

Chapter 10 – Changes to the Employment Income Manual (EIM)

EIM74050: Pensions taken as flexible drawdown: temporary non-residence: an overview

Note: This guidance covers the taxation of amounts taken as flexible drawdown whether it is taken under a registered pension scheme or under an overseas pension scheme. Further information about flexible drawdown can be found [here](#).

From 6 April 2011 an individual with pension savings held in a money purchase arrangement (other than a cash balance arrangement) in either a registered pension scheme or an overseas pension scheme (where the funds concerned have benefitted from UK tax relief) is able to withdraw those savings in their entirety as “flexible drawdown” pension income subject to meeting certain conditions. These conditions are that:

- a. the individual has reached age 55 (normal minimum pension age) or an earlier age where the member is in ill-health (see [RPSM08100070](#) for more detail) or has a protected pension age (see [RPSM03106000](#) for more detail), and
- b. the individual has other pensions in payment of at least £20,000 (see [here](#) for more detail), and
- c. no relevant contributions are paid by or on behalf of, or in respect of, the individual, in the tax year in which the declaration (see next) is made, to any registered pension scheme under which there is a money purchase arrangement (other than a cash balance arrangement) relating to the member, and at the time of the declaration (see next) the member is not an active member of any registered pension scheme under which there is a defined benefits or cash balance arrangement relating to the member, and
- d. the individual makes a valid declaration (see [here](#) for more detail) to the scheme administrator of the pension scheme from which they wish to take flexible drawdown and the scheme administrator accepts that declaration.

Where a UK resident individual takes flexible drawdown from a registered pension scheme, they can broadly receive a tax-free lump sum equal to 1/3rd of the value of the sums and assets used to provide flexible drawdown. Any amount taken as flexible drawdown is taxable in the year of receipt as pension income, under s.579A ITEPA 2003, at the individual’s marginal rate (see [EIM74014](#)).

To prevent the possibility of someone avoiding tax by becoming temporarily non-resident for one full tax year or more and in that period taking flexible drawdown from a registered pension scheme or from an overseas pension scheme, FA 2011 introduced sections 576A and 579CA ITEPA 2003. From 6 April 2011, and subject to certain conditions, flexible drawdown paid whilst an individual is temporarily non-resident in the UK is treated as pension income arising to the individual in the tax year they resume residence in the UK.

EIM74051: Pensions taken as flexible drawdown: temporary non-residence: meaning of terms

“Active member” is defined by section 150(2) FA 2004.

“Cash balance arrangement” is defined by section 152(3) and (5) FA 2004.

“Defined benefits arrangement” is defined by section 152(6) and (7) FA 2004.

“Dependants’ drawdown pension” is defined by paragraph 18 of Schedule 28 to FA 2004.

“Dependants’ drawdown pension fund” is defined by paragraph 22 of Schedule 28 to FA 2004.

“Drawdown pension” is defined by paragraph 4 of Schedule 28 to FA 2004.

“Drawdown pension fund” is defined by paragraph 8 of Schedule 28 to FA 2004.

“Double taxation relief arrangements” means arrangements that have effect under section 2(1) of T(IOP)A 2010;

“Flexible drawdown” means arrangements to which sections 165(3A) or 167(2A) of Finance Act 2004 apply.

“Member’s relevant transfer fund” has the same meaning as in paragraph 4(2) of Schedule 34 to FA 2004.

“Member’s UK tax-relieved fund” has the same meaning as in paragraph 3(2) of Schedule 34 to Finance Act 2004.

“Money purchase arrangement” is defined by section 152(2) and (4) FA 2004.

“Overseas pension scheme” has the same meaning as in section 150(7) FA 2004.

“Registered pension scheme”. A pension scheme is a registered pension scheme at any time when, either through having applied for registration and been registered by HMRC or through acquiring registered status by virtue of being an approved pension scheme on 5 April 2006, it is registered under Chapter 2 of Part 4 of Finance Act 2004.

“Relevant contribution” is defined in paragraphs 14D and 24F of Schedule 28 to FA 2004 and means a contribution which is either a relievable pension contribution or a contributions paid by the member’s employer.

“Relevant non-UK income withdrawal”, in relation to a relevant non-UK scheme, means an amount paid under the scheme which, if the scheme were a registered pension scheme, would be income withdrawal or dependants’ income withdrawal (within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004).

“Relevant non-UK scheme” is a scheme falling within paragraph 1(5) of Schedule 34 to FA 2004.

