Pension Services

Qualifying Recognised Overseas Pension Scheme - (QROPS)

In recent years, UK nationals have increasingly been looking beyond the UK both for employment opportunities and a place to retire.

Several million UK nationals already live overseas and research by the Institute of Public Policy Research estimates that whilst one in twelve Britons of UK pensionable age currently live abroad, they predict that this will increase to nearly one in five by 2050.

In addition, a survey from the insurance provider RIAS found that about 10% of the UK's over-50 population are "seriously considering" a move to another country and data from the Office for National Statistics suggests that 400,000 people in the over-50 age group are already planning to emigrate.

Retiring abroad

According to the Institute of Public Policy Research, in 1981 there were 252,000 British pensioners living overseas but by 1991 that number had more than doubled to 594,000 and by 2006 there were more than one million – one in twelve of all British pensioners.

Almost 25% of British pensioners overseas live in Australia, whilst Canada (15.2%) the USA (12.7%), Ireland (10.1%), Spain (7.2%), New Zealand (4.5%), South Africa (3.7%), France (3.3%) and Italy (3.3%) make up the eight other top retirement destinations for British retirees. With the number of British pensioners living abroad predicted to increase to one in five by 2050.

Recognised transfers

A transfer-out to an overseas scheme is only a recognised transfer if it is transferred to a Qualifying Recognised Overseas Pension Scheme (QROPS).

A Qualifying Recognised Overseas Pension Scheme is a Recognised Overseas Pension Scheme (ROPS) that meets certain requirements.

Firstly, in order to be classed as a 'Recognised' Overseas Pension Scheme, the scheme must meet one of the following conditions:

- Be established in a European Economic Area (EEA) member state; or
- Be established in a country or territory that has a Double Taxation Agreement (DTA) with the UK; or
- If it is established elsewhere, the scheme rules of the receiving scheme must provide for all of the following:
- At least 70% of the funds must be used to provide an income for life; and

- No pension payments can commence before the normal minimum pension age (50 until 6 April 2010 and 55 thereafter) UNLESS the individual is in ill-health or they have a 'protected' lower pension age following a block transfer to the overseas scheme; and

- Residents of the country or territory concerned can join the scheme.

Secondly, in order to be classed as a 'Qualifying' Recognised Overseas Pension Scheme, the scheme must:

- Have notified HMRC that the scheme is a recognised overseas pension scheme and have provided evidence of that if required;

- Have informed HMRC of the name of the country or territory in which the scheme is established. If this is not an EEA member State or a territory with which the UK has a Double Taxation Agreement, the scheme manager must also provide evidence that the scheme fulfils the requirements as set out in the third bullet point above;

- Have undertaken to notify HMRC if the scheme ceases to be a recognised overseas pension scheme; and

- Have undertaken to provide HMRC with certain information on making payments in respect of scheme members

An overseas pension scheme must use HMRC form APSS 251 to apply to be registered as a 'qualifying' recognised overseas pension scheme.

Transfers to Australia and the USA

Australia

In view of the fact that Australia is the most popular pre and post retirement destination for UK nationals, the changes made to Australian pension legislation in 2007 must be taken into account when considering transferring pension benefits there.

If benefits are transferred to Australia:

- There is a six month window after becoming an Australian resident to transfer pension benefits to an Australian qualifying recognised overseas pensions scheme (QROPS) without incurring a tax charge.

- Any transfers made after six months will give rise to an income tax charge based on the growth of the invested funds from the date of becoming Australian resident to the date the pension is transferred. For transfers that do take place after 6 months, it is therefore a case of 'the sooner the better.'

- Complying with the 6 month rule in order to avoid the tax charge on the invested funds could be a problem for those with substantial transfer values because there is an annual limit on contributions (including transfers-in from overseas) of A$150,000, although the A$150,000 limit can be bought forward for the next two tax years, if the individual is under age 65. This means that, for someone under age 65, a maximum of $450,000 (c£245,000 based on exchange rates in November 2009) could be transferred in the first 6 months, as long as no contributions are made during the first three tax years.

