STATES OF JERSEY

TAX RULES APPLYING TO PENSIONS AND PENSION SCHEMES: SUMMARY OF RESPONSES TO CONSULTATION

Presented to the States on 22nd May 2014
by the Minister for Treasury and Resources

STATES GREFFE

REPORT

Ministerial comments

With Jersey's aging demographic, it is vitally important that the tax rules applying to pensions and pension schemes are fit for purpose. However, it has become apparent that our tax rules have not kept pace with modern society and are now lagging behind those applied in comparable jurisdictions. In response, in October 2013, the Treasury published a consultation document proposing a number of changes to the relevant tax rules, seeking to modernise and simplify Jersey's pensions regime.

I would like to thank those individuals and organisations that responded to the consultation document. The 41 responses received during the consultation period came from a broad cross-section of the pension industry and interested individuals. The overwhelming majority of respondents were supportive of the general aims of modernisation and simplification, but they also challenged the initial proposals and identified different options.

In particular, a number of respondents wanted us to go further than our initial proposals, increasing flexibility for all pension savers, irrespective of whether they are saving in an occupational pension scheme or a personal pension scheme. We have listened to their arguments, and this Report outlines a number of changes to our initial proposals.

The updated amendment to the Income Tax Law, reflecting these changes, will be lodged with the States in July 2014, as part of the 2015 Budget, and, assuming States' approval, the changes will become effective from 1st January 2015.

The most significant change from the initial proposals is the plan to allow much greater flexibility over the 30% tax-free lump sum which Jersey pension schemes can pay. Essentially, provided that their pension scheme's rules allow it, our proposal is to allow pension savers to access the 30% tax-free lump sum in an unlimited number of tranches from the age of 50.

As part of the most recent UK Budget, the Chancellor of the Exchequer surprised the UK's pension industry by announcing plans to allow pension savers free access to their pension fund once they reach the minimum pension age (currently 55 in the UK), any drawings being subject to income tax on the individual at their marginal UK tax rate. This proposed change, which if adopted in its current form will revolutionise pension saving in the UK, will take some time for the pension industry and pension savers to digest. We will monitor the UK government's consultation on their plans carefully, review the final package of proposals and then consider what, if any, changes should be made in Jersey.

It is should be noted that under Jersey's existing pension rules no one is obliged to purchase a traditional annuity from an insurance company. Savers in a retirement annuity contract (RAC) who are, on the face of it, obliged to purchase a traditional annuity, have the option to transfer their pension fund either to a retirement annuity trust scheme (RATS) or, provided they have sufficient amounts of certain forms of guaranteed income, to an approved drawdown contract and hence avoid that obligation.

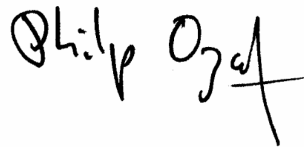
Savers with a pension fund in a RATS are not obliged to purchase a traditional annuity. Instead, they are permitted to draw income directly from the RATS itself and hence, when the individual dies, anything remaining in the scheme can remain within their family, not with an annuity provider. To prevent individuals incorrectly assuming that they need to purchase a traditional annuity, we intend to remove the reference to "annuity" in the scheme name, changing it to retirement trust scheme (RTS).

Furthermore, the Comptroller has amended the calculation of the maximum annual income that can be withdrawn directly from a RATS. For 2014, and in subsequent years, the maximum annual income that can be withdrawn has been increased to 150% of the "basis calculation" (up from a previous maximum of 100% of the "basis calculation"), giving individuals saving in a RATS more flexibility over the income they draw during their retirement.

Anyone saving in a Taxes Office approved pension scheme, with a guaranteed level of certain forms of income to support them for the remainder of their life, can transfer their pension fund to an approved drawdown contract, where they are able to draw whatever amount they want from their pension fund, paying income tax at their marginal tax rate on whatever amount they draw. To increase the attractiveness of approved drawdown contracts, we intend to allow pension savers access to them even if a tax-free lump sum has already been taken from their approved pension scheme.

In the spirit of greater flexibility, earlier this year the Taxes Office allowed personal pension schemes to invest in new class of asset, investment-grade gold, and consideration is being given to going further and allowing pension schemes to invest in a wider range of assets. An announcement on this issue will be made later this year.

Finally, many respondents to the consultation highlighted their concern regarding the lack of provision that many Islanders have made for their retirement. Improving Islanders' confidence that pension schemes are properly administered and that their interests are protected would be a major step in encouraging pension saving. Hence I can announce that government will commence work, in partnership with the Jersey Financial Services Commission, on developing a pensions regulatory function within the commission. In developing this function we will work closely with interested parties to develop a solution that is appropriate for the Island and Islanders.



Senator P.F.C. Ozouf
Minister for Treasury and Resources
21st May 2014

Executive Summary

- A consultation was launched on 8th October 2013 seeking the Public's view on a number of proposed changes to the tax rules applying to pensions and pension schemes. The changes proposed in the consultation primarily sought to simplify and modernise the relevant tax rules.

- The consultation period closed on 10th January 2014, by which time 41 written responses had been received. Those responses represented a good cross-section of the pensions industry. The responses to the consultation have been summarised in Section 2 of this Report.

- The majority of respondents were supportive of the general aims of modernisation and simplification, but they also challenged the initial proposals and identified different options.

- Following a review of the responses, a number of changes to the initial proposals have been made. The key changes to the initial proposals outlined in Section 3 of this Report are –

    - Allowing pension schemes greater flexibility over the payment of the 30% elected lump sum
    - Allowing individuals to access the flexibility of approved drawdown contracts, irrespective of whether they have already taken a tax-free lump sum from their pension scheme
    - Removal of the proposed caps on tax-free lump sum payments
    - Allowing partial pension fund transfers, subject to express approval from the Comptroller of Taxes
    - Removal of the proposed 10% tax on international pension fund transfers
    - Changes to the tapering of tax relief for pension contributions made by individuals with income over £150,000
    - An updated timeline relating to the implementation of the rule changes
    - Confirmation that no changes are proposed to pension schemes approved under Articles 131A and 131C of the Income Tax (Jersey) Law 1961
    - Confirmation that there will be no compulsion on pension schemes to offer the additional flexibility being proposed
    - Potential changes to the scope of approval given to occupational pension schemes.

- These changes, together with a number of changes to address technical issues identified through the consultation process, will be reflected in the updated amendment to the Income Tax Law.

- This amendment to the Income Tax Law will be lodged as part of the 2015 Budget (in July 2014) with the changes becoming effective, assuming States' approval, from 1st January 2015.

Section 1: Introduction

Consultation process

A consultation was launched on 8th October 2013, seeking the Public's view on amendments to the tax rules applying to pensions and pension schemes. The consultation document consisted of a draft of the proposed amendment to the Income Tax Law and a summary of the main changes.

