November update

Babbé

Guernsey pensions: Impact of new Ordinance on RATS set up as QNUPS

Doom-laden critics have predicted that recently passed legislation portends a mass exodus from Guernsey pensions. Nicholas Donnithorne and Anna Gray look behind the hype.

On 2 October 2015, the Income Tax (Pension Amendments) (Guernsey) Ordinance 2015 and the Income Tax (Pensions) (Contribution Limits) and Tax-free Lump Sums (Amendment) Regulations 2015 came into force to implement the proposals set out in Billet d'Etat XVI [see our note on this at http://babbelegal.com/files/1814/4664/4315/1692BAB_Tax_Law_Changes_v5.pdf for summary], giving rise to much press speculation about the impact for Guernsey.

In a nutshell:

Some parties have predicted the demise of certain Guernsey pension schemes (RATS with transferred in UK tax-relieved funds) because, they say, even if the new Guernsey legislation permits greater flexibility, a RATS cannot offer the new flexibilities introduced in the UK and also be a QNUPS, but:

- This is not relevant for RATS that do not have funds transferred in from the UK (in practice most schemes established on or after 6 April 2015)
- Where there is an impact, this is limited: in many cases, there are steps the scheme can take to provide for the UK flexibilities under their schemes for members

What is the issue?

With the advent of the new legislation a number of critics have speculated that the measures in the legislation do not help and there will be an adverse impact for Guernsey pensions because a RATS pension scheme making use of the greater flexibility afforded by the new Guernsey legislation cannot meet the UK's requirements for being a "qualifying non-UK pension scheme" (QNUPS). This is a matter which is only fully resolvable by a change to the UK QNUPS legislation. This note cannot therefore provide any "answers": instead it considers some of the issues from a practical perspective.

It is important to note at this stage, by way of reminder, that on the basis of current legislation, a "qualifying recognised overseas pension scheme" (QROPS) should generally always also be a QNUPS.

If a scheme has QNUPS status, broadly speaking, the benefits held in respect of a member are not considered part of his or her estate for UK inheritance tax purposes, which could be a considerable advantage to UK domiciled individuals.

UK legislation stipulates that one of the conditions for Guernsey pension schemes to have QNUPS status is that:

> *"the scheme rules provide that at least 70% of a member's relevant scheme funds will be designated by the scheme manager for the purpose of providing a pension for life"*

If the Guernsey pension scheme amends its rules, for example, to allow members with funds that have transferred in from the UK the possibility of taking up to 100% of their accumulated defined contribution pension pot at retirement, the QNUPS requirement would, so the argument goes, no longer be met.

Is this a calamity for Guernsey pensions?

The interpretation of the UK legislation set out above is not, in our view, free from doubt, but even if correct, this is not necessarily calamitous, for the following reasons:

- Firstly, the impact only applies to schemes with transferred in UK funds: so most Guernsey RATS established after April 2012 (the date from which only Guernsey residents could transfer UK tax-relieved assets into a Guernsey QROPS) as QNUPS will be unaffected

- Secondly, for impacted schemes, members may not necessarily wish to access the new flexibilities in respect of their UK transferred-in funds. For example:
  - *For many wealthy individuals, full drawdown from age 55 has been a possibility under UK legislation since April 2011, so such individuals transferring out of the UK at that point may not have been concerned with full drawdown*

- Thirdly, conversely many members of Guernsey RATS may not be primarily concerned with QNUPS status: especially if they particularly want to access 100% of their benefits – they are not viewing the Guernsey pension scheme as a vehicle for inheritance tax planning. This may particularly be applicable for members who transferred UK tax-relieved pension assets to a Guernsey QROPS.

