HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number CBP-07937, 27 June 2017

Finance Act 2017 - foreign pensions

By Djuna Thurley

Contents:

1. Background
2. *Finance Act 2017*

Contents

Summary **3**

1. Background **4**

2. *Finance Act 2017* **8**
2.1 Transfers to QROPS 9
2.2 Tax treatment of payments 13

Cover picture: Flikr Creative Commons: Vladimir Pustovit (image cropped)

Summary

In Autumn Statement 2016, the Government said it would introduce measures to align the tax treatment of foreign pensions more closely with the domestic pension tax regime:

> **4.21 Foreign pensions** – The tax treatment of foreign pensions will be more closely aligned with the UK's domestic pension tax regime by bringing foreign pensions and lump sums fully into tax for UK residents, to the same extent as domestic ones. The government will also close specialist pension schemes for those employed abroad ("section 615" schemes) to new saving, extend from 5 to 10 years the taxing rights over recently emigrated non-UK residents' foreign lump sum payments from funds that have had UK tax relief, align the tax treatment of funds transferred between registered pension schemes, and update the eligibility criteria for foreign schemes to qualify as overseas pensions schemes for tax purposes.

It proposed to legislate for:

- **The introduction of a 25% tax charge on transfers to qualifying registered overseas pension schemes (QROPS).** The aim was to target those seeking to reduce the tax payable by moving their pension wealth to another jurisdiction.
- **The removal of the 10% deduction before foreign pension income is taxed.**

Both these provisions attracted comment from outside stakeholders. In the case of the tax charge on transfers, the Chartered Institute of Taxation said that more safeguards were needed for people genuinely moving overseas. In the case of the removal of the 10% deduction on income, the Low Income Tax Reform Group said that the purpose of the deduction had been to reflect the extra cost that can be involved in having an overseas pension and called for measures to mitigate the impact.

Because the Prime Minister had announced a General Election on 8 June, the Finance Bill had its Second Reading in the Commons on 18 April, and then all its remaining stages on 25 (Commons) and 26 April (Lords). With cross-party support the Government some parts of the Bill, with the intention of legislating for them after the election. However, both the provisions on foreign pensions were retained. The then Treasury Minister Jane Ellison mentioned them briefly when setting out the Government's approach to the Bill:

> Clause 18 legislates for a significant anti-avoidance measure announced at the spring Budget. It will make changes to ensure that pension transfers to qualifying recognised overseas pension schemes requested on or after 9 March 2017 will be taxable. The charge will not apply if the individual and the pension savings are in the same country, if both are within the European economic area or if the pension scheme is provided by the individual's employer.
>
> Before the changes were announced in the spring Budget, an individual retiring abroad could transfer up to £1 million in pension savings, without facing a charge, to a pension scheme anywhere in the world provided that it met certain requirements. Overseas pension transfers had become increasingly marketed and used as a way to gain an unfair tax advantage on pension savings that had had UK tax relief. That was obviously contrary to the policy rationale for allowing transfers of UK tax-relieved pension savings to be made free of UK tax for overseas schemes. This charge will deter those who seek to gain an unfair tax advantage by transferring their pensions abroad. Exemptions allow those with a genuine need to transfer their pensions abroad to do so tax-free. Clause 17 will make various changes in the tax treatment of specialist foreign pension schemes to make it more consistent with the taxation of domestic pensions. (HC Deb 25 April 2017 c1013-4)

The provisions are now in *Finance Act 2017*, s 9-10 and Schedules 3-4.

1. Background

The pension tax simplification regime introduced in April 2006 replaced the previous 'corresponding relief provisions' with 'migrant member relief', whereby individuals and their employers could claim tax relief on contributions to certain overseas schemes. When the legislation was before Parliament, the then Financial Secretary to the Treasury, Ruth Kelly, explained that the new rules would be more generous and would match the new rules for registered UK schemes:

