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Legal Update – Taxation and Data Protection

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Agenda

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- Lifetime ISAs
- Annual Allowance and Lifetime Allowance
- Public sector exit payment cap
- Data Protection
  - EU General Data Protection Regulation
  - ‘Safe Harbour’

Lifetime ISA

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- New savings vehicle available from April 2017
- Contributions count against the ISA allowance of £20,000 rather than the pensions annual allowance
- Available to under-40s
- Maximum annual contribution of £4,000
- 25% government bonus on contributions at end of tax year
- Bonus available between age of 18 and 50
- Tax-free funds (inc. bonus) can be used to buy a

first home worth up to £450,000

- Or funds can be withdrawn tax-free post-60

(or on terminal ill health)

- On death funds form part of the account holder's estate

Annual Allowance and Lifetime Allowance (1)

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Annual Allowance:

- Until 6 April 2016 annual limit on tax relief was £40,000
- From 6 April 2016, changes for those with “adjusted income” over £150,000
- AA reduces by £1 for every £2 by which the individual’s income exceeds £150,000 (subject to a maximum reduction of £30,000)
- Carry-forward of unused allowance is still available
- No reduction if “threshold income” is £110,000 or less

Lifetime Allowance:

- On 6 April 2016 reduced from £1.25m to £1m
- From 6 April 2018 will rise with inflation

Annual Allowance and Lifetime Allowance (2)

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Lifetime Allowance: Individual and Fixed Protection Certificates

- HMRC's online application process now up and running for obtaining a Lifetime Allowance protection certificate
- Personal accounts can be set up on the Government Gateway for anyone requiring a protection certificate in respect of:
  - Individual Protection 2016
  - Fixed Protection 2016 or
  - Individual Protection 2014

- Use the portal to apply for a permanent protection notification number
- For anyone who used the interim application process, HMRC has confirmed that "*providing these individuals have not lost their protection, their pension savings will continue to be protected and there will be no tax consequences.*"

Public Sector Exit Payment Cap (1)

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Recap: September 2015 – HMRC Consultation on a Public Sector Exit Payment Cap

- Proposed £95,000 cap (before tax) on the total amount of redundancy and other exit payments that an individual leaving the public sector can receive

"The government does not believe that six figure exit payments, which are far in excess of those available to most workers in the public sector or wider economy, are fair or offer value for money to the taxpayer who funds them."

- Wide scope of exit payments caught by the cap – **would include the cost to the employer of funding early access to unreduced pensions for employees**

Public Sector Exit Payment Cap (2)

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- Following a mixed response, a consultation on other reforms to Public Sector Exit Payments ran from February to May 2016. Government proposed to:
  - Set a maximum tariff for calculating exit payments at three weeks' pay per year of service.
  - Cap the maximum number of months' salary that can be used when calculating redundancy payments up to 15 months.
  - Set a maximum salary for the calculation of exit payments.
  - Taper the amount of lump sum compensation an individual is entitled to receive as they get close to the normal pension age or target retirement age of the pension scheme to which they belong, or could belong, in that employment.
  - Reduce the cost of employer-funded pension top up payments, such as limiting the amount of employer funded top ups for early retirement, or removing access to them and/or increasing the minimum age at which an employee is able to receive an employer funded pension top up.

Public Sector Exit Payment Cap (3)

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- Government published its response to the consultation on 26 September 2016:
  - 350 responses were received – majority expressed opposition to the government's proposals
  - "Exit payments will continue to be fair to employees and provide an appropriate level of support as a bridge into finding new work, or into retirement. Nevertheless, it is right to take forward the proposed reforms to cut the cost of redundancies, and to ensure greater consistency between schemes"
  - "Ministers remain of the view that it would be appropriate to reform exit payment arrangements across the public sector consistent with the proposals set out in the consultation"
- Government hopes that following the consultation, regulations implementing the cap will be published and in force early 2017

