

## Important Announcement to members of the following pension schemes (“the Schemes”)

Cranborne Star Pension Scheme  
Grosvenor Parade Pension Scheme  
Tallton Place Pension Scheme  
The Lancaster Pension Scheme  
The Portman Pension Scheme  
Woodcroft House Pension Scheme

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This is our 24th Announcement to members.

Dalriada is aware of queries raised by some members with regard to their annual individual tax assessments and the Tax Tribunal proceedings.

### **Individual Tax Assessments**

To confirm, irrespective of their circumstances and whether or not members felt they were misled as regards their membership of the Schemes, it is HMRC’s view that members remain liable for tax, by way of unauthorised payment charges, whether or not they repay any monies they received personally by way of an MPVA loan or whether the individual(s) they notionally ‘loaned to’ repay their MPVA loans.

As has been set out in earlier Announcements, HMRC intend to tax members on the basis of the MPVA loans they notionally made to members of other Ark schemes. However, this approach and interpretation of the Ark schemes is being challenged by Dalriada in the Tax Tribunal (see later) and, as such, HMRC are **also** issuing **annual** tax assessments on an alternative basis, in line with the decision in Dalriada v. Faulds.

As Dalriada has commented previously, ultimately, it has no influence on individual tax assessments made by HMRC. We have, however, provided members with information with regard to HMRC’s approach and guidance on how to appeal their tax charges and, in our 14<sup>th</sup> Announcement, we included a FAQ document to assist with any queries. **A copy of that FAQ document is appended to this Announcement.**

As a reminder, members can appeal their individual tax assessments (including the annual tax assessments) themselves by issuing the following wording to [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk). Please ensure you include “ARK” in your title.

***"I have received a tax demand [dated xxx].***

***I understand that you are not yet in a position to issue an appealable decision and that you intend to issue an appealable decision in a test case (or cases) and litigate on this case (or cases), dealing with the range of facts and possible tax charges.***

***I further understand that, given this, you are willing to postpone the collection of tax until such time as you are able to issue an appealable decision in my case.***

***I would be grateful if you could do this in my case. I acknowledge that, should the outcome of the appealable decision determine that tax is payable, I will be required to pay the tax plus any late payment interest that would then become payable".***

With regard to the final paragraph, you may want to make an on account payment to offset the late payment interest. If you wish to consider this, we suggest you should include a comment to that effect in your email to HMRC and ask them to suggest what level of on account payment to make.

Whilst Dalriada cannot advise members on their personal tax affairs, if you have any queries with regard to appealing your individual tax assessments or have recently received correspondence from HMRC in respect of any tax payable, please contact Dalriada in the first instance and we will do our best to assist.

Dalriada understands that members may have instructed a third party representative to appeal their annual tax assessment on their behalf. As commented above, there is **no requirement for this** and members can make appeals **themselves**, again, as set out above.

However, if members are relying on the advice or support of a third party, Dalriada would encourage members to exercise caution, particularly if fees are being charged. Certainly, members should:

- Establish the qualifications of those representing them
- Ensure they see copies of any representations made
- Ensure they are clear about how any fees paid are determined and for what precise purpose they are being used.

## **Tax Tribunal Proceedings**

Dalriada is challenging the basis used by HMRC to calculate the tax. The Court only permitted Dalriada to challenge the basis in relation to the tax charges levied against the Schemes themselves (the Scheme Sanction Charges).

However, because of the link between the scheme tax charges and member tax charges, if Dalriada is successful in its appeal, members should benefit as their individual tax charge will then be calculated in line with HMRC's alternative position (so in line with the annual assessments).

This means that members who received an MPVA loan will still be required to pay some level of tax, but at a lower and, in our view, fairer level than proposed by HMRC, accepting that members will continue to have to pay tax until any MPVA loan they received is repaid.

Dalriada's costs for challenging HMRC at the Tax Tribunal will be met from scheme funds. However, as set out in previous Announcements, Dalriada intends to submit applications for compensation to the Fraud Compensation Fund (FCF) on behalf of the Schemes once the Tax proceedings have been concluded.

As a reminder, to claim compensation from the FCF it will be necessary to demonstrate that any scheme losses for which compensation is sought are attributable to an act of dishonesty. These

# Dalriada. A better way

losses would include our costs incurred for appealing the tax charges if they, too, can be attributable to the act of dishonesty, which we will claim they can be and, so, will form part of any FCF compensation claim. We should emphasise, though, at this stage we do not know if any FCF claims will be successful.