The changes outlined in the consultation document sought to achieve –

- simplification of the tax rules applying to pensions and pension schemes;
- modernisation of the tax rules applying to pensions and pension schemes – including, in particular, the introduction of flexible retirement in the context of occupational pension schemes; and
- greater consistency between the tax rules applying to occupational pension schemes and to personal pension schemes, and between the tax rules applying to different forms of personal pension schemes, so that the tax incentives to transfer funds between pension schemes are minimised.

The consultation period closed on 10th January 2014, by which time 41 written responses had been received. Those responses represented a good cross-section of the pensions industry, including independent financial advisers; pension administrators; annuities providers; actuaries; lawyers and accountants interested in pensions issues; pension scheme trustees and interested individuals.

The overall quality of responses was high. The quality and level of detail that they contained demonstrated that the consultation document had elicited a great deal of thought from the respondents. This has necessarily resulted in it taking longer than anticipated to review the responses and to draw conclusions.

Summary of responses and key changes to initial proposals

Overall there was a general agreement amongst respondents that the proposed new rules represented a significant simplification when compared to the existing rules, and that the introduction of greater flexibility into the pension rules is to be welcomed. However, views on the detail of some of the proposed change were more wide-ranging.

This Report summarises the responses received to the consultation[1] and outlines the key changes to the initial proposal that have been made following a review of those responses[2].

[1] See Section 2: "Summary of responses"
[2] See Section 3: "Key changes to initial proposals"

Next steps

The relevant amendment to the Income Tax Law is being updated to reflect the changes to the initial proposals and a number of technical issues that were identified through the consultation process. The final version of the amendment to the Income Tax Law will be lodged as part of the 2015 Budget (in July 2014) with the changes becoming effective, assuming States' approval, from 1st January 2015.

Section 2: Summary of responses

Question 1 – structural changes to the pension rules

Question 1 related to the proposed new structure of the pension rules. The responses to the consultation were overwhelmingly supportive of the proposed new structure of the rules and, in particular, the efforts to combine the Income Tax Law and the Superannuation Funds Order –

> "We are supportive of the separation of the conditions of approval (including the payments an approved Jersey scheme may make) from the tax analysis applying to those payments. We agree that this makes the pension rules clearer. We are also supportive of the consolidation of the tax rules relating to occupational pension schemes in one place with the key provisions from the Income Tax (Superannuation Funds) (Jersey) Order 1972 being incorporated within the Income Tax (Jersey) Law 1961 (the "Tax Law")."[3]
>
> "The proposed changes appear to have the intention of clarifying and simplifying the existing law, which is welcomed."[4]
>
> "We are of the opinion that the proposed structural changes are positive and most welcome. Any such changes should of course ensure minimal impact on existing pension arrangements in relation to any documentation amendments. Of course the impact of changes must also simplify and modernise what has gone before (accepting the inherent complications and limits that can be achieved). Separating the conditions of approval from the tax analysis as well as incorporating key provisions from the 1972 Order into Article 131 is a positive step forward."[5]

Questions 2–4 – definitions included in the new pension rules

Questions 2–4 related to the proposed definitions included in the new pension rules, checking that they are appropriate, clear and unambiguous. On the whole, the definitions were regarded as appropriate, clear and unambiguous. However, a number of technical issues were raised on some of the definitions (particularly with reference to the term "scheme manager"). These concerns are being reviewed, and any changes considered appropriate will be included in the final version of the Income Tax Law amendment.

[3] Law Firm
[4] Pension Administrator
[5] Independent Financial Adviser

Question 5 – scope of approval (relevant to occupational pension schemes only)

Question 5 related to the scope of the Taxes Office approval with respect to occupational pension schemes. A number of respondents were satisfied that the approach to the approval of occupational pension schemes outlined in section 4.3 of the consultation document was most appropriate. However, a number of respondents raised concerns where occupational schemes have members in more than one jurisdiction –

> "We are concerned that by enshrining the principle of "whole scheme approval" in legislation… it will be necessary for the trustees of multi-jurisdictional Jersey based schemes to apply Jersey restrictions on benefits and contributions in addition to any other restrictions which apply as a result of "home" tax approval. This is administratively complex and potentially disadvantages members relative to being included in a "home" scheme or indeed in a multi-jurisdictional non-Jersey based scheme…
>
> We are also unclear whether, if a multi-jurisdictional Jersey based scheme were to be segregated the "whole scheme" for Jersey tax purposes would be the section providing benefits for Jersey members, or the scheme in its entirety, and we would welcome clarification of this."[6]
>
> "We consider the approach outlined in section 4.3 of the Consultation document to be the most appropriate course in respect of approving occupational pension schemes with scheme managers who are non-Jersey resident. However, we have a number of UK clients where the trustee of a sectionalised scheme is Jersey resident. We are therefore concerned that the proposed draft Article 131(3) would mean that the whole of the sectionalised scheme (and not just the Jersey section) would need to comply with paragraphs (5) to (16). We consider that the position where this scenario arises should be clarified. We would also consider that the residency of scheme members rather than that of a scheme manager should be the primary driver in determining the treatment of the scheme for approval purposes."[7]

In addition, one respondent requested that we consider requiring schemes containing only (or mainly) Jersey members to have a Jersey resident scheme manager –

> "Without such a restriction on when a Scheme with a non-resident scheme manager can seek approval there is potential for a scheme established solely (or mainly) for the provision of pension benefits for Jersey employees to be established in another jurisdiction which could lead to compliance and tax/revenue risk."[8]

Question 6 – are there are any existing schemes that will fail to meet the proposed conditions of approval?

The majority of respondents were unable to identify any existing schemes that would fail to be an approved scheme under the proposed conditions of approval. Respondents did, however, raise concerns that the additional flexibility provided for under the

[6] Law Firm
[7] Law Firm
[8] Actuary

proposed new rules would be compulsory, and hence schemes would have to amend their rules in order to offer this flexibility. **For the avoidance of doubt, none of the proposed changes to increase flexibility are compulsory. Each scheme will be free to decide whether to make the changes or not. If no additional flexibility is offered, this will not make an existing scheme non-compliant**.

Question 7 – recognition condition

Question 7 related to the current condition that an occupational pension scheme must be "recognized by the employer and employed person in the trade or undertaking" (the "recognition condition"). On the whole, respondents did not identify any adverse consequences from the removal of the recognition condition. However, one respondent identified the risk that small occupational pension schemes are the primary source of pension liberation activity in the UK, and retaining the recognition condition may prevent that sort of activity spreading to Jersey.

