



Trusts and Fiduciary

The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 – Update

Responding to HMRC'S proposed changes for Guernsey QROPS

January 2012



Proposed UK legislative changes to the QROPS regime

On 6 December 2011 HMRC released a consultation document relating to draft legislation entitled The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 (the 'New Proposed Regulations'). Carey Olsen published a review of the New Proposed Regulations on 9 December 2011 (link below), summarising the changes and alerting our clients to the potential impact of QROP Schemes established in Guernsey. The New Proposed Regulations have been published for comment and the consultation process will finish on 30 January 2012. Subject to the outcome of the consultation, the New Proposed Regulations would form a part of the Finance Act 2012.

Latest Developments

A number of new developments have taken place since 6 December 2011 in the UK and in Guernsey.

On 20 December HMRC issued draft guidance to the New Proposed Regulations. Furthermore, the Guernsey Association of Pension Providers (GAPP) has responded by drawing together comments from its members and preparing a response to the consultation. On behalf of its members GAPP has also been working very closely with the States of Guernsey Income Tax and policy makers to consider how best to address the challenges to Guernsey's pensions industry and ensure that Guernsey reacts in a co-ordinated and timely manner to the proposed changes. GAPP's focus has been not only to attempt to influence the New Proposed Regulations through the consultation process but also to identify and drive forward proposals for an alternative pensions product in Guernsey. The draft consultation response is due to be released to GAPP's members by email on 13 January for discussion at the GAPP members' meeting scheduled for 19 January. Carey Olsen has been actively engaged in this process and in the preparation of the response.

This briefing note follows on from our previous client briefing and provides an update and analysis of recent developments surrounding the New Proposed Regulations.

For more information on the contents and scope of the New Proposed Regulations please click here to view Carey Olsen's briefing note of 9 December 2011 [http://www.careyolsen.com/downloads/publications/the_overseas_pensions_schemes_\(miscellaneous_amendments\)_regulations_2012.pdf](http://www.careyolsen.com/downloads/publications/the_overseas_pensions_schemes_(miscellaneous_amendments)_regulations_2012.pdf)

HMRC Guidance

HMRC's guidance on the New Proposed Regulations essentially outlines what the requirements for QROPS Status would be if the New Proposed Regulations were enacted in their current form.

Most significantly, the guidance confirms that HMRC's intention behind the introduction of Condition 4 is to require that local and non-local members of QROP Schemes receive the same tax treatment on receipt of benefits in the jurisdiction in which the QROPS is established. New Condition 4 takes no account of the tax regime of the member's place of residence at drawdown.

The guidance further details the proposed new reporting requirements and the information to be provided to HMRC in relation to transfers to QROP Schemes from UK registered pension schemes.

However the guidance leaves unanswered a substantial number of questions on how the new regime would function in practice. It remains unclear what the reporting requirements will be in respect of funds that are (i) left in schemes that cease to have QROPS Status after 6 April 2012; and (ii) paid out of such schemes. It is still uncertain whether unauthorised payment or other punitive tax charges would apply to such funds.

GAPP's response to the consultation

Since the release of the New Proposed Regulations, GAPP has been fully engaged with preparing a response to HMRC's consultation.

In the GAPP Press Release of 9 December 2011, Stephen Ainsworth, President of GAPP, said “We have the full commitment of the States Income Tax Office and senior policy makers to consider ways to resolve any potential issues that may be contained in the draft legislation. I am confident that Guernsey will remain at the forefront of international pension provision as a result”.

GAPP’s response to HMRC’s consultation outlines areas of concern, makes recommendations if the changes to the regime are to go ahead, and seeks clarification on a number of important points. Please find a brief summary of the consultation response under the headings below:

Reporting requirements

GAPP intends to support HMRC’s proposition to extend the QROPS reporting period from five years from the date on which the member leaves the UK to 10 years from the date of transfer into the QROPS, recognising that this would help to ensure that QROPS are being used for their proper purpose.

