INTERNATIONAL ADVISER SUPPLEMENT

MARCH 2010

QROPS

An essential guide for advisers and their expatriate clients

Playing it safe

QROPS are theoretically straightforward, but HMRC has taken certain steps to limit abuse. Concept Group's Roger Berry explains the issues that can sometimes arise

Roger Berry, managing director, Concept Group

QROPS should be a safe, almost boring proposition for advisers and clients given the framework they exist in. After all, schemes have to be approved by HMRC with the scheme managers having to follow UK pension rules while a member is UK resident, or has been in any of the last five UK tax years. After that period primary undertakings without time limit exist, so why have there been issues and what are the ones brewing today?

Concept Group first acted as trustee of a group multi-member pension scheme with QROPS approval in 2006, soon after it created the first personal group scheme with open architecture, and Aurora was born. Almost certainly the largest QROPS available in the market place today, Aurora has survived due to its prudent approach and become synonymous with QROPS.

HMRC would appear to be generally satisfied with the QROPS legislation but has taken action to control abuse. In 2008 a QROPS for member John Dunne was challenged.

In this case, there were a number of issues HMRC could rightly have had concerns over but the sham employment was the weak link attacked. The special commissioners concluded that his employment was not legitimate, and in 2008 charged him more in tax than he had received from his QROPS.

Personal pension QROPS are now the dominant format available to advisers. If HMRC approve the scheme are we not safe?

HMRC now caveat the list of schemes they publish on their website, taking the stance that such schemes have effectively notified HMRC that they fulfill the requirements, HMRC not necessarily verifying such information. Subsequently, it could be discovered the conditions are not met and the scheme could then be treated as never being approved and thus any transfers to it could be unauthorised, with all the taxes and penalties that involves.

A proactive stance

As this appeared not long after the Singapore event, it is interesting to consider this explanatory note in that context. Certainly, mere mention of any scheme on the list warrants little, although the greater involvement by HMRC in schemes seeking and struggling to attain approval, from jurisdictions such as Malta, Gibraltar and Cyprus, suggests a more proactive approach is being adopted.

Given that jurisdictions are changing their laws to comply with the requirements, it appears HMRC's stance is working and an increasingly compliant industry will emerge. That is good news for advisers and clients.

Assuming then a scheme is correctly approved, will it behave as a pension should. Will the trustees maintain the pension fund to provide an income for life in retirement and stay within the rules?

The answer to that question will depend on the trustees/administrators view of the rules. A set of rules that vary depending on the route of approval the scheme used to achieve QROPS listing with HMRC and bearing in mind local pension and/or trust law.

It is a point often missed that when considering matters within a pension trust, the trustees' duties are onerous and they will have consideration for the member and potential beneficiaries – such as the spouse and dependants.

They will have their view on how they see the legal requirements and may take into account the UK centric view on pension operation. For instance, the fund should be used to pay an income for life. This view is important because HMRC are the primary arbiters and they can, if they choose to, remove the approval of the scheme.

If a scheme is taking a more aggressive approach and looking to run contrary to the clear intentions of the legislation, great care is needed.

Let us then look at the areas of concern. The first would, on most people's list,

IA KEY POINTS

Take care with tax-free lump sums as they may be taxed where you reside.

Minimum benefit age rises this year to 55, from 50.

be any scheme offering total encashment, others will include taxable property issues, tax-free lump sums, benefit age rules and the selling of QROPS to UK resident individuals with no real intent of permanently leaving.

Encashment

Points to consider would be whether, even in the UK, it would be possible, due to factors such as serious ill health or trivial fund size. Is it possible under the rules of the scheme and its jurisdiction? The trustees must consider in detail whether it is in the best interest of the member and dependants and consider residency, financial and health history of the member.

Given that it is not the intention of HMRC, in constructing the QROPS framework, to provide a route for UK tax-relieved funds to be simply encashed to members, it is a dangerous and contentious area best avoided.

Even if an adviser can establish the technical correctness of such advice, what will the member say to HMRC if, as occurs all too often, the member returns to the UK because grandchildren are born, a spouse dies or for healthcare reasons.

Guernsey schemes are not faced with that issue as it is prevented as a matter of local pension regulation. Those changes came after Guernsey approached HMRC in 2008 and sought to allay any concerns HMRC had. For many advisers that proactive stance and prudent approach is the reason to choose a Guernsey scheme.

