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Qualifying Recognised Overseas Pension Scheme ("QROPS")

This note provides an overview of the Qualified Recognised Overseas Pension Scheme ("QROPS")

Overview

QROPS were introduced in the UK on 6 April 2006 as part of new legislation introduced by the UK Government with the objective of simplifying pensions (also commonly referred to as "A-Day"). This scheme was introduced to allow individuals who had either left the UK or are intending to leave the UK, to transfer their UK registered pension scheme into an overseas pension scheme without suffering unauthorised payments or scheme sanction charges. In the UK, employees and employers, typically obtain benefits when they make pension contributions into UK registered pensions schemes. A member would only be able to retain the tax benefits, upon a transfer of his pension contributions, if the transfer is made to another UK registered pension scheme or a QROPS.

The consequences of not complying with the laws and regulations applicable to QROPS can be very damaging, as a result of unauthorised payments, surcharges and scheme sanction charges being levied. It is, therefore, imperative that providers and trustees, which receive transfers from UK registered pension schemes or other QROPS, ensure they understand and comply with the UK's rules and requirements.

This briefing note seeks to explain the requirements and most pertinent issues from a Jersey law perspective in relation to the QROPS regime and Jersey's proposed changes to modernise its tax rules to bring it in line with those of comparable jurisdictions.

QROPS

A QROPS does not necessarily have to be established in the new country of residence thus providing greater flexibility and stability, along with the freedom of a member to choose his own scheme provider. A QROPS can be established in any EU Member State, Norway, Lichtenstein, Iceland or any country or territory with which the UK has a double taxation agreement with exchange of information and non-discrimination provisions, including Jersey.

If a transfer is made to a non-UK scheme, which does not have QROPS status, the member is liable to pay penal tax (comprising an unauthorised payment charge and surcharge), which may be up to 55% of the value of the transfer payment.

The UK's HM Revenue & Customs ("HMRC"), maintains a QROPS list, which aims to list those pension schemes that have notified HMRC that they meet the conditions to be a QROPS and which schemes have asked to be publicly listed. The list is based on information provided to HMRC by non-UK pensions schemes when they notify HMRC that they comply with the requirements to be a QROPS. Publication on the list should not be seen as confirmation by HMRC that it has verified all of the information supplied by the scheme in its notification. The purpose of this list is merely to help UK registered pension schemes to carry out their due diligence when transferring pension savings to another pension scheme that is not a UK registered pension scheme.

It is, therefore, important to note that HMRC does not approve QROPS schemes. The listing of a pension scheme on HMRC's QROPS list or the previous confirmation from HMRC that a specific pension scheme has QROPS status does not mean that the scheme is a QROPS. Providers of non-UK registered pension schemes are required to ensure that the scheme is compliant and qualifies as a QROPS and that both the scheme rules and the administration of the scheme continue to comply with the QROPS' requirements at the time a transfer is made. Similarly, the absence of a scheme name from HMRC's QROPS list should not be seen as a statement of scheme status. For example, some schemes choose to opt out of this public listing even though they may have notified HMRC of their QROPS status.

Whilst Jersey QROPS have appeared on this list for several years, Jersey has only recently taken steps to open this market to non-resident individuals.

QROPS' Requirements

In order for a Jersey pension scheme to be a QROPS the following criteria must be satisfied:

- Members must be 55 years of age and older before any pension benefits may be paid, except where the pension holder suffers ill-health (which for these purposes are specifically defined), and, as a result, can no longer undertake their occupation.
- The scheme must be approved for tax purposes by Jersey's Comptroller of Taxes.
- The prescribed rates in respect of a lump sum benefit on retirement, and on income for life must be maintained.
- The scheme must be open to Jersey residents.
- Application must be made to HMRC for a reference number by completing certain forms as required.
- The scheme administrator must provide certain undertakings to HMRC, which includes an undertaking that it will provide HMRC with information prescribed in The Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Scheme and Corresponding Relief) Regulations 2006, which were amended in April 2012 with further amendments that were proposed in 2013.

A scheme administrator is also required to, amongst other things, (i) notify HMRC that the scheme is a QROPS and provide supporting information, (ii) notify HMRC of the country in which the scheme is established, (iii) notify HMRC when the scheme ceases to be a QROPS, (iv) notify HMRC of any payment made within 10 years of the transfer payment or where the member has remained UK resident or reacquired UK residency within 5 years prior to the transfer being made, and (v) provide any other information as required by HMRC.

In the case of the scheme not having an administrator the obligations will fall on the trustee of the scheme. HMRC can de-list the scheme as a QROPS if the reporting obligations are not complied with, and this could have substantial consequences for members and possible liability for the trustees or administrator of the scheme.

Benefits of QROPS

- A Tax-free lump sum option.
- It provides a tax efficient transfer of accrued pension benefits from a UK registered pension scheme.
- The flexibility to consolidate more than one existing pension into a single QROPS.
- There is no minimum or maximum thresholds on the value of the fund.
- There is no requirement to purchase an annuity.
- More flexibility with regards to investment decisions.
- It provides additional benefits upon retirement with the ability to pass on pension funds to certain beneficiaries.
- Pension payments can be made in a currency of choice.

Current situation in Jersey

In 2013 the Jersey government issued a tax consultation paper, which included draft legislation, regarding proposed changes to the tax rules relating to pensions and pension schemes. Responses to the consultation were received from industry and a report was presented to the States in May 2014. The main changes proposed to the existing tax rules and relevant for purposes of Jersey's QROPS regime are as follows:

- non-resident individuals will be allowed to contribute into Retirement Trust Schemes;

- a much wider range of international pension fund transfers, both to and from Jersey will be permitted; and
- pension schemes will have much greater flexibility over how they choose to pay out the tax free lump sum available from approved Jersey schemes.

The proposed changes outlined in the Draft Income Tax (Amendment No. 44) (Jersey) Law 2011 would come into effect on 1 January 2015. This will have a significant impact on all Jersey pension schemes and will allow Jersey equal footing when competing with its peers.

What services does Hatstone Lawyers provide?

Hatstone Lawyers is an independent law firm and does not provide trust company business services. We are happy to work with both banks and large independent trust companies in any jurisdiction.

Hatstone Lawyers will prepare the relevant instruments of trust and scheme rules to ensure that the documentation complies with the UK QROPS requirements.

For more information please feel free to contact us.

About Hatstone

Hatstone is a leading boutique multi-jurisdictional law firm with offices in BVI, Jersey, London, Panama and South Africa.

Our philosophy revolves around a Partner-led client service.

We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth.

- **Partner-led:** Our Partners each have a wealth of experience in banking and finance, the establishment and maintenance of investment funds, corporate and commercial, acquisitions and mergers, private equity and venture capital, structured finance, financial services and regulatory law, trusts and foundations. We believe that our clients benefit from having their affairs overseen by senior staff with the necessary experience.
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- **Transparency:** We are happy to work on a fixed fee basis (in most circumstances) and are transparent about our fees.

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