Question 8 – removal of restriction on pension income that can be paid

Question 8 related to the proposal to remove the restrictions on the pension income that can be paid from an occupational pension scheme. Respondents were broadly in support of the proposal to remove the cap on the amount of pension income that can be paid from an occupational pension scheme –

> "We do not consider that restrictions on the amount of pension that can be paid by an approved Jersey occupational pension scheme should be imposed. The cap on the amount of tax relief that individuals may claim for pension contributions and tax charged on pension receipts (in excess of the tax free lump sum) should provide protection against tax leakage."[9]
>
> "As pension income is taxable, and there is a restriction on the elected lump sum, there does not appear to be any need to restrict the level of retirement income. We agree, however, that once income has commenced, it should be payable for life."[10]
>
> "We would agree with the proposal to remove the restriction on the amount an Approved Jersey Occupational Pension Scheme can pay out by way of pension income. From a taxation perspective, there is no reason to restrict this amount."[11]

A number of respondents raised a concern regarding how the new term "income for life" should be interpreted, particularly where an occupational scheme is a defined contribution scheme. In this situation, a number of respondents indicated that the term "income for life" should be calculated in a manner consistent with the "annuity equivalent" used in the context of RTS[12].

[9] Law Firm
[10] Pension Administrator
[11] Independent Financial Adviser
[12] See: https://www.gov.je/TaxesMoney/IncomeTax/Pension/Pages/CalculationAnnuity.aspx

Question 9 – calculation of the 30% elected lump sum

Section 4.4.(f)(i) of the consultation document proposed setting the amount that can be paid out by way of the 30% elected lump sum payment by reference to the fund value at the time that the first tranche of the 30% elected lump sum payment is made. Question 9 queried whether this would be the best approach. Many respondents addressed question 9 and CQ 6–8 together, commenting in general on the availability of the 30% elected lump sum payment.

The issue of the 30% elected lump sum payment results in a wide divergence of views amongst the respondents. A number of respondents considered that the lump sum should only be available in one tranche; in support of their position they highlight the fact that the vast majority of individuals adopt this approach in practice –

> "Yes we agree to the change of the 30% lump sum payment provisions, we do not feel there is a need to have 3 tranches of lump sum payments. Most members do not benefit from 3 tranches as each tranche taken reduces the fund value and therefore the amount of the next tax free cash payment. Fund growth will be unlikely to place members in a better position after a tranche of tax free cash has been taken. So members are invariably better off in tax free cash terms to take the commutation as one payment."[13]

> "We would support the removal of the 3 tranche system. It is difficult for providers to administer and for this reason [we] has never offered this flexibility. We have rarely received enquiries regarding this flexibility so do not believe there is a great demand for it. Its removal will also aid the simplification of the pension regime."[14]

A number of respondents considered that the current approach should be retained, but with appropriate clarification regarding how the Taxes Office consider that the lump sum should be calculated at the time that each tranche is paid. Individual respondents, in particular, appeared to prefer this route.

Finally some respondents considered that the 30% elected lump sum should be payable in more tranches. In supporting this argument, respondents highlighted that one of the main aims of the consultation was the introduction of the concept of flexibility in retirement, and allowing more tranches to be paid would support that concept –

> "I believe that a good solution would be to allow segmentation of pension benefits into what might be called 'sub-funds'… The individual would then be able to take a single 30% lump sum from each sub-fund with the remainder being used for immediate or deferred income for life… This also has the same effect if a member wants to go into a flexible retirement. For example on reaching 60 a member wishes to reduce his working hours to part time and supplement his income using part of his pension benefits. By segmenting his pension fund into two sub-funds and then taking income for life (and a lump sum if desired) from only one of the sub-funds he can have a phased retirement… a limit on the maximum number of segments for a single scheme which are permitted to ensure that segments are not too small or too many

[13] Independent Financial Adviser
[14] Pension Administrator

(3 would be consistent with the current lump sum payment staging but I do not see any reason why further sub-division would not be acceptable).”[15]

“Members could be allowed to separate their pension into segments, drawing down the 30% lump sum from each segment separately, with the remaining funds left in place to deliver income. Successive segments could be accessed consecutively to deliver lump sums (and leave income-generating funds) up to age 75, at which point all segments would need to be activated.”[16]

Question 10 – removal of restriction of dependant pension

Question 10 related to whether the limits on the pension income payable to dependants should be removed. The answers to this question were broadly consistent with the answers to question 8 (i.e. broadly supportive, with some concerns raised regarding how the term “income for life” should be interpreted).

Question 11 – level of very small pension fund

Under the existing tax rules, an approved occupational pension scheme may pay a very small pension fund to the relevant member provided that certain conditions are met. One of these conditions is that the pension fund value does not exceed £5,000, and question 11 queried whether that threshold should be extended.

The responses to this question were wide-ranging. Some respondents considered that the existing £5,000 limit is appropriate –

“[We believe] that the very small pension fund threshold should remain at £5000 and to increase this figure will send the wrong message to the market on the importance of saving for retirement.

If the cost of maintaining a small deferred pension fund is an issue or concern the member always has the option to consolidate this into an alternative arrangement i.e. their new employer’s scheme or a RAT.”[17]

“Yes, we consider the existing £5,000 figure as being appropriate.”[18]

However, these respondents were in the minority, and most called for the limit to be increased, with one respondent indicating that a threshold of £50,000 should be considered. Amongst those respondents who offered a view of where the threshold should be set, the majority indicated that a threshold in the region of £15,000 – £18,000 would be appropriate. A number of respondents also highlighted the approach adopted by Guernsey, where a more flexible approach is taken to the payment of trivial pension funds. The following is an extract from Guernsey’s practice notes relating to occupational pension schemes –

[15] Actuary
[16] Trade Body
[17] Independent Financial Adviser
[18] Pensions Administrator

> "It is permissible to commute a Fund Value which is Trivial in Amount at any age. The full amount of the trivial commutation is taxable at the standard rate (currently 20%) if commutation occurs before age 50 and at half the standard rate if commutation occurs on or after age 50.
>
> It is not necessary to seek prior approval from the Director before commuting a Fund Value which is Trivial in Amount. However, before commuting a Fund Value of greater than £15,000, Trustees should obtain a declaration from the member confirming that the Fund Value may be deemed Trivial in Amount (i.e. the member is age 50 or over and the aggregate of the member's Fund Values (including any previous trivial commutations, taken at face value) from all Approved Occupational Pension Schemes and schemes approved under section 157A of the Law does not exceed £30,000)."

Question 12 – time limit on refund of contributions

Question 12 related to the introduction of a statutory limit on the number of years of service for which a member of an approved occupational pension schemes could seek to have contributions refunded. Respondents were largely supportive for the introduction of some form of cap, with the majority of those respondents indicating that a cap after a member has completed somewhere between 2 and 5 years of service would be appropriate.

