SSAS update

Welcome to our latest view on recent regulatory and legislative developments for trustees of small self-administered pension schemes

November 2017

In this update

Tightening up the regulations?

We are starting to see a theme from the various regulators involved with SSASs of a general tightening of the regulations, which is evidenced later in this update.

The regulatory spotlight is turning to SSASs as they are sometimes perceived (perhaps unfairly) as a mechanism used by scammers and so called pensions "unlocking" schemes.

Trustees who maintain a well run SSAS (eg they have good record keeping, up to date accounts and can evidence that they act within the rules) have nothing to fear from a tightening of regulations. For those who may be slipping behind, we suggest that now is the time to bring matters to the fore and up to date. We are on hand to provide clients with assistance so that you don't fall foul of the regulations.

HMRC's Trusts Registration Service

HM Revenue & Customs (HMRC) will shortly launch its new online Trusts Registration Service (TRS) which will replace certain paper forms and ad hoc processes for reporting to HMRC.

Trustees of occupational pension schemes (such as SSASs) will normally only need to register with the new TRS if they are liable to pay any of the "relevant UK taxes". The "relevant UK taxes" are income tax, capital gains tax (CGT), inheritance tax, stamp duty land tax, stamp duty reserve tax and, in Scotland, land and buildings transaction tax. Taxes due under the Finance Act 2004 (eg Lifetime Allowance charge, Annual Allowance charge, unauthorised payments charge etc) do not trigger the registration requirement.

Most pension schemes should not have income tax, CGT or inheritance tax to pay, but may be subject to stamp duty or land tax.

Trustees registering with the TRS for the 2016/17 tax year should do so before **5 December 2017** for income tax or CGT, or by 31 January 2018 for any of the other relevant taxes.

The obligation to register applies annually so trustees should set up a rolling reminder to keep this under review.

Legal Entity Identifier

From 3 January 2018, certain investment firms will only be able to execute trades on behalf of trusts (and others) – such as SSASs - where the trust has a Legal Entity Identifier (LEI). The LEI is a unique code, included in a global data system, which enables parties to a financial transaction to be identified in any jurisdiction. This is a further step, endorsed by the G20, towards combating money laundering.

It is likely that any investment firms will have already contacted trustees directly if an LEI is required. However, if no such contact has been made, we suggest that trustees check with such investment firms if an LEI will be needed.

Further details can be found on the Financial Conduct Authority's website. Trustees will be directed to register online with the London Stock Exchange (LSE) and obtain LEI from them at www.lseg.com/lei.

We strongly suggest the LSE's full online guidance is referred to and followed. There is a £115 +VAT fee for registration and £70 +VAT for its annual renewal.

General Data Protection Regulation (GDPR)

SSAS trustees have long been subject to registration with the Information Commissioner's Office (ICO) for the purposes of the Data Protection Act (DPA). As controllers and processors of personal and often sensitive data about their members, trustees are subject to legal obligations about how that data is stored and processed. The GDPR, which will take effect from 25 May 2018, will increase the data protection obligations across Europe (and is expected to still apply in the UK post Brexit).

In practice, for the majority, SSAS members are also trustees and thus the lines can become blurred. Nonetheless, SSAS trustees should adhere to the requirements of both the DPA and GDPR, particularly where the data is not about themselves personally, such as a beneficiary or another trustee.

Further details regarding the GDPR are available on the ICO's website at ico.org.uk.

Trustee knowledge

Understanding the trustee role

Trustees are responsible for all their SSAS activities, even when certain activities have been delegated. Thus it is important for trustees to understand their role and responsibilities in a well run and governed scheme.

The Pensions Regulator (TPR) provides some useful online tools to assist trustees to achieve and maintain good governance with some best practice examples. These can be found at trusteetoolkit.thepensionsregulator.gov.uk.

Lack of knowledge is no defence against tax charges

HMRC require every SSAS to have a Scheme Administrator who is responsible for ensuring the SSAS is compliant with the rules.

For LCP SSAS clients, the trustees collectively act as the Scheme Administrator (even where one individual has registered with HMRC for reporting purposes).

As previously reported, we continue to see legal cases where Scheme Administrators have attempted to appeal against HMRC's imposed tax charges where they have fallen foul of the rules.

For example, a loan from a SSAS will be considered authorised where all the conditions for loans are met, including the registration of the legal charge. If they are not met it will be "unauthorised" and, for a large loan, the tax charges could be considerable.

Trustees should be aware that non-payment of rent from a sponsoring employer to a SSAS may be considered an "unauthorised loan" by HMRC, with all the tax consequences such a stance would create.

Our viewpoint

HMRC's interpretation of the rules indicates they have no discretion and it appears that being unaware of the rules is no defence.

Changes to HMRC online

HMRC will be moving their pension scheme registration and administration to a new digital platform – the Pensions Online Digital Service. They intend to migrate existing registrations by April 2018 and for new registrations to be completed on the new platform from that date.

