Further pension changes in Jersey

Service area / Employment, Pensions and Incentives
Location / Jersey
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New pension changes

Although the Jersey tax approval regime was amended substantially with effect from I January 2015, the Finance (2018 Budget) (Jersey) Law (the “ Budget Law”) has introduced four further changes, which came into effect on 1 January 2018.

In summary, the four changes are:

- the maximum limit for the commutation of trivial pensions has increased from £30,000 to £35,000;
- the small commutation provisions have been amended and extended;
- there is now specific provision for bulk transfers as between approved Jersey occupational pensions schemes; and
- an anti avoidance measure has been introduced in relation to certain overseas transfers.

The changes are effected by amending Part 19 of the Income Tax (Jersey) Law 1961, as amended (the “Income Tax Law”), in the manner set out in the Budget Law.

None of the changes are mandatory (but please see our comments below concerning small fund commutations). Instead, it is for each scheme manager to consider whether to amend the scheme rules to make one or more of the changes, to the extent that they may be relevant.

Commutation limit for trivial pensions

The limit to which a pension holder who has attained the age of 60 may commute the whole of his or her fund value is being increased from £30,000 to £35,000. The fund value at the time of the commutation together with previous commutations by the pension holder must not exceed the limit.

At the same time the pre-existing requirement that a pension holder must not have commenced benefits under the scheme when the election is made has been removed.

Small fund commutations

Pension holders in approved Jersey schemes are now permitted to commute the whole of their fund where at the time of a pension holder’s election, the value of the fund to be commuted does not exceed £19,000 and the aggregate value of the fund and any lump sums previously commuted does not exceed £50,000.

Significantly, the small fund commutation provisions have been extended to all approved Jersey schemes. This means that as at 1 January 2018, it is possible for such provisions to be contained in approved Jersey retirement annuity contracts and approved Jersey retirement trust schemes, as well as approved Jersey occupational pension schemes.

In addition, there is now more flexibility as to when such an election is made. There is no requirement that a pension holder must be a leaver or retiring, in order to elect to take a small fund commutation. However, in practice, employers and/or trustees may wish to include in scheme rules a requirement as to when such an election can be made.

It is important for scheme managers of approved Jersey occupational schemes which have existing small fund commutation provisions to check how these provisions are drafted. If such provisions rely expressly on what were Articles 131(13) and (14) of the Income Tax Law, these provisions need to be replaced with the specific requirements to be met, since Articles 131(13) and (14) have been deleted as part of the changes to the small fund commutation provisions under Part 19 of the Income Tax Law.

The small fund commutation is now treated as a payment of pension income and attracts income tax at the standard rate of 20%.

Bulk transfers

The Income Tax Law now expressly allows a bulk transfer of the whole or part of an approved Jersey occupational pension scheme to be made to another Jersey approved occupational pension scheme, with the prior written approval of the Comptroller of Taxes (the "Comptroller").

As part of the application to seek approval, a scheme manager must provide the following information to the Comptroller:

- the date of the proposed transfer;
- the name of the transferor scheme;
- the name of the transferee scheme;
- the name of each pension holder whose fund value it is proposed be transferred; and
- the name of each pension holder (if any) whose fund value will not be transferred.

It is worth noting that this change only applies to approved Jersey occupational pension schemes.

Anti avoidance

The anti-avoidance provision applies to any pension holder who transfers a fund value to an equivalent pension scheme established outside Jersey in the manner permitted under the Income Tax Law, who subsequently receives a lump sum payment from the receiving scheme of the whole or part of the value previously transferred, and who then becomes resident in Jersey within the same year of assessment as that in which the permitted transfer took place or in any of the following 3 years of assessment. In this event, the lump sum received from the receiving scheme will now be treated as income and charged to tax.

This provision was introduced to meet a concern that with the introduction of pension freedoms in the UK, there was the potential for individuals to leave Jersey for a short period of time, withdraw all of their pension fund whilst non-resident and then subsequently return to Jersey – accessing the whole of their pension fund without paying any Jersey tax.

Whilst we do not envisage the anti-avoidance provision will be written into scheme rules, it is important to understand the circumstances in which a tax charge will arise.

Next steps

Scheme managers of relevant approved Jersey schemes should consider the changes and decide whether they wish to include any of them in their pension schemes, in particular:

- should the limit in any trivial pension commutation provisions be increased?
- if the scheme is an approved Jersey retirement annuity contract or an approved Jersey retirement trust scheme, should the scheme rules be amended to introduce provisions for small fund commutations?
- if the scheme is an approved Jersey occupational pension scheme:
  - should the small fund commutation provisions be amended (or introduced) along the lines proposed, if there are a number of pension holders whose fund values are under £19k?
  - if existing small fund commutation provisions rely expressly on the terms of Articles 131(13) and (14) of the Income Tax Law, these provisions should be replaced with the express requirements to be met; and
  - would it be helpful to include provisions allowing for bulk transfers?

If you would like any assistance or advice in connection with these pension changes, the team of pension lawyers at Carey Olsen would be happy to assist you.

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