LIFE ASSURANCE ARRANGEMENTS: GETTING YOUR HOUSE IN ORDER

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Life assurance is a core benefit many employers provide for their employees. It is often the case that arrangements may have been in place for many years without review. However, a review is worthwhile as there may be tax, cost and reputational risks if arrangements aren’t properly established and governed. In addition, changes in the tax regime over the last few years mean changing the structure of your life assurance arrangements may offer benefits from a reward perspective, especially for senior and high earning staff.

The basics

A life assurance arrangement is typically made up of two elements:

- An insurance policy - insuring the benefits to be provided and;
- A discretionary trust - which holds the insurance policy and ensures the benefits can be paid in a tax efficient manner.

The employer will usually establish the trust and act as the trustee and other employers in the group may be adhered to the trust to participate for the benefit of their employees.

Time for a review?

Common issues

Missing/incomplete documentation

Usually employers can locate the insurance policy but the trust deed may be missing or may not have been signed.

Trust deeds that are out of date or no longer fit for purpose

Typical issues can be that the deed describes different benefits to those currently insured under the policy, it may not protect an employer from exposure if an insurer fails to pay the benefits due or it may have inadequate powers to administer and pay the benefits.

Uninsured liabilities

If the trust deed or contractual promises provide for benefits different to those insured you may have uninsured “gaps” that represent an unknown risk and potential cost for the business.

Age discrimination

There may be issues with whether the benefits are insured if an employee remains in work beyond age 65 and how to mitigate this issue with an aging workforce in a manner that does not give rise to age discrimination risks.

An audit of the current arrangements will quickly identify these issues so action can be taken to rectify these. Doing this now avoids unexpected issues arising when there has been a death and benefits fall due to be paid

Using an Excepted Group Life Policy (EGLP)

Another key consideration is whether to change the type of life assurance cover provided to make it more attractive to employees, particularly senior staff or high earners. From a tax perspective there are two types of life assurance arrangements:

- Life policies held as part of a tax registered life assurance scheme
- EGLPs, which are non-registered life assurance schemes.

An employer can operate both. EGLPs are increasingly being offered, as they can be as tax efficient as a registered scheme from an employer's point of view and can be advantageous for certain employees with significant pensions savings. This is because the benefits paid from an EGLP won't count towards an employee's lifetime allowance (which is the UK tax limit on relievable pension savings) and so won't risk taking the employee over the threshold resulting in a 55% tax charge.

In addition, EGLPs offer a solution for employees who have registered for tax protection with HMRC in respect of their pensions savings, and risk losing this if they are put into a new registered life assurance arrangement. So setting up an EGLP should be considered as part of any review of life assurance and in particular when taking on new employees who have HMRC protection or for existing employees with HMRC protection or earnings above a certain threshold.
Care needs to be taken if moving existing employees out of a registered arrangement into an EGLP to ensure they are not entitled to double recovery of benefits i.e. benefits from both schemes. This may require an amendment to the rules to be made to avoid this.

Be aware of tax “trip-wires”

Setting up an EGLP is relatively simple and quick to do, but there are some tricky (and not widely understood) tax issues in relation to whether the premium for an EGLP is taxable as a benefit in kind. Where the premium is paid by the employer, this will essentially depend on how your trust deed is drafted and who can be a beneficiary of the lump sum. ***Taking tax advice on this and not relying on insurers’ general guidance is important, as we are aware that this guidance is often contrary to the position HMRC adopts.***

Where the premium for an EGLP is paid for by the employee as part of a salary sacrifice or flexible benefit arrangement, changes introduced from 6 April 2017 mean an employee may be liable for tax and National Insurance contributions in respect of the cover provided under the EGLP. These tax charges will not apply to registered life assurance arrangements and so this is another reason to consider carefully what type of life cover to provide for employees.