HMRC request that all registered Scheme Administrators log on to the existing online service as soon as possible to make sure that their data is up to date and complete. HMRC intend to cleanse the data before the migration and, if it is not complete (or if it has not been accessed in some time) it will not be moved and trustees will have to register again as a new user.

We suggest all trustees registered with HMRC **log on to the HMRC website to check that the details held are correct and complete**. This is particularly important for those who have delegated the reporting requirements to someone else (like LCP) to complete.

Regulatory reporting requirements 2016/17

A reminder for all those connected with SSAS of the regulatory reporting requirements.

HMRC requires Scheme Administrators to submit reports online. Their deadline for the submission of their reports for the 2016/17 tax year is 31 January 2018. Failure to meet the deadlines will result in automatic fines.

HMRC Registered Pension Scheme Return

Technically HMRC only requires Scheme Administrators of SSASs to submit a Registered Pension Scheme Return when requested, however, requests appear to be annual.

Whoever has registered with HMRC online as Scheme Administrator should check the scheme's noticeboard on HMRC's website to see whether a notice to complete a return has been received for the 2016/17 tax year and, if so, arrange its completion. Please let us have a copy of the submitted return in due course.

Our viewpoint

If LCP has been appointed as authorised practitioner we have written to request the necessary information (and in many cases already completed the return). If we have not been so appointed, the Scheme Administrator must complete the submission. We are happy to act as authorised practitioner if required - please contact us for details.

The Pensions Regulator's scheme return

The TPR requests the completion of their scheme return normally on a rolling three year basis for schemes with two or more members. This is a separate return to that requested by HMRC. Although TPR usually provides trustees with notification of the requirement by post this is not always the case. We suggest that trustees regularly check the TPR's Exchange system (via their website www.thepensionsregulator.gov.uk) to see whether a return is due.

TPR aims to give six weeks for the completion of the return and has the power to fine trustees for failing to do so.

Our viewpoint

TPR's scheme return is a regulatory hurdle that trustees could easily miss (resulting in an unexpected fine) but one that is not too onerous to complete. We are happy to help clients with completing the return as required. We already monitor TPR's website and complete returns when they become due for some of our clients and would be happy to extend this service to other clients who require further assistance.

HMRC Event Report

In addition to the scheme return, HMRC requires an Event Report to be submitted if certain events occur during each tax year. We have set out opposite some further information on the reportable events to help trustees determine whether or not an Event Report may need to be submitted. If a report is necessary the Scheme Administrator will need to arrange for its completion.

If there is any doubt as to whether an event that has occurred needs to be reported, please let us have details and we will advise accordingly.

Our viewpoint

Where we are aware that a reportable event has occurred we have already written to trustees regarding the next steps that need to be taken to submit the report. If a reportable event has occurred and LCP has been appointed as authorised practitioner we can submit the report. Otherwise the Scheme Administrator must arrange for the submission of the report.

HMRC Event Report 2016/17

The regulations set out numerous separate events covering many areas, most of which are unlikely to apply to schemes ordinarily. However, to help the Scheme Administrator determine whether a report may be required, we have summarised below the type of events that require reporting.

Generally, the reportable events fall into two main areas: scheme events and member events. Please review the following list of events and if you think any of them may have occurred during the last tax year let us know as a matter of urgency so that we can advise whether it needs to be reported.

Scheme events

- Unauthorised payments[1].
- The purchase or sale of any taxable property[2] (or, if already held, any income received from such property), at any time during the tax year.
- A change in membership between certain bands (ie where the number of members has increased from 1 or above 11, or decreased below 2 or become 0).
- The wind up of the scheme.

Member events

- A member commences receipt of their benefits before normal minimum pension age - normally only possible on ill-health grounds.
- Commencement of benefits where the member's funds from all schemes have exceeded the Lifetime Allowance and the member has relied on any form of Lifetime Allowance protection.
- A lump sum is paid to a member who has any form of Lifetime Allowance protection.
- A lump sum is paid to a member that represents more than 25% of their share of the fund.
- Lump sum death benefit payments that amount to more than 50% of the Standard Lifetime Allowance that was applicable on the date of the member's death.
- The trustees are required to issue a Pension Savings Statement (usually when contributions paid in respect of a member exceed the Annual Allowance).

Transfers to Qualifying Recognised Overseas Pension Schemes are now reported separately and must be reported within 60 days of the transfer.

[1] An unauthorised payment is a legally defined term and includes, for example, a loan to a scheme member.

[2] Taxable property is a legally defined term and includes, for example, residential property, works of art etc. If in doubt, please contact us.

Any questions?

If you would like any assistance or further information on the contents of this SSAS update, please contact Peter Clarke or Patrick Moriarty or email enquiries@lcp.uk.com.

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