Data Protection

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Recap

- TPS employers and administrators control and process significant amounts of personal data
- “Personal data” is information that:
  - Is about a living person
  - Identifies a person whether by itself, or together with other information in the organisation’s possession (or likely to come into its possession)
  - Is in an electronic form or a structured manual file
- Data controllers must ensure that all personal data is:
  - Adequate, relevant and not excessive
  - Accurate and up-to-date
  - Kept secure
  - Not transferred outside the EEA unless the data will be adequately protected

EU General Data Protection Regulation (GDPR)

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- New GDPR adopted by the EU on 24 May 2016
- Will have direct effect in all EEA countries and will replace the Data Protection Act in the UK from 25 May 2018
- Will have a significant impact on all pension schemes including TPS, for example extending obligations in a number of key areas
- New obligations placed on data processors, which will need to be addressed in new and existing contracts with service providers such as **scheme administrators**, **payroll processors** and **any other contract where personal data is passed on**
- Penalties for non-compliance will also increase considerably – the most serious breaches will be punishable by fines of up to €20million

Data Security (1)

What you can do:

- Data security (or lack of it) has resulted in the highest fines to date, and damage to reputation is also a major risk

- Could be caused by:
  - Poor access control (physical and virtual) allowing unauthorised access
  - Forwarding papers to personal accounts
  - Loss of unencrypted laptop or other device (e.g. memory stick)
  - Sending email to wrong address
  - Sending “cc” rather than “bcc” emails to members
  - Administrator hosts data on faulty virtual servers

Data Security (2)

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Solutions:

- Properly implemented data security policy
- Nominated individual with overall responsibility for data security
- Access limited to that which is necessary
- Secure disposal of hard copy data/deletion of electronic data
- Appropriate due diligence before using service providers (e.g. external payroll) including legal review of contracts
- Physical security to data in paper form and electronic devices on which data is stored
- Vetting and training those who have access to personal data
- Password protection/encryption for data held electronically
  - Storage: use robust hashing and salting
  - Complexity: at least ten digits – ideally numbers, letters (upper and lower case) and symbols

Data Security (3) – How strong is your password?

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Characters	Numbers only	Upper case or lower case letters	Upper case and lower case letters	Numbers, upper case and lower case letters	Numbers, upper case, lower case and symbols
4	Instantly	Instantly	Instantly	Instantly	Instantly
5	Instantly	Instantly	Instantly	3 seconds	10 seconds
6	Instantly	Instantly	8 seconds	3 minutes	13 minutes
7	Instantly	Instantly	5 minutes	3 hours	17 hours
8	Instantly	13 minutes	3 hours	10 days	57 days
9	4 seconds	6 hours	4 days	1 year	12 years
10	40 seconds	6 days	169 days	106 years	928 years
12	1 hour	12 years	600 years	108k years	5m years
14	4 days	8k years	778k years	1bn years	5bn years
16	1 year	512m years	1bn years	6tn years	193tn years
18	126 years	3bn years	1tn years	23qd years	1qt years

Brexit and the GDPR

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- Widely held view is that UK will still wish to be considered an "adequate" jurisdiction for data protection to enable trade with the EU
- ICO has been clear that organisations should continue to prepare for and comply with the GDPR now, rather than lose valuable compliance preparation time
- With fines for non-compliance set to increase to €20million for breach of the data protection principles or failing to comply with the conditions for consent, data subjects' rights and international data transfers, risk is very much with data controllers and processors if they choose not to act

Data Protection – ‘Safe Harbour’

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- Transfers of personal data from the EU to outside of the EEA are only permitted if “adequate protection” is ensured for the data in the country to which it is transferred
- Framework known as “Safe Harbour” operated in the US, whereby firms could self-certify to a set of data protection standards which were regarded as sufficient to ensure the “adequate protection” requirement is satisfied
- However, a recent ECJ case involving Facebook found that the “Safe Harbour” framework was invalid as US security forces can access data beyond what is strictly necessary and proportionate
- As such, where pension scheme data is transferred to or processed in the US, data controllers can no longer rely on “Safe Harbour” to constitute adequate protection for the data
- “EU-US Privacy Shield” has been announced by the European Commission and is intended to replace the “Safe Harbour” framework, and the EC has decided that the Privacy Shield does provide adequate protection

Questions?

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