## **Third party representatives**

Again, we are aware that some members are being approached to make payments to individuals on the grounds that they will be representing members in the Tax Tribunal.

As we set out in our 23rd Announcement, the Tax Tribunal will consider a number of categories of member. HMRC sought 'volunteer members' for each category and, of those that came forward, we are aware that two are being represented by third party representatives in the Tax Tribunal.

Whilst those third party representatives might make arguments that could impact on all members (as, indeed, will Dalriada in relation to the scheme charges), they will only be 'representing' the two volunteer members and looking specifically at the facts of the category of member they are in.

There is no third party representative due to appear at the Tax Tribunal who is acting for the members 'collectively' and we would urge members to exercise caution with regard to anyone claiming that they are and, certainly, where members are being asked to pay fees so they can be 'represented'.

To reiterate, if Dalriada is successful in its appeal against the scheme tax charges, this will potentially benefit **all** members, to the extent that members should then pay a lower, fairer level of personal tax (and only if they have received an MPVA loan payment) and the Schemes themselves will not be subject to tax charges. As was set out in our 22<sup>nd</sup> Announcement, Dalriada has dropped the argument that there should be no tax payable (by virtue of the loans being void), as having taken legal advice, we don't think it will succeed.

Given that, whilst Dalriada is not able to 'represent' members, we will be making arguments that will benefit members if our appeal is successful. This, in our view, would be the best outcome for members and is unlikely to be improved by any third party representation.

One final point we would make is that personal funding by members of third party representation at the Tax Tribunal cannot form part of any FCF compensation claim.

## **What should you do if you have any questions?**

As always, should you have any queries in relation to this Announcement or your membership of the Schemes, please contact us.

You can contact us as follows:

Online: Use our Get in Touch form on our website: [www.dalriadatrustees.co.uk/contact](http://www.dalriadatrustees.co.uk/contact)

Email: [ArkAdmin@dalriadatrustees.co.uk](mailto:ArkAdmin@dalriadatrustees.co.uk)

Telephone: 028 9041 2756

Post: Dalriada Trustees Limited, Linen Loft, 27-37 Adelaide Street, Belfast, BT2 8FE

## **Frequently asked questions ('FAQs') for the members of the Ark pension scheme**

These FAQs set out HMRC's current view of the possible tax liabilities of members in respect of their involvement in the Ark Pension Reciprocation Plan schemes ('the Ark schemes').

HMRC's view is that the Ark schemes were set up as a Tax Avoidance Scheme with the intention of circumventing the restrictions on authorised payments from a registered pension scheme and thereby avoiding a charge to tax on payments to the members. It is not unusual for the tax position to be complicated when people enter into artificial schemes.

HMRC's view is that the "loans" made under the MPVA arrangements are in the first instance unauthorised payments.

HMRC are continuing their investigations into the Ark schemes and HMRC's view might evolve further in the light of documents provided to HMRC by the members of the Ark schemes during the course of their investigations.

The possible arguments set out in these FAQs are not exhaustive. Further issues could arise depending on any future action taken in respect of the Ark schemes and the loans made from the schemes and as further evidence is provided to HMRC.

### **Section 1: The payments and associated tax charges**

#### **Q1.1. What tax charges do HMRC think are due on the Ark scheme?**

A1.1. Based on the available information it is HMRC's view that unauthorised payment tax charges arose when the "loans" were made. It is HMRC's view that this tax charge arose on the member who made the loan(s) under section 160(2)(a) Finance Act 2004.

This is because in HMRC's view each loan was a "payment" for the purposes of Part IV Finance Act 2004 when it was made out of a pension scheme. The loans were made with the purpose and in anticipation that the member would receive a reciprocal payment.

Under section 160(2)(a), a tax charge arises on a payment (including a loan) "to or in respect of" a member and it is HMRC's case that a payment made "in respect of" a member includes a payment made to facilitate a reciprocal payment.

As explained in A1.2 below, it is recognised that in *Dalriada v Faulds & Others* [2011] EWHC 3391 (Ch) Mr Justice Bean came to a different conclusion in relation to the interpretation of the words "in respect of".

