

A guide to (Q)ROPS: Recognised Overseas Pension Schemes

Introduction

Qualified Recognised Overseas Pension Schemes ((Q)ROPS) were first introduced in the Pensions Act 2006 as part of 'Pensions Simplification'.

Whilst it has always been possible to apply to the UK authorities to transfer pension benefits overseas, the introduction of the (Q)ROPS regime was designed to streamline this process. Transfers to (Q)ROPS would be deemed 'recognised' and not subject to any 'un-authorised payment charges' as detailed later.

The following is a brief guide to (Q)ROPS and should not be taken as exhaustive. Advice should be sought from a suitably qualified intermediary both on a potential transfer and the tax implications in your country of residence.

Who should consider a transfer to (Q)ROPS?

(Q)ROPS are potentially suitable for those who have already emigrated from the UK on a permanent basis, UK non-domiciles who will return home, and those intending to migrate from the UK on a permanent basis at some time in the future. HMRC have also confirmed that (Q)ROPS are suitable for UK Domicile & Resident persons who are not intending to emigrate.

However, in the 8th April 2017 Budget, HMRC announced the introduction of the 'overseas transfer charge' (OTC) which came into effect on the 9th April 2017.

The OTC arises on all transfers to (Q)ROPS that have been requested on or after 9 March 2017. There are however exemptions, which if met will allow the transfer to proceed without an OTC. These can be summarised as follows:

- i. the member is resident in the same country in which the (Q)ROPS receiving the transfer is established
- ii. the member is resident in a country within the European Economic Area (EEA) and the (Q)ROPS is established in a country within the EEA
- iii. the (Q)ROPS is set up by an international organisation for the purpose of providing benefits for, or in respect of, past service as an employee of the organisation and the member is an employee of that international organisation. PTM112200 provides guidance on the definition of an international organisation. It does **not** simply mean a multi-national employer.
- iv. the (Q)ROPS is an overseas public service pension scheme and the member is an employee of an employer that participates in the scheme
- v. the (Q)ROPS is an occupational pension scheme and the member is an employee of a sponsoring employer under the scheme.

For those who do not meet the above criteria an OTC will be made at time of transfer.

The Overseas Transfer Charge (OTC) - is 25% of the 'transferred value' where it arises on a transfer. Where the overseas transfer charge arises on a transfer from a registered pension scheme, the transferred value is the total amount of the sums and value of assets transferred after the deduction of any lifetime allowance charge due (where BCE 8 applies and a lifetime allowance charge actually arises) on the transfer.

Post transfer charges - the 'relevant period' - if a transfer is not liable to the overseas transfer charge because when the transfer is made the member is resident in the same country in which the (Q)ROPS receiving the transfer is established, or the member is resident in a country within the European Economic Area (EEA) and the (Q)ROPS is established in a country within the EEA but after the transfer circumstances change so that neither of these conditions are met, the OTC charge now arises. This only applies if the change of circumstances takes place within the relevant period of five full tax years from the date of the original transfer from the registered pension scheme to the (Q)ROPS. Five full tax years (the relevant period) is either:

- where the transfer is made on 6 April, five years from that date, or
- where the transfer is made on any other date, the period from that date until the next 5 April plus a further five years from 6 April.

Definition of Resident - in relation to the member 'residence' means residence for tax purposes. The definition of tax residence will vary from country to country. Guidance on the UK statutory residence test [can be found here](#). Where an individual is resident in more than one state in a tax year, residence in this context is to be taken as the country of residence for the purposes of the OECD model tax convention prevailing at the relevant time. The EEA is made up of any EU member state as well as Liechtenstein, Norway and Iceland. (In the context of this question this includes Gibraltar which is considered part of the EU as part of the UK.) In addition, if, after a taxable transfer has been made, the member becomes resident in a different country, the member is required to tell the scheme administrator within 60 days of the change of residence. This requirement only applies for five full tax years following the date of the payment. They should also tell the scheme manager of the (Q)ROPS.

TMF International Pensions strongly recommends that clients should seek advice from a suitably qualified and regulated intermediary before proceeding with any transfer.

What can be transferred?

Most UK pension schemes can be transferred to a (Q)ROPS including 'protected rights' and those schemes in 'drawdown'. The exceptions are typically State Pensions, Annuities and Final Salary/Defined Benefit schemes once in payment.

Investment options

Each jurisdiction has its own rules and regulations governing the range of investments that can be held within their pension funds. However, clients and their advisors should remember that pension funds transferred to (Q)ROPS (which has not been 'approved' merely recognised by HMRC), are 'relevant transfers' of UK tax relieved pension savings.