> The new rules are more generous than the existing ones for corresponding relief and match the new rules for relief in respect of contributions made to registered pension schemes. We are extending the qualifying criteria, both in terms of the individuals who can qualify for relief, and what constitutes a qualifying overseas pension scheme. Internationally mobile overseas individuals who come to the UK to work for a period of time and continue to be members of an overseas pension scheme will be able to claim migrant member relief on pension contributions up to the level of their UK chargeable earnings. Employers will be able to claim tax relief on contributions paid in respect of these employees, and employees will not be taxed on the benefit of an employer's provision of retirement benefits in an overseas scheme. Individuals will be entitled to claim migrant member relief against earnings chargeable to tax in the UK, providing that they come to the UK as a member of a qualifying overseas pension scheme and that they joined that scheme when they were not resident in the UK. Additional conditions are that they must […] have been UK residents when they paid the contributions on which relief was claimed, and that they were eligible for tax relief on the contributions in the country in which they were resident immediately before coming to the UK. Finally, individuals must notify scheme managers that they intend to claim migrant member relief. That is important because obligations are placed on scheme managers of qualifying overseas schemes to notify the Inland Revenue that a scheme is such a qualifying scheme. The scheme manager must also notify the Inland Revenue if that stops being an overseas pension scheme, and provide it with information about benefit crystallisation events relating to the individual.[1]

She went on to explain that the new tax charges that would apply to registered UK schemes would also apply here, with some modification:

> New Clause 13 and new Schedule 2, which it introduces, will ensure that certain tax charges will apply in respect of overseas schemes when UK tax relief has been given on amounts in the fund. That will occur when there has been migrant member relief or relief under the terms of a double taxation agreement, or where a transfer has been made from a UK registered scheme to an overseas pension scheme. … There are three types of charges that might apply to an overseas scheme. First, member payment charges will apply to payments that would give rise to a UK tax charge if they were made from a registered scheme in the UK, such as an unauthorised payments charge, a special lump sum death benefits charge or a charge in respect of trivial commutation. Those charges will apply if individuals are resident

1 HC Deb 6 July 2004 c730-1; Government new clauses 12 and 13

> in the UK in the year in which the payment is made, or resident in the UK during any of the immediately preceding five years. They will apply only to the extent that the payments are made out of funds that have benefited from UK tax relief. We have provided against double taxation by allowing credit against UK tax for foreign taxes paid in respect of those payments. Secondly, the annual allowance provisions will apply to an overseas scheme as if it were a registered scheme to the extent to which the annual increase in individuals' pension rights under the scheme had benefited from UK tax relief. Thirdly, lifetime allowance provisions will apply to funds in an overseas scheme that benefit from UK tax relief on or after 6 April 2006. Additionally, individuals may elect for a benefit crystallisation event to occur when tax relief is no longer claimed, thus allowing individuals who leave the UK permanently to be sure that all UK taxation issues in respect of their overseas schemes are completed.[2]

There would be four aspects to the overseas pensions regulations:

> First, the regulations will set out the detail of the conditions that must be met for an overseas scheme to be a scheme in respect of which an individual may claim migrant member relief, or a scheme to which funds from a UK-registered scheme may be transferred. Secondly, the regulations will set out the information reporting requirements that an overseas scheme must comply with in order for its members to be eligible for migrant member relief, or in order to receive funds transferred from a UK-registered scheme. Thirdly, the regulations will set out the way in which the tax rules for registered schemes will be modified for application to overseas schemes. Finally, the regulations will provide detailed rules for identifying which part of the funds in an overseas scheme has benefited from UK tax relief.[3]

There would be no bar to UK nationals claiming migrant member relief provided they met the relevant conditions:

> […] for example, that they were not resident in the UK and were a member of an overseas scheme and eligible for tax relief in their country of residence immediately before coming to the UK. UK nationals can benefit in exactly the same way as with other schemes.[4]

The provisions are now in sections 243-4 and Schedules 33-4 of the *Finance Act 2004.* Guidance is in the international section of HMRC's Pension Tax Manual.

An article in *Investment and Pensions Europe* discussed the implications:

> Under current UK tax rules, expatriates who work in the UK but remain in their home country plan may well encounter UK tax problems. They will not be eligible for a tax deduction on their personal contributions and will be liable to pay tax on the employer contribution as a benefit in kind. The exceptions to this rule are if an individual can claim UK tax relief under a double taxation agreement (DTA), such as in Denmark, France, Ireland and the US, or if the UK Inland Revenue grants 'corresponding approval'. The latter only applies to non UK-domiciled employee under contract with an overseas employer.

---

[2] Ibid
[3] Ibid c736-7
[4] Ibid

Under the new system, the DTA concessions will be limited to the new lifetime and annual allowances, and 'migrant member relief' will replace corresponding relief. Migrant member relief will offer tax relief up to the UK limits for individuals who come to the UK as a member of an overseas plan and who were eligible for tax relief on contributions to the overseas plan in their country of residence immediately before coming to the UK. This is good news for inter-country transfers where the new criteria will be satisfied, for example, from the Netherlands to the UK. It is less positive, however, for future international/offshore plan members who will not satisfy the new requirements.

