

Before the Arbiter for Financial Services

Case 102/2019 and Case 103/2019

EP & PP (together ‘the Complainants’)

vs

**STM Malta Trust and Company
Management Limited as substituted by
STM Malta Pension Services Limited
(C51028) (‘STM Malta’ or ‘the Service
Provider’)**

Sitting of the 1 June 2021

The Arbiter,

PRELIMINARY

Change in name

The Office of the Arbiter for Financial Services (‘OAFS’) has discovered, through its own research, that in the year 2020, STM Malta Trust and Company Management Ltd changed its name to STM Malta Pension Services Limited (‘STM Malta’ or ‘the Service Provider’). This results from the records filed with the Malta Business Registry (MBR) in June 2020 relating to the change in name.¹

The Service Provider confirmed such a change in name and stated that the MBR issued the change in name certificate on 13 July 2020. For all intents and purposes

¹ As per the documents filed on 22 June 2020 with the Malta Business Registry - https://registry.mbr.mt/ROC/index.jsp#/ROC/downloadDocument.do?companyId=C+51028&filename=C+51028%2FC_51028_D50_0.pdf&archiveid=3738958&anonEmailAddress=&anonConfirmEmailAddress=

the records of this case have been accordingly updated to reflect the change in name of the Service Provider.

Individual Complaints filed with the Arbiter

The Complainants, EP and PP, who are related to each other as husband and wife,² each filed a Complaint against STM Malta individually. Their respective Complaint with the Arbiter is indicated as Case number 102/2019 for the complaint filed by EP and Case number 103/2019 for the complaint filed by PP.

In their respective letter dated 20 November 2019, addressed to the Arbiter and attached to their respective Complaint Form, the Complainants stated *inter alia* that:

'Both our complaints are identical, but we have each submitted a personal complaint because we have separate pension funds with STM'.³

In order to establish the facts of each case and hear the submissions individually, the Arbiter appointed each case for hearing and invited the parties to make their submissions. After this process, the Arbiter came to the conclusion that Case 102/2019 and Case 103/2019 are indeed intrinsically similar in nature.

Consequently, the Arbiter deems it fit to treat the said cases together in terms of Article 30 of Chapter 555 of the Laws of Malta which provides that:

'The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature.'

The Cases in question

The Complaint relates to the STM Malta Retirement Plan ('the Retirement Scheme' or 'Scheme'), this being a personal retirement scheme licensed by the Malta Financial Services Authority ('MFSA'), established in the form of a trust and administered by STM Malta Trust and Company Management Ltd now renamed as STM Malta Pension Services Limited ('STM Malta' or 'the Service Provider'), as its Trustee and Retirement Scheme Administrator.

² A fol. 70 - Case 102/2019; A fol. 71 - Case 103/2019.

³ A fol. 8 - Case 102/2019; A fol. 7 - Case 103/2019

The Complainants claimed that STM Malta provided them with misleading information regarding the payment of a tax-free lump sum from the Scheme given that they recently discovered that the lump-sum payment was not actually tax-free.⁴ It was submitted that they were misled through the literature and documents supplied to them by their trustees, STM Malta, in 2014.⁵

The Complainants explained that the welcome letter in relation to the Scheme, sent to them by STM Malta, stated that *'after taking the tax-free lump sum we would be entitled to commence taking a pension income'*.⁶

The Complainants further submitted that page 3 of the STM 2012 Plan Particulars also confirmed what was stated in the STM welcome letter which was sent to their address in France.

It was pointed out that the Scheme's Particulars described their entitlement of *'a 25% tax free lump sum at the time of retirement'* under the section titled *'Lump Sum Provision'*.⁷ It was further noted that subsequently, the Tax section of the Scheme's Particulars then confirmed that *'taking an income would usually incur a tax charge in the country of tax residency'*.⁸

The Complainants submitted that the said statements accordingly confirmed two separate streams of pension benefits that the Service Provider had led them to expect - that is, a tax-free lump sum followed by a pension income that would be taxed in their country of residence. It was submitted that the statements made by STM Malta and what they were led to expect, were however incorrect.

Background

The Complainants explained that in 2013, they were approached by DeVere Group in connection with their UK pensions as they were French residents.

It was noted that DeVere proposed a transfer of their pensions respectively into a QROPS scheme, with STM Malta being the trustee of the pension scheme.