Questions 13–14 – move towards self-certification

Questions 13–14 related to plans to introduce a system under which pension schemes self-certify their compliance with the conditions of approval. The majority of respondents were supportive of the move towards self-certification by pension schemes, whilst highlighting the UK's experience in relation to pension liberation and the fact that HMRC's self-certification process may have helped to facilitate that –

> "Guernsey introduced self-certification a number of years ago and based upon our experience has streamlined the establishment and ongoing management of pension schemes (where changes to legal documents are required). This has had a positive impact on all parties related to pension schemes."[19]
>
> "I would commend the proposal to move to a self-certification system which for the many well managed schemes in Jersey will result in a more streamlined process particularly for straightforward changes (for example the addition of a new participating employer in a 5 multi-employer master trust). A self-certification system similar to the Guernsey approval mechanism would also ensure that the process is kept simple and efficient for pan-island schemes."[20]

However, some respondents cautioned against such a move –

[19] Actuary
[20] Actuary

> "I believe that the current scheme should be maintained rather than moving towards a self-certification scheme. The consequences of a withdrawal of approval on both the scheme, and perhaps more importantly, on the members could result in some very unfair consequences."[21]

Others warned about the additional costs that would be incurred by pension schemes (e.g. legal costs) in order to self-certify their compliance with conditions of approval; whilst others warned that self-certification should not be introduced until such time as a proper sanction regime is introduced –

> "We have concerns that the self-certification process will be abused. There also appears to be a black and white approach – which assumes no grey areas… the fact that currently only a 'Red Card' option is available. The option of self-certification is therefore reliant on the introduction of a suitable sanctions regime. A failure in the construction of the pension may be no fault of the actual pension holder and this needs to be taken into account. To remove approval due to a relatively minor error in the self-certification process would be both unfair and disproportionate."[22]

Question 15 – taxation of payments from approved Jersey schemes

Section 4.6 of the consultation document outlined the proposed taxation of payments from approved Jersey schemes, and question 15 queried whether the proposals were appropriate. Overall, the majority of respondents welcomed the proposed simplification of the taxation of pensions and lump sum payments –

> "This approach seems appropriate and the administrative simplicity of a single rate of tax [on lump sum payments] is welcome."[23]

However, despite a general welcoming of the proposed changes, a number of respondents had particular concerns.

Tax rate on lump sum payments

A number of respondents indicated that applying a 10% tax rate to taxable lump sum payments seemed too low –

> "I don't see why it is only 10% particularly for large amounts."[24]

> "I fail to see the point of the proposed concessionary rate of 10% on larger withdrawals at all. Surely if somebody has enjoyed 20% deductions on contributions to a pension fund and the money is then withdrawn to spend freely, the 20% should be recovered in full."[25]

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[21] Independent Financial Adviser
[22] Investment Adviser
[23] Pension Administrator
[24] Individual
[25] Individual

£1.8 million/£540,000 cap

A number of respondents were in support of the introduction of some form of cap on the amount of tax-free lump sum payments –

> "I very much hope that as per the existing tax rules the 30% elected lump sum payment is tax free but I agree with the proposal to have a cap of £540,000 placed on the amount that can be paid tax free. And that any 30% elected lump sum payment in excess of £540,000 will be subject to tax at 10%."[26]

However, a number were firmly against the introduction of some form of cap –

> "We do not consider that there are good policy reasons for imposing a cap on the amount of tax free lump sum that can be received. The imposition of such a cap would send the message to the public that the government does not encourage pension savings. In our view, this message would be contrary to public policy, especially in the light of Jersey's aging population. We would have thought that the government should encourage private pensions savings so as to alleviate the burden on the States."[27]
>
> "We do not think a cap on tax-free cash payments or indeed the existing £1.8m tax-free cap on death benefits serves any real purpose."[28]
>
> "We cannot see the rationale for subjecting payments above £1,800,000 to a 10% "wealth tax.""[29]

Administration burden

A number of respondents raised a concern that they would have to deduct tax from pension income[30] paid to Jersey resident individuals. **The intention is that the current treatment will continue to be applied (i.e. the Comptroller will instruct the scheme manager <u>not</u> to deduct tax from pension income, except in rare cases where the individual is in tax arrears or there is another reason to doubt the ability to recover the tax correctly payable by the individual in receipt of the pension income).**

<u>Question 16 – amendment to Concession P22</u>

Question 16 related to Concession P22, which states: "Where an individual who is resident in Jersey receives a lump sum payment (by way of commutation) of his pension from an overseas scheme, that payment will not be subject to Jersey income tax." It queried whether it should be updated to reflect the proposed taxation of lump sum payments from approved Jersey schemes.

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[26] Individual
[27] Law Firm
[28] Pension Trustee
[29] Investment Adviser
[30] For the avoidance of doubt, there will be an obligation on scheme managers to deduct tax from certain lump sum payments

A number of respondents indicated that the wording of Concession P22 should be amended so that the tax treatment of lump sum payments, particularly elected lump sum payments, from non-Jersey schemes, is consistent with the tax treatment applying to Jersey schemes, to do otherwise "would provide another tax incentive for schemes to be established outside of Jersey for Jersey members"[31].

However, a number of respondents were against any changes in the Concession that would result in taxing lump sum payments from non-Jersey schemes –

> "No, the concession should not be updated, so as to tax payments made by non-Jersey schemes to Jersey residents."[32]
>
> "We do not believe that Concession P22 needs to be amended, unless the definition of "overseas pension scheme" is very clearly defined. There are many variations of "overseas pension scheme" globally, some of which have received tax benefits, many of which have not and the risk is that a bona fide "savings" scheme becomes taxable overnight, thereby introducing a form of capital tax."[33]
>
> "If concession P22 were updated so that similar tax treatment would be applied to lump sum payments made by non-Jersey pension schemes to Jersey residents, this may have the effect of dissuading individuals who are either close to retirement age or who are in the later years with their career looking to move to Jersey to take up senior managerial positions from doing so, by reason of the fact that their own jurisdiction provides them with greater flexibility than that offered in Jersey."[34]
>
> "[We do] not believe that [change] to Concession P22 is necessary or appropriate as any attempt to tax lump sum payable to Jersey residents from a non Jersey scheme would be administratively burdensome and the effort required disproportionate to the additional revenue collected."[35]

<u>Question 17 – discouraging multiple pension saving</u>

Question 17 related to the issue of discouraging individuals from saving in multiple pension schemes in order to obtain a tax benefit. Of those respondents who offered an opinion regarding which of the 2 potential solutions outlined in the consultation document to address the tax benefits associated with saving in multiple pension schemes was better, solution 2, although more complicated, was overwhelming preferred. Many respondents, however, indicated that the complexity associated with the potential solutions could be avoided by not introducing a cap on tax-free lump sums –

> "The abolition of the lifetime allowance [i.e. the caps on tax free lump sums] would remove the need for this complex set of rules."[36]

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[31] Actuary
[32] Independent Financial Adviser
[33] Pension Trust
[34] Law Firm
[35] Independent Financial Adviser
[36] Pension Administrator

Another respondent challenged us to look at the issue from a different perspective –

> "The main problem with the proposals in this area are the different tax liabilities arising for members with a single large pension fund as compared to members with multiple smaller pension funds. I would suggest that a reasonable aim should be that all individuals are treated in the same way regardless of whether their pension saving is through one or multiple pension schemes (regardless of whether due to circumstances or planning). The taxation rules ought to encourage individuals to consolidate pension savings for simplicity and efficiency. However, the proposed arrangements would encourage individuals to save through multiple approved Jersey schemes in order to benefit from additional tax efficiency.
>
> The potential solution discussed in Example 7 [of the consultation document] attempts to reduce this effect but I believe that an alternative solution could be introduced which improves consistency and also increases the flexibility of pension arrangements generally in line with the overall aims of Treasury and Resources. This approach is not to discourage multiple pension vehicles but to ensure that the same tax reliefs are available to individuals with a single large pension.
>
> I believe that a good solution would be to allow segmentation of pension benefits into what might be called "sub-funds". In order to consider whether benefits have commenced then this would be assessed at the level of the sub-fund and not the overall scheme benefit. The individual would then be able to take a single 30% lump sum from each sub-fund with the remainder being used for immediate or deferred income for life."

