Roger Berry, managing director, Concept Group

Ask a silly question

Concept's managing director, Roger Berry, considers some frequently asked questions that are not so easy to answer

Qualifying Recognised Overseas Pension Schemes (QROPS) have been with us since 2006 and offer, for those leaving the UK, a very helpful process for transferring their UK accrued pension benefits overseas.

With the ability to choose a benign jurisdiction and scheme to receive the pension transfer it is often good news for the client and good business for advisers and providers. However the world of QROPS never stands still with new jurisdictions entering the market, new products being promoted, HMRC enforcement and revised guidance, so what is the right answer to those tricky questions clients ask?

What if I go back to the UK?

QROPS regulations are clearly constructed and predicated on the assumption a person is leaving the UK permanently. So it is strange to realise that returning to the UK with a QROPS is not a major issue.

There is a school of thought that returning to the UK with a QROPS will somehow cause tax charges or penalties to arise. That is not the case. It would only be an issue if the QROPS concerned had lost its approval from HMRC and/or payments had been made to the member outside the undertakings given by the scheme to HMRC. So any client, who is a member of a normal compliant QROPS playing by the rules, has nothing to fear by returning to the UK with a QROPS.

The fact is that even a client with absolutely no intention of returning to the UK can end up doing exactly that because circumstances change – perhaps a husband dies and the wife then wishes to return home, perhaps grandchildren are born or most frequently, ill health drives a return to the UK to be with family. However do not avoid considering the benefits of QROPS because you 'might' return one day to the UK. That said, if you know you are only temporarily out of the UK – say on a three-year contract, then probably QROPS is not for you.

QROPS & SIPPS

Once a QROPS member goes back to the UK a QROPS may be considered to be similar to an offshore SIPP. The provider will now have to report certain events to HMRC and pay benefits in accordance with the UK rules. Those benefits may well be paid and received gross of tax. The UK resident tax payer will then subsequently pay UK taxes as it is the member's responsibility to disclose them under UK self-assessment rules. You may therefore enjoy paying your taxes slightly later as appropriate, but on the other hand you may well pay a little more for a QROPS to be run than a UK SIPP, as QROPS tend to be more expensive than SIPPs.

Finally, if you do have a QROPS and you are looking to return to the UK you might also consider a transfer to another offshore plan known as a QNUPS.

What are QNUPS?

The acronym stands for Qualifying Non-UK Pension Scheme. QNUPS first appeared in the Finance Act 2008 when retrospective amendments back to 2006 were made to the Inheritance Tax (IHT) provisions. QNUPS defining regulation followed in January 2010 describing the type of offshore pension scheme that would get the beneficial IHT provisions.

The most familiar pension scheme that meets QNUPS requirements is our old friend a QROPS. In addition to QROPS, consider an identical scheme which has not submitted its deed nor completed its application to HMRC. That is a QROPS without the Q and is called, unsurprisingly, a ROPS. A ROPS still gets the IHT benefits as it is a QNUPS. There are some differences between a ROPS and a QROPS that advisers should be aware of.

First, any client in a QROPS is well advised not to invest in any form of taxable property, the most obvious being residential property. The reason being there are nasty taxes which fall on a member of a QROPS that invests in such property, and what is worse, there is ongoing reporting to HMRC, without time limit.

However, assuming the member of the QROPS has been non-UK resident for more than five full UK tax years, then it is possible to transfer to a ROPS where there is no reporting to HMRC. This applies even if subsequently the ROPS invests in taxable property. For those desiring investments of this type in their pension plan, ROPS

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offers definite advantages.

Second, clients may wish to top up or make further provision for their retirement. If they are overseas they may decide not to use a UK registered pension scheme. An offshore scheme such as a ROPS, used in a reasonable way, could allow a non-UK resident person to make provision or additional provision for their retirement and yet still enjoy IHT benefits, even if still UK domiciled on death.

