

Questions and Answers on the anti-forestalling legislation in Schedule 35 of Finance Bill 2009.

Protected pension input

Regular payments

Q. Since 22 April 2009 I have continued to make quarterly contributions to a money purchase arrangement (not a cash balance arrangement) but the previous payments were not always at the same level, what will be my protected pension input amounts for 2009/10 onwards in respect of this arrangement and how much will be protected?

A. This will depend on the facts of each case. The following examples indicate when amounts would normally be considered to be protected.

Example 1

Jenny has a pre-22 April 2009 contractual agreement to pay £2,000 per quarter to an arrangement that Jenny has under a personal pension scheme. In 2008-09 Jenny missed a quarterly contribution (or happened to pay less than £2,000 for that quarter).

During the 2009-10 tax year Jenny paid quarterly contributions of £2,000 to the arrangement.

In this case we would accept that the normal regular contributions of £2,000 per quarter throughout 2009-10 to the arrangement are protected pension input amounts.

Example 2

As example 1, but although Jenny has a contractual agreement to make quarterly contributions, she actually misses three out of the four payments in 2008-09.

In this case, because there was an agreement to make payments on a quarterly basis in respect of the arrangement and contributions continued to be paid on that quarterly basis after on Budget Day (22 April 2009), we would accept that the normal regular contributions of £2,000 per quarter in 2009-10 onwards are protected amounts.

Example 3

Sam pays £1,000 each quarter to his pension provider throughout 2008-09, although there is no formal agreement to make any payments.

During 2009-10 Sam pays £1,000 each quarter in to the same arrangement.

In this case, we would accept that the normal regular contributions of £1,000 per quarter in 2009-10 are protected amounts.

Example 4

As example 3, but one of Sam's quarterly payments in 2008-09 is only £100.

In this case, we would accept that there is a set pattern of contributions of £1,000 per quarter and that therefore the normal regular contributions of £1,000 per quarter in 2009-10 onwards are protected amounts.

Example 5

In 2008-09 Emma contributes quarterly to her pension scheme but different amounts each quarter. The contributions were as follows

| | |
|---------|--------|
| April | £3,000 |
| July | £4,000 |
| October | £4,500 |
| January | £2,900 |

In this case, we would accept that regular contributions have been made although there is no set pattern to the actual rate paid. In these circumstances, we would accept that the rate of quarterly contributions is the median of the four contributions made in 2008/09. That is if the contributions were put in order of value, the middle value, or in the case where there are an even number of contributions the average of the two middle values. In this example, this would be the average of £3,000 and £4,000, that is £3,500.

Therefore if Emma continues to make quarterly payments at an amount of £3,500 in 2009-10 onwards we would accept that they were protected amounts.

Example 6

In 2008-09 Angus contributes quarterly to his pension scheme but in different amounts each quarter. The contributions were as follows

| | |
|---------|---------|
| April | £2,000 |
| July | £5,000 |
| October | £4,000 |
| January | £45,000 |

Again we would accept the median value of the contributions as his rate of quarterly contributions.

In this example, this would be the average of £4,000 and £5,000, that is £4,500. Therefore the protected amount would be £4,500 per quarter.

Flexible benefits

Q. My employer provides flexible benefits giving me an annual choice of how much I want to contribute to the company pension scheme on a monthly basis. But I have to opt in each year. Last year I opted to contribute 5% of my salary on a monthly basis. I have to opt again for an amount on 1 September 2009. If I continue to opt for a 5% contribution on a monthly basis would this be protected pension input even though I opted for it after 22 April 2009?

A. Yes. If the level of your contribution remains the same as it was before 22 April 2009 (in this case 5%) and was a regular payment then this would be protected pension input, irrespective of the fact that you had to opt in (on or after 22 April 2009) for the 5% contribution to continue. However, if on or after 22 April 2009 you opted to increase the level of contribution then the increased amount would not be protected pension input.

Q. I am in a defined contribution scheme and my contribution is linked to a percentage of my salary. If my pay increases is the increased amount of contributions a protected pension input?

A. Yes as long as your contributions were linked to a percentage of salary and this was agreed before 22 April 2009 then any automatic increase in contributions as a result of an increase in your salary would be a protected pension input.

Discretionary rules

Q. The trustees of the pension scheme of which I am a member propose to increase my benefit entitlement using the discretion given to them under the rules of the scheme. Would HMRC consider that there had been a material change in the rules of the scheme, resulting in the increase not being protected?

