# Protecting your QROPS

## Nancy Chien, senior associate in the International Private Client group of Bedell Cristin, examines the importance of not falling foul of HMRC when moving benefits in a UK pension scheme to Jersey

Nancy Chien, senior associate in the International Private Client group of Bedell Cristin

THIS article is relevant for trustees, employers, members and administrators of Jersey pension schemes that receive transfers from UK pension schemes or other QROPS for Jersey residents. In practice this is likely to occur when previously UK resident individuals move to Jersey and wish to transfer their accrued benefits in a UK pension scheme to a Jersey scheme.

It is important that Jersey pension schemes which receive transfers from UK pension schemes or other QROPS comply with the requirements in the UK, as otherwise the members in respect of whom the transfers have been made may be liable to pay penal tax in the UK of up to 55% of the amount transferred.

This article explains the requirements which Jersey pension schemes must comply with in order to obtain or maintain QROPS status for transfers in respect of Jersey residents, especially in the light of the changes that were made to the QROPS legislation in 2012.

**What is QROPS and who needs it?**

QROPS stands for 'qualifying recognised overseas pension schemes'. In the UK, employees and employers obtain tax benefits when they make pension contributions into UK registered pension schemes. If a member wishes to transfer his accrued pension benefits to another scheme, he would only be able to retain the tax benefits if the transfer was made to another UK registered pension scheme or a QROPS.

If a transfer is made to a non-UK scheme which does not have QROPS status, the member is liable to pay penal tax (comprising an unauthorised payment charge and surcharge), which may be up to 55% of the value of the transfer payment. It is therefore crucial that all Jersey schemes that receive transfer payments from UK schemes meet QROPS requirements.

HMRC publishes a QROPS list on its website. However, the fact that a scheme is on the list or has previously received confirmation from HMRC that it has QROPS status does not mean that the scheme is a QROPS, nor will it provide a defence in the event penal tax is charged.

A scheme will only be a QROPS if both the scheme rules and the administration of the scheme continue to comply with the QROPS requirements at the time at which transfer is made.

**What are the QROPS requirements?**

A Jersey pension scheme will be a QROPS if it meets the following criteria:

- The scheme rules provide that at least 70% of the transfer payment (which has been subject to UK tax relief), will be used to provide pension benefits for the member. Accordingly, only 30% of the transfer payment can be used to provide a lump sum payment upon the member's retirement.
- The scheme rules provide that pension benefits must not be paid to members before they reach age 55, except in the case of ill-health. What constitutes ill-health is specifically defined for this purpose.
- The scheme must be open to Jersey residents (which would be the case for all Jersey pension schemes).
- The scheme must be approved for tax purposes by Jersey's Comptroller of Taxes.
- The scheme administrator must obtain a QROPS reference number by applying to HMRC. The administrator will need to complete appropriate forms issued by the HMRC for this purpose.
- The administrator of the pension scheme must give HMRC certain undertakings, including an undertaking that it will provide HMRC with the information prescribed in regulations.

**A scheme administrator is also required to:**

- notify HMRC that the scheme is a QROPS and provide evidence of that (i.e. a copy of the trust deed and rules) if required - it is therefore important that the scheme's trust deed and rules comply with the QROPS requirements;
- inform HMRC of the country in which the scheme is established (i.e. Jersey);
- notify HMRC if the scheme ceases to be a QROPS;
- notify HMRC of any payment made within ten years of the transfer payment or where the member has not ceased to be a UK resident five years prior to the payment being made.

The scheme administrator must provide the details of the payment to the HMRC within 90 days, including details of the member, the date, nature and amount of the payment; and

- provide any other information required by HMRC.

There are other reporting obligations which are not referred to in this article. If the scheme does not have an administrator, the reporting obligations must be satisfied by the trustee of the scheme.

If the scheme administrator fails to comply with these reporting obligations, HMRC can de-list the scheme as a QROPS, which would have significant consequences for members and potential liability for the trustee and/or scheme administrator.

**Action required**

Schemes which rely on QROPS status to receive transfers should have their trust deed and rules reviewed by a pensions specialist. Further, scheme trustees/administrators should review their scheme administration policy to ensure that adequate procedures are in place to enable them to comply with the onerous reporting obligations.

For further information, please contact Nancy Chien, Senior Associate in the International Private Client group of Bedell Cristin, who has specific experience advising on QROPS matters, and has advised on pensions matters in both the UK and Jersey.

The information contained in this article is intended to provide a brief update in relation to the topics covered.

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