Flexible approach

Nancy Chien, senior associate, International Private Client Group, Bedell, says that significant changes are on the horizon for pensions in the Island

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THE current Jersey pensions regime feels like a 1970s bungalow that has undergone a few licks of paint to cover up the cracks. However, the government has now decided that the Island needs to catch up with modern times as the existing framework is no longer fit for a 21st century workforce.

Tax Policy issued a consultation paper in October 2013, which contained proposals as to how Jersey's pensions regime can be modernised. The consultation closed on 10 January 2014 and it is proposed that the new rules will be lodged with the States for debate in spring 2014. The proposals, once they come into effect, will affect existing members, trustees and employers of all types of pension schemes in Jersey. Founders and employers should start thinking about the ramifications of these proposals for their businesses. Anyone with an interest in a pension scheme should consider the proposals in respect of their current retirement plans.

The consultation paper offers long-awaited flexibility, but it also seeks to introduce additional taxes.

One of the areas in which flexibility has been long-awaited is so-called 'flexible retirement'. Flexible retirement describes the situation where members of pension schemes are allowed to commence their pension payments while continuing to work. Currently, members of occupational pension schemes are prohibited from drawing on their pensions while still working. Flexible retirement has been allowed in the UK since 2006 and, as recognised by Tax Policy, in the modern world, attitudes towards retirement are changing. As people live longer, it is inevitable that they will need to work for longer. Flexible retirement will allow workers the flexibility to choose how many hours they work and how they use their pension savings.

It is not proposed that flexible retirement will automatically apply to all pension schemes. In order to take advantage of flexible retirement, employers will need to consider the employment law implications and pension law consequences of employees moving from permanent employment to flexible retirement. For instance, from an employment perspective it may be necessary to vary or draft new contracts of employment and amend staff handbooks and from a pension perspective to make changes to the trust deed and rules.

Another area in which flexibility will be introduced is a self-certification approval system, so that it will be the responsibility of each pension scheme to certify that the scheme meets the conditions of approval. It is proposed that standard forms will be made available and the Taxes Office will issue approval status if the form is completed correctly and the requisite form is furnished. However, the taxes office will review a number of schemes on an annual basis to determine if they comply with the conditions of approval. Schemes that are found non-compliant will have their tax approval withdrawn. Guernsey has already moved to a self-certification approval system.

The consultation paper introduces some new taxes on benefits paid to non-resident members.

It is proposed that tax is imposed on pension benefits (including lump sums) paid to non-resident members whose employment was carried on outside Jersey. Therefore, the current tax exemption offered by the Taxes Office for non-Jersey employees will be removed. This will affect schemes that have Jersey and non-Jersey members (for example, pan-Channel Island schemes), as the non-Jersey members will now be required to pay tax on benefits in Jersey under this proposal. The rationale for this change is to remove the risk that Jersey schemes will not comply with the requirements of UK legislation for QROPS (qualifying recognised overseas pension schemes) on the basis that non-residents would otherwise receive preferential tax treatment compared to residents. Individuals resident in countries with which Jersey has a double tax agreement may be able to alleviate their tax burden in Jersey or their home jurisdiction under the terms of such double tax agreement. However, individuals resident in other jurisdictions will be subject to Jersey tax.

Another proposal that is likely to have a major impact on non-residents is the ability to transfer their pensions out of Jersey, but at the cost of a 10% tax charge. The rationale for the tax charge is to compensate the Treasury for the tax loss, as after the transfer it will not be possible to charge tax on pension benefits received by the member outside of Jersey, even though such member may have received tax relief in respect of his contributions into the scheme while he was tax resident in Jersey.

The consultation paper introduces some welcome changes to Jersey's pension regime, but it also seeks to introduce extra taxes which may catch out the unwary. There are many other proposals which are not discussed in this article. It is important that employers, trustees and members start planning for the changes that may be introduced, so that they do not inadvertently fall foul of the new requirements. A more detailed discussion of the consultation paper can be found on www.bedellgroup.com under the publications, pensions tabs.

● Nancy Chien is named as one of the 'Top 35 under 35' advisers by Private Client Practitioner and recognised in the Citywealth 2013 Jersey Future Leaders List.