A. Whether there has been a material change will depend on the facts and circumstances of the individual case.

Where a discretionary power was used in a particular way before 22 April 2009, so that it would have been reasonable for members to assume that it would be exercised in the same way after that date, then we would accept that this was a rule of the pension scheme before 22 April 2009. It follows that if a member's benefits are being increased on or after 22 April 2009 under a discretionary power being used in the same way it was exercised before that date, there has not been a material change in the rules of the scheme for the purpose of paragraph 8(4) of Schedule 35 and that the pension input amount that occurs as a result of the use of the discretionary power in this particular way will be a protected pension input amount.

On the other hand, if the discretion is being used to provide a material change in benefits but not in a way it was before 22 April 2009, we would consider this to be a new rule made on or after that date, so any increase in pension input would only be protected if the 50-member rule in paragraph 8(6) was satisfied.

In addition, the anti-avoidance provision in paragraph 14 of Schedule 35 which relates to any case where there is a scheme to avoid or reduce liability to the special annual allowance charge, lifetime allowance charge or annual allowance charge should always be borne in mind when considering the tax position of any pension input, as there will be no protected pension input amount where paragraph 14 applies. This could include the case where as part of a scheme to avoid or reduce tax liabilities there was a material change to the scheme rules affecting 50 or more members where the purpose of that rule change was to avoid or reduce these charges.

Employee/employer contributions

Q. My employer pays £2,000 a month into my personal pension scheme and I also pay £2,000 a month, giving total contributions of £4,000 a month. These contributions have been made since I joined the company in January 2007. From September 2009, my

employer is introducing a salary sacrifice arrangement and as a result my employer will increase their contribution to £3,000 per month, whilst mine will be reduced to £1,000 a month. Although my employer has increased their contributions, as the overall amount remains the same is this protected pension input?

A. Yes, even though there is a change in the amount you and your employer contribute, because the total monthly amount of pension savings remains the same this is protected pension input.

High-income individuals

Q. I have a salary sacrifice agreement linked to a pension arrangement which I have to renew annually. If I renew it on or after 22 April 2009, will the amount of salary sacrificed need to be added back into my income, even where the amount sacrificed remain constant with my pre Budget day levels?

A. Yes. Any salary sacrifice linked to pension arrangements entered into on or after 22 April 2009 will need to be added back to your income in working out 'relevant income'.

Q. I have a salary sacrifice agreement linked to a pension arrangement that was in place before 22 April 2009 which I have to renew annually, although the agreement includes a default position that if I do nothing the salary sacrifice will continue at the same levels for the following year. If the default provision has applied as there has not been any renewed agreement on or after 22 April 2009 does the amount sacrificed have to be added back to work out relevant income?

A. No. If the default position was that the pre-22 April 2009 salary sacrifice linked to pension arrangements continues at the same pre-22 April 2009 level without any new agreement this would be an existing pre-22 April 2009 salary sacrifice and would not to be added back in to your income in working out relevant income.

Redundancy

Q. I am being made redundant. Does my redundancy payment have to be included in the total when working out 'relevant income'?

A. Yes. Apart from the first £30,000 of your redundancy payment which is tax-free and need not be counted as part of your taxable

income, redundancy payments are treated as employment income and therefore included in total income for the purposes of working out what your 'relevant income' is. If as a result you have 'relevant income' of £150,000 or more, then the special annual allowance applies to you.

Q. I am being made redundant and was planning to contribute part of my redundancy payment to my personal pension. I had been basing my planning on the assumption of getting tax relief at 40%? Does this mean I will only receive tax relief at basic rate on this lump sum payment?

A. If your relevant income is £150,000 or over, then any new pension savings over the special annual allowance, including a lump sum payment from any redundancy package will be subject to a tax charge. This will in effect restrict tax relief to basic rate.

Q. I have never had income anywhere near £150,000 but was told I was being made redundant in March 2009. As part of my redundancy package I agreed to give up some redundancy pay (£150,000) in return for my employer making a one off lump sum payment to my pension. The agreement was signed on 1st April but the payment wasn't made to the pension scheme until 30th April. Am I affected?

A. As long as the agreement to salary sacrifice some of your redundancy pay for employer pension contributions was in place before 22 April 2009, the amount sacrificed would not need to be added back to your income to work out 'relevant income'. If your 'relevant income' was below £150,000 (and was also below this for either, or both, of the preceding two tax years) then the special annual allowance will not apply to you.

Contributions

Q. I have a National Insurance rebate on contracting out being paid into my pension scheme. Is this included as a contribution?

A. No. They do not count for the special annual allowance or the annual allowance.