



The impact of the extended anti-forestalling provisions

Directors and high earners need to consider how the extension to anti-forestalling announced in the December Pre-Budget Report (PBR) affects both existing and future pension planning in order to determine correctly the tax relief available. In particular it is important to identify and understand:

- who is likely to be affected by the reduction in the 'relevant income' limit to £130,000
- what existing arrangements are not affected
- what arrangements post-PBR are affected
- the tax implications if the special annual allowance is exceeded, including the change in the tax rate at in 2010/2011 and other options exist.

People affected can choose to limit contributions to no more than the higher of protected pension input or their special annual allowance, and benefit from full higher rate tax relief. Or they can pay additional contributions, get higher rate tax relief on contributions up to the higher of their special annual allowance or protected pension input, and get basic rate tax relief on the remainder up to 100% of relevant UK earnings. The planning considerations for people with relevant income of less than £130,000 are unaffected by the PBR. Below are some examples illustrating the impact of the extended provisions.

Q1 Andy's gross taxable income is £167,000 but has been reduced by £20,000 personal contributions and £2,000 gift aid donation. So he expects to have relevant income of £145,000 in 2009/2010. He makes regular contributions to a personal pension of £1,000 a month and paid an extra £18,000 single contribution in September 2009. How is he affected?

A1 Before 9 December 2009 Andy was not considered to be a high income individual and he thought he had escaped the anti-forestalling rules. But following the PBR he is now caught. However £1,000 per month is a protected pension input and the £18,000 single contribution was paid before the PBR, so these will still get higher rate tax relief. Any further contributions in the 2009/2010 tax year will trigger a special annual allowance tax charge. In 2010/2011 Andy can pay up to a further

£8,000 single contribution on top of his £1,000 per month without triggering a special annual allowance tax charge.

Q2 Beryl expects to have gross income in 2009/2010 of £143,000, including a bonus of around £10,000. Her employer has paid £30,000 annually to a stakeholder plan since 2005. From time to time, she also sacrifices her bonus, payable in March, to provide a top-up pension contribution. She makes no personal contributions other than this. How is she affected?

A2 Beryl's special annual allowance is £30,000 (because of the average of her annual/single pension contributions), so she can carry on with the annual employer contribution of £30,000. But if she sacrifices her bonus in March 2010, this will trigger a special annual allowance tax charge. Even if she makes a personal contribution of over £13,000 gross to a pension arrangement, she will still have 'relevant income' of more than £130,000 in the previous tax year and would now be caught by anti-forestalling. (Her employer contributions are not added to her 'relevant income' yet, but will be after 5 April 2011. She will need further pension advice before then.)

Q3 Clive has gross income of £140,000 for 2009/2010. Each year he sacrifices £15,000 of salary on 1 November and his employer matches this. How is he affected?

A3 Clive's relevant income is £125,000 so he is not affected this year. (The sacrifice was before 9 December 2009 and his relevant income in each of the previous two tax years was also below £130,000.) If the sacrifice does not need to be 'renewed' in November 2010, (ie it continues by default unless Clive decides otherwise) then relevant income will remain at £125,000. However if the sacrifice must be formally renewed in November 2010, it will be added into the relevant income calculation. Clive's relevant income would then be over £140,000 and caught by anti-forestalling. However if his pension contributions were paid more regularly than quarterly before 9 December 2009, they count as protected pension input and avoid a special annual allowance tax charge. Clive could also make a personal contribution of over £10,000

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gross in 2010/2011 to bring his relevant income below £130,000 and maintain effective higher rate tax relief. Clive may also need further advice before 6 April 2011, when the new income definition is introduced.

Q4 Emma's relevant income in 2009/2010, ie after deducting personal contributions, will be £148,000. She makes personal contributions to a GPP of £1,250 per month, matched by her employer. Her employer was considering making a one-off payment into her pension on 31 March 2010. How is she affected?

A4 The PBR announcement has caught Emma. She has no unused special annual allowance and is over the new relevant income threshold. There was no formal agreement prior to 9 December to make the one-off contribution. Emma and her employer should either explore other options or Emma must accept that a special annual allowance tax charge will apply to any ad-hoc payment into her pension.

Q5 Henrietta is due to be made redundant on 31 December 2009. Her long service and large severance package mean that, for the first time, she will have relevant income of above £130,000 in 2009/2010. She could give up some of the severance monies in exchange for an increase to her pension rights but is concerned that her tax relief will now be restricted.

A5 Unless Henrietta had reached agreement with her employer to waive part of her severance package by 8 December 2009, or relevant income could be reduced below £130,000 (perhaps by making an AVC of up to £20,000) then any increase in her pension rights attributable to a lump sum increase is likely to trigger a special annual allowance tax charge.

Q6 Irene has relevant income of £148,000, currently contributes to a personal pension and has protected pension input of £2,000 per month. She had been thinking of switching to a SIPP. How is she affected?

A6 Before the PBR she was not affected by anti-forestalling and could easily have moved her contributions over to a SIPP. If she does this now, after the PBR, she could lose her protected pension input and incur a special

annual allowance tax charge on £4,000. (We understand that the Government still plans to relax the rules on protected pension inputs and pension switching, although draft regulations are not expected until February 2010. Irene should probably delay switching to a SIPP until more details emerge.)

Q7 Freddie has relevant income of £136,000. In August 2009 he increased his monthly pension contributions from £2,000 to £3,000. He expects to make another increase in August 2010. How is he affected?

A7 Freddie has protected pension input of £36,000 based on regular contributions in place before 9 December 2009. Increasing his contributions in August 2010 will trigger a special annual allowance tax charge.

Q8 Gilbert's relevant income is £131,000 and he and his employer contribute a fixed percentage of salary to a CIMP. Salaries are reviewed in April and total pension contributions exceed £20,000. How is he affected?

A8 The next increase to pension contributions in April 2010 will be protected because the rate of increase was agreed before 9 December 2009.

Q9 Company directors James, Algernon and Ginger have relevant income of £115,000, £135,000 and £155,000 respectively, unchanged for the last three tax years. The firm pays monthly pension contributions to a SIPP of £4,000 for each of them. This increased by £500 in July 2009. They don't pay other pension contributions and charitable donations are trivial. How are they affected now and after 5 April 2011?

A9 As James's relevant income is below £130,000 he is not affected now or from 6 April 2011, even if his employer contributions increase. Algernon's relevant income is above £130,000 so he is subject to anti-forestalling from 9 December 2009. His contributions of £4,000 per month are protected, including the £500 increase in July 2009. Any increases before 6 April 2011 will incur the special annual allowance tax charge. From 6 April 2011, the employer contributions will be added to his income, which will then be greater than £150,000, further restricting his tax relief. Ginger was already affected by anti-forestalling as his relevant income is above £150,000. The £500 per month increase triggered a special annual allowance tax charge for 2009/2010. Like Algernon his tax relief will be further restricted from 6 April 2011.

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Mark.Dallas@lighthousegroup.plc.uk.