

Part 6 Overview

In this sixth instalment of our Mini-series, we will have a look at how international pensions pass on wealth to a member's beneficiaries and the advantages in respect of foreign assets.

This follows our first five instalments, 'What is a Foreign Pension?', 'Benefits of using a Foreign Pension', 'How to make a contribution to a Foreign Pension', 'Investment Options for International Pensions' and 'Taking Benefits from an International Pension'. If you have not seen these instalments, please let us know and we will send them to you.

It may be useful to review Part 2 – 'Investment Options for International Pensions' along with Part 6, as this covers the main reasons for using an international pension and the advantages of succession and probate.

We will release the final part of our Mini-series, Part 7, where we will discuss Taxation, at the beginning of 2018.

Upcoming Mini-Series

- Taxation

Did you know?

Guernsey is not part of the United Kingdom or a member of the European Union. As a result, Guernsey has autonomy and its own legislature, which allows it to determine its own laws, including taxation.

Key Facts

- Choice of beneficiaries, i.e. individual, trust or pension
- Avoids need for foreign wills and adherence to foreign succession rules
- May not be subject to foreign death taxes
- Mitigates executor fees and foreign legal costs
- Easy asset transfer on death
- Not subject to foreign probate
- Low administrative costs
- Full value of the pension fund available as death benefit
- Money can be left offshore – don't have to bring back to SA

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6 Succession and Legacy Planning

Beneficiaries

Most international pensions do not restrict who can be appointed as a beneficiary or the number of beneficiaries. This differs from the domestic pension legislation of many countries which can have specific rules dictating the manner in which the pension trustees deal with death benefits, i.e. how the benefit is paid and to whom.

The absence of such prescriptive legislation in Guernsey means that the member has a much wider choice when considering how and to whom any death benefit should be left. The beneficiaries do not have to be family members or dependants. The general options in respect of death benefits are as follows:

- **Individuals:** This is the most common approach and it sees the member of an international pension plan nominate their dependants as the beneficiaries. In most instances this would be the member's spouse, children or combination thereof. However, it can be any individual with no requirement for dependency or family relation. This is very useful for people who cohabit and choose not to marry or want to provide financial support to a friend or more distant relative, the options are endless.
- **Pension Fund:** Many members will elect that the death benefit is contributed into a new international pension, for their spouse or a nominated individual, which gets set-up on the members death. This is a very useful option as it ensures that the

death benefit is preserved and moves from one pension to another without a distribution to an individual. This can have a range of benefits including asset protection and potentially mitigating tax which may arise if the death benefit was paid directly to an individual.

- **Trust:** As with the point above, this creates an option that offers potential efficiency in respect of the transfer of the death benefit. The nature of trusts used vary from charities: where the death benefit is used to make a donation, discretionary family trusts or trusts that are specifically set-up for the maintenance of an individual or minor dependent.
- **Estate:** Generally, this is the least efficient, but in certain instances an individual may want the death benefit to form part of their estate and all distributions be dealt with by their Will.

The Value of the Death Benefit

Once the member has passed away, the total value of the member's pension fund is made available for distribution to their beneficiaries. This is very different from a purchased annuity, which will typically cease on death with the remaining value of the annuity being lost or reduced.

Where an annuity is running, (not a purchased annuity, see Part 5 for detailed information on benefit types), the outstanding value of the annuity can be paid as a lump sum or annuity income to the beneficiaries for the outstanding duration of the

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An Introduction to Foreign Pensions - Part 6

annuity. The point is that none of the residual value of the plan's assets are lost due to underwriting risk.

Holding Foreign Funds for Retirement

Many clients will have earmarked a portion of their wealth for retirement with such funds held outside of pension or retirement. This could be an international bank account or foreign collective investment fund, endowment and/or life policy.

Whilst the provision of funds is to provide income and capital in retirement is a positive step, such planning comes with significant risks. The main risk is that these assets will form part of the individual's estate and open to claim. Should a catastrophic event happen, such as bankruptcy or insolvency, due to an unforeseen event these assets can be attached and lost.

For most, losing assets later in life is something that they cannot recover from, as they don't have the earning power or the time to rebuild their wealth. International pensions provide protection against such events and allow individuals to safeguard their investments creating peace of mind and a more certain financial outcome in retirement for the member and their dependants.

Foreign Probate and the Laws of Succession

Each country has its own legislation on what constitutes a valid Will and how personal assets are to be distributed on death. These are referred to as;

a) Probate, to establish that a Will is authentic and valid.

b) Succession, the legal process for transferring assets from one individual to another on death.

Domestic laws apply where an account or asset is situs. Situs, is defined as the location where the asset/property is held for legal or taxation purposes. Hence a bank account in the Isle of Man is an Isle of Man situs asset and subject to their laws of probate and succession on the holder's death. Holding stock in British Petroleum, which has its primary listing on the London Stock Exchange, would be considered UK situs.

International pensions mitigate foreign probate and succession rules as the owner of the asset is the international pension, which never dies and this is a significant advantage. Hence there is no need for foreign Wills or the proving of foreign Wills in the territory, where the asset is held. Nor are the assets subject to rules of forced heirship, which can often conflict with the Will. For example, a Will might want the assets distributed evenly to the children, where the country's law requires a specified amount to go to the first born or for all the assets to go to the surviving spouse.

The time and administrative cost taken in dealing with foreign probate and succession cannot be ignored, however, it is simply mitigated when an international pension is used.

Death and Estate Taxes

As with probate and succession, each country has its own regime in respect of the taxation of an asset held by an individual, resident or non-resident on death, which is situs in the foreign territory. Duties can, in certain instances, be excessive. For example, in certain European countries such taxes can exceed 80% under certain circumstances.

International pensions can mitigate foreign death and estate taxes. A significant financial benefit over holding international assets directly. It means that one only needs to consider the death or estate duty position in the country where the member was resident instead of where the assets are registered.

Executors and Legal Costs

With no need for a foreign Will and the mitigation of probate and foreign laws of succession, there is no need to appoint foreign lawyers or executors when the member dies. This has many advantages over holding foreign assets directly. Cost and time being just two.

Distribution and Administration at Death

On the death of the member, the death benefit is paid to the beneficiaries in a timely manner. This usually requires the beneficiaries to verify their identity and for

the trustees to verify the death certificate. The end result is that the distribution of assets to the beneficiaries, takes weeks rather than many months.

The speed of wind-up and simple administrative requirements around the payment of death benefits can be comforting to those left behind at what is a traumatic time for family members.

Summary

When it comes to matters of succession, international pensions mitigate foreign probate and laws of succession, remove the need for foreign Wills and the appointment of foreign executors or lawyers. They provide a robust environment to protect investments from unforeseen events, which could otherwise be detrimental to the member and their family. They offer a highly efficient mechanism to transfer wealth, in a way that the member decides, in a seamless and expedient manner.

Whilst the list of benefits of international pensions is vast, it is the certainty and peace of mind on the death of the member, which is probably the most sought-after outcome, knowing that irrespective of events, their wealth will be protected and passed on as they planned.



THIS MINI-SERIES QUALIFIES AS 20 MINUTES CPD

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