

Talking points – ASP – Collateral damage

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With the changes to Alternatively Secured Pension (ASP), are you sure you know who ASP is still suitable for?

Clients need to be made aware, when considering ASP, of the possible collateral damage they could cause to their intended beneficiaries.

In this Talking Points we discuss the rule changes and possible fall out for those who are not prepared.

The rules

The new legislation basically removes the attraction in using a SIPP as a means of passing on a member's residual ASP assets on death to one or more other scheme members, sometimes referred to as a family SIPP.

Where a member dies on or after 6 April 2007 while taking ASP the only authorised payments in respect of the residual fund will be where it is:

- » paid to secure dependants' benefits;
- » paid to a charity; or in certain limited circumstances
- » paid as a lump sum death benefit to a non connected employer.

Further details are set out concerning the latter in Statutory Instrument SI 2006/574. Any payment made to enhance the benefits of another scheme member (i.e. alternatively secured rights) will be treated as an unauthorised payment with total tax charges, including the scheme sanction charge, of up to 70% of the amount of the payment. In addition to this the payment will form part of the member's estate for IHT purposes resulting in a combined tax charge of up to 82% of the amount of the payment. This will be irrespective of whether the unauthorised payments charge or the IHT charge is made first.

The tax

The amount of the tax due on such a payment will in itself preclude the use of a family SIPP. However, the position is even worse as it is the recipient of the alternatively secured rights who will have to find the 55% unauthorised payments and unauthorised payments surcharge from his/her own resources as the fund will remain within the registered scheme.

Worse still, if the scheme makes scheme chargeable payments exceeding 25% of the total scheme assets within a 12 month period, the de-registration threshold would be reached. If this happens there would be an additional tax liability bringing the effective tax rate on the payment to over 100%. Fortunately, this is unlikely to occur especially for large schemes where ASPs make up only a small proportion of funds.

In paragraph 5.14 of its report on the Annuities Market issued at the time of the Pre Budget Report (PBR), HMRC indicated that its then proposals concerning ASP *will bring practice and policy intention into line, and provide a fair balance between meeting the needs of those with principled religious objections to annuitisation and the needs of the wider public who are provided with tax relief in order to enable individuals to produce an income in retirement. However, if these proposals prove unworkable, or there is continued evidence of use of pension tax relief to provide capital sums after retirement, the Government will need to consider whether to remove access to ASP altogether.*

Our view

The changes to ASP are likely to severely limit its ongoing use, which in the future may be restricted to those cases where:

- » a member is reluctant to commit to buying an annuity because of their own or their dependant's health
- » the member plans to draw the maximum ASP income and use all or part of it to make normal expenditure gifts, free of IHT.
- » the intention is to leave the residual fund to charity, which will continue to be free of tax

It should also be noted that those who purchased ASPs before the 6 April 2007, will also be affected by these changes. However, the charges will not be retrospective for those who died prior to this date.