⁴ A fol. 4

⁵ A fol. 9

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

It was submitted that a significant aspect of the DeVere/STM Malta proposal was that they would still be eligible for a tax-free lump sum in the same way as they would have been if they had remained in the UK.

The Complainants claimed that, in their introductory letter, STM Malta had stated that, as members of the Scheme, the Complainants would be eligible for a tax-free lump sum once they have been living away from the UK for over 5 years.

It was noted that the covering letter issued respectively by STM Malta to the Complainants, in 2014, stated that:

*'You will be entitled to take a tax-free lump sum of between 25% and 30% of the value of the fund from the age of 55 ... At the time of taking the tax-free lump sum you will also be entitled to commence taking a pension income, should you wish to do so ...'.*⁹

The Complainants submitted that it recently came to light that they were however never eligible for such tax-free lump sum whilst living in France. It was further submitted that this matter was never pointed out to them at the time and that STM's welcome letter actually stated that they would be entitled to a tax-free lump sum of between 25% to 30%.

The Complainants further submitted that they transferred their UK pensions into their respective Scheme on the basis of the alleged promise by STM Malta of a tax-free lump sum which, however, was never actually available.

One of the Complainants further noted that her NHS final salary pension scheme, which she was advised to move into the QROPS scheme of STM Malta, had been safe in the UK and free of any management charges. She noted that with STM Malta's Scheme she had to pay all the charges applied by STM Malta, their advisors and the fund investment companies - all without the benefit of the tax-free lump sum that STM Malta was alleged to have promised her.

It was submitted that the information provided to her was incomplete, inaccurate and misleading and that both DeVere and STM Malta both made exactly the same misleading statements. It was also claimed that STM Malta should have been looking after her interests independently and without a conflict of interest due to

⁹ A fol. 4 - Case 103/2019

their other partnerships but, as trustees, they failed both professionally and financially.¹⁰

It was claimed that this matter was beyond a let-down, as it was alleged that this was a deliberate misrepresentation of the true situation.

The Complainants felt aggrieved also because rather than acknowledging the situation, STM Malta has repeatedly stated that they do not offer tax advice and that the Complainants should have sought tax advice at the time. The Complainants submitted that they did have a financial advisor, the same who had introduced STM Malta to them, and that the Service Provider knew this.

The Complainants questioned why STM Malta referred to a tax-free lump sum in their brochure and went on to quote a tax-free lump sum of between 25-30% in their welcome letter of April 2014, if STM Malta did not really give tax advice.

It was submitted that STM Malta should have never called it a tax-free lump sum. The Complainants claimed that STM Malta was an international company with international clients and the statements it made about tax, even if they satisfied Maltese income tax regulations, were misleading for the vast majority of overseas based clients.

The Complainants submitted that what STM Malta should have said, but it did not, is that *'Your lump sum is paid free of Maltese tax but is likely to be taxed alongside your subsequent pension income in your country of residence'*.¹¹

It was claimed that whilst STM Malta state that they *'do not provide pensions, tax, investment or legal advice in any form'*, STM Malta has breached the Complainants' trust through the alleged misleading statements concerning tax.¹²

The Complainants also noted that, in reply to their formal complaint, STM Malta tried to hide behind Maltese income tax regulations. It was claimed that these were, however, not relevant at the point of receipt for many, if not most, of the the Scheme's beneficiaries.

¹⁰ *Ibid.*

¹¹ *A fol. 9*

¹² *Ibid.*

The Complainants added that STM Malta was being evasive in the questions posed to them. Moreover, STM Malta was repeatedly asked, to no avail, to clarify whether its statements possibly were unintentional or as an administrative error, a mistake in content or meant for other clients. The Complainants also asked whether they could be provided with a proforma 2019 welcome letter to see if such letter had replaced or changed the misleading statements, but this was not provided.

The Complainants believe that in 2014, there may have been a special relationship between De Vere and STM Malta with both handing out the same misleading information. They considered that STM Malta was meant to protect the interests of the Scheme's beneficiaries and act responsibly, with transparency and honesty at all time, but it was claimed that STM Malta has however failed them in this regard.

Requested Compensation

The Complainants requested financial compensation to leave them in a neutral financial position.

They requested that STM Malta either:

- (i) pays sufficient compensation to cover the French tax on their lump sums that they were misled to believe would be free of income tax in their country of residence, or
- (ii) pays all the fees deducted from their pension funds over the last 5.5 years, which fees would not have been deducted if their pension funds had been left in the UK.¹³

The Complainants explained that if they stay in France, which was always their intention, they will have to pay 30% tax on all their pension.

