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## Finance Bill 2017—aligning the taxation of foreign pensions to UK pensions

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Pensions analysis: The government plans to align the UK tax treatment of foreign pensions more closely with the UK's domestic pension tax regime. Nigel Sloam, senior partner at Nigel Sloam & Co Actuaries and Consultants, discusses the proposed changes.

### What are the changes proposed in the Autumn Statement in relation to UK taxation of foreign pensions?

Changes are proposed to:

- the conditions a pension scheme must meet to be a qualifying overseas pension scheme (QOPS) or qualified recognised overseas pension scheme (QROPS)
- the period in which UK tax charges can potentially apply in respect of payments from a relevant non-UK scheme (RNUKS)
- the rules governing 'taxable property', and
- the rules governing the taxation of foreign pensions or annuities payable to a UK resident

### Why is the government making these changes?

As announced in para 4.21 of the Autumn Statement 2016 the government's intention is to legislate in the Finance Bill 2017 in order to introduce regulations 'to align the tax treatment of foreign pensions more closely with the UK's domestic pension tax regime'.

On 3 January 2017, HMRC published updated guidance on these changes, see 'Pension Tax for overseas pensions'.

### How will the changes affect overseas pension schemes and those saving into them?

If the proposals are implemented as envisaged, the changes will include:

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- changes to the regulatory requirement test (strengthening the requirement for regulation especially in relation to certain non-occupational pension schemes)
- the pensions age test (removing anomalies that prevent payments from a QOPS or QROPS for a member who has yet to attain age 55 even if they would be authorised if made from a UK registered pension scheme), and
- removing the requirement for pension arrangements in some jurisdictions that at least 70% of a member's UK tax relieved funds be used to provide an income for life ('the 70% rule')

Current QOPS or QROPS arrangements may no longer retain such status if the proposed changes are implemented as envisaged—unless changes are also made to the local regime. This could impact on the potential for:

- further contributions to such pension arrangements to receive UK tax relief (where eligible), and
- further transfers to be made to such pension arrangements from UK registered pension schemes without penalty

The removal of the 70% rule does, however, offer the potential that modes of withdrawal akin to flexi-access drawdown in the UK could be made available in a wider range of overseas territories than is currently the case. This is of course subject to any required changes in local legislation, regulation and individual pension scheme rules.

## **Changes to the period in which UK tax charges can potentially apply in respect of payments from an RNUKS.**

The member payment charge regime applies UK tax charges to UK source tax-relieved funds held within relevant non-UK pension arrangements.

Currently the member payment charge regime only applies if the member is resident in the UK when the payment is made or has been resident in the UK in any of the five previous tax years.

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The intention is that this will be extended to ten years from 6 April 2017 for transfers or contributions on or after that date. Transfers or contributions before that date are, however, defined as 'five year rule funds' and under the current proposals will continue to be subject to the existing regime.

## Changes to the rules governing 'taxable property'

'Taxable property' is residential property and tangible moveable property. The acquisition of such property by an investment-regulated UK registered pension scheme—and any ongoing income arising thereafter—is subject to UK tax charges. These charges also apply should UK tax-relieved funds held within an investment-regulated QOPS, QROPS or RNUKS be used to purchase such property and in respect of any subsequent income that may arise.

An anomaly currently exists in respect of non-UK registered pension schemes in that tax charges may arise in relation to the acquisition of taxable property even if the pension scheme contains no UK tax relieved funds.

HMRC intends to introduce regulations to ensure that in such cases tax charges will only arise:

- on the scheme administrator in respect of property held directly or indirectly in the UK, and
- on the members to the extent of their UK tax-relieved funds

## Changes to the UK tax treatment of benefits paid from foreign pension schemes to a UK resident individual

An individual who is UK resident and receiving income from a foreign pension—other than on the remittance basis—only pays UK tax on 90% of the amount. It is proposed that from 6 April 2017 this cap will be removed.

In addition, concessions which permit an unapproved foreign pension scheme to potentially pay lump sum benefits with exemptions from or reductions to UK tax in respect of foreign service will be removed from 6 April 2017. This will potentially impact upon lump sum benefits drawn from overseas employer financed retirement benefit schemes (EFRBS).

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## How and when will the changes be implemented?

The intention is that these changes will be effective from 6 April 2017—except for the third point above (changes to the rules governing ‘taxable property’) where it is envisaged that changes will be implemented after the Finance Bill 2017 receives Royal Assent.

## What should practitioners be telling their clients?

Practitioners should:

- review any overseas pension arrangements in which their clients have interests and ascertain how they will be impacted by the changes above
- review carefully whether it is appropriate for such clients to effect transfers to or between any overseas pension schemes and the timing of such, and
- consider whether it is appropriate for such clients to consider commencing benefits earlier than previously anticipated

If any new overseas pension arrangements are to be incepted, practitioners should consider the current status of any arrangement and its likely status post-5 April 2017 and also review the position of the overseas pension trustee, administrator or provider.