

VAT and Pensions – The new regime



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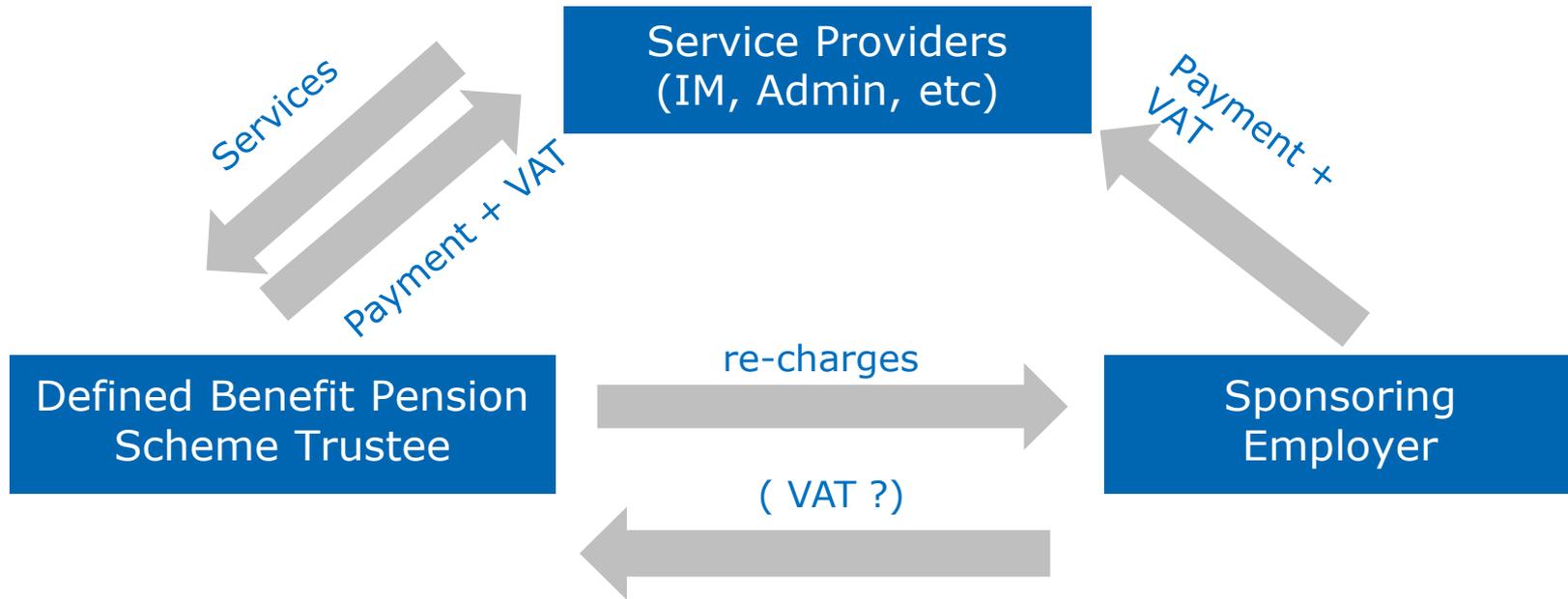
AGENDA

- Recap of the issues
- The impact of Pensions Law
- Potential Solutions
- What next?
- Questions



Recap of the issues

Services and Payment flows for Defined Benefit Pension Fund



Current Position

Notice 700/17 expires 31 December 2016

- VAT on pension fund administration recoverable by sponsoring employer
- VAT on services connected with pension fund investment activity is input tax of the pension scheme and *not* recoverable by the employer
- Combined supplies of investment management and administration charged on a single invoice could be split 70:30 – i.e. employer can recover VAT on 30% as referable to administration

The Catalyst for Change

European Case Law

1. Wheels – investment management of Defined Benefit scheme subject to VAT
2. PPG – VAT charged on services *provided to* employer on running a separate pension scheme is recoverable by the employer
3. ATP – investment management of Defined Contributions schemes is VAT exempt
4. United Biscuits – insured funds benefit from VAT-exemption; case brought on lack of fiscal neutrality for those employers who do not invest in insured funds

Rethink of VAT on pensions costs

- PPG highlighted that an employer can only recover VAT on services for which it has:
 - paid; and
 - used for the purposes of its business
- If charges made between employer and fiscally separate pension scheme then VAT applies
- Tension between VAT and Pensions Law leads to period of informal consultation

The impact of Pensions Law

Impact of Pensions Law Requirements

- Pensions are deferred pay
- Key part of employer's remuneration structure and general costs
- Balance of Cost scheme - trustee costs are employer costs and the employer has no "choice"
- Scheme funding requirements of Part 3, PA 2004
- S75 & 75A, PA 1995

Pensions Law Requirements (contd...)

