Kent Pension Fund

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Invicta House,
County Hall,
Maidstone,
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Technical Consultation - Inheritance Tax on Pensions

Response on behalf of Kent Pension Fund

Background

The Kent Pension Fund is administered by Kent County Council and has over 450 scheme employers (active and ceased), and just over 155,000 scheme members split between active, deferred and pensioner status, split by approximately 50,000 members in each category.

The LGPS operates as a public sector, statutory defined benefit pension scheme. Within the scheme regulations, death grants are payable at the discretion of the administering authority (Kent Pension Fund) and are therefore not subject to tax under the current regime.

We are grateful for the opportunity to offer our thoughts, and have looked to address the specific questions that are relevant to the LGPS:

Response - general points

Part 1

a. We feel that in the Public Sector pension schemes, death grant payments cannot be considered a form of tax planning. This is because payments are made at the discretion of the administering authority. The scheme member also has, in theory, no definite expectation of when they may die. Therefore there may never be a death grant payment due, so such a facility cannot be relied upon to provide an inheritance.

b. If individuals are accumulating wealth in pension schemes with the intent of transferring this, should this not be dealt with through the annual allowance. Your point at 1.4 reads that unlimited tax-free savings can be built up in pensions; this isn't true though, as the annual allowance restricts pension growth on an annual basis.

c. In addition to (a) and (b), we understand that some defined contribution schemes could be seen as being used to accumulate transferrable wealth, however this argument appears fundamentally flawed for anyone who dies as an active scheme member or before their pension due date as they have not been able to access their pension rights before death, yet are still becoming liable to a tax charge.

d. Given the assisted dying bills and associated arguments for and against would this not ‘encourage’ anyone with a serious illness to consider terminating their life early to avoid the pension being included in IHT?

e. Given our experience as a PSA with annual allowance tax reporting, there is a huge time and resource cost for pension schemes which ends with very few cases being liable for tax. Why should pension schemes have to fund such activity? Perhaps pension funds should be allowed to recharge HMRC for the amount of additional work generated even if we don’t end up deducting tax?

Part 2

f. With regard to the 6 month deadline referenced at 2.8, the LGPS has two years to pay a death grant before the tax free status of the payment is lost. This would be incompatible with the deadlines to pay Inheritance Tax, so would require a change to the LGPS regulations, as also referenced in 2.11 and our answer to question 3 below.

g. In some cases, we as a PSA are not notified of death until one to two months after the event – even a delay as short as this would shorten the timescale to pay IHT significantly and create issues further into the process.

h. In addition, not all death grant payments derive from pensioner members. Where a member dies as an active member of the scheme, additional information may be required from a third party, for instance pay information from a scheme employer. Any calculation of a death grant cannot be performed until this information is received. This could delay a PSA’s ability to provide information to a PR.

i. In addition, scheme member’s relationship backgrounds are becoming ever more complicated, for instance through different marriages, partners, children with different partners etc. This can make the process of identifying and/or locating a beneficiary for a death grant extremely challenging for a PSA. This needs to be recognised within the timescales that HMRC are implying will be imposed by these changes.

j. It is not clear from the technical information provided who will pay any interest charge. Will interest have to be paid by admin authority and reclaimed from the death grant payable, or will the cost be fully borne by the pension fund?

k. In addition to the points made at 2.16, consideration should also be made that a PR may not properly engage with the PSA in a timely manner. As a PR can be a layperson, with no experience of any tax matters, there could be significant challenges in communication between the PR and PSA. It should not fall on a PSA to explain tax processes to a PR, but this will undoubtedly become an issue if information is not forthcoming.

l. In 2.21, where the PR notifies the PSA of the tax liability, is it also for the PR to determine how to split that tax liability should there be multiple beneficiaries for the death grant? This is not clear.

m. As a PSA, we are often notified of the death of a member by a party other than the PR. This makes your point at 2.24 less valid as if, for instance, notification was made by a third party, a PSA would then have to try and make contact with the PR. If this took maybe 2-3 weeks, how would that affect the two month timescale you are quoting in 2.24. The majority of our death reporting is now done through Tell Us Once, therefore we have minimal contact with any next of kin or PR at the point of notification.

n. In the LGPS, a PSA will be required to pay interest on a death grant payment if it is made more than one month after the date of death. It is not clear how interest should be treated for tax purposes, as a final amount of interest cannot be determined until payment is made. If the interest is to be included within the IHT calculation, the actual amount payable cannot be determined until the point of payment thus the proper liability can never be determined in advance.

o. In 2.28, it seems unfair that a PSA will be liable for interest on late payment of tax where there may have been delays incurred to any payment that are outside of their control. We would expect this to be mentioned in the summary of impacts, as it could be a substantial cost, however there is no mention in that section.

p. We do not understand why beneficiaries only become jointly and severally liable for tax after 12 months, as addressed in 2.34. We have addressed further thoughts on this point under question 5 below.

q. Beneficiaries of a death grant are likely to not have a long term benefit in the scheme. How can a PSA be expected to maintain contact with these individuals in the long term? This would involve a huge amount of work, for potentially very little benefit if there are few estates that require a revision to the IHT payable. PSAs will not hold database records for these individuals, so that data will not form part of the PSAs data quality scoring. Finally, would there not be a GDPR issue if inaccurate data is being held?

