

## Should your pension retire abroad?

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**Imagine a clear sky, warm sunshine, a gentle breeze, clear blue sea and beautiful scenery. Whether you wish to stop work tomorrow or continue until you take your last breath, you might harbour ambitions to live abroad, for some or all of the time. Many successful UK people move abroad permanently and this opens up some very interesting planning opportunities in respect of their UK registered pension benefits.**

When pension simplification legislation came into effect on 6<sup>th</sup> April 2006, pension plans became much more attractive. In particular the ability to avoid buying an annuity at age 75 and the possibility of transferring the unused fund to other generations proved appealing. However, since then the conditions relating to taking benefits at age 75 have been tightened and the Finance Act 2007 brought in a tax charge of up to 82% on residual pension funds transferred to non-dependants arising from the death of a pension scheme member.

**.... the tax advantages of QROPS are so attractive that moving abroad permanently is worthwhile....**

A consequence of what some may see as a confiscatory tax is that people find creative solutions to avoid it. One possible solution to the problem might be a Qualifying Recognised Overseas Pension Scheme (QROPS). However, to take advantage of QROPS one must either have left the country or intend to do so. Individuals with substantial pension funds may find that the tax advantages of QROPS are so attractive that moving abroad permanently is worthwhile as part of an overall financial plan.

### **What is a QROPS?**

A QROPS is an overseas pension arrangement to which transfers from UK pension schemes are permitted, by virtue of meeting certain conditions set out by Her Majesty's Revenue and Customs (HMRC) relating to how they are established and regulated and how benefits are paid.

The overseas pension scheme must be established and regulated outside the UK as a pension scheme. If there is nobody to regulate it, the scheme must either be established in the European Union or in Norway, Iceland or Liechtenstein or the scheme's rules must provide that at least 70% of the UK tax-relieved fund will be used to provide a pension for life from the member's normal minimum pension age. The latter is sometimes referred to as the "70% rule".

The overseas scheme must be 'recognised for tax purposes' in the country or territory in which it is established and the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) must be payable no earlier than they would be through a registered pension scheme in the United Kingdom.



A recognised overseas pension scheme is an overseas pension scheme that meets the requirements prescribed under The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (SI 2006/206).

In addition to the provisions associated with 'overseas pension schemes' referred to above, the scheme must be established in a country or territory with which the UK has a double taxation agreement that contains exchange of information and non-discrimination provisions.

### **The 'five complete tax years' rule**

The QROPS must undertake to provide HMRC with information when it makes a payment in respect of a member who has transferred pension rights from a UK registered pension scheme. However, the QROPS scheme manager does not have to notify HMRC of a payment if the QROPS scheme member **is not resident in the UK when the benefit payment is made, has not been resident in the UK earlier in the tax year in which the payment is made, or in any of the five tax years immediately preceding that tax year.** This arises from regulation 3(3) of SI 2006/208.

This provision applies because after five complete tax years of non-residence the pension fund within the QROPS becomes subject to the laws of the relevant overseas jurisdiction - and the link for example to the UK requirement that a pension fund must primarily be used to provide an income for life is lost.

The five-year rule referred to is to be found in the Finance Act 2004 - Schedule 34, clause 2. This schedule deals with the tax charge that will apply in respect of a transfer to a relevant non-UK pension scheme.

### **The application of a transfer of pension rights to a QROPS**

Those who have left the UK permanently, or at least intend to do so for a considerable period, and those who intend to leave the UK in the future may therefore wish to consider this attractive proposition associated with their UK pension rights.

To be an effective and attractive solution it is essential to establish perhaps that a number of criteria are satisfied:

1. That there are substantial and effective laws associated with investor protection in the receiving jurisdiction.
2. That a pension provider within the receiving jurisdiction is able and willing to accept pension funds transferred in from the United Kingdom, irrespective of whether the individual is resident in that jurisdiction.
3. That the pension provider in question is registered and authorised by the authorities in that jurisdiction.



4. That there are acceptable taxation consequences within the fund itself once invested within the jurisdiction in question.
5. That, subject to satisfying the five-year rule, there is no requirement to secure an income by way of an annuity - and that capital may be withdrawn from the pension fund if required.
6. That following the death of the member any remaining fund held within the scheme is released to the member's beneficiaries.

