



Trusts and Fiduciary

The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012

December 2011



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'). The New Proposed Regulations have been published for comment and the consultation will finish on 30 January 2012. Subject to the result of the consultation, the New Proposed Regulations would form a part of the Finance Act 2012. The consultation document can be found at <http://www.hmrc.gov.uk/budget-updates/06dec11/pensions-draft-legis.pdf>.

The New Proposed Regulations contain substantial amendments to the existing QROPS approval and reporting regimes and may potentially impact the ability of QROP Schemes to continue to be established in Guernsey.

The Explanatory Memorandum to the New Proposed Regulations outlines the purpose for which HMRC has prepared the New Proposed Regulations, which is stated to be 'to ensure that the system is being used to support pension saving' and that 'savings are used to provide an income in retirement as intended when the regime was introduced in 2006'.

The purpose of this note is to briefly outline the most significant changes proposed and to alert our clients to the potential impact on QROP Schemes established in Guernsey.

The requirements to be a QROPS

Currently, the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 outline the requirements to be a QROPS, however these requirements will change if the New Proposed Regulations are put in place. They will have effect from 6 April 2012 onwards but will impact both current and future members.

1. Under the New Proposed Regulations it would be necessary for all QROP Schemes to be recognised for tax purposes in their country of establishment (the current Condition A) – it will no longer be possible to rely on Condition B.

QROPS Schemes are capable of being (and should be) recognised for tax purposes in Guernsey and are capable of being approved under section 157A of the Income Tax (Guernsey) Law 1975 in respect of Guernsey and non-Guernsey resident members. This change should not affect Guernsey's QROP Schemes, but will have an impact on the QROPS market in general.

2. More significantly, the New Proposed Regulations would make it necessary for the same tax relief by way of tax exemption on pension benefits to be available to residents and non-residents of the QROP Scheme's country of establishment. The New Proposed Regulations insert a new Condition 4 at regulation 2(d) which provides that:

'where an exemption from tax in respect of benefits paid from the scheme is available to a member of the scheme who is not resident in the country or territory in which the scheme is established, the exemption must (a) also be available to members of the scheme who are resident in the country or territory; and (b) apply regardless of whether the member was resident in the country or territory (i) when the member joined the scheme or (ii) for any period of time when they were a member of the scheme.'

The latter change raises questions about Guernsey's ability to host QROP Schemes that would comply with the New Proposed Regulations and worryingly, that existing schemes will no longer meet the conditions to maintain their QROP status. This is because Guernsey residents are given tax relief on their pensions contributions but are taxed on their pensions income, whereas non-Guernsey residents are not taxed on their pensions income in Guernsey, and normally benefit from the exemption available under section 40(ee) of the Income Tax (Guernsey) Law 1975. This current arrangement does not appear to be permissible under the New Proposed Regulations.

There may be possibilities in changing the basis of the tax treatment of QROPS members by moving away from the exemption regime under Section 40(ee). However this would need to be discussed with the Director of Income Tax in Guernsey and, possibly, with HMRC.

Reporting requirements

1. The Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 currently require trustees to report payments to members unless the member is non-UK tax resident at the time that the payment is made and was not so resident during the preceding five tax years.

The New Proposed Regulations remove the need for trustees to consider for how long a member has been non-UK resident. Under the New Proposed Regulations a trustee would need to report payments made to members for ten years from the date of transfer of UK funds to the QROP Scheme. Payments would need to be reported within 60 days of being made rather than at the end of the tax year.

2. There are further rules requiring potential members of QROPS to supply personal information to the transferring (UK registered) pension scheme before requesting a transfer to a QROPS. The transferring scheme would then have to send the information provided by the member, and other information, to HMRC. This is intended to ensure that prospective QROPS members are aware of the potential tax consequences of transferring their UK registered pension scheme rights to a QROPS.

Next steps

As the New Proposed Regulations have only very recently been released it is difficult to gauge what their impact will be, and what can be done to limit any negative implications they may have for QROP Schemes in Guernsey. It is important to note that the New Proposed

Regulations have been released as a consultation document and may yet be amended before becoming law. The requirement that where tax exemption is available to all non-resident members it must be available to all members, seems unrelated to HMRC's principal concern, namely that QROPS are being misused as a means of turning pension savings into tax-free lump sums. This appears to be the most significant (and potentially damaging) change that is proposed. Please note that it does not appear that any proposed changes have been put forward in relation to the provisions of Schedule 34 to the UK Finance Act 2004 (the '2004 Act'). Schedule 34(2) to the 2004 Act outlines when the 'member payment provisions' of that act (the provisions which give rise to unauthorised payment charges) cease to apply, namely after five tax years of a member's non-UK residency. This would suggest that the proposed changes to the reporting period are aimed at preventing members from obtaining income tax relief in relation to pensions income by moving their pensions abroad, rather than increasing the period of time during which they are liable to incur unauthorised payment charges, however clarification will need to be sought in order to fully understand the scope and impact of the New Proposed Regulations and other proposed legislative changes in the draft Finance Act 2012.

Further consultation with the Director of Income Tax in Guernsey will be necessary (as well as, no doubt, between the Director and HMRC).

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. Legal and tax advice should be sought by trustees and pension providers to deal with specific queries.

Contact us

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