“Relievable pension contributions” are defined by s.188(2) FA 2004.

“Relieved member” has the same meaning as in paragraph 1(7) of Schedule 34 to FA 2004.

“Resident” and “ordinarily resident”, as referred to in sections 576A and 579CA ITEPA 2003, have the same meaning as in the rest of the Income Tax Acts. For guidance on the meaning of those terms, see publication HMRC6 (which has replaced leaflet IR20).

“Transfer member” has the same meaning as paragraphs 1(7) and (8) of Schedule 34 to FA2004.

“Treaty non-resident” is a term used in both sections 576A and 579CA ITEPA 2003. Sub-section (3)(b) of both sections provides that a person is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the UK for the purposes of double taxation relief arrangements having effect at that time.

“Year of departure” and “year of return” are each defined in sections 576A(2) and 579CA(2) ITEPA 2003.

“Year of non-residence” means any tax year which falls between the year of departure and the year of return as defined in sections 576A(8) and 579CA(5) ITEPA 2003.

EIM74052: Pensions taken as flexible drawdown: temporary non-residence: meaning of 'temporary non-residence'

Section 576A and 579CA ITEPA 2003

Sections 576A and 579CA ITEPA 2003 apply to any individual who left the UK to take up residence abroad who later resumes UK residence, and who:

- was tax resident in the UK for any part of at least four out of the seven tax years immediately preceding the year of departure, and
- was not resident and not ordinarily resident in the UK for a period of less than five full tax years, and
- during the period of temporary non-residence, was paid flexible drawdown from a registered pension scheme or from an overseas pension scheme to the extent that the payment is referable to the individual's tax-relieved fund under the overseas scheme.

Where these conditions are satisfied, the individual will be liable to income tax in respect of the amount paid during the period of non residence as flexible drawdown as if it were pension income arising or accruing in the tax year in which the individual returned to the UK. See [EIM74055](#).

Nothing in any double taxation relief arrangements between the UK and the country or territory in which the person taking flexible drawdown was resident at the time is to be read as preventing that person from being chargeable to income tax in respect of any flexible drawdown treated by sections 576A or 579CA as arising or accruing in the year of return (or as preventing a charge to that tax from arising as a result).

EIM74053: Pensions taken as flexible drawdown: temporary non-residence: provisions not changed

Sections 575 and 579B ITEPA

The pension income tax provisions contained in sections 575 (foreign pensions) and s.579B (pensions from registered pension schemes) for persons who are resident or ordinarily resident in the UK and receiving payments of either a foreign pension or a pension under a registered pension scheme are unaffected by sections 576A and 579CA ITEPA. Sections 576A and 579CA are not themselves charging provisions. They modify the operation of the main charging provisions at sections 575 and 579B by deeming certain amounts taken as flexible drawdown to arise or accrue as pension income at a certain time.

EIM74054: Pensions taken as flexible drawdown: temporary non-residence: persons within the scope of section 575 or section 579B by virtue of section 575 or section 579CA

A person receiving or entitled to receive the pension is chargeable to income tax in respect of amounts taken as flexible drawdown arising or accruing to them in a year, or any part of a year, in which they are resident or ordinarily resident in the UK, by virtue of either section 575 or section 579B ITEPA.

"Person" includes a member of a registered pension scheme or an overseas pension scheme and any dependants who on the member's death have an entitlement to dependants' drawdown pension.

EIM74055: Pensions taken as flexible drawdown: temporary non-residence: main conditions for sections 576A and 579CA to apply

[EIM74050](#) outlined the basic proposition whereby flexible drawdown taken by an individual whilst temporarily resident outside the UK will be charged to income tax on their return to the UK. For sections 576A and 579CA to apply, all four of the conditions in subsection (2) of each section must be met. Three of the four conditions refer to specific 'residence requirements': an individual satisfies those residence requirements for a tax year if during any part of that tax year he is resident in the UK and not treaty non-resident.

An individual is treaty non-resident at any time if, at that time, they fail to be regarded as resident in a territory outside the UK for the purposes of double taxation relief arrangements having effect at that time.

First condition: (2)(a)

The individual must satisfy the residence requirements for a tax year, known as 'the year of return'.

Second condition: (2)(b)

There must be one or more tax years immediately before the tax year of return in which the individual did not satisfy the residence requirements, but prior to those tax years in which the individual did not satisfy the residence requirements there is at least one earlier tax year in which he **did** satisfy the requirements.

