

Pension Levy amended ... the details

Section 4 of Finance Bill (No 2) 2011, which provides for the pension levy, will be significantly amended this week in Committee Stage in the Dail.

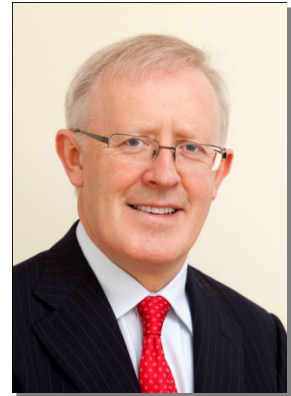
The main changes are:

- The levy will now be an annual 0.6% levy payable on 25th September 2011, 2012, 2013 and 2014 by reference to the market value of a scheme's assets at the previous 30th June.

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So SSAS, PRSA, Personal Pension Plan, BOB and Executive Pension Plan clients who can retire and take their retirement benefits before 30th June 2011 can dodge the levy, as the levy does not apply to ARFs or vested PRSAs.

- Filing and payment of the levy by 25th September each year must be made by 'electronic' means as may be specified by Revenue.
- The administrator of one member SSAS will have the option in respect of non pension policy assets only, to value the scheme assets for the levy at either the 30th June or at the last date of the scheme's accounts ending prior to 30th June, where the accounts are '*prepared to an appropriate accounting standard*'. This presumably includes for one member SSAS the format of annual accounts accepted by Revenue?

One assumes that the administrators of one member SSAS will use the more beneficial valuation date for clients each year, and in particular will not opt for the earlier accounting end date before 30th June 2011 for clients who want to retire before 30th June 2011 and avoid the levy for 2011. The administrator is not obliged to use the earlier date... the legislation says "the chargeable person so decides".'

- In relation to policies issued by life companies, there is a very confusing mix of liability to pay the levy:
 - The life company is required to pay the levy in respect of all pension policies issued by it.
 - The life company is also required to pay the levy in respect of all 'life' (i.e. not pension) policies issued by it to schemes other than one member SSAS schemes..
 - The one member SSAS administrator is required to pay the levy in respect of all 'life' (i.e. not pension) policies it holds.

Apparently the intention was that life companies would pay the levy in respect of all pension policies, and the scheme administrator would pay the levy in respect of all 'life' policies held by schemes, but the amendment does not do this. This amendment may need to be amended itself, during the Committee Stage of the Bill to achieve this intention.

- In the case of one member SSAS:
 - Land (which presumably includes buildings on that land?) will be valued at their net asset value, i.e. *after* deducting outstanding borrowings.
 - The levy in respect of pension policies held by the SSAS as investments will be deducted and paid by the life company based on 30th June values, and not by the scheme administrator. The scheme's administrator's liability will be by reference only to the directly held assets other than pension policies.

- Where the administrator and the sole member are both trustees (a typical configuration for SSAS) then the member and the administrator are jointly and severally liable for the full levy.

This may be useful to an SSAS administrator (typically the Pensioner Trustee) where the scheme has insufficient or no liquidity from which the administrator can recover the levy due. In such a case, the administrator can seek payment or refund of the levy from the member personally, but ONLY if the member is a trustee of the scheme.

This puts a high premium on maintaining the sole member as a trustee of the scheme at all times.

- Enhanced protection is now provided to scheme administrators and life companies to recover the levy, if they so wish, from the scheme's assets.
 - The administrator/life company is '*entitled to dispose of or appropriate such assets of the scheme as are required to meet the amount of the duty so payable*' and '*no action shall lie against the chargeable person in any court by reason of such disposal or appropriation*'
 - Where the chargeable person is not a trustee of the scheme, then the chargeable person and the trustees of the scheme are jointly and severally liable for the full tax liability. So the trustees can't hide behind the administrator in relation to liability for the levy.
 - Where the levy is paid by the administrator who is not the trustee, and recovered by the administrator disposing of scheme assets, '*the trustees shall allow such disposal or appropriation*' and the chargeable person '*shall be acquitted and discharged of any such disposal or appropriation as if the amount of duty had not been so paid*'.

However while the administrator or life company can recover the levy amount payable from the scheme assets, it does appear that this recovery facility does not extend to interest/penalties to which the administrator or life company become liable if they do not file and pay the levy due by the required 25th September deadline. This makes it all the more important to hit the 25th September annual pay and file deadline.

- Despite recent statements in the Dail by the Minister for Finance¹ about the desirability of not passing on the levy to scheme members, in fact the amendments provide enhanced protection to life companies/ administrators to recover the tax by reducing member's benefits:

The legislation now allows the scheme trustees or life company, as the case may be, the option to reduce member's benefits to the extent of the amount of levy recovered from the scheme's assets, '*notwithstanding any provision of the Pensions Act 1990, or of any other enactment..., or any rule of law, or anything contained in the rules of a scheme, or the terms and conditions of any contract*'. Wow!

However the option to reduce benefits (which happens automatically in DC arrangements where the levy is recovered from the scheme assets) is restricted so that '*the diminution in value of those benefits shall not exceed the amount disbursed from the assets attributable at the valuation date to the scheme's liabilities in respect of that member*'.

¹ "I believe that it would be an act of responsibility and generosity for those same (pension fund) managers to deduct the 0.6% from their management fees, salaries and administration costs for the next four years or to take a reduction over a more extended period. ...

We should be in no doubt that it is vested interests and those with large pension pots who are stirring up a storm and engaging in scare tactics in relation to this pension levy. It is disappointing to see some Members of this House championing their cause." Dail Debates, 26th May 2011

In the case of DB schemes, this is awkward as in effect it means attributing to EACH member a proportion of the scheme assets and then ensuring that the value of any reduction in benefits for that individual member on foot of the levy, does not exceed the notional value of assets attributed to that member.

SSAS administrators and ‘lower of’ valuations for levy?

The amended legislation will allow the one member SSAS administrator to choose for each scheme and for each year whether to value non pension policy assets at either 30th June or at the scheme accounting year end preceding 30th June.

While this might seem like an administrative measure to allow one member SSAS administrators avoid having to value scheme assets twice a year, it does lead to a potential conflict of interest between administrative ease for the administrator and the best interests of the sole member, who will naturally want the ‘lower of’ valuations and hence levy.

Where a one member SSAS is invested solely or mainly in a property (either directly or indirectly) then there may be no practical difference between the value of the scheme assets at the two different dates.

However in the case of a ‘stocks and shares’ one member SSAS, the market value of scheme assets on both dates will be readily available and could be different (e.g. a substantial contribution could have been paid between the last scheme year end date and the following 30th June); in such a case, the administrator who is also a trustee should act in the member’s best interests by picking the valuation date for a scheme which gives the *lowest* valuation of scheme assets and hence the lowest levy liability and consequent reduction of benefits.

In any event the option for an SSAS administrator to choose the preceding scheme accounts date is qualified as only applying where ‘*accounts are prepared to an appropriate accounting standard*’. It’s not clear whether this refers in the case of one member SSAS to the unaudited pro forma accounts which Revenue accept from some Pensioner Trustees in lieu of full audited accounts?

30th June 2011 valuation date

The 30th June 2011 is the first valuation date for the first levy payment, due by 25th September 2011.

This has two implications:

- Clients considering making discretionary pension contributions in June should wait until after 30th June 2011, and hence avoid the 2011 levy on such contributions.
- Clients with DC benefits who are considering retirement shortly would be advised to do so and mature their retirement benefits *before* 30th June 2011, and so avoid the levy liability.