The transfer of pension rights from any UK-registered pension scheme is not a matter to be taken lightly. Any UK-based adviser advising on the transfer must be suitably qualified and have the relevant permission granted by the Financial Services Authority, particularly where the transfer is from a UK occupational pension scheme

In some jurisdictions where QROPS have been established, there is no taxation applied on income or capital gains arising to the member's fund. However, generally any withholding tax (for example on dividend income) cannot be reclaimed.

#### **What pension rights can be transferred to a QROPS?**

***A QROPS ....may be used to receive transfer values from any UK registered pension scheme***

A QROPS (subject to its own rules) may be used to receive transfer values from any UK-registered pension scheme, including protected rights funds.

Separate requirements of the Department of Work and Pensions associated with protected rights funds must be satisfied prior to transfer. These are straightforward and involve completing form CA1881.

Transfer values from many registered pension schemes in the UK will be paid to the QROPS in cash. In other instances it may be possible to transfer existing assets but the additional costs associated with this would need to be considered.

Transfer values may be taken into a QROPS from a UK-registered pension scheme (other than annuities or secured pensions) even where benefits have been taken. For example if there is an existing UK self-invested personal pension scheme where unsecured income is being drawn ('drawdown') it may remain beneficial to transfer to a QROPS where the individual is non-UK resident and intends to remain so over the long-term.

There is no limit to the size of funds that may be accumulated within a QROPS. However, a transfer from a UK-registered pension scheme to a QROPS is a 'benefit crystallisation event' requiring a test against the individual's lifetime allowance (£1.6 million for the 2007/8 tax year). Any registration that is required for protecting funds that exceeded the lifetime limit on 5<sup>th</sup> April 2006 should be dealt with before transferring out to a QROPS.



## Taking benefits – retirement age

There can be considerable flexibility in terms of the timing of taking benefits from a QROPS. If you have been UK resident at any time during the five complete tax years prior to taking benefits then UK provisions apply (the QROPS restrictions), effectively prohibiting (because of the tax charges that would apply) the taking of benefits before the age of 50 (55 from 6 April 2010).

The following assumes that the five-year rule would not apply and relates to one specific QROPS scheme.

The retirement age is documented as being age 60. However, a member of this scheme may generally take benefits from age 50 depending on the circumstances prevailing. Generally some benefit must be taken by age 75 – although there is some flexibility on this. However if the QROPS member wanted to take benefits earlier than 50, and as the QROPS restrictions no longer apply, the assets of the plan could be transferred to another form of international scheme which would provide flexibility for benefits to be provided at an earlier date.

Benefits may, for example, be taken in pension form with no particular limits on the amount of pension that may be taken. Although this is described as an 'annuity' there is no obligation to buy an annuity from a life office and the amount of 'annuity' required may be drawn from the fund. This does not, however, preclude the possibility of withdrawing most or the entire fund in a single transaction. In whatever form benefits are drawn there will be no deduction of local taxation at source. Taxation will apply in accordance with the legislation governing the scheme member's country of residence.

Following the death of the QROPS member, the remaining fund would be subject to the discretionary disposal of the scheme trustees, in accordance with the provisions of the scheme rules. This will generally result in a disposal in lump sum form to beneficiaries nominated by the scheme member. On death following the creation of an entitlement to pension benefits from the scheme, no inheritance tax charge should apply, even in respect of individuals who remain UK domiciled, as confirmed by the recent pre-budget report.

***...following the creation of an entitlement to pension benefits from the scheme, no inheritance tax charge should apply***

## QROPS in practice

John has funds within a UK registered pension scheme of £3m – he is aged 57, and has not yet taken benefits from the scheme. John's children are now into adulthood and his daughter is working in Canada, whilst his son plans to emigrate to New Zealand with his family within the next few years.

John and his wife own a second home in southern France and spend as much of their leisure time there as they can. John objects strongly to the requirement that eventually he will have to use his pension fund to buy an annuity (or have 82% of the fund following death after age 75 being lost in tax charges). He is, therefore, interested in the possibility of going to live in their house in the south of France and transferring his pension fund to a QROPS.



John and his wife emigrate to France and John transfers his pension fund to a QROPS. After five complete tax years outside the UK John is allowed to access his fund in accordance with local law and does not have at any stage to buy an annuity. Indeed if he wishes, John may access the entirety of the fund subject to any taxation in France. By accessing his fund John avoids using the alternatively secured pension and a potential tax charge of up to 82% on 'left over funds'.

So if you are someone with substantial pension assets and you intend to live abroad permanently, it looks as though the world (and your pension fund) is your oyster.

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