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TOP QUESTIONS TO ASK WHEN TRANSFERRING YOUR UK PENSION SCHEME TO AUSTRALIA

The relationship between Australian superannuation funds and UK pension schemes has been a complicated one for a number of years. Legislative changes in both jurisdictions over the last decade have made it a challenging process for members, with periods of uncertainty and a lack of clarity around which superannuation funds can and can't accept transfers.

Only a Qualifying Recognised Overseas Pension Scheme (QROPS) is authorised to accept transfers from UK pension schemes. Her Majesty's Revenue and Customs (HMRC) is the UK governing body that grants QROPS status, and significant changes in 2015 made it much more difficult to satisfy the criteria.

The following statistics released by HMRC in 2020 highlight this – 4 to 5 years of increased transfer activity from 2007 and a marked decrease from 2015 to date.

Table 1: Transfers to Qualifying Recognised Overseas Pension Schemes

Tax Year (6th April to 5th April)	Number of Transfers (1)	Total Value of Transfers (2)
2006 to 2007	2500	£ 120 m
2007 to 2008	5700	£ 350 m
2008 to 2009	6100	£ 360 m
2009 to 2010	6700	£ 460 m
2010 to 2011	12800	£ 1360 m
2011 to 2012	16400	£ 1040 m
2012 to 2013 (3)	13400	£ 1000 m
2013 to 2014	11300	£ 860 m
2014 to 2015	20100	£ 1760 m
2015 to 2016 (3)	13700	£ 1500 m
2016 to 2017	9700	£ 1220 m
2017 to 2018 (4)	4700	£ 740 m
2018 to 2019	5000	£ 640 m
2019 to 2020	4400	£ 550 m

(1) The number of transfers is rounded to the nearest 100
(2) The total value of transfers is rounded to the nearest £10 million
(3) There were changes to the requirements schemes had to meet to qualify as a QROPS in April 2012, and April 2015
(4) The first year of data where QROPS transfers can be liable for a 25% Overseas Transfer Charge

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905230/QROPS_July_2020.pdf

Fortunately, one (unintentional) consequence of the 2015 changes by HMRC was that it placed self managed super funds (SMSFs) in a unique situation – they are now the only Australian super funds that can satisfy the requirements that a scheme must meet to be a QROPS. We'll touch on why, and answer other important transfer questions, shortly.

Before you decide what to do with your UK superannuation, it's a good idea to have a think about the following:

1. What funds can I transfer to?

As we mentioned earlier, only a Qualifying Recognised Overseas Pension Scheme is authorised to accept transfers from UK pension schemes, and HMRC oversees which funds are recognised as a QROPS.

To qualify as a QROPS the scheme must meet the requirements set by UK tax law, including:

- being available to residents in the country the scheme was established
- being registered as a pension scheme with the country's tax authority
- restricting payments to members over the age of 55 (with the exception of very limited circumstances)
- in the case of Australia, a complying superannuation fund as governed by the Australian Taxation Office (ATO)

The age restriction imposed by HMRC is the key aspect that makes SMSFs unique in this discussion. They are the only funds, by virtue of having a unique trust deed that governs their operations, that can restrict access to people over the age of 55. Larger Australian super funds, including standard retail and industry funds, can't restrict payments to members based on their age. Their rules can allow early access to super on financial hardship and compassionate grounds, and as a result they can't satisfy the criteria imposed by HMRC.

2. How do you make an SMSF QROPS compliant?

The trust deed of the SMSF must have certain restrictions to satisfy HMRC, including:

- A clause that restricts membership to people aged 55 or over. This is of course a key requirement in light of the HMRC guidelines.
- Prohibiting the member from withdrawing their benefits before they are retired and have reached their preservation age.
- Restricting access to the portion of benefits received from a UK pension scheme on compassionate or financial hardship grounds (which are of course conditions of release in Australia).

The process of registering can be summarised, broadly, as follows:

- Notify HMRC of the intention to be registered as a QROPS by completing the online form APSS251. It can take up to 8 weeks for the request to be processed, and once complete the fund will appear on the ROPS list.
- When the fund appears on the list they are deemed to be a QROPS and the transfer of the balance can occur from the UK scheme. HMRC will also issue an official confirmation letter confirming the QROPS status – it is best practice to wait for this before organising the transfer.
- Ensure the SMSF cash account can receive foreign currency.