- Fourthly, there may be ways of assisting members with UK funds in a Guernsey RATS who wish to make use of the new flexibilities without losing a scheme's QNUPS status by transferring out and thereby isolating funds: in particular
  - *Transfer members wishing to take advantage of the flexibilities to another RATS which offers the UK flexibilities, but is not a QNUPS;*
  - *Transfer members wishing to retain the QNUPS status to a RATS which is also a QNUPS, and then make the changes to the original RATS*

NOTE: *In either case, for any transfer of UK tax-relieved funds, there may be UK tax consequences of transferring to a scheme that is not a UK registered scheme or a QROPS, unless the member is not resident in the UK at the time, and has not been so resident in that tax year and the 5 tax years prior to that.*

  - *Transfer to a UK registered pension scheme offering the flexibilities or to a QROPS.*

Note: *We are not aware of UK providers offering the facility currently for members to transfer from another scheme specifically for the purposes of taking their benefits, but there may be scope for such innovation in the market.*

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PO Box 69, La Vieille Cour, La Plaiderie, St Peter Port, Guernsey GY1 4BL
Tel +44 (0)1481 713371 Fax +44 (0)1481 711607
www.babbelegal.com

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Summary of transfer options

Original RATS • QNUPS compliant • Not offer flexibilities for separately identifiable UK funds	**Transfer UK funds of those wishing to access flexibilities** • Must not be UK resident in current or previous 5 tax years	**New RATS** • Not QNUPS compliant • Offers flexibilities for separately identifiable UK funds
Original RATS • Not QNUPS compliant • Offers flexibilities for separately identifiable UK funds	**Transfer funds of those wishing to benefit from QNUPS status** • Must not be UK resident in current or previous 5 tax years	**New RATS** • QNUPS compliant • Not offer flexibilities for separately identifiable UK funds
Original RATS • QNUPS compliant • Not offer flexibilities for separately identifiable UK funds	**Transfer funds of those wishing to access flexibilities.**	**UK registered scheme or QROPS offering drawdown**

Guernsey pensions

So, in conclusion, whilst there is no denying that Guernsey RATS with funds transferred in from the UK will need to consider carefully the impact of the UK QNUPS legislation on any steps they might take to allow members to access the new flexibilities, it is far from clear that this development will adversely impact the viability of Guernsey pensions.

Further, members should be advised to be wary of knee-jerk reactions such as those proposed by various commentators that they should transfer all their pensions to a regime purporting to offer both the flexibilities and QNUPS status, unless satisfied the recipient scheme offers the good value they would expect.

Flexibilities and QNUPS status are not the only features of good value pension provision, particularly if members are not minded to draw their benefits in the near future. Other important considerations include the flexibility of the investment opportunities for assets held within their pension arrangement and the maturity, expertise and experience of the team behind the particular recipient pension arrangement.

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Summary of issues

- **Guernsey s157A RATS**
- **Created after April 2012**
- **No transferred in UK funds**

→ **No issue –** because no UK transferred in funds benefitting from flexibilities

- Guernsey s157A RATS
- Created before April 2012
- No members want to access new flexibilities

→ **No issue –** scheme can remain as QNUPS and not amend rules to offer new flexibilities

- **Guernsey s157A RATS**
- **Created before April 2012**
- **Members not concerned to maintain QNUPS status**

→ **No issue –** scheme can remain as QNUPS and not amend rules to offer new flexibilities

- **Guernsey s157E scheme**

→ **No issue –** Ordinance does not apply to give flexibilities to this scheme, although scheme may wish to explore conversion to s157A

- **Guernsey s40(o) or 40(ee) scheme**

→ **No issue –** these schemes do not have QNUPS status. No restrictions on flexible benefit structure after age 50

- **Guernsey s157A RATS**
- **Funds transferred in from UK**
- **Some members wish to access flexibilities; others require scheme to maintain QNUPS status**

→ **Potential issue –** Consider:

- Transfer to new scheme: run one as QNUPS and one for flexibilities (but not QROPS transfer requirements)
- Transfer to registered UK pension scheme or QROPS

Between them, Nicholas Donnithorne and Anna Gray at Babbé have 25 years experience advising the pensions industry on pensions law. They have advised government bodies and industry bodies, private individuals and commercial trustees.

If you have any questions in relation to the above, please contact.

Nicholas Donnithorne
Tel: +44 (0)1481 746179
n.donnithorne@babbelegal.com

Anna Gray
Tel: +44 (0)1481 746190
a.gray@babbelegal.com