However, HMRC were not a party to those proceedings and will seek to argue that the construction which the learned Judge placed on the expression “in respect of” in this context was incorrect. For the avoidance of doubt, HMRC’s view is that the tax charges under Part IV FA 2004 apply irrespective of the fact that, as Mr Justice Bean found, the loans were void in equity, as the loans were nevertheless “payments” within the meaning of the relevant tax legislation.

### **Example**

If your scheme made a “loan” of £40,000 the following tax charges will apply regardless of the amount you actually received:

Unauthorised payment charge £40,000 @ 40% = £16,000  
Unauthorised payment surcharge\* £40,000 @ 15% = £ 6,000  
Total tax due = £22,000

\*The unauthorised payment surcharge will apply if the value of the loan made exceeds 25% of the value of your pension fund.

Further guidance on unauthorised payments and surcharges is available here:

<http://home.active.hmrci/rpsmanual/RPSM04104000.htm>

### **Q1.2. Do HMRC only intend to raise tax charges on members who made a loan?**

A1.2. No. It is HMRC’s view that the correct basis for taxing these loans is under section 160(2)(a) Finance Act 2004 (as above). However, as an alternative we are also intending to ensure that HMRC’s position is protected on the basis that section 160(2)(b) and section 173 Finance Act 2004 apply, in accordance with the views expressed by Mr Justice Bean in the case of *Dalriada v Faulds & Others*. If this alternative view were to apply then members who received a loan would be subject to an unauthorised payment charge for each year they were in receipt of a loan and for each year they are in receipt of the loan going forward until such time as it is repaid or written off. The amount of the unauthorised payment is calculated by reference to the beneficial rate of interest (an official rate of interest currently 4%) in place for each individual tax year until the loan is repaid.

Under this alternative view if the loan is formally written off then it is HMRC's view that the value of the loan at the time it is written off will constitute a one-off benefit in the amount of the loan written off.

However, HMRC's preferred method and the method described above are alternative methods of taxation. It will be for the Tax Tribunal to decide which applies. HMRC do not intend to collect charges under both alternative options.

### **Example (which makes a number of assumptions for illustration purposes)**

2010/11

5 October 2010 loan received £40,000

Beneficial rate of interest for the year 2010/11 = 4% per annum

Cash equivalent of loan = £40000 x 4% x 6/12 (months) = £800

Unauthorised payment charge due £800 @ 40% = £320

### **2011/12**

Loan outstanding 6 April 2011 = £40,000

Loan outstanding 5 April 2012 = £40,000

Beneficial rate of interest for the year 2011/12 = 4% per annum

Cash equivalent of loan = £40000 x 4% x 12 (months) = £1,600

Unauthorised payment charge due £1,600 @ 40% = £640

### **2012/13**

Loan outstanding 6 April 2012 = £40,000

06 October 2012 loan repaid £10,000

Loan outstanding 5 April 2013 = £30,000

Beneficial rate of interest for the year 2012/13 = 4% per annum

Cash equivalent of loan £35000\* x 4% x 12 (months) = £1,400

Unauthorised payment charge due £1400 @ 40% = £560

\*£30,000 for 6 months, £40,000 for 6 months

### **2013/14 (if loan written off)**

Loan outstanding 6 April 2013 = £30,000

06 May 2013 loan written off in full £30,000

Loan outstanding 5 April 2014 = £0

Unauthorised payment charge due £30,000 @ 40% = £12,000

Unauthorised payment surcharge due £30,000 @ 15% = £4,500

Total tax charges £ 16,500

### **2014/15**

If loan paid off or written off in 2013/14 – no tax charges will apply in 2014/15.

### **Q1.3. What if I have made and received a loan?**

A1.3. Your tax charges will be calculated as per A1.1 above on the amount of the loan made from your scheme. In the alternative, tax charges will be calculated as per A1.2 and the Tribunal will have to decide which applies.

### **Q1.4. What if I have not made a loan or received one?**

A1.4. As explained, the tax position is complicated. If the loans are treated as being made by all scheme members collectively and not any individual member you may still receive a tax charge if the scheme that you are a member of has made a loan. This is why you may receive a tax return to complete.

