

**Creating a secondary market in annuities – tax framework
Response from the Low Incomes Tax Reform Group (LITRG)**

1 We welcome the opportunity to add to our earlier response on creating a secondary market in annuities¹ and welcome the Government’s response to that consultation, being in broad agreement with its proposals. In this submission we simply make comment on those areas of particular interest to our constituency, those on low incomes and the unrepresented.

2 About Us

2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

¹ See <http://www.litrg.org.uk/latest-news/submissions/150618-creating-secondary-annuities-market>

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 General

- 3.1 As mentioned above, we are pleased that the Government has made proposals which level the playing field between pre- and post-pensions freedom annuitants and aim to produce equality of opportunity and outcome. It seems to us that overall the tax framework for the sellers and their subsequent choices – we make no comment on the buyers and industry side – achieves that target. We are particularly pleased to note that the Government has relaxed its stance on buyback by original annuity providers, a point which we develop further below.

4 Executive summary

In this response we make the following recommendations:

- 4.1 The legislation should be widened to include all pre-pensions reform annuities, regardless of type.
- 4.2 All payments should be made to the person to whom they would have been made had the annuity not been sold on.
- 4.3 The terms “connected” and “sponsoring” should be derived where possible from existing definitions.
- 4.4 The obligatory use of financial advisers should be thought through very carefully. The amounts involved, especially among our constituency, will in many cases preclude on cost grounds alone such a source of advice, however desirable, and will sadly deny those of modest means the benefits of a secondary annuities market. There should be a very wide consultation on appropriate de minimis.
- 4.5 Protected pension age is irrelevant to the new market.
- 4.6 Pension Wise (or its successor under Public Financial Guidance reforms) should issue clear warnings to prospective sellers on both the possible impact on state benefits and also the serious risks of scammers. Insurers should do likewise.
- 4.7 HMRC should crucially fully co-operate with the pensions industry in flagging up the tax implications of an annuity sale.

5. We now make comment on relevant questions.

Q1: There may be some annuities still in payment that were bought in respect of certain ‘old code’ predecessor schemes not covered by the paragraph 1 Schedule 36 categories. Should annuities issued in respect of other categories of tax advantaged pension scheme be included in the market?

5.1 While Schedule 36 Finance Act 2004 as quoted in 2.7 is pretty comprehensive in covering the pension schemes included in this reform – and there will be a fair number of ancient and pathetically small pensions dating from the iron-clad days of Retirement Annuity Contracts (RACs) and old code schemes – it might be a sensible precaution to add a clause giving HMRC discretion to extend the same treatment to the odd few which slip through the net in order to avoid unnecessary unfairness or hardship in a handful of anomalous instances. Should these proposals be enacted, the intention of Parliament of giving all annuitants the same opportunities would be very clear. The impact on the Exchequer would be miniscule.

Q2: Do you have any views on the number and scale of annuities purchased by relevant non UK schemes that are currently in payment?

5.2 We have no information or views to give.

Q3: Are there any particular restrictions on the surrender or assignment of such annuities imposed by non UK authorities?

5.3 We have no information to give.

Q4: Do you have any views on the extent to which annuity contracts in members’ names may have more than one individual with an actual or deferred entitlement to receive payments under the contract – other than contingent rights to receive payments following the death of a person?

5.4 We have no views on the main thrust of this question but with reference to 3.7 we agree that payments should be made only to the person receiving the annuity at the time of sale. There is no case for payments going to those who would not otherwise receive them were the annuity to continue unsold until such time as the relevant contingencies kicked in.

Q5: Do the proposed connected entity and anti-avoidance rules strike an appropriate balance between protecting against the risk of abuse and facilitating the new market?

5.5 The proposed anti-abuse measures would seem objective and appropriate. We would expect clear definitions of the terms “connected” and “sponsoring”, and for these to be included in the legislation rather than left to guidance. For simplicity, we would assume that the draftsmen will look to existing definitions, where possible, rather than writing new ones solely for this purpose.

Q6: Do you foresee wider implications for adviser charging in respect of the assignment or surrender of annuities affected by the proposed changes?

- 5.6 Compulsory use of financial advisers for sellers must be given careful consideration. Many people wishing to take advantage of the secondary market will be those with annuities small to the point of futility. To quote at the absurd end of the scale, two clients helped by Tax Help for Older People¹ had yearly gross annuities of £11.34 and £71.71 from RACs. At 73, the first one would be delighted to take a straight £50 and be shot of it. So also, one suspects, would the insurance company, relieved of the administrative costs which must exceed the payment handsomely. But even above these extreme examples there are many with annuities of a few hundred pounds a year where the annuitants would find a lump sum more useful than, say, a regular £47 a month.
- 5.7 Clearly, paying an IFA several hundred pounds from these amounts to receive advice of limited value would severely reduce the opportunities for these annuitants to put their money to better or more relevant use. Furthermore research² following the introduction of pensions freedom in 2015 has shown that few IFAs are now willing to give advice on pots below £50,000. There must be some de minimis in place in order to protect these low income annuitants and to enable them to take advantage of the secondary market. There are obviously many factors to take into account, the overall income of the prospective seller, their age and health, the potential size of the offer from the buyer, the tax implications of any course of action, possible administrative, advisory and intermediary costs. All these indicate a vital need for consultation on the figures before setting too arbitrary levels. Otherwise large numbers on low incomes will be unfairly excluded from the market. As a starting point, there are situations under the new Pensions Freedom where independent financial advice is obligatory.
- 5.8 There is also no reason why Pension Wise staff could not be trained and empowered to explain the facts of a course of action to an enquirer without actually giving advice or specific recommendations.
- 5.9 We note from the Government's response to the call for evidence³ that it 'believes that individuals who want to sell an annuity income stream *above a certain value* should be required to seek advice before proceeding with the sale, and will legislate for this.' We understand that such legislation is planned 'under the power given by the Bank of England

