

One of the key features of the new pensions tax regime that came into force from 6 April 2024 is the introduction of [Transitional Tax-Free Amount Certificates](#) ('TTFACs').

In their recent [Newsletters](#), HMRC have considered over 20 'frequently asked questions' on these Certificates and recent queries to the [Aries Help Desk](#) indicate that this is still an area of concern and uncertainty for many Aries members.

For this Aries Insight, then, we will attempt to explain what these TTFACs are, who can apply for one, how they must do so and what the TTFAC should show.

### Basics

Starting with the basics (which is always a good place to start), from 6 April 2024 the Lifetime Allowance ('LTA') and the various old Benefit Crystallisation Events ('BCEs') ceased to apply. New Allowances, the Lump Sum Allowance (LSA) and the Lump Sum and Death Benefit Allowance (LSDBA), as well as the concept of Relevant Benefit Crystallisation Events ('Relevant BCEs') were introduced.

The standard LSA is set at £268,275, whilst the standard LSDBA is set at £1,073,100.

As part of the changes, HMRC had to develop a way of taking into account certain benefits that a member may have received before 6 April 2024 in order to establish their **available** LSA and LSDBA.

This is not a new concept. When the LTA regime was introduced from 6 April 2006, HMRC introduced a similar provision under which a member's LTA was reduced to take account of any 'pre-commencement pensions' (pensions already in payment before 6 April 2006) that a member had in payment, immediately before their first BCE, as explained in the old RPSM [here](#).

For the transition to the LSA / LSDBA regime, HMRC have introduced two possible methods for taking into account both pensions that were already in payment on 6 April 2006 and also any BCEs that occurred between 6 April 2006 and 5 April 2024.

The first method (which HMRC refer to as the '[standard transitional calculation](#)', although at Aries we tend to refer to it as the 'default approach'), the member's LSA and LSDBA are generally reduced by 25% of the amount of the LTA that the member had used up by any BCEs that occurred between 6 April 2006 and 5 April 2024.

**Note 1:** There are some circumstances under which a member's LSDBA is actually reduced by 100% of the amount of the LTA already used up, which are explained in the article [here](#).

**Note 2:** Under the default approach, where the member has a pre-commencement pension in payment but has not had a BCE between 6 April 2006 and 5 April 2024, the pre-commencement pension is taken into [account](#) at the member's first Relevant BCE.

This 'default approach' **must** be used where there is no TTFAC for the member.

HMRC have also introduced a second, alternative approach – the [TIFAC](#) approach (or, in Aries terms, the 'bespoke approach'). (This is unlike the transition to the LTA regime, under which a single, uniform, approach applied for taking pre-commencement pensions into account applied for everyone.)

This 'bespoke approach' **must** be used if there is a TTFAC for the member.

## What is a TTFAC?

In simple terms, a TTFAC is a document that (amongst other things) certifies the individual's:

- 'lump sum transitional tax free amount'; and
- 'lump sum and lump sum death benefit transitional tax free amount'.

These amounts are specific to the individual and are based on the actual benefits that they have taken before 6 April 2024.

The lump sum transitional tax free amount is the total of the following:

- where the member became entitled to any Pension Commencement Lump Sums (PCLSs) before 6 April 2024, the amount of those PCLSs;
- where the member has become entitled to any Uncrystallised Funds Pension Lump Sums (UFPLSs) before 6 April 2024, the amount of the tax-free element of those UFPLSs;
- where the member has become entitled to any Stand-Alone Lump Sums (SALSs) before 6 April 2024, the amount of the tax-free element of those SALSs; and

- where the member has a pre-commencement pension in payment, 25% of the amount of the member's LTA that was deemed to have been used up by that pre-commencement pension on the member's first BCE on or after 6 April 2006 (see the 'Basics' section above).

The lump sum and lump sum death benefit transitional tax free amount is the total of the following:

- the tax-free element of each 'relevant' lump sum that the member has become entitled to before 6 April 2024;
- the tax-free element of each 'relevant' lump sum death benefit paid in respect of the member before 6 April 2024; and
- where the member has a pre-commencement pension in payment, 25% of the amount of the member's LTA that was deemed to have been used up by that pre-commencement pension on the member's first BCE on or after 6 April 2006.

Here, a benefit is 'relevant' if it constituted a [BCE](#) for LTA purposes. Note that this would include any of the weird and wonderful BCE 9s that may have occurred for or in respect of the member. Conversely, benefits that were never BCEs, such as 'small pots' or trivial commutation payments, were not BCEs and so do not need to be included.

**Note 1:** HMRC have [confirmed](#) their intention to amend the current [legislation](#) such that any PCLS or any tax-free element of a UFPLS paid before 6 April 2024 to a member who was aged over 75 (which were not BCEs because the member was aged over 75) must be included for the purposes of the lump sum and death benefit transitional tax free amount. This amendment will be retrospective back to 6 April 2024, so HMRC say that schemes should take such benefits into account when providing a TTFAC even before the legislation is amended.

**Note 2:** according to [HMRC](#), any tax-free lump sums taken before 6 April 2006 must also be included for both the lump sum transitional tax free amount and the lump sum and lump sum death benefit transitional tax free amount. This does not appear to be what the legislation requires and would appear to involve an element of double-counting.

