



Income Tax Office

HM Government of Gibraltar

**PENSION SCHEMES IN
CONNECTION WITH A
STATUTORY INSTRUMENT
14B ITA GUIDANCE NOTES**

This guide is for general guidance only. It must not be treated as a complete and authoritative statement of the law on any particular case.

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PART 1

INTRODUCTION

- 1.1 On 3rd July 2014 an amendment to the Income Tax Act 2010 was passed by The Gibraltar Parliament in respect of permitting the establishment of pension schemes in Gibraltar in connection with the UK Statutory Instrument 2010/51.
- 1.2 These Guidance Notes sets out the principal considerations for any Gibraltar pension scheme which wishes to function as such a pension scheme as defined in United Kingdom legislation.

PART 2

ESTABLISHMENT OF SCHEMES

- 2.1 Any scheme to which these Guidance Notes applies shall be established in such format as may be required from time to time by the Commissioner of Income Tax and shall meet any regulations that shall be made from time to time by the Financial Services Commission.
- 2.2 No person shall act as a trustee of such a scheme who is not deemed as appropriate either by the Commissioner of Income Tax or the Financial Services Commission. For the avoidance of doubt, an authorised insurance company may act as a trustee of such a scheme.
- 2.3 Trustees of schemes shall ensure that the pension schemes are administered by suitably qualified or experienced personnel resident in Gibraltar so that the schemes are administered efficiently and competently to the standards required by the Gibraltar Financial Services Commission.

PART 3

MEMBERSHIP OF SCHEMES

- 3.1 Membership of any scheme covered by these Guidance Notes shall be open to residents of Gibraltar and such other persons as the trustee/administrator of each scheme may admit to membership at their absolute discretion, provided that no member shall be admitted to any scheme covered by these Guidance Notes whose membership shall prejudice the approval of the scheme by the Commissioner of Income Tax.

PART 4

CONTRIBUTIONS

- 4.1 A member may from time to time elect to make such personal contributions to a scheme as shall be agreed with the trustee/administrator of the scheme provided that such contributions shall not prejudice the approval of the scheme by the Commissioner of Income Tax.
- 4.2 Personal assets transferred into the Scheme are classified as contributions to the Scheme and are subject to approval by the Trustees, who have the right to insist on an actuarial calculation and report to justify the level of contributions to be received. Any such report will take into account the income requirement from the scheme and pension income from other sources as well as the member's state of health and the value of worldwide assets.
- 4.3 Contributions shall be subject to guidance issued from time to time by the Income Tax Office and the Commissioner of Income Tax.

PART 5

DEATH BENEFITS

- 5.1 In the event of the death of a member, the trustee/administrator of a scheme subject to its rules will be able to apply such deceased member's, remaining Member's Interest, in one or both of the following two alternative types of death benefit in such combination and proportion as the trustee/administrator in its absolute discretion shall determine. The two alternative death benefits are:-
- a) Lump sum death benefits and
 - b) Pension benefits to eligible dependants.
- 5.2 At the discretion of the trustee/administrator the lump sum death benefits may be paid to any of the following in such amounts and proportions as the trustee/administrator shall determine:-
- a) The deceased member's surviving spouse or dependant
 - b) Any child, grandchild or other descendant of the deceased member
 - c) Any surviving parent or sibling of the deceased member
 - d) Any spouse or close dependant of any person listed in b) and c) above
 - e) Any other person who in the opinion of the trustee/administrator was a financial dependant of the deceased member and who had been a financial dependant of the deceased for at least one year prior to the deceased member's death
 - f) Any person nominated as a beneficiary on death to the trustee/administrator by the deceased member during his lifetime
 - g) Any trust wherever situated for the benefit of any person listed in a) to f) above
 - h) Any charity nominated as a beneficiary on death by the deceased member during his lifetime and approved for such purpose by the trustee/administrator.
 - i) The deceased's legal personal representatives.
- 5.3 All or any lump sum distribution made under 5.1 and 5.2 above are not subject to taxation in Gibraltar.
- 5.4 The trustee/administrator may also choose to apply all or part of the deceased Member's Interest to provide a dependant's pension for any one or more of
- a) The deceased member's surviving spouse or close dependant