TMF International Pensions offers an open architecture platform:

- i. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall invest the assets of the Scheme in the best interest of Beneficiaries. In the case of a potential conflict of interest, the Scheme Administrator, or the Investment Manager that may appointed to manage the Scheme's assets shall ensure that investment activity is carried out in the sole interest of the Beneficiaries;
- ii. the Retirement Scheme Administrator or the Investment Manager, as applicable shall ensure that the assets of a Scheme are properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole;

- iii. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall ensure that the assets of the scheme are sufficiently liquid and/or generate sufficient retirement income to ensure that retirement benefits payments can be met closer to retirement date for commencement of retirement benefits;
- iv. subject to paragraph (vi), a Scheme shall not engage, directly or indirectly, in transactions with, or grant loans to, any of its Members or connected persons thereto;
- v. a Scheme shall not engage, directly or indirectly, in borrowing in connection with property purchases on behalf of any of its Members or connected persons thereto, other than on fully commercial terms, provided that the Scheme may borrow up to 50% of the amount of property purchased which must be valued by an Independent Qualified Valuer; Immovable property held by the Scheme may be used by the Members or connected persons thereto provided that it is on fully commercial terms which must be valued by an Independent Qualified Valuer;

Investment Manager

- 1.3.4 The Scheme may appoint an Investment Manager, to carry out the investment management function of the Scheme, independent from the entity carrying out the custody function in connection with the Scheme.
- 1.3.5 The Investment Manager of the Scheme may either be:
- a) the Retirement Scheme Administrator if it is not undertaking the custody function for the Scheme itself and if duly licensed under the Act to carry out investment management services for a Scheme; or
 - b) an entity licensed to carry out investment management services to Schemes under the Act; or
 - c) an investment manager established in another Member State or EEA State and duly authorised for this activity in accordance with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC and 2011/61/EU, as amended from time to time, and which has passported its services in Malta; or
 - d) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment management activities.

Custodian

- 1.3.6 The Scheme may appoint a Custodian, independent from the entity carrying out the investment management services in connection with the Scheme.
- 1.3.7 Where the assets of a Scheme are entrusted to a Custodian for safekeeping, the Custodian of the Scheme shall either be:
- a) the Retirement Scheme Administrator if it is not undertaking investment management function for the Scheme itself and if duly licensed under the Act to carry out custody services for a Scheme; or
 - b) an entity licensed to carry out custody services to Schemes under the Act; or
 - c) custodians or depositaries established in another Member State or EEA State and duly authorised for this activity in accordance with Directive 2004/39/EC or Directive 2006/48/EC, or accepted as a depository for the purposes of Directive 2009/65/EC, as amended from time to time, and which has passported its services in Malta; or
 - d) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake custody services.

Investment Advisor

1.3.8 A Scheme may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Scheme.

1.3.9 The Investment Advisor of a Scheme may either be:

- a) an entity licensed to provide investment advice to Professional Clients under the Investment Services Act (Cap.370); or
- b) an investment advisors established in another Member State or EEA State and duly authorised for this activity in accordance with Directive 2004/39/EC, as amended from time to time and which has passported its services in Malta; or
- c) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment advice.

Benefit Options

Benefits available from pension funds will vary from jurisdiction to jurisdiction.

Pension rule 1 in section 165 Finance Act 2004 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age (55), unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme or on death. Pension commencement lump sum is limited to 25% and the residual fund is to be used to provide an income for life.

As of April 5th 2015, HMRC changed the rules governing pension withdrawals, effectively allowing members to take their 25% PCLS (Pension Commencement Lump Sum) Tax Free in UK and the residual pot (75%) in a single or regular payment, subject to the marginal rates of income tax.

Please consult your adviser for full details, and refer to: Pension Changes 2015 (<https://www.gov.uk/government/news/pension-changes-2015>).

Within Malta, there are new regulations which also came into force on 6th April 2015. The rules referred to under Part B.4.6.8 of the Pension Rules for Personal Retirement Schemes Issued in Terms of the Retirement Pensions Act 2011 shall not apply to Members of retirement schemes licensed under the Act which qualify as (Qualifying) Recognised Overseas Pension Schemes under rules issued by Her Majesty's Revenue and Customs ("UK HMRC"). Members of these Schemes with 'relevant transfer funds' shall be subject to UK HMRC Rules.

What is a (Q)ROPS?

The requirements that a scheme must meet in order to be considered a (Q)ROPS (Recognised Overseas Pension Scheme), are laid down in <https://www.gov.uk/government/publications/pension-tax-for-overseas-pensions/pension-tax-for-overseas-pensions> Pension Tax for Overseas Pensions and <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm112300>

HMRC now refer to (Q)ROPS only as ROPS having removed the "Qualifying" statement on their website (see HMRC published list <https://www.gov.uk/government/publications/list-of-qualifying-recognised-overseas-pension-schemes-grops/list-of-recognised-overseas-pension-schemes-notifications> page 3, but still use QROPS on other Forms!).

Reporting Requirements

The scheme manager of a (Q)ROPS has undertaken to comply with the information requirements imposed under The Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208].