Suppose that a member took benefits before 6 April 2006 that included a 'tax-free lump sum' (the pre 6 April 2006 equivalent of a PCLS). Taking HMRC at their word, that lump sum would need to be included as a tax-free lump sum taken before 6 April 2006 and then effectively included again when the pre-commencement pension is taken into account.

## What constitutes a pre-commencement pension?

As covered above, where the member has a pre-commencement pension in payment, this must be taken into account for their lump sum transitional tax free amount and their lump sum and lump sum death benefit transitional tax free amount.

This inevitably leads to the question as to exactly what is a pre-commencement pension.

Unhelpfully, as part of the updates to the PTM for the introduction of the LSA / LSDBA regime, HMRC have managed to [archive](#) their earlier guidance on this issue. Fortunately, we can still fall back on the guidance in the old [RPSM](#), which explains exactly what constitutes a pre-commencement pension.

## Who can (or cannot) apply for a TTFAC?

An application for a TTFAC can be made by the member or, if the member is deceased, by their Legal Personal Representatives (LRPs).

A member who has already used up all of their LTA as at 5 April 2006 can still apply for a TTFAC.

A member whose only BCEs involved events that did not give rise to any tax-free benefit (such a transfer to a Qualifying Recognised

Overseas Pension Scheme – a BCE 8) can also apply for a TTFAC.

To be able to apply for a TTFAC, however:

- the member **must have** had a BCE under a registered pension scheme between 6 April 2006 and 5 April 2024. If there has been no BCE, no application for a TTFAC can be made (even if the member has a pre-commencement pension in payment).
- the member **must not have had** a Relevant BCE under a registered pension scheme on or after 6 April 2024. (Note that, according to [HMRC](#), the TTFAC must have also been issued before the first Relevant BCE, which is not quite the same thing.)
- the member **must be** a member of a registered pension scheme (or, for deceased members, must have been a member of a registered pension scheme immediately before their death).

**Note:** an immediate annuity contract established on or after 6 April 2006 is not a registered pension scheme. HMRC have [confirmed](#) their intention to amend the legislation to enable members (and their LPRs) to apply to an annuity provider for a TTFAC. This amendment will not be retrospective back to 6 April 2024.

## How to apply for a TTFAC

To apply for a TTFAC, the member must apply to a scheme (any scheme) of which they are a member and the application must include '[complete evidence](#)' of the member's lump sum death benefit transitional tax free amount – essentially complete evidence of all the amounts the TTFAC will take into account.

Whilst the [legislation](#) only refers to complete evidence as to the member's lump sum and lump sum death benefit transitional tax free amount, to make this work in practice, that evidence would need to specify the nature of each relevant lump sum so that the pension scheme can identify whether or not each lump sum counts towards the member's lump sum transitional tax free amount.

For example, if a member's application simply said that the member received a lump sum of £35,000 on 10 January 2022 which was entirely tax-free, the pension scheme would not know whether this was a PCLS (in which case it would count towards the member's lump sum transitional tax free amount and their lump sum and lump sum death benefit transitional tax free amount) or a Serious Ill Health Lump Sum (in which case it would only count towards the member's lump sum and lump sum death benefit transitional tax free amount).

## Assessing an application for a TTFAC

On receipt of an application, the pension scheme will need to assess the information provided, to determine whether or not it constitutes 'complete evidence'.

If the evidence is not complete, the scheme must refuse the application, notifying the applicant no later than three months after the receipt of the application. This is the only ground on which a scheme can refuse an application.

Where the scheme considers that the evidence is complete, the scheme must issue the TTFAC no later than three months after the receipt of the application.

According to [HMRC](#):

*"[S]hould the member realise that they have not submitted all their evidence ... there is nothing in legislation preventing that further information from being provided to the scheme as part of the same application. ...*

*A response must still be provided within the three-month window set out at paragraph 3 of schedule 9 to Finance Act 2024. In addition, the three-month window does not restart each time a member provides additional evidence. The three-months starts on the date on which the application is received."*

This view surprised us a little, given that the relevant legislation says that an application "must be accompanied by complete evidence as to the amount of the individual's lump sum and death benefit transitional tax-free amount".

It could well be argued that an 'application' that is not accompanied by 'complete evidence' is not a valid application at all. Taking this view, the three month time limit would only begin when 'complete evidence' is provided.

Until and unless HMRC change their stance here, however, schemes may be well advised to follow HMRC's interpretation of the three month time limit.

This is particularly the case given that a failure to issue a TTFAC within the three month period, or to reject the application because the evidence was incomplete within the three month period, carries a penalty. This penalty is up to £300, with a further possible penalty for an ongoing failure, under Section 98 of the Taxes Management Act 1970.

Where a scheme does reject a member's application for a TTFAC due to incomplete evidence being provided, the member can make a further subsequent application. However, if the member does not provide any additional evidence, the scheme can simply reject the application again.

## What should a TTFAC look like?

At the time of writing (early April 2024), nobody knows, as no TTFACs have been issued.

