Channel Islands pensions, savings plans and gratuity schemes update

May 2019

Angela Calnan was invited to speak at the Channel Islands International Pensions Conference last week to discuss the latest developments in the Guernsey and Jersey pensions industry as well as looking further afield to the Gulf Cooperation Council (GCC) at the significant opportunities for Channel Islands providers there.

There is currently a lot of development and innovation in the pensions industry across the Channel Islands and we are seeing significant growth in the sector in our Guernsey and Jersey offices.

Armed with empirical data, the GFSC confirmed at the Conference that the Guernsey market had grown by half a billion pounds in 2018 (the year following the introduction of our Pensions Rules[1]).

The purpose of this update is to summarise the Guernsey and Jersey pensions offering as, particularly with pan-Islands firms like ours, we are often asked to compare and contrast the regimes.

The Latest on the Guernsey Regime

(A) Legislation

In 2017 the law that regulates our trustees[2] was amended to bring the setting up, running and advising on "pension schemes" and "gratuity schemes" within that law as "regulated activities".

This gave a lot of comfort to our "employer" clients and also our internationally mobile HNW clients as it means that these schemes can only now be dealt with by fiduciary licensees.

In considering the way that the industry is now regulated in Guernsey, it is important to go on to look at how "pension schemes" and "gratuity schemes" are actually defined in the Fiduciaries Law.

Interestingly, the definitions in the Fiduciaries Law dovetail with the way in which Guernsey defines these schemes for the purposes of their treatment for Guernsey income tax under The Income Tax (Guernsey) Law, 1975 ("**Income Tax Law**").

So, pensions schemes and gratuity schemes are defined in the Fiduciaries Law as follows:

- "*pension scheme*" – means any fund contract scheme or trust which is (a) approved by our Director of the Revenue Service ("**Director**") under sections 150, 154A, 157A or 157E of the Income Tax Law; (b) recognised by the Director as exempt under section 40(o) of the Income Tax Law; or (c) recognised as exempt under section 40(ee) of the Income Tax Law; and

- "*gratuity scheme*" – means a scheme which does not fall within the above definition of "pension scheme" and which is established in connection with the carrying on of a business or the exercise of functions and where the scheme is solely or

> mainly for the purpose of providing "retirement benefits" by means of a lump sum or other payments for employees or their families either at the end of employment or at another time.

The definitions have been kept deliberately wide in Guernsey.

Many schemes will, of course, be hybrids and will have savings elements, gratuity elements and/or pension elements so careful legal analysis is needed to ascertain whether a particular scheme is caught under the above definitions of regulated activities.

Equally, there are some schemes that are unlikely to be caught such as pure bonus schemes, pure EBTs and pure share plans. However, there are not express carve outs for these types of employee incentive arrangements within the legislation so, again, care must be taken.

In January 2019, our Income Tax Law was amended to introduce a new section 40(nn) which provided an express exemption for gratuity schemes from Guernsey income tax in order to bring the Income Tax Law into line with the amended Fiduciaries Law.

(B) Regulation

As well as our legislation, we also have our Codes of Practice for TSPs and CSPs and also our Pensions Rules.

The recent Discussion Paper from the GFSC[3] highlighted the fact that both the Codes and the Pensions Rules overlap in respect of the conduct of business elements and that the regulatory landscape could be simplified for licence holders if Rules 2-9 of the Pensions Rules (which deal with the conduct of business) were repealed and absorbed into a new consolidated Fiduciary Handbook. This would eliminate the existing two-tier regime where pension service providers have to comply with the Pensions Rules ***as well as*** the Codes.

Consequently, the Pensions Rules would be revised based on the remaining Chapter 10 of those Rules with enhancements following feedback from industry.

The Codes would also be repealed.

These amendments to the regulation of pension providers would not involve any significant policy changes, they simply involve refinements of what is already there in order to harmonise and simplify.

We are currently awaiting a revised draft of the Pensions Rules in order to be given a further opportunity to comment as part of any further consultation on the introduction of the Single Fiduciary Handbook.

The Latest on the Jersey Regime

International Saving Plans

The latest development in Jersey has been the introduction of the International Savings Plan ("**ISP**").

As in Guernsey, Jersey has defined the ISP in its Income Tax Law[4].

As with Guernsey's definition of its nearest equivalent - the "gratuity scheme" - Jersey describes its ISP by stating that it falls outside of the Jersey definition of "pension schemes"[5] and that it has as its sole purpose the provision of benefits in respect of a person's employment outside of Jersey. Guidance notes on the ISP were published by the Jersey Comptroller of Taxes on 22 May 2019.

A plan must be established under an irrevocable trust under Jersey law by a person not resident in Jersey. Further, the plan must relate to a trade or undertaking outside of Jersey. It must have a corporate trustee (or otherwise two trustees) who are regulated by the JFSC. Income derived by the ISP is exempt from Jersey income tax. Benefits paid from an ISP to persons not resident in Jersey are also exempt from Jersey income tax.

In a similar manner to the Guernsey regime, to obtain ISP status, the trustee of the plan must notify the Comptroller that it is an ISP. This is a self-certification process.

Jersey is still considering who and how to regulate and supervise its pensions industry. In November 2018, the States of Jersey issued a consultation paper on proposed regulation of pension business. At last week's conference, James Roberts, the representative from the States of Jersey, considered the pros and cons of the JFSC regulating the sector or whether regulation should come from a newly formed body.

It will be interesting to see how the Jersey regime develops.

The take home point, really, is that the service offering across the Islands is comparable and the regulatory regimes are both very robust which should give a great deal of comfort to employers and internationally mobile individuals when looking for a safe and secure jurisdiction to house these often considerable and very important structures.

For more information on Collas Crill's pensions and employee benefits practice, please do not hesitate to contact Angela Calnan in our Guernsey office or Nick Marshall in our Jersey office.

[1] The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017 ("**Pensions Rules**").

[2] The Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 ("**Fiduciaries Law**").

[3] Discussion Paper on Proposals to Create a Single Fiduciary Handbook and Revise Pension Rules dated 5 March 2019 ("**Discussion Paper**").

[4] Article 118D Income Tax (Jersey) Law 1961 ("**Jersey Income Tax Law**").

[5] Under Article 19 of the Jersey Income Tax Law

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