



Guernsey Practice Notes

Requirements for Exempt Pension Trusts and Exempt Pension Contracts

26th March 2012

These notes have been prepared by the BWCI Group in conjunction
with the States of Guernsey Income Tax Office



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Readers are reminded that nothing stated in these notes should be treated as an authoritative statement of the **Law** on any particular aspect or in any specific case and action should not be taken as a result of these notes alone. Any further enquiries may be addressed to the Retirement Annuity Supervisor, States of Guernsey Income Tax Office, PO Box 37, 2 Cornet Street, St Peter Port, GY1 3AZ

1. Introduction

1.1 Introduction

These notes set out the contributions which may normally be paid to and the benefits which may normally be provided by exempt pension contracts and exempt pension trusts seeking approval under section 157E of the Income Tax (Guernsey) Law, 1975. The Director of Income Tax may be prepared to allow other benefits in special circumstances. The notes produced by the **Director** regarding the procedure for applications for approval, together with a summary of the consequences of approval under section 157E, are set out in Appendix 1.

1.2 Application of these Practice Notes

These Practice Notes apply in full to **Exempt Pension Trusts**.

Section 2 of these Practice Notes does not apply to contracts written under **Exempt Pension Contracts** but the remaining sections apply in full to all **Exempt Schemes**.

1.3 Definitions

The terms which appear in bold type in these notes are defined in Appendix 2.

2. Trustees and Advisers

2.1 Appointment of Trustee

There must be at least two trustees, or one or more corporate trustees.

Each trustee must be resident in Guernsey, must be carrying on in Guernsey the business of the administration and management of trusts and must be carrying on business under a regulatory licence granted by the Guernsey Financial Services Commission.

The administration and management of the trust must be carried on in Guernsey.

Any changes to the trustees must be notified to the **Director** within 30 days of such change.

2.2 Meaning of “Administration”

As the term “administration” is not defined in the **Law** it takes its ordinary meaning and would include all activities relating to the oversight, control, management and decision making in respect of the scheme. Thus all activities in relation to the scheme which require a decision (for example in determining the benefits due to an individual) should be carried on in Guernsey. It would not be acceptable for an **Exempt Pension Trust** to be fronted from Guernsey with the real activity being carried on outside Guernsey. However, this does not affect the ability of the members themselves to make decisions where appropriate (for example in terms of the amount of the permissible lump sum to be taken by way of commutation). Additionally, it does not affect activities which are purely incidental or which could reasonably be expected to be carried out by a third party.

The **Director** is prepared to determine whether a trust arrangement fulfils the “administration” requirement in cases of doubt and in order to do so will then require full details of the manner in which the trust arrangement is to be operated and, in particular, what activities are to be carried on outside Guernsey.

2.3 Conditions of Approval

The trustees should ensure that they have read the relevant sections of The Trusts (Guernsey) Law, 2007 and appreciate their responsibilities thereunder. For example, they may wish to take independent professional advice as to the implication of their investment strategy on future cash flow for making pension payments and, indeed, for the continuing security of such pension payments. Also, accounts should be prepared and lodged with the Income Tax Office annually.

Where there are Guernsey resident members or members with **Guernsey Tax-Relieved Scheme Funds**, trustees should ensure that they also comply with the requirements of the **GFSC RATS Rules**.

Adherence to these Practice Notes is a condition of approval.

Any subsequent changes to the trust deed and rules must be notified to the **Director**.

3. Membership

3.1 Membership

Membership of an **Exempt Scheme** may be made available either to a single individual or group of individuals or may be made available without limitation.

Every member of an **Exempt Scheme** must be made aware of the terms of the scheme.

4. Contributions

4.1 Contributions by Members

A member is not required to contribute to a scheme. Where a member does contribute, contributions of any amount may be made but no contributions will be allowable as a deduction for tax purposes.

4.2 Contributions by Employers

An employer of a member is permitted to contribute to the scheme if it wishes to do so but the contributions will not be allowable as a deduction for tax purposes. Employers' contributions will be taxable as a benefit in kind for the member.

