

SCHEDULES

SCHEDULE 28

Section 91

INHERITANCE OF TAX-RELIEVED PENSION SAVINGS

Amendments of Part 4 of FA 2004

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.
- 2 (1) Section 172 (assignment) is amended as follows.
 - (2) In subsection (3)—
 - (a) in paragraph (a), for “an actual or” substitute “a”, and
 - (b) in paragraph (b), for “the member” substitute “a member of the pension scheme”.
 - (3) After subsection (6) insert—

“(6A) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—

 - (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.”
- 3 (1) Section 172A (surrender) is amended as follows.
 - (2) In subsection (1), at the end of paragraph (a) (but before the “or”) insert—

“(aa) any rights to payments under a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme,”.
 - (3) In subsection (3)(a), for “relating to” substitute “in respect of”.
 - (4) In subsection (5), after paragraph (c) insert—

“(ca) a surrender of (or agreement to surrender) rights to payments under an annuity in any case covered by regulations under paragraph 3(2B) or 17(3) of Schedule 28;”.
 - (5) After subsection (9) insert—

“(9A) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—

 - (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or

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- (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.”
- 4 (1) Section 172B (increase in rights of connected person on death) is amended as follows.
 - (2) In subsection (2), at the end of paragraph (a) (but before the “or”) insert—
 - “(aa) rights to payments under a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme or under a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme,”.
 - (3) In subsections (3)(a) and (7)(b), for “is actually or prospectively entitled” substitute “has an actual or prospective entitlement”.
 - (4) In subsection (7)—
 - (a) omit paragraph (a) (including the “and” at the end), and
 - (b) in paragraph (b), for “them” substitute “at least 20 members of the pension scheme”.
 - (5) After subsection (7) insert—
 - “(7A) This section does not apply if—
 - (a) the increase mentioned in subsection (1)(a) is an increase in the rate of a dependants' annuity or dependants' scheme pension or in rights representing a dependants' unsecured pension fund or dependants' alternatively secured pension fund, and
 - (b) the increase is attributable to rights of the dead member to payments under a dependants' annuity or dependants' scheme pension or rights representing a dependants' unsecured pension fund.
 - (7B) References in this section to a benefit to which the member or a person has an entitlement under the pension scheme includes rights to payments under—
 - (a) a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme, or
 - (b) a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme.”
- 5 In paragraph 16(2) of Schedule 28 (dependants' scheme pension), after “pension” insert “for the purposes of this Part”.

Amendments of IHTA 1984

- 6 IHTA 1984 is amended as follows.
- 7 (1) Section 151A (person dying with alternatively secured pension fund) is amended as follows.
 - (2) In subsection (2), after “charged if it” insert “and any amount on which tax was previously charged under this section in relation to the member”.
 - (3) In subsection (4B) —

- (a) for the words from “that” to “per cent.” substitute “amount that could be transferred by a chargeable transfer made (under section 4 above) on the member’s death if it were to be wholly chargeable at the rate of nil per cent. (assuming, if necessary, that the value of the member’s estate were sufficient but otherwise having regard to the circumstances of the member)”, and
 - (b) for “that chargeable transfer” substitute “the chargeable transfer so made”.
- 8 (1) Section 151BA (rate or rates of charge under section 151B) is amended as follows.
 - (2) In subsection (1), for the words after “(4) of that section)” substitute “less the amount of any previously charged income tax (within the meaning of subsection (4A) of section 151A) constituted the relevant amount for the purposes of subsection (2) of that section, but subject as follows.”
 - (3) Omit subsection (2).
 - (4) In subsection (3)—
 - (a) for the words from “on the taxable amount” to “of that section” substitute “is to be determined on the assumption that the references in section 151A(4A) and (5)”, and
 - (b) for “this section” substitute “section 151B above”.
- 9 (1) Section 151C (dependant dying with alternatively secured pension fund where section 151B does not apply) is amended as follows.
 - (2) In subsection (3B)—
 - (a) for the words from “that” to “per cent.” substitute “amount that could be transferred by a chargeable transfer made (under section 4 above) on the dependant’s death if it were to be wholly chargeable at the rate of nil per cent. (assuming, if necessary, that the value of the dependant’s estate were sufficient but otherwise having regard to the circumstances of the dependant)”, and
 - (b) for “that chargeable transfer” substitute “the chargeable transfer so made”.
 - (3) In subsection (4), insert at the appropriate place—
 - ““dependants' alternatively secured pension” has the meaning given by paragraph 19 of that Schedule;”, and
 - ““dependants' unsecured pension” has the meaning given by paragraph 18 of that Schedule;”,
 - and in the definition of “dependant’s alternatively secured pension fund”, for “Schedule 28 to that Act” substitute “that Schedule”.
- 10 After section 151C insert—
 - “151D Unauthorised payment where person dies over 75 with pension or annuity**
 - (1) This section applies where—
 - (a) a member of a registered pension scheme, or a dependant of such a member, dies after reaching the age of 75;
 - (b) immediately before death the member or dependant has under the pension scheme an actual right to payments under a relevant pension

