

## JUNE 2007 NEWSLETTER

### **IMPORTANT: Cooling off period for new SIPPs**

One of the FSA requirements is that anyone signing up for a new SIPP must be given a 30 day option to change their mind.

However, as we explain in Section 8 of our Application Form and Section 24.2 of our Terms of Conditions, this means that we will not do any work on the SIPP application or apply for any transfers until the end of the 30 day cooling off period. This is a commercial decision, because if the client changes their mind, we would not be paid for the work we have done. If clients wish us to proceed with the set up of their SIPP before this 30-day period expires then they do have the option of waiving their right to cancel.

In reality, because all our clients come to us via professional introducers such as IFAs, they will have had all the implications of a SIPP fully explained to them by their IFA well before the Application Form reaches us.

However, if a client wants to choose to have the cooling off period, that is of course their right and we will fully respect it.

**We therefore remind all our IFAs that, if their client requests the 30 day cooling off period, then we will not set up the SIPP bank account or apply for any transfers until the end of the cooling off period.**

### **At last – good news on Protected Rights?**

An amendment to the Pensions Bill 2007 introduced in the Lords on 6<sup>th</sup> June will at last open the door for SIPPs to take Protected Rights money, and more importantly, it will allow Protected Rights to have exactly the same investment options as non-Protected Rights monies.

Let us quote from Hansard 6<sup>th</sup> June 2007, and in particular what Lord Mackenzie of Luton said [Lord Mackenzie is the Parliamentary Under Secretary (Lords) at the Department for Work and Pensions]:

“The amendments remove all the rules that apply to protected rights except for the provisions concerning survivors (*see below*). The consequence of those changes is that protected rights will be treated in the same way as non-protected rights when being invested or transferred.”

Two further points. First, the effective date is not given. Let us hope they go for something sensible like 6<sup>th</sup> April 2008. There must be a fear that it could be delayed until as late as 2012 (the DWP originally said they would consider freeing up investment of Protected Rights from 2012, which is when money purchase contracting out is abolished). Please let common sense prevail!

Secondly, another aspect of this late amendment to the Bill relates to the need to ensure that “dependant’s” benefits are provided in a specific way on Protected Rights monies. In particular, those who are married or in a civil partnership will still be required to provide a 50% spouse/partner pension with their protected rights fund, even after money purchase contracting out is abolished in 2012. This will mean that Protected Rights and non-Protected Rights cannot in all cases be combined to provide one pension or buy one annuity. If the member does not want to provide a 50% dependant’s pension with their non-Protected Rights monies, then if they elect to have drawdown, SIPP administrators will have more cumbersome administration, duplicate communication with members and additional expense, which will add to costs. If the member also chooses to buy an annuity, they will incur two annuity administration expenses, leading to an overall lower annuity rate.

However if that’s the price we pay for freeing up Protected Rights, it’s not such a bad deal.

It is estimated that there is between £75bn and £100bn sat in insured Protected Rights funds. When these new rules come into force, we expect significant Protected Rights funds to be transferred from the insurance companies to SIPPs.

Also remember – there’s still estimated to be a further £250bn of non-Protected Rights funds currently in insured personal pensions.

### **In specie contributions**

HMRC have clarified their requirements for in specie contributions. Sadly, this is another example of “Simplification” being a misnomer. Whilst the concept of an in specie contribution is straightforward, the practicalities are less so.

RPSM 05101020 stipulates that contributions need to be a monetary amount to qualify for tax relief. RPSM 05101045 goes further and says that simply requesting assets to be taken into a scheme does not qualify for tax relief. However, if an individual first agrees to pay a monetary amount, then this “debt” can be settled by way of a transfer of assets and in so doing can be treated as a contribution for tax relief purposes.

### **So what is the process?**

Consider a member who personally owns a commercial property worth £200k who wants to pay it into their SIPP as an in specie contribution. They need to agree, in writing, with the SIPP Administrator that they will make a personal contribution of £200,000.

An independent valuation of the property will be needed (as it is effectively a “connected party” transaction) confirming the value at £200,000.

The lawyers (on both sides i.e. the member’s and the trustee’s) will need instructing and the property will be transferred from the member’s ownership to the SIPP trustee’s ownership when contracts are exchanged. It will be the date that the contracts are exchanged which will be the date that the in specie contribution will have been deemed to be made – known as the “trade date”.

This gives rise to a number of questions:

### **Is Stamp Duty payable:**

Yes. It is classed as a change of legal owner and SDLT will be due on the full amount as at the trade date i.e. at 1% on £200,000 in our example.

### **What about Capital Gains Tax?**

The contributor will be subject to CGT on the “sale” of property, this being calculated as at the “trade date”

### **What tax relief is given?**

If it was a Company contributions then as usual it will be a gross contributions and will attract tax relief assuming the contribution passes the ‘wholly and exclusively’ test.

Personal contributions will be treated as a “net” contribution, so the SIPP administrator would reclaim the basic rate tax on the £200,000 and the member would claim the extra 18% higher tax rate on their next annual tax return. Care must be taken to ensure that the grossed up personal contribution does not exceed 100% of the member’s net relevant earnings or the Annual Allowance which ever is lower in any one input period.

### **What if the value of the transferred assets is less than the specified monetary amount?**

If the property had been valued at say £190,000, the member will be duty bound to pay a further £10,000 into their SIPP as a contribution (eligible for tax relief of course). HMRC expect interest to be applied to the shortfall of £10,000 if there is a delay in it being paid – their guideline being that if in normal commercial circumstances interest would be payable, then interest should be charged.

Commonsense will however prevail if there is a small shortfall that would be costly to collect; it can then be ignored eg if the shortfall was say £10 or £50.

### **What if the value of the transferred assets is more than the specified monetary amount?**

Suppose the valuation came out at £210,000. Option 1 would be for the SIPP to reimburse the member £10,000 in cash: in this case only £200,000 would be eligible for tax relief. Option 2 would be for the member to opt to leave the extra £10,000 in the SIPP as a further “cash” contribution, in which case tax relief on £210,000 could be claimed.

### **Comments**

HMRC have clearly made a mountain out of a molehill here. However, at least we now know what the procedure is. We as SIPP trustee will naturally be wary of agreeing a formal “debt” with a member – we and the member will want to be certain there will be no shortfall. What this will mean in practice is that we (and the member) will need to probably have a formal valuation of the property (or whatever asset is to be paid as an in specie contribution) before the formal debt is set up and then have the valuer reissue the valuation formally when the property is exchanged.

Both parties will need reassurance from the valuer that they do not expect any material change in their valuation during that period - which will need to be kept as brief as possible.

**Our website**

We encourage you to check out our website, which includes much technical support and many downloadable leaflets. If you have any suggestions for improving the website, please let us know.

**Gilt yield for drawdown rates**

The gilt yields to use for drawdown calculations are:

February 2007	4.50%
March 2007	4.50%
April 2007	4.50%
May 2007	4.75%
June 2007	4.75%
July 2007	5.25%

*June 2007*

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