



**FIN SIGHT PLUS PTY LTD**  
RETIREMENT SOLUTIONS ACTUARIES

## **TECHNICAL NOTE: BECOMING A QROPS**

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### **1. INTRODUCTION**

UK pension schemes receive generous taxation treatment. The UK legislation will allow entitlements to be transferred overseas provided the receiving fund is a properly regulated retirement fund in accordance with the rules of the country in which it is established and the transfer is not used for early release. The way the hm Revenue and Customs have achieved these aims is to restrict transfers only to overseas schemes that have applied to become a Qualifying Recognised Overseas Pension Scheme (a QROPS).

This document provides an overview of the process that an Australian superannuation fund needs to follow in order to become a QROPS so it can receive transfers of UK pension monies. It also highlights some additional administrative considerations and undertakings associated with becoming a QROPS. There is a separate technical note providing an overall summary of a foreign pension benefit transfer.

### **2. LEGISLATIVE REQUIREMENTS TO BECOME A QROPS**

The key criteria that an Australian superannuation fund needs to meet in order to become a QROPS are:

- ◆ Primary Conditions 1 and 2
- ◆ Definition of “overseas pension scheme”
- ◆ Recognition requirements
- ◆ Qualifying requirements

### **Primary Conditions**

**Primary Condition 1** requires the fund applying to be a QROPS to be open to residents of Australia, i.e. not exclusively for non residents. A QROPS does not have to be a public offer fund – it can have restricted membership.

**Primary Condition 2** requires the scheme to be established in a country that has a system of personal taxation and for retirement monies to be concessionally treated. An Australian complying regulated super fund comes within regulation 3(2)(c) of SI 2006/206 and so meets Primary Condition 2. The fund can be either an APRA regulated fund or an ATO regulated SMSF.

### **Overseas Pension Scheme conditions**

For a scheme to be classified as an **overseas pension scheme** under UK tax legislation, it:

- ◆ Cannot be a UK registered pension scheme.
- ◆ Must be established outside the UK.
- ◆ Must be regulated as a pension scheme in the country in which it is established.
- ◆ Must be recognized for tax purposes by that country, i.e. have tax relief.
- ◆ Satisfy either
  - Approved or recognized by or registered with the relevant taxation authorities as a pension scheme in that country; or
  - If there is no system for approving, recognizing or registering pension schemes, the scheme must be resident there.

### **Recognition Requirements**

For the overseas pension scheme to be **recognized**, it must be established in

- ◆ A member state of the European Economic Area; or
- ◆ A country with which the UK has a Double Taxation Agreement (DTA) that contains exchange of information and non-discrimination provisions; or
- ◆ Any other country if at the time of the recognized transfer the following conditions are all satisfied:
  - At least 70% of the funds transferred would be used by the receiving scheme to provide an income for life for the member, subject to attaining minimum pension age; and
  - The benefits payable under the scheme are not payable earlier than would be permitted under a UK registered pension scheme; and
  - Membership of the scheme is open to persons resident in the country in which it is established.

Australia's DTA with the UK meets the requirements for recognition.

### **Qualifying Requirements**

For the recognized overseas pension scheme to become a **qualifying** recognized overseas pension scheme, the scheme manager must:

- ◆ Have notified Her Majesty's Revenue and Customs (HMRC) that the scheme is an overseas pension scheme and provide evidence of that if required;
- ◆ Inform HMRC of country of establishment and if not an EU state or a country with which the UK has a Double Taxation Agreement which includes the exchange of information and non-discriminatory provisions – then provide evidence of satisfying the various design conditions;
- ◆ Any other evidence as required by HMRC;
- ◆ Undertake to notify HMRC if the scheme ceases to be a recognized overseas pension scheme
- ◆ Undertake to provide HMRC with certain information on making payments in respect of certain scheme members.

More details on the information to be supplied to HMRC are set out below.

### **3. PROCEDURE TO BECOME A QROPS**

An Australian Superannuation fund can apply to become a QROPS by completing form APSS 251 and forwarding it to

HM Revenue & Customs  
Pension Schemes Services  
Yorke House  
Castle Meadow Road  
Nottingham  
NG2 1BG  
England  
United Kingdom

In response to the application, HMRC will send the scheme manager a letter of acceptance that the scheme is a QROPS and assign a unique QROPS reference number. HMRC can ask the scheme manager for more evidence before issuing a letter of acceptance (or rejection). Details of the QROPS will be entered on the HMRC database. Their aim is to process 91% of all applications in 15 working days with the remainder in a further 25 working days.

