



ASSOCIATION OF CONSULTING ACTUARIES

First Floor, 40 Gracechurch Street, London EC3V 0BT
Tel: +44(0)20 3102 6761 E-mail: acahelp@aca.org.uk
Web: www.aca.org.uk

6 December 2018

Pensions Policy Team
HM Revenue & Customs
Room 3C/07
100 Parliament Street
London
SW1A 2BQ

By email to pensions.policy@hmrc.gsi.gov.uk

Dear Sirs

Draft regulations on the repayment of the Overseas Transfer Charge

I am writing on behalf of the Association of Consulting Actuaries about the (Draft) Pension Schemes (Information Requirements – Repayment of Overseas Transfer Charge) Regulations 2019 at <https://www.gov.uk/government/consultations/draft-legislation-repayment-of-the-overseas-transfer-charge> .

In theory these regulations would allow an overseas transfer charge, paid in connection with a transfer to a QROPS, to be reclaimed where this tax charge turned out not to be due. However, there are a number of obstacles that mean that in practice it would be very difficult for any refunds to be claimed for most overseas transfer charges. It would be unhelpful and unwelcome if these practical obstacles arising from the legislation were likely to prevent taxpayers from paying the correct amount of tax.

Under regulation 3, only the person who originally paid the charge may claim a repayment and, under regulation 6, any repayment must be made to that person. This would usually be the scheme administrator of the UK registered pension scheme when a transfer value was paid from that UK scheme to a QROPS. However, after the transfer to the QROPS the individual would not be a member of this UK registered pension scheme.

- (a) The trustees of the UK scheme would be asked to expend scheme resources on making a tax claim in respect of an individual who was not a member of the scheme. There

Association of Consulting Actuaries Limited
Registered Office: 10 St James Road · Wokingham · RG40 4RT
Registered in England No. 10184138
Registered under the Data Protection Act ZA330750

Privacy Statement: <https://aca.org.uk/privacy-accessibility-statement/>

should therefore be a provision to allow the scheme to charge for reasonable administration costs.

- (b) The individual would not have an active membership of the UK scheme and so there would be practical problems in the scheme receiving a tax refund in respect of the individual. For risk management purposes a number of administration systems have blocks on re-opening an old member record that has been closed.
- (c) There is no guarantee that any refund that was received could be transferred onto the QROPS to which the original transfer was sent. That process would require the agreement of the QROPS, which is a matter that would not be in the control of the UK scheme. Hence the UK scheme would carry a risk of being left with the refund and so creating a member entitlement it did not wish to create and which it could not easily transfer away. There is a further practical problem in that the QROPS may have lost its status, subsequent to the initial transfer (for example, as happened with Canadian pension schemes) and/or the member may have exhausted his or her entitlement from the QROPS.
- (d) Could you clarify please that if a UK scheme does successfully claim a refund of tax and passes this across to the QROPS then this would not be classed as a second transfer to a QROPS (e.g. for Benefit Crystallisation Event 8) and that the transaction would not need to be reported to HMRC since it would merely be the residual amount of the original transfer payment.
- (e) The UK pension scheme might be a defined benefits scheme with no DC arrangement. Any refund would be a DC amount and the scheme may not have the structures to hold benefits on a DC basis. The worst case would be that the scheme would need to convert the DC amount back into a pension amount, which would only add to the cost of administering the transaction.

The process of paying the refund is cumbersome for UK registered pension schemes. Under regulation 4, where a UK registered pension scheme submits a claim for a refund which is accepted by HMRC the sequence of events is that HMRC issues a reference number to the scheme administrator. The scheme administrator then needs to go back to the original Accounting for Tax quarterly return in which the overseas transfer charge was paid and submit a revised AFT return, including the new reference number. This will then trigger a refund of tax to the scheme administrator. This multi-stage process, requiring old returns to be amended, adds time and costs to the administration of the scheme in respect of an individual who is no longer a member.

I note that under regulation 6(2)(b) any refund paid to a pension scheme must be "ring fenced" but the regulations provide no further elucidation. This presumably means ring fenced for the sole benefit of or in respect of the individual, but the draft regulations are silent on this point. For example, the refund would be ring fenced were the money to be ring fenced to pay for the cost of

the extra scheme administration caused by the overseas transfer charge process. It would be helpful if regulation 6(2)(b) was either deleted or clarified as to exactly what was required by the expression.

In summary, requiring that claims for repayment of the overseas transfer charge are made by the ceding pension scheme that paid the transfer and paid the charge (typically the UK registered pension scheme) creates practical obstacles to making these claims and so would hinder HMRC's objective that taxpayers pay the correct amount of tax. We note that there are substantial precedents for tax repayments not being made to the original payer. For example, PAYE is withheld and paid by employers while refunds of excess income tax withheld under PAYE are generally paid to the individual employee. In the circumstances, since all transfers to QROPS are reported in detail to HMRC, it should be possible to allow the receiving QROPS to reclaim the tax rather than impose the obligation on the former UK scheme.

Allowing the QROPS to reclaim the tax really would seem the simplest and cleanest way forward to resolve these problems.

We would be happy to discuss this matter further if you wish. Please, in the first instance, contact Tim Sexton (co-vice chair of the committee) on tim.sexton@uk.pwc.com or on 07841 494194.

Yours faithfully

Karen Goldschmidt

Chair of the ACA Pensions Taxation Committee

On behalf of the Association of Consulting Actuaries Limited

Disclaimer

This 'paper/document' is intended to provide general information and guidance only. It does not constitute legal or business advice and should not be relied upon as such. Responding to or acting upon information or guidance in this 'paper/document' does not constitute or imply any client /advisor relationship between the Association of Consulting Actuaries and/or the Association of Consulting Actuaries Limited and any party, nor does the Association accept any liability to any person or organisation relating to the use of such information or guidance.