

RETIREMENT ANNUITY TRUST SCHEMES (RATS)

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BACKGROUND

With only a limited number of retirement annuity contracts (RAC) and personal pension schemes (PPS) available in Guernsey, the popularity of RATS has grown rapidly. Basically a RATS is a discretionary trust which acts as a self administered private pension scheme for individuals resident in Guernsey. RATS are very flexible pension vehicles and are capable of approval by both the UK and Guernsey tax authorities.

Guernsey pensions tax legislation was developed further during 2011 with the aim of encouraging individuals to save towards their retirement. The new regulations were effective from 1 January 2011.

BENEFITS

- As for Retirement Annuity Contracts, a pension must be taken from a RATS some time between the member's 50th and 75th birthday, however, it is not necessary to purchase an annuity.
- A member may take a loan from the RATS subject to certain conditions.
- A lump sum of 30% of the value of the fund can be taken on the date the pension commences. There is no requirement to commence drawing an annuity at the time that the lump sum is taken.
- The trustees are able to invest in a wide range of asset classes.

ELIGIBILITY

Both residents and non-residents of Guernsey are eligible to join an approved RATS.

FAQS

Frequently asked questions about RATS and Retirement Annuity Contracts (RAC)/Personal Pension Schemes (PPS)

1. Following the changes in rules relating to the approval of trustees, can a member or a relative of a member be a trustee of the RATS?

Yes, but only if the Trust Deed specifically provides that the trustees act by majority and the majority of the trustees are neither members of the scheme or relatives. This does not apply with RAC/PPS which are administered by insurance companies.

2. Can anyone be a trustee of a RATS?

Yes, subject to 1 above. However, any trustee who is not a professional trustee is required to sign a Code of Practice issued by the Director of Income Tax. This certifies that the individual understands his role and responsibility as a trustee under the Trusts (Guernsey) Law 1989. There is also an overriding requirement that there must be at least two Guernsey resident trustees. However, if a trustee of the scheme is an independent professional trustee, one such Guernsey resident trustee would be sufficient.

Trustees and intermediaries promoting RATS must have an awareness of, and comply with, the provisions of the Guernsey Retirement Annuity Trust Scheme Rules, 2010 which were published by the Guernsey Financial Services Commission in 2010 and came into force on 1 January 2011.

3. Can I transfer my Guernsey home into a RATS?

Yes. Once in the RATS, occupation of the property must be subject to a commercial rent payable to the scheme. Such rental income will be exempt from liability to Guernsey tax in the hands of the trustees. Such transfers are not possible with RAC/PPS schemes.

4. Can I transfer my commercially let UK property into a RATS?

Yes. Note however that the rental income will be subject to UK taxation at the (higher) trust rate. Again, such transfers are not possible with RAC/PPS schemes.

5. I run my own incorporated business. Can I transfer the company shares into a RATS?

Yes, subject to a restriction. Where a member, together with any other member or relatives owns more than 15% of the issued share capital of the company, not more than 10% of the value of the pension fund can be invested in the company. Such transfers are not possible with RAC/PPS schemes.

6. Can I borrow funds from a RATS?

Yes, provided the loan does not exceed 30% of the total value of the fund and is subject to a commercial rate of interest. There is also a requirement that any loan must be repaid before benefits commence to be drawn down. The trustees would be required to obtain adequate security for the loan. It is not possible to borrow funds from a RAC/PPS.

7. I have a UK pension scheme and have moved to Guernsey to live and work. Can I transfer my UK scheme into a Guernsey RATS or RAC/PPS?

Yes. However some trustees may be reluctant to transfer the value of protected rights and clearance from the trustees should be sought beforehand. Prior approval of the tax authorities to the transfer may also be required.

It should be noted that with effect from 6 April 2006, following the introduction of a simplified pension scheme tax regime in the UK, the reciprocal arrangement on transferring pension rights was terminated. However, transfers of pension funds from the UK are possible provided the RATS is registered with HM Revenue & Customs as a Qualifying Recognised Overseas Pension Scheme (QROPS) and provided the member is resident in Guernsey. Following a recent increase in the minimum age from which benefits can be drawn under UK pension scheme rules from 50 to 55, to qualify as a QROPS, this minimum age requirement must be reflected in the RATS instrument.

8. If I transfer my UK pension fund, which is currently valued at £1m into a Guernsey RATS or RAC/PPS, will I still be entitled to draw down 30% of the fund as a tax-free lump sum, as permitted under UK legislation?

Yes. Lump sums paid out of pension funds transferred into a Guernsey RATS will not be subject to the maximum tax-free limit which for 2016 is £188,000. All pension funds arising from contributions made in Guernsey will continue to be subject to the tax-free limit.

9. If I transfer my UK pension fund into a Guernsey RATS or RAC/PPS, will the funds be afforded the same protection from a UK Inheritance Tax charge as is available to the UK pension fund?

