

How Osborne death tax changes impact on QROPS

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For a long time now, the appropriate use of QROPS for British expats who are resident in the US, has been in debate. Some see it as a credible solution whilst others say that the risks far outweigh the benefits.

QROPS are a legitimate pension solution to a great many British expats but a good quality financial adviser should always consider the impact of the clients' residency and how the local tax laws will affect the benefits of a QROPS. What may work very well for an expat in Portugal may be completely different to one in the US.

The April Budget and UK chancellor George Osborne's [recent announcement around the taxing of death benefits from a UK pension](#), however, certainly improve the argument to use a UK based solution.

Let's look at the two in more detail.

Income

- From a QROPS

Assuming the QROPS is based in Malta, income can be paid gross and taxed federally and by the state (if applicable) in the US.

- From a UK pension

The double taxation treaty between the UK and US clearly defines how distributions can be taxed. The individual would apply for a NT (No Tax) tax code and then gross income payments can be taxed federally and by the State (if applicable) in the US.

Death Benefits

- From a QROPS

This can be paid to any chosen beneficiary free of tax.

- From a UK based pension

Pre-retirement benefits can be paid to any chosen beneficiary free of tax. Post retirement, benefits can be paid free of tax as long as the individual is under age 75. Over 75, benefits can be paid as a lump sum, taxed at a reduced rate of 45% and then from 5th April 2015 at the beneficiaries marginal rate of tax.

Access

- From a QROPS

QROPS legislation only allows 30% of the fund to be taken as a lump sum. The remaining 70% must be used as income.

- From a UK pension

Currently, only 25% of the fund can be taken as a lump sum but from April 2015 there will be no limits on the amount of the fund you can access. Any lump sum above 25% would be taxed as income.

Risks

- From a QROPS

Many believe a transfer into a QROPS when the individual is a US resident is a taxable event. Daniel Freedman of London and Capital wrote an article about this for International Adviser which is [worth a read](#).

Malta, which is a commonly used QROPS jurisdiction, has signed up to the Foreign Account Tax Compliance Act (FATCA). The QROPS trustees are obliged to report to the IRS information about the QROPS which may lead to tax charges for the transfer itself and the compliance of the underlying investment assets. The investment assets must be structured in a way that they are IRS compliant so they are not classed as a Passive Foreign Investment company (PFIC) which incurs 30% withholding taxes.

- From a UK pension

UK-based pensions utilise the double taxation treaty and are clearly defined as qualifying from an IRS point of view. The tax treaty has been in operation for many years so it is tried and tested. Another key point is that UK-based pensions are excluded from FATCA reporting so there are no worries of incurring withholding taxes due to the compliance of the underlying assets.

The verdict

Generally QROPS can be a good solution for British expats but for those in the US, a thorough assessment needs to take place as to whether the risks are just too much to outweigh the benefits.

The recent changes to UK pension legislation have greatly improved the death benefits and access to retirement funds. There are UK pensions which are designed for Brits in the US and we expect the market for these products to increase rapidly now that this type of option is relevant and very attractive.

The answer to which pension is more suitable will, as ever, depend upon your individual circumstances but with so many changes to pensions, their taxation and how benefits are taken, it is imperative for people to take FCA regulated, independent financial advice to help them make the right choice.

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