If you argue that the Ark scheme works so that there is no tax payable you can enter nil on your return in such circumstances (but see Section 3 Q3.12 for further wording to include to avoid a possible penalty). If you acknowledge there should be some form of tax charge you should contact HMRC ([pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk)), remember to include ARK in the subject line or, in writing, to:

HMRC  
Pension Schemes Services Compliance  
1<sup>st</sup> Floor Fitzroy House  
Castle Meadow Road  
Nottingham

NG2 1BG

**Q1.5. Are HMRC considering any other arguments?**

A1.5. HMRC's intention is to protect their position by raising assessments in the alternative on both of the bases set out above. This is to ensure that HMRC's position is protected should a Tribunal agree with Mr Justice Bean's analysis of the tax charges (as set out in A1.2 above) rather than HMRC's (as set out in A1.1 above).

However, at this time, HMRC cannot rule out any other arguments which may arise as their investigation into the Ark schemes continues. This matter is very complex and it is not possible to comment at this point on other arguments HMRC may want to make until we have collected all the necessary documentation and evidence.

**Q1.6. Do HMRC think that the loans are repayable?**

A1.6. This is a matter between the members and the trustees of the schemes, and ultimately for the Courts to decide.

**Q1.7. If I repay my loan does that mean that I am no longer subject to a tax charge?**

A1.7. HMRC's role in this matter is to consider the taxation position of these loans. It is important to note that it is HMRC's view that loans are "payments" for the purposes of the tax legislation under consideration whether or not they are repaid.

It is also HMRC's view that the repayment of the loan does not remove the tax charges set out at A1.1 above (i.e. Section 160(2)(a)) that arose on the loan being made.

With regard to the alternative tax charge basis (as set out at A1.2 above) (i.e. Section 173), loan recipients are subject to an unauthorised payment charge for each year they are in receipt of a loan. Repaying the loan will therefore stop further annual tax charges under the alternative basis of assessment. However, it is HMRC's view that repayment will not remove the charges which have already arisen. In addition, if instead of being repaid, the loan is written off it is HMRC's view that this will trigger an unauthorised payments charge as set out in A1.2 above.

**Q1.8. What are the tax charges that apply?**

A1.8. The unauthorised payment tax charge and surcharge which apply when payments are made from a registered pension scheme that are not authorised under the legislation are 40% and 15% respectively. As set out in A1.1 above, these are the tax charges which HMRC think apply in respect of the loans being made.

In the alternative, and as set out at A1.2 above, HMRC will be protecting the tax charges set out by Mr Justice Bean by issuing assessments on loans received in the alternative. This is to protect the position should this be the conclusion of the Tax Tribunals.

HMRC do not intend, and have never suggested that they intend, to collect charges under both these alternative options.

In addition to the charges set out above HMRC will also need to consider pursuing scheme sanction charges against the Administrators of the Ark schemes which may be paid from the funds held in the Ark schemes.

## **Section 2: Dealing with the appeals and the Tribunal Process**

There are a lot of members involved in this scheme and HMRC will therefore need to liaise with stakeholders about the most efficient way to take these cases through the litigation process.

This may involve litigating a lead case, with other cases awaiting the decision in that case, or alternatively litigating a number of lead cases dealing with a broad range of facts and possible tax charges.

HMRC are currently working with Dalriada Trustees Limited (Dalriada) to try and ensure that the cases are taken forward in the most efficient and cost effective way in order to bring things to a conclusion as quickly as possible.

### **Q2.1. What if HMRC already have open enquiries into my tax returns?**

A2.1. Given the number of similar cases in which common issues are likely to arise it is anticipated that guidance will be sought from the Tribunal about case management issues and to obtain appropriate directions for case preparation.

In view of this, once HMRC have received all the information needed we may defer issuing an appealable decision (in respect of your specific case) until we have completed all our enquiries and sought specialist legal advice. It is likely therefore that nothing will happen for sometime in respect of your enquiry. Indeed it may be that we have to request further information from you at a later date beyond what you have already provided.

### **Q2.2. Can I appeal against the decision letter(s)?**

A2.2. You can appeal against the decision in writing within 30 days of receiving a decision letter. Full details of how to appeal will be included in the decision letter. Ultimately if you do not agree with HMRC's decision you will be able to appeal through the Tax Tribunal system.

HMRC's letters will set out clearly when you can contact the Tribunal as there are certain formalities that need to be completed before the Tribunal Service will be involved.

### **Q2.3. When will HMRC issue a decision letter in my case?**

A2.3. HMRC will issue a decision letter after they have considered all the evidence relevant to the decision. As the Ark scheme is a reciprocal loan arrangement HMRC may need to complete more wide-ranging enquiries than simply into your personal tax affairs in order to obtain all the necessary evidence of how the scheme worked.