5. Benefits

5.1 Commencement of Benefits

A member may elect to commence benefits at any time from age 55, or at an earlier age if due to **Incapacity**.

In particular, commencement of benefits may be deferred beyond age 75 if the member wishes.

5.2 Benefits

Subject to the options available under section 7, benefits must be taken in pension form and must provide an income for life. It is not, however, necessary to purchase an annuity from an insurance company and the pension may be paid out of the fund itself. If desired, the pension may be guaranteed for a period of up to 10 years.

The pension may provide for no increases or for annual increases of a fixed rate of up to 5% per annum, or in line with inflation as measured by any recognised index in Guernsey or the UK or in any other **Crown Dependency**. A contingent spouse's pension may be provided for if required by the member. Account may be taken of any reduced expectation of life for a member in poor health, but it is not compulsory to do so. The level of income drawdown should not normally exceed the amount available to provide an income for life but may be less if the member so requests. The terms and conditions of such pension payments may be reviewed at appropriate intervals.

Pension payments are exempt from **Income Tax**.

A lump sum, which is also exempt from **Income Tax**, may also be taken within the prescribed limit (see section 7). The pension does not need to commence when the lump sum is taken.

5.3 Risk Disclosure

If an annuity is not being purchased from an insurance company then the pensioner (and contingent pensioner, where appropriate) should be known to have other means of subsistence and thus not be specifically dependent upon the **Exempt Scheme** for a significant part of their normal living expenses in retirement. The danger is that in basing a pension on an "average expectation of life" assumption there will be a substantial proportion of pensioners (and contingent pensioners) who outlive the available funds in an **Exempt Scheme**. Thus the trustees or managers must warn the parties concerned of this danger. The wording of the **GFSC RATS Rules** may be used for this purpose.

6. Death Benefits

6.1 Death before Commencement of Benefits

The following benefits may be provided:-

- (i) a lump sum (exempt from **Income Tax**) of up to the amount of the member's **Fund Value** at the date of death; plus
- (ii) a pension payable to the member's spouse, **Civil Partner**, children or **Dependants** derived from the member's remaining **Fund Value**. This pension will be exempt from **Income Tax**.

6.2 Death after Commencement of Benefits

The following benefits may be provided:-

A pension payable to the member's spouse, **Civil Partner**, children or **Dependants** derived from the member's remaining **Fund Value**. This pension will be exempt from **Income Tax**.

6.3 Termination of Scheme

If there is a fund left after all pensioners' entitlements have been met this may be distributed as required by the Deed, or at the discretion of the trustees. Such distributions will be exempt from **Income Tax**.

7. Lump Sums

7.1 Retirement Lump Sum

A member who has attained age 55 or who is suffering from **Incapacity** may commute up to 30% of his **Fund Value** for a lump sum. This lump sum will be exempt from **Income Tax**.

A lump sum can be paid at the same time or before or after a member commences annuity payments and a member may elect to receive his lump sum in any number of tranches.

8. Transfers of Benefits

8.1 Outward Transfers of Benefits

Outward **Transfer Payments** may be made to **Exempt Schemes** or **Approved Schemes** or **Approved Occupational Pension Schemes** or **Registered Pension Schemes** or **Statutory Schemes**. Outward **Transfer Payments** may also be made to Guernsey schemes which are not **Exempt Schemes** or **Approved Schemes** or **Approved Occupational Pension Schemes** (ie schemes within the provisions of Section 40(ee) or Section 40(o) of the **Law**, respectively).

With the prior written consent of the **Director** outward **Transfer Payments** may also be made to other schemes outside of Guernsey.

In all cases such schemes must provide benefits no more generous than those permitted under an **Exempt Scheme**. In particular, such schemes should not permit commutation of more than 30% of the member's **Fund Value** for a lump sum and should not permit benefits to be paid to the member before age 55 (except for **Incapacity**).

Outward **Transfer Payments** will be exempt from **Income Tax**.

