

## Qualifying Recognised Overseas Pension Scheme (QROPS)

### 1 Introduction

1.1 Following the changes introduced by the Finance Act 2004, there are now less restrictive rules on transferring pensions rights overseas from UK registered pension schemes. However, the treatment of funds post transfer are more restrictive. The changes were part of the intended simplification of the previous pensions tax regime, and compliance with EU court decisions and the EU pensions directive.

1.2 The three main circumstances where an overseas transfer would occur are:

- when individuals who migrate (or intend to migrate) from the UK wish to transfer their UK pension funds to an overseas pension scheme (either in or outside the EU), and
- when returning nationals return to their country of citizenship
- where UK residents have personal circumstances where they may benefit from arranging their pension affairs in another jurisdiction.

### 2 Principles

2.1 A transfer of rights overseas is feasible, provided it is to a qualifying recognised overseas pension scheme (QROPS). Many are listed on an HMRC website at: [www.hmrc.gov.uk/pensionschemes/qrops-list.htm](http://www.hmrc.gov.uk/pensionschemes/qrops-list.htm)

The list is updated every month although it should be noted that not every QROPS is listed so it cannot be taken as exhaustive.

2.2 For the UK pension provider, the main formality is to be satisfied that the receiving overseas pension scheme is on the approved list of QROPS and that the individual is a member.

### 3 QROPS requirements

3.1 Under regulation 3(3) of SI 2006/208 a QROPS must undertake to report future payments made to individuals who are either resident in the UK in the year of payment or who were resident in one of the previous five tax years. However, a QROPS will need to check on the position of the member when a payment is made as the member could have become UK resident again after a period of non-residence. The reporting enables HMRC to establish whether the QROPS has made a payment which, had it been made from a UK scheme, would have been an unauthorised payment.

3.2 If the QROPS reports what is considered to be an unauthorised payment, HMRC will raise an assessment on the member of the QROPS. The member is responsible for settling the tax liability.

### 4 Opportunities

- 4.1 The new rules governing the transferring of pensions overseas can give some migrating individuals significant advantages (such as mitigating currency risks). Some jurisdictions do not give tax relief on pension contributions while others allow a lump sum pension payment to be made free of all local taxes. Different regimes impose different investment restrictions. Appropriate design of a QROPS arrangement (i.e. an advanced QROPS rather than a standard model) can result in tax efficient retirement planning on the pension fund, in accordance with HMRC requirements and without aggressive tax planning.
- 4.2 Certain jurisdictions may be unattractive, especially where the tax rules governing pensions in the overseas jurisdiction are more onerous. For example, what may have been tax-free cash in the UK could be converted into a taxable pension overseas. This may be balanced against any tax liability there might be in the overseas jurisdiction on the same tax-free cash, had it come from the UK scheme.
- 4.3 Irrespective of whether there is a double taxation treaty between the UK and the overseas jurisdiction, taxation issues should still be assessed, to ensure there are no consequential charges. For individuals, tax is just one of a number of points that need consideration when determining the merits of a transfer from a UK pension scheme. A transfer needs to represent good value, particularly where it comes from a defined benefits scheme, and provide a positive impact on the individual's lifestyle.
- 4.4 QROPS can be established in countries without a double taxation agreement. This would make investigation of the tax position in the intended country of residence even more essential.

## **5 Position of advisers**

- 5.1 Advisers who specialise in overseas pensions issues will need to be comfortable that:
- the individual client is eligible for entry into membership of a QROPS under HMRC rules.
  - the individual will benefit from moving his arrangements overseas.
  - they are aware of the risks of possible future changes in UK and local law, of advisory expenses, of possible future withdrawal of HMRC recognition and its impact, of the taxation implications and of domestic and foreign restrictions (e.g. on appropriate investments permitted to QROPS in the jurisdiction chosen).
  - domestic advisers are available to help in domestic compliance and investment management.
- 5.2 Since the sums involved can often be significant it may be sensible to take expert advice on investment rather than rely simply on sales brochures from foreign firms.
- 5.3 This note explores the use of QROPS for individuals who are in personal pensions, SIPPS or SSASs, and does not cover similar but different issues which are involved with the export of conventional occupational pension schemes. Nor does it discuss the different rules for EU and non-EU QROPS. Advisers should also bear in mind that some types of transfer may be subject to FSA regulation.
- 5.4 The mechanics of meeting a client's needs in moving pension rights overseas may include (1) selecting a suitable QROPS (2) in an appropriate jurisdiction (3) if necessary registering the QROPS with HMRC and arranging for the local administrator to make the necessary undertakings to HMRC (4) and making sure the client is aware of the penalties for failure to meet HMRC requirements. The advice

process may take several months and involve, depending on the complexities, several thousand pounds in internal and external charges.

## 6 Conclusions

- 6.1 Advising on QROPS requires a specialised level of knowledge and expertise. We would not anticipate all advisers being in a position to advise in this complex area. Non-expert advisers should refer any clients for whom QROPS might be suitable to a QROPS specialist.
- 6.2 New rules and guidance will continue to evolve and it is essential that those advising keep up to date with changes.
- 6.3 There are residual concerns about the developing practice of HMRC to withdraw recognition from QROPS without notice or appeal, which might result in harsh and even penal tax charges in relation to individuals who have chosen that particular QROPS.
- 6.4 QROPS within the EU may in due course prove particularly advantageous even to those who have no intention of moving overseas.
- 6.5 The new international pension planning rules offer significant opportunities (especially to those moving overseas), to reduce management costs and improve the nature of benefits and choice of investments.

### **Useful references**

<http://www.hmrc.gov.uk/PENSIONSCHEMES/faqs.htm>  
<http://www.hmrc.gov.uk/PENSIONSCHEMES/qrops-list.htm>  
<http://www.hmrc.gov.uk/pensionschemes/ps-newsletter36.htm>

***Whilst we have endeavoured to ensure that the information on this fact sheet is correct, we do not warrant its completeness, accuracy or relevance to individual circumstances. Legal or other appropriate professional advice should be sought before making any investment decisions.***

*The Personal Finance Society would like to thank the Pinsent Masons pensions law team; Rachel Vahey of Aegon; Geraint Davies of Offshore QROPS; and Robert Reid of Syndaxi who assisted with the preparation of this factsheet.*