Payment Information:

The scheme manager must notify HMRC when they make a payment, or are treated under certain provisions as making a payment, in respect of a relevant member. However, the scheme manager does not have to notify HMRC if the payment is made 10 years after the day of the transfer that created the relevant transfer fund and the relevant member is a person to whom the member payment provisions do not apply under paragraph 2 of Schedule 34 (see RPSM13102120).

The member payment provisions do not apply unless: the member is resident in the UK when the payment is made (or treated as made), or although not resident at that time, has been resident in the UK earlier in the tax year the payment is made or in any of the 5 tax years immediately preceding that tax year.

The scheme manager must provide HMRC with the following information:

- a) the full name (first names, surname or family name) of the member including title
- b) full postal address of member, including country
- c) the date on which the payment was made or treated as made
- d) the amount and currency of the payment
- e) the nature of the payment
- f) the relevant member's date of birth & national insurance number,

This information must be provided within 90 days beginning on the day on which the payment is made or treated as made, or by such other time as may be agreed between HMRC and the scheme manager.

Change of tax residency or pension transfer request:

In addition, if, after a taxable transfer has been made, the member becomes resident in a different country, the member is required to tell the scheme administrator within 60 days of the change of residence. This requirement only applies for five full tax years following the date of the payment. They should also tell the scheme manager of the (Q)ROPS.

Information the member needs to provide to the scheme manager of the (Q)ROPS when requesting an onward transfer - the scheme manager needs certain information to determine whether or not the transfer is liable to the overseas transfer charge. Within 60 days of requesting the transfer the member must provide the following information to the scheme manager:

- their name and date of birth
- their national insurance number, where applicable, or confirmation in writing that the member does not qualify for a national insurance number
- their principal residential address and, if they are were and ceased to be resident for tax purposes in the United Kingdom, the date that residence ceased
- the name and address of the receiving (Q)ROPS, the country in which it is established, and its (Q)ROPS reference number
- whether or not the receiving (Q)ROPS is an occupational pension scheme
- whether or not the receiving (Q)ROPS is an overseas public service pension scheme (see [PTM112300](#) for definition)

- whether or not the receiving (Q)ROPS is established by an international organisation (see [PTM112200](#) for definition) for the purpose of providing benefits for or in respect of past service as an employee of the organisation.

Where the answer to any of the last three extra questions is 'yes' the member must also supply the following details to the scheme manager:

- their employer's name and address
- their job title
- the date their employment started
- their tax reference in respect of the employment (if known)

Members do not need to provide this information if all their UK related funds under the scheme are:

- pre 9 March 2017 funds, or
- the transferred funds were liable to the overseas transfer charge, either on transfer into the current (Q)ROPS or on an earlier transfer where there has been a chain of transfers between (Q)ROPS, and the member has not qualified for a repayment of the tax charge, or
- the member payment provisions do not apply to the transferred funds, either because the relevant time limit has been exceeded or because the member has used up all their relevant transfer fund or ring-fenced transfer fund.

These exemptions cover the situations where the overseas transfer charge cannot arise on a transfer between (Q)ROPS.

Change of residence

In addition, if, after a taxable transfer has been made, the member becomes resident in a different country, the member is required to tell the scheme administrator within 60 days of the change of residence. This requirement only applies for the length of the relevant period.

HMRC Published list

<https://www.gov.uk/government/publications/list-of-qualifying-recognised-overseas-pension-schemes-grops/list-of-recognised-overseas-pension-schemes-notifications>

This list contains some of the overseas entities that have told HMRC they are Recognised Overseas Pension Scheme (ROPS) HM Revenue and Customs (HMRC) can't guarantee these are ROPS or that any transfers to them will be free of UK tax.

It is your responsibility to find out if you have to pay tax on any transfer of pension savings.

HMRC will usually pursue any UK tax charges (and interest for late payment) arising from transfers to overseas entities that do not meet the ROPS requirements even when they appear on this list. This includes where taxpayers are overseas. HMRC will also charge penalties in appropriate cases.

Tax relief is given on pensions to encourage saving to provide benefits in later life. Accessing benefits (directly or indirectly) before age 55 will result in a liability to UK tax charges in all but the most exceptional circumstances. You should seek suitable professional advice including from a regulated financial advise



Why you should choose Malta?

- Full Member of EU since 2004.
- Member of:
 - EBA (European Banking Authority)
 - EIOPA (European Insurance & Occupational Pensions Authority)
 - ESMA (European Securities Marketing Authority)
 - IOSCO (International Organisation of Securities Commission)
 - IAIS (International Association of Insurance Supervisors)
- Pensions are a regulated activity.
- Pension Scheme administrators and Individual Pension schemes are licensed.
- Compulsory independent auditing of pension schemes, submitted to the Regulator.
- 'Over 60 Double Tax Treaties with a further 8 in the pipeline.
- Single, accessible and responsive regulator – MFSA.
- All licences, legislation and regulations published on MFSA website – www.mfsa.com.mt
- Comprehensive, legislative & regulatory framework.
- IFRS standards since 1997.
- Sophisticated ICT Infrastructure

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