- Trusteeship
- Non-trading
- Legal entity
- Overriding statutory and trust law requirements

Pensions Law Requirements (contd...)

- S47, PA 1995
 - Trustees to appoint auditor, actuary, legal adviser
 - Civil penalties for non compliance or reliance on advisers not properly appointed
 - Fund manager appointed by “*or on behalf of*” the trustees?
 - Regulations prescribe certain elements as to the manner and terms of appointment
- Duty to take proper advice to ensure they are carrying out their duties under trust law and statutory requirements
- Make arrangements for the proper administration of the scheme (normally 3rd party administrators)

The issues in summary

- Pension law (broadly) requires scheme related services to be provided to the trustees
- But VAT law only permits VAT paid on services to be recovered by the person who has paid for those services and used them for taxable supplies
- Employers are generally able to recover VAT if they make taxable supplies of goods or services – but Employers are not normally contracting for pension scheme related services
- Pension schemes VAT exempt on most activities – e.g. sale of securities

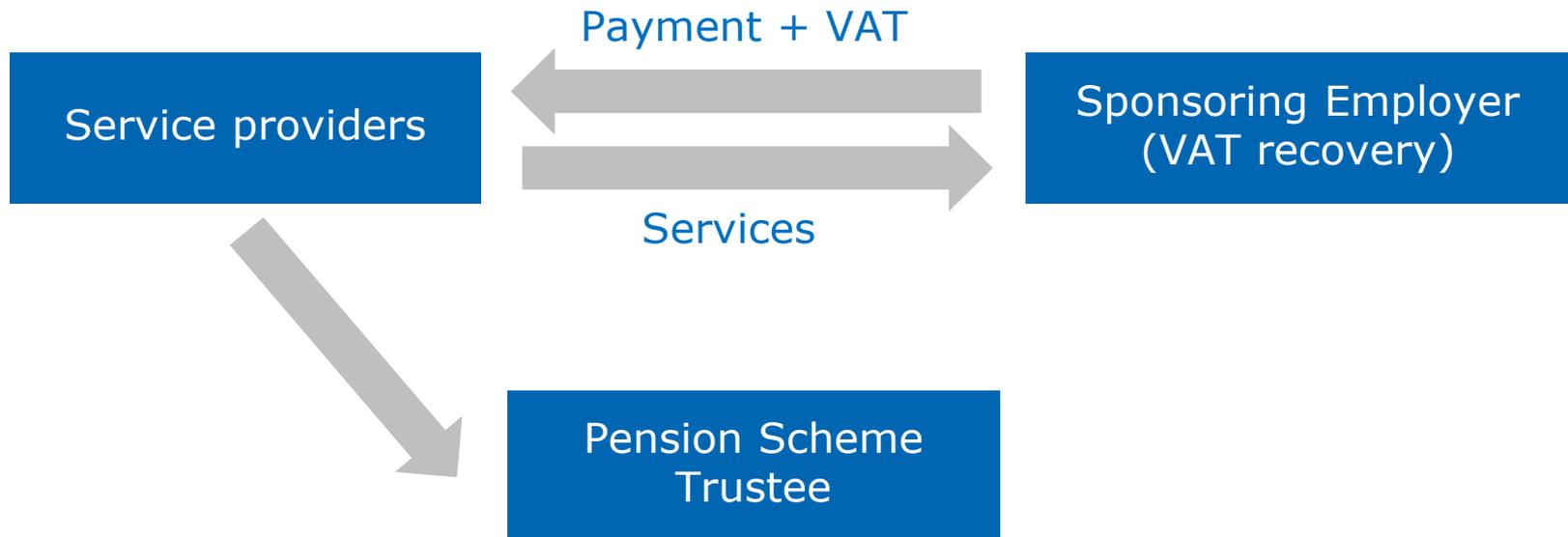
Potential Solutions

The four potential solutions

- Tripartite arrangements
- Supply of Scheme admin services by pension trustee to employers
- VAT grouping
- Authorised Contractual Schemes

