Transfers to overseas schemes – new rules

August 2017 Pension briefing

HIGHLIGHTS

The March 2017 Budget detailed several measures in relation to overseas pension schemes. These reforms, contained in the Finance Act 2017, aim to permit tax free transfers where people have a genuine reason to move their pension abroad, whilst cracking down on illegitimate uses of overseas funds and the potential for pension scams.

A new charge – the overseas transfer charge – has been introduced on transfers to qualifying recognised overseas pension schemes (QROPS) from 9 March 2017, unless the transfer is excluded from the charge. In addition, a scheme which was a QROPS will have stopped being one on 14 April 2017 if it failed to submit a revised undertaking to HMRC.

THE OVERSEAS TRANSFER CHARGE (OTC)

- Prior to the changes announced in the March 2017 Budget, a **qualifying recognised overseas pension scheme** (**QROPS** – defined in the box below) could receive transfers from registered UK pension schemes free of tax (up to the lifetime allowance – currently £1m). The transfer would be an authorised member payment.
- Transfers to QROPS "requested" on or after **9 March 2017** are subject to a 25% tax charge on the transfer, deductible before the transfer by the scheme administer/manager of the scheme making the transfer. The member and scheme managers are jointly and severally liable for the charge. The OTC will not affect any lifetime allowance charge which may arise.
- A "request" is a substantive request to the scheme administrator of the individual's registered pension scheme on which the administrator must take action (in other words, providing an instruction to transfer £X or £% of the individual's pension funds to a named overseas pension scheme). If a member formally requested the transfer to a named QROPS before 9 March 2017 but the transfer payment was not made until after 9 March 2017, the OTC will not apply. A transfer to a different QROPS to the one named in the pre-9 March transfer request will not qualify for the exemption, however. Nor is a casual enquiry made prior to 9 March 2017 sufficient to avoid the OTC.
- A transfer from a QROPS will be liable to the OTC (subject to the exemptions) if it is an onward transfer made within five years of the original transfer to a QROPS (assuming it was not previously charged). If the onward transfer includes funds derived from a pre-9 March transfer, that part will not be liable to the OTC.
- To decide if the OTC applies, schemes will have to ask the member for information about the transfer. There is an updated form (Pension schemes: member information APS S263) to do this. If the member does not supply this and the transfer is made, it is liable to the OTC and the transferring scheme must deduct the 25% tax.
- The information requirements for UK pension scheme administrators making overseas transfers have also changed. Administrators now have to tell HMRC, the transferring member and the overseas scheme manager details of every transfer and whether the OTC applies. If a transfer is not a taxable overseas transfer the administrators will need to provide the reason why.

OTC EXEMPTIONS AND EXTENSIONS

- There are a number of exemptions from the OTC which may apply:
  - both individual and QROPS are resident (for tax purposes) in the same country after the transfer;
  - both individual and QROPS are resident in an European Economic Area country (EU plus Iceland, Liechtenstein and Norway) after the transfer;
  - the QROPS is an occupational pension scheme sponsored by the individual's employer – this is aimed at schemes set up by multi-national employers for their employees working in a branch or for a group company. HMRC says it will keep this exemption under review;
  - the QROPS is an overseas public service pension scheme and the individual's employer participates in the scheme; or
  - the QROPS is a pension scheme established by an international organisation to provide benefits in respect of past service, and the individual is employed by the international organisation.
- The OTC will also apply to transfers that were tax-free when they were made if, within five tax years of the date of the original transfer (calculated from the 6 April after the transfer), the condition that exempted it from the charge ceases to apply – HMRC can effectively claw back the charge. Members are obliged to inform the scheme

manager (within 60 days) if they change their country of residence during the five year period.

- Conversely, if the charge is paid at the point of transfer, and within five years an exemption applies (the member moves to the same country as the QROPS, for example) then the charge is refunded to the member.

Qualifying recognised overseas pension schemes (QROPS)

A QROPS is a scheme that HMRC recognises as eligible to receive transfers from a registered pension scheme in the UK. In order to count as a QROPS, the scheme must be both an "overseas pension scheme" and a "recognised overseas pension scheme" and, in addition, it must meet the extra requirements to be a QROPS.