Paying into a ROPS

The word 'reasonable' is not a word found in the QNUPS legislation. However given the anti-avoidance legislation and legal precedents that exist in this area, it would be foolhardy to suggest a client could expect to put limitless contributions into such a ROPS and HMRC still respect it as a pension, probably on the basis of its artificial construction.

There is also a school of thought that suggests anyone considering returning to the UK who has a QROPS should review the possibility of transfer from the QROPS into a ROPS. Presumably to be in a scheme with no reporting by the provider and to maintain IHT benefits. The difficulty here is that once resident in the UK, the member themselves takes on the burden of reporting to HMRC under the self-assessment regime. As for any IHT benefits for a member of a ROPS, if UK resident and domiciled on death… well, at the very least, let's say it is unproven, therefore take great care.

Is the scheme investment regulated?

Unless a pension scheme is a group scheme where the members have no say in the investment strategy, it is going to be a reasonable bet the scheme will be viewed as investment regulated.

Put another way, if the member can in any way influence the investment process, it is investment regulated. So a scheme is deemed investment regulated even if a member does not influence the scheme investment process, if the scheme is constructed so a member is able (whether directly or indirectly) to influence the investments chosen.

In the QROPS market that exists today it is usual for members and/or their advisers to have an option to be able to either direct investment choice, choose the investment manager or select investments from a list. It is therefore hard to consider that there are many, if any, non-investment regulated QROPS in the market place today.

Investment regulated

So what is the issue with being investment regulated, as it seems likely everyone is? Well, the advantage of a non-investment regulated scheme is that it may invest in residential property with the ability to avoid the taxable property rules, taxes and penalties and endless reporting. It may be that schemes that have mistakenly taken on taxable property investments have chosen to avoid the issues (taxes, reporting, and so on) by deeming themselves non-investment regulated. Unfortunately, it is HMRC that decides, not the scheme administrators, so that may be rather a short term fix.

There is also a school of thought, which appears to be slowly dwindling, that suggest an investment regulated scheme has all sorts of issues, in say transferring to a ROPS, apparently, crystallising certain tax charges.

The seed of this argument seems to stem from HMRC's pension scheme manual and some confusing guidance. Fortunately, the underlying law is clearer and it is not a question of investment regulated or not, but a question of whether the plan has invested in taxable property or not.

In summary, it would be the case that a transfer to a ROPS (or even another QROPS) could crystallise tax charges if there were investments in taxable property, but not by sole dint of the fact that it was investment regulated.

Which jurisdiction is best to hold my QROPS?

Without any prejudice, clearly Guernsey is the current market leader. Guernsey's prudent approach and proactive dealings with HMRC give it a much sought after degree of safety. But will it stay that way?

Other jurisdictions are getting organised; Malta, Jersey and the Isle of Man to name a few. New Zealand seems to be suffering from the success and flexibility of its legislation. Allowing a greater degree of commutation is almost counterproductive to the prudent adviser and pensioner alike.

Hong Kong is on the brink of a new Double Tax Treaty with the UK, which is good news, but there seems to remain a question of trustee regulation. The Isle of Man is dropping its withholding tax on income benefit payments but not the 7.5% final death duty. Therefore, like the classic school report joke, an improvement but 'could do better'!

For the new jurisdictions, such as Malta and Jersey, it is going to be about controlling their industry. Having the ability to get HMRC approved QROPS is one thing, stopping one or more providers abusing the regulations and attracting HMRC's glare, is another.

The good news for clients and advisers is that business volumes are ever increasing and so is competition. This has resulted in the fees for QROPS continuing to fall. IA

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IA KEY POINTS

Numerous misconceptions and doubts exist around QROPS and their close relation ROPS, both of which are QNUPS. Careful consideration needs to be given to which suits a particular client, depending on their circumstances and plans. For example, scheme members may return to the UK and retain their QROPS without the need to transfer back to a UK registered pension scheme.