Questions 18–19 – collection of tax on lump sums

Questions 18 and 19 related to the practical issues associated with the collection of tax on lump sum payments. The responses from the larger pension administrators indicated that obliging scheme managers to deduct tax from any taxable lump sum payment should not cause any significant difficulties –

> "We don't see any particular administrative issues paying tax on lump sum payments provided we are clear on the role of the scheme manager…"[37]
>
> "…we do not believe that deduction and payment of tax to the Taxes Office will present an additional administrative burden."[38]

Questions 20–21 – taxation of non-resident members of occupational pension schemes

Questions 20 and 21 related to a proposed change in the taxation of non-resident members of occupational pension schemes. A number of respondents were supportive of the proposed change –

[37] Pension Administrator
[38] Pension Trustee

> "We understand and agree with the proposal here even though it would create a harsh result for non-Jersey resident members. In introducing this change, we hope that the government will make efforts to negotiate more double tax treaties with pension provisions."[39]

However, those representing existing occupational pension schemes with non-resident members who have an expectation that their pension would be exempt from tax in Jersey raised significant concerns –

> "The proposed amendment in Section 4.9 would create a significant problem for the non-Jersey members of [the X scheme]. The membership of [the X scheme] includes individuals who are or were employed in Jersey, Guernsey and [other countries]. As there is no double tax agreement between Jersey and [a particular country], payments made to [particular country] resident members would be subject to Jersey tax if the proposed amendments are adopted. Moreover, we note that in respect of those jurisdictions with which there is a double tax treaty, including Guernsey, there is only a *possibility* that the effect of Jersey tax may be removed.
>
> The introduction of this change would materially prejudice members of [the X scheme] who have never worked or been resident in Jersey, and who have planned their retirement benefits on the assumption that their benefits will not be subject to tax in Jersey. The Minister is strongly urged to reconsider this proposal."[40]

> "A number of our clients have expressed concern about this change. It will significantly disadvantage members of schemes (covering more than one jurisdiction) who are exempt from this tax under the current system and have relied on the current status quo while planning their retirement benefits but are resident in a country that is not covered by a double taxation agreement with Jersey."[41]

> "…we have major concerns about the imposition of Jersey income tax on non-resident. The issue is covered in 'Section 4.9 – Payments from approved Jersey occupational pension schemes to non-resident members'.
>
> We understand that Section 4.9 of the consultation means that [X scheme] members in [various countries other than Jersey] will suffer Jersey tax even if they have never worked in Jersey; never obtained tax relief in Jersey; and are not resident in Jersey…
>
> …We strongly encourage the States of Jersey to reconsider its proposals for the taxation of non-resident members."[42]

[39] Law Firm
[40] Law Firm on behalf of Occupational Pension Scheme
[41] Pension Consultant
[42] Occupational Pension Scheme

Questions 22–23 – changes to income tax exemptions

Questions 22 and 23 related to proposed changes to the income tax exemptions outlined in Article 115. None of the respondents identified any significant issues with the changes proposed.

Question 24 – partial fund transfers

Question 24 related to the issue of partial pension fund transfers. Respondents were split on the issue, with some firmly against the introduction of partial pension fund transfers –

> "We do not believe partial transfer should be allowed. If introduced this would allow individuals to transfer to multiple different approved schemes and for the transferring scheme this would introduce significant complexity – checking the approvals of each of the different schemes and making a number of different payments to different bank accounts. In addition, it might be possible for individuals to transfer to several different schemes so that in each scheme the amount of the Fund Value is less than the trivial limit and they can take the entire amount as immediate lump sums. In this case, they would potentially fall back on States for benefits."[43]

Some respondents were firmly in favour of the introduction of partial pension fund transfers –

> "We would support partial pension transfers for the following reasons:
>
> 1. Primarily we would support partial transfers as a proviso to potential future changes in legislation [in] an area that is long overdue – the inclusion of pensions in Divorce settlements. The present system is completely out of date and totally inequitable in the world we live today.
>
> 2. Early interpretation of the RAT rules were, in certain circumstances, at odds with that of the Jersey Income Tax Department. Those persons have been disadvantaged through no fault of their own and the current issue could be resolved;
>
> 3. While we recognise that partial pension transfers may provide an opportunity for 'tax planning', we believe that the extent would be limited and could be greatly restricted if only one partial transfer per scheme was permitted."[44]
>
> "Yes, partial pension transfer should be allowed. This will allow additional flexibility and bring us closer in line with the UK. Especially important for those who would like to buy an annuity with only a proportion of their funds. This will also allow those clients who had previously paid new money into a RAT in a segregated fund within a scheme where the full 30% TFC already drawn. Previously the comptroller had allowed the segregated pot to provide

[43] Actuary
[44] Independent Financial Adviser

future TFC. With this being abolished, those clients are now disadvantaged. This change will allow them to transfer the 'clean funds' to a new scheme."[45]

Whereas other respondents took a "middle ground" view –

"Whilst we do not have any strong feelings against allowing partial transfers where it may be possible in the future we do not feel that it is a necessary step. We have not received enquiries asking about the possibility of providing partial transfers. Partial transfers would be difficult to administer on some schemes which were not originally designed to accommodate them and adding this feature would come at a cost to providers having to make system and process changes. The cost of making these changes, when compared to the demand we've seen, makes it unlikely to be a feature that we would look to offer. If introduced, the legislation should not make it mandatory."[46]

Questions 25–27 – international transfers

Questions 25 to 27 related to international pension fund transfers. There was almost unanimous support for the proposal of allowing international fund transfers to occur in a much broader range of circumstances –

"We endorse the potential new policy on international transfers. Jersey is an international finance centre with individuals coming from many different countries to work and then going back to their home country or another different country after a period of employment in Jersey. It seems appropriate that pension legislation should reflect an internationally mobile workforce."[47]

In addition, respondents accepted that there had to be some controls over the ability to transfer a pension fund internationally –