3. Who can transfer?

A transfer from a UK pension scheme will be classified by the ATO as a contribution, not a rollover. As a result, members need to ensure that the transfer complies with the Australian contribution rules for non- concessional contributions.

The ability to make non-concessional contributions depends on a number of factors, including age and member balance. Members over the age of 65 will need to satisfy the work test, while the bring forward rule may be available for members under the age of 65.

Transfers in excess of the non-concessional contribution cap will be treated in line with the ATO's guidance on excess contributions.

3. What is the transfer process?

The transfer process will vary depending on the interaction with the individual UK pension scheme, but broadly speaking:

- Member requests transfer from UK pension scheme – form APSS 263 sets out the information that will need to be provided by the member to the scheme
- The UK scheme manager advises the member what information, or additional information, they need before they can make the transfer. Due diligence checks will be completed.
- The UK scheme manager establishes if the transfer is liable for the overseas transfer charge or any other taxes.
- Transfer made.

If the scheme you are transferring from does not receive the correct paperwork they are required to apply a 25% charge on the transfer value. The member will have to apply for a refund at a later date.

In most cases, however, the UK pension scheme will not release the member balance until they are satisfied that the appropriate documentation and identification has been provided.

What happens if I transfer to an overseas scheme that is not a QROPS?

If you transfer to an overseas scheme or fund that is not a QROPS, it is likely that you will be classified as making an unauthorised payment. This could result in an unauthorised tax charge of 55% with the possibility of additional penalties. Such a transfer is also unlikely to be regulated and is likely to leave you without any recourse to compensation.

What is the tax treatment in Australia?

UK pension scheme balances transferred to eligible Australian QROPS are not taxed in Australia if they are received within six months of the member becoming an Australian resident or within six months of their foreign employment being terminated .

Transfers made after this first six month period, which is often the majority of transfers, will have an assessable component referred to as 'applicable fund earnings'.

Applicable fund earnings is essentially the growth in the foreign fund/scheme between the time the member became an Australian resident and when the lump sum was paid. It is only a tax on the growth component, not a tax on the entire balance.

Members can elect to pay the tax personally or have the Australian super fund pay it. ATO form NAT11724 must be completed if the election is made to have the super fund pay the tax.

What are the reporting requirements after the transfer?

The super fund will have a ten year reporting requirement to HMRC, who must be notified if there are changes to the QROPS or movements of balances that were previously subject to UK tax relief. Penalties for releasing funds before age 55, include a tax charge of 55%, may also apply in extreme circumstances.

The primary reporting criteria include notifying HMRC of the following:

- The super fund's continuing QROPS status every 5 years, on the date of anniversary of the fund becoming a QROPS (date of the confirmation letter from HMRC).
- Changes to the details of the fund (using form APSS251A) within 30 days of:
    - The fund stopping being a QROPS
    - A change to the details of the scheme administrator, a scheme member or the fund itself
    - A scheme member moving to a different country – HMRC must be provided with a forwarding address
- Movements of balances that were previously subject to UK tax relief:
    - The scheme transfers pension savings, whether this is taxable or not
    - A scheme member's circumstances change, and an overseas transfer charge needs to be paid as a result
    - All withdrawals of UK monies from the fund within 90 days of the payment date, whether they are paid as a lump sum, pension stream or otherwise (form APSS253).

In summary, we have now had several years of consistent guidance from HMRC and SMSFs have been placed in a favourable position as a result of the changes. Caution should be exercised with transfers from UK pension schemes, both in the initial phase of transferring funds but also when it comes to the (somewhat onerous) ongoing reporting requirements. Overall, however, the process is very manageable and should not deter former UK residents from transferring balances to the Australian superannuation system – providing they have sought appropriate advice and guidance.

Need More Information?
Contact your Client Manager or refer to HMRC (Her Majesty's Revenue and Customs) www.hmrc.gov.uk/pensionschemes