Hardest hit are high earning members of international/offshore plans who may have been using bonus waiver facilities to take maximum advantage of the higher Inland Revenue funding limits in these types of plans. With the new post A Day limits in place, scope for bonus waiver may be restricted.

The results of a 2004 Mercer survey showed that 59% of companies with correspondingly approved plans are likely to seek alternative ways to compensate high earners for the 'loss' of tax relief post simplification. The majority are likely to compensate through extra salary or consider flexible benefit options and unfunded arrangements as alternatives in the future. However, many feel that other tax avoidance schemes are unlikely to be 'quick fixes.'

The survey also found that almost 90% of employers with correspondingly approved plans are investigating how to maximise funding prior to A Day, as there will be no lifetime allowance charge in respect of contributions made pre April 2006.

There will be new, and more relaxed, rules regarding UK plan membership post A Day. Almost anyone will be able to join a UK plan without a time limit, although the benefits of joining depend on the tax situation where they are resident and working. However, almost two-thirds of the Mercer survey sample are more likely to keep UK expatriates in the UK plan, and one in three would consider using the UK plan for pension provision for non-UK nationals.

Broader strategy issues - what might this mean for international pensions?

A lot of activity is anticipated in the expatriate pensions area, particularly for those hardest hit such as high earners in correspondingly approved plans. The improved flexibility and wider eligibility conditions for UK plan membership will also mean that the UK can be used as a solid base from which to provide tax effective pension provision for an increasingly international population.

It is also expected that many expatriates who come to the UK and remain in overseas plans will apply for migrant member relief, making the UK a leading light in respect of tax effectiveness for cross-border plan membership. Again, this option will make pension planning for expatriates - which traditionally presents enormous challenges - simpler and more equitable.

Expatriate pension strategy has always been complex, with as many potential one-off solutions as there are individual problems. The improved flexibility granted by pensions simplification gives a new set of tools with which to establish a stable, secure pension strategy - for UK multinationals in particular. This, when coupled with additional EU regulations requiring member states to afford

> the same tax concessions to both local and other EU country pension plans, will make the UK a leader in this field.[5]

The tax treatment of overseas pensions has remained broadly unchanged since the introduction of pension tax simplification.[6] When the Government introduced the 'pension freedoms' under the *Taxation of Pensions Act 2014,* it included provision to ensure the new rules were reflected in the treatment of relevant overseas schemes.[7]

---

5 Yvonne Sonsino, Where UK tax is taking the lead, *Pensions and Investment Europe,* 1 September 2004

6 See Library Briefing Paper SN-02984 Pension tax simplification (December 2008)

7 PBC Deb 18 November 2014 c46 [David Gauke]

2. *Finance Act 2017*

In Autumn Statement 2016, the Government said it would take steps to align the tax treatment of foreign pensions more closely with the domestic pension tax regime:

> **4.21 Foreign pensions** – The tax treatment of foreign pensions will be more closely aligned with the UK's domestic pension tax regime by bringing foreign pensions and lump sums fully into tax for UK residents, to the same extent as domestic ones. The government will also close specialist pension schemes for those employed abroad ("section 615" schemes) to new saving, extend from 5 to 10 years the taxing rights over recently emigrated non-UK residents' foreign lump sum payments from funds that have had UK tax relief, align the tax treatment of funds transferred between registered pension schemes, and update the eligibility criteria for foreign schemes to qualify as overseas pensions schemes for tax purposes. [8]

An HMRC policy paper explained the rule changes in more detail:

- where a foreign pension or lump sum is paid to a UK resident, 100% of the pension arising will be chargeable to UK tax (to the same extent as if they had been paid from a registered pension scheme)
- no new pension schemes can be established under section 615 of ICTA *[Income and Corporation Taxes Act*] 1988, and no further contributions can be made to existing schemes. Funds accrued in a section 615 scheme before 6 April 2017 will continue to be paid out using the existing rules
- the tax treatment of funds in RPSs based outside the UK will be more closely aligned with that of UK-based RPSs
- UK tax charges can apply to a payment by an RNUKS to an individual who has been resident outside the UK for less than 10 tax years
- the 70% rule will be removed from the conditions that a pension scheme has to meet to be an 'overseas pension scheme' or a 'recognised overseas pension scheme' and the pension age test is revised so that additional payments may be made and the test still be met. As a result if a non-occupational pension scheme is not regulated and the provider of that scheme is not regulated, it will not be able to be a QOPS or QROPS. [9]

