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Pensions Newsletter

Picture this

Kodak Pension Scheme helps save Kodak

The Trustees of the Kodak Pension Plan (KPP), the UK pension scheme for employees of Kodak Limited, the UK subsidiary holding company of Eastman Kodak ("Kodak") and sole sponsoring employer of the KPP, has recently acquired two of the businesses of US parent company Kodak in a move which helped Kodak out from Chapter 11 bankruptcy in the US, and which had earlier been approved by the US bankruptcy court in New York and the Pensions Regulator.

The Trustees agreed to release their claim against Kodak, arising out of a guarantee from Kodak, of £1.8 bn, the current amount of the full buy out deficit in the KPP, and agreed to pay some $325 million to Kodak for its Personalised Imaging and Document Imaging Businesses.

The Trustees believe that this will provide KPP members with better benefits than they would have received had the fund entered the Pension Protection Fund (PPF), as the long-term cash flow received from the two businesses will be used to help fund a new plan for existing members, with the existing scheme being closed. Additionally, there will be an uplift in the scheme's assets, as the businesses were transferred at a substantial discount to their true value.

Both Kodak and the Trustees agreed that this was the best deal that could be done for both the KPP and Kodak, by enabling the KPP to acquire two profitable businesses with the potential for members to receive benefits that, although reduced, would be better than those that they would have received from the PPF, and Kodak can move forward having cleared the debt owed to the KPP.

This shows another innovative approach to pension schemes dealing with deficits and providing for their members.

New auto-enrolment earnings thresholds announced

The government, in The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2013, has set new earnings thresholds for the tax year 2013/14.

The automatic enrolment earnings threshold - the figure above which a worker must be automatically enrolled into a pension scheme, has been linked to the personal tax allowance for that tax year, and is set at £9,440. This is an increase from the 2012/13 figure of £8,105.

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Also in this issue

TUPE and auto-enrolment

Proposed amendments to TUPE regulations

Regulations which are intended to align the existing pension protection legislation with the automatic enrolment requirements are due to come into force.

The Transfer of Employment (Pension Protection) Regulations 2005 (the "Regulations") were introduced to provide a measure of protection for employees in occupational pension schemes who are transferred to a new employer on a sale of a business (a "TUPE transfer"). The Regulations provide that on a TUPE transfer, the new employer must pay matching contributions of up to 6% of the employee's earnings into a defined contribution scheme or stakeholder scheme.

The draft regulations address the issue of aligning the Regulations with the auto-enrolment requirements. Under the auto-enrolment legislation, employers must pay contributions into a qualifying scheme of initially 1% of qualifying earnings, rising to 3% in October 2018.

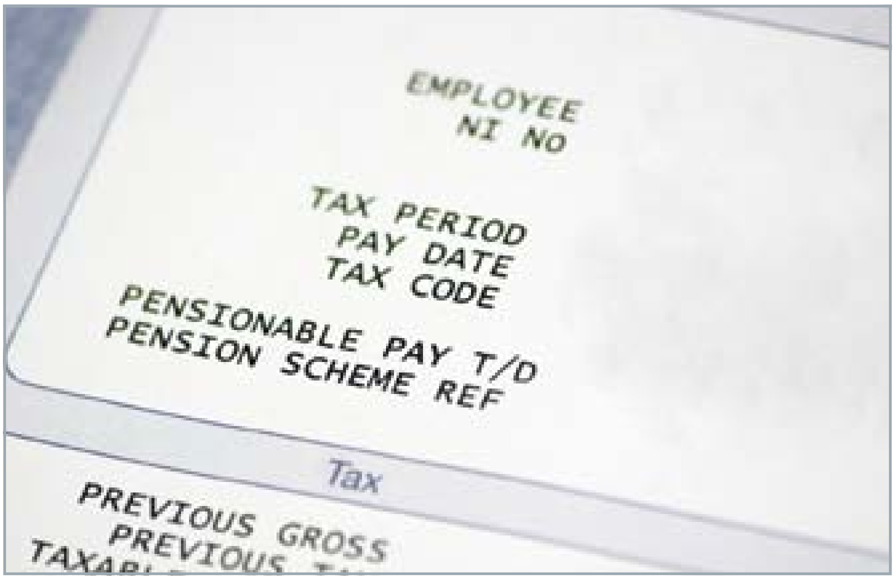
This could lead to a position where, on a TUPE transfer, the transferee employer may be required to pay up to 6% in contributions whereas the transferor employer had only been paying contributions at a statutory minimum level applying to auto-enrolment. This would give the transferring employees a more generous pension entitlement than they had before the TUPE transfer. This could also result in additional costs for the employer and a two-tier workforce.