- b) Any dependent child, grandchild or other descendant of the deceased.
 - c) Any other person who in the opinion of the trustee/administrator was a financial dependant of the deceased member at the date of his/her death and who had been a financial dependant of the deceased for at least one year prior to the deceased members death.
- 5.5 In the event that the trustee/administrator determines to provide more than one spousal or dependant's pension under 5.4 above then separate pensions shall be provided for each such dependant and each shall be subject to the appropriate rate of income taxation as determined by the Gibraltar Government from time to time.
- 5.6 The trustee/administrator may determine at its absolute discretion that any individual dependant's pension may cease while in payment. (For example in the event of a former spouse or close dependant remarrying or cohabiting)
- 5.7 In the event that any dependant's pension ceases for any reason the trustee/administrator shall have the right to apply any residual unearmarked funds within the deceased member's interest to pay either further lump sum death benefits to an eligible beneficiary under 5.2 above or to provide further dependant's pensions under 5.4 above.
- 5.8 Any dependant's pension payments made shall be subject to Income Tax at the rate set out in Section 14A(2) of The Income Tax Act 2010, or as subsequently amended, which shall be deducted at source from any such payments made by the trustee/administrator at the time of payment.
- 5.9 Funds may continue to be held under the scheme during such period following the death of a member as the trustee/administrator finds to be necessary in order either to determine who is to benefit and/or to pay death benefits.
- 5.10 No death benefits are to be paid without the approval of the Commissioner of Income Tax. Notification by the scheme trustees needs to be made not later than 1 month after the benefit commences

PART 6

COMMENCEMENT AND AMOUNTS OF MEMBER'S BENEFITS

- 6.1 Any member of a scheme shall have the right to commence drawing benefits from the scheme, in whole or in part, at any time after attaining the Minimum Benefit Commencement Age.
- 6.2 If a member of a scheme who has not attained the Minimum Benefit Commencement Age is, in the opinion of the trustee/administrator, permanently incapacitated as confirmed by medical evidence, then such member shall also be entitled to commence drawing benefits from the scheme provided that payment of benefits to such member shall not prejudice the approval of the scheme by the Commissioner of Income Tax and subject to prior notification, given in such format as the Commissioner of Income Tax shall determine.
- 6.3 Each member who is eligible to draw benefits shall be able to choose to draw such benefits in lump sum or in pension form, subject to Sections 7 and 8. Again subject to prior notification, given in such format as the Commissioner of Income Tax shall determine
- 6.4 The amount of any lump sum benefit payable to an Eligible Member shall, however, not exceed the limits set out in Section 7.
- 6.5 The amounts of any pension benefit payable to an Eligible Member shall not exceed the limits set out in Section 8.

PART 7

PENSION COMMENCEMENT LUMP SUM PAYMENTS ('PCLS')

- 7.1 An Eligible Member may at any time, after attaining the Minimum Benefit Commencement Age, be entitled to draw a Pension Commencement Lump Sum benefit not exceeding the amount set out in 7.2 below.
- 7.2 The maximum PCLS benefit payable at any time to an Eligible Member under 7.1 above shall not exceed 30% of the value of such Member's Unvested Interest, as determined at the time of such payment.
- 7.3 An Eligible Member who has already drawn a PCLS benefit may as a result of additional contributions or transfer payments made to a scheme on his/her behalf or in the event that he/she has not previously drawn the maximum PCLS benefit be entitled to draw additional PCLS benefits. Entitlement to any outstanding PCLS will cease from a vested arrangement upon the commencement of income benefits.
- 7.4 Any PCLS payment made under 7.3 shall be subject to the limits set out in 7.2 above.
- 7.5 No PCLS paid within limits under 7.2 shall be subject to tax in Gibraltar.