The potential solutions

Tripartite arrangements



Tripartite pros/cons

Pros

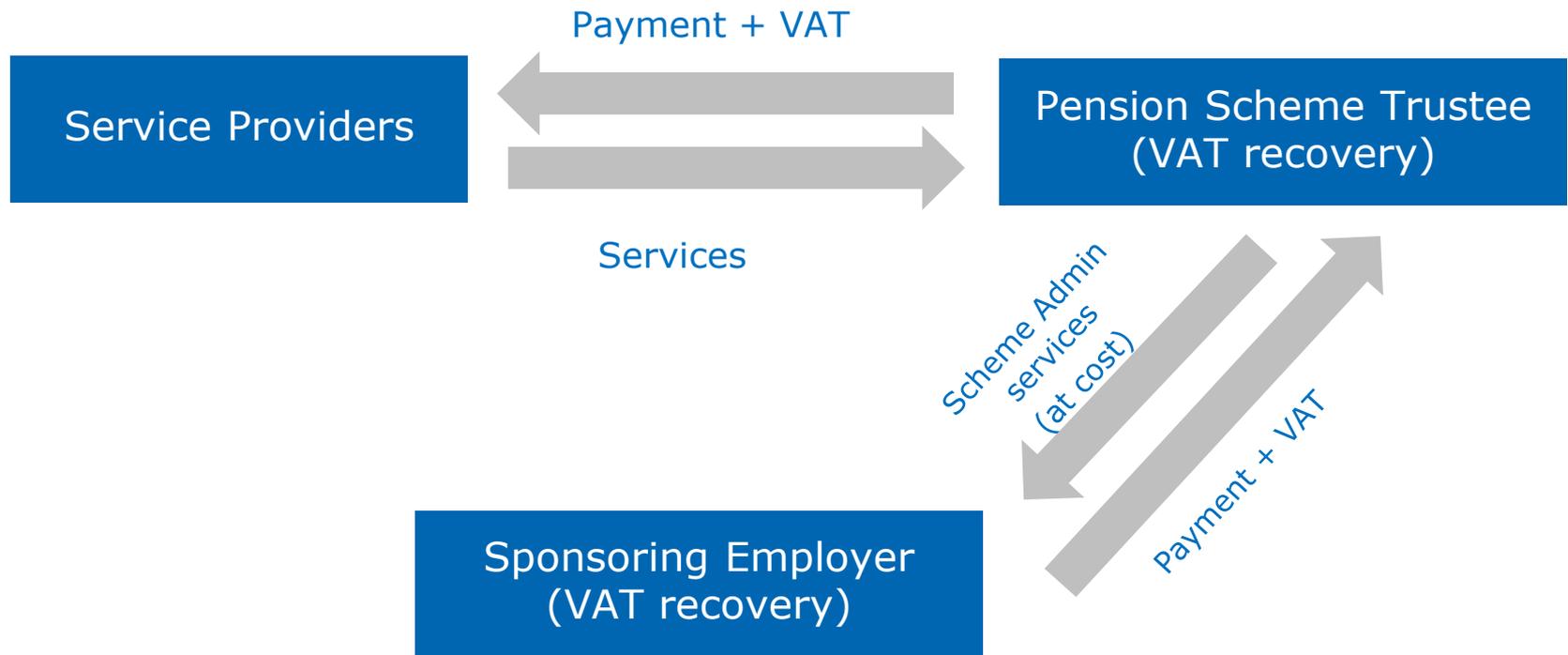
- Most employers can recover all VAT for all services
- Best for employers who pay no CT
- As CT reduces may become more attractive

Cons

- Investment management services not deductible for CT purposes because of accounting treatment
- Conflict of interest problems for some advisory services
- Initial acceptability/complexity issues