Taxable Property

Taxable property is an area of recent concern following revised guidance issued by HMRC. But not new law, as some have reported, the legislation has existed all along. Based upon the same definitions that exist for UK schemes, residential property, jewellery and works of art are examples. Any scheme that allows itself to be influenced by a member in acquiring such property falls into a painful reporting and taxing regime. The reporting overrides the five-year rule and is without term. Interestingly, there have been moves by some schemes to unilaterally define themselves outside this regime by adopting the label of non-investment regulated. A desperate and hollow act as the only issue is whether any member has held or now holds taxable property.

Tax-free lump sums

Firstly, take care as they may be tax free from where they are paid but may be taxed where you reside. Secondly, if you are offered a lump sum and you have already taken one while in the UK, alarm bells should be ringing.

Benefit age rules

The UK's position is changing as of April this year, moving from commencement of benefit minimum age of 50 to 55. A small window of opportunity exists to commence benefit now until April if a member is over the age of 50. After that, jurisdictions such as Guernsey will have to comply with the new age limit, irrespective of residency history.

UK residents & QROPS

Technically possible? Obviously, the intention of the legislation is to provide movement of pensions to those permanently leaving or having left the UK. So difficult to understand in the long term how someone can explain to HMRC why they have had a QROPS and been long-term UK residents.

A scheme manager is required to report certain events to HMRC while UK resident, such as death or commencement of benefit. HMRC will therefore know exactly what is transpiring. It seems likely they will simply look through any benefits being promoted under anti-avoidance regulations or treat as an artificial arrangement and simply issue assessment to taxes as if it is a UK scheme.

Given the recent blurring of borders between tax avoidance and tax evasion, any such adventure, technically possible or not, must surely be viewed with some risk and will need very careful consideration. The courts are upholding this view and even supporting a retrospective approach, resulting in significant back taxes arising. See Huitson vs HMRC 28 January, 2010.

And what of Aurora? No investment in taxable property, not now and at no time in the past. No second pension commencement lump sums have been paid and we do not deal with UK residents not leaving. Straightlaced and unexciting Aurora may be, but it is safe and successful. IA

“Given that it is not the intention of HMRC, in constructing the QROPS framework, to provide a route for UK tax-relieved funds to be simply encashed to members, it is a dangerous and contentious area best avoided”

The Concept Group's Aurora Pension Plan has become one of the best known QROPS on the market and is seeing increasing business from UK-based advisers

An established concept

Concept Group Limited (CGL) is an independently-owned, Guernsey-based licensed fiduciary company. CGL is an innovator and developer of employee benefit and bespoke fiduciary products and considers local and international pension trust work as part of its core business.

Historically, their innovation included the first multi-member group retirement schemes for Guernsey residents and their hugely successful International Pension Plans. The company's Aurora International Pension Plans, developed in early 2007, have now become synonymous with the QROPS market.

UK Confidence

Aurora has now become the most well known and widely used QROPS in the international market place with a large and experienced team providing technical support and high service levels.

While CGL continue to receive applications from across the globe, one interesting trend has been the increase in business coming directly from UK-based advisers. This reflects the increasing confidence and understanding of the QROPS structure from UK intermediaries and advisers, and suggests QROPS is now becoming mainstream general advice for their clients that are leaving or have left the UK.

Instead of UK advisers losing relationships when their clients leave the UK, QROPS provides a structure to maintain the relationship and earn initial and ongoing fees from the advice.

Banks and investment houses are also taking increased notice of QROPS as they see the structure as an excellent opportunity to gather new assets under management within their investment and custodian services.

Guernsey Focus

Guernsey's proactive dealings with HMRC, benign tax position, flexibility on benefits and prudent approach are the foundation stones of its QROPS success and have led Guernsey to be a centre of excellence in QROPS.

Concept's involvement in the establishment of Guernsey as a QROPS centre has been extensive. Currently, Roger Berry, Concept's managing director, sits on three Guernsey pension committees, the Guernsey Financial Services Commissions Retirement Annuity Trust Review committee, the industry formed Guernsey Association of Pension Providers (GAPP) and the Guernsey Income Tax Pensions Legislation Review group. He chairs the GAPP QROPS sub-Committee and is therefore very much at the forefront of QROPS development in Guernsey. Roger also speaks widely on the subject of QROPS, on both the technical and political issues that arise.