8.2 Inward Transfers of Benefits

Transfer Payments may be received from **Exempt Schemes** or **Approved Schemes** or **Approved Occupational Pension Schemes** or **Registered Pension Schemes** or **Statutory Schemes**. **Transfer Payments** may also be received from Guernsey schemes which are not **Exempt Schemes** or **Approved Schemes** or **Approved Occupational Pension Schemes** (ie schemes within the provisions of Section 40(ee) or Section 40(o) of the **Law**, respectively).

With the prior written consent of the **Director** transfer payments may be received from other schemes outside of Guernsey which are tax approved or exempted in that jurisdiction and which provide benefits of a similar nature to those which may be provided by an **Exempt Scheme**.

Where any part of such **Transfer Payments** is derived from **Guernsey Tax-Relieved Scheme Funds** then such part will be subject to **Income Tax** at the standard rate (or at one half of the standard rate where any such part had previously been subject to **Income Tax** at one half of the standard rate). The trustees of the transferring fund are liable for the deduction of such **Income Tax** from the **Transfer Payment** and for remitting it to the **Director** within one month.

Regard should also be had to the relevant legislation regarding pension transfers in the transferring territory.

9. Accounts and Investment of the Funds

9.1 Accounts

The **Director** will ask to see accounts annually.

9.2 Investment of the Funds

The investment(s) selected for the **Exempt Scheme** should have regard to the cashflow requirements needed to make the pension payments.

The following are suitable investments for **Exempt Schemes**:

1. Equity investment in any company quoted on a recognised stock exchange.
2. Equity investment in companies not quoted on a recognised stock exchange. Where any member of the scheme holds, together with relatives or any other member, more than 15% of the issued share capital of the company, not more than 10% of the total fund shall be invested in the company.
3. Any other investment or contract of insurance marketed by a generally recognised financial institution.
4. Loans to members may be made by the trustees, provided that:
 - (a) The total amount advanced at any time does not exceed 30% of the **Fund Value**.
 - (b) Interest is charged on a commercial basis. Such interest must actually be paid by the member at least annually and, for these purposes, “commercial basis” means interest should be charged on the loan at a rate no lower than that obtainable on a similar amount deposited with, and no higher than that payable on a similar amount borrowed from, a financial institution.
 - (c) The trustees should ensure that they hold sufficient security for the loan, to enable them to enforce repayment at any time.
 - (d) The loan must be repaid before benefits commence to be paid in respect of the member for whom the loan was made.
5. Purchase of property let on a commercial basis. This may include property occupied by a member, their relatives or connected companies, provided that a properly valued commercial rent is paid. Property should be wholly owned by the trustees; part ownership is not permitted.

9.3 Gearing

The trustees should not borrow money for the purposes of additional investment (i.e. “gearing”) except in the case of investment into real property. This restriction applies to all such borrowing from the date of publication of these Practice Notes although existing borrowings may continue.

Appendix 1 Applications for and Consequences of Approval

Applications for Approval of Scheme

Applications for approval should be made using form 681 and addressed to the Retirement Annuity Supervisor (see Appendix 4).

The **Director** is unable to provide a pro-forma trust deed, nor is he able to offer advice on the wording or composition of this, and it is strongly recommended that professional advice is obtained before executing a trust deed. It would be usual for the trust deed to contain, possibly as an appendix, the Rules of the scheme, confirming that it will conform to the requirements of the **Law**.

Scheme documentation does not need to be submitted with the application form, although the **Director** may subsequently request additional information.

Once an application for approval has been received it will be allocated a reference number. This reference number should then be quoted on all further correspondence in connection with the scheme.

Basis of Approval

The **Law**, at section 157E (2), allows for the approval of an Exempt Pension Contract made by an individual with a company, resident in Guernsey (or carrying on business through a permanent establishment situated in Guernsey) and carrying on in Guernsey the business of granting annuities on human life provided that the business is being carried on under a regulatory licence issued by the Guernsey Financial Services Commission. Approval of such a contract is subject to the conditions contained in sections 157E (2) and (3) of the **Law**. The **Director** may also place other conditions on the Scheme as he thinks fit in appropriate cases.

