

A Practical Guide to Qualifying Recognised Overseas Pension Scheme (QROPS) in Cyprus

1. What is a UK QROPS?

A QROP is an investment vehicle that allows non-UK tax residents who are overseas holding a UK registered pension schemes to transfer the assets of the pension overseas, to a QROPS. In order to qualify as a QROPS, a pension scheme which has been established in another country must be officially recognised by Her Majesty's Revenue and Customs ("HMRC") in the UK. Both Regulated and Unregulated QROPS can be recognised by HMRC.

2. What is the difference between a Regulated and Unregulated QROPS?

A Regulated QROPS is a pension scheme which is regulated by a body in the country in which the QROPS is established. An Unregulated QROPS is a pension scheme which does not meet the definition of a Regulated QROPS.

3. What conditions must be met in order for a QROPS to be recognised by HMRC?

The following conditions must be met in order for a QROPS to be recognised by HMRC:

(i) In the case of a Regulated QROPS,

- The QROPS must be opened to persons resident in the country or territory in which it is established;
- The country in which the QROPS is established must have a system of personal taxation as required by HMRC.

(ii) In the case of an Unregulated QROPS in addition to the conditions in (i) above,

- The QROPS has been established in a member state of the European Communities including Norway, Iceland or Liechtenstein, or
- At least 70% of a QROPS member's tax relieved funds will be used to provide an income for life;
- The QROPS benefits payable to the members are not payable before the member reaches normal minimum pension age unless the ill-health condition is met.

4. What are the tax conditions for recognition?

The QROPS must either be:

(i) approved by or recognised by or registered with the relevant tax authorities as a pension scheme in the country or territory in which it is established; or

(ii) if no such system exists in the country where the QROPS has been set up in order to fulfil condition (i), then the following conditions must be met:

(a) the pension scheme is a resident in the country in which it is established;

(b) at least 70% of a member's UK tax relieved funds will be used to provide an income for life; and

(c) the pension benefits payable to the members are not payable before the member reaches normal minimum pension age unless the ill-health conditions is met.

5. How is a pension scheme fund established in Cyprus?

A pension scheme fund may be established either (i) in accordance with Law 146(I)/2006, the law regulating occupational pension schemes (the "**Occupational Pension Schemes Law**"); or (ii) in accordance with Law 44/ 1981, the law regulating provident funds (the "**Provident Funds Law**"); (iii) as a Cyprus international trust in accordance with Law 69(I)/ 1992 regulating Cyprus international trusts (the "**Cyprus International Trusts Law**").

6. Which Cyprus pension scheme fund is most compatible with the conditions imposed by HMRC on QROPS?

The Occupational Pension Schemes Law permits the establishment of cross-border occupational pension schemes. Specifically section 36(2)(a) of the law allows for payments to be made by a company whose head office is in another member country of the European Union into a fund established within the Republic of Cyprus. While, section 3(a) of the law clarifies that sections 4- 29 and 31- 36 only applies to occupational pension schemes of companies which are in the business of providing life insurance we have received verbal confirmation from the Regulatory Body that the law is not applied so narrowly and that a cross-border occupational pension fund established by a company engaging in any business may qualify as a cross-border occupational pension scheme.

In Cyprus, the regulatory body for occupational pension schemes is the Ministry of Employment and Social Security (the '**Regulatory Body**') making such pension schemes Regulated QROPS in accordance with the requirements of HMRC.

7. Why are (ii) and (iii) in Question 5 not compatible as QROPS?

Pension scheme funds established in accordance with the Provident Fund Law while regulated by the Regulatory Body do not permit the establishment of a cross-border pension schemes, being an important requirement to qualify as a QROPS.

A condition which must be met in order to establish a Cyprus International Trust in accordance with the Cyprus International Trust Law is that a beneficiary to the trust cannot be a permanent resident of the Republic of Cyprus. This conflicts with the requirement of HMRC on QROPS. Also, there is no regulatory body for the approval and registration of a Cyprus International Trust in order to make it a Regulated QROPS.

8. How is an occupational pension scheme created pursuant to the Occupational Pension Scheme Law?

The following documents must be submitted by the administration committee or founders within 60 days from the date the occupational pension scheme fund is established:

- An application form signed by the applicants;
- Any other documents or information the Regulatory Body deems necessary; and
- Articles of association regulating the particular pension scheme fund.

9. What is the minimum information which must be included in the articles of association as required by section 8(2) of the Occupational Pension Schemes Law?

The minimum information to be included is:

- The name and seat of the occupational pension scheme fund;
- The conditions to become a member of the occupational pension scheme fund and the conditions to cease to be a member of the occupational pension scheme fund;
- The rights and obligations of the members of the occupational pension scheme fund;
- The details of the administration committee, terms of its appointment or removal and its authority;
- Provisions regulating the meetings of the members of the occupational pension scheme fund;
- How the articles of association may be amended;
- The percentage contributions made by the member and employer;
- Provisions regulating the book keeping and audit of the accounts of the occupational pension scheme fund;
- The procedure for dissolution of the occupational pension scheme fund.

10. What is the significance of registration of the occupational pension scheme with the Regulatory Body?

The occupational pension scheme fund will receive a certificate of registration once it has been registered by the Regulatory Body. The fund is given legal personality at the point of registration which ceases to exist once the fund is dissolved.

11. Are pension schemes approved by, recognised by, registered with the relevant Cyprus tax authorities?

Until recently pension schemes were approved by, recognised by and registered with the Cyprus tax authorities. This system no longer exists due to the absence of internal regulations in place within the Cyprus tax authorities. Therefore, we cannot be sure on how the Cyprus tax authorities will approach an application for the registration and approval of a cross-border pension scheme. It is recommended that the facts of the case are presented to the Cyprus tax authorities and a ruling is requested on how it will approach the cross-border pension scheme in question.

12. Is tax applicable to the QROPS funds when transferred from the UK to Cyprus and is tax incurred by a member when his/her benefits are paid?

No tax should be applicable when transferring the funds from the UK to Cyprus.

Section 5(1)(d) of the Income Tax Law 118(I)/2002 as amended, provides that in the case of a Cyprus tax resident individual (being an individual who is present in Cyprus for periods exceeding 183 days during a tax year, which is always the calendar year), income tax is imposed on pensions received from Cyprus and abroad.

Section 5(2)(c) of the Income Tax Law 118(I)/2002 as amended, provides that in the case of a non-Cyprus tax resident individual, income tax is imposed on pensions received in respect of employment services rendered in the territory of Cyprus.

Therefore, assuming that the employees will not be exercising any employment services in the territory of Cyprus and will not be tax residents of Cyprus, the benefits they will be receiving from the funds should not be taxable in Cyprus.

FURTHER INFORMATION

Please contact any of the following lawyers if you require additional information on the above topic.

Cyprus

Emily Yiolitis

Partner

emily.yiolitis@harneys.com

+1 357 25820020

Cyprus

Margarita Hadjitofi

Associate

margarita.hadjitofi@harneys.com

+1 357 25820020

The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.

www.harneys.com