However GAPP will seek clarification as to how this new reporting period - whose trigger date is from the date of transfer into the QROPS rather than the member’s non-residency, as is currently the case, - is intended to interact with the Member Payment Provisions.

New Condition 4

GAPP proposes to emphasise that new Condition 4 would have serious implications for those who were once UK resident and wish to transfer their pensions overseas to well regulated jurisdictions with a history of complying with QROPS laws and regulations, such as Guernsey. If the New Proposed Regulations were enacted in their current form, such individuals will be faced with having to move their pensions away unless Guernsey, and other jurisdictions in a similar situation to Guernsey, change their domestic laws to meet new Condition 4.

GAPP does not believe that new Condition 4 will help to ensure that QROPS are used correctly, and will therefore recommend that new

Condition 4 should not be introduced and that there should instead be reliance on the increased reporting requirements and the restriction on transfers to New Zealand schemes, which it believes are sufficient and proportionate measures to curb potential abusive behaviour.

In the alternative, if HMRC is committed to bringing in new Condition 4, GAPP will request that this should be delayed by at least a year, to enable proper consideration of new Condition 4’s effect on the status of schemes and their members.

Further questions

GAPP intends to outline a number of critical questions about new Condition 4 which remain unanswered - and which it would be crucial for providers in Guernsey both to understand and act upon - before new Condition 4 is brought in to effect. These questions include clarification of which reporting requirements apply to schemes which cease to be QROPS compliant on the date that new Condition 4 is brought in, and whether the Member Payment Charges apply to funds in such schemes (whether left in the scheme or paid out), amongst other questions.

Finding a solution for Guernsey – meeting Condition 4

Alongside responding to HMRC’s consultation process, GAPP has been working with the States of Guernsey Income Tax, Carey Olsen, legislators and politicians in order to find a way by which Guernsey could meet the new Condition 4 if it were to be brought into effect in its current form, as proposed by HMRC, on 6 April 2012. Representatives from our legal teams have been working very closely with GAPP to explore the various options available and identify an alternative pensions product that will be acceptable to pension savers, the various stakeholders in the industry as well as to the States of Guernsey, including the Policy Council, Treasury and Resources Department, the Income Tax office, Commerce and Employment, our legislators and politicians.

Essentially, it would seem that two options are open to Guernsey to ensure compliance with New Condition 4:

- 1) The first option would be to tax Guernsey and non-Guernsey residents on pensions income. This would ensure that Guernsey and non-Guernsey resident QROPS members would receive the same tax treatment. However, this option would place Guernsey at a competitive disadvantage when compared with other QROPS jurisdictions. QROPS members are often taxed on pensions income in their home jurisdiction, however this option would cause them to be subject to double taxation on the same pensions income (both in Guernsey and in their country of residence), where relief is not available under the tax regimes of their residence or under an international bilateral agreement.
- 2) The second option would be to establish an alternative pensions product under Guernsey's existing system of taxation of personal income, which would be available to Guernsey and non-Guernsey residents. No Guernsey tax would be payable on distributions received, thereby ensuring equal tax treatment of benefits for Guernsey and non-Guernsey residents, and ensuring that Guernsey based pensions meet the requirements of new Condition 4.

GAPP has reported that there has been a very commendable response from all role-players to date to focus on and deal expeditiously with this complex and multi-faceted issue, and has expressed its confidence that Guernsey's reputation as a highly regulated and compliant jurisdiction will be maintained. Due to Carey Olsen's expertise in matters related to Guernsey pensions and tax, we are in a strong position to play an active role in supporting Guernsey's pensions industry and are pleased to advise GAPP at this critical time.

Carey Olsen is confident that under the admirable stewardship of Stephen Ainsworth, GAPP will be able to lead the way forward to enable us to meet the challenges presented by the New Proposed Regulations so that Guernsey will be able to continue to provide QROPS services of the highest standards to pension savers both at home and abroad.

Carey Olsen will provide follow up client briefings on this topic as further information becomes available. If you have any queries then please do not hesitate to contact the pensions team.

For further information please view the GAPP website:
<http://www.gapp.gg/2-Home.php>

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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