"Any pension legislation has to take into account the fact that the Jersey workforce is being sourced from all corners of the globe. The current arrangement whereby only transfer to Guernsey or UK schemes were permitted is a little insular. We therefore agree with the proposal to allow transfers, subject to the Comptrollers consent, to any pension arrangements, as long as the receiving scheme provides for not more than 30% of the benefits being taken as a lump sum on retirement."[48]

"We do support the step requiring the Comptroller to give permission for the transfer. This gives support to providers around pension liberation by making the decision to allow/disallow an international transfer very clear."[49]

However, a number of respondents identified concerns with the idea of requiring the pension holder to obtain professional advice which indicates the similarities and the differences between approved Jersey schemes and the particular non-Jersey pension scheme to which the fund transfer is sought in order to determine its "equivalence" –

[45] Independent Financial Adviser
[46] Pension Administrator
[47] Actuary
[48] Investment Adviser
[49] Pension Administrator

> "Our main area of concern is that the consultation refers to only allowing international transfers if they seek professional advice. We think this is something that would be very difficult to monitor. We also wonder what the benefit/quality of this advice would be as there can't be many advisers who are qualified to give advice on the legal and tax regimes of more than one country, especially if we consider beyond Jersey/Guernsey."[50]
>
> "…we suspect that there may be issues in determining equivalency of overseas plans and would be keen to understand how equivalency would be determined, particularly where an overseas plan is drafted in a foreign language."[51]
>
> "Section 4.11(b) states "that it will be the pension holders/dependants responsibility" to obtain relevant advice that indicates the Jersey/non Jersey schemes are compatible. However we understand that it is not considered best practice for the trustee to rely on pension holders own legal advice in making a fiduciary decision that a receiving scheme is appropriate to transfer that individual's fund.
>
> While it is acknowledged that the Comptroller must give prior approval for the transfer the Trustee of our 'master trust' arrangement will be seeking further clarification on the matter of a trustee's reliance on tax advice given to a third party when submitting its response."[52]

Furthermore, respondents identified concerns with the idea of only allowing a transfer to the jurisdiction in which the pension holder established tax residency –

> "While a restriction of this nature would reduce the risk of transfers to overseas schemes being used for inappropriate purposes, it would disadvantage some individuals who wish to transfer for genuine and justifiable reasons. Some examples are –
>
> - individuals who work for multi-national companies, where the pension scheme is based in the country in which the head office is registered, yet the individual lives and works in another country
>
> - people who live close to international borders and so work in one country (where the pension scheme is based) but live and are tax resident in another. This commonly happens, for example, in Northern Ireland and the Republic of Ireland."[53]
>
> "Sometimes people will be working in jurisdictions where equivalent pensions are not available…"[54]
>
> "Based upon what is being proposed, an individual would need to prove they are tax resident in the country where they wish to transfer to and would also restrict the ability to transfer to an international scheme. We believe it would

[50] Pension Administrator
[51] Law Firm
[52] Independent Financial Adviser
[53] Pension Administrator
[54] Independent Financial Adviser

> not be appropriate to impose such a restriction since it would be time consuming and cumbersome to check tax residency."[55]

The proposed introduction of a 10% transfer tax on permitted international pension fund transfers (subject to a narrow band of exemptions) was unpopular with respondents –

> "We consider that the 10% tax charge on pension transfers to equivalent non-Jersey schemes, other than Guernsey, Isle of Man and UK pension schemes, to be inappropriate. Members should be treated equally on pension transfers and not penalised based on the jurisdiction of the receiving scheme."[56]

> "…I do not believe that any forward tax charge on transfers could be appropriate in any circumstances."[57]

> "If this tax charge is to proceed we think it may discourage transfers even if it may be in the pension holder's best interest."[58]

> "…it should be withdrawn."[59]

<u>Questions 28–29 – benefit in kind charge</u>

Questions 28 and 29 related to the proposal to introduce a benefit in kind charge on certain employer pension contributions. Respondents accepted that some form of limit on the pension contributions that can be made by employers in the context of owner/managers is appropriate. However, concerns were raised regarding the proposed measure, particularly in the context of defined benefit schemes:

> "There is also complexity in applying this limit where the relevant pension scheme is a defined benefit pension scheme for which contributions may not be expressed as a simple percentage of earnings and/or may not be calculated on a per-member basis. It should also be noted that defined benefit scheme contributions may include contributions related to a past service deficit which ought not to be considered taxable in the context of current benefits in kind since the benefit promise was made (though not necessarily sufficiently funded) in prior years. In the context of defined benefit schemes I believe that there may still be some need to consider what is reasonable for a bona-fide pension scheme in terms of target pension benefit (e.g. 2/3 of earnings at retirement) to ensure that a defined benefit structure cannot be used as a mechanism to allow excessive contributions – even if this replacement ration is no longer applied as a fixed limit."[60]

And late stage provisioning –

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[55] Actuary
[56] Law Firm
[57] Independent Financial Adviser
[58] Pension Administrator
[59] Individual
[60] Actuary

> "[We do] not support this proposal and believes that the 25% of relevant earnings limit is unnecessarily harsh on owner managers who may not be in a position to make significant pension provision for retirement until later life having previously diverted income and financial resources to establish and grow their business.
>
> If we are to encourage and facilitate adequate provisioning for retirement then owner managers should not be hampered from funding pension their pension scheme when profits and cash flow permits."[61]

In terms of alternative approaches, a number of respondents called for the use of an actuary to provide a view on whether the scheme had been overfunded –

> "In the past, overfunding has been satisfactorily determined by an independent actuary. We would strongly recommend that this process is maintained and the threshold that determines whether a scheme is overfunded or not, is maintained as a % of final salary."[62]

Another respondent called for a "safe harbour" such that all employer contributions up to a set threshold would not be regarded as a benefit in kind, and only when employer contributions exceeded this threshold would the percentage of net relevant earnings test be applied.

Finally, a number of respondents called for the introduction of a lifetime pension contribution allowance, similar to that operating in the UK –

> "We also believe that serious consideration be given to a much fairer approach to personal pension funding. The UK pension regime affords all citizens, equally, a lifetime pension contribution allowance. As the name suggests, this is for an individual to use during their lifetime and their personal circumstances determine whether they use some or all of it, or whether they use it equally over their life or just in the years leading up to their retirement. The UK lifetime allowance was £1.8m but had subsequently reduced to £1.5m, which equates to a circa £60,000 pension income."[63]
>
> "Consideration could be given to a UK style system in terms of having a lifetime pension contribution allowance."[64]

Consultation topic 1 – increase minimum pension age to 55

No legislative changes will be proposed in 2014 to increase the minimum pension age.