If a QROPS does not provide the required payment information it can have its QROPS status revoked and be removed from the QROPS database. The registration letter received from HMRC notifies that unless they are informed otherwise by the Fund, it will publish the Fund's name at [www.hmrc.gov.uk/pensionschemes/qrops.list.htm](http://www.hmrc.gov.uk/pensionschemes/qrops.list.htm). It is worthwhile to allow the Fund's name to be published even if a SMSF because some UK schemes will accept the letter and number but others insist it is on the published list.

If a QROPS ceases to have QROPS status, it can still hold a UK pension benefit for a member, but would lose its right to receive further transfers from UK registered pension schemes.

#### **4. REPORTING REQUIREMENTS BY QROPS**

In order for an Australian super fund to be a QROPS, the manager must have undertaken that on the making of a payment (or of a deemed payment), they will provide HMRC with the name and address of the member and the date, amount and nature of the payment. This applies irrespective of the size of the payment. The QROPS will not have to report to HMRC a payment (or a deemed payment) if the member is not a tax resident in the UK when the payment is made and has neither been a UK resident in that tax year nor in any of the five previous full UK tax years. The QROPS will need to check on the position when a payment is made as the member could have multiple residency periods.

Many Australian funds will require this level of preservation i.e. 5/6 years even if it is more onerous than Australian requirements. This ensures that the benefit will be only treated under Australian rules. Some benefits may have to be paid in the period, e.g. a death benefit. Here it's important to ensure that both Australian and UK conditions are met.

Benefit payments can be reported on form APSS 253. A payment includes the commencement of pension payments, a cash withdrawal or transferring the funds to another Australian super fund. It will not be possible to submit reports electronically.

#### **5. AUTHORISED TRANSFERS AND PAYMENTS**

##### **Monies that can be transferred**

The UK retirement system is complex (see our separate technical note that provides an overview). The various types of occupational; personal; stakeholder etc. entitlements before pension commencement **can** be transferred.

Transfers to overseas pension schemes of protected rights and of a Guaranteed Minimum Pension are subject to the same HMRC requirements as other overseas transfers, and the QROPS transfer extinguishes these rights.

Entitlements already in pension mode (including income drawdowns) are a lot more difficult to move. In theory it may be possible to transfer a UK unsecured pension (USP) or UK alternatively secured pension (ASP) – but they will need to stay within FA 2004 maximum withdrawal limits during the 5/6 year period.

UK annuities can only be transferred to an EEA life company and (hence) cannot be transferred to a QROPS. State pensions cannot be transferred.

##### **Initial transfer from the UK**

If an **unauthorized payment** of transfer is made it will give rise to a 40% unauthorized payment charge and possibly up to a 15% unauthorized payment surcharge. A UK registered pension scheme must transfer to a QROPS to avoid this charge. The QROPS requirement applies irrespective of how long the member has been a non UK resident.

If the transfer is completed within 6 months of the individual becoming resident in Australia for tax purposes, the Australian funds treats the full amount of the UK pension monies a non-concessional contribution. The more common situation is that the transfer occurs beyond the 6 months date, if an election is made to transfer the liability to a superannuation fund or at the individual's marginal tax rate in other cases, in which case the growth in the transfer value from the date that the individual become resident in Australia is treated as a concessional contribution (i.e. taxed at 15%).

We have a technical note that looks at this issue in more depth.

### **Subsequent transfer / payment within Australia**

***If the Australian QROPS transfers to another Australian super fund they should also check the receiving fund is a QROPS in order to know if the transfer would give rise to an unauthorized payment charge/surcharge on the individual.***

The UK money is deemed by HMRC to be the first amount transferred from a QROPS. If there are or will be Australian contributions then quarantining the UK monies in the Australian fund may be worthwhile to enable this requirement to be met.

Any payments by the Australian fund before the end of the first 5/6 year period will have to meet the Finance Act 2004 (FA 2004) rules. Payments outside of those rules give rise to the unauthorized payments charge. The individual will be liable for the unauthorized payments charge on a UK self assessment return. If a member dies within the first 5 years of being resident in Australia, the QROPS must report any death benefit payments. If the payments conform with the FA 2004 pension death benefit/lump sum death benefit rules, there will be no unauthorized payments charge.

Generally, someone who has transferred their rights to an overseas scheme will have to take their benefits no earlier than the normal minimum pension age – age 50 up to 6<sup>th</sup> April 2010 and age 55 after that date or they will be liable to an unauthorized payment charge (there are some exceptions).

## **6. FURTHER ASSISTANCE**

The FinSight Plus website has a form you can download should you wish to complete the necessary paperwork for an Australian SMSF to become a QROPS.

This tech note was updated on 20/12/2009.

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