In the Spring 2017 Budget, the Government said that it had revised some of the proposals following consultation:

> Following consultation, the legislation has been revised to set out the position for defined benefit specialist pension schemes for those employed abroad (section 615 schemes) and clarify that all lump sums paid out of funds built up before 6 April 2017 will be subject to existing tax treatment. These changes will have effect from 6 April 2017. [10]

---

[8] HM Treasury, Autumn Statement 2016, Cm 9362, November 2016
[9] HMRC policy paper, Foreign pension schemes, 5 December 2016
[10] HMRC, Spring Budget 2017: overview of tax legislation and rates, 8 March 2017; HM Treasury Spring Budget 2017 Policy Costing

In addition, to tackle "abuse of foreign pension schemes", it would introduce a 25% tax charge to pension transfers made to QROPS.[11]

2.1 Transfers to QROPS

The purpose of the Qualifying Recognised Overseas Pension Scheme (QROPS) regime is to:

> […] ensure that the scheme is treated as a pension scheme for regulatory and tax purposes in the country in which it is established. It should be treated in the way that is usual for pension schemes in that country to be treated, particularly for members of the scheme who are resident there.[12]

A QROPS is a pension scheme established outside the UK that is broadly similar to a UK registered pension scheme:

> A qualifying recognised overseas pension scheme (QROPS) is a pension scheme established outside the UK that is broadly similar to a UK registered pension scheme.
>
> The criteria for what makes a foreign pension scheme similar to a UK registered pension scheme for the purposes of a transfer are set out in UK legislation. Schemes that notify HMRC that they meet the conditions and undertake to provide information to HMRC are 'QROPS'.
>
> The purpose of the conditions is to ensure that the scheme is treated as a pension scheme for regulatory and tax purposes in the country in which it is established. It should be treated in the way that is usual for pension schemes in that country to be treated, particularly for members of the scheme who are resident there.[13]

They must satisfy various requirements including: a tax recognition test; a regulatory requirements test; pension age and benefits tax relief tests and notification requirements.[14]

For more information…

The Pensions Advisory Service has produced information on how they work for individuals: TPAS website: overseas transfers and TPAS Overseas pensions: QROPS

Detailed guidance is in HMRC's Pension Tax Manual – International: qualifying recognised overseas pension schemes (QROPS): contents.

There is a list of QROPS that have been notified to HMRC. HMRC also produces statistics on Transfers to Qualifying Recognised Overseas Pension Schemes: December 2016.

Before the *Finance Act 2017*, QROPS could "receive pension transfers free from UK tax up to the lifetime allowance."[15] The purpose was to enable people leaving the UK to simplify their affairs:

---

11 HC Deb 8 March 2017 c813; HMRC, Spring Budget 2017: overview of tax legislation and rates, 8 March 2017

12 Ibid

13 HMRC, Pension tax manual, QROPS: introduction

14 Ibid; HMRC – guidance. Overseas pensions: payments to your members, 5 December 2016

15 Gov.UK – overseas pensions: tell HMRC you're a QROPS

> The Government allows transfers to QROPS to be made free of UK tax because they enable people permanently leaving the UK to simplify their affairs by taking their pension savings with them to their new country of residence. This is intended to enable them to continue to save to provide an income when they retire.
>
> An individual who leaves the UK and transfers their pension savings should be in broadly the same position as someone who remains in the UK with their pension savings.[16]

The legislation was in Part 4 of the *Finance Act 2004* and regulations made under it.[17]

Concerns

In 2011, the Government expressed concern that QROPs were being marketed as a way of making payments not allowed under UK rules. It proposed changes to make the regime operate in line with the policy intention:

