RETAIL & CONSUMER

VAT RECOVERY ON PENSION SCHEMES

What is happening with the Pension Scheme 2016?

Transitional period for offsetting VAT on pension costs extended

In our "Pensions 2016: What's happening?" update we reported on the end of the transitional period for offsetting VAT on pensions costs. This could have left pension schemes facing a possible 20% increase on their running costs from 1 January 2017 and many R&C employers are likely to have been mulling over the potential options for dealing with this, pending further HMRC guidance.

Such guidance has not been forthcoming, but on 5 September 2016 HMRC announced that it is extending the transitional period for reclaiming VAT to 31 December 2017. This maintains its longstanding practice of allowing employers to treat VAT on certain pension costs as input tax for VAT purposes, meaning it can be offset against the employer's own VAT bill – welcome news in some respects, but ultimately it fails to do away with the uncertainty in relation to this long drawn-out and somewhat vexed issue.

Background

Following the decision of the Court of Justice of the European Union in the "PPG case", HMRC announced in February 2014 that it was ending its existing practice of allowing employers to offset VAT paid on certain pension costs against their own VAT liability, where the pension costs were technically incurred by the scheme trustees. The change was subject to a transitional period.

HMRC's February 2014 announcement was very unclear. Although there have been various subsequent announcements seeking to clarify the consequences of HMRC's change of policy, these have thrown up numerous legal issues. The transitional period during which the old practice can be maintained has already been extended several times.

The new announcement

HMRC have said that it is taking them longer than expected to reconcile the court decision in the PPG case with pension and financial service regulations, accounting rules and emerging case law, which is why the decision has been taken to extend the transitional period by a further 12 months to 31 December 2017. The announcement acknowledges that "some taxpayers may have already made changes to their structure and/or contractual arrangements to comply with the judgment. Provided the employer and pension scheme trustees agree and both apply the same treatment, these taxpayers may continue with those arrangements. If they wish, they may choose to revert back to the previous treatment during the transitional period."

It goes on to state that the guidance HMRC had been intending to publish has been put on hold whilst HMRC considers the wider implications of the options being proposed. The announcement already contemplates the possibility of a further extension to the transitional period, stating that towards the end of 2017, HMRC will review the position and "consider the need for a further extension if necessary".

Comment

It is not clear what impact the Brexit vote has had on HMRC's thinking. Depending on how Brexit plays out - as with GMP equalisation - it is possible that HMRC could dodge having to resolve this issue altogether, since the relevance of PPG as a Court of Justice of the European Union decision could ultimately fall away.

As with our previous guidance, R&C employers and trustees need to be aware that there are several potential options for maintaining the ability to make the relevant VAT reclaims at the end of the new transitional period, none of which are straightforward. Those who have adopted a new structure and/or contractual arrangements may want to revert back in light of the HMRC statement. For others who decided to "watch and wait", we recommend continuing to do so before making any final decisions.

Given the range of issues which HMRC will have to consider, we may well not see any further guidance on this topic until at least Autumn 2017.

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