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PRACTICE NOTE

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APPROVED PENSION SCHEMES – INVESTMENTS

1. Introduction

Before offering guidance in respect of income tax matters, it is worth noting that the primary regulator of pension schemes in the Isle of Man is the Insurance and Pensions Authority ('IPA'). The Retirement Benefits Schemes Act 2000 confers on the IPA powers to regulate the operation and management of retirement benefits schemes in or from the Isle of Man; and sets out various conditions which must be complied with before a scheme may operate in or from the Isle of Man.

The Assessor does not consider that the Income Tax Division's work should duplicate that of the IPA. The IPA is statutorily responsible for regulating the operation of pension schemes: the Assessor is concerned with the actions of trustees and administrators which may have taxation implications.

In April 2008, the Isle of Man's pension taxation legislation was updated, and is now based on modern and generous principles to encourage people to make provision for their eventual retirement.

Pension schemes must be approved by the Assessor under the provisions of the following acts of Tynwald:

- the Income Tax Act 1970 (the '1970 Act');
- the Income Tax (Retirement Benefit Schemes) Act 1978 (the '1978 Act'); and
- Part 1 of the Income Tax Act 1989 (the '1989 Act').

Income derived from the investments made by or the deposits held by an approved pension scheme is exempt from income tax. The term 'investments', while used in statute, is not further defined, other than to include 'dealing in financial futures or traded options'. Although the Treasury has the power to make regulations defining the meaning of investments, it has not exercised it to date.

Given their ever-changing nature, it is not possible to produce a list of 'permitted' types of investment. This note aims to indicate general principles. It is important that scheme funds are protected in order that appropriate benefits can be provided.

The Assessor may withdraw approval from a pension scheme in certain circumstances, and in particular where he is of the opinion that securing the provision of relevant benefits is not the purpose of arrangements made. Arrangements must of course encompass investments.

Pension schemes approved under the Income Tax Acts must have the sole purpose[1] of providing relevant benefits to members, their spouses or their dependents. Relevant benefits are defined in relation to each type of pension scheme, but in general are any pension, annuity, lump sum, gratuity or other like benefit given or to be given on retirement or death, in anticipation of retirement or in cases of ill health.

2. Guidelines

Scheme rules set out the powers which trustees may exercise. Trustee law may also impose obligations such as the duty of care, which may affect investment decisions. However, permission is often sought from the Assessor in relation to proposed investments. The following guidance aims to indicate how a decision on approval is reached.

If, in relation to a proposed investment, there would be concerns regarding the scheme's ability to provide relevant benefits in the future; the proposed investment may be inappropriate. Examples include the acquisition of a wasting asset or the making of a loan to an otherwise insolvent party.

If what might be termed 'non-relevant benefits' may be provided via the proposed investment to the member, or to persons connected to the member, the Assessor will not give approval. Non-relevant benefits could result from, for example:

- the personal enjoyment or use of an asset by the member (for example, tangible moveable property); or

- a transaction with the member which is not on commercial, or on what may better be described as "arm's length terms".

The term 'benefits' can include payments of money, the use of assets, the transfer of assets or other transfers of money's worth. Furthermore, the provision of non-relevant benefits could constitute 'unauthorised payments' and may therefore render them liable to an income tax charge and a supplementary charge. Unauthorised payments may result in a review of the administration of the scheme, which could ultimately result in the withdrawal of the Assessor's approval of the scheme.

The Assessor recognises that the law confers tax advantages on pension schemes, both in relation to contributions and to scheme income. These advantages are conferred in order to encourage people to make appropriate provision for their retirement in anticipation of receiving relevant benefits. Where it appears that proposed investments are particularly complex, contrived or that they may be part of a larger arrangement, the Assessor will make enquiries in order to determine

[1] In the case of section 50B of the Income Tax Act 1970, the scheme must have the sole or main purpose of providing relevant benefits.

whether tax avoidance features; rather than the legitimate advantages afforded by the pension scheme. Approval will not be given where tax avoidance features.

3. Trading Income

Pension scheme trustees and administrators are reminded that investment income does not include income arising from a trade. If a transaction, or a series of similar transactions, could be construed as the carrying on of a trade, the related income is taxable and not subject to the normal scheme exemption.

4. Qualifying Recognised Overseas Pension Schemes ('QROPS')

An Isle of Man approved pension scheme may be registered in the United Kingdom as a QROPS. This permits funds held in a United Kingdom pension scheme to be transferred to the Manx scheme. If funds are transferred in this way, trustees and administrators have a dual compliance obligation under both Isle of Man and United Kingdom law, and must take appropriate advice.

Similar issues may arise in relation to transfers from countries other than the UK.

5. Permission

If the scheme trustees and the scheme member (where appropriate) agree unanimously that an investment:

- would show the duty of care required by Isle of Man trustee law; and
- would be expressly allowed in the scheme rules; and
- would not lead to any issues under the guidelines; and
- does not constitute a trade; and
- would not contravene another country's legislation (where applicable),

then the Assessor will allow the investment to be made without clearance.

If a unanimous agreement is not reached, the investment should not go ahead; although the opinion of the Assessor may be sought.

The guidance in this note ought not to deter trustees and administrators from seeking the Assessor's opinion in respect of investments should they feel it appropriate to do so.

6. Prohibited Investments

Investments in personal tangible moveable property are not permitted, for example:

antiques	coins	fine wines	furniture
gem stones	jewellery	kruggerands	oriental rugs
rare books	rare stamps	vintage cars	works of art
yachts			

7. Regulations

The Income Tax (Pensions) Act 2008 allows for the definition of 'investment' to be extended or restricted by regulations. At this time the Assessor does not wish to introduce regulations which would restrict the freedom of action of scheme trustees and administrators.

The Income Tax (Pensions) Act 2008 also allows for a reporting requirement in certain situations to be introduced by regulation. The Assessor is considering the introduction of regulations which will require scheme trustees and administrators to report to the Assessor in certain situations which could include, for instance, when a scheme member dies or at any time when scheme funds are withdrawn. Once these regulations have been drafted they will be published for consultation.

M Couch

Assessor of Income Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements, and suggestions for future Practice Notes are always welcome.