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PRACTICE NOTE

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APPROVED PENSION SCHEMES – UPDATE

1. Introduction

This note provides an update on three areas of interest for the pension sector.

2. Pension Transfers

2.1 Transfers out of pension schemes approved by the Assessor

The administration of pension schemes may call for transfer payments to be made to or from a scheme from time to time. Transfers out of approved schemes are subject to a number of conditions which have been applied for many years and which are normally reflected in standard deeds and rules of pension schemes established in the Isle of Man.

Transfers out of approved pension schemes fall into two categories:

- those which can be made without the Assessor's clearance; and
- those which require the Assessor's clearance before being made.

2.2 Transfers not requiring the Assessor's clearance

Transfers can be made from one domestic approved pension scheme to another domestic approved pension scheme without needing to seek prior clearance from the Assessor. Although in a statutory sense the term 'approved' in this context is applicable to Isle of Man schemes under the Income Tax (Retirement Benefits Schemes) Act 1978, the Income Tax Act 1989 and the new Section 50C of the Income Tax Act 1970 only; the Assessor will treat it as also including United Kingdom schemes approved by HM Revenue & Customs. This does not include schemes in countries other than the United Kingdom which have some form of HM Revenue & Customs approval or registration.

Transfers as mentioned immediately above will be permitted by the scheme rules. Those rules will have been reviewed by the Assessor before scheme approval was given. It follows that the

Assessor must be informed of any subsequent rule amendments in order that approved status may be maintained.

Before a transfer is made from an approved pension scheme to another scheme, the scheme administrator should ascertain both the approved status and the tax reference number of the receiving scheme.

2.3 Transfers requiring the Assessor's clearance

Any transfer from an approved pension scheme not covered by section 2.2 above will require the Assessor's clearance. In particular, proposed transfers to schemes outside the Isle of Man and the United Kingdom, whether or not they have some form of HM Revenue & Customs approval or registration, must receive the Assessor's approval before being made.

When reviewing transfers to foreign schemes, the Assessor will take into account the following information, which should be provided by the scheme trustees or administrator:

- the country in which the scheme is established;
- the approval status of the scheme in that country (both in terms of taxation and independent regulation);
- the country in which the member is resident;
- the country in which the member is employed;
- whether the overseas scheme would be able to effect an equivalent transfer into an Isle of Man scheme.

Most overseas transfer clearance requests are approved by the Assessor.

The Assessor's current practice is that overseas transfer clearance requests are likely to be denied where:

- the receiving scheme is not authorised or recognised by the tax and/or regulatory authority of the country in which it is established;
- the receiving scheme is established in a country which does not tax pension income; or
- there is a risk that the fund transferred could be commuted in full.

2.4 Transfers made without clearance

Unless made in accordance with section 2.2 above, or following clearance from the Assessor, transfers out of approved schemes constitute unauthorised payments and will be subject to both an unauthorised payment charge and a supplementary charge of 20%.

3. Death of Member

3.1 Personal pension scheme

The payment of benefits by a personal scheme can be via a withdrawal of funds. Therefore, there is a possibility that part of the accumulated scheme fund may not have been withdrawn when the member dies. The fund remaining is then liable to tax at 7½%, unless it is transferred to another Isle of Man approved pension scheme.

3.2 Occupational scheme

The payment of benefits by an occupational scheme can also be via a withdrawal of funds. Again, there is a possibility that part of the accumulated scheme fund may not have been withdrawn when the member dies, and the trustees or administrator may wish to make a payment of that remaining fund to the spouse, children or dependants of the deceased member. Such a payment could have constituted an unauthorised payment under the Income Tax (Retirement Benefit Schemes) Act 1978 and could have been taxable at a rate of 18%.

However, the Income Tax (Pensions) (Temporary Taxation) Order 2010 (Statutory Document 807/10), approved by Tynwald on 19 October 2010, introduced a new Section 9A into the Income tax (Retirement Benefit Schemes) Act 1978 which provides for a 7½% rate of tax on the commutation of an employee's pension after death.

4. Value of Member's Benefits

Section 2A (2) of the Income Tax (Retirement Benefit Schemes) Act 1978 describes the conditions applying to lump sums: in particular that they must not exceed 30% of the total value of the benefits payable to the member at the time. In the case of a defined benefits scheme, the Assessor will accept that the 'total value' can be taken to be a value not exceeding 20 times the annual rate of pension payable by the approved scheme on the nominated date.

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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.