The **Law**, at section 157E (4), allows for the approval of an Exempt Pension Trust provided that it is established:

- (a) under the laws of Guernsey and is administered and managed in Guernsey; and
- (b) with at least two trustees or one or more corporate trustees each of which are resident in Guernsey; and
- (c) each trustee carries on in Guernsey the business and management of trusts and the business is being carried on under a regulatory licence issued by the Guernsey Financial Services Commission; and
- (d) for the purposes of providing pension savings for individuals and their families and dependants; and
- (e) under irrevocable trusts.

Approval of **Exempt Pension Trusts** is also subject to the conditions contained in sections 157E (2) and (3) of the **Law**, in other words the same as those for **Exempt Pension Contracts** with necessary adaptations. The **Director** may also place other conditions on the **Exempt Pension Trust** as he thinks fit in appropriate cases.

Tax Consequences of Schemes Approved under Section 157E

Income derived from investments and deposits forming a part of the scheme will be exempt from **Income Tax**.

Neither members' nor employers' contributions will qualify for **Income Tax** relief.

Both pensions and lump sum payments may be made free of **Income Tax**.

Outward **Transfer Payments** may be made without deduction of **Income Tax**.

Where any part of an inward **Transfer Payment** is derived from **Guernsey Tax-Relieved Scheme Funds** then such part will be subject to **Income Tax** at the standard rate (or at one half of the standard rate where any such part had previously been subject to **Income Tax** at one half of the standard rate). The trustees of the transferring fund are liable for the deduction of such **Income Tax** from the **Transfer Payment** and for remitting it to the **Director** within one month.

Approved Occupational Pension Scheme

A pension scheme or part of a pension scheme approved by the **Director** in accordance with section 150 of the **Law** and any scheme authorised by Resolution of the States of Guernsey

Approved Scheme

A **Retirement Annuity Scheme** or a **Retirement Annuity Trust Scheme**

Civil Partner

An individual who is registered as the civil partner of a member under the UK Civil Partnership Act 2004 or who is treated as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose relationship in either case has not been dissolved or annulled

Crown Dependency

Guernsey, Jersey or the Isle of Man

Dependant

An individual who is dependent for the ordinary necessities of life upon a member of an **Exempt Scheme**.

Director

The Director of Income Tax referred to in section 205 of the **Law**

Exempt Pension Contract

An exempt pension contract approved under Section 157E of the **Law**

Exempt Pension Trust

An exempt pension trust approved under Section 157E of the **Law**

Exempt Scheme

An **Exempt Pension Contract** or an **Exempt Pension Trust**

Fund Value

The member's entire (pre-commutation) accumulated fund, including contributions, investment returns and the proceeds from any insurance policies

GFSC RATS Rules

The Retirement Annuity Trust Schemes Rules, 2010 made by the Guernsey Financial Services Commission, as amended from time to time

Guernsey Tax-Relieved Scheme Funds

Funds (including income and gains thereon) derived from contributions which have benefited (or which would have benefited had there been no limit on tax relief in the relevant year of charge) from Guernsey tax relief

Incapacity

Physical or mental incapacity. Incapacity should be determined on the basis of qualified medical advice that the member is and will continue to be medically incapable either physically or mentally as a result of injury, sickness, disease or disability of continuing the member's current occupation and as a result of such injury, sickness, disease or disability ceases to carry on that occupation.

Income Tax

Guernsey income tax

Law

The Income Tax (Guernsey) Law, 1975, as amended

Registered Pension Scheme

A scheme as defined in section 153 of, and Schedule 36 to, the UK Finance Act 2004

Retirement Annuity Scheme

A scheme approved under Section 157A (2) of the **Law**

Retirement Annuity Trust Scheme

A scheme approved under Section 157A (4) of the **Law**

Statutory Scheme

A scheme as defined in section 612(1) of the UK Income and Corporation Taxes Act 1988

Transfer Payment

A payment equal to the member's **Fund Value**, at the time when the payment is made. Reasonable administration expenses may be deducted from the **Fund Value**

This appendix summarises the extra statutory concessions relating to pensions which the **Director** may be prepared to allow in certain circumstances.

