

## 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 14<sup>th</sup> Announcement.

### **HMRC**

The Frequently Asked Questions document (FAQs) we referred to in our 12<sup>th</sup> Announcement (dated 23<sup>rd</sup> July) has now been finalised and a copy is enclosed, together with a covering letter from HMRC.

These FAQs set out what action you should take with regard to correspondence you might receive from HMRC, including completing a Self Assessment Tax Return form.

Importantly, you should note that HMRC believe that there is tax payable in the form of unauthorised payment tax charges and their proposed basis is set out in Section 1 of the FAQs.

However, it is likely that the correct basis will only be established for certain as a result of legal action in the Tax Tribunal (equivalent to the Court for matters relating to tax). As commented in Section 2 of the FAQs, HMRC and Dalriada are working together to determine the most efficient way of taking a lead case (or cases) through the Tax Tribunal.

This will take some time (possibly many months) and, as such, it is possible for members to informally postpone payment of any tax.

The FAQs set out what members need to do to postpone payment of any tax but if you have any questions or queries, you can contact HMRC at the following e-mail address (please include ARK in the subject title) – [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk)

Or in writing to the following address:

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

You should note if it is determined that tax is payable, there will be late payment interest charged back to the tax year that the tax was due to be paid. As such, members might want to consider making a payment 'on account'. Again, details are set out in the FAQs.

HMRC have also confirmed that, at this stage, they do intend to levy Scheme Sanction Charges on the Schemes. As we commented in our last Announcement (dated 28<sup>th</sup> August) these could be up to 40% of the total unauthorised payments and these charges would be against the Schemes themselves, not individual members. These charges would impact on the funds remaining to provide member benefits.

Whilst the threat of Scheme Sanction Charges remains, Dalriada will continue to adopt a conservative investment strategy in respect of any liquid assets to ensure there is no further investment loss in the value of the funds.

## **Investments**

### *Freedom Bay*

Dalriada has established that planning permission has been granted earlier this year and that some construction work on the development has now commenced.

However, the interest payment due for this year has still not been received (under the terms of the investment, interest is payable during the period of construction).

Dalriada is in contact with the people behind the Freedom Bay project to try and establish the likely completion date, when the Schemes might start to receive dividend payments or, otherwise, what options Dalriada might have to sell its 'fractional shares' and realise this particular investment.

Whilst we are still some way off being able to put a reasonable value on this investment, the fact that building work has finally commenced is encouraging.

### *Hyper*

Dalriada is continuing to correspond with the company responsible for the investment in Hyper Active No. 1 Limited. We are currently awaiting up to date accounts and property valuations in respect of the London based investments.

Again, we are not able to say definitively what this investment is worth at this stage. However, we are hopeful that a satisfactory solution can be found that will enable us to exit this investment whilst providing a fair value for members.

## **Court Applications**

As advised in previous Announcements, we now require direction from the Court on how to manage the Schemes going forward.

The necessary applications to Court have now largely been prepared although we need to identify representative beneficiaries to be involved with the applications. More information on this is set out below.

## **Representative Beneficiaries**

### Background

Dalriada made an application to Court to establish if the loan payments (Maximising Pension Value Arrangements or MPVAs) made from the Schemes to members were allowed under both the Schemes' rules and the law.

Following the hearing (referred to as *Dalriada v Faulds* [2011] EWHC 3391), Mr Justice Bean, decided that MPVAs were not allowed under either the rules of the Schemes or the law more generally. This was for a number of different reasons including because they were deemed 'unauthorised payments'.

Given this, MPVAs were held to be 'void' and, as such, should not have been made from the Schemes. Dalriada must now seek Court direction as to whether or not it should seek repayment of these payments.

Dalriada also needs to seek Court direction on a number of administrative issues to enable it to administer the Schemes going forward. These include how to divide remaining assets between members and whether certain classes of members should be treated differently from others.

Dalriada is preparing an application to Court in order to receive the required guidance. The usual approach when making such an application is to have the involvement of a Representative Beneficiary, i.e. a member of one of the Schemes who represents the interests of the members generally. In this case, it may be necessary to have more than one Representative Beneficiary, potentially one who received an MPVA and one who did not.

Dalriada would like to invite nominations for individuals who would be prepared to act as a Representative Beneficiary.

### Would you like to act as a Representative Beneficiary or know someone who would?

A Representative Beneficiary will be named in the proceedings as an example of the members. The role of a Representative Beneficiary is to ensure that the views of the members are fully considered by the Court.

A Representative Beneficiary would have its own legal advisers who would be expected to liaise with them and discuss the proposed approach to be taken in responding to the different parts of Dalriada's application.

