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Withdrawal of transitional arrangements concerning benefit limits and the approval regime for multi-jurisdictional schemes

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As many scheme administrators will know, the Jersey tax regime for Jersey approved pension schemes was significantly changed in 2015. Amongst other things, benefit limits were removed with the only condition being that the pension must be payable for the remainder of the member's life.

There was concern at the time that the rules of some schemes determined the payments that could be made by reference to the Jersey Tax Office's benefit limits that had previously been in place. For example, a scheme's rules may state that the benefits to be provided would be the maximum permitted under the applicable legislation, without explicitly setting out details of the benefits to be paid. With the removal of the benefit limits, such a provision is no longer appropriate and employers will not wish to fund the provision of unlimited benefits from their schemes.

To meet this concern, a transitional arrangement has been applied where a scheme was an occupational pension scheme approved under Article 131 of the Income Tax (Jersey) Law 1961, as amended, on 31 December 2014. For such a scheme, the benefit limits as at 31 December 2014 would continue to apply unless the trustees resolved otherwise. However, this transitional arrangement only applies until 1 January 2018 and accordingly scheme administrators should now be checking their scheme rules and, if necessary, arranging for them to be amended to ensure that the benefits which are payable are those intended and that the scheme does not promise unlimited benefits from 1 January 2018.

New guidance was also introduced in 2015 in respect of multi-jurisdictional occupational pension schemes (i.e. schemes which have Jersey as well as non-Jersey members). Such a scheme established in Jersey which had approval under Article 131 as at 31 December 2014 is being treated from 1 January 2015 to 31 December 2017 as having approval under Article 131 for the part of the scheme relating to the Jersey members and approval under Article 131A for the part of the scheme relating to the non-Jersey members. The automatic part approval under Article 131A will however no longer apply from 1 January 2018. Therefore in order for the part of the scheme relating to the non-Jersey members to continue to be subject to Article 131A approval, scheme administrators will need to seek specific approval from the Comptroller before 1 January 2018. In order to obtain such approval, the part of the scheme relating to non-Jersey members must comply with the requirements of Article 131A.

Finally, Article 131 schemes established before 1 January 2015 whose rules permit refunds of member contributions to members who have left an employer's service have until 1 January 2020 to amend their rules to limit the repayment of any sum representing such contributions to individuals who have been members of such schemes for less than 5 years. Schemes established on or after 1 January 2015 have already been required to contain within their rules a condition that an individual cannot request a repayment of their contributions once they have been a member of the scheme for a period of 5 years or longer.

The employment, pensions and incentives team at Carey Olsen in Jersey are able to assist both with the checking of scheme rules and the preparation of scheme amendments if required and the obtaining of Article 131A approval from the Comptroller. For more information or professional advice, please contact one of our lawyers listed overleaf.

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