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Global Employer Services

GES NewsFlash

UK — Lifetime allowance and non-UK residents: HMRC agree beneficial interpretation

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Summary

The total amount that may be saved tax effectively in a UK registered pension scheme is normally determined by the Lifetime Allowance (LTA). Amounts in excess of the LTA are subject to a LTA charge at the time benefits are withdrawn or there is another type of "Benefit Crystallisation Event." If the amount in excess of the LTA is taken as a lump sum, the LTA charge will be levied at a rate of 55%.

The standard LTA for 2011/12 is £1.8M but this is expected to reduce to £1.5M for 2012/13.

Some individuals may be entitled to claim one or more Lifetime Allowance Enhancement Factors (LAEFs) which have the effect of increasing the amount that can be saved tax effectively in a UK registered pension scheme. One of these LAEFs is the nonresidence LAEF which can be claimed by individuals who meet the conditions to be regarded as a "Relevant Overseas Individual" (ROI) for at least part of the period over which benefits accrue.

Deloitte has recently obtained confirmation from HM Revenue & Customs (HMRC) that more people will meet the conditions to be regarded as a ROI than thought previously. This is welcome news and is likely to have two key advantages:

1. Individuals who were expecting to be subject to a LTA charge may no longer be subject to a charge or may be subject to a charge on a smaller amount than would have been the case under the previous understanding.

2. It may now be appropriate to keep individuals working outside of the UK as active members of their existing UK registered pension scheme whereas previously such individuals may have been transferred to a new arrangement for the period of their overseas secondment.

Who now qualifies as a ROI?

It had previously been thought that individuals who were UK-resident when they joined their UK registered pension scheme, who were then seconded abroad for a period during which they were regarded as non-UK resident for tax purposes, would not be regarded as a ROI until they had been non-UK resident for five complete UK tax years. This was on the basis that the individual's employer continued to be the UK "legal" employer and one of the tests for ROI status is that the individual is not employed by a person resident in the UK.

Deloitte has now confirmed with HMRC that individuals who are seconded abroad will not be regarded as employed by a person resident in the UK provided the costs of the individual's employment abroad, including pension costs, are not ultimately borne by a UK-resident entity. This condition will be regarded as met where amounts paid by the UK employer are subsequently recharged to a non-UK resident entity.

Deloitte's view

HMRC's clarification on this important point will be welcomed by employers and individuals alike. It makes complete sense as the previous interpretation restricted significantly the number of people who were able to claim a nonresidence LAEF.

Individuals who have not yet reached the pensions lifetime limit should take a view whether they might do so by the time they retire, in which case they should claim while they can.

Employers should now review how they build this new understanding into their processes when individuals are seconded abroad. Individuals cannot benefit from a nonresidence LAEF unless they claim it using form APSS 202. Claims are normally made after the individual has returned to live in the UK, or has ceased contributing or retired but must be made within the time limit allowed.

Employers should also consider whether they need to amend any information provided previously and also whether this new understanding impacts the basis on which retirement benefits are provided for individuals working outside of the UK.

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