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SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

Modifications etc. (not altering text)

- C1** Sch. 36 modified by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572), art. 23D (as inserted (1.6.2009) by [S.I. 2009/1172, arts. 1, 3](#))
- C1** [Sch. 36](#) applied (1.6.2018) by [The Local Government Pension Scheme \(Scotland\) Regulations 2018 \(S.S.I. 2018/141\)](#), regs. 1(1), **48(2)**

PART 4

OTHER PROVISIONS

Benefits taxable under Chapter 2 of Part 6 of ITEPA 2003: contributions taxed pre-commencement

- 53 (1) Paragraph 54 or 55 has effect where—
- (a) section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) operates (or would otherwise operate) by reason of the provision of a lump sum under an employer-financed retirement benefits scheme on or after 6th April 2006, and
 - (b) before that date an employer has paid any sum or sums, with a view to the provision of benefits under the scheme, in respect of which an employee is taxed.
- (2) For the purposes of sub-paragraph (1)(a) section 394 of ITEPA 2003 operates if—
- (a) an amount counts as employment income of an individual under that section, or
 - (b) the person who is, or persons who are, the responsible person in relation to the scheme is or are chargeable [^{F1}to income tax under subsection (2) of] that section.
- (3) For the purposes of sub-paragraph (1)(b) an employee is taxed in respect of a sum or sums if—
- (a) the employee is assessed to tax by virtue of section 595 (1) of ICTA (charges on payments) in respect of the sum or sums, or
 - (b) the sum or sums counts or count as employment income of the employee under section 386 (1) of ITEPA 2003 (charges on payments).
- (4) It is to be assumed, unless the contrary is shown, that neither paragraph 54 nor paragraph 55 has effect.

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Textual Amendments

- F1** Words in Sch. 36 para. 53(2)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 656\(3\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C1** Sch. 36 para. 53(3) applied by 2003 c. 1, s. 554U(2) (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 1](#))

- 54 (1) This paragraph has effect if—
- (a) all of the income and gains accruing to the scheme are brought into charge to tax and the lump sum is provided to the employee, a relative of the employee, the personal representatives of the employee, an ex-spouse [^{F2}or former civil partner] of the employee or any other individual designated by the employee, or
 - (b) the scheme was entered into before [^{F3}1st December 1993] and has not been varied on or after that date with a view to the provision of benefits under the scheme.
- (2) In a case where the employer has not paid any sum or sums with a view to the provision of benefits under the scheme since before 6th April 2006, section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to the lump sum.
- (3) In a case where the employer has paid any sum or sums with a view to the provision of benefits under the scheme on or after 6th April 2006—
- (a) section 394 of ITEPA 2003 does not apply in relation to so much of the lump sum as does not exceed the appropriate fraction of the amount of the market value of the assets of the scheme on 5th April 2006 as increased under sub-paragraph (4), and
 - (b) only any sum or sums paid by the employee after that date with a view to the provision of benefits under the scheme is or are to be taken into account under section 395 of ITEPA 2003 (general rules).
- (4) For the purposes of sub-paragraph (3)(a)—
- (a) “the appropriate fraction” of the amount of the market value of the assets of the scheme on 5th April 2006 is the same fraction as the fraction of the assets of the scheme to which the employee would have been entitled had the scheme been wound up on that date, and
 - (b) the amount of the market value of the assets of the scheme on that date is to be increased by the percentage by which the retail prices index for the month in which the lump sum is provided is greater than that for April 2006.
- (5) In this paragraph—
- “ex-spouse”, in relation to an employee, means the other party to a marriage with the employee that has been dissolved or annulled, and
- [^{F4}“former civil partner”, in relation to an employee, means the other party to a civil partnership with the employee that has been dissolved or annulled,]
- “relative”, in relation to an employee, means—
- (a) the [^{F5}spouse or civil partner] of the employee,
 - (b) the widow or widower [^{F6}or surviving civil partner] of the employee,

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- (c) a child of the employee, or
- (d) a dependant of the employee.

Textual Amendments

- F2** Words in Sch. 36 para. 54(1)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(a)**
- F3** Words in Sch. 36 para. 54(1)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 161(2), **Sch. 23 para. 46**
- F4** Words in Sch. 36 para. 54(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **182(b)(i)**
- F5** Words in Sch. 36 para. 54(5) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 182(b)(ii)(aa)
- F6** Words in Sch. 36 para. 54(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 182(b)(ii)(bb)

- 55 (1) This paragraph has effect if paragraph 54 does not.
- (2) Section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to so much of the lump sum as does not exceed the sum, or the aggregate of the sums, referred to in paragraph 53(1)(b).
- (3) And the reference in section 395 of that Act (general rules) to the amount of the lump sum is to the amount of the remainder of the lump sum.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)