Third condition: (1)(c)

There are fewer than five tax years between the year of departure and the year of return. (The 'year of departure' is the last tax year before the year of return in which the individual satisfied the residence requirements.)

Fourth condition: (1)(d)

The individual satisfied the residence conditions in four of the seven tax years immediately preceding the year of departure.

If all of the four conditions are met, sections 576A and 579CA ITEPA provide that flexible drawdown paid during a year of non-residence by a scheme member or a dependant from a registered pension scheme or a UK tax-relieved fund in an overseas pension scheme and which would not otherwise be chargeable to tax as pension income under part 9 ITEPA, is to be treated as arising or accruing in the tax year of return to the UK for the purposes of sections 575 and 579B ITEPA.

If at least one of the four conditions is not fulfilled then no charge to income tax can arise under sections 575 and 579B on flexible drawdown paid during the intervening years of non-residence.

EIM74056: Pensions taken as flexible drawdown: temporary non-residence: practical questions

To decide whether an individual is within the charge under sections 575 or 579B ITEPA, by virtue of sections 576A and 579CA, the four conditions described at [EIM74055](#) can be framed as a series of questions.

- Has the individual become resident or ordinarily resident in the UK during the tax year?

- Was the individual previously resident or ordinarily resident in the UK for a tax year at some earlier time before he became not resident and not ordinarily resident?
- Are there fewer than five complete tax years between the year of departure and year of return to the UK?
- Was the individual resident or ordinarily resident in the UK for any part of at least four out of the seven tax years before the year of departure?

If all of the questions can be answered 'Yes' then the individual will be chargeable on flexible drawdown paid in the period of non-residence under either section 575 or section 579B depending on whether it was paid, respectively, from UK tax-relieved funds held in an overseas pension scheme or a drawdown pension fund or a dependants' drawdown pension fund held in a registered pension scheme.

Individuals who went abroad on or before 6 April 2011 who are paid flexible drawdown on or after that date, will be chargeable on the amounts so taken if they later resume tax residence in the United Kingdom and meet the 4 conditions set out at [EIM74055](#).

If the answer to any of the questions is "No" then the individual will not be chargeable on any flexible drawdown paid in the period of non-residence.

EIM74057: Pensions taken as flexible drawdown: temporary non-residence: section 579CA example

Mr Smollett, who is aged 56 (so has reached normal minimum pension age) and has lived all his life in the UK, leaves the UK on 5 August 2011 for a three year contract of employment abroad.

He resumes tax residence in the UK on 2 September 2014.

He is paid £100,000 as a tax-free pension commencement lump sum and £300,000 in flexible drawdown from his UK registered pension scheme on 20 April 2012. As he is not-resident in the UK for tax year 2012-13, in accordance with the terms of the double taxation agreement between the UK and the country in which Mr Smollett is resident at the time, no income tax is deducted or due in respect of the £300,000 paid as flexible drawdown (see [EIM74403](#)).

Mr Smollett fulfils all the conditions in s.579CA ITEPA.

- He has resumed UK tax residence (2014-15 is the year of return (S.579CA(2)(a))
- There is at least one tax year immediately prior to the year of return when he was not tax resident in the UK (the intervening years: 2012-13 and 2013-14) and immediately prior to that there are earlier years of UK residence (all those to 2011-12 inclusive (S.579CA(2)(b))).
- The intervening years are less than five full tax years (S.579CA(2)(c))
- His year of departure is 2011-12 and he had been resident in the UK for at least four out of the seven tax years immediately prior to his year of departure (in this example he was resident for all of the previous years, S.579CA(2)(d)).

The flexible drawdown was paid in a year of non-residence (not in the year of departure or year of return) and is not, apart from S.579CA, otherwise chargeable to tax under Chapter 5A ITEPA. In this example Mr Smollett will be chargeable under Section 579CA in the tax year of return to UK residence (2014-15) on the £300,000 paid as flexible drawdown.

EIM74058: Pensions taken as flexible drawdown: temporary non-residence: persons within the scope of sections 576A:

persons not domiciled or not ordinarily resident in the UK: remittance basis

When a person who meets all four conditions in section 576A(2) ITEPA 2003 returns to the UK and is resident for tax purposes, they are normally liable to a pension income tax charge in respect of any flexible drawdown paid from an overseas pension scheme during the period of temporary non-residence (see [EIM74055](#))

But where:

- the person is either not domiciled or not ordinarily resident in the UK in the year of return, and
- the remittance basis, see SAIM1130, applies to that person for the year of return
- the charge is limited to amounts of flexible drawdown paid from a relevant non-UK scheme which were remitted to the UK in a year of non-residence. The remitted amounts are treated as remitted in the year of return.

