Technical Note 11.

Budget 2017 & QROPS - what has changed?

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A bombshell landed during the Chancellor's Budget speech on 8 March 2017. In summary there are three sets of important changes. The first has immediate effect from today 9 March 2017, and the second takes effect from 6 April 2017. The third affects all QROPS schemes.

A. From 9 March 2017

With immediate effect: unless certain conditions are satisfied, then transfers to QROPS which have not been previously "requested" from the transferring scheme will be subject to a 25% tax charge on transfer. This is called the Overseas Transfer Charge. SIPPS are unaffected.

This tax charge **does not apply up front** where:

1. The transfer is to a QROPS located in the European Economic Area (EEA - see note at the end) *and* the member is also tax-resident in an EEA member state. So a transfer from a UK registered pension scheme to a Maltese QROPS for a resident of Spain, for example, is not affected up front, meaning that the Overseas Transfer Charge does not apply as an **immediate** consequence of the transfer.

2. The member is tax-resident in the same jurisdiction as the receiving QROPS. So a transfer from a UK registered scheme to a New Zealand QROPS for a tax-resident of New Zealand is similarly unaffected.

This tax charge **does not apply** at all where:

3. The member wishes to transfer to a public service scheme, international scheme, or occupational pension scheme (no matter where the scheme and member are located). So, a member of the Shell Pension Scheme sent to Ecuador and joining the Shell Pension Scheme there is not affected, assuming that the Shell Ecuador Pension Scheme is a QROPS.

However, if the exemption applied on the basis of either of conditions 1) or 2) *and* the member's circumstances change within the first five tax years following the transfer so that the relevant exemption would no longer apply if the transfer were to be made at the time of the change, then the Overseas Transfer Charge **will** then apply at that time, as a liability for the QROPS member and the QROPS administrators.

Effect on the main QROPS jurisdictions

a) Gibraltar is not of itself a member of the EEA but is considered part of the EU as a part of the UK. So, transfers to a QROPS in Gibraltar are not caught up front by the Overseas Transfer Charge for so long as the transferring member is tax-resident in the EEA.

b) Malta is a member of the EEA, so transfers to a Maltese QROPS will be subject up front to the new 25% tax charge, unless the member is tax-resident of an EEA member state.

c) The Isle of Man holds neither membership nor associate membership of the European Union, and lies outside the European Economic Area (EEA). So, transfers to an Isle of Man QROPS will be subject to the Overseas Transfer Charge up front, unless the member is also a tax-resident of the Isle of Man.

d) Transfers to a New Zealand QROPS will be free up front of the Overseas Transfer Charge only in respect of tax-residents of New Zealand.

Effect on Pipeline transfer business

The Overseas Transfer Charge applies where the transfer has not been 'requested' before
9 March 2017. The term "requested" means that the member had given the UK pension scheme administrator an instruction to transfer £X or X% of their pension funds to a named overseas pension scheme.

The Overseas Transfer Charge provisions will (we believe) apply to all cases where the transferring scheme has not as at 9 March 2017 received signed discharge forms from the member.

We would expect that UK schemes will interpret this as meaning that they must also be in possession of all the relevant documents including the Pension Schemes Act 2015 sign off where required. Schemes may well take their own views on this but can be expected to proceed with considerable caution.
If your understanding is that specific cases introduced to IPTS may be caught by the overseas transfer charge, you must tell IPTS immediately so we can cease work on the relevant cases.

And there's more....

As mentioned above, but worth repeating: if a transfer meets one of Exemptions 1) or 2) above and so is not subject to the Overseas Transfer Charge at the time of the transfer, it may become chargeable later. This will occur if the exemption conditions which were met to make the transfer tax-free cease to be met within the first five full tax years following the date of transfer.

Similarly where the Overseas Transfer Charge was paid on a transfer, a change in the member's circumstances in the five tax years following the transfer may mean the tax charge can be reclaimed from HMRC.

If a transfer to a QROPS requested before 9 March 2017 is completed but the funds are sent to another QROPS, that transfer is **not** a pre 9 March 2017 requested transfer. This is because the funds have not been sent to the scheme included in the transfer request made before 9 March 2017.

B. From 6 April 2017

New tax rules will apply to transfers to QROPS where the transfer is made on or after 6 April 2017. In such cases then when benefits are taken with five years of the date of transfer then UK tax rules will apply, irrespective of how long the member has been non-UK tax-resident.

This will work alongside the previously announced measure where the "five tax year" rule is extended to ten tax years from 6 April 2017. This means that even where an individual has been non UK tax-resident for more than ten tax years, then on a transfer made after 5 April 2017 UK tax rules will apply for five tax years following the transfer to the QROPS.

C. QROPS Reapplication

Any scheme that is currently a QROPS and wishes to continue to qualify must undertake to HMRC by 13 April 2017 that it will operate the Overseas Transfer Charge. Failure to do so means that the scheme *automatically* ceases to be a QROPS on 14 April 2017, and there is no right of appeal.

We expect that trustees/administrators of ceding schemes where a transfer has been instructed may consider holding such transfers until they have evidence from the recipient scheme after 14 April 2017 that it continues to qualify as a QROPS. A transfer to a scheme that has ceased to be a QROPS will attract the Unauthorised Payment

Charge and Scheme Sanction Charge.

Where a scheme ceases to be a QROPS, members of the QROPS who transferred into it from a UK scheme could in theory find themselves liable to the tax charges above. Given the nature of events on this occasion, we doubt that HMRC would pursue such charges arising as a result of the scheme's failure to make the necessary undertaking, but this remains uncertain in the absence of any statement from HMRC.

Note - the EEA

The EEA is made up of EU member states as well as Liechtenstein, Norway and Iceland. For this purpose, this includes Gibraltar which is considered part of the EU as part of the UK.

EU countries: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

The Spring Budget brought unexpected and dramatic changes to expat pension options.

This technical note details those changes to QROPS in plain English. If you're concerned the changes affect you, **contact us immediately** to discuss your options. And if you're not sure how they may impact on you, your pension and your choices in the future, **talk to us** and we'll help you.

Talk to us