This was topic on which views were wide-ranging. Many respondents argued that there is no requirement to raise the age at which individuals can access pension benefits above the current age of 50, and that many people have developed their life plan on the assumption that they will be able to access some pension benefits (primarily the 30% elected lump sum payment) at that time –

[61] Independent Financial Adviser
[62] Pension Trustee
[63] Pension Trustee
[64] Independent Financial Adviser

> "I would not recommend it be increased. 50 is the minimum age, not the normal. With the flexibility to draw from 50 without the requirement to 'lock in' an annuity rate at age 50, as was required in the past, the ability to draw from 50 is less likely to be detrimental. Many people may already be anticipating accessing their TFC [Tax Free Cash] from 50, possibly for mortgage repayment etc. and deferral could be detrimental."[65]

The majority of respondents, however, were broadly supportive of a move to increase the minimum pension age to 55, noting the increase in life expectancy and that most people are under provided for their retirement, and hence the rules should encourage them to save for longer periods. One respondent suggested that Jersey should already consider increasing the minimum pension age to 60 to help address the issues with under provision.

Despite the disparity of views on where the minimum pension age should be set, nearly all respondents did agree that, if changes are to be made, they should be introduced with a considerable lead-in period, such that individuals who have made life plans based on accessing pension benefits at the age of 50 are able to adapt those plans accordingly, whilst those closest to the age of 50 should be protected from the implications of the change entirely.

<u>Consultation topic 2 – remove the upper age limit</u>

No legislative changes will be proposed in 2014 to remove or increase the upper age limit.

Many respondents were supportive of the idea of removing the 75 year upper age limit for the commencement of pension benefits, noting increasing life expectancy and the fact that many individuals are working much later into life. Their view was that, as has occurred in the UK, the pension rules should be updated to reflect these changes in society.

However, this view was not universally held, and other respondents were concerned about the potential for estate planning, noting that such a change would fundamentally alter the purpose of a pension saving, away from its function of paying an income to the individual throughout their retirement –

> "Pension schemes were designed to provide an income during retirement. This approach would go against this concept and could be used to avoid paying tax."[66]

> "I would not support the removal of the 75 year upper age limit. The reason for this is that where pension tax breaks are provided by the States of Jersey these should be provided for the purpose of encouraging and enhancing genuine pension provision only and should not be used in support of inheritance or other tax planning. I do not believe that there is a need for individuals making genuine pension savings to defer benefits beyond the age of 75."[67]

[65] Independent Financial Adviser
[66] Actuary
[67] Actuary

In addition, a number of respondents raised concerns regarding the interaction of such a change with age discrimination legislation. To address these concerns, a number of respondents suggested that the upper age limit should be increased to 80 rather than removed entirely.

Consultation topic 3 – access to the 30% elected lump sum payment

See the commentary provided under question 9.

Consultation topic 4 – introduction of a sanctions regime

The majority of respondents recognised that the current situation where the only sanction available to the Comptroller of Taxes is the "nuclear option" of removing approval from a pension scheme is inappropriate. When designing a new sanctions regime respondents requested that it should be –

- clear;
- fair;
- proportionate;
- progressive; and
- accompanied by a transparent appeals process.

Respondents also called for consideration of how any sanctions regime would interact with the JFSC.

The majority of respondents indicated that, where the event that should be subject to a sanction was not the fault of the pension holder and the pension holder had not been enriched by the event, the sanction should fall on the scheme manager rather than the pension holder or his/her pension fund. However, one respondent did warn that such an approach may dissuade lay trustees from becoming pension scheme trustees –

> "We would suggest that any sanctions imposed on scheme managers should be on the businesses of the scheme mangers themselves. Where the scheme manager comprises of a group of individuals its charges would normally be met from the Scheme funds. It may be that a charge is made on businesses/individuals themselves that cannot be met from a scheme's funds but this would have the effect of dissuading lay trustees from acting as pension scheme trustees."[68]

A number of respondents also requested that we consider the introduction of a separate pensions regulator.

Other topics mentioned by a number of respondents

Three other topics were mentioned by a number of respondents in response to the consultation document. The first topic is the quantum of trivial pension funds. Currently for a pension fund to be considered "trivial", the pension fund value must not exceed £30,000. A number of respondents queried whether that threshold should be increased.

[68] Law Firm

The second topic was the issue of pension sharing on divorce, where a number of respondents highlighted both: (i) the problems that not allowing pension sharing on divorce causes in divorce settlements; and (ii) the fact that Jersey has fallen behind comparative jurisdictions on this issue.

The third topic related to the restriction on tax relief for pension contributions made by individuals with income in excess of £150,000. A number of respondents requested that the restriction be removed entirely, highlighting, in particular, that it had a disproportionate impact on late stage provisioning, where individuals found that, later in their career, they finally had resources available to make pension contributions, but were barred from receiving tax relief and hence decided not to save in a pension scheme.

Section 3: Key changes to initial proposals

Having reviewed the responses to the consultation document, the following key changes to the initial proposals are being made –

1. Allowing greater flexibility over access to the 30% elected lump sum payment

Currently, a pension saver is able to access the 30% elected lump sum in up to 3 tranches. However, there is some uncertainty regarding how that 30% should be calculated when each tranche is paid. The consultation document therefore proposed that, to address the uncertainty, the option of taking 3 tranches would be retained, but the total amount payable would be calculated by reference to the market value of the pension fund on the date that the first elected lump sum payment was made.

The consultation document also questioned whether the 30% elected lump sum should be restricted so that it could only be taken in a single payment.

The issue of access to the 30% elected lump sum payment resulted in a wide divergence of views.

A number of respondents thought that the lump sum should only be available in one tranche, and highlighted the fact that the vast majority of individuals seek to take the maximum lump sum as early as possible, making access in more than one tranche largely irrelevant.

A number of respondents thought that the current approach should be retained, but with appropriate clarification being given regarding how the Taxes Office consider that the lump sum should be calculated at the time that each tranche is paid.

Finally, some respondents thought that the 30% elected lump sum should be payable in more, potentially unlimited, tranches. Respondents argued that allowing more tranches would support one of the consultation's main aims: the introduction of greater flexibility in retirement.

After careful consideration, it has been decided that pension schemes should be allowed to pay the 30% elected lump sum payment in more tranches. This will allow individuals to take a series of lump sums at times appropriate for them, facilitating greater flexibility in retirement.

Secondly, under the current rules, taking the 30% elected lump sum removes one of the main tax incentives for continuing to save in the same pension scheme. This may discourage individuals from making further pension savings in the years between drawing the 30% elected lump sum and drawing their pension income. The fact that they would be able to accrue further 30% elected lump sum payments on pension contributions made to the same pension scheme after the initial 30% elected lump sum payment has been paid, could act as an incentive to make further pension savings.

Finally, it is has been noted that many retirement annuity contracts (RACs) are, by default, set up as 10 or 100 separate contracts, with each contract being a separate pension scheme. In this situation, the pension saver is able to achieve the flexibility outlined above under the current rules by taking the 30% elected lump sum payment from one or more of their contracts as and when they choose. Therefore this change would provide parity between an individual saving in a retirement trust scheme (RTS), who is currently limited to a maximum of 3 tranches, and an individual saving in a RAC who, effectively, may have access to 100 tranches.

