TMF GROUP

Global reach
Local knowledge

A guide to QNUPS: Qualifying Non-UK Pension Schemes

Introduction

Qualifying non-UK Pension Schemes (QNUPS) were finally confirmed on 15th February 2010 via an HMRC issued ‘Statutory Instrument SI 2010/51’, following the insertion of a new clause from the Finance Act 2008, (“qualifying non-UK pension scheme” inserted into IHTA 84 by FA2008-S92-Sch29-para 18[8])

With effect from this date it became possible for individuals to make post tax contributions to a QNUPS, whereby providing themselves with a fund which will grow free of Income & Capital Gains, and provide valuable additional pension benefits, as well as protection from Inheritance Tax.

As non-UK approved schemes, QNUPS do not automatically confer these benefits, but if properly structured in the right jurisdiction attractive advantages may be made.

What is a QNUPS?

A QNUPS is an off-shore unapproved pension. To qualify, an overseas pension scheme should:

- be established in a country or territory which regulates pensions schemes
- not provide benefits to the member before the normal retirement age (circa 50)
- be ‘recognised for tax purposes’ in the country or territory that it is established
- be open to residents and non-residents in the country or territory in which it is established

A QNUPS must also satisfy the definition of a pension scheme set out in Section 150 of Finance Act 2004 (FA2004).

A QNUPS should also fall within the requirements set out in section 271A Inheritance Tax Act 1984 (IHTA) and Inheritance Tax (Qualifying non-UK Pension Schemes) Regulations 2010 (SI2010/51).

What are the reporting requirements?

A QNUPS unlike a QROPS has no reporting requirements to HMRC. Having not sought approval from HMRC and not being in a position to accept UK pension funds, the only reporting issues to be considered would be the domestic ones in the territory in which it is established.

What is the tax position on contributions?

From a purely UK perspective, contributions to QNUPS generally will be made with post-tax assets, either income or capital. A QNUPS does not qualify for relief under Section 188 Finance Act 2004 (FA2004). If a member is resident in the country in which the QNUPS is established, there may be domestic tax relief available. (Please consult your advisor.)

There should be no CGT issues where contributions are made from cash. Transfer of actual assets however, could trigger a taxable gain.

Generally no IHT charges arise on transfer of assets by a member. To the extent that there is any reduction in the value of 'the estate'. Section 10 IHTA operates to prevent a transfer being a transfer of value where it is "not made ….to confer any gratuitous benefit".

What level of contribution is acceptable?

There are no specific guidelines as to what is deemed reasonable, but when looking at a level of contribution, HMRC will look at what would in the normal cause of events be 'usual'.

If funding is disproportionately large, then it would suggest to HMRC that avoidance of taxation was the purpose. Income and gains may then be subject to anti-avoidance measures under Section 261 Income Tax (Trading & Other Income) Act 2005 ("ITTOIA"), section 720 Income Taxes Act 2007 ("ITA") and Sections 86 &b 87 Taxes of Chargeable Gains Act 1992 ("TCGA").

It is therefore very important that either an actuarial report or advice from a suitably qualified independent financial advisor or accountant is obtained before a QNUPS is created and funded. Evidence based contributions are best.

What is the income/capital gains tax position within the fund?

In most jurisdictions where QNUPS will be set up, there are no income or capital gains taxes on accrual within the fund, however, this is jurisdictionally dependent.

There are two sets of taxes that could be attributed to a UK settler. Section 621 ITTOIA requires there to be an element of 'bounty'. HMRC have indicated that a reasonably funded QNUPS with beneficiaries who are relatives of the contributor, they would not argue the issue of 'bounty'. Section 720 ITA is subject to a motive defence.

Transfers by a member to a QNUPS should not be caught by the Income Tax anti-avoidance provisions provided that the scheme operates as a true pension fund, and is not over-funded.

What can I withdraw from my Retirement Scheme?

At retirement age the QNUPS will pay up to 30% as a commutation of the fund, and the residual fund will be used to provide an income for life. Benefits must start to be drawn before the age of 70.

A QNUPS is a pension fund and as such is designed to provide you with an income in retirement. Failure to do so, or take only a nominal income, may involve tax implications as described above.

Note: Advice should be sought from your adviser as to the tax implications on payment of benefits in your country of residence.

Additional cash lump sum

Where subsequent to a valuation of a Member's remaining assets in the Scheme it is established that the assets are more than adequate to generate sufficient retirement income throughout the Member's lifetime at valuation date, then 50 per centum of the excess value of such assets as determined by the valuation may be withdrawn as an additional cash lump sum.
The additional lump sum may only be opted for after three years from commencement of the Member's retirement benefits, and every year thereafter.

The above shall be without prejudice to any other limitations on withdrawal of retirement assets as specified by any other pensions or taxation legislation to which a retiree is subject to.

In the case where a Member is domiciled in Malta the conditions shall only apply where the annual retirement benefit from an annuity exceeds €50,000. This value shall be adjusted annually to take account of changes in the index of inflation as published by the National Statistics Office in the Government Gazette of Malta.

What is the income tax position on withdrawals?

Trustees confer benefits in accordance with the Trust Deed & Rules. If the member is UK resident, the taxation will depend upon classification by Section 393 ITEPA 2003.

'Relevant benefits, non-relevant benefits and excluded benefits".

If the member is non-UK resident, tax may be payable in their jurisdiction of residency.

Please consult your advisor for more details on your personal circumstances.

What is the position on death?

Benefits on death should be treated as 'excluded benefits' for Income tax purposes, and there should be no IHT to pay on funds which, following the death of the member, have not been spent on benefit to the member, provided that there is no choice for the member to receive a pension or instead pass on the value as a death benefit. Careful planning of how assets are transferred on death to beneficiaries needs to be made.

Investment flexibility

Many QNUPS providers impose investment restrictions, however schemes offered by TMF offer genuine ‘open architecture’ (investment freedom) within the range of permissible investments:

The Trustees’ preference is for a client/adviser to appoint a fund/investment manager to take safe custody of the assets and to act on the investment mandate laid down by the client. This will allow investments to be managed within the following categories:

- Stocks, bonds, alternative investments, hedge funds, structured products & deposits

In addition the following asset classes are permitted:

- Private Equity – held indirectly through a separate wholly owned offshore company
- Commercial Real Estate – held indirectly through a separate wholly owned offshore company

Assets can be held in any denomination.

Please be aware that assets that cannot be liquidated to provide you with an income or physical assets that do not provide a regular income stream, will almost certainly invalidate your scheme for IHT purposes.

Other points to consider

Double Tax Treaties. Depending upon the member’s country of residence, it may be beneficial to have your QNUPS in a jurisdiction which is protected by tax treaty. Not all countries recognise pension fund structures in non-tax treaty jurisdictions.

Note

This summary is of a general nature only and is not intended to be relied upon as, nor to be a substitute for professional advice, or used in formulating any business decisions without first seeking such advice. No liability is accepted for any consequences arising from any transactions embarked upon in connection with this summary.

The benefits referred to in this summary may vary according to residency and domicile. Different rules apply to different individuals and employers.

No warranty regarding the appropriateness of investing in a QNUPS trust is being given and none of the above comments should be constructed as tax advice. You should always take independent tax advice, as your personal circumstances may mean the comments above do not apply to you.