

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 reclaim 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.

Who to contact

JADE MURRAY
Partner

0113 209 2446
jade.murray@addleshawgoddard.com



ALEXANDRA FRICKE
Associate

0113 209 2124
alexandra.fricke@addleshawgoddard.com



JAMES DAMARELL
Trainee Solicitor

0113 209 7609
james.damarell@addleshawgoddard.com



10-6919449-1

addleshawgoddard.com

Doha, Dubai, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

© 2016 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged.

This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances.

Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice) and in Hong Kong through Addleshaw Goddard (Hong Kong) LLP (a limited liability partnership registered in England & Wales and registered and regulated as a foreign law firm by the Law Society of Hong Kong, operating in Hong Kong as a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance) in association with Francis & Co. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request.

The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications.

If you prefer not to receive promotional material from us, please email us at unsubscribe@addleshawgoddard.com.

For further information please consult our website www.addleshawgoddard.com or www.aglaw.com.