One of the reforms of the taxation of pension schemes made by the Finance Act 2004 with effect on 6 April 2006 ("A-Day"), was the introduction of a lifetime allowance ("LTA"). Each taxpayer with benefits in a registered pension scheme, has an LTA. If the total value of the taxpayer's pension savings exceeds his LTA, the excess is subject to tax. The amount of the standard LTA at A-Day was £1.5m. It was increased to £1.8m for 2010/2011 and then, starting in 2012/13 was reduced in stages to £1m for 2017/18, since when it has increased slightly by indexation. Taxpayers' existing rights at A-Day could be protected by notification to HMRC on or before 5 April 2009 ("the Closing Date"), and corresponding arrangements for protection were made on each subsequent reduction of the LTA. Here, repeating my New Year 2017 update, is a table of them.

protection	what is covered	formalities	future accrual
primary	Savings >£1.8m at 5 April 2006.	Notify HMRC by 5 April 2009.	yes
enhanced	Fully protects all rights accrued as at 5 April 2006.	Notify HMRC by 5 April 2009 and no accrual from 6 April 2009.	no
fixed	Fixes LTA at £1.8m.	Apply to HMRC by 5 April 2012. Not needed for those with primary or enhanced protection.	no
fixed 2014	Fixes LTA at £1.5m.	Apply to HMRC by 5 April 2014. Not needed for those with primary, enhanced or fixed protection.	no
individual 2014	Savings >£1.25m at 5 April 2014. Fixes LTA as value of pension rights at 5 April 2014 at £1.5m.	Apply to HMRC by 5 April 2017. Not available to those with primary protection.	yes
fixed 2016	Fixes LTA at £1.25m.	Apply online to HMRC from July 2016. Not available to those with primary, enhanced or fixed protection or FP14.	no
individual 2016	Savings >£1m at 5 April 2016. Fixes LA as value of pension rights at 5 April 2016 at £1.25m .	Apply to HMRC from July 2016. Not available to those with primary protection or IP14.	yes

risks

The two risks facing a pension scheme member are (1) not having protection at all. and (2) losing protection by a "relevant benefit accrual".

Accrual in the case of a money purchase scheme is the payment of a contribution.

Matters are more complicated in a cash balance or a DB scheme. Accrual occurs if (copying the key words of the FA 2004 sch 36 para 13 (b)) a "relevant event" occurs

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and the "relevant crystallised amount" exceeds the "appropriate limit". In other words, there is accrual if on any benefit commencement event ("BCE" eg starting a pension or reaching age 75) or on a permitted transfer which is not a BCE, the amount crystallised exceeds the value of the member's pension rights at A-Day as adjusted in accordance with paragraphs 15 and 15A.

tax charge

A taxpayer's LTA is tested on each occasion that retirement benefits start to be taken (crystalised) and is reduced by the value of the benefits taken. The total of a taxpayer's uncrystallised benefits are tested on his or her 75th birthday and are liable to tax at 25% of the excess. If the member is under 75, the excess it taken as a pension is also taxed at that rate or, if as a lump sum, 55%

remedies

1 (for no protection)

The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006/131, regulation 12, provide for the late submission of notification for protection if he (a) gives a notification to the Revenue and Customs after the closing date, (b) had a reasonable excuse (eg reliance of a professional adviser, as in Arthur Tipping v HMRC [2017] UKFTT 0485 (TC)) for not giving the notification on or before the closing date, and (c) gives the notification without unreasonable delay after the reasonable excuse ceased.

2 (for losing protection)

There is here no statutory remedy, but HMRC's guidance in its Pension Taxes Manual shows that it can be possible for a taxpayer's loss of protection to be avoided if contributions paid after A-day are refunded. Normally a refund of contributions would be an unauthorised member payment, but not necessarily so if the payments were made as a result of a "genuine error": see PTM14600 to 146800 and my Summer 2018 pension law update. HMRC's example is of a bank continuing to pay pension scheme contributions after the member has cancelled them. HMRCs' examples are not exhaustive. In another instance a member was taken to hospital seriously ill before he could instruct his bank to cease payment. When the payments are treated as not having been paid the LTA is preserved.

HMRC's genuine error relief is, fundamentally, an application of the far wider equitable remedy of mistake and rectification. The decision in Hymanson v HMRC [2018] UKFTT 667 (TC) illustrated the application of this principle to a taxpayer's loss of his LTA: my Summer 2019 update. Mr Hymanson's certificate was cancelled when he, confused by the fact that he was not required to cancel his company's rent to another scheme, mistakenly believed that he did not need to cancel his contributions to some other pension schemes, and the judge directed HMRC to issue a new certificate.

conclusion

Failing to obtain protection or the cancellation of a certificate is not always final.

END