The potential solutions

Supply of scheme admin services by pension trustee to employers



Supply of scheme admin services by trustees

Pros

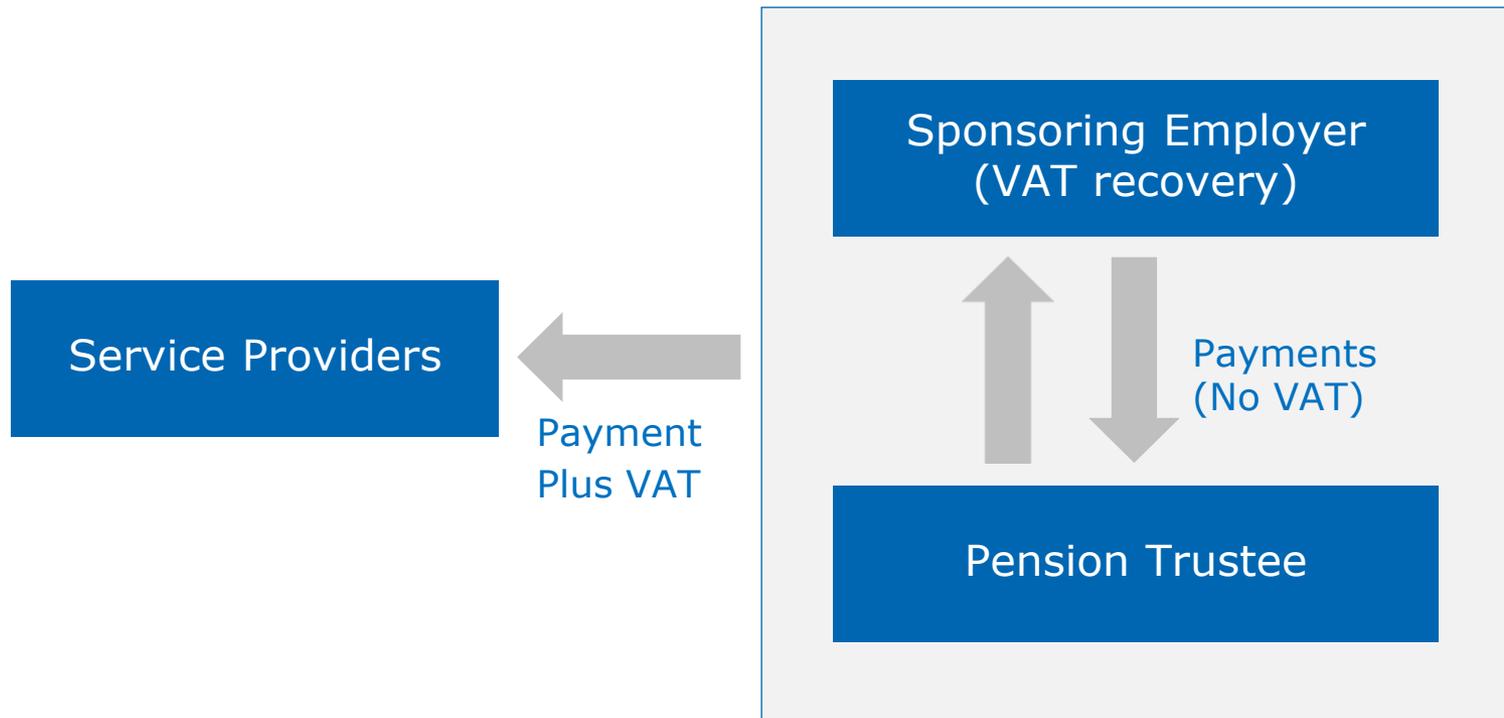
- No contractual changes required
- Full recovery for the employer for all non-IM investment activity services (inc. IM consultancy)

Cons

- Trustees need to be VAT registered (if not already) – not an onerous obligation
- The trustees will only be able to recover a proportion of the VAT on IM fees used for investment activity

The potential solutions

VAT grouping



VAT Grouping pros and cons

Pros

- No contractual changes for services provided
- Full VAT recovery for non-IM investment activity services

Cons

- Trustees need to have a “body corporate” to VAT group (at the moment)
- Joint and severally liability for the VAT group members (although HMRC confirm it will not impact assets of pension plan)
- VAT recovery on IM investment activity will be restricted

Authorised Contractual Schemes

- Tax transparent fund the management of which is VAT exempt
- FCA regulated
- Potentially suitable for £1bn plus schemes
- IM industry is considering setting up ACSs to offer DB pension scheme clients VAT efficient IM investment activity services

What next?

What should you be doing?

- No one size fits all solution – likely to be bespoke for each scheme
- Assess the VAT costs – cost/benefit analysis
- Consider implementation/hybrid
- Consider impact on other documentation being entered into – e.g. schedules of contributions and recovery plans
- Take Action NOW!

Questions?

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