PART 8

PAYMENT OF PENSIONS

- 8.1 Pensions payable to scheme members are intended to be payable throughout life.
- 8.2 The maximum regular pension payable to a member in respect of each year commencing on the anniversary of Pension Commencement Date shall be such sustainable amount as determined by the trustee/administrator using actuarial advice or guidance, if required, taking into account the value and nature of the assets and subject to the trustee's discretion.
- 8.3 An acceptable default position, where it is not necessary or appropriate to obtain actuarial advice, would be to obtain an average of three market rates or to rely on the United Kingdom Government Actuary's Department ('GAD') drawdown rates.
- 8.4 The member shall be entitled to draw each instalment of maximum regular pension in whole or in part, at any time after the relevant anniversary of the Pension Commencement Date.
- 8.5 The amount of the maximum regular pension shall be recalculated in respect of each member at least once in every three year period following Pension Commencement Date and yearly following the member attaining age 75.
- 8.6 The trustee/administrator may make from time to time, at the request of the member, such additional pension payments to the member within actuarial limits as shall not prejudice the approval of the scheme by the Commissioner of Income Tax. The scheme will be registered in the name of each pension scheme
- 8.7 Any pension payments made shall be subject to Gibraltar Income Tax at the rate set out in Section 14B of The Income Tax Act 2010, or as subsequently amended, which shall be deducted at source from any such payments made by the trustee/administrator at the time of payment.

PART 9

TRANSFERS TO A SCHEME IN GIBRALTAR

- 9.1 A member of a scheme, who has accumulated pension entitlements within another pension scheme whether situated in Gibraltar or elsewhere may request that the trustee/administrator accept a transfer payment from such other pension scheme. The trustee/administrator shall have the right at its absolute discretion to refuse such request.
- 9.2 No transfer payment may be made to a scheme in respect of a member which shall prejudice the approval of the scheme by the Commissioner of Income Tax.
- 9.3 No transfer to a scheme may be made without the approval of the Commissioner of Income Tax, who may set out from time to time his requirements for such approval.
- 9.4 Subject to 9.1 and 9.2 above, the trustee/administrator shall determine the form in which any transfer payment shall be made and the benefits that shall be granted in respect of such transfer payment.

PART 10

TRANSFERS FROM A SCHEME IN GIBRALTAR

- 10.1 A member, who joins another pension scheme, whether situated in Gibraltar or elsewhere, may request that the trustee/administrator make a transfer payment to such other pension scheme. The trustee/administrator shall have the right to refuse such request if such transfer would conflict with 10.2 below.
- 10.2 No transfer payment may be made to another scheme in respect of a member which shall prejudice the approval of the scheme from which a transfer is being requested by the Commissioner of Income Tax.
- 10.3 No transfer from a scheme may be made without the prior approval of the Commissioner of Income Tax, who may set out from time to time his requirements for such approval.
- 10.4 Subject to 10.1 and 10.2 above, the trustee/administrator shall determine the form in which any transfer payment shall be made and may make as a condition of such transfer stipulations regarding the benefits that shall be granted in respect of such transfer payment in order to comply with 10.2 and 10.3 above.

PART 11

TRANSFERS FROM A SCHEME IN THE UK

- 11.1 Transfers from UK registered pension schemes are not permitted and should instead be transferred into a scheme established to comply with the UK QROPS provisions.

PART 12

INVESTMENTS

- 12.1 The investments of a scheme should be under the ultimate control of the trustee/administrator with a view to providing sustainable pensions and related benefits for scheme members.
- 12.2 Such investments of a scheme shall be subject to such guidance as may be prescribed from time to time by the Commissioner of Income Tax.
- 12.3 Subject to the above and to other requirements of the scheme, the investments of a Member's Interest shall be determined by the trustee/administrator after taking such advice as is considered appropriate including taking account of the wishes of the member and the member's attitude to risk.