Yes, but this is a specialist area and requires specific advice depending on individual circumstances. You should contact BDO Limited for further information.

10. Do I have to be retired before I can draw a pension from a RATS or RAC/PPS?

No. You can start to draw a pension at any time between the ages of 50 and 75 even if you are still working. Similarly, you do not have to draw a pension as soon as you retire.

11. Can I draw a tax-free lump sum but not draw a pension thereafter?

Yes. There is now much greater flexibility in relation to drawing benefits from the scheme and it is no longer a requirement to draw an annuity at the time of drawing the lump sum.

12. Do the RATS trustees have to buy an annuity from an insurance company before I start to draw benefits from the scheme?

No. Unlike RAC/PPS schemes which are insurance company run schemes, an annuity style payment from a RATS can be drawn directly from the funds in the trust subject to a regular actuarial valuation of the funds. However, in these situations, there is no guarantee that the funds in the scheme will be sufficient to pay an annuity until your death. Contrast this with an RAC/PPS where an annuity will be purchased by the insurance company.

13. Further, there is no requirement to purchase an insurance based annuity at age 75.

When I start to receive an annuity from a RATS or RAC/PPS scheme, can I pay the Guernsey tax due by instalments in June and December?

No. Other than the tax-free lump sum, any benefits drawn from the scheme will be subject to taxation at source under the Employees Tax Instalment (ETI) Scheme.

14. If I die, can the remaining funds in the RATS or RAC/PPS scheme be used to provide a pension for my spouse?

Yes. The terms of the Trust Deed or the pension contract may allow for the provision of a pension for the surviving spouse.

15. Once the member and spouse have both died, what will happen to any funds remaining in the scheme?

Any funds used to purchase an annuity from an insurance company that remain on death will usually revert to the insurance company. If an annuity was drawn directly from the RATS, any remaining funds will be subject to a tax charge at the rate of 20%. Thereafter, the remaining funds will be available to distribute to other beneficiaries as provided for in accordance with the terms of the Trust Deed.

16. If I die before drawing any benefits from the scheme, will my pension fund be subject to a tax charge?

No. In the case of a RATS the funds will be treated as capital for tax purposes and will not be subject to a tax charge if the trustees distribute the funds to other beneficiaries in accordance with the terms of the Trust Deed. If the trustees start to pay a pension, for example to a surviving spouse, Guernsey tax will be payable in the normal way and thereafter, any remaining funds will be subject to a tax charge at the rate of 20%.

17. If I move abroad to a country other than the UK can I transfer my RATS or RAC/PPS fund to my new country of residence?

Yes, provided the transferee scheme is a regulated approved scheme in that country a tax charge at the rate of 10% will be applied on the whole of the fund. If the transferee scheme is not a regulated approved scheme in that country, the tax charge is likely to be at the rate of 20%.

18. If I move abroad and have already started to draw benefits, am I able to transfer my RATS or RAC/PPS fund to my new country of residence?

No. Once benefits are drawn, it will not be possible to transfer the fund. It will continue to be treated as a Guernsey pension fund subject to Guernsey taxation, unless under the terms of a Double Taxation Arrangement the pension is taxable only in the country of residence.

19. Is there a maximum contribution I am able to make each year?

There is no restriction on the amount that can be contributed.

20. Will I be entitled to tax relief for the whole of my contributions?

Tax relief is available for all contributions up to a maximum of £50,000 per annum. Tax relief will be granted against all sources of assessable income and not just against net relevant earnings.

In the case of married couples, where each spouse has sufficient income to cover their own contributions, a married couple may be entitled to tax relief of up to £100,000 per annum.

21. If I do not contribute the maximum annual amount each year, can I carry forward the unused capacity and increase my contributions in the following year?

There is a facility to carry forward unused tax relief for up to 6 years. For instance, an individual making contributions of say £10,000 in year 1 will be able to carry forward the unused relief of £40,000 (see 20 above) and increase the tax relief available in the subsequent year 2 to £90,000.

However, to be entitled to carry forward unused tax relief, the member must have actually been making contributions in the years in which the unused tax relief arose.

22. I am not employed. Am I still able to make contributions into a RATS or RAC/PPS?

Yes, relief is available against all assessable income as noted in para. 20 above.

23. I am currently a member of my employer's occupational pension scheme, can I still set up a RATS or RAC/PPS and make additional pension contributions?

There are no restrictions on setting up a RATS or RAC/PPS if you are already a member of an occupational scheme.

Tax relief is available on all contributions whether made into an occupational scheme or a RATS/RAC/PPS subject to the limits referred to in para. 20 above.

24. What are the contribution limits if I am a member of an occupational scheme and also have a RATS or RAC/PPS?

There are no contribution limits. However, where contributions are made by employers on behalf of its employees, there may be restrictions on the tax relief available to the employer in situations where the contribution is not regarded as an "ordinary contribution".

FOR FURTHER INFORMATION OR ADVICE, PLEASE CONTACT:



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