Based on the current value of their respective pension fund, the tax would equate to GBP13,500 (30% of a lump sum of approximately GBP45,000) for EP and to GBP12,900 (30% of a lump sum of approximately GBP43,000) for PP.¹⁴ This was

¹³ A fol. 10

¹⁴ A fol. 4

the respective compensation requested by the Complainants to maintain their status quo respectively.

The Complainants furthermore submitted that in order to obtain their tax-free lump sum, they would have to return to the UK, which would effectively mean that the QROPS was a total waste of time and money. Alternatively, they requested the Arbiter to calculate the compensation to which they felt entitled, as based on the fees paid over the years.

Such fees were calculated as GBP12,135.50 for EP and GBP12,006 for PP. Workings for the said figures were attached to the respective Complaint Form of the Complainants.¹⁵

In its reply, the Service Provider essentially submitted the following:¹⁶

1. That the Complainants alleged that they have or will suffer a tax loss as a result of representations made to them by STM Malta, in particular in the letters dated April 2014 which caused them to transfer UK Pensions to the STM Malta Retirement Scheme. Alternatively, the Complainants allege that in the absence of tax benefits the transfer was pointless. The Service Provider also noted that in either case restitution is being requested.
2. STM Malta stated that whilst it has every sympathy with the Complainants' position, respectfully points out that the Complainants have not and could not have relied on the STM Malta for advice in relation to the decision to transfer. It was noted that, in particular, the letter referred to is dated some 4 months after the Complainants applied to join the Scheme. It was also noted that, furthermore, and without prejudice to STM Malta's main defence, it appears that the Complainants tax position is unaltered by the transfer to the QROPS.

The Service Provider remarked that the Complainants tax position appears to arise from their decision to reside in France and their taxation in relation to any '*tax free lump sum*' as defined by the UK Government in relation to a UK pension would have been the same as a '*tax free lump sum*' arising from

¹⁵ A fol. 4 & A fol. 7 - Case 102/2019; A fol. 11 – Case 103/2019

¹⁶ A fol. 60 - Case 102/2019; A fol. 61 - Case 103/2019

the application of the Malta Income Tax Act and, therefore, the tax loss complained of does not exist.

Submissions in relation to the Complainant's Reliance on representations made by STM Malta

3. The Service Provider noted that the Complainants were introduced to STM Malta by DeVere, which, amongst other things, specialised in providing pension transfer advice in relation to transfers from UK registered pension schemes to Qualifying Recognised Offshore Pension Schemes (QROPS).

The Complainants made an application to join the Scheme in January 2014, as per copy of the Application Form attached in Annex 1 to its reply. STM explained that prior to submitting the application, the Complainants had received a financial planning report prepared by DeVere. STM Malta noted that the Complainants made explicit reference to this in their email of 25 October 2019, attached as Annex 2 to its reply.

It further noted that the application form at section 8 contains a number of declarations by the Complainants.

Reference was made, in particular to the following:

- '1. Confirm that either I have received independent pension transfer, financial, legal and tax advice with regard to the suitability of the Plan for me and my individual circumstances and that implications to me of entering into the Plan OR I have chosen not to take such advice because I am sufficiently knowledgeable and experienced to make this pension transfer decision on my own. I acknowledge and understand that STM Malta has not provided and cannot provide any such advice and cannot be held responsible for any advice obtained or advice not sought by myself or any related persons party to the affairs of the Plan;*
- 2. Confirm that STM Malta is not in any way involved or responsible for my tax affairs or those of any beneficiary, and that it is accepted that the individuals concerned are responsible for and will comply with their personal tax obligations wherever they may arise;*

10. *Confirm that I have received financial, legal and tax advice with regard to the suitability of the Plan for me and the implications to me entering into the Plan;*¹⁷

STM Malta submitted that obtaining these declarations was a condition of its acceptance of the Complainants as members of the Scheme. Had the Complainants chosen not to adhere to the declarations, their application for membership would have been rejected.

It was further submitted that it is therefore clear that at the time of the application, it was clearly understood by STM Malta and the Complainants that the Complainants were not relying in any way on information provided by STM Malta when they concluded that the QROPS transfer was an appropriate transaction. The Complainants cannot now unilaterally seek to change the basis of the arrangements agreed in 2014.