The draft regulations provide that on a TUPE transfer of employees that are members of an occupational pension scheme, the new employer has the option either to make contributions of not less than those paid by the transferor immediately prior to the transfer or to match contributions paid by the employee up to a maximum of 6% of the employee's pay.

This puts the new employer in the same position as it would be in if it acquired employees who were members of a group personal pension scheme (as this would be a contractual obligation that does pass on a TUPE transfer), enabling it to match the contributions payable by the former employer into such a scheme.

The government also felt that the Regulations did not make clear the stated policy intention that it was for the employee to choose the level of contribution in the new employer's scheme, which the employer then was required to match, but capped at 6%. The draft regulations clarify this point.

The draft regulations do, however, fail to address one outstanding issue. Under the Regulations, a transferee may only use an occupational pension scheme or stakeholder scheme to meet their pension obligations following a TUPE transfer. It had been hoped that the draft regulations would amend the Regulations to allow the use of a group personal pension scheme; it remains to be seen whether any further changes will be made before the Regulations are brought into force in; it remains to be seen whether any further changes will be made before the Regulations are brought into force; originally this was expected to be 1 October 2013, but these appear to have been delayed.



New auto-enrolment earnings thresholds announced

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In addition, the qualifying earnings bands have been amended, with the lower limit increasing from £5,564 in 2012/13 to £5,668 for the tax year 2013/14. This is the same as the lower earnings limit for National Insurance purposes.

The upper limit for qualifying earnings has been lowered, again to align with the National Insurance upper earnings limit, from the 2012/13 figure of £42,475 to £41,450 for the tax year 2013/14.

These changes will mean that the earnings on which contributions must be based will decrease, and this will have the effect that the resultant benefits will decrease.

Further, it means that as many as 400,000 employees that would previously need to be automatically enrolled into a workplace pension will no longer be eligible, as they will fall under the threshold earnings amount.

The new limits will largely be welcomed by employers, as it will not only simplify administration by aligning the figures with NI earnings limits, but it will also reduce pensions costs, by reducing the contributions payable and removing some lower paid employees from the requirement to enrol them into a pension.

The Chancellor confirmed in his March Budget speech that the income tax personal allowance will rise again to £10,000 for the tax year 2014/15, and although there is no automatic link, if the earnings threshold is similarly increased, yet more lower paid employees will be taken out of the automatic enrolment requirements.

Restriction of pensions tax relief

The Finance Act 2013 implements changes to pensions tax relief announced by the Chancellor in his autumn statement on 5 December 2012 and confirmed by the Chancellor in his budget speech in March 2013.

The changes include a reduction, from the tax year 2014/15 onwards, in both the annual allowance (the maximum pension saving each year that will receive tax relief) from £50,000 to £40,000, and the lifetime allowance (the maximum pension saving an individual can have over their lifetime that can receive tax relief) from £1.5 million to £1.25 million.

This follows the reductions made to both the annual allowance and lifetime allowance for the current tax year, but the carry-forward rules remain unchanged, so that an individual can carry forward unused allowances of up to £50,000 for the tax years 2011/12 through 2013/4, and £40,000 for the tax years thereafter.

The legislation also includes a new form of fixed protection referred to as "Fixed Protection 2014" which will enable certain individuals who currently have no other protection to apply to underpin their lifetime allowance at £1.5 million. This will only be available providing no further pension accruals/contributions are made and Fixed Protection 2014 must be claimed on or before 5 April 2014. The government also proposed a personalised protection regime, referred to as "Individual Protection 2014", for individuals whose pensions savings exceed £1.25 million on 5 April 2014. This would enable those individuals to continue to build up pensions savings whilst still benefitting from the protection of a personal lifetime allowance fixed at their accrued total, capped at £1.5 million. The government's consultation has recently closed on this Individual Protection 2014, which may be claimed in addition to one form of fixed protection, and which will be part of the legislation to be enacted as the Finance Act, in summer 2014. The proposed deadline for claiming Individual Protection 2014 is 5 April 2017.

These further reductions mean that more pension savers will be caught and may therefore be worse off; there will also be further administrative costs for schemes in communicating with members and dealing with the changes.

