

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

## Introduction

Qualified Recognised Overseas Pension Schemes 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 'unauthorised 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 Finance Act 2017, HMRC announced the introduction of the 'overseas transfer charge' (OTC) which came into effect on the 9th March 2017.

The OTC arises on all transfers from a UK Registered Pension Scheme to a (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 arises) on the transfer.

**Post transfer charges - the 'relevant period'** - if a transfer is not liable to the OTC because when the transfer is made, one of the above exemptions is applicable, but after the transfer circumstances change so that neither of these conditions are met, the OTC charge will now arise. 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** - The members 'residence' in this case 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. So far, post Brexit, this has not changed, and the UK remains considered as an EEA country for OTC purposes). 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.

TMF International Pensions strongly recommends that clients 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, 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 the Beneficiaries. In the case of a potential conflict of interest, the Scheme Administrator, or the Investment Manager that may be 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 the Scheme are properly diversified in such a way as to avoid accumulation 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 benefit 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.
- vi. 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.

### **Benefit Options**

The retirement options for members and the age when they can commence to take retirement benefits depend upon the type of pension scheme they transferred to TMF.

If the member transferred UK pension benefits directly from a UK Registered Pension Scheme or indirectly from an alternative providers' QROPS (which can evidence the original source as a UK relevant transfer), Members will take benefits in a manner consistent with those provided for under UK Rules provided for under UK Authorised Member payments for pension income under UK legislation.

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.

As of April 5<sup>th</sup> 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 which can be found [here](#).

If members transferred pension benefits which did not originate from a UK Registered Scheme, or the member or their employer previously made contributions into the TMF scheme, the retirement options in respect of these benefits are as per B.4.6 of the Pension Rules and as follows.

### **Initial Cash Lump Sum**

In line with Malta Rules, members can commence benefits, irrespective of whether they continue to work, at any time from age 50 and no later than age 75. Members can take up to 30% of their Fund as an Initial Lump Sum.

The remaining benefits after the initial cash lump sum can be used to provide a pension income in one or a combination of the following ways:



### **(i) Programmed withdrawals (“PWD”)**

The remaining funds after the initial cash lump sum must be used to provide members with a regular pension income payable at least annually, with the maximum annual payment based on the UK GAD rates, the fund size and age at point of initially taking the income.

This limit will be reviewed every 3 years until age 75, and annually thereafter based on the fund value, age and GAD rates applicable at the date of the review.

### **(ii) Purchase an Annuity**

Alternatively, members can elect to purchase a lifetime annuity at any time, by transferring all or part of their remaining Pension Fund to an appropriately licensed Annuity Provider

### **(iii) Additional Cash Lump Sum (ALS)**

After three years from the date of commencement of retirement benefits, members may request an Additional Cash Lump Sum income payment. Thereafter they can make a request annually to take further ALS, subject to the conditions below.

Additional Cash Lump Sum Income can only be paid where at the point of request and based on the members’ age, value of the fund and UK GAD rates, we establish that the fund is adequate to generate sufficient retirement income throughout the members’ lifetime. If this applies, then 50% of the excess value of the pension fund may be withdrawn as an ALS Income. Sufficient retirement income is defined as the current annual national minimum wage in the country where the member is residing.

### **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 [here](#) and [here](#).

HMRC now refer to (Q)ROPS only as ROPS having removed the “Qualifying” statement on their website (see HMRC published list [here](#))

### **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 OTC. 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 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.

### **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.
- Extensive network of Double Tax Treaties
- Single, accessible and responsive regulator – MFSA.
- All licenses, legislation and regulations published on MFSA website – [www.mfsa.com.mt](http://www.mfsa.com.mt)
- Comprehensive, legislative & regulatory framework.
- IFRS standards since 1997.
- Sophisticated ICT Infrastructure



Global reach  
Local knowledge

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