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Proposed Changes to the UK Tax Regime for QROPS - update

There has been considerable confusion and unfortunately - in some cases - misinformation circulated by those with vested interests regarding the proposed changes to the regime for Qualifying Recognised Overseas Pension Schemes (QROPS), announced by HMRC on 6 December 2012. There have been varied reactions regarding the prospects for schemes that may lose QROPS status as well as different or slow responses from the various QROPS territories to these proposed changes.

The HMRC requested consultation period ended on 31 January 2012. It is expected that the final Government response will be published simultaneously with the Chancellor's Budget statement on Wednesday 21 March 2012.

The fact that the original consultation document included draft secondary legislation combined with the short consultation period would suggest that there is momentum to see these changes implemented, close to those suggested announced in the draft proposals.

The main proposed changes are:-

I. The introduction of a new condition for QROPS qualification – that any exemption regarding the taxation of benefits for non-residents must also be available to residents in the territory in which the QROPS is based. This affects existing arrangements in Guernsey, The Isle of Man, Gibraltar and – depending upon the structure adopted - in Malta as well.

II. Revised reporting requirements for <u>all</u> QROPS. It is proposed that the reporting period will be changed from the first five full fiscal years after the member becomes non-resident to 10 years <u>from the date of transfer</u> to the QROPS. This will affect all existing QROPS wherever they are based.

III. Measures to prevent transfers to schemes which permit 100% commutation which HMRC views as against the spirit of the QROPS regime. This affects arrangements in New Zealand in particular.

We would like to dispel the following myths:-

I. That the <u>currently known</u> proposed changes affect the UK member payment (i.e. tax) charges that could apply to QROPS – including the charge on lump sum distributions on death. The position remains that such charges will only apply within the first five full fiscal years of non-residency.

II. That there is a process by which a QROPS can be de-registered by HMRC with subsequent tax penalties. Providing a transfer takes place or has taken place to a genuine overseas pension scheme which meets all the conditions to be a QROPS at the point of transfer we understand that no tax penalties should apply even if that scheme subsequently loses its QROPS status. There may, however, be negative consequences in the future for a member of a pension scheme which loses QROPS status - if he/she decides to return to the UK. In addition, there may also be negative consequences if HMRC subsequently find that a scheme which provided notification that it met QROPS status was subsequently found not to do so – and as such expert independent professional advice is needed on the selection of a suitable territory and provider.

Our comments on the position in the major QROPS territories are as follows:-

I. **Guernsey** - the Guernsey Government – on the prompting of the local association of pension providers – has reacted swiftly and is introducing a new pensions regime before 6 April 2012 which will meet the new condition for QROPS status and allow pension payments to continue to be made gross to non-residents. It is likely that the enabling legislation will be passed on 7 March 2012. There will be no automatic transfer of schemes to the new regime and individual providers will need to re-register existing QROPS. **We understand that the providers that we have recommended will do this in time for all of our clients.**

II. **Isle of Man** - on the Isle of Man, we understand that certain older schemes will potentially comply with the proposed new condition because they deduct tax at source on pension payments – including to non-residents. For more recently introduced arrangements, changes will need to be introduced in a similar way to Guernsey and we await further announcements.

III. **Malta** - in Malta arrangements which levy income tax on pension payments for residents and non-residents alike should potentially comply with the proposed new condition but other arrangements which differentiate between residents and non-residents will potentially lose QROPS status.

IV. **Gibraltar** - in Gibraltar the position on transfer has been uncertain for some time although we understand that there is a single arrangement which may meet the new condition and retain QROPS status.

V. **New Zealand** - some arrangements in New Zealand would appear to meet the new condition but certain New Zealand arrangements have been specifically targeted by HMRC for permitting 100% commutation. We are also aware that the New Zealand government is actively considering restricting pension arrangements to residents which could impact on existing arrangements.

Our urgent action points for clients – and our professional connections - are as follows:-

- All existing arrangements – and potential and imminent transfers to QROPS - should be reviewed with us to ensure that the schemes proposed will be new regime compliant – insofar as is possible.

- For those resident in jurisdictions with beneficial rates of taxation - and who have already transferred their UK pension savings to QROPS - checks should be made that the selected QROPS territory and provider continue to offer a viable and sustainable home to preserve, protect and defend accrued pension savings post 5 April 2012.

- For such individuals who have yet to transfer their pension savings from the UK, consideration should be given to seeking independent advice on transferring these savings to an appropriate QROPS in a suitable jurisdiction to ensure that the benefits of such are taken advantage of at the earliest opportunity.

Nigel Sloam & Co in London and our subsidiary NSS Actuarial Monaco in Monaco - will offer expert, professional and truly independent advice - free of provider and territory bias - in this complex area of pension planning. This advice will be made available to our existing and new clients and to our principal professional connections.

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