> The Government has found that QROPS are being marketed extensively as a way of paying amounts or enabling the payment of amounts that are not allowed under UK rules (in particular 100% lump sums) once the UK tax rules no longer apply.
>
> This is contrary to the policy rationale for allowing transfers of UK tax-relieved pension savings to be made free of UK tax to QROPS.
>
> **What the Government expects**
>
> The Government expects that individuals will
>
> • use the QROPS regime to transfer their pension savings where they leave, or intend to leave, the UK permanently so that they can continue to save to provide an income when they retire
>
> • be aware that UK tax rules continue to apply to pension savings transferred from a UK pension scheme and that UK tax charges can arise in relation to the transfer; and
>
> • engage with HM Revenue & Customs where necessary and pay any tax charges that arise The Government expects that QROPS will
>
> • ensure they meet the conditions to be a QROPS before notifying HM Revenue & Customs
>
> • ensure they continue to meet the conditions when they are accepting transfers from UK registered pension schemes
>
> • provide the information required and engage with HM Revenue & Customs where necessary.
>
> **Government action**
>
> Today the Government is publishing changes to the QROPS regime for consultation on whether they achieve the intended effect. The changes are intended to make the QROPS regime operate in line with the policy intention.
>
> The Government will continue to keep the QROPS system under review to ensure that it is used in a manner consistent with the principle for which tax relief on pensions is provided.[18]

---

16 HMRC Purpose of the QROPS regime, December 2011
17 HMRC Policy Paper, QROPS: charge on transfers, March 2017
18 HMRC, Purpose of the QROPS regime, December 2011

The regime was strengthened between 2012 and 2015 to more precisely define the types of pension schemes that could receive tax-free transfers and improve the information required in relation to these transfers.[19]

Budget 2017

At the time of Budget 2017, the Government said it would introduce a 25% tax charge on a transfer to a QROPS from 9 March 2017, subject to exceptions:

> This measure ensures that transfers to QROPS requested on or after 9 March 2017 will be taxable unless, from the point of transfer, both the individual and the pension savings are in the same country, both are within the European Economic Area (EEA) or the QROPS is provided by the individual's employer.
>
> If this is not the case, there will be a 25% tax charge on the transfer and the tax charge will be deducted before the transfer by the scheme administrator or scheme manager of the pension scheme making the transfer.
>
> It also widens the scope of UK taxing provisions so that, following a transfer to a QROPS on or after 6 April 2017, they apply to payments out of those transferred funds in the five tax years following the transfer.[20]

The change was "targeted at those seeking to reduce the tax payable by moving their pension wealth to another jurisdiction."[21]

The Government expects the change to affect only a minority of the transfers to QROPS each year (generally between 10,000 and 20,000) and to produce revenue for the Exchequer of around £65 million a year.[22]

The Government included provision for this *Finance Bill 2017.* HMRC explained:

> This measure ensures that transfers to QROPS requested on or after 9 March 2017 will be taxable unless, from the point of transfer, both the individual and the pension savings are in the same country, both are within the European Economic Area (EEA) or the QROPS is provided by the individual's employer.
>
> If this is not the case, there will be a 25% tax charge on the transfer and the tax charge will be deducted before the transfer by the scheme administrator or scheme manager of the pension scheme making the transfer.
>
> It also widens the scope of UK taxing provisions so that, following a transfer to a QROPS on or after 6 April 2017, they apply to payments out of those transferred funds in the five tax years following the transfer.[23]

Because the Prime Minister had announced a General Election on 8 June, the Finance Bill had its Second Reading in the Commons on 18

[19] HMRC Policy Paper, QROPS: charge on transfers, March 2017
[20] Ibid
[21] HM Treasury, Budget 2017, HC 1025 March 2017, para 3.46
[22] Ibid, Table 2.1, note 23; HMRC Policy Paper, QROPS: charge on transfers, March 2017
[23] HMRC Policy Paper, Qualifying recognised overseas pension schemes: charge on transfers (8 March 2017); See also Explanatory Notes

April, and then all its remaining stages on 25 (Commons) and 26 April (Lords). With cross-party support the Government some parts of the Bill, with the intention of legislating for them after the election. However, both the provisions on foreign pensions were retained. The then Treasury Minister Jane Ellison mentioned them briefly when setting out the Government's approach to the Bill:

In debate on the Bill on 25 April, Financial Secretary to the Treasury, Jane Ellison said:

