

Pensions myth-busting – overseas transfers

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Transferring UK pension benefits overseas was already difficult enough, but the new rules announced in the 2017 Budget have added a further layer of complexity. An Overseas Transfer Charge (OTC) applies to overseas transfers that are requested after 9 March 2017 and is generally payable unless the member can show that certain exemptions apply.

The new regime has increased the burden on scheme administrators who were already finding it difficult to process pension transfers, given the requirements to check that independent advice has been received and that the receiving arrangement is not a scam. HMRC has issued some guidance but many areas of uncertainty remain.

Read on to see the top 4 overseas transfer myths that we've encountered recently.

1. **"I can delay the transfer if the member has not provided all the information needed."**
No. Under the Transfer Values Regulations 1996, this can only be done if you can't establish that the member has received appropriate independent advice. If you haven't got all of the information you need you can apply to the Pensions Regulator to extend the deadline by which the transfer needs to be paid. Alternatively, you can take the decision to deduct the OTC before paying the transfer (which is what the guidance from HMRC says you should do if the member hasn't provided all of the information that they need to) but practically speaking this may not be the best course of action if in fact the OTC is not applicable.
2. **"When doing due diligence on the overseas arrangement I should ask for a copy of the pension plan rules."** This is a tricky one. While it might seem like a natural question as part of the due diligence you are carrying out, bear in mind that whatever documents you receive are unlikely to be subject to English law and in other jurisdictions different laws apply which could override them. If you do obtain copies of plan rules, the most prudent approach is to have them reviewed by lawyers from that jurisdiction but this will obviously come at an extra cost.
3. **"I can just send the member a form from HMRC to get all the information I need."**
Unfortunately not. When the OTC regime was introduced, HMRC updated its form APSS263 to cover the new obligations for members to provide information. Unfortunately, the form does not completely mirror the law. It makes things even more difficult that scheme administrators

are supposed to tell members all of the information they need them to provide within 30 days of the member's request to make a transfer – so if you are only sending members form APSS263 you may need to review your other communications to members to make sure they cover all of the information that is needed.

4. **“After the transfer goes through, I can still be liable for the overseas transfer charge.”**

Thankfully not. It is true that the charge can arise in the period of 5-6 years after the transfer was made if the member's circumstances change and the exemption he or she relied on no longer applies (the exact period depends on when the member made the transfer). However, if circumstances do change and the OTC becomes payable (e.g. because the member is no longer a tax resident in the EEA) then the charge is jointly and severally payable by the member and the manager of the qualifying recognised overseas pension scheme, not the scheme administrator of the original transferring pension plan.

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