It was noted that the Complainants allege that they relied on the Marketing Brochure produced by STM Malta in 2014, included by the Complainants in their documents and for convenience included as Annex 3 to its reply.

STM Malta drew the Arbiter's attention to the final paragraph of the third page which says:

*'STM does not offer transfer or tax advice. STM provides no assurance in these areas and we recommend that individual tax and transfer advice is taken.'*¹⁸

STM Malta pointed out that references to taxation are only in respect of UK taxation and that nowhere in the brochure is reference made to a tax-free lump sum. It was submitted that, accordingly, it is not possible to conclude that the brochure would have induced any person to transfer a pension on the expectation of receipt of a tax-free lump sum regardless of their place of residence for tax purposes.

The Service Provider noted that the Complainants have further alleged that they have relied on a letter dated 24 April 2014 and 20 May 2014

¹⁷ A fol. 71 - Case 102/2019; A fol. 72 Case 103/2019.

¹⁸ A fol. 62 - Case 102/2019; A fol. 63 Case 103/2019.

respectively received from STM Malta (copy of which was attached as Annex 4 to its reply) which letter refers to a Tax-Free Lump Sum.

In relation to this letter, STM Malta submitted that:

1. The Complainants could not have relied on this letter to induce them to transfer their pension as it is dated some 4 months after the Complainants original application to the STM Malta Retirement Scheme;
2. In Malta terms, the statement is entirely accurate, since such payment is exempted from Malta income tax in terms of S12(h) of the Income Tax Act;
3. The term '*Tax Free Lump Sum*' is generally understood to relate to the place where the pension is situated. An extract from the UK Government Web Site, (marked as Annex 5), which STM Malta referred to, uses the exact same terminology without any caveat and this was attached to its reply.

The Service Provider submitted that it made appropriate and sufficient notification through its application form and its marketing materials to direct the Complainants to take independent tax advice.

It further submitted that it is not party to any advice that the Complainants took but assumes that any such advice would have been received prior to the Complainants applying to join the Scheme, and that any such advice would or ought to have highlighted the taxation of the Complainants' non-French pensions.

The Service Provider further submitted that even if it were possible to construe the words in its letter of 24 April 2014/20 May 2014 as meaning '*Tax Free anywhere in the world*' (which it submitted is not possible), the said interpretation would be in conflict with the advice obtained from the Complainants' own qualified tax adviser.¹⁹

The Service Provider further submitted that the Complainants declared that they have taken tax advice (or alternatively stated that they are sufficiently

¹⁹ *Ibid.*

expert not to require tax advice) and STM Malta has relied on such declarations. STM Malta accordingly rejected the claim in its entirety.

Calculation of Tax Loss

The Service Provider noted that without prejudice to its submissions that there is no loss attributable to its actions, it was important to comment on the tax calculation.

It stated that the Complainants submitted an unsubstantiated calculation in relation to the estimated amount of tax they expect to pay on drawdown of their Lump Sum. It submitted that in calculating the tax, the Complainants have overlooked the tax that would have been payable had the transfer to the STM QROPS not taken.

The French tax regime applies to the Complainants regardless of the sources of their reportable income for French tax purposes and that accordingly all pension initial lump sums are chargeable in the same manner regardless of the source of the lump sum.

It was further submitted that the Complainants, therefore, cannot claim there is a tax loss as a result of the transfer. The Complainants cannot use the Arbitration process to avoid their legitimate tax obligations and it would be inequitable for an order to be made for STM Malta to pay the Complainants' tax which is due regardless of the QROPS transfer.

No other Benefit

Moreover, the Service Provider submitted that the Complainants assert that they would have to return to the UK to be able to claim the tax-free lump sum, and that in the absence of a 'tax-free lump sum' then the pension transfer is pointless and that as an alternative to be refunded the alleged tax loss, they should be refunded costs associated with the transfer.

The Service Provider stated that it is not true that the Complainants will need to return to the UK to be able to claim the tax-free lump sum. It noted that pursuant to the Malta Income Tax Act, STM Malta will generally seek to have a Member of the Scheme commute the first 25% of his member fund to a lump sum which can be paid free of Malta income tax if paid within 12

months from the date benefits commence. The balance is then paid as taxable income in Malta and subject to income tax at a maximum marginal rate of 35%. It noted that a foreign taxpayer may then claim relief from this tax under a relevant tax treaty. STM Malta submitted that the lump sum commutation is not taxable in terms of the Malta Income Tax Act regardless of the place of residence of the member.

