

## • HOW EFRBS, QROPS AND QNUPS MIGHT CREATE NEW WORK AND OPPORTUNITIES FOR JERSEY TRUST COMPANIES.

### INTRODUCTION

Since HMRC introduced pensions reforms in April 2006, advisers have made considerable use of non-registered retirement benefit schemes to allow persons to plan their retirement as tax efficiently as possible. Due to the professionalism, skilled workforce and considerable administration experience of Jersey's trust industry, Jersey trust companies have continually been appointed to administer such retirement benefit schemes.

This article intends to provide a brief overview of the most popular schemes, but also highlight the potential opportunities for Jersey trust companies.

### EMPLOYEE FUNDED RETIREMENT BENEFIT SCHEME (EFRBS)

An EFRBS is an employer funded retirement scheme for the benefit of employees and former employees upon their retirement. It may also benefit their families. A principal aim of an EFRBS is to provide the employer with a competitive edge by rewarding and motivating its workforce and thereby attracting and retaining quality persons to allow success in its business.

Whilst an EFRBS can be onshore, an offshore EFRBS also has non-aggressive tax planning opportunities. Essentially, there are various potential tax mitigating advantages for both the employer and the employee which include National Insurance, Income Tax, Capital Gains Tax and Inheritance Tax. Careful tax advice is required, but generally the scheme is regarded as suitable for individuals not domiciled in the UK, UK domiciled but likely to leave the UK, and UK domiciled with significant incomes.

The principal benefits of an EFRBS is that: (a) it is non-registered with HMRC and therefore is not included in an individual's pension lifetime limit allowance; (b) does not have a

specific retirement age; (c) greater investment Duties as to Investment scope with no restrictions; (d) there is no requirement to purchase an annuity; and (e) the employee can borrow 100% of the funds held in an EFRBS provided this is done on commercial terms.

### QUALIFYING RECOGNISED OVERSEAS PENSION SCHEME (QROPS)

A QROPS is designed for the benefit of individuals and their families. Before QROPS were introduced, HMRC took at least 25% of any UK pension transferred abroad, which for emigrating persons significantly affected their retirement. The QROPS has mitigated this problem so as to allow anyone with a UK registered pension living outside the UK (or intending to leave the UK) to transfer their UK registered pension abroad.

Whilst the QROPS is designed to behave like a UK scheme for those members who have been resident in the UK at any time in the past five tax years, after five years of non residence in the UK, the pension fund becomes governed by the laws of the jurisdiction where the QROPS is located. This means that the scheme will not be subject to UK tax or related payment charges and also allows the member the option to avoid the UK requirement to purchase an annuity at 75 years of age.

The lack of the requirement for an annuity provides a member of a QROPS with the freedom to choose how funds are invested. Furthermore, the avoidance of an annuity will allow a member to nominate his family or other persons to benefit from the fund after his death. In such circumstances, the scheme's rules can allow the member's family or other nominated persons to benefit by receiving lump sum payments.

Overall the principal benefits of an QROPS is its flexibility after the expiry of five years of non UK residency.

### QUALIFYING NON-UK PENSION SCHEME (QNUPS)

Introduced on 15 February 2010, a QNUPS creates further opportunities for emigrating persons or expatriates who have retired abroad to become more tax efficient. A QNUPS allows a member to continually pay into and accumulate funds in the scheme once they have retired. This is something which a member of a QROPS is not entitled to do. Therefore, a retired person over 80 years of age could still contribute a large investment into a QNUPS creating tax advantages for himself and his family, or other nominated persons, with the benefit of the funds being passed to those persons after his death free from inheritance tax.

The principal benefits of a QNUPS are: (a) there is no maximum age in which you can invest within the scheme; (b) a member need not receive income from employment to make a contribution to the scheme; (c) there is no maximum limit of what a member can invest into the scheme; (d) it is potentially very tax efficient and in most countries will avoid local wealth and death taxes; (e) assets can grow free from tax liabilities; and (f) they have no investment restrictions and so can invest, for example, in residential property.

In terms of investment, QNUPS are seen as more flexible than QROPS. It is possible to transfer a QROPS to a QNUPS to take advantage of the QNUPS regime, but professional advice is required.

Furthermore a person can be a member of both a QNUPS and QROPS without reporting responsibilities unless the QNUPS holds assets from both schemes.

#### OPPORTUNITIES

QROPS and QNUPS are both registered schemes. Whilst there are a number of QROPS in Jersey, and Jersey would seem to be well placed to take advantage of the UK high earners looking to become more tax efficient today by planning for tomorrow, it is the case that Jersey trust companies are unable to take full advantage because of Jersey's restrictive legislation; it would appear that Jersey trust companies may only provide administration services in relation to QROPS and QNUPS for persons living in Jersey. Consequently, without clear legislative reform, there is a missed opportunity for Jersey to successfully compete with Guernsey, the Isle of Man and other jurisdictions. It is to be hoped that in the present economic climate the Jersey authorities will have the appetite to relax the restrictions and in doing so attract this kind of work away from our competitors both near and afar.

On the other hand an EFRBS is an unregistered scheme. This has allowed Jersey trust companies to provide administration services to EFRBS without any residency requirement. Therefore this will no doubt be the most common established scheme in Jersey. As things stand, EFRBS offer Jersey trust companies the best opportunity to attract new work to the Island. It is important they show reasonable and reasoned decisions based upon inter alia appropriate research, risk and analysis reports, independent credit ratings, professional advice and regular reviews of performance. This will assist to demonstrate to any third party that any losses are not due to the conduct of trustees or the council and therefore reduce the risk of any claim for liability.

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