At a more practical level, the legislation does not specify what a TTFAC should look like. It must, however, certify that the scheme administrator of the scheme is satisfied as to -

- the amount of the individual's lump sum transitional tax-free amount, and
- the amount of the individual's lump sum and death benefit transitional tax-free amount.

In addition, the TTFAC must contain the following information:

- the individual's name, address and national insurance number,
- the individual's lifetime allowance previously-used amount expressed as a percentage of the standard lifetime allowance,
- the amount that the scheme administrator is satisfied is the individual's lump sum transitional tax-free amount, and
- the amount that the scheme administrator is satisfied is the individual's lump sum and death benefit transitional tax-free amount.

## What should a member do with their TTFAC?

Where a TTFAC is in force (it comes into force on the day on which it is issued) it serves to replace the standard transitional calculation.

The effect of this is that, where a member has a Relevant BCE under any scheme, that scheme **must** take any in force TTFAC into account when assessing a member's available LSA and / or available LSDBA on a Relevant BCE.

For clarity, where a TTFAC is in force, the standard transitional calculation cannot be used.

In practical terms, then, when a Relevant BCE is due to occur under a scheme, the scheme will need to establish whether or not a TTFAC is in force and, if so obtain a copy.

**Note:** HMRC have [confirmed](#) their intention to require members who have a TTFAC in force, and also have remaining rights in a scheme, to notify that scheme accordingly. Whilst this amendment is being made mainly in the context of providing 'LSA / LSDBA used' statements (the equivalent of the previous 'LTA% used' statements), it may also help in the context of future Relevant BCEs, although we will need to see the proposed amending legislation to confirm this.

## Cancelling a TTFAC

A TTFAC can (and must) be cancelled by any registered pension scheme where it appears to the scheme administrator that the amount of the individual's lump sum transitional tax-free amount and / or lump sum and death benefit transitional tax-free amount specified in the TTFAC is incorrect.

Where a scheme cancels a TTFAC, it must notify the member (or the deceased member's LRP) accordingly. The TTFAC ceases to apply when such a notice of cancellation is provided.

**Note:** a member, or a member's LPR, is unable to cancel or revoke a TTFAC – see the 'Can a member...' section below.

This, of course, leads to the question of what happens for any Relevant BCEs that occurred when the (incorrect) TTFAC was in force?

According to [HMRC](#):

*"[O]n cancellation of a TTFAC ... any past RBCEs will continue to be reduced by the transitional tax-free amounts. This means the actual transitional tax-free amounts. It does not mean the erroneous amounts stated on the individual's certificate which have been the cause of its cancellation."*

This appears to be a surprising conclusion, given that:

- it presupposes that a replacement TTFAC will be applied for and provided (which may not be the case and **cannot** be the case if the member has actually had a Relevant BCE under any scheme), and
- suggests that any replacement TTFAC actually takes effect before it was issued.

In further [guidance](#), HMRC have stated that: *"[W]here the revocation of a certificate reveals that the member should have had no lump sum allowance available, it is possible that previous payments were unauthorised. This includes where either:*

- *there has been a previous RBCE [Relevant BCE] consisting of the payment of a pension commencement lump sum (PCLS)*
- *a scheme has paid a trivial commutation lump sum (TCLS) or winding up lump sum (WULS) since 6 April 2024*

*The government will therefore bring forward legislation to provide that, under such circumstances, these lump sums will not be treated as unauthorised payments. They will however be fully taxable at the individual's marginal rate."*

It is also possible that certain benefits, whilst authorised, will have been under-taxed. For example, 25% of a UFPLS is paid [tax-free](#), provided that that 25% element does not exceed the lower of the member's available LSA or available LSDBA.

Where the member held an (incorrect) TTFAC, a scheme may have wrongly concluded that a member did have sufficient LSA / LSDBA available to pay out the full 25% tax-free.

HMRC are currently considering who should be responsible for revisiting any such previous Relevant BCEs, although it seems likely that this will be the responsibility of the scheme under which the Relevant BCE(s) occurred.

### **Can a member revoke or cancel a TTFAC if they end up worse off as a result?**

No.

Only a registered pension scheme can cancel a TTFAC, and only then if they consider that the Certificate is incorrect.

### **So, who should apply for a TTFAC?**

This has been the subject of many queries to the Aries Help Desk.

There are some obvious cases where it might be advantageous to the member to obtain a TTFAC. For example, where the member's only

BCEs involved a transfer to a Qualifying Recognised Overseas Pension Scheme, or automatic BCEs occurring at age 75 (where no tax-free benefit was involved).

Members who took benefits (including a standard 25% PCLS) when the LTA was below £1,031,000, or members who took a PCLS of less than the usual 25% maximum, may benefit from a TTFAC..

Ultimately, however, it will be for the individual to consider their own circumstances and determine whether or not they should apply for a TTFAC.

### **Summary**

TTFACs are set to be a key feature of the post 5 April 2024 landscape.

Whilst there are still some unresolved issues here and this is a rapidly developing area, this Aries Insight attempts to pull together what we know at this stage and to highlight some of the outstanding matters that remain to be addressed.

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