EIM74059: Pensions taken as flexible drawdown: temporary non-residence: assessment time limits

The normal assessment time limits apply where an amount paid as flexible drawdown is treated by virtue of either section 576A or section 579CA as assessable in the tax year of return to UK residence.

EIM74060: Pensions taken as flexible drawdown: temporary non-residence: application of a DTA

Sections 576A and 579CA

Sections 576A and 579CA require amounts paid as flexible drawdown in the intervening years between UK departure and return to be assessed to tax for the tax year of return.

Both sections provide that this charging provision overrides the terms of any double taxation agreement. Nothing in any double taxation relief arrangement will operate to prevent a person who meets all four of the conditions in section 576A(2) or section 579CA(2) (see [EIM74055](#)) from being chargeable to income tax under sections 575 or 579B ITEPA respectively in respect of flexible drawdown paid in the intervening years but treated as arising or accruing in the year of return by either section 576A or section 579CA.

This means that any exemption specifically given under an agreement between the UK and another taxing state will not be taken into account in arriving at any UK liability.

EIM74500 - Foreign pensions

Section 573 ITEPA 2003

Section 573 ITEPA 2003 applies to any pension paid by or on behalf of a person who is outside the United Kingdom to a person who is resident in the United Kingdom. It does not apply to any pensions charged by any of the provisions in Part 9 Chapters 5 to 14 ITEPA 2003 (see [EIM74001](#)).

Voluntary pensions

Section 574 ITEPA 2003 extends the charge under Section 573 to a pension that is paid voluntarily or is capable of being discontinued if the following conditions are met:

- the pension is paid to a former employee or office holder or to their widow, widower, surviving civil partner, child, relative or dependant
- the payment is paid by or on behalf of the person who employed the former employee (or the person under whom the office was held) or by the successors of that person.

Annuities and income withdrawal from overseas pension schemes

From 6 April 2011, Section 574 ITEPA 2003 also extends the charge under Section 573 to:

- an annuity under, or purchased with sums or assets held for the purposes of, or representing acquired rights under, a relevant non-UK scheme (see [RPSM13102130](#) for more detail) or an overseas pension scheme (see [RPSM14101030](#) for more detail)
- an amount paid under a relevant non-UK scheme or an overseas pension scheme which, if the scheme were a registered pension scheme, would be income withdrawal (see [RPSM09102010](#) onwards for more detail) or dependants' income withdrawal (see [RPSM10104400](#) onwards for more detail) within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004 (see [RPSM](#) for more detail.).

The term "overseas pension scheme" has the same meaning as in section 150(7) FA 2004.

The term "relevant non-UK scheme" should be read in accordance with paragraph 1(5) of Schedule 34 to that Act.

Taxable pension income

Section 575 (as amended by IT(TOI)A 2005) provides that the taxable amount of a foreign pension is 90% of the actual amount arising in the tax year unless the income is charged in accordance with Section 832 of IT(TOI)A (relevant foreign income charged on the remittance basis). As foreign pensions are treated as "relevant foreign income", Chapters 2, 3 and 4 of Part 8 IT(TOI)A respectively provide for claims to remittance basis, deductions and reliefs and unremittable income. These Chapters contain the rules that formerly applied to Case V of Schedule D. See SAIM1130 for further details.

Other pension income with a foreign source

The rules for foreign pensions also apply for determining the amount of taxable pension income for certain foreign annuities (see Sections 609 to 611 ITEPA 2003 and [EIM74007](#)) and for foreign voluntary annual payments (see Section 635 ITEPA 2003 and [EIM74011](#)).

Pre-1973 pensions paid under the Overseas Pensions Act 1973

Under Section 1 Overseas Pensions Act 1973, the responsibility for payment for certain pensions was transferred to the United Kingdom government from the governments of a number of former United Kingdom colonies. Section 629 ITEPA 2003 charges these pensions provided that the original pensioner retired before 6 April 1973. Pensions paid to the widow or widower of the original pensioner are also covered. Where Section 629 applies, the taxable amount of pension income is determined in accordance with the rules for foreign pensions. Section 629 does not apply to any statutory increases resulting from the application of the Pensions (Increase) Act 1971. Section 569 ITEPA 2003 (United Kingdom pensions) will apply to the statutory increases (see [EIM74003](#)).