Overseas Pension Transfers

by Patrick O'Shea - Pension Advisory Services

There has been an increase in interest in overseas pension transfers recently including interest in the outcome of a recent High Court case. This update looks at some of the issues involved.

Does the outcome of the recent High Court case permit an Irish resident client to make a transfer to a pension in another EU country with the intention of being able to claim benefits early or alter the treatment of the tax free lump sum option?

Following the recent High Court case it continues to be a Revenue requirement that a client may not transfer to a pension in another country in order to circumvent Irish pension tax legislation and Revenue rules. For example it is not permissible to transfer overseas with the objective of accessing benefits before retirement.

What other findings came from the recent High Court case?

The recent High Court case centred on two issues:

1. If the overseas scheme provided "relevant benefits", as per the precise definition used for the Occupational Pensions Schemes and PRSA (Overseas Transfer Payments) Regulations, 2003

2. If residency in the country of the receiving scheme is specifically required in order for a transfer to be bona fide

Issue 1: The central issue on the case was that transfers may only be to an overseas pension that provides "relevant benefits".

The definition of "relevant benefits" used for the purpose of the Overseas Transfer Payments Regulations is the same definition used in Irish occupational pension scheme legislation, which requires that benefits relate to a specific employment. As such, the question was whether the "relevant benefits" provided from the overseas pension scheme must similarly be in relation to a specific employment.

While the Court agreed that this definition of "relevant benefits" does include the requirement for an employer/employee relationship as applying to an Irish occupational pension, the Court found that it may depart from the literal reading of the legislation and adopt a purposive approach to reflect what it feels to be the true intention of the legislation. PRSAs do not require the client to have an employment connection, and the Court ruled that as such the condition of an employment relationship could not be applied to the overseas pension scheme.

Issue 2: On the second point, for all transfers to an overseas pension the Life Office must receive and review a Revenue declaration completed by the member. This Revenue declaration must include the reasons for the transfer request. The question was whether the reasons must include that the individual is now resident in the country in which the receiving pension scheme is located. The judgement was that it is not a specific requirement that the individual needs to be resident in the particular country of the receiving scheme.

Importantly, the judge stated that it is not possible to lay down a general rule regarding the bona fides of such transfers. Everything depends on the circumstances of the particular case.

What factors does an individual considering a transfer to an overseas scheme need to consider?

As with any financial decision, we recommend that an individual should speak to their financial adviser. Clients should make sure that all advice they receive in relation this is from a financial adviser who is properly authorised and regulated.

As with any transfer, the client should make sure that they are aware of the financial consequences of transferring the value of their existing policy. This would include considering

- Is the receiving pension approved by the appropriate regulatory authority
- Ensuring all charges are disclosed, and comparing projected values and charges under the overseas scheme compared with projected values and costs under the Irish pension plan
- What are the investment fund choices and risk level involved
- How will benefits be paid on retirement or on death
- How will benefits be taxed on retirement or on death in the country in which the pension scheme is located and the country in which the client is resident
- Is the transfer being done to circumvent Irish pension tax legislation and Revenue rules

What powers do the Revenue Commissioners have regarding an overseas transfer?

Any transfer which is intended to circumvent pension tax legislation will be considered a contravention of Revenue rules.

The Revenue Commissioners have stated that if they become aware that a non bona fide transfer has been made they will invoke the provisions of the Taxes Consolidation Act 1997 and the occupational pension scheme or PRSA will be deemed to have contravened the approval conditions until the contrary is demonstrated to the satisfaction of the Revenue Commissioners.

The Revenue Commissioners have the power under this legislation to withdraw the approval for occupational pension schemes and PRSAs retrospectively, including the withdrawal of all tax reliefs granted plus interest and penalties.