QROPS
MALAYSIA

ARE YOU TAX RESIDENT IN MALAYSIA AND DO YOU HAVE A UK REGISTERED PENSION?

IF SO, AND YOUR PENSION REMAINS IN THE UK, YOU SHOULD BE AWARE OF YOUR POSSIBLE UK TAX OBLIGATIONS. FURTHERMORE, BENEFITS COULD BE AVAILABLE SHOULD YOU TRANSFER THESE PENSION FUNDS OUT OF THE UK TO OTHER SECURE JURISDICTIONS UNDER HMRC'S FAVOURABLE QUALIFYING RECOGNISED OVERSEAS PENSION SCHEME (QROPS) REGIME.

UK TAXATION IF YOUR PENSION REMAINS IN THE UK

From 6 April 2006 a single set of rules came into effect. Under this system, the tax treatment for all types of approved schemes, including occupational schemes, small self-administered schemes, personal pensions, self-invested pension plans and retirement annuity contracts have been amalgamated into the rules for Registered Pension Schemes. These can be either Defined Benefit or Defined Contribution (DC) Schemes.

UK INCOME TAX DURING LIFETIME OF MEMBER

From 6 April 2015, more flexibility was introduced in respect of how you can access UK DC savings. Generally 25% can be taken UK tax free and the remaining 75% (whether income from an annuity, drawdown, or lump-sum) will be taxable at your marginal rate of UK tax (current top rate 45%).

UK residents are liable to UK tax on such income and, generally, non-UK residents are subject to UK income tax on UK source income too. Therefore, if you are non-UK resident and receive a payment from a UK Registered Pension Scheme, assuming the payment is not within your 25% tax free amount, it is liable to UK tax at your marginal rate, unless a Double Tax Agreement (DTA) with your country of residence and the UK provides exemption from UK tax on such income.

UK / MALAYSIA DTA

Under the DTA between the UK and Malaysia, pensions paid in consideration of past employment to a tax resident of Malaysia and any annuity paid to such a tax resident, shall be taxable only in Malaysia and not the UK.

For pensions not paid in consideration of past employment it is possible that they shall be taxable in both countries.

See overleaf for Malaysian taxation.

There are separate provisions for Government Pensions.

UK TAX ON PAYMENT OF PENSION DEATH BENEFITS

From 6 April 2015, the UK tax treatment of benefits from DC schemes on death depends, amongst other things, on the age of the member at the time of death (i.e. pre or post 75). From this date, generally, there should be a lower UK tax cost on passing pension value to heirs on death. However, that said, there is still a possible current tax rate of up to 45%.

For those that are non-UK resident and have a QROPS, the UK tax cost on succession can be less. For further details please refer to the STM Pensions Death Benefits briefing.

This general information has been provided on the basis of the current legislation and practice in Malaysia as of June 2015 and April 2015 for UK, Gibraltar & Malta. Should any of the information provided be inaccurate, incomplete or misleading, we take no responsibility for any reliance placed on it. We recommend that individuals always seek specialist multi-jurisdictional (where relevant) tax advice so that their individual circumstances can be fully considered.

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IF YOUR UK PENSION IS TRANSFERRED TO A QROPS IN:

1. GIBRALTAR has no DTA with Malaysia, therefore the QROPS payments to you would be taxable in Gibraltar, currently at a rate of 2.5%.

No UK income tax if non-UK resident (for 5 tax years + or total withdrawals are below £100,000).

No Gibraltar Inheritance Tax.

Protection from UK IHT.

Protection from UK death benefit charges if non-UK resident (and non-UK resident for the last 5 years + before payment).

2. MALTA has a DTA with Malaysia, this provides that pensions paid to a tax resident of Malaysia in consideration of past employment shall be taxable only in Malaysia. However, if the pension is not paid in consideration of past employment it may be taxed in both countries. We understand that the Maltese Tax Authorities do not treat pensions from QROPS as "paid in consideration of past employment" therefore tax may be due in Malta.

If Malta taxes the QROPS income payments they are taxed at rates of up to 35%.

No UK income tax if non-UK resident (for 5 tax years + or total withdrawals are below £100,000).

No Maltese Inheritance Tax.

Protection from UK IHT.

Protection from UK death benefit charges if non-UK resident (and non-UK resident for the last 5 years + before payment).

MALAYSIAN TAX POSITION

Individuals are taxed on income accruing in or derived from Malaysia, or for certain companies received in Malaysia from outside Malaysia.

Foreign source income is not taxable in Malaysia. This includes foreign source pension income which would remain not taxable even if remitted to Malaysia as remittance of foreign source income by an individual is exempt from tax.

There is no different tax treatment in Malaysia for foreign occupational or foreign personal pension schemes.

Currently Malaysia does not impose net wealth, gift or inheritance taxes.

Residence status only affects the amount of tax payable on income accruing in or derived from Malaysia for individuals.

Residence status is determined based on the physical presence of the individual in Malaysia. The four rules for determining the residence status are:

- Present in Malaysia for at least 182 days in the calendar year, or
- Present in Malaysia for less than 182 days in the calendar year provided that period is linked by or to another period of 182 or more consecutive days throughout which the individual is in Malaysia in the adjoining year, or
- Present in Malaysia for at least 90 days in the calendar year and in any three out of four immediately preceding calendar years the individual was either resident or in Malaysia for at least 90 days, or
- A resident for the year if the individual is resident the following year and has been resident for the immediately preceding three years

Tax resident individuals are taxed at progressive rates ranging from 0% to 26% with entitlement to personal relief deductions.

A non-tax resident individual who exercises employment in Malaysia for less than 60 days is exempt from Malaysian tax. An individual whose employment period exceeds 60 days would be taxable unless the individual is able to seek exemption from Malaysian tax under the relevant DTA. A non-tax resident individual would be taxed at a flat rate of 26% with no entitlement to personal relief deductions.

Currently, Malaysia has entered into DTAs with more than 70 countries, including the United Kingdom and Malta.

OPTIONS FROM A TAX PERSPECTIVE:

UK

If the pension remains in the UK, the exemption from UK tax (under the DTA) on any payments applies if it is paid in consideration of past employment. If not paid in consideration of past employment, tax could be due in the UK on the payments (at up to 45%). In both cases there should be no tax payable in Malaysia. However, the fund remains exposed to the UK death benefit charges.

GIBRALTAR

Transferring to a Gibraltar QROPS for non-UK residents (5 years +) can alleviate UK tax on any payments (at up to 45%) with 2.5% Gibraltar tax on payments and no tax in Malaysia. Furthermore, the QROPS can protect from the UK death benefit charges if non-UK resident (5 years +) and there is no Gibraltar IHT.

MALTA

Transferring to a Maltese QROPS for non-UK residents (5 years +) can alleviate UK tax on any payments (at up to 45%) with potentially tax due in Malta (under the DTA at up to 35%). No tax in Malaysia on such payments. Furthermore, the QROPS can protect from the UK death benefit charges if non-UK resident (5 years +) and there is no Maltese IHT.

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FOR FURTHER INFORMATION PLEASE CONTACT:

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