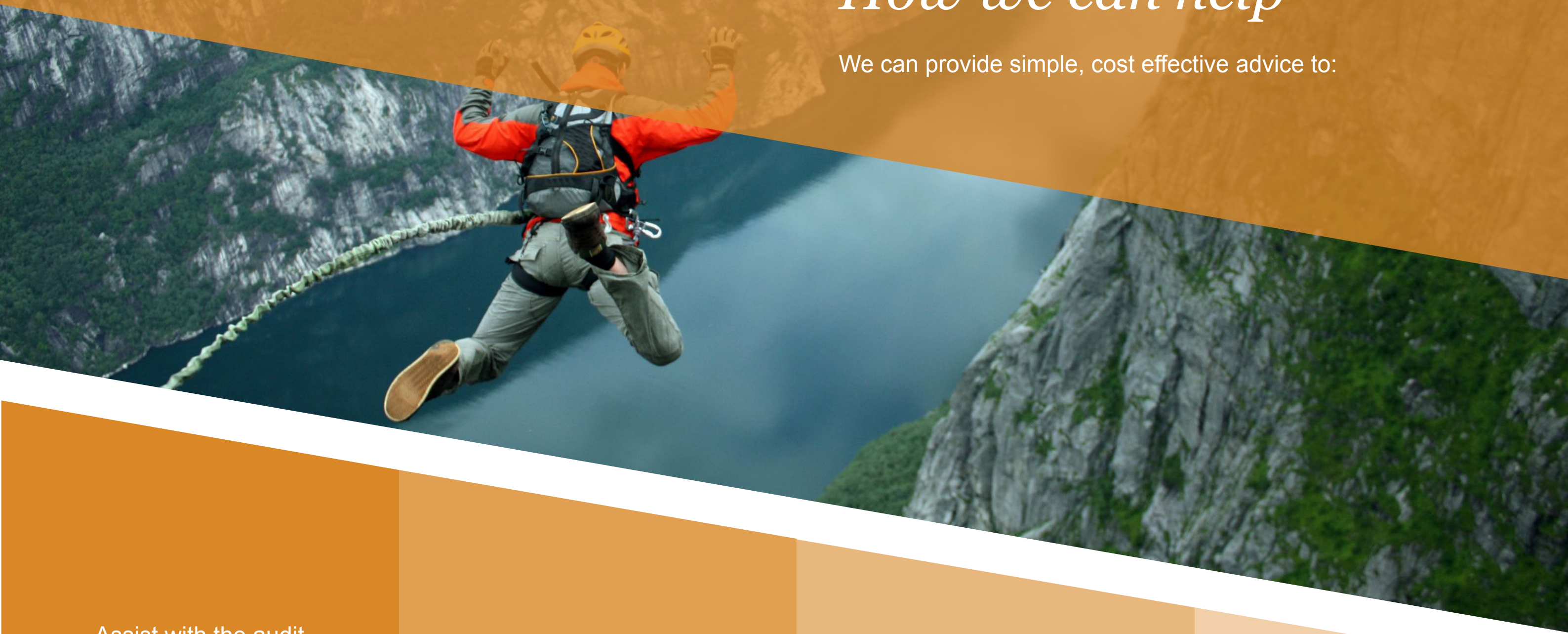
Communications and governance

If you update your life assurance arrangements (especially if you introduce an EGLP) you may need to communicate this to employees and ask them to complete a new nomination form.

When a death occurs there needs to be a decision made to determine who to pay the benefit to. Whilst most employers act as trustee of these schemes (so have responsibility to deal with a distribution), they would not expect these decisions to be taken at board level. Having a clear governance process in place is important to ensure this is dealt with at the appropriate level in the business and the paper trail provides protection against potential complaints challenging the decision. These complaints are more frequent as people’s family lives are increasingly complex.

How we can help

We can provide simple, cost effective advice to:



- Assist with the audit of your existing life assurance arrangements and advise on the options and potential actions coming out of this
- Establish new arrangements for a fixed fee, including EGLPs
- Draft or review the associated communications
- Help you put in place robust governance processes to deal with death distributions.

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