Without prejudice to its submissions that the Complainants previously declared to it that they have not relied on STM Malta for Pension Transfer advice, STM Malta submitted that it has not, in the documentation relied on by the Complainants, sought to assert that there is a '*tax free lump sum*', other than that in the letter dated 24 April 2014/20 May 2014 which could not have been respectively relied on by the Complainants when choosing to transfer their pension.

The Service Provider noted that instead, the marketing document (marked as Annex 3 to its reply), suggests that the benefits which might accrue to a member might include the following:

- '- *Transparent Charges*
- *No transfer or exit charges if your circumstances change*
- *Free movement between STM Schemes and jurisdictions*
- *A wide range of tax efficient pension solutions*
- *Multi jurisdictional options to suit your country of residence*
- *Freedom of investment choice, putting you in control'.²⁰*

STM Malta submitted that it cannot, therefore, agree that there are no other benefits other than the '*tax free lump sum*'. It noted that rather, STM Malta did not claim that there was a '*tax free lump sum*', but did suggest that there are other benefits that would accrue and that to the extent that the Complainants have enjoyed other benefits, they had continued to enjoy these benefits until they transferred to another scheme.

²⁰ A fol. 64 - Case 102/2019; A fol. 65 - Case 103/2019

It was further submitted that STM Malta's charges are clear in its documentation and there is no basis for an award in respect of the charges arising from the STM QROPS.

The Advice Relied on

The Service Provider further stated that in the first two paragraphs of Section D of the Complaint, the Complainants describe how they were approached by DeVere Group who proposed a pension transfer. It noted that by the third paragraph, the proposal became '*the DeVere/STM proposal*'.²¹

STM Malta submitted that this is an error of fact as any proposal produced by DeVere is produced entirely independently of STM Malta or any member of the STM Group. Any review leading to the proposal was carried out exclusively by DeVere and any options or recommendations in the report are those of DeVere and are in no way to be considered advice given by STM Malta or any member of the STM Group.

Conclusion

The Service Provider submitted that the Complainants stated that as a result of a statement made in a letter in April/May 2014, they have or will suffer a loss to tax. It stated that it has clearly demonstrated that the Complainants could not have relied on any such statement in their decision to transfer their pension, since the statement was made some four months after the Complainants decided to transfer.

STM Malta also submitted that it has shown that in its promotional materials that could have been relied on by the Complainants in deciding, there is no reference to a tax-free lump sum, whilst other benefits are promoted.

It was further submitted that STM Malta has also shown that, in calculating any alleged tax loss, the Complainants had no right to anticipate that there would be no French tax in relation to their pension lump sum whether situated in the UK, Malta or elsewhere and, therefore, it would be

²¹ *Ibid.*

inequitable for the Arbiter to make any award in favour of the Complainants in these circumstances.

Having heard the parties and seen all the documents and submissions made,

Further Considers:

The Merits of the Case

The Arbiter will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.²²

The Product in respect of which the Complaint is being made

The STM Malta Retirement Plan ('the Retirement Scheme' or 'Scheme') is a trust domiciled in Malta and authorised by the Malta Financial Services Authority ('MFSA') as a Personal Retirement Scheme.²³

The Scheme was initially registered with MFSA under the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta).²⁴

The Complainants commenced their membership into the Scheme on 14 and 22 February 2014 respectively with a transfer value into the Scheme of GBP149,547.07 and GBP157,012.90²⁵ respectively.²⁶

The Service Provider

STM Malta is licensed as a Retirement Scheme Administrator²⁷ by the Malta Financial Services Authority and acts as the Retirement Scheme Administrator and Trustee of the Scheme.

The Complainants

²² Cap. 555, Art. 19(3)(b)

²³ <https://www.mfsa.mt/financial-services-register/result/?id=209>

²⁴ This being the regulatory framework applicable in Malta for personal retirement schemes at the time of the Complainants respective membership into the Retirement Scheme in 2014.

²⁵ Made up of two transfer values of GBP62,126 and GBP94,886.90.