PART 13

DISCONTINUANCE OF SCHEMES

- 13.1 In the event that the Commissioner of Income Tax withdraws his approval of any scheme operating under these Guidance Notes the trustee/administrator shall enter into such arrangements as shall be necessary to preserve the entitlements of members, including transferring such Member's Interests to other appropriate pension arrangements.
- 13.2 In the event that a trustee/administrator wishes to discontinue a scheme for any other reason than such trustee/administrator shall ensure that the rights and entitlements of members shall not be prejudiced.

PART 14

WITHDRAWAL OF APPROVAL OF A SCHEME

- 14.1. If in the opinion of the Commissioner of Income Tax the facts concerning any scheme or its administration cease to warrant continuance of approval, it may be withdrawn. Withdrawal is effected by notice in writing to the trustee/administrator, specifying the grounds for, and the operative date of the withdrawal. The operative date will normally be that of a particular event which has made the scheme no longer approvable but in some cases may be the beginning of a tax year or even the date of commencement of the scheme, according to the circumstances.
- 14.2. An unacceptable amendment to a scheme will cause approval to lapse automatically. Approval may also be withdrawn for such reasons as serious breaches of the rules e.g. Payment of excessive or unauthorised benefits, overfunding to an unacceptable extent and persistent failure by the trustee/administrator to furnish information or meet the scheme's tax liabilities.
- 14.3. The following taxation consequences arise following withdrawal of approval:
 - (a) All the exemptions and reliefs conferred in relation to approved schemes, including those for contributions by employers and employees, are forfeit from the date of withdrawal;
 - (b) The members are liable to tax under the Income Tax Act on any payment made to them or for their benefit out of funds which are or have been held for the purposes of the scheme if the payments would not have been expressly authorised by the rules of the scheme before the operative date of withdrawal.
- 14.4. If the trustees believe there are valid grounds for an appeal they shall be notified to the Commissioner within 30 days of receiving the notice from the Commissioner

PART 15

WITHDRAWAL OF APPROVAL OF A MEMBER

- 15.1 If in the opinion of the Commissioner of Income Tax the facts concerning any member cease to warrant continuance of approval, the member may be withdrawn. Withdrawal is effected by notice in writing to the member, specifying the grounds for, and the operative date of the withdrawal. The operative date will normally be that of a particular event which has made the member no longer approvable but in some cases may be the beginning of a tax year or even the date of commencement of the member joining the scheme, according to the circumstances.
- 15.2 If the member believes there are valid grounds for an appeal the member shall notify the Commissioner within 30 days of receiving the notice from the Commissioner

PART 16

DEFINITIONS

“Actuarial Advice” shall mean advice received from a Fellow of The Institute and Faculty of Actuaries in the United Kingdom or a firm of such Fellows, or a suitably qualified firm located elsewhere.

“Eligible Member” shall be a member who has attained the Minimum Benefit Commencement Age or a member who has not attained the Minimum Benefit Commencement Age but who is in the opinion of the Trustee/Administrator permanently incapacitated as confirmed by medical evidence and to whom payment of benefits shall not prejudice approval of a scheme by the Commissioner of Income Tax.

“Member’s Interest” shall mean the value on a particular date, as determined by the Trustee/administrator, of all contributions and transfer payments received on behalf of the member with appropriate allowance for the investment return received thereon and after taking account of the amount and timing of any benefits paid to or on behalf of the member.

“Member’s Unvested Interest” shall mean the value on a particular date, as determined by the Trustee/administrator, of that portion of the Member’s Interest which has not yet been applied to provide or calculate a benefit that has been paid from the Scheme or from any other previous pension scheme for the member from which a transfer payment has been received.

“Minimum Benefit Commencement Age” shall be age 55

“Pension Commencement Date” shall in respect of a member be the date at which benefits are first payable to such member from the scheme or in the case of a member who is in receipt of a transfer payment from a foreign pension scheme and who had been drawing benefits from such foreign pension scheme shall be the date on which benefits were first paid from such foreign pension scheme.