

# HMRC Gets Rough on QROPS Abuse

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QROPS is the well used acronym standing for Qualifying Recognised Overseas Pensions Scheme, and is the benchmark required by HMRC before permitting any HMRC approved scheme to be transferred overseas.

In brief the requirements for QROPS are that:

- ~ It must be established outside the United Kingdom
- ~ There is in the country in which it is established a body that regulates pensions and the scheme is so regulated.
- ~ And for Tax recognition that a scheme has to meet to be an Overseas Pension Scheme that is enabled to accept transfers from HMRC approved schemes in the UK the Scheme must:
  - ~ Be recognised for tax purposes under the tax legislation of the country or territory in which it is established and
  - ~ It must be open to persons resident in the country or territory in which it is established and
  - ~ All or most of the benefits paid by the scheme to the Members who are not in serious ill health are subject to taxation
  - ~ At least 70% of the Member's UK tax relieved scheme funds should be designated to provide an income for life for the Member not before the Member has reached "Normal Retirement Age".

There have been some significant developments in Pension transfers using the QROPS route recently. There has been concern over how long HMRC would tolerate those who so openly advertise QROPS tax loopholes, and related breaches. I think that we have now seen HMRC reaction.

HMRC have recently closed down the Singapore option and we expect further similar developments soon.

There are 3 tiers of types of schemes that have, in the past, obtained QROPS approval:

- ~ "Type 1". Jurisdictions facilitating "pension busting" with no tax payable upon 100% pay out of the pension to the beneficiary.
- ~ "Type 2". Schemes which via QROPS transfer the funds into a tax regimen in which no tax is payable on the benefits withdrawn albeit the benefits are withdrawn over time (Despite "Primary Condition 2c of QROPS approval per HMRC website which states:
  - "All or most of the benefits paid by the scheme to members who are not in serious ill- health are subject to taxation"*
- ~ "Type 3". Schemes that do not "Trust Bust" and which do require some sort of tax to be withheld on benefits paid

HMRC have already outlawed Type 1 schemes, and it will be very interesting to see what words are used by HMRC in their no doubt vigorous defence of their actions in the Singapore case. We expect HMRC to close down all such schemes, and to clear up any apparent confusion over QROPS status. What was a significant development was the speed with which HMRC acted after they became aware of the issues. It is understood that HMRC have not only a website showing the names of all the schemes that have obtained QROPS (and have agreed to their names being posted on the internet) but also a list of the jurisdictions concerned along with the total value of monies being transferred by country/jurisdiction. In this way HMRC is able to monitor leakages and act rapidly to put a stop to practices with which it is in disagreement.

Type 2 schemes are the sort of thing advocated by some; we cannot see this being allowed for long; particularly given Primary condition 2 c as above.

Type 3 schemes are those that do not "Trust Bust" and do require a tax on the withdrawal of

benefits unless a DTA is in existence, in which case there is only one layer of tax payable in the country of residence of the Member. This is the approach advocated by Isle of Man Treasury authorities, and consequently, it follows that the Isle of Man Treasury has a good relationship with HMRC. The key here seems to be not to provoke HMRC – and certainly not unnecessarily, and yet there are those who seem keen to do this by openly advertising benefits that do not long term sit with the HMRC intention of QROPS legislation and the idea of long term pension planning.

On the other hand the Isle of Man Treasury has indicated its willingness to explore DTAs or Taxation and Economic Co-operation Agreements with suitable countries and has recently concluded such arrangements with the seven members of the Nordic Council – Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. Spain is currently in similar discussions with the Isle of Man.

Those selecting aggressive solutions may regret their decisions later as they face the prospect of mounting legal expenses in offshore jurisdictions in order to sort out their schemes which have been disallowed by HMRC, where the Trustees have been removed and QROPS approval has been rescinded. HMRC has long arms and may

seek to levy an unauthorised payment charge of 55% on transactions which it believes are unauthorised.

It also seems apparent from browsing the internet that the more aggressive the option the higher the fees payable. So if you are offered something that seems to be too good to be true i.e. 100% payout of an approved pension transferred from the UK without any tax penalty but subject to fees of between 5% and 10% of the entire pension itself. You need to know that it probably is too good to be true, and the fees are 5 to 10 times higher than you might reasonably expect in the circumstances, and are the real giveaway as the driver for the “opportunity”.

It is clearly a potential gravy train for Legal counsel and we can see trouble ahead for schemes that incur the wrath of HMRC, as well as trouble for their advisers who have given advice to their own clients to take these aggressive options, not to mention the poor Members whose prospects for a peaceful retirement may be jeopardised.

Perhaps the old maxim Caveat Emptor has never been more true!

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