### **Q2.4. I have received a penalty notice against a late filing penalty, which I do not agree with. What should I do?**



A2.4. Once HMRC have issued a tax return to you there is a statutory time limit for completing and returning it. If HMRC receive the return after the time limit has expired you will receive a penalty notice. To avoid a penalty you must complete your return on time. If your return is late, you must have a reasonable excuse for not completing it.

If you do not agree with the penalty notice, you need to appeal to HMRC in writing explaining why your return is late. You can contact HMRC via the dedicated e-mail address ([pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk), remember to include ARK in the subject line) or in writing to the address shown in Section 1, Answer 1.4.

HMRC will postpone the penalty until such time as an appealable decision can be issued on the tax consequences and we will make a decision on the penalty at the same time.

**Q2.5. I have received a statement showing I owe tax as a result of declaring the unauthorised payment on my return.**

A2.5. If you have declared the unauthorised payment on your tax return, this will result in a tax charge being calculated automatically and result in a statement being issued to you for the tax. Whilst HMRC are continuing with their enquiries, and if you make a request in writing via the dedicated e-mail address ([pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) and include ARK in the subject line) or in writing to the address shown in Section 1, Answer 1.4, HMRC will informally postpone the collection of the tax due until such time as an appealable decision is issued. However, once the tax consequences have been decided by the Tribunal, interest will be charged on the tax due, if any.

**Q2.6. I have received a notice against a late payment penalty which I do not agree with. What should I do?**

A2.6. As in Q2.5 above, if you have declared the unauthorised payment on your tax return, this will result in a tax charge being calculated automatically and result in a statement being issued to you for the tax. Late payment penalties apply if the tax has not been paid within 28 days of the statutory payment date (31 January following the end of the tax year in which the payment is due – e.g. for tax year 2010/11 the statutory payment date is 31 January 2012). As with the late filing penalties, if you do not agree with the penalty notice, you will need to appeal to HMRC in writing via the dedicated e-mail address ([pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) and include ARK in the subject line) or in writing to the address shown in Section 1, Answer 1.4, explaining why your return is late. HMRC will postpone the penalty until such time as an appealable decision can be issued on the tax consequences and we will make a decision on the penalty at the same time.

**Section 3 : Dealing with HMRC**

**Q3.1. Why haven't I heard from HMRC yet?**

A3.1. HMRC are currently working through the data they hold that set out the details of the members who entered into the Ark schemes. HMRC have already contacted some of the members and will be contacting other members over the coming months as it continues to work through the data it holds.

**Q3.2. Which members will HMRC be contacting?**

A3.2. HMRC will send tax returns to all members of the Ark schemes regardless of whether they made or received a loan. On receipt of a tax return HMRC can open enquiries so as to protect HMRC's position.

It may be also necessary to complete returns for more than one tax year, e.g. if your scheme made a loan one year but you received a payment a different year. Once HMRC receive the returns they will issue you with a request asking you for information and documents in respect of your pension arrangements and any loans you have received.

**Q3.3. I have received tax returns from HMRC but have not submitted them yet. Should I now submit them?**

A3.3. Yes, if you have received returns but have not submitted them yet you should do so as soon as possible. HMRC's published guidance sets out the deadlines for submitting a tax return and the penalties which apply when your return is late. This guidance can be located here: <http://www.hmrc.gov.uk/sa/deadlines-penalties.htm>

**Q3.4. I have already submitted tax returns, what happens now?**

Q3.4. If you have already submitted tax returns for the year in which the loan was made or for the years since you received the loan, HMRC will write to you opening an enquiry for each year and requesting any further information required.

**Q3.5. What if I have received a return but did not transfer my pension to Ark?**

A3.5. You still need to complete a return for the year and explain in a covering letter that you did not proceed with the transfer. If you subsequently transferred your pension to an alternative scheme please provide full details.

**Q3.6. HMRC haven't sent me tax returns. Will they contact me?**

A3.6. If you have not already received tax returns for the year in which the loan was made or received, then HMRC will issue tax returns to you in the coming months as it works through the data that it holds.