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- or relevant annuity or a prospective right to payments under a relevant pension; and
- (c) at any time after the death a relevant unauthorised payment is made by the pension scheme.
- (2) Where this section applies tax shall be charged under this section.
- (3) The amount on which tax is charged under this section shall be the difference between—
- (a) the amount of the relevant unauthorised payment; and
 - (b) the amount of any liability to income tax which has arisen under Part 4 of the Finance Act 2004 by virtue of the making of the relevant unauthorised payment.
- (4) In this section—
- “dependant” has the meaning given by paragraph 15 of Schedule 28 to the Finance Act 2004;
- “dependants' annuity” has the same meaning as in that Part of that Act (see paragraph 17 of that Schedule);
- “dependants' scheme pension” has the same meaning as in that Part of that Act (see paragraph 16 of that Schedule);
- “lifetime annuity” has the same meaning as in that Part of that Act (see paragraph 3 of that Schedule);
- “relevant annuity” means a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme;
- “relevant pension” means a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme;
- “relevant unauthorised payment” means an unauthorised payment (within the meaning of Part 4 of the Finance Act 2004: see section 160(5) of that Act) which—
- (a) consists of the payment of a lump sum in respect of the dead member or dependant; or
 - (b) is treated as made by virtue of the operation of section 172B of that Act by reason of the death; and
- “scheme pension” has the same meaning as in Part 4 of that Act (see paragraph 2 of Schedule 28 to that Act).

151E Rate or rates of charge under section 151D

- (1) Tax charged under section 151D above shall be charged at the rate or rates at which it would be charged if the amount on which it is charged, and any amount on which tax was previously charged under that section in relation to the death of the member or dependant, were part of the value transferred by the transfer of value made on the death of the member or dependant.
- (2) The rate or rates at which tax is charged on that amount shall be determined as if that amount had formed the highest part of that value.

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- (3) Subsection (4) below applies where, before the time when the unauthorised payment is made, there have been one or more reductions of tax by virtue of the coming into force of a substitution of a new Table in Schedule 1 to this Act since the death of the member or dependant.
- (4) The rate or rates at which tax is charged under section 151D above is to be determined as if the new Table effecting the reduction of tax (or the most recent reduction of tax) (“the applicable Table”) had been in force at the time of the death of the member or dependant, but subject to subsections (5) and (8) below.
- (5) The nil-rate band maximum in the applicable Table is to be treated for the purposes of this section as reduced by the used-up percentage of the difference between—
- (a) that nil-rate band maximum, and
 - (b) the nil-rate band maximum which was actually in force at the time of the death of the member or dependant.
- (6) For the purposes of subsection (5) above “the used-up percentage” is—

$$100 - \left(\frac{E}{\text{NRBM}} \times 100 \right)$$

where—

E is the amount by which M is greater than VT under section 8A(2) above in the case of the member or dependant; and
NRBM is the nil-rate band maximum at the time of the death of the member or dependant.

- (7) The following provisions apply where—
- (a) tax is charged under section 151D above, and
 - (b) immediately before the death of the member or dependant, the member or dependant had a spouse or civil partner (“the survivor”).
- (8) If the survivor died before the time when the unauthorised payment is made, tax is charged as if the personal nil-rate band maximum of the member or dependant were appropriately reduced.
- (9) In subsection (8) above—
- “the personal nil-rate band maximum of the member or dependant” is the nil rate band maximum in the applicable Table, increased in accordance with section 8A above where that section effected an increase in that nil-rate band maximum in the case of the member or dependant (as a survivor of another deceased person), and
- “appropriately reduced” means reduced by the amount (if any) by which the amount on which tax was charged at the rate of nil per cent. on the death of the survivor was increased by reason of the operation of section 8A above by virtue of the position of the member or dependant.
- (10) If the survivor did not die before the time when the unauthorised payment is made, tax is to be charged on the death of the survivor as if the percentage

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referred to in section 8A(3) above in the case of the member or dependant were that specified in subsection (11) below.

(11) That percentage is—

$$\frac{AE}{ANRBM} \times 100$$

where—

AE is the adjusted excess, that is the amount by which M would be greater than VT under section 8A(2) above in the case of the member or dependant if—

- (a) the amount on which tax is charged under section 151D above were included in the value transferred by the chargeable value made on the death of the member or dependant, and
- (b) the nil-rate band maximum at the time of the death were ANRBM; and

ANRBM is the adjusted nil-rate band maximum, that is the nil-rate band maximum in the applicable Table (as reduced under subsection (5) above where that subsection applies)."

11 In section 210 (persons liable), after subsection (2) insert—

“(3) The person liable for tax chargeable under section 151D is—

- (a) if the tax is charged by reason of an unauthorised payment actually made by any person other than the scheme administrator of the pension scheme, that person, and
- (b) otherwise, the scheme administrator of the pension scheme.”

12 (1) Section 216 (delivery of accounts) is amended as follows.

(2) In subsection (1)(bca), after “210(2)” insert “or (3)”.

(3) In subsection (6)(ac), after “scheme” insert “otherwise than by reason of a liability to tax under section 210(3)”.

(4) In subsection (7), for “or 126” substitute “, 126 or 151D”.

13 In section 226(4) (payment), for “or 151B” substitute “, 151B or 151D”.

14 In section 233(1)(c) (interest on unpaid tax), for “or 151B” substitute “, 151B or 151D”.

Commencement

15 (1) The amendments made by paragraph 2 have effect in relation to assignments or agreements to assign made on or after 10 October 2007.

(2) The amendments made by paragraph 3 have effect in relation to surrenders and agreements to surrender made on or after that date.

(3) The amendments made by paragraphs 4, 7(2), 8, 10 and 11 to 14 have effect in relation to deaths occurring on or after 6 April 2008.