
# FIXED/ENHANCED PROTECTION AND AUTOMATIC ENROLMENT

## INDIVIDUALS WITH PENSION "TAX PROTECTED STATUS" AND THE EXCEPTION TO EMPLOYER DUTIES EFFECTIVE 1ST APRIL 2015

The Finance Act 2006 introduced a raft of new legislation affecting pension schemes in the UK with effect from 6th April 2006.

One of the regulations was designed to impose a cap known as the "Lifetime Allowance" (LTA) on the total value of an individual's pension plans with any excess above the LTA being subject to a LTA tax charge. Transitional arrangements (Primary and / or Enhanced Protection) were introduced to allow very large pension funds to be maintained in the current largely tax free environment subject to certain criteria. Since 2006 there have been several changes to the level of the LTA (see table right) and new forms of Protection have been introduced.

| TAX YEAR | LTA |
|---|---|
| 2006/07 | £1,500,000 |
| 2007/08 | £1,600,000 |
| 2008/09 | £1,650,000 |
| 2009/10 | £1,750,000 |
| 2010/11 | £1,800,000 |
| 2011/12 | £1,800,000 |
| 2012/13 | £1,500,000 |
| 2013/14 | £1,500,000 |
| 2014/15 | £1,250,000 |
| 2015/16 | £1,250,000 |
| 2016/17 | £1,000,000* |

*Announced in the April 2015 budget.

### ENHANCED PROTECTION

This fully protects the individual's pension benefits (irrespective of the value) provided that no pension contributions were paid after 5th April 2006 and any defined benefit scheme accrual remains within specified limits. It had to be applied for by 5th April, 2009. It can be revoked or lost if the criteria is breached i.e. a contribution is paid or there is "relevant benefit accrual".

### FIXED PROTECTION

With the reductions in the Lifetime allowance since April 2012 (as shown in the table above) a new type of protection was introduced from April 2012. Fixed Protection 2012 was aimed at those whose pension fund exceeded (or could exceed in the future), £1.5m. Fixed Protection 2014 provides similar protection for those whose pension fund exceeds (or could exceed in the future), £1.25m.

A condition of these forms of protection is that no pension contributions are paid or benefit accrual in a defined benefit scheme occurs after 5th April 2012 or 5th April 2014 (as applicable).

### INDIVIDUAL PROTECTION 2014

It is currently possible to protect some pension benefits from a LTA charge by using individual protection 2014. This provides a protected LTA equal to the value of an individual's pension savings on 5 April 2014, subject to an overall maximum of £1.5 million. The member must have had pension savings of at least £1.25m on 5 April 2014 to apply.

A crucial difference from fixed protection 2014 is that a member can still be an active member of a pension scheme. Applications for individual protection 2014 can be made up until 5 April 2017 via a HMRC online form:

https://online.hmrc.gov.uk/shortforms/form/IP2014


## INTERACTION OF PENSION PROTECTION AND AUTOMATIC ENROLMENT

The issue with Automatic Enrolment is that Fixed or Enhanced Protection could be made invalid if any future pension contributions are made after the effective date of the protection. That action could potentially lead to serious tax implications for the individual.

Prior to 1st April 2015 the Automatic Enrolment legislation did not provide an exemption for anyone with these forms of protection. In order to avoid the potential tax consequences of contravening the rules of either Enhanced or Fixed Protection, the process prior to 1st April, 2015 that individuals with these types of protection needed to follow was:

- the individual is auto enrolled (assuming they are an eligible jobholder)
- the individual opts out within the prescribed time frame
- the individual receives a refund of any contributions paid
- the individual is then treated as if he / she had never made that contribution in the first place
- the individual has then preserved their Enhanced or Fixed Protection status and thus avoided the potential tax penalty.

Since 1st April, 2015 employers have been able to elect to not automatically enrol “workers” with HMRC tax protected status for their pension savings into their qualifying workplace pension scheme. This is only possible where an employer has ‘reasonable grounds to believe’ (eg the worker shows them documentary evidence) that a worker has HMRC tax protected status for their pension savings (eg Enhanced or Fixed protection). In these circumstances the employer may choose not to automatically enrol/re-enrol them. The worker would still have the right to opt in/join – but clearly that would result in loss of pension protection unless they opted back out within the one month opt out period.

The introduction of this exception to auto enrolment from 1st April, 2015 is ‘permissive’- ie not mandatory and so employers can continue to follow the ‘old’ rules indefinitely. However, where an employee is able to produce valid documentary evidence of HMRC tax protected status we would anticipate that most employers would not automatically enrol that individual. If the employer does automatically enrol the individual they can still opt out by following the process shown above that was the only option pre 1st April 2015 to avoid losing HMRC tax protection.

THIS ARTICLE WAS WRITTEN BY NICOLA PRINCE, DIRECTOR – EMPLOYEE BENEFITS AND AUTO ENROLMENT.

THE CONTENT OF THIS ARTICLE IS FOR GENERAL INFORMATION ONLY AND IS BASED ON OUR UNDERSTANDING AS AT 7TH MAY, 2015. AS ALWAYS, SPECIFIC PROFESSIONAL ADVICE SHOULD BE TAKEN ON A CASE BY CASE BASIS.

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