Technical Expertise

As the longest serving group personal QROPS provider in the market, with possibly the largest book of QROPS clients in the world, the Aurora team strive to provide excellent support to their intermediary clients and expend great effort in maintaining full knowledge of all technical matters relating to QROPS. As an example Aurora has never dealt with any taxable property investments.

Dedicated teams provide support on technical matters, application processes, transfer issues and ongoing administration.

CGL continue to provide innovative solutions for their clients. The open architecture and investment freedom offered by the Aurora Libertai range has been extremely popular. This Aurora option offers investment autonomy and the member's choice of investment manager. IA

IA CONTACT DETAILS

Mailing address: PO Box 130, Sarnia House, Le Truchot, St Peter Port, Guernsey, GY1 3HH

Telephone: + 44 (0) 1481 754725

Fax: + 44 (0) 1481 716566

Email: robbie@cgl.gg

Website: www.cgl.gg

Concept Group Limited

"Instead of UK advisers losing relationships when their clients leave the UK, QROPS provides a structure to maintain the relationship and earn initial and ongoing fees from the advice"

Guernsey is a leading jurisdiction for the provision of QROPS and enjoys a number of advantages that make it a key location for taking out such a scheme

A closer look at Guernsey

No matter whether you are advising expatriates, those considering moving abroad or it is your personal position, then it will be well worth considering the advantages of QROPS and in particular the specific benefits that schemes from providers in Guernsey can offer.

What is a QROPS?

Her Majesty's Revenue & Customs (HMRC) introduced a series of changes to the UK pensions system from 6 April, 2006 – known as 'A Day'.

The overhaul included withdrawing the existing agreements for the transfer of UK pension rights to overseas schemes and meant that, in effect, this would only be possible if the receiving scheme was recognised by HMRC as a QROPS.

While an individual is resident in the UK or has been for any of the past five complete tax years, the QROPS rules require benefits to be paid in line with those which could be paid if funds were still held in the UK scheme. But once a person has migrated and ceased to be a UK tax resident for five full UK tax years, then it is the rules of the QROPS in its place of registration that apply.

Guernsey QROPS

What does a QROPS in Guernsey offer?

- Pension income paid gross without the deduction of Guernsey income tax.
- No Guernsey income or capital gains tax on the assets within the scheme, i.e. gross roll up.
- Increased freedom of investment choice.
- No limits to the value of the fund which can be accumulated.
- Optional lump sum – up to 25% and tax-free.
- Flexibility of benefit drawdown.
- No requirement to purchase an insurance-based annuity (although may do so).
- Ability to avoid potential negative financial implications of an alternatively secured pension (ASP) or an unsecured pension (USP).
- Ability to leave residue of fund to named beneficiaries.
- Able to receive protected rights from UK-registered pension schemes.
- May be used to receive transfer values from any UK-registered pension scheme even where it is in drawdown, subject to certain conditions.

Offshore leader

Guernsey is a leading jurisdiction for the provision of QROPS.

- Offers security by being proactive in ensuring that its schemes continue to be approved by HMRC.
- Bespoke personal pension regime – including retirement annuity trusts (RATS) – for 25-plus years.
- Pension schemes are approved by Guernsey's income tax director.
- Experienced service providers offer a variety of investment models with some providing for a choice in investment manager and/or an open architecture that allows the most diverse of investment choices.
- Trust practitioners that are well regulated by the Guernsey Financial Services Commission (GFSC).
- Features on the OECD 'white list' published at the conclusion of the G20 summit in London in April 2009.

International pensions

Guernsey is also a natural home for international pensions. The island hosts many experienced service providers offering attractive products in this market. IA

IA CONTACT DETAILS

Mailing address: PO Box 655, North Plantation, St Peter Port, Guernsey, GY1 3PN

Telephone: +44 (0) 1481 720071

Fax: +44 (0) 1481 720091

Email: qrops@guernseyfinance.com

Website: www.guernseyfinance.com

Contact: Peter Niven, chief executive of Guernsey Finance

Guernsey
The symbol of international finance

"While an individual is resident in the UK or has been for any of the past five complete tax years, the QROPS rules require benefits to be paid in line with those which could be paid if funds were still held in the UK scheme"

AN INTERNATIONAL ADVISER SUPPLEMENT

www.international-adviser.com MARCH 2010