

**Retirement Annuity Trust Schemes (RATS) – “administered” in the context of approval under section 157A(4) of the Income Tax (Guernsey) Law, 1975 (“the Law”)**

Section 157A(4) of the Law provides specific alternative conditions which must be fulfilled by a RATS seeking approval. In particular, it requires that the scheme must be:

“... established under the law of the United Kingdom or Guernsey and is administered in the United Kingdom or Guernsey ....”

On a number of occasions, the Director has been asked to clarify his interpretation of “administered”, to determine the extent to which a scheme’s activities should be carried on in Guernsey or the United Kingdom under the Law or whether they may be carried on elsewhere.

This is important because clearly the proper operation of RATS is critical to their continued acceptance, both by the Director (for domestic approval purposes) and by HMRC in respect of QROPS issues. The Director has taken steps to reassure HMRC regarding the manner in which Guernsey operates these schemes, and he would not wish to see that good relationship prejudiced. There is, therefore, a reputational as well as a legal aspect to consider.

The Director has taken legal advice on the correct interpretation of “administered” in the context of the Law. He has also taken into account the need to preserve Guernsey’s standing as a premier regime for doing pension business and the effect on Guernsey’s domestic tax revenues, whilst bearing in mind the need to not unduly distort normal commercial activities. It is believed that what follows constitutes a balanced approach to the issue.

Clearly there must be Guernsey trustees, to comply with the requirement imposed by the Director as a condition of approval, and this also assists in fulfilling the “established” test.

So far as “administered” is concerned, as the term is not defined in the Law it takes its ordinary meaning, which is essentially to “manage” or, more specifically, “to manage as a steward”. The Director’s view, based on the advice provided to him, is that this would encompass all activities relating to the oversight, control, management and decision making of and in respect of the scheme, and it would follow that all such activities should be carried on in Guernsey or the UK in order to meet the terms of approval.

In the context of the RATS, this would mean that all activities in relation to the administration of the scheme which require a decision (for example, determining the benefits due to an individual) should be carried on in Guernsey or the UK. In other words, there must be real and significant substance in Guernsey or the UK in order to satisfy the test. This does not, of course, affect the ability of the members themselves to make decisions where appropriate, e.g. in terms of the lump sum to be taken by way of commutation.

In summary, therefore, the Director’s view is that, as a default position, all activity relating to the administration (in its broadest sense) of a RATS should be carried on in Guernsey, unless it can be shown that it is an activity which is purely incidental or is one that could reasonably be expected to be carried on by a third party. In short, he would not wish to see a Guernsey RATS being used simply as a façade where the real activity is carried on outside either jurisdiction and where there is no real control over the risks to reputation which arise from the operation of a RATS, particularly in the area of QROPS provision.

In any case, where doubt arises as to whether or not a RATS fulfils the “administered” criterion, the Director would be prepared to make a decision after receiving and considering full details of the manner in which the RATS is operated and, specifically, what activities are carried on outside Guernsey.