Why Malta?
Briefing Document

Introduction

In order to provide the security and flexibility sought by the international investor, a number of potential jurisdictions were considered from which to establish the Global Retirement Account.

Fully regulated pension industries exist outside of the EU, however these jurisdictions present a potentially higher level of risk for intermediaries and clients when compared to a QROPS established in the EU.

This document provides further information on the criteria Dominion used to choose our QROPS jurisdiction and why Malta has been selected.

Criteria for Choosing the Best QROPS Jurisdiction

The pensions and tax technical team within Dominion spent a considerable amount of time in 2006 and 2007 researching potential jurisdictions in order to find a suitable and safe jurisdiction from which to establish a Recognised Overseas Pension Scheme (ROPS) under which the necessary notifications and undertakings could be given to HMRC in order for the ROPS to be a QROPS and therefore be able to accept recognised transfers of pension rights from registered pension schemes.

Critical criteria for choosing the best jurisdiction was established by Dominion based on experience gained in implementing and administering other pension arrangements in the firm's licensed pensions' administration business in Jersey, Hong Kong, Bermuda, Cayman and BVI.

The criteria included:

- Establishment of the pension plan in an EU/EEA Jurisdiction whose tax treatment of domestic pension schemes, contributions made to pension schemes and benefits paid from pension schemes closely mirrored that of the UK's EET (Exempt, Exempt, Taxed) model.
- A well-developed International Tax Treaty network
- Secure legislative framework
- Regulated domestic pension environment including the requirement for all QROPS in the jurisdiction to be audited, thereby creating a level playing field for all service providers operating in the jurisdiction.

Following an in depth analysis of the options available, Malta satisfied all of the above conditions and had the overall security of being based in an EU Member State. Accordingly Malta became the preferred jurisdiction to establish a ROPS under which the necessary notifications and undertakings could be given to HMRC for QROPS status.

Key Benefits of Malta as a Jurisdiction

Before undertaking due diligence on how or if an individual scheme meets the UK qualification criteria, it is important to understand how the individual jurisdiction qualifies. There are two main recognition routes for jurisdictions split between EU/EEA Member States and non EU/EEA Member States.

EU/EEA Member States: The route to recognition

A personal or occupational pension scheme established in an EU/EEA Member State scheme qualifies as a ROPS, as long as it satisfies the Tax Recognition Test, the Benefits Tax Relief Test and the Pension Age Test set out in regulations stipulated by HMRC. Whether any particular scheme will satisfy these tests will depend mainly on the local domestic legislation of the Member State in which the pension plan is situated, as well as the rules of the particular pension scheme in question. It should be noted that the Tax Recognition Test and the Benefits Tax Relief Test can only be satisfied under the Member State's domestic tax legislation, while the Pension Age Test can be satisfied under either the domestic tax legislation or through an individual scheme's rules.

All pension schemes which are established in Malta and are licensed under the terms of the Retirement Pensions Act 2011 with the Malta Financial Services Authority in accordance with Malta's domestic pension regulation will satisfy the Tax Recognition Test and the Tax Relief Test. Therefore, as long as the scheme rules of the particular scheme in question do not permit access to UK tax relieved funds prior to the member attaining the age of 55 (otherwise than in the event of permanent invalidity) (the Pension Age Test) a duly licensed Maltese pension scheme will be a ROPS.

Additional protection is afforded to schemes that meet the qualification criteria which are established in EU Member States, as it is not permitted for pension schemes of EU Members States to be treated unfairly by other EU Member States. This means that HMRC cannot discriminate either on a current or retrospective basis against the pension rules and regulations existing in other Member States such as Malta.

Non EU/EEA Member States: Additional Requirements

In addition to satisfying the Tax Recognition Test, the Tax Relief Test and the Pension Age Test mentioned above under the local domestic tax legislation in which a scheme is situated, pension schemes established in jurisdictions which are not EU/EEA Member States need to satisfy one of two different requirements in order to meet the requirements to be a ROPS, namely:

1. The Scheme must be established in a jurisdiction that has a pension regulator (which regulates the pension scheme in question) and a tax treaty with the UK which has provisions in relation to exchange of information and non-discrimination. Or:

2. If 1 above cannot be satisfied, the Scheme rules must provide at least 70% of the sum transferred to it (from the UK RPS) is designated by the scheme Manager to provide the member with an income for life from no earlier than age 55.

Countries which offer/have offered QROPS under Route 1 above include Australia and New Zealand (prior to 6/4/2012)*.*

Countries which offer/have offered QROPS under Route 2 above include the Isle of Man Guernsey and New Zealand (from 6/4/2012).Schemes that qualify under this Route 2 must provide at least 70% of the funds initially transferred are used to:

- Purchase an annuity for life of the member from the age of 55, or
- Provide the member with pension income for life

If a QROPS established under this alternative route does not clearly state in its rules how it will manage its obligation to provide members with a pension on the basis outlined above, there is a risk that Her Majesty's Revenue and Customs may not ultimately recognise the scheme as a QROPS.

Any QROPS which relies on this default route to QROPS recognition will consequently be heavily dependent for risk management purposes on the construction of the trust deed and rules of the particular QROPS plan, together with the operational practices of the scheme provider to maintain QROPS qualification status.

The Malta Financial Services Authority

The Malta Financial Services Authority (MFSA) worked with Her Majesty's Revenue and Customs to ensure its domestic income tax legislation complied with the UK requirements (outlined above) confirming QROPS recognition of registered pension schemes on a case by case basis.

It therefore follows that Maltese retirement schemes (whose rules satisfy the Pension Age Test) which are licensed with the MFSA under the terms of the Retirement Pensions Act 2011 and which have given HMRC the requisite notification and undertakings that they are a Recognised Overseas Pension Scheme will automatically satisfy the requirements to be a QROPS.

Achieving qualification criteria is essential, since HMRC withdrawal of QROPS recognition on the basis that the QROPS never qualified in the first place will result in a UK income tax charge of 55% of the value originally transferred as each plan member transfer would not be recognised under UK income tax legislation.

Regulation

All licensed Maltese pension schemes are regulated by Malta's local regulatory body the MFSA and are subject to stringent audit requirements, annual reporting and publication of financial statements for the whole scheme, that are available to all plan members. QROPS operators in other jurisdictions often have to work within a self-regulated environment that does not involve such a level of security and transparency to plan members.

Domestic

Malta has its own internal domestic trust and pension laws, based on UK principles.

Tax Treaties

Malta has over 65 tax treaties that can confer particular advantages to QROPS plan members when compared to the UK tax treaty network that applies to UK registered pension schemes. The Malta/US tax treaty is an example where it is often more beneficial for US citizens and green card holders to receive a UK tax relieved pension from a Maltese Plan, rather than a UK Plan or any other jurisdiction offering a QROPS.

Compatibility

The Island is English speaking and has a suitable time zone.