Low Incomes Tax Reform Group

A voice for the unrepresented

Clause 6 – Pensions advice
Consultation on draft clauses for Finance Bill 2017
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 It is welcome that the definition of "relevant pensions advice" under new section 308C ITEPA 2003 is broad such that it might include "tax issues relating to pensions" (per the explanatory note accompanying clause 6).

1.2 Of concern, though, is the limitation of the qualifying sum for exemption being £500 in a tax year. This amount will not go very far at all in paying for expert advice. We strongly recommend the Government consider increasing the exemption to £1,000 so that it is more likely to cover the cost of full advice, and that the exempt sum is up-rated regularly.

1.3 The definition of "relevant pensions advice" under these provisions is out of step with that proposed under the "pensions advice allowance" (whereby a sum of up to £500 may be withdrawn tax-free from existing pension pots to pay for pensions advice). That proposal aims to restrict use of the £500 sum to Financial Conduct Authority-regulated advice.[1] We recommended in response to the "pensions advice allowance" consultation that the proposed definition was too narrow and it should be possible to use the sum to pay for tax advice.[2] We recommend that a consistent definition of pensions advice, to include advice on

[1] See HM Treasury "Introducing a pensions advice allowance: consultation", para 4.1: https://www.gov.uk/government/consultations/introducing-a-pensions-advice-allowance/introducing-a-pensions-advice-allowance-consultation

[2] See our response to the pensions advice allowance consultation, para 11.1: http://www.litrg.org.uk/latest-news/submissions/161011-introducing-pensions-advice-allowance

CHARTERED INSTITUTE OF TAXATION
1st Floor, Artillery House, 11-19 Artillery Row,
London, SW1P 1RT

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)20 7340 0550
Fax: +44 (0)20 7340 0559
E-mail: litrg@ciot.org.uk
www.litrg.org.uk

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the tax aspects of pension provision by a suitably qualified practitioner, be used for both the tax exemption proposed in clause 6 of Finance Bill 2017, and for the pensions advice allowance. To do otherwise seems an unnecessary and confusing complication. Failing that, clear guidance will be needed to ensure that individuals understand what each allowance can be used to pay for, and so that employees understand consumer protection issues (ie the difference between "information" and full, regulated advice).

1.4 We do not understand the rationale of limiting the exemption to employees of a "minimum qualifying age" of relevant pension age less five years. While we appreciate there is an exception for ill-health, the general limitation means the exemption is unlikely to go very far towards solving the problem of younger people under-saving for retirement. By relevant pension age minus five, it may well already be far too late for the individual to do much to address under-savings. With automatic enrolment, there is a need for all employees to understand their retirement savings from the earliest age possible. We therefore recommend that there is no age restriction on this exemption, or at the very least that relevant pension age minus 10 is used instead.

2 About Us

2.1 The Low Incomes Tax Reform Group (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.

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 comments

3.1 The introduction of a broader pensions advice exemption as proposed in clause 6 of the draft Finance Bill 2017 is welcome. So too is it welcome that the exemption is not affected by clause 2 and schedule 2 of the draft (optional remuneration arrangements).

3.2 We do, however, comment on the following aspects of the proposed exemption:

- The limitation of the exemption to £500
- The definition of "relevant pensions advice"
- The age limitations on qualifying for the exemption

3.3 In commenting on all of the above points, we draw parallels with the proposed introduction of a "pensions advice allowance", under consultation by HM Treasury[1] (the consultation having closed on 26 October 2016, with no response available at the time of writing).

3.4 That proposed allowance will allow people to withdraw up to £500 tax-free (and not otherwise affect their withdrawal of tax-free lump sums on retirement) from their pension savings to pay for pensions advice.

3.5 Various points of detail were open to consultation, the responses to which could also inform the introduction of the income tax exemption for employer provided advice.[2]

4 The limitation of the exemption to £500

4.1 It is interesting to note that the pensions advice allowance consultation document says:

> "The Pensions Advice Allowance could also be used as a contribution towards advice that costs more than £500. The allowance could represent a significant contribution towards the cost of face to face advice. This costs £150 per hour on average, and can take up to 9 hours for advice on pensions."

4.2 So, even if an individual were to receive an allowance from their employer up to the tax-free maximum of £500, and take the maximum £500 pensions advice allowance from their pension saving, they could still face paying a further £350 – on *average* – from their own pocket of after-tax income, or other savings.

4.3 In our response to the pensions advice allowance consultation, we recommended that figure be set at a more realistic £1,000 (or perhaps subject to a cap of a percentage of pension savings).[3] We similarly recommend that the Government consider increasing the income tax exemption in the proposed S308C ITEPA from £500 to £1,000.

