HMRC - PTM092200 - Protecting Pre-April 2006 Pension Rights: Divorce

Pension credits

The Welfare Reform and Pensions Act 1999 (or Welfare Reform and Pensions (Northern Ireland) Order 1999) includes provisions allowing for an individual’s pension rights to be split or shared with an ex-spouse following a divorce or dissolution of a civil partnership (see PTM029000) and introduces the concept of pension debits and pension credits.

Pension credits

Where pension sharing occurs the amount awarded to an ex-spouse or former civil partner is referred to as a pension credit right. As the pension credit right will increase the ex-spouse’s existing pension rights this may affect or increase their liability to the lifetime allowance charge. The legislation provides that ex-spouses acquiring pension credit rights may be entitled to enhance their lifetime allowance to reduce or negate their liability.

An ex-spouse may be able to claim a lifetime allowance enhancement provided certain conditions are met. How this is dealt with depends on whether the pension credit rights were acquired before or after 6 April 2006. This guidance only applies to pension credit rights acquired before 6 April 2006. For pension credit rights acquired on or after 6 April 2006 see PTM095200.

Pre 6 April 2006 pension credit rights

Paragraph 18 Schedule 36 Finance Act 2004

Where pension credit rights were acquired before 6 April 2006 a lifetime enhancement factor known as “the pre-commencement pension credit factor” could be given providing an individual notified HMRC by 5 April 2009 of any pre-commencement pension credits the enhancement can be given to ensure parity of treatment with the previous tax regime.

The enhancement to the lifetime allowance is the value of the pension credit (indexed) expressed as a factor of the standard lifetime allowance for the tax year 2006/07. This is called the pre-commencement pension credit factor and is expressed in the formula

IAPC / SLA

IAPC is the amount of the pension credit awarded for the purposes of section 29(1) of Welfare Reform and Pensions Act 1999 or Article 26(1) of Welfare Reform and Pensions (Northern Ireland) Order 1999 increased by the percentage increase in the retail price index (RPI) from the month in which the rights were acquired to April 2006.

SLA is the standard lifetime allowance for the tax year 2006-07.

The factor should go to two decimal places. This should be a rounded-up figure, so for example if the calculation produces a factor of 0.231 this becomes 0.24.

For the avoidance of doubt, the only permitted indexation of the pension credit is by the RPI percentage increase - as described above. This applies even where the pension credit contains an element attributable to contracted out rights.

Example

An individual was awarded a pension credit of £135,000 in January 2001. By applying the increase in RPI from January 2001 to April 2006, the pension credit on that date was worth £150,000.

By applying the above formula to the standard lifetime allowance on 5 April 2006, it will be enhanced by a factor of 0.1 or 10 per cent (£150,000/£1.5 million).

Provided an application was received by them before 6 April 2006, HMRC will have issued a certificate showing the enhancement to the standard lifetime allowance as a factor of 0.1.

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Interaction with primary protection

Paragraph 18(5) Schedule 36 Finance Act 2004

An individual who became entitled to a pension credit before 6 April 2006 but who has also notified HMRC that they are claiming primary protection could not also have a pre-commencement pension credit factor. This is because the benefits the individual has protected under primary protection should include the value of the pension rights from the pension credit, so the primary protection factor the individual has received will incorporate the pre-commencement pension credit element.

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Notification procedure for the pre-commencement pension credit factor

Regulations 5 and 12 The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 SI 2006/131

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An individual normally had to notify HMRC of their entitlement to a pre-commencement pension credit factor using form APSS 201 in the period 6 April 2006 to 5 April 2009. HMRC may accept a late notification in limited circumstances. See](https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm098000) for guidance on late notification.

HMRC will issue a certificate confirming the pre-commencement pension credit factor the individual is entitled to. The certificate is valid until such time as the certificate (or any amended certificate) is revoked or amended by HMRC.

If after the claim has been made the individual learns that the information provided was incorrect, they must inform HMRC as soon as possible. If necessary, HMRC will then revoke the original certificate and issue an amended certificate.

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