Section 615(6) superannuation schemes – finally fulfilling their potential

Section 615(6) schemes are regularly referred to as a niche sector of the pensions world but the potential market is far wider than often given credit. Whenever an International Pension Plan is considered as a solution for the provision of employee benefits for an international work force, s615(6) should be considered as an alternative because of the tax advantages a s615(6) may offer which an International Pension Plan cannot.

Through the current efforts of an almost evangelical approach by a small number of industry practitioners, s615(6) is beginning to gain recognition as the solution to multi national operative companies' superannuation requirement, irrespective of their size, countries of representation, work force nationalities, or corporate structure.

The background is that a means was sought to provide for retirement income for employees whose duties were conducted outside the UK, and representations' were made to Parliament by the International trading companies of our grandfathers era. Parliament recognised the needs of the traders, sea farers, mineral extractors and plantation workers, who could not benefit from the taxation advantages of mainstream pension funding simply because of their non-UK residence, and introduced legislation to accommodate these overseas seconded personnel of the great trading empire.

The Income & Corporations Taxes Act 1988 established the updated version of this legislation and its very simple provisions are contained in Section 615 and specifically in s615(6). Legislation so concise that it is worth repeating here in full:

*"**615**(6) Subsection (3) above applies to any superannuation fund which —*

(a) is bona fide established under irrevocable trusts in connection with some trade or undertaking carried on wholly or partly outside the United Kingdom;

(b) has for its sole purpose the provision of superannuation benefits in respect of persons' employment in the trade or undertaking wholly outside the United Kingdom; and

(c) is recognised by the employer and employed persons in the trade or undertaking;

and for the purposes of this subsection duties performed in the United Kingdom the performance of which is merely incidental to the performance of other duties outside the United Kingdom shall be treated as performed outside the United Kingdom."

Legislation developed around this simple provision to ensure that those whose duties were conducted outside the UK should not be disadvantaged for the sacrifices they were making for the greater good of Empire. Where anomalies arose, extra statutory concessions were introduced to ensure these entitlements were protected. In fact, looking after the welfare of this group of individuals seems to have developed a certain zeal of its own. Successive Governments have taken steps to greater protect the advantages secured under s615(6) schemes, strongly implying that s615(6) is around for the long term, as if its history of approaching 80 years is not sufficient indication that the Treasury does not find such schemes offensive in any way.

So what does s615(6) offer its members?

- There is generally no tax liability to the employee
- There are generally no social security costs for the employer or employee
- Employer contributions are allowable against Corporation Tax in the UK
- Pension rights may be taken entirely as a cash sum
- 100% cash commutation by UK tax residents is tax free
- A minimum retirement age of 55, or earlier on leaving service
- Individuals can select their own investment profile
- There are no annual or lifetime allowance limits on s615(6) benefits
- Funds grow in a tax efficient, confidential environment
- Employee contributions are permissible
- Continuity of pension contributions despite international relocation
- Fund administration may be conducted by a number of sources
- Unrestricted contribution levels permitted by the Pension Scheme Services

All of which combine to create an extremely tax efficient and flexible employee remuneration package and the attractions of s615(6) to UK employers seconding UK national employees overseas are plain to see in the context of retirement planning. But does this not support those who claim that the applications are niche?

Far from it; s615(6) has a far wider application than at first sight. The employer does not have to be located in the UK. The employee does not have to be a UK National. In fact, there is no requirement for there to be any connection with the UK other than the s615(6) trust being resident there.

Example of broader application

An example of how s615(6) schemes are applied in other jurisdictions is in a Commonwealth country with a backward, but emerging economy. Mineral and oil and gas activities are making the country a Mecca for overseas national professionals and the wealth is trickling down through employment opportunities for the locals.

Current pension provision is rudimentary but there is a Government requirement for all employers and employees to provide for retirement funding for both locals and overseas nationals alike. The terms of how benefits may be taken are different for locals and overseas nationals. Those who remain resident in the country have a minimum retirement age of 55 whilst those leaving the country (both locals and overseas nationals) are able to claim benefits one year after 'permanent' emigration.

