Overseas transfers

Max Ballad, legal director at **ARC Pensions Law,** sets out significant legislation changes that will affect overseas transfers of pensions

Changes announced by HM Revenue & Customs (HMRC) in March, coupled with the implementation of relevant provisions of the Finance Act 2017, have led to trustees of registered pension schemes running a greater risk of incurring tax charges.

Trustees are advised to revise procedures and undertake additional checks before making transfers to overseas pension schemes.

The changes also introduce a new 25% tax on overseas transfers (the 'overseas transfer charge'), which will apply unless certain conditions are met.

Pension savings are subject to favourable tax treatment in the UK, with tax relief accorded on both contributions and investment income. Even allowing for the income tax paid on pensions when in payment, the cost of this relief to the Exchequer is substantial, estimated at around £25 billion by the Office for National Statistics for the 2015/16 tax year. The cost is controlled by the limits which legislation imposes on the amount of tax-free pension saving an individual can build up each year, the individual's lifetime allowance, and a plethora of rules governing how benefits may be taken in retirement or on death. Both the individual and the pension scheme can incur tax charges if these rules are breached.

Although employees who move abroad may have perfectly legitimate reasons for wanting to transfer the value of benefits built up in a UK pension scheme overseas, there is a risk that some transfers may be requested to 'liberate' retirement savings accumulated in a tax privileged environment in the UK.

> ***... promoting fairness by continuing to allow overseas transfers but subjecting them to additional controls and the new tax charge***

The recent changes to the overseas transfers regime are aimed at promoting fairness by continuing to allow overseas transfers but subjecting them to additional controls and the new tax charge. As previously, a transfer may be made to an overseas pension scheme if it is a qualifying recognised overseas pension scheme (QROPS). However, to retain their status as of 14 April 2017, QROPSs are required to submit a new undertaking to HMRC; schemes that fail to do so will have their status revoked. It should therefore not be assumed that a scheme which was formerly a QROPS will continue to be so after this date.

A transfer to an overseas scheme which is not a QROPS will be unauthorised under tax legislation, resulting in the trustees incurring a scheme sanction charge, as well as an unauthorised payment charge on the individual. The trustees would pay the scheme sanction charge from the scheme's assets, and consequently increase costs for the employer.

The new 25% tax charge will be levied on an overseas transfer unless at least one of various exemptions applies. It can be expected that most genuine transfers will satisfy this test. For example, the overseas transfer charge will not apply if an individual is resident in the same country as the QROPS after the transfer, or if both are within the European Economic Area. One note of caution, however, is that the transfer remains subject to UK tax legislation for a period of five years after the initial transfer. This means the overseas transfer charge could apply if the individual moves to another country within the five-year period and none of the exemptions therefore apply. It can also work in reverse for an initially taxable transfer which becomes exempt within the five years, in which case the tax is refunded.

The scheme administrator of the UK pension scheme (i.e. the trustees of an occupational, trust based scheme) and the manager of a QROPS making a transfer are jointly liable for the charge, which must be deducted from the transfer value and paid across to HMRC.

The changes are expected to have a relatively modest impact on tax revenues and will not apply to many genuine overseas transfers. They may, however, reduce the scope for overseas transfers to be used for pensions liberation, or by scammers, who see overseas transfers as a means of acquiring what can often be substantial sums of money. ■