Corporate restructuring

Amendments to the employer debt rules, following consultation, ease the situation for employers

The employer debt rules under s75 Pensions Act 1995 have long been a source of contention as they can inhibit corporate restructuring in schemes with more than one participating employer. Following a long period of consultation, final regulations have been laid that change the rules from 6 April 2010.

**New easements**

The regulations introduce two new circumstances (see Box) in which an employer in a multi-employer scheme can cease to participate, as a result of a corporate restructure, without paying an employer debt. Provided the required conditions and steps are met, an event that would otherwise be an “employment cessation event” will not be treated as such.

**Additional requirements in both cases**

In both cases, three further steps must be carried out:

1. The trustees must notify the employers of their decision on whether the restructuring test has been satisfied, or the de minimis conditions have been met, as appropriate.

2. The receiving employer must take over legal responsibility for all of the exiting employer’s assets, employees, scheme members and scheme liabilities. This must be done within 18 weeks of the date of the trustees’ decision. This period can be extended by up to a further 18 weeks at the discretion of the trustees. This is unlikely to be appropriate in many restructurings. Hence the easements may be of limited practical use.

3. The receiving and exiting employers must send the trustees written confirmation that all of the liabilities have been taken over by the receiving employer and the date on which this was completed.

In both cases, a six year time limit will operate from the date of completion of the restructuring after which no debt can arise due to the restructuring. If within that period it becomes apparent that there has been an incomplete transfer of liabilities, or incomplete or incorrect information was provided to the trustees, or the final steps were not carried out properly, an employment cessation event will be deemed to have occurred, triggering a debt.

The trustees may require the exiting and receiving employers to meet the costs arising from the operation of these easements.

**Other technical amendments**

The draft regulations proposed a number of technical amendments to the rules. As responses to the consultation indicated that there were diverging views, many of these were dropped and will be subject to further work. Some of the changes are, however, being introduced at this stage.

**Employer debt rule amendments**

**General easement**

To avoid triggering an employer debt, the exiting employer must write to the trustees asking them to undertake a “restructuring test” and provide any information the trustees consider necessary to carry out the test. The trustees must then consult with both the exiting and receiving employers about the test. The restructuring test involves the trustees satisfying themselves that (after the restructuring) the receiving employer will be at least as likely as the exiting employer to meet the scheme liabilities it is acquiring, as well as its own liabilities. They must consider the covenant of both employers; and the restructuring exercise itself must not do anything to weaken the covenant of the receiving employer.

**De minimis easement**

This easement applies for transactions that involve relatively few scheme members. To avoid triggering a debt, the exiting employer must write to the trustees to ask them to decide whether the de minimis conditions are met. The conditions are met if (using information contained in the most recent “s179” valuation and the scheme return), the trustees are satisfied that:

- the assets of the scheme are at least equal to the Pension Protection Fund (PPF) liabilities
- the number of defined benefit (DB) members with the exiting employer is no more than two (or if greater, 3% of the total number of DB members in the scheme)
- the total annual amount of accrued pensions of the members covered by the transaction must not exceed £20,000, and the transaction must not exceed £50,000, in the rolling three year period.

**In a nutshell**

- new regulations amend the employer debt rules from April 2010
- the regulations affect corporate restructuring in schemes with more than one participating employer
- two new easements allow employers to leave schemes without triggering the debt.