Broadly, an **overseas pension scheme** is one which is:

- not registered;
- established outside the UK;
- regulated by a regulator (if there is one); and
- recognised for tax purposes in the country where it is established.

A **recognised overseas pension scheme (ROPS)** is an overseas pension scheme which meets further requirements; in short:

- benefits test– where tax relief on benefits is available for non-resident members, equivalent relief must be available for resident members;
- pension age test – benefits transferred to a ROPS (so far as they relate to funds that have received UK tax relief) must be payable no earlier than normal pension age, (unless they are paid in circumstances in which they would be authorised member payments if paid from a registered scheme); and
- establishment test – the scheme must be established in the European Economic Area or a country the UK has a double tax treaty with.

The extra conditions for a ROPS to be a **QROPS** include:

- the scheme manager must notify HMRC that the scheme meets the ROPS conditions;
- the manager must undertake to tell HMRC if the scheme ceases to be a ROPS and to comply with provision of information requirements;
- the scheme must not be excluded from being a QROPS (for example, for a significant failure to comply with provision of information rules); and
- the scheme manager made the pre-14 April confirmation (see QROPS status below).

QROPS STATUS

- QROPS scheme managers were required to contact HMRC by **13 April 2017** with a revised undertaking that they would operate the OTC. If they did not do so, the scheme automatically stopped being a QROPS from **14 April 2017**.
- Registered pension scheme administrators are advised, if a member requests a transfer to a QROPS, to check if the scheme gave this undertaking. If it did not, no transfer should be made. Any transfer received on or after 14 April 2017 by a scheme that ceased to be a QROPS will be an unauthorised payment and will be liable to the scheme sanction charge.
- HMRC publishes and updates a list of schemes that count as ROPS (see box above) but this does not guarantee that the ROPS meets the requirements to be a QROPS.

ACTION POINTS FOR TRUSTEES AND ADMINISTRATORS OF UK SCHEMES

- The transfer to an overseas scheme that is not a QROPS is likely to be an unauthorised member payment attracting penal tax charges.
- If the transfer is to a QROPS, then in addition to the existing due diligence checks on the status of the receiving scheme (which includes checking the published list of ROPS notifications no earlier than 24 hours before the transfer is made) scheme administrators/managers will also need to check whether or not the transfer will be liable to the OTC.
- If the basis for the OTC not applying is the nature of the pension scheme and the member's employment status, HMRC expect administrators to "check critically" the information provided by the member. If due care is not taken in establishing the correct position of the transfer, HMRC will not discharge the administrator from liability to the OTC.

APPLICABILITY OF UK TAX RULES – EXTENSIONS

There have been changes to align UK and overseas pensions more closely and, as part of this, there have also been extensions to the application of UK tax rules to pension savings transferred to a QROPS.

The rules are complex but, in particular, the Finance Act 2017 includes an extension from five to 10 years of the UK's taxing rights over recently emigrated non-UK residents' overseas lump sum payments from funds that have had UK tax relief. It also introduced a new five year period after the transfer to the QROPS in which payments will be subject to UK tax regardless of where that individual is resident.

The main impact will be on individuals who emigrated from the UK over five years ago who now want to transfer to a QROPS – these individuals will be brought into the scope of UK tax when they previously would not be subject.

KEY HOGAN LOVELLS PARTNERS		
Katie Banks	**+44 20 7296 2545**	**katie.banks@hoganlovells.com**
Duncan Buchanan	**+44 20 7296 2323**	**duncan.buchanan@hoganlovells.com**
Claire Southern	**+44 20 7296 5316**	**claire.southern@hoganlovells.com**
Edward Brown	**+44 20 7296 5995**	**edward.brown@hoganlovells.com**
Faye Jarvis	**+44 20 7296 5211**	**faye.jarvis@hoganlovells.com**

About Pensions360

Hogan Lovells' broad cross-practice capability covers the full spectrum of legal advice from lawyers who understand pension clients; advising on issues from scheme investments, corporate restructurings and transactions, to funding solutions and interaction with the Regulator or the courts. The ability to draw on specialists from other practices who are not only experts in their field but have an in-depth understanding of pension issues sets us apart from our competitors.