An Introduction to Foreign Pensions - Part 3

OVERSEAS TRUST & PENSION

Part 3 Overview

In the third edition of our mini-series we will be discussing how to make a contribution to a foreign pension and the options available.

This follows our first two instalments, which were titled: 'What is a Foreign Pension?' and the 'Benefits of Using a Foreign Pension'. If you have not seen these instalments please let us know and we will send them to you.

Part 4 will be released at the end of August 2017 and will cover the various investment options available in a foreign pension.

In the future, we also intend to look at:

Benefit options at retirement and tax implications

Succession and Foreign Probate

Upcoming Mini-Series

- **Investment Options**
- **Benefit options at retirement and tax implications**
- **Succession and Foreign Probate**

Did you know?

Overseas Trust and Pension is the only Foreign Fiduciary Services Provider regulated by the FSB in South Africa and has been accredited as an official CPD provider by the Financial Planning Institute. This makes our CPD accredited material acceptable worldwide and can be used to accumulate CPD points towards gaining or retaining your professional FPI accreditation.

3 Making Contributions to a Foreign Pension and Exchange Control

A foreign pension can be funded in a number of ways and from different sources, making them flexible and efficient vehicles in which to accumulate funds for the future in a "hard currency". The ways in which contributions are made are covered below.

Origin of funds: Funds used to contribute to a foreign pension will either come from a local source from within the Common Monetary Area ("CMA") of South Africa, i.e. South Africa, Namibia, Lesotho or Swaziland, or will be from a foreign source. If the originating source was the CMA, then exchange control regulations apply to such contributions and are currently as follows:

i. An individual can use their annual ZAR 10 million 'Foreign Investment Allowance' to place funds into a foreign pension. In order to do this, they will have to obtain the necessary tax clearance from SARS and receive SARB approval. When making an application to SARB, the individual will state the reason for the investment, (i.e. 'contribution to a foreign pension'), and may be required to identify the investments being considered.

ii. Clients can also use their annual ZAR 1 million "Discretionary Allowance", which doesn't require tax clearance or SARB approval. An authorised dealer/bank can process contributions made under the Discretionary Allowance immediately. The Discretionary Allowance also includes the individuals allowance for all foreign travel, purchases or cross boarder gifts, and clients should consider this when looking to make their contribution.

Once the required SARS clearances and SARB approvals have been given, the process of contribution is straight forward. Cash is converted into the chosen foreign currency via the client's relevant authorised dealer (e.g. bank or currency exchange firm), and then transferred to the foreign bank account of the pension, from where the money is invested. We will cover investment in Part 4 of the mini-series.

Important Note: The assets permitted under the Foreign Investment Allowance and Discretionary Allowance must be foreign assets. The pension cannot be invested back into South African assets, be they stocks, shares, debt instruments or other property, whether directly or indirectly. If this occurs, it will be deemed a 'loop arrangement'. Furthermore 'investments purposes' is defined by SARB to include stocks, shares, collectives and real-estate, but excludes loans.

The creation of a loop or utilising investment funds for non-investment purposes, as defined by SARB, is a contravention of the Currency and Exchanges Act of 1933 and the Exchange Control Regulations of 1961, which carries significant penalties including fines and custodial sentences.

Where funds are not from a source in the CMA, then these can be contributed to a foreign pension without any South African exchange control restrictions.

Contact Us

If you have any questions in relation to international personal or corporate pension plans, that you are considering for a client or that a client may be in, please contact your usual OTAP representative.

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Nature of Funds: Foreign pensions can take contributions in different forms, which includes cash, shares, collective investments and contracts, such as unit linked life policies and other foreign pension fund transfers. Whilst this is covered below, it should be noted that any reference to cash can be read as Rand or other currencies, and reference to any other assets refer specifically to non-South African based assets only.

i. **Cash** - These are funds held in a bank account that are transferred to the pension. Funds transferred can be in a majority of currencies and acceptance is dependent on the product provider. This is the simplest, quickest and most cost-effective way of funding a foreign pension.

ii. **In Specie Transfer** - Where a client holds listed stock, shares and/or unit trusts in their own name, these can in certain instances, be transferred as a contribution to the pension. The advantage of this is that the investment does not need to be sold and the client remains fully invested.

   It should be noted however, that there are many variables and factors which determine if a transfer is possible. Such transfers can take time and incur additional costs between the transferring parties.

iii. **Reassignment** - Where a client has an investment account, which holds a portfolio of investments or owns a unit linked policy, under certain circumstances, these arrangements can be reassigned from the client's name to the name of the pension.

   Reassignment is a particularly useful way of funding a pension, as the appointed discretionary investment manager or exiting policy can continue without interrupting the underlying investments.

   However, the administrative complexity in reassignment can be onerous, resulting in a longer duration to fund the pension and additional costs to facilitate the arrangement.

iv. **Pension Transfer** – There are different international mechanisms that permit the transfer of a pension from one territory to another. Consolidating a number of foreign pensions can be very useful to an individual and moving a pension from its original territory to an international centre can bring benefits. However, each transfer will be dependent on the rules governing transfers for that jurisdiction, the encumbered plan's own requirements and the foreign pension's ability to accept the transfer.

   Transfers can take a significant amount of time to complete and in many instances, will require the client to take advice from the territory in which the pension is based. It is not possible to transfer a registered South African pension, provident fund or retirement annuity into a foreign pension without cashing it.

v. **Trust Distributions** - A growing number of clients who are receiving distributions from foreign trusts or where the settlor of foreign trusts is looking to simplify their arrangement by having their allocation of the trust's assets placed into a pension fund.

   The contribution can be made in any of the forms described above, but comes with additional complexity around the necessary appointments and processes.

Tax Note: Reassignment and In-Specie transfers are deemed as disposals for tax purposes, as ownership of the asset moves to the pension and hence there is the potential of Capital Gains Tax ("CGT"), even though the assets are not realised.

Summary: Making contributions to a foreign pension is much easier than people realise and given the many ways in which contributions can be made, it is an ideal way of consolidating assets or building a position in foreign investments to provide benefits in retirement.

Part 2 of our mini-series covered the benefits of using a foreign pension given their simplicity, investment and currency freedoms without the restrictions that are placed on domestic arrangements. However, the significant peace of mind that their legal protections provide, their ability to mitigate foreign probate and the speed of succession on death are equally attractive. It's the collective nature of these benefits that other foreign or domestic arrangements simply cannot duplicate and the reason why individuals should consider funding a foreign pension, be it to consolidate existing offshore assets or to fund from domestic wealth.

Key Notes

- **Clients can move money into a foreign pension using their annual Offshore Investment Allowance – up to ZAR 10 million**
- **For those wanting to start with smaller amounts – up to ZAR 1 million can be moved offshore through their Discretionary Allowance and a contribution made to a foreign pension**
- **There are no limits on the level of contribution**
- **Existing offshore assets (e.g. cash, share portfolios, unit trusts, unit linked policies etc.) can be transferred (In-Specie or reassigned) into a foreign pension without the assets having to be sold**
- **Under certain circumstances, a foreign pension in another territory can be transferred in**
- **Offshore Trust assets can be moved into a foreign pension under certain conditions**

For more information, email us on nicole@overseaspension.com or call us on 021 851 5584. Alternatively, you can visit our website at www.trustandpension.com

THIS MINI-SERIES QUALIFIES AS 20 MINUTES CPD

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