Funding for a suitable legal team will be provided from the assets of the Schemes, on a basis to be agreed with that legal team.

It is important that a Representative Beneficiary has some interest in performing the role and is willing and able to do so. Having said that, a Representative Beneficiary will not be required to take a particularly active role unless they wish to. He or she will rely heavily on their legal team to communicate their views. Other members may also want the chance to express their views but we would expect this to be done through the legal representatives rather than directly through a Representative Beneficiary.

However, it is important to recognise that at least a modest commitment of time and engagement is required to fulfil the role and this commitment might well extend over a period of several months.

As commented earlier, it is likely that two different Representative Beneficiaries will be required for the purposes of dealing with some (but not all) elements of the Court application, most likely one member who has received an MPVA and one who has not.

We do not anticipate that more than two Representative Beneficiaries will be required. Also, whilst Dalriada wishes to ensure a fair outcome and that members are properly represented, this must be achieved in the most cost effective manner. For example, if there are two Representative Beneficiaries, Dalriada would not consider it necessary or appropriate for both individuals to be required to argue in relation to every element of the application, when the position will often be sufficiently covered by one of the Representative Beneficiaries with Dalriada potentially arguing the opposite side.

### Eligibility

To be eligible to participate as a Representative Beneficiary, the individual must be a member of one of the Schemes.

Any scheme member may nominate himself or herself, or alternatively another member of one of the Schemes, for consideration. There is no requirement for previous experience in either the pensions or legal industries.

Members who wish to be considered should provide details to support their nomination, including any previous experience that they consider may be relevant.

If you wish to nominate another member of one of the Schemes, please provide details explaining your choice of nominee, your relationship to him or her and why you feel that member is suitable.

### The Next Step

If **you** would like to be considered to act as a Representative Beneficiary, please complete and return **Form A** attached.

If you would like to nominate **someone else** to act as a Representative Beneficiary, please complete and return **Form B**.

Forms should be returned by no later than **Monday 24<sup>th</sup> November**. If you wish to e-mail completed forms, you can do so to [suzanne\\_wilson@dalriadatrustees.co.uk](mailto:suzanne_wilson@dalriadatrustees.co.uk).

Please note that Dalriada has already received notifications from some members that they are willing to act as a Representative Beneficiary or that they wish to nominate someone else to act in the role. Where members have contacted Dalriada already, these comments will be taken into account and there is no need to complete and send a further nomination form.

### Review of Nominations

All nominations will be considered by Dalriada.

However, it should be made clear this is a consultative process and not a vote. Should any member receive multiple nominations this would not automatically mean they would be chosen as a Representative Beneficiary (although multiple nominations would be something to take into account).

Dalriada's primary objective in choosing Representative Beneficiaries is to ensure they are eligible and who would, based on the information provided, be willing to participate with interest and who will follow Court process and engage with their legal representatives appropriately.

Dalriada's focus is on obtaining Court direction as cost effectively as possible whilst ensuring arguments are properly aired and that members' views are properly represented.

Save for some limited areas where Dalriada does believe certain approaches might be administratively better for the Schemes, it has no views as regards the arguments to be run or the outcome of the prospective application.

If you have any queries or require any further information, please do not hesitate to contact Dalriada (see **What should I do if I have any further questions?** below).

### **Ark Class Action**

Dalriada has been in contact with Ark Class Action. Ark Class Action is a group established to help and support victims of pension liberation, initially those members who joined the Ark Schemes through Premier Pensions based in Spain but is open to all individuals who have been victims of pension liberation.

Ark Class Action aims to help members in exploring what options they have, including considering whether to pursue advisers and introducers that encouraged them to transfer into one of the Schemes and, also, help members with the subsequent tax consequences and dealing with HMRC.

Dalriada has been in communication with Ark Class Action and met with them in the summer and will continue to work with them where appropriate, particularly with regard to ensuring a coordinated response to HMRC.

Whilst Dalriada cannot recommend, or advise, members to join Ark Class Action, it is happy to provide contact details such that members can contact the group if they wish, find out what is required in order to join, and decide for themselves if they wish to join.

Ark Class Action can be contacted by e-mail as follows:

[angiebrooks99@gmail.com](mailto:angiebrooks99@gmail.com) or  
[angiebrooks@pension-life.com](mailto:angiebrooks@pension-life.com)

Dalriada has received nominations from Ark Class Action for some of the groups' members to act as Representative Beneficiaries.