> Clause 18 legislates for a significant anti-avoidance measure announced at the spring Budget. It will make changes to ensure that pension transfers to qualifying recognised overseas pension schemes requested on or after 9 March 2017 will be taxable. The charge will not apply if the individual and the pension savings are in the same country, if both are within the European economic area or if the pension scheme is provided by the individual's employer.
>
> Before the changes were announced in the spring Budget, an individual retiring abroad could transfer up to £1 million in pension savings, without facing a charge, to a pension scheme anywhere in the world provided that it met certain requirements. Overseas pension transfers had become increasingly marketed and used as a way to gain an unfair tax advantage on pension savings that had had UK tax relief. That was obviously contrary to the policy rationale for allowing transfers of UK tax-relieved pension savings to be made free of UK tax for overseas schemes. This charge will deter those who seek to gain an unfair tax advantage by transferring their pensions abroad. Exemptions allow those with a genuine need to transfer their pensions abroad to do so tax-free.[24]

The relevant provisions are now *Finance Act 2017*, s10 and Sch 4.

Guidance on when the charge applies is on Gov.UK – Overseas pensions/pension transfers.

Comment

The Chartered Institute of Taxation argued for more safeguards for people genuinely moving overseas:

> In imposing a 25% tax charge on transfer, the Government appears to want to dissuade individuals from transferring their pension savings from UK schemes to overseas schemes that are perhaps aimed at letting savers have early access to their money tax-free. Such a move by the Government to tackle pension liberation schemes is understandable.
>
> In many cases, however, there will be genuine reasons for wanting to move pension funds outside of the UK, e.g. emigration, full-time working abroad, etc. What is needed therefore is some flexibility to permit tax-free transfers in appropriate cases.
>
> The Government proposes a number of exceptions to the tax charge in such situations, e.g. where the QROPS and individual are in the same country post transfer, both are in the EEA or the pension scheme is provided by the individual's employer.

[24] HC Deb 25 April 2017 c1014

> These exceptions are welcome but the CIOT is concerned that they are not wide enough. While there may be relatively small numbers of people unfairly affected, the impact on each such individual could be very significant. As an example, a tax-free transfer from the UK would become taxable in the UK if within 5 years the individual ceased to be resident in the country to which the pension funds were transferred. We think that to allow internationally mobile workers to freely move between countries without incurring a tax charge on their former UK pension savings, the Government should consider extending the exemptions to include transfers to the country of which the individual is a citizen.
>
> The need for adequate, early stage consultation is crucial so that potentially unfair anomalies can be ironed out before reforms such as this are introduced.[25]

2.2 Tax treatment of payments

Before 6 April 2017, legislation allowed individuals to deduct 10% of the value of overseas pensions, annuities and social security pensions so that only 90% is taxable in the UK.[26] This was provided for in section 575 of the *Income Tax (Earnings and Pensions) Act (ITEPA) 2003*:

> 2) The full amount of the pension income arising in the tax year or, as the case may be, the UK part of the tax year is to be calculated on the basis that the pension is 90% of its actual amount, unless as a result of subsection (3) the pension income is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).[27]

In contrast, the full amount of income from a UK pension to be taxable.[28]

The reason for allowing a 10% deduction from foreign pension income was to provide some recognition of the cost of receiving such an income. In March 1974, the then Chancellor of the Exchequer, Dennis Healey said:

> …the basis of taxation will be changed instead to the income arising from overseas employment, irrespective of the amount remitted. But, because of the special considerations applying to incomes of this kind, the tax assessment will be limited to 90 per cent. of the full amount of the income. In this way we shall recognise the special importance to the United Kingdom economy of this income and the expenses which are often incurred in earning it, and at the same time we shall ensure that the individuals concerned do not escape tax. The same treatment will apply to pensions from overseas received by United Kingdom residents. They will pay on the full amount, subject to the 10 per cent. reduction[29]

---

25 CIOT, More safeguards needed in Chancellor's move against overseas pension schemes, 8 March 2017

26 HMRC Foreign Notes – Tax year 6 April 2013 to 5 April 2014; HMRC, Foreign pension schemes, 5 December 2016

27 Section 575

28 Section 571

29 HC Deb 26 March 1974 cc315-6

However, in December 2016, the Conservative Government said that the differential treatment had led to some foreign schemes being marketed as ways of avoiding UK tax:

> In the UK the foreign pension tax regime has remained broadly the same since the wholesale changes to the pension tax regime in 2006. In 2012 and 2015 Parliament made some changes to the requirements that foreign schemes had to meet for UK tax relief to apply to them, particularly in relation to transfers they receive but the tax treatment of foreign pensions or pension provision in relation to foreign service has remained largely the same. This has led to the marketing of some of these foreign pension tax provisions as ways of avoiding UK tax.[30]

In the 2016 Autumn Statement, it announced that:

> The tax treatment of foreign pensions will be more closely aligned with the UK's domestic pension tax regime by bringing foreign pensions and lump sums fully into tax for UK residents, to the same extent as domestic ones.[31]

It said it would introduce legislation so that:

> where a foreign pension or lump sum is paid to a UK resident, 100% of the pension arising will be chargeable to UK tax (to the same extent as if they had been paid from a registered pension scheme)[32]

The relevant provisions are now *Finance Act 2017*, s 9 and Sch 3.