Currently, the intention is to adopt a similar approach to Guernsey's, which works on segmenting a pension scheme whenever an elected lump sum is paid.

For the avoidance of doubt, as outlined above, there would be no compulsion on a pension scheme to adopt this level of flexibility. It would be an option open to each pension scheme to review and introduce if considered appropriate.

2. Access to approved drawdown contracts

Anyone saving in a Taxes Office approved pension scheme, with a guaranteed level of certain forms of income to support them for the remainder of their life, can transfer their pension fund to an approved drawdown contract, where they are able to draw whatever amount they want from their pension fund, paying income tax at their marginal tax rate on whatever amount they draw.

The consultation document did not propose making changes to approved drawdown contracts. However, to increase the attractiveness of approved drawdown contracts, it is proposed that the current restriction, which prevents a pension saver from entering into an approved drawdown contract if they have already taken a tax-free lump sum from their pension scheme, is removed.

3. Removal of proposed £1.8 million/£540,000 cap on tax-free lump sums

The consultation document included the proposal to introduce a £1.8 million/£540,000 cap on tax-free lump sums. The rationale for the cap was to place a limit on one of the main tax incentives to save in a pension (i.e. the payment of tax-free lump sums), addressing the risk that pensions may be overfunded for tax purposes.

Respondents to the consultation identified four main concerns with the introduction of the proposed cap –

(a) The £1.8 million/£540,000 cap would only apply to a handful of individuals who choose, and who had the ability, to make this level of pension. Therefore, the introduction of the proposed cap was disproportionate, adding complexity to the rules (particularly the need to introduce anti-avoidance rules to prevent individuals circumventing the cap), whilst impacting on only a handful of individuals.

(b) The combination of limiting the tax relief available for personal pension contributions, the tapering of that tax relief for individuals with income in excess of £150,000, and the introduction of a benefit in kind rule for employer contributions (in the context of owner managers) should be sufficient to prevent the overfunding of pensions. A cap on tax-free lump sums would be a secondary line of protection and hence unnecessary.

(c) It would result in administrative complexity for scheme managers where an individual saved in multiple pension schemes (e.g. who would have kept track of the lump sum payments made to the individual when determining whether the cap had been exceeded?).

(d) Despite being proposed at a level that would only have applied to a handful of individuals, the simple presence of a cap would act as a deterrent to pension saving. In particular, respondents expressed the concern that, if a cap were introduced, it would likely be reduced in the future[69], discouraging individuals from saving now.

The decision has therefore been taken to remove the proposed £1.8 million/£540,000 cap from the new rules. Through a combination of the existing restrictions on tax relief and the introduction of a benefit in kind rule for owner managers, it is considered that pensions are suitably protected from the risk of overfunding for tax purposes.

4. Availability of partial fund transfers

The consultation document indicated that partial fund transfers would not be introduced. It read –

> "Due to the opportunities for planning it is currently proposed that partial transfers of pension funds are not permitted; either the entire pension fund is transferred or nothing is transferred."

Following strong representation from a number of respondents, it is now proposed that a limited form of partial transfer is introduced, subject to the express approval of the Comptroller. The Taxes Office will review the partial transfers requested under this provision and determine whether a broader power to allow partial transfers should be introduced in the future. For the avoidance of doubt, the provision will be drafted so that an individual will not be able to oblige a scheme manager to make a partial transfer.

[69] Consistent with what has happened in the UK with the lifetime allowance.

5. Removal of proposed 10% transfer tax

The consultation document proposed that international pension fund transfers, both to and from Jersey, would be allowed on a much wider basis than currently permitted. Broadly, a transfer to a foreign pension scheme would be permitted under the proposed rules where the foreign pension scheme was "equivalent" to an approved Jersey scheme.

The majority of respondents welcomed the proposed changes to allow a wider range of international pension fund transfers.

However, to protect the domestic tax base, it was proposed that a 10% transfer tax should be imposed on the transfer of a pension fund outside of the Island.

The introduction of the proposed 10% transfer tax was unpopular with respondents for the following reasons –

(i) It would effectively stop all international pension fund transfers, hence the flexibility introduced by allowing a wider range of international pension fund transfers would be immediately negated by the existence of the transfer tax; and

(ii) It would be inconsistent with the policy of allowing individuals to transfers pension funds to Jersey, on which no Jersey tax relief had been received, because they would suffer 10% tax on the whole fund value (including the element on which they had received no Jersey tax relief) if they choose to move it outside the Island again.

The decision has therefore been taken that the widening of the basis of international pension fund transfers will be retained, but the 10% transfer tax will not be introduced. In the meantime, consideration will be given to alternative measures to address situations where individuals seek to abuse the availability of international pension fund transfers.

6. Change to the tapering of relief for persons with income over £150,000

Since the 2012 year of assessment, the amount of tax relief available for pension contributions made by individuals with an income over £150,000 has been restricted. The restriction was introduced with a taper mechanism to avoid the creation of a "cliff-edge" effect, with relief removed entirely as soon as an individual had an income of £150,000. It is accepted that the current taper mechanism does not operate wholly as intended and hence the decision has been made to amend it.

7. Timeline relating to rule changes

The respondents' views on when the rules changes should be implemented were diverse. Larger organisations, that administer a significant number of pension schemes, advocated delaying the changes, so that they have time to prepare their systems. Individuals, and occupational pension schemes wanting to offer their members the option of "flexible retirement", wanted the changes to be made as quickly as possible.

Balancing all the responses, a decision has been made that the final version of the amendment to the Income Tax Law should be lodged as part of the 2015 Budget and become effective, assuming States' approval, from 1st January 2015. This approach will also make the administration of the new rules, and the application of any transitional rules, easier for the Taxes Office, pension administrators and pension savers.

8. No changes to Art 131A and Art 131C schemes

A number of respondents to the consultation raised concerns that changes were being proposed to pension schemes approved under Article 131A and Article 131C (i.e. pension schemes exclusively for non-Jersey residents). For the avoidance of doubt, no changes are proposed to the Jersey tax rules applying to such schemes or the Jersey tax treatment of pension benefits paid by such schemes.

9. No compulsion on pension schemes to offer additional flexibility

The benefits that can be taken from a pension scheme are determined by the terms of that particular scheme. The conditions of approval outlined in the consultation document only determine whether a scheme meets the standards required to be an "approved" scheme. There will be no compulsion on pension schemes to change their rules in order to offer all or any of the additional flexibility proposed under the new rules. Offering the additional flexibility will therefore be at the discretion of the scheme manager.

10. Scope of approval for occupational pension schemes

The consultation responses highlighted a number of issues regarding the scope of approval for occupational pension schemes which have members in both Jersey and other jurisdictions. We will work with interested parties to alter the scope of approval so that such occupational pension schemes are not encouraged to establish/re-establish outside of Jersey.