



Roger Berry, managing director,
Concept Group

You may be surprised just how many fables Aesop wrote but the hare and the tortoise must rank as his most famous. The fable applies to QROPS because frequently the providers and jurisdictions involved in high-speed manoeuvres seem to keep being beaten, in the end, by the slow and the steady.

Perhaps due to the enormous complexities of the UK legislation and that of the members and QROPS providers jurisdictions, many grey areas exist which encourage a diverse interpretation of the 'rules'.

As many readers will be aware, Guernsey QROPS providers have joined together to create a Code of Practice that will hopefully provide some harmony for users of Guernsey QROPS. As chairman of that committee, we have faced some criticism over the time we have taken to produce the exposure draft, now in open draft for comment. The irony is that most QROPS jurisdictions do not even have a QROPS industry body, let alone any codes of practice. Guernsey quietly continues to move ahead, and the tortoise is winning.

■ The NZ situation

Historically, the area that has attracted the most 'hares' has been those wishing to be involved in 100% commutation of pensions. Interestingly, New Zealand is the longest standing jurisdiction, to my knowledge, offering some form of 100% commutation and its use or abuse is ongoing. There is talk of industry committees being set up and an attempt to clean up non-residents of New Zealand using or abusing the favourable commutation rules. Frankly, I would never bet against the possibility any jurisdiction involved in this

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Concept Group's managing director, Roger Berry, reviews the diverse approaches to QROPS business

The hare and the tortoise

form of QROPS abuse receiving enquiry from HMRC.

Receiving an enquiry from HMRC can lead to being delisted from HMRC's QROPS list and can leave members and providers with taxes and charges due. But take care with the list, appearance on it is voluntary. Some schemes may choose not to be listed or ask to be removed subsequently, without any necessary tax consequence. It is simply their choice not to be listed.

Alternatively, the scheme may no longer meet the QROPS requirements and fall off the list that way, having notified HMRC. Again, no taxes necessarily arise. The nasty one is when HMRC concludes that the scheme never met the original application requirements, it gets de-listed and potentially taxes and charges arise retrospectively back to 'square one' as all

transfers may be deemed unauthorised.

■ A new way of thinking

The mindset from the UK perspective does seem to be changing. The draft Finance Bill 2011 contains provisions that will do away with the need for insurance based annuity, the need to commence taking benefit at any age and amongst other things allow 'flexible drawdown'. You will need to demonstrate a lifetime pension income of at least £20,000 (including state pension), but if you can do that then flexible drawdown means you can take remaining pension savings as you wish if your provider allows.

I can almost imagine a number of hares starting to put their running shoes on. Unfortunately, all benefits so taken are treated as income



and taxed accordingly, if UK-resident. Even if non-UK-resident, HMRC are reserving the right to tax a member of a scheme doing this if they subsequently become UK tax resident and had less than five complete UK tax years absence. If the member is non-UK-resident, then that jurisdiction may have regulations to tax the sums as income or perhaps as a lump sum.

Hares will do well to remember their abiding undertakings given to HMRC when they received their 'approval', otherwise some crossing of shoelaces will undoubtedly occur. Those taking great care and full tax advice will be the winners here.

■ Farewell to IHT

One very positive UK draft change is the removal of USP and ASP and inheritance tax

(IHT) generally on pension residues being passed on death. These are being replaced with a flat 55% death charge on the residue being passed on if you die in benefit or are 75 or older (spousal annuities excepting).

Interestingly, these draft pension changes extend to members of non-UK pension schemes that have had the benefit of UK tax relief or been transferred from UK registered pension schemes.

QNUPS continues to be an area with a reasonable concentration of hares present. Again, it is a difficult area to pin down legally and technically. Certainly, for top-up contributions on a reasonable level, a client may gain some coincidental IHT/death charge benefit, even if still UK domiciled. Promoting of schemes as IHT avoidance vehicles, with no limit on contribution size in relation to a members estate and suggesting transfer to a QNUPS (probably a QROPS is what is meant) if returning to the UK is most worrying. Settlement provisions may well apply. Clearly, this is a complex area but one with potential given care and detailed tax counsel opinion.

■ The smaller picture

Another area which confuses me, as I am clearly in the 'tortoise' camp, is the taking on of small business. I am sure the odd exception can be found, but generally a scheme at say £30,000 will not attract any significant taxation on life or death benefit and will pay a very measly 'annuity' or drawdown, even if transferred to a QROPS. Most likely it will over time be terribly eroded by annual fees and costs of investment management.

Interestingly Guernsey's pension legislation committee, on which I am privileged to sit, considered the issue last

year and the island's relatively new position is that a person with pension planning of £30,000 or less may seek commutation as the pension/s are so small as to be uneconomic to run and unlikely to provide any significant or meaningful pension income.

I would suggest then that wholesale involvement in small QROPS business is a mis-selling issue waiting to arise.

■ IoM's 50c

I am sometimes asked at seminars and by the media; what is the current point of interest in QROPS?

Presently, that would have to be Isle of Man 50c legislation. If there ever was a hare to Guernsey's tortoise this is it. I am not convinced the legislation was anything other than an attempt to level the playing field with Guernsey. It has though, whether the Manx authorities intended it or not, created a very new creature and one HMRC is clearly looking at closely.

There exist presently a large number of 50c applications for QROPS stuck in limbo with HMRC. The joy for Guernsey is that our long-standing legislation is very similar and if the 50c schemes do ultimately find approval with HMRC, Guernsey will be able to do the same. With no 20% VAT to add to our fees and avoidance of actuarial reports and costs often required in Manx schemes, Guernsey will in all likelihood remain more cost effective.

As QROPS providers, particularly the leading ones, attain volume business, prices can continue to fall as economies of scale arise. The QROPS market is still growing and if all remains as it is, prudent providers, intermediaries and clients all stand to gain, although some hares will inevitably fall along the way. IA

IA KEY POINTS

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