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[1] See https://www.gov.uk/government/consultations/introducing-a-pensions-advice-allowance/introducing-a-pensions-advice-allowance-consultation

[2] Our response to the pensions advice allowance consultation can be found on the LITRG website: http://www.litrg.org.uk/latest-news/submissions/161011-introducing-pensions-advice-allowance

[3] Ibid, section 6

4.4 Furthermore, our response to the pensions advice allowance consultation noted that the limit should be reviewed regularly to take account of changes in the cost of advice.[1] Similarly, we note there is no provision to uprate the proposed exemption in S308C ITEPA, so we recommend that at the very least the exempt sum should be index-linked each year but preferably regularly reviewed against the actual costs of advice to ensure it remains relevant.

5 The definition of "relevant pensions advice"

5.1 The pensions advice allowance consultation says:

> "4.1 Regulated advice and guidance
>
> "It is the government's intention to restrict the use of the Pensions Advice Allowance to full regulated advice only. This means that guidance only services would be excluded.
>
> "The government appreciates that there is a case for widening the use of the Pensions Advice Allowance to include guidance only services. This could allow consumers to receive help on their pension that stops just short of a personal recommendation, and is therefore more cost effective for an adviser to deliver.
>
> "However, the government considers that, on balance, this potential benefit is outweighed by a number of important concerns. High quality guidance services are currently available either for free or for significantly less than £500, for example from PensionWise. If the Pensions Advice Allowance was applicable for guidance services, there is substantial risk of creating a £500 'price point' for tailored guidance services. This would be to the detriment of people who cannot afford regulated advice, and risks widening the advice gap further.
>
> "Offering use of the Pensions Advice Allowance to unregulated persons creates consumer protection risks. As guidance can be delivered without FCA authorisation, individuals outside of the control of the FCA could be able to access funds from consumer's pensions. It would also be more difficult for pension providers to protect consumers by screening for suspicious withdrawal requests. This is because they would not have the safeguard of checking that an individual is FCA regulated.
>
> "Additionally, if the allowance could be used for guidance only services, we may require new regulation. This is because the current FCA regulation only applies to the facilitation of charges for full regulated advice. The added complexity of

[1] Ibid, section 6.5

> introducing new regulatory requirements for the Pensions Advice Allowance may discourage providers from offering it."

5.2 We disagreed with the above in our response, inasmuch as it did not appear to allow an individual to pay for expert tax advice they might require in relation to pension choices. It is therefore welcome that the proposed income tax exemption under the new S308C ITEPA will allow for tax advice to be covered (as per the explanatory notes).[1] But it is of concern that the definition of advice for the income tax exemption appears to be different to that for the pensions advice allowance, as this might be a source of confusion.

5.3 There also appears to be no consideration in the proposed income tax exemption of the consumer protection issues outlined in the pensions advice allowance consultation document as above. How is the employee to ensure that they are getting quality "information, or advice" (proposed S308C(5) ITEPA) if there is no reference to regulated advice?

5.4 Some joined up thinking between HMRC, HM Treasury and the Financial Conduct Authority is needed here to ensure that people understand what the different allowances and reliefs are in relation to pensions advice; and – if different allowances *can* pay for different kinds of advice – clear information will be necessary. We would, however, recommend a consistent definition for simplicity, so that pensions advice for all purposes includes advice on the tax aspects of pension provision by a suitably qualified practitioner.

6 The age limitations on qualifying for the exemption

6.1 Again, we compare here the proposed income tax exemption under S308C ITEPA to the pensions advice allowance consultation. In the latter, the age at which the pensions advice allowance might be accessed was a point open to consultation.[2]

6.2 Our response to that was as follows:

> "As far as a minimum age is concerned, we regard five years before pension crystallisation age as too late to make any serious adjustment to their pensions savings or retirement age; indeed many personal pension schemes recommend moving pension investments into safer areas like cash or bonds at that point. Ten years would seem to be adequate to take appropriate action to improve the retirement situation, as well as being an age when the prospect of retirement is beginning to loom larger on a saver's horizon. The ten years could be linked to

[1] See page 24, para 1: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574679/Explanatory_Notes_-_draft_provisions.pdf

[2] See question 4: https://www.gov.uk/government/consultations/introducing-a-pensions-advice-allowance/introducing-a-pensions-advice-allowance-consultation

changes in the minimum pension withdrawal age."[1]

6.3 It makes sense to limit access to the pensions advice to a time when a pot has built up. With the income tax exemption, however, there is an argument that with automatic enrolment all employees of whatever age should be able to access pensions advice. To address the problem of under-saving for retirement, we would therefore recommend there is no minimum age applied to this particular exemption; though as a minimum we would recommend that the pension age minus 10 suggested above is adopted for the income tax exemption as well.

LITRG
20 January 2017

[1] Our response, para 8.3: http://www.litrg.org.uk/latest-news/submissions/161011-introducing-pensions-advice-allowance