- Whilst contributions and transfers can be made until age 75, if someone is over 65, they must work a total of at least 40 hours over a period of 30 consecutive days during the tax year to qualify. This is an important consideration for clients over 65 intending to retire in Australia as contributions and transfers-in will not be possible if the 30 day requirement is not fulfilled.

- When benefits are subsequently drawn from an Australian scheme, then as long as they have been an Australian resident for more than 5 tax years and are over age 60, it may be possible for the whole fund to be taken as a tax free lump sum - any UK restrictions on how the benefits can be taken will cease to apply.

But what happens if pension benefits are left in the UK after someone has emigrated there?

- Under Australian Foreign Investment Fund (FIF) rules, personal pension funds left in the UK for more than six months after someone has become an Australian resident become liable to Australian income tax on any fund growth. This will continue to apply until such time that the benefits are subsequently transferred to Australia.

- Benefits held in a UK occupational scheme, however, would only be subject to income tax in Australia on the growth of the invested funds if they are transferred to Australia after the 6 month window has closed. In this case, the tax charge would be based on the fund growth from the date of becoming an Australian resident to the date that the benefits are transferred.

- This means that if UK occupational scheme benefits are transferred to Australia within 6 months or, alternatively, are never transferred, they should escape any liability to Australian tax on the fund growth.

- With FIF in mind though, a transfer from a UK occupational pension scheme to a UK personal pension could lead to an income tax liability in Australia on the invested funds going forward.

- When benefits are subsequently drawn from a UK pension scheme, whilst the UK has a double taxation agreement with Australia (thus ensuring that any pension benefits paid from a UK registered pension scheme to an Australian resident will not be subject to tax in the UK) both the tax free cash and income will be subject to Australian income tax.

In view of the above, the relative tax treatment of the funds and benefits could make a transfer of funds to an Australia QROPS very attractive – particularly if the transfer is made within six months of emigrating.

We would strongly advise however that anyone who is emigrating, or who has already emigrated to Australia, should seek advice from a suitably qualified adviser who is well versed in Australian pension and taxation law before any decision regarding transferring pension funds is made.

USA

Whilst the legislation will permit a transfer from a UK registered pension scheme to a QROPS in the USA, and there are some US pension schemes on HMRC's official QROPS list, our understanding is that transfers to the USA are not currently allowed under US Internal revenue rules because they will only permit 'rollovers' (pension transfers) from other US schemes.

The fact that any overseas scheme that meets the prescribed conditions could be registered with HMRC as a QROPS does not, therefore, in itself mean that the scheme concerned will actually be permitted to accept the transfer.

Summary

For many ex-pats living overseas, leaving the pension benefits in the UK and subsequently drawing them from a UK arrangement (whether via an annuity, scheme pension or drawdown plan) could still be the most straightforward and tax-efficient solution. This is most likely to be the case if:

- No tax would be payable in the overseas country in respect of any uncrystallised pension funds which are retained in the UK; and

- The UK has a double taxation agreement with the country in question; and/or

- The client has a plan with valuable guaranteed annuity rates which would be lost on transfer

For other ex-pats however, transferring to a QROPS could be beneficial. This is most likely to be the case if:

- The overseas country will levy a tax charge in respect of any uncrystallised pension funds which are left to accumulate in the UK; and/or

- The UK does not have a double taxation agreement with the country in question; and/or
- After being a Non UK resident for 5 whole tax years, the retirement and/or death benefits payable from the QROPS would receive more favourable tax treatment than they would have done in the event that they had instead been drawn from the UK.

Whether or not a transfer will be appropriate though will of course depend on the facts of each case, taking into account the particular circumstances of the individual, where the benefits are being transferred to, how the benefits could be taken after the 5 year window, and how they would be treated for tax.

As always, anyone considering transferring pension benefits abroad should seek our advice as we have completed over £10 Million on pension transfers/consolidations for overseas based clients in the last 4 years and with offices covering the Middle East, South East Asia, Australasia, North America and Africa we are well versed in both pension and taxation law in the jurisdictions.

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