Questions

Question	Response
1	We believe scheme reporting requirements should be minimised, so on this basis it makes sense to only report death benefits where there is an IHT liability. This ties in with other reporting requirements, e.g. Annual Allowance. We think it should be clear though that PSAs act on instruction from the PR, so think it should be clear that the PR retains ultimate liability for any IHT.

	With that said, HMRC will only be able to police the IHT system based information that is reported, so if no report is made then there could be potential for tax evasion. This may be more relevant if a case is just below the threshold, isn't reported, but then at a later date requires adjustment which increases the amount payable to a taxable level but this isn't reported.
2	This is a difficult question to answer as presumably we cannot proceed with anything if we don't know if there is any IHT due. Even the value of any death grant cannot give a guide on this, as even if the death grant is only £100, there could still be IHT due if the rest of the estate is above the threshold. Logically, a deadline could be given by the PSA to say that, if nothing is received by X date, then payment will be made, but where does the ultimate liability fall if it later transpired that IHT should have been paid? This just leaves PSAs in an impossible position, as they are waiting for information that may never come. It assumes that every PR is a competent individual or organisation that can deal with the estate in a timely manner. In addition, there may be pressure from the recipient of the death grant to expedite payment, however the PSA will not be in a position to give timescales if they are waiting on the PR. There could also be other delays winding up the estate that impacts on the PSA receiving the required information, and every delay will compound, which could push a case over the 6 month payment deadline. We feel it is unfair to hold the PSA accountable for paying interest when circumstances outside of their control has created such a situation.
3	In the LGPS the discretionary aspect of death grants would have to be removed as there would be insufficient time to undertake proper checks on all cases in less than a six month window. Sometimes it can take a month to be notified of a death, so this just compresses the timeline even further. In some cases, notification comes via a government department, so as a PSA we never establish contact with a PR or any NOK until some months after the death. It should be made clear to any PR that they have to fully investigate all of an individual's pension saving arrangements before winding up the estate and making any tax assessments. What happens if an individual dies intestate? What delay will applying for probate have?

	In addition, any rules introduced should be as simple as possible. The Government could also consider mandating the drawdown of pensions at a specific age to avoid pension pots being retained at a high level until death.
4	We believe that the reporting and paying of Inheritance Tax at the end stage, through the AFT return, would not present a problem providing the reportable data requirements are set out clearly with guidance on how to submit and pay.
5	We believe that the beneficiary should immediately become jointly and severally liable as soon as payment is made. We do not understand why that should be delayed for 12 months. In addition, the joint liability should be held between the PR and the beneficiary. We do not understand why the PSA should be held jointly liable.
6	This is an impossible question to answer fully. How can a PSA be expected to maintain address or contact information for someone for whom they have no on-going records or liability. Even if records were kept, it is impossible to force a beneficiary to engage as a PSA has no statutory authority to enforce compliance. The beneficiary could just ignore any correspondence. Should it not be up to HMRC to keep contact with the beneficiary in some way? It would therefore seem to make more sense for the beneficiary to declare and pay the tax. Within the three way party (of PR, PSA and HMRC) the beneficiaries seem to sit outside of this exercise, when they should share liability as soon as payment is made and be formally held to that obligation.
7	PSAs are completely at the mercy of the PR and their ability to co-ordinate and provide information. Timescales do not fit in with current processes to pay death grants in the LGPS as explained above. The process outlined appears cumbersome and stressful, at what should be recognised is a difficult time when a next of kin could do without complex rules and delays in making payments. Making a situation more complex increases the need for a next of kin or the PR to get specialist advice which can be costly, particularly if it is then established that no tax is due. Our experience with the online systems in place are that often tax payments cannot be matched with information reported, and HMRC

	then tries to charge interest quarterly; more of these types of cases will only cause additional work. For example, we currently pay over tax for annual allowance charges but the members are then 'chased' for tax years after the event, thus demonstrating that the system is not fit for purpose. Given HMRC send tax chasers and late payment assessments via post rather than email will increase the risk of enquiries not being received in a timely fashion.
8	Additional scenarios would be: • Where an individual dies intestate. • Where an individual die overseas. • Where a beneficiary resides overseas. • Where a beneficiary dies and there is then an adjustment to the IHT due. • Where we, as a PSA, are not notified of a death in a timely manner, or as we experience in a small number of cases, never making contact with a next of kin or PR.
9	Payment of tax by the beneficiary. This could be done through a payroll system / RTI, in a similar way to how PCELS payments are made. This could then create a link between HMRC and the beneficiary in case of any future query. Exclude any payments made prior to pensionable age from IHT. At the date a pension must be paid (for example the scheme Normal Pension Age), anyone not claiming the pension should be reported to HMRC and then HMRC can assess tax liability on that pension on an annual basis or create a liability against the estate of that individual when they do die. As an alternative measure, the PSA could determine who a beneficiary is, taxes the total death grant at 40% using PAYE, provides a 'certificate of payment' to the beneficiary(ies) to explain gross and net amounts and the beneficiary(ies) apply to HMRC for any tax refund/HMRC automatically repays tax refund once IHT liability established.

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Yours sincerely

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