

NB GMPs themselves cannot be equalised. So-called “GMP equalisation” is the equalisation of pension benefits which include GMPs.

history from 2018

- 1 The first Lloyd’s Bank case, [2018] EWHC 2839 (Ch), which determined for the first time that benefits including GMPs must be equalised, was followed by second and third decisions, [2018] EWHC 3343 (Ch) and [2020] EWHC 3135 (Ch).
- 2 One method of equalisation, D2 in the first Lloyd’s Bank judgment, is the conversion of GMPs to scheme benefits. The judgment in the third case established the liability of trustees to make good shortfalls in the amounts of transfer values which included unequalised GMPs.
- 3 In its “Guaranteed Minimum Pension equalisation newsletter – April 2022”, HMRC issued guidance about tax treatment, supplementary to previous guidance in February and July 2020.

HMRC guidance April 2022

- 4 top-up payments by transfer There are no adverse tax consequences if the transfer is an authorised payment, which it will be if it is a recognised transfer: FA 2004 s164(1)(c). The conditions for a recognised transfer under FA 2004 s169 are that:
 - (a) it made in respect of a member of the scheme, which it is because, having a right to a top-up payment, the member is a deferred member for tax purposes;
 - (b) the transfer represents an “accrued right”, which it is as it derives solely from the benefits that he or she had under the transferring scheme; and
 - (c) it is made to a registered pension scheme or a qualifying recognised overseas pension scheme.A transfer which is not a recognised transfer would be an unauthorised member payment.
- 5 top-up payments by lump sum payments A top-up payment may be made directly to the member without a tax charge under the FA 2004 if it is an authorised member payment and this includes the payments of lump sums and small sum sums provided for in the Registered Pension Schemes (Authorised Payments) Regulations 2009, SI 2009/1171 as well as winding up lump sums. The newsletter refers also to further

Roderick Ramage

BSc(Econ) solicitor

authorised and regulated by the Solicitors’ Regulation Authority number 231800

Copehale, Coppenhall, Stafford, ST18 9BW

01785-223030, roderick.ramage@law-office.co.uk, www.law-office.co.uk

guidance in the Pension Tax Manual, TPM063000 for cases where the member has died. The payment can also be made as a payment following a relevant accretion (regulations 6 and 7 of SI 2009/1171).

- 6 ("normal") tax treatment The right to a top-up payment is an uncrystallised right, and to 75% of the payment, if made to the member and not to another person in the member's death, and 25% is tax free. Otherwise the whole of it taxable. The payment should be made through PAYE.
- 7 unauthorised member payments (not part of the April 2022 newsletter) If the top-up is by a transfer or lump sum payment which is not an authorised payment, it will incur an unauthorised payment charge of 40% under FA 2004 s208 and probably, as the payment is over 25% of the value of the member's rights, an unauthorised payment surcharge of 15% under s209,
- 8 annual allowance, lifetime allowance protection &c While there would not normally be any annual allowance implications there might in rare circumstances be the risk of a loss of lifetime allowance protection. HMRC makes it clear in this newsletter that, although it gives some guidance about the tax consequences of conversion, it is still continuing to work through the tax issues and will give further updates in future pension newsletters.

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

- 9 Of the methods A to D for equalising GMPs discussed in the first Lloyd's Bank judgment, method D2, is by the existing statutory power to convert GMPs to scheme benefits.
- 10 The power to convert GMPs into scheme benefits is in s13(1A) and s17(1A) of the Pension Schemes Act 1993, which, with effect from 6 April 2009, were added by the Pensions Act 2007, s14, which also added the conditions for conversion and related provisions in s24A to s24H. The 2022 Act does not alter the basic principles of conversion, but, when brought into force, will make some technical amendments in respect of survivors, consent to conversion and removing the requirement to notify HMRC of a conversion.

My previous GMP equalisation updates:

1 January 2019 : the first Lloyds Bank decision determined that GMP must be equalised.

8 May 2019 : GMP conversion in 10 seps.

1 January 2021: top-up equalisation payments in respect of earlier transfers of unequalised GMPs.