New single-tier state pension proposed

The government in January published a White Paper setting out its proposals to replace the current basic state pension and state second pension with a flat-rate payment from April 2017, and followed that with a draft Pensions Bill which was introduced into Parliament in the Queen's Speech in April. This single-tier flat-rate pension will be introduced in April 2016.

The aim is to simplify the current state pension system by introducing the single payment, which it is suggested will be £144 per week, based on today's figures. The amount will be set at just above the current level of means tested support, and will be subject to increase at least in line with average earnings growth.

Employees will need 35 qualifying years of national insurance contributions to receive the full amount, and there will be a minimum qualifying period of between 7 and 10 years (the exact period is yet to be decided) to be entitled to receive any state pension. Individuals with less than 35 qualifying years but more than the minimum number of qualifying years will receive a pro-rated amount.

The single-tier pension will be based on individual contributions, and therefore no rights can be inherited or derived from a person's spouse or civil partner; contributions of the self-employed will, however, count towards the new pension.

The changes also mean that contracting-out will be abolished in respect of defined benefit schemes, resulting in increased national insurance contributions payable by both employers and employees. Contracting-out has already ceased for money purchase benefits.

Whilst it is felt that the benefits of the new pension will outweigh the increase in national insurance contributions payable by employees in most cases, employers could potentially be disadvantaged by having to pay increased contributions. Accordingly, the Bill includes a statutory power for private sector employers to amend scheme rules to adjust future benefits or to increase employee contributions to offset the additional cost to employers.

The government has previously guaranteed the provisions of the reformed public service pension schemes for 25 years, so no changes will be possible to these schemes. However, the government is consulting on whether schemes with protected employees from former nationalised schemes will be able to amend the rules of their schemes to offset the increased cost to employers.

It remains to be seen whether the potential additional costs implications for employers may result in more employers shifting to less costly defined contribution schemes, although some may offset the increased costs by cutting back on future benefits under their existing schemes.

Abolition of requirement to provide access to stakeholder pension schemes

Until recently it was a legal requirement for all UK employers with 5 or more employees to designate and facilitate access to a stakeholder pension scheme. An employer was obliged to provide information to its employees about its designated stakeholder pension scheme, although it was not obliged to pay any contributions into such a scheme.

With the introduction of the new auto-enrolment regime employers are no longer required to provide access to a stakeholder scheme. The consequence of this is that a UK employer is no longer required to offer its employees any form of access to a pension until it reaches its auto-enrolment staging date.

Where an employer has employees who were already members of a stakeholder scheme on 1 October 2012, providing they had made a least one regular contribution to the scheme prior to that date, those employees may continue to have contributions deducted from their salaries and paid over to the designated stakeholder scheme.

Where an existing member of a stakeholder scheme requests his employer to cease deductions, the employer must notify the employee that it is no longer required to make deductions and pay them over to the stakeholder scheme on the employee's behalf but the employee can still make payments directly to the stakeholder scheme, subject to the rules of the scheme.

If an employer has a stakeholder scheme in place, it can continue with such scheme once it reaches its staging date providing that the stakeholder scheme meets the criteria for a "qualifying scheme" under the new auto-enrolment regime.

As the staging dates for auto-enrolment run until 1 February 2018, depending on the size of the employer, an employer may not be under a duty to provide access to a pension for its employees for a number of years. Details of how to determine your staging date can be found on The Pensions Regulator's website www.thepensionsregulator.gov.uk.

OFT warns DC schemes are poor value for money

The Office of Fair Trading (OFT) recently published its study on the defined contribution (DC) workplace pensions market. This report suggested that DC schemes are not delivering the best value for money for savers, due to a combination of high annual charges, particularly in old schemes, and poor governance of newer trust-based schemes.

The report has made a number of recommendations, including calling for the Association of British Insurers to set up an immediate independent audit of high-charging contract schemes, though it stopped short of calling for a cap on charges, and asked the Pensions Regulator to assess smaller trust-based schemes that are not delivering value for money.

With the advent of auto-enrolment, there will be a significant increase in the number of members of DC schemes, and it will be important that savers get value for money; the OFT have therefore also recommended that the DWP consults on preventing schemes being used for auto-enrolment that contain in-built adviser commissions and discounts for active members (ie where deferred members pay higher charges than current employees).

Information

If you have any queries on any issues raised in this newsletter, or any pension matters in general please contact Craig Engleman on 01482 337301 or 01904 688509 or email craig.engleman@rollits.com.

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.
Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 21 October 2013.

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