Divorce

When a husband and wife separate the **Director** may be prepared to allow a transfer of part of the pension rights of one of the parties from an **Exempt Scheme** to another **Exempt Scheme** or **Approved Scheme** or **Approved Occupational Pension Scheme**. Each case would however need to be submitted to the **Director** for individual consideration and subject to agreement with the scheme trustees.

**Application for Approval under the
Income Tax (Guernsey) Law, 1975, as amended (“the Law”)**

**Occupational Pension Scheme
Retirement Annuity Contract
Retirement Annuity Trust Scheme
Exempt Pension Contract
Exempt Pension Trust
(delete as appropriate)**

1. Name of Scheme/Contract
.....

2. Names of Trustees and Administrators
.....

3. Name of sponsoring employer (if applicable)

4. Details of any associated schemes for employer named at 3. above

5. Address for correspondence
.....
.....

6. Date of establishment of Scheme/Contract

7. Anticipated approximate size of membership

8. I/we hereby apply for approval under: *(delete as appropriate)*
 - (a) section 150(2) of the Law (Occupational Schemes);
 - (b) section 157A(2) of the Law (Retirement Annuity Contracts);
 - (c) section 157A(4) of the Law (Retirement Annuity Trust Schemes);
 - (d) section 157E(2) of the Law (Exempt Pension Contracts);
 - (e) section 157E(4) of the Law (Exempt Pension Trusts).

9. I/we confirm that:
 - (a) a copy of the Instrument establishing the Scheme/Contract is available to the Director of Income Tax on request (see Note 2 on next page);

- (b) any changes to the Scheme, Deed, Rules or Contract of a material nature will be advised to the Director within 30 days of implementation (see Note 4 below);
- (c) any changes to the Trustees or the correspondence address will be notified to the Director within 30 days;
- (d) the Trustees/Administrators:
 - (i) are satisfied that the Scheme, Deed, Rules or Contract satisfies all of the conditions of the legislation under which approval is sought;
 - (ii) are aware of and have read the Practice/Guidance Notes/Codes of Practice published by the Director in respect of such arrangements (see Note 5 below);
 - (iii) undertake to ensure that the Scheme, Deed, Rules or Contract is administered so as to adhere to the relevant legislation, notes, guidance or codes, or to advise the Director immediately if this ceases to be the case;
 - (iv) undertake to supply the Director with such further information as the Director may reasonably require.

10. Declaration

I hereby declare that the information provided in this application is true and correct to the best of my knowledge and belief. I have taken professional advice in completing the application, as appropriate.

I am authorised to make the declaration above on behalf of the Trustees/Scheme Administrator.

Signed

Date

Capacity in which you are making the application (if not Trustee/Scheme Administrator):

.....

NOTES ON APPLICATION FOR APPROVAL

1. When completed, the application should be submitted to the Income Tax Office, addressed to:
 - the Pension Schemes Supervisor (for section 150 applications); or
 - the Retirement Annuity Supervisor (for section 157A or section 157E applications).
2. Do NOT send Scheme or Contract documentation unless requested. For Retirement Annuity Trust Schemes, the document establishing the Scheme should only be submitted if its trustees are not regulated by the GFSC.
3. A letter confirming approval will be sent as soon as possible after receipt of the application, which will contain the approval reference number.
4. A change to a Scheme, Deed, Rules or Contract will be regarded as material if it affects, or may affect, continued approval. There is no specific form for advising such changes.
5. All legislation, notes and codes are available at www.gov.gg/tax.
6. The application should only be signed by a person authorised and able to provide the information and undertakings requested. This will obviously include the Trustees or Administrators, but may also include a person holding a legal, actuarial or accountancy qualification.