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UPDATE

# Jersey pensions reform - update to guidance notes

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Following the reform of the tax rules which apply to Jersey pension schemes earlier this year, the Comptroller of Taxes published an update to its tax guidance notes for pension scheme administrators in September 2015. This update provides a summary to some of the most significant updates to the guidance notes together with a recap of the main changes which were introduced on 1 January.

The Jersey tax rules which apply to occupational and personal pension schemes for Jersey residents (known as 'approved Jersey schemes') were significantly reformed as of 1 January 2015.

The reforms were supported by new guidance notes issued by the Comptroller of Taxes (the **guidance notes**). On 21 September 2015, an updated version of the guidance notes was published which provided important clarification in respect of some of the changes.

We set out below a summary of some of the updated provisions in the guidance notes together with a recap of main changes which were introduced from 1 January 2015.

## Updates to the guidance notes

### Limits on pension income – transitional arrangements

Rules and restrictions regarding the maximum amount of pension income that can be paid by an occupational pension scheme were removed from the guidance notes as of 1 January 2015. Additionally, the requirement that a member retires before the member starts drawing a pension was also removed at this time. These amendments were to facilitate flexible retirement in occupational pension schemes as well as personal pension schemes.

The amount of pension income payable is now determined by the rules of the scheme in a defined benefit scheme or the size of the fund in a defined contribution scheme, subject to the overriding requirement that the scheme must continue to pay pension income for the remainder of the member's life.

A transitional period was therefore introduced for approved Jersey schemes with rules which restrict benefits by reference to the Taxes Office's approval requirements in force as at 31 December 2014. In the first version of the guidance notes, schemes were allowed to continue to be subject to those limits until whichever is the earlier of:

- the date on which any provisions referring to any limit on benefits required as a condition of approval are amended; and
- 1 January 2018.

There was therefore a concern that amendments made to introduce the new flexibilities into schemes might inadvertently bring the transitional rules applied by the Taxes Office to an end.

The terms of this transitional period were clarified in the September update of the guidance notes to confirm that, prior to 1 January 2018, one or more benefits and/or one or more flexibilities may be provided by a scheme as permitted by the tax rules applicable from 1 January 2015, but the provision of the same will not otherwise prejudice the continued application of the tax rules as at 31 December 2014 to the scheme until 1 January 2018. It is therefore now clear that the introduction of the new flexibilities into schemes will not terminate the transitional period.

### Repayment of contributions – transitional arrangements

From 1 January 2015, the repayment of contributions to members of occupational pension schemes has been restricted to those members with less than five years membership of the scheme.

The first version of the guidance notes provided that existing schemes which do not restrict refunds of contributions will be able to continue to make such payments until the earlier of the first date on which a change to benefits payable to scheme members is made or 1 January 2019. Under the updated version of the guidance notes, this has been extended to 1 January 2020.

### Trivial commutation

The value of a trivial pension which can be commuted in full from an approved Jersey scheme at any age, so long as certain conditions are met, was increased from £5,000 to £18,000 under the amendment.

The updated guidance notes now also specify that the commutation of the fund is taxed at 10 per cent and that tax must be deducted before payment is made to the member.

Pension fund transfers

A member of an approved Jersey scheme may request a partial transfer of benefits out of the scheme, subject to the approval of the Comptroller. The updated guidance notes now also provide that schemes may allow deferred members still in the service of their employer to retain their benefits in the scheme until they retire, leave the employer's service or transfer to an approved annuity contract or retirement trust.

### Self-certification

A 'self-certification' approval system to certify that a scheme meets the conditions for approval has been introduced. A requirement to notify the Comptroller of changes to schemes was introduced under the Income Tax (Jersey Occupational Pension Schemes) (Jersey) Order 2014 which came into effect on 1 January 2015.

While previously this was to be the sole responsibility of the scheme manager (being the trustees of a trust), the updated guidance notes have now clarified that no objection will be made if the notification of the changes are submitted by the trustees or legal advisers of the pension scheme. Additionally, the Comptroller has stated that the amending documentation should not be submitted to the Taxes Office, but should be available if required.

Going forward, this certification system is expected to include random reviews by the Taxes Office to ensure that schemes are complying with the approval conditions.

## Recap of changes from 1 January 2015

### Pension contributions

The existing cap on an individual's contributions to approved Jersey schemes was removed by the amendment completely, though a maximum annual cap of £50,000 (subject to reduction in the case of individuals with incomes over £150,000) available for tax deduction remains.

Whilst tax relief on pension contributions continues to be restricted for those individuals with incomes over £150,000, the taper mechanism in respect of these contributions will be amended to ensure that it operates effectively to ensure that income earned over £150,000 does not benefit from tax relief on contributions.

### Lump sum payments

Members of both occupational and personal pension schemes who have reached age 50 are now able to receive their 30 per cent tax-free lump sum in an unlimited number of tranches before they commence receipt of their pension income. Previously, there was a maximum of three tranches.

For individuals who are seriously ill (that is to say there is evidence from a medical practitioner that they are expected to live for less than one year), they may access the whole of their pension fund in a lump sum payment irrespective of whether they have already started receiving benefits from the scheme.

Lump sum benefits payable to dependants free of tax following the death of a member before normal retirement date will no longer be restricted to five times remuneration.

Lump sum benefits on death after normal retirement date will no longer be restricted to £30,000 and tax is payable on such sums at a rate of 10 per cent.

### Dependants' pensions

The previous restriction on the amount of pension income payable to dependants (being 2/3 of the member's pension in occupational pension schemes and the amount of income payable to the member in personal pension schemes) was removed from the guidance notes as from 1 January 2015.

### Drawdown contracts

Members of approved Jersey schemes, with a guaranteed level of certain forms of income to support them for the remainder of their life, are now able, from the date on which they can draw their pension, to transfer their pension fund to an approved drawdown contract where they are able to draw whatever amount they require from their pension fund. This includes circumstances where a member has already taken a tax-free lump sum from their pension scheme.

### International transfers

Subject to certain conditions in relation to the equivalency of the scheme, it is now possible to transfer a pension from an approved Jersey scheme to a non-Jersey pension scheme and from a non-Jersey pension scheme to an approved Jersey scheme.

### Split approval regime

Where a pension scheme has members residing both within and outside Jersey it is now possible for the scheme to be approved under more than one approval regime, enabling appropriate taxation to be applied in respect of Jersey and non-Jersey residents.

The guidance notes provide existing multi-jurisdictional schemes that are currently approved under Article 131 of the Income Tax (Jersey) Law 1961 with a three year window until 1 January 2018 in which to seek approval partly under Article 131 and partly under Article 131A of the Law.

### Action to take

There is no compulsion on pension schemes to change their rules in order to offer all or any of the flexibilities introduced by the new law. However, it is likely that employers wishing to offer the most attractive and flexible benefits to the members of their schemes will wish to review their rules in order to determine whether changes are needed to take advantage of the changes.

In addition, schemes wishing to continue to pay benefits under the pre-1 January 2015 regime should consider whether further amendments to the scheme rules are necessary in order to retain such limits after 31 December 2017.

Mourant Ozannes would be happy to assist with any such review of benefits or scheme amendments.

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