**Q3.7. Do I have to wait for HMRC to contact me?**

A3.7. No. If you think you need to complete tax returns but have not received any, you should contact us quoting your Unique Taxpayer Reference (UTR) or National Insurance number if you are not currently a Self Assessment Customer. If you are already a Self Assessment customer you can submit your return either online or in paper format. For further information see: [www.hmrc.gov.uk/sa/your-tax-return.htm](http://www.hmrc.gov.uk/sa/your-tax-return.htm)

**Q3.8. Should I make a payment on account?**

A3.8. The Tribunal will determine what, if any tax is due. Interest will be due on any tax owing from 31 January following the end of the year of assessment in which the loan was made/or received. Interest will continue to accrue until the tax is paid in full. You may therefore wish to consider making a payment on account to reduce any amount of interest payable. You may also be liable to a late payment penalty.

Further details on how to pay can be found here  
[www.hmrc.gov.uk/payinghmrc/selfassessment.htm](http://www.hmrc.gov.uk/payinghmrc/selfassessment.htm)

Please include reference ARK with any payment. You should also email [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) with details of the payment made and include ARK payment in the subject line. Alternatively write to HMRC

Pension Schemes Services Compliance  
1<sup>st</sup> Floor Fitzroy House  
Castle Meadow Road  
Nottingham  
NG2 1BG

### **Q3.9. What if I can't pay the tax charges?**

A3.9. Once a decision has been made and the outcome of any appeal determined, if you are unable to pay the tax charges in full, you should contact HMRC's Debt Management and Banking Service. For further information see [www.hmrc.gov.uk/payinghmrc/problems/cantpay.htm](http://www.hmrc.gov.uk/payinghmrc/problems/cantpay.htm)

### **Q3.10. Who should I contact in HMRC if I want to talk about submitting a tax return relating to the Ark schemes?**

A3.10. We have a dedicated e-mail address to which you can e-mail queries and/or contact us. This email address is [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) When using this e-mail address to contact us please enter ARK in the subject line of the email. Alternatively write to

HMRC  
Pension Schemes Services Compliance  
1<sup>st</sup> Floor Fitzroy House  
Castle Meadow Road  
Nottingham  
NG2 1BG

### **Q3.11. What if I don't complete and submit my tax return to HMRC?**

A3.11. If you do not submit your Self Assessment Tax Returns, HMRC may make a determination of the tax due under section 28C Taxes Management Act 1970 based on the information already held. In addition, late filing penalties leading to daily penalties will also apply.

This determination will be raised on the basis of HMRC's preferred view in accordance with section 160(2)(a) Finance Act 2004 (as set out in Section 1 A1.1 above) unless there is only a liability in accordance with section 160 (2)(b) Finance Act 2004 in which case we will be raising this determination under the latter (as set out in Section 1 A1.2 above).

HMRC will issue determinations in this way because if our understanding of section 160(2)(a) Finance Act 2004 is incorrect and the individual has a liability in line with section 160(2)(b), the tax year for the individual will be open and so will allow for this

decision to be substituted for our original determination. This will be considered in respect of each tax year going forward.

**Q3.12. How do I declare the unauthorised payment I have received?**

A3.12. You should declare the amount of the unauthorised payment in your tax return in the additional information pages on page Ai4 in box 12.

HMRC are working with Dalriada to discuss how members can get the correct information for the purpose of their returns.

Any queries on completion of tax returns should be directed to [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) or in writing to the address shown in Section 1, Answer 1.4. When contacting us please enter ARK in the subject line of the email or letter.

**Q3.13. I do not agree with HMRC that an unauthorised payment tax charge is due. What do I put on my tax return?**

A3.13. Set out in Section 1 A1.1 above is HMRC's view of the unauthorised payments which arise on the loans being made; we have also set out the way in which the unauthorised payment arose in line with the stance taken by Mr Justice Bean in *Dalriada v Faulds & Others*.

You may agree with one of these bases for a tax charge (for example you may prefer the basis set out in Section 1 A1.1 above rather than Section 1 A1.2) arising or neither of them.

You should complete your tax return on the basis of which you think is the correct interpretation of the applicable law. You may wish to engage a tax adviser to provide guidance if you are unsure.

Where your interpretation of the tax due differs from HMRC's (HMRC's basis is set out in Section 1 A1.1), provided your view is based on a legally tenable view and you draw HMRC's attention on your return to the different interpretation, HMRC will not raise the penalties which are applicable in respect of an incorrect tax return. For this purpose we would accept that mentioning ARK in the white space (This is Box 19 on the standard individual Return form, SA100 page TR6, headed "Please give any other information in this space") on your tax return would be sufficient.