Comment

The Low Income Tax Reform Group (LITRG) raised concerns about fairness, arguing that someone in receipt of a foreign pension was still likely to face higher costs:

> 1.1 Removing the '90% rule' for taxing foreign pension income in the UK is intended to be a fairness measure, and to simplify the system.
>
> 1.2 On its own, those in receipt of a foreign pension are unlikely to view it as such – it will merely impose an additional tax cost on them. […]
>
> 3.5 It is still true in today's world that someone in receipt of a foreign pension may well fact higher costs than someone in receipt of UK-only pensions. This is because of:
>
> **Costs associated with the pension itself**, such as currency conversion charges (often disproportionate for conversion of smaller amounts, with similar banking charges potentially being incurred for small and large amounts – indeed larger conversions might come at a reduced cost where a better deal can be negotiated; thus impacting on those with small pensions more than those with larger sums); and other administrative costs, such as foreign pension administrators requiring pensioners to submit proof of life periodically for payments to continue.
>
> - **Administrative costs imposed by the way the UK tax system deals with foreign pensions** – requiring all those in receipt of such income to file an annual tax return even if they

[30] HMRC, Foreign pension schemes, 5 December 2016
[31] HM Treasury, Autumn Statement 2016,
[32] HMRC, Foreign pension schemes, 5 December 2016

> have no liability. This puts foreign pensioners in a much more costly position than a UK-source-only pensioner whose tax is dealt with under Pay As You Earn (PAYE).[33]

It included a quote from a pensioner to illustrate the effect:

> … It seems that there has been some abuse of the 90% rule involving people with large pension pots who are able to transfer funds abroad and then release large lump sums at an advantageous tax rate. Whilst curtailing such abuse is obviously a legitimate aim I am concerned about the impact this change is going to have on low-income pensioner households with small foreign pensions who are going to be hit by a significant tax hike.
>
> In the main, these people will have foreign-currency pensions from their time spent working abroad that have received no tax relief in the UK and have therefore been derived at no cost to the Exchequer. At least, at present, the 10% deduction goes some way to compensating for the higher costs and disadvantages associated with such pensions. My wife, for instance, who receives two small pensions from Holland, has to complete and have verified official "proof-of-life" [sic] forms each year, which means either taking them to the Consulate to be certified or paying a lawyer to do so. She must also submit details of any small changes in income and if any problems have to be sorted out make telephone calls at an international rate. On top of this there is the vexing problem of bank charges. If you have small pensions that pay out monthly you have to be careful that you do not end up spending a substantial part of your income on bank transfer charges. The only way we have found to mitigate the cost of bank charges is not to transfer the payments every month but to save them up until we have sufficient funds to make it worthwhile.[34]

It argued that:

> 1.4 If the change is accompanied by the removal of the currently mandatory self-assessment burden for all recipients of foreign pensions (irrespective of a UK tax liability arising on that income), it starts to appear more acceptable. We therefore stress that it is essential this matter is addressed so that, with effect from April 2017, the self-assessment burden is removed.
>
> 1.5 We do point out though that this does not address the fact that those in receipt of foreign pensions often incur costs in relation to that income – which impact disproportionately on those on low incomes. We therefore suggest that a modified 10% deduction from taxable foreign pension income is retained, capped at 10% of twice the personal income tax allowance, to give at least some relief for currency conversion and administrative costs often necessarily incurred by the taxpayer. Such a rule should also apply in calculating tax credits income.[35]

---

[33] LITRG, Press Release: Extra costs in store for recipients of foreign pensions 8 March 2017; Briefing on Clause 11 and Schedule 3 – overseas pensions.

[34] Ibid

[35] Ibid

BRIEFING PAPER
Number CBP-07937
27 June 2017

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the conditions of the Open Parliament Licence.