¹ Tax Help for Older People is a charity which provides free professional advice on tax for those who would not otherwise be able to afford advisers' fees. See www.taxvol.org.uk for full details.

² <http://www.ftadviser.com/2014/11/24/ifa-industry/advisers-increasing-minimum-portfolio-sizes-since-rdr-w0eivD2zv0wvV4cdELHiiN/article.html>

³ Creating a secondary annuity market: response to call for evidence, December 2015. See paragraphs 4.5 and 4.6 in particular:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485286/creating_a_secondary_annuity_market_response.pdf

and Financial Services Bill'.¹ As we cannot see any draft legislation for this amongst the documents published on 21 April 2016, we assume that it will be published separately for consultation. Indeed, we urge the Government to consult carefully on the values involved and the definition of advice as this requirement in itself could obstruct people taking advantage of the secondary annuity market – an obstacle that would not be in the way of those with small, uncrystallised pots under pension freedom.

Q7: Do you have views on the extent to which individuals assigning or surrendering annuities in return for paying proceeds to another pension product will have a protected pension age?

5.10 See under question 8.

Q8: Should the protected pension age also apply for the purposes of payments/withdrawals under the new product?

5.11 We take questions 7 and 8 together, as our answer is the same for both.

5.12 There is no reason why those with a protected pension age should have to sacrifice it simply because they are taking advantage of a different outlet for their pension savings. Protected pension ages are not related to the amount saved or the way in which it is decumulated.

Q9: Do you have any views on the extent to which LTA charges are likely to arise as a result of the proposed new benefit crystallisation event?

5.13 No comment, as it does not apply to those on low incomes.

Q10: The government recognises that aspects of the various transactions may be beyond some administrators' control. Do you believe that retaining the existing unauthorised payment discharge is an appropriate approach?

5.14 As this refers to unauthorised payment charges on scheme administrators, we have no comment.

Q11: Do you have any views on the wider implications of taking relevant annuities outside the Registered Pension Scheme environment?

5.15 We are primarily interested in those surrendering or assigning their annuity rather than the post-assignment treatment.

5.16 We would, however, comment that Pension Wise (or its new successor body under the Public Financial Guidance reforms) should ensure that annuitants exercising their rights to

¹ See <https://www.gov.uk/government/consultations/creating-a-secondary-market-for-annuities-secondary-legislation/consultation-creating-a-secondary-market-for-annuities-secondary-legislation>

cash in their annuity are aware of the consequences of how they use the proceeds thereafter. By this we mean:

5.16.1 There are risks associated with ‘scammers’ attempting to get pensioners to cash in their policies and stealing the proceeds (we know of course that there are frequent ‘phishing’ scams perpetrated in the name of HMRC, so there is a role for the tax authorities to play in consumer protection).

5.16.2 How the annuitant chooses to use the proceeds could have other impacts on their tax (or state benefits) position, so some risk warnings would again be appropriate – just one example might be that ‘deprivation’ rules for state benefits such as pension credit or care fees assessment could be triggered if the annuitant cashes in and then gives away the proceeds.

5.17 Such risk warnings could also be provided by the pensions industry, to ensure the messages reach annuitants (see also our answer to question 12 below).

Q12: Insurers who have issued annuities being assigned could also be required to provide information about the amount of the proceeds arising from the assignment, which they would need to obtain from the individual or from the buyer. What are your views on this approach?

5.18 Paragraph 5.6 of the consultation document says:

‘It is also proposed that insurers whose annuities are being assigned will be required to provide a statement to individuals assigning their annuity in return for a taxable lump sum, to flag individuals’ responsibilities for notifying taxable amounts to HMRC where PAYE has not been applied. It is envisaged that this statement could be incorporated into other written material.’

5.19 We have several points to make in this regard:

5.19.1 such communications should be written in plain English which can be understood and acted on by the annuitant without having to ask an adviser to translate

5.19.2 the statement regarding tax responsibilities should **not** be ‘incorporated into other written material’. We feel this needs to be a clear, separate statement calling the recipient to action. Indeed, it might even be best if HMRC were themselves to design a standard form or letter for the insurers to enclose, if sending other information onto which the insurer could insert the taxable amount and which clearly describes what the recipient needs to do with it. An official paper or form is more likely to attract the recipient’s attention than a few lines buried amongst ‘other written material’.

Q13: Views are welcomed into the most appropriate way to achieve the proposed notification to the new provider?

5.20 No comment, as outside our area of interest.

Q14: Do you have any views on the proposed treatment of annuities following sale?

5.21 No comment, as outside our area of interest.

LITRG

15 June 2016