Overseas transfers – going nowhere fast…

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When Barnett Waddingham's Colin Jamieson said a few weeks ago that HM Revenue and Customs (HMRC) had left schemes 'between a ROPS and a hard place', he neatly summed up the incredibly difficult position schemes have been left in by developments in the overseas transfer environment. UK schemes are being bombarded by overseas transfer requests, some of which could potentially be fraudulent and many of which could be non-qualifying.

Alas, poor QROPS list

In July 2015 HMRC published a vastly reduced recognised overseas pension scheme list, having removed all the schemes that had not confirmed they met the new minimum age access requirements introduced in April 2015. What used to be referred to as the Qualifying Recognised Overseas Pension Schemes (QROPS) List is now presented as a List of Recognised Overseas Pension Schemes Notifications. This is a subtle but important change, with significant implications for trustees.

HMRC's published list used to carry a 'good faith' protection where the scheme administrator had relied on the fact that the overseas pension scheme was included on the latest published list and had checked the latest list within 24 hours of transfer. Having withdrawn this protection without explanation.

Regulatory blind alley

This fairly disingenuous repositioning by HMRC leads to a regulatory blind alley – how can a transferring scheme realistically prove the qualifying status of an overseas arrangement when even HMRC aren't prepared to take that risk? How far can the UK scheme be expected to go in carrying out due diligence? How many UK schemes have valuable time and resources tied up in investigating the same few overseas receiving schemes? How do we navigate the legal minefield, and who should be picking up the hugely increased administrative costs?

Qualifying status?

HMRC might take a different view but our understanding of the frustratingly circular administrative aspects of the relevant regulations is, broadly:

- Section 169(1)(b) of the Finance Act 2004 requires that the receiving arrangement must be a qualifying ROPS in order for the transfer to be a recognised transfer
- pension scheme rules will usually prevent trustees from making transfer payments other than those which are recognised transfers. A transfer which is not recognised gives rise to unauthorised payment charges against members and trustees
- in order to become qualifying, a ROPS must make the undertakings and notifications to HMRC as set out in section 169(2). **HMRC is the only body able to determine whether a ROPS has met the additional requirements to be a QROPS**

Advice requirement

In many overseas cases the advice process commonly emanates from an adviser acting as an Appointed Representative of a non-UK adviser elsewhere in Europe, operating from a UK administrative office under an EU 'passporting' arrangement with the Financial Conduct Authority (FCA).

A consensus view amongst compliance officers in actuarial consultancies, although not yet tested with the regulators or the courts, is that a 'passported' EU adviser is not a pension transfer specialist, and therefore does not meet the FCA's regulated advice requirements after April 2015 but, again, why should trustees and administrators be expected to navigate these incredibly complex waters?

Pension scams

At ground level, administrators are seeing a substantial increase in the number of requests to transfer to overseas pension products. Many of these are in respect of UK residents, for whom the benefits of an overseas transfer are not immediately obvious, but schemes are specifically instructed not to 'second guess' a member's wish to transfer.

At the same time, members are being given what feels like fairly false comfort that their original scheme will be able to verify whether their new arrangement is legitimate and qualifying when these are surely responsibilities that should fall squarely within HMRC's remit.

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