Local distributors see a scheme accepted as satisfying s615(6) criteria as offering a series of advantages over a scheme subject only to local governance.

1. As a former Commonwealth country there is a tremendous respect for the UK, its regulations and its reputation
2. Access to global investment management offers exposure to international assets and to hard currency
3. Online member access to pension information 24/7, contribution history, asset allocation and values is a facility with which local schemes cannot compete ▸

Gary Draper
Managing Director
s615(6) Limited

Local distributors see a scheme accepted as satisfying s615(6) criteria as offering a series of advantages over a scheme subject only to local governance

These schemes are considered inoffensive to the UK Revenue always as long as the member accruing pension rights is either non-UK resident or that the conditions of s615(6) membership are fully satisfied otherwise

4. A tier of corporate trustee governance subject to UK trust law and pension supervision is beyond that which is available locally
5. Fail safe local pensions and trust regulations do not impede the ability of the scheme to meet s615(6) criteria and the flexible s615(6) trust deed is able to incorporate local rules for those who remain in the country without impacting on the freedom of those who leave to achieve access to their funds.

Other opportunities exist for the establishment of mult-national employers of internationally mobile workforces which might have no obvious contact with the UK. There are many circumstances, for example, where corporation tax deduction is available on employer sponsored s615(6) schemes where this could not possibly apply to International Pension Plans established in 'off-shore' jurisdictions.

Commonly asked questions regarding the durability of s615(6) schemes in the future in these Governmental cash straitened times, revolve around whether HM Revenue and Customs (HMRC) find these schemes abusive. The reaction from HMRC and the Pension Schemes Service has always been to the contrary – that these schemes are considered inoffensive to the UK Revenue always as long as the member accruing pension rights is either non-UK resident or that the conditions of s615(6) membership are fully satisfied otherwise.

Concern does exist that there will be those seeking to exploit the current tax advantages for continuance of disguised remuneration abuses, following the loss of lucrative fees from employee benefit trusts or EFRBS for UK residents. But it must be remembered that these schemes exist for the benefit of non UK residents for whom the effects on the UK exchequer are neutral, despite seeming too generous at first sight. However, the defence mechanisms are already in place to disallow applications for s615(6) scheme membership where the member is a UK resident and it is likely that attempts to use the scheme for disguised remuneration will be frustrated at the application stage.

Probably the greatest threat to the future of s615(6) arose with the issuing of the consultation paper entitled 'Simplifying the taxation of pensions: the Government's proposals, dated December 2003' an extract from which is shown here:

"These schemes are not UK approved pension schemes, although they do have to be established for the sole purpose of providing superannuation benefits. They are established under irrevocable trust for non-resident employees by employers whose business is undertaken wholly or in part outside the UK. Benefits can be taken on retirement or leaving service at any age and wholly as a lump sum. Benefits paid from these schemes are not liable to UK tax when paid to non-UK residents and, by concession, lump sums paid to UK residents are not chargeable."

Readers will require no explanation of what the consultation paper heralded and no doubt many brows were furrowed at the time on the dramatic proposed changes contained in the document's 84 pages. Far fewer, I am sure, were preoccupied with annexe clauses 131 and 132 which stated:

"Given that the new regime should accommodate s615 members, the Government believes that there is no continuing need for this type of scheme. However, as this type of scheme meets a specialised need, comments are invited from employers on any continuing need for such schemes."

I consulted, and others may have too, to protect the future of s615(6), a future which emerged absolutely unscathed as Government chose to leave s615(6) schemes entirely unaffected with pensions simplification in April 2006. Since then, s615(6) schemes have withstood the disguised remuneration onslaught, emerging better protected as a result. The intent is quite obviously to protect the tax advantages available to emerging benefits which is evident in the enshrining of former concessions into statute.

I anticipate a bright future for s615(6) schemes in the context of the narrower UK market and the wider international environment as long as the principles on which our forefathers established the platform for funding expatriate retirement benefits do not become jaundiced.