### **What should I do if I have any further 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:

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

By Telephone: 028 9041 2756

By Post: Dalriada Trustees Limited  
22 Great Victoria Street  
Belfast  
BT2 7BA

Via e-mail: [suzanne\\_wilson@dalriadatrustees.co.uk](mailto:suzanne_wilson@dalriadatrustees.co.uk)

This Announcement has been uploaded onto our Frequently Asked Questions page available at [www.dalriadatrustees.co.uk/ark](http://www.dalriadatrustees.co.uk/ark)

**Issued by Dalriada Trustees Limited**

**November 2014**

## Form A - Representative Beneficiary Nomination

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If you wish to be considered to act as a Representative Beneficiary please:

- fully complete this form and ensure that you have signed appropriately
- return this form to Dalriada by post or e-mail
- completed forms to be received no later than **24th November 2014**

### YOUR DETAILS

Surname \_\_\_\_\_ First Name(s) \_\_\_\_\_

Home Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postcode \_\_\_\_\_

Date of Birth \_\_\_\_\_

Name of Scheme \_\_\_\_\_

Please tick the appropriate box:

Yes, I received an MPVA from the Schemes

No, I did not receive an MPVA from the Schemes

Please provide details below to support your nomination, including any previous experience that you feel would benefit you in your role as Representative Beneficiary and a brief description of your views on the possible recovery of MPVAs paid from the Schemes. Please use a separate sheet if necessary (or continue on the back of this form).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I confirm my willingness to be nominated as a Representative Beneficiary:

Signed \_\_\_\_\_

Date \_\_\_\_\_

## Form B - Representative Beneficiary Nomination

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If you wish to nominate **someone** to be considered to act as a Representative Beneficiary please:

- fully complete this form and ensure that you have signed appropriately
- return this form to Dalriada by post or e-mail
- completed forms to be received no later than **24th November 2014**

### YOUR DETAILS

Surname \_\_\_\_\_ First Name(s) \_\_\_\_\_

Home Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postcode \_\_\_\_\_

Date of Birth \_\_\_\_\_

Name of Scheme \_\_\_\_\_

### YOUR NOMINATION

Surname \_\_\_\_\_ First Name(s) \_\_\_\_\_

Please provide details below to support your nomination, including why you have selected your nominee, your relationship with your nominee and why you feel that they are suitable for the role. Please use a separate sheet if necessary (or continue on the back of this form).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I confirm that I wish to nominate the above named member as a Representative Beneficiary:

Signed \_\_\_\_\_ Date \_\_\_\_\_





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**Pension Schemes Services**

Fitz Roy House  
Castle Meadow Road  
Nottingham  
NG2 1BD

**Phone**

Monday to Friday 9.00am to 5.00pm

**Fax** 03000 564566

**Email** [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk)

**Web** [www.gov.uk](http://www.gov.uk)

**Date** 20 October 2014

**Our ref**

**Your ref**

Dear

**Ark Pension Schemes**

According to information held by HMRC you have transferred your pension to a pension scheme previously administered by Ark Commercial LLP which may have led to you receiving a MPVA loan in the form of a reciprocal agreement. These pension schemes were appointed with an Independent Trustee – Dalriada Trustees Ltd - by The Pensions Regulator in May 2011.

HMRC believe that the MPVA loans made from these scheme result in an Unauthorised Payment and you may become liable to a charge regardless of whether you actually received a payment. Ultimately the tax treatment of these loans will be decided by the Tribunal and if necessary through the Courts.

We are writing to you because HMRC have either issued you with a Tax Return for the year you transferred to one of the Ark schemes OR you may have already completed a return OR you may receive a return from HMRC shortly.

HMRC have issued some Frequently Asked Questions (FAQs) regarding the tax treatment of the loans and what you need to do when you receive a Return. A copy of the FAQs is attached.

If you have an agent who deals with your tax affairs you should show them a copy of this letter and the FAQs. If you do not have an agent you may want to seek professional advice on how to complete your return.

Your tax return should be completed to the best of your knowledge and include all of your income and not just the Unauthorised Payment arising from your pension.



If, as a result of completing your return a tax charge arises from the Unauthorised Payment, HMRC will, if requested by you either in writing or by email , informally postpone the tax whilst we continue with our enquiries.

If you have any questions either about these FAQs or the proposed tax charges please send an email to [pensions.compliance@hmrc.gsi.gov.uk](mailto:pensions.compliance@hmrc.gsi.gov.uk) and ensure that the word "ARK" is entered in the subject line or alternatively write to me at the address above.

Yours sincerely

**XXXXXXXXXXXXXXXX**  
Compliance Officer

To find out what you can expect from us and what we expect from you go to [www.gov.uk/hmrc/your-charter](http://www.gov.uk/hmrc/your-charter) and have a look at 'Your Charter'.

## **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.