²⁶ *A fol.* 14 - Case 102/2019; *A fol.* 15 - Case 103/2019

²⁷ <https://www.mfsa.mt/financial-services-register/result/?id=204>

The Complainants born in 1954 and 1958 respectively, are both of British nationality and were resident in France at the time of application for membership of the Retirement Scheme, as indicated in their respective Scheme's Client Application Form both signed and dated 22 January 2014.²⁸

Investment adviser

DeVere Group based in France, was the appointed financial adviser of the Complainants in respect of their respective Scheme as outlined in the respective Scheme's Application Form for Membership.²⁹

Observations and Conclusions

In terms of Article 26(3)(c)(iv) of Cap. 555 of the Laws of Malta, the Arbiter may only award compensation '*... for any loss of capital or income or damages suffered by the complainant as a result of the conduct complained of ...*'.

The Arbiter considers that, during this case, it has not emerged that the Complainants have suffered any loss of capital or income given the nature of their claim which involves personal tax that would apply on a lump sum, **yet to be taken**, which the Complainants expected to be tax-free. Neither has it been adequately proven that the Complainants have actually suffered damages.

This is in view that the event, that is, the tax payment in respect of which a claim is being made, had not yet materialised at the time of the Complaint (nor indicated to have occurred during the time of the proceedings of the case).

The tax payment and exact amount thereof in future may vary as it is ultimately dependent on a number of factors including the circumstances specifically applicable at the time of payment from the Scheme. The Complainants themselves submitted that a different tax treatment would apply depending on the course of action that could be taken by them in future with respect to their respective Scheme.³⁰

In any case, even if, for the sake of the argument only, it is assumed that tax has actually been paid on a lump sum disbursed from their respective Schemes, the

²⁸ A fol. 67-72 Case 102/2019; A fol. 68 - 73 Case 103/2019

²⁹ A fol. 68 - Case 102/2019; A fol. 69 - Case 103/2019

³⁰ A fol. 4

Arbiter considers that there is still no adequate and sufficient proof that the tax has been suffered as a result of the conduct of the Service Provider.

The Complainants alleged that they expected the lump sum payment to be tax-free on the basis of the alleged disclosure made by the Service Provider in its '*welcome letter*' of April/May 2014 and '*The STM 2012 Plan Particulars*'.³¹

It is noted that the STM document attached by the Complainants to their Complaint, which is actually a '*guide*',³² does not include any references to the payment of a tax-free lump sum and **rather recommends** *inter alia* '*... that individual tax and transfer advice is taken*'.³³

Whilst the wording used in the welcome letter could have been better phrased and duly qualified accordingly in order to remove any possible doubts in relation to its application and context, it is considered that, on its own, the disclosure included by STM Malta in its welcome letter is not considered as sufficient basis on which to offer the requested compensation by the Complainants.

This is particularly so when taking into consideration various factors including:

- (i) the role of STM Malta which clearly does not involve the provision of tax advice nor the monitoring and examination of the personal tax advice received or out to be sought by the Complainants;
- (ii) the requirement for the Complainants to comply '*with their personal tax obligations wherever they may arise*' as disclosed in the '*Declaration Section*' of the Scheme's Application Form;³⁴
- (iii) the tax treatment of the lump sum payment from the Scheme under the Malta Income Tax Act as explained by the Service Provider in its submissions; and

³¹ A fol. 9

³² A fol. 24 - Case 102/2019; A fol. 25 - Case 103/2019

³³ *Ibid.*

³⁴ A fol. 15 - Case 102/2019; A fol. 16 - Case 103/2019

(iv) the tax payments indicated by the Complainants ultimately arising on the basis of their personal tax treatment as a consequence of their residence in France.

As to the Complainants claim for compensation of the Scheme's setup and ongoing costs (in lieu of the tax amount payable) for the reason that the Scheme is being considered by the Complainants as a '*waste of money*', it is noted that tax matters was not the only benefit of the Scheme as clearly outlined in the '*QROPS Benefits*' section of the Service Provider's Guide titled '*Expatriate Your Pension*'.

Moreover, no tangible evidence has been either produced nor emerged that tax was the sole reason for the QROPS investment and that the Complainants did not avail of the other claimed benefits as listed in the said Guide.³⁵ This is apart from the aspects already raised above with reference to Article 26(3)(c)(iv) of Cap. 555 of the Laws of Malta.

For the reasons explained above, the Arbiter consequently considers that he does not have sufficient and adequate basis on which he can reward the compensation requested by the Complainants or any other compensation.

The Arbiter is accordingly rejecting the complaint.

Because of the uniqueness of this case, each party is to bear its own legal costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services

³⁵ A fol. 27 - Case 102/2019; A fol. 28 - Case 103/2019