
STATUTORY INSTRUMENTS

2010 No. 51

INHERITANCE TAX

The Inheritance Tax (Qualifying Non-UK Pension Schemes) Regulations 2010

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| <i>Made</i> | - - - - | <i>12th January 2010</i> |
| <i>Laid before the House of Commons</i> | - - - - | <i>14th January 2010</i> |
| <i>Coming into force</i> | - - | <i>15th February 2010</i> |

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 271A of the Inheritance Tax Act 1984⁽¹⁾.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Inheritance Tax (Qualifying Non-UK Pension Schemes) Regulations 2010 and shall come into force on 15th February 2010.

(2) These Regulations shall have effect from 6th April 2006.

Interpretation

2. In these Regulations—

“pension rule 1” means pension rule 1 in section 165 of the Finance Act 2004⁽²⁾;

“relevant scheme funds” means any sums and assets held under a pension scheme—

(a) to which these Regulations apply, and

(b) which would be subject to inheritance tax if the scheme did not meet the requirements for a qualifying non-UK pension scheme.

Scope of these Regulations

3. These Regulations apply to pension schemes which are established in a country or territory outside the United Kingdom.

(1) 1984 c. 51. By virtue of section 100(1) and (2) of the Finance Act 1984 (c.41), on and after 25th July 1986 the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability to tax arising before the 25th July 1986, Section 271A was inserted by section 92 and paragraph 18 of Schedule 29 to the Finance Act 2008 (c. 9).

(2) 2004 c. 12.

Requirements for qualifying non-UK pension schemes

4.—(1) For the purposes of section 271A of the Inheritance Tax Act 1984 (qualifying non-UK pension scheme) a pension scheme must—

- (a) be recognised for tax purposes under the tax legislation of the country or territory in which it is established (see regulation 5) and satisfy regulation 6; or
- (b) be established by an international organisation for the purpose of providing benefits for, or in respect of, past service as an employee of the organisation and satisfy regulation 7.

(2) In this regulation “international organisation” means an organisation to which section 1 of the International Organisations Act 1968(3) applies by virtue of an Order in Council under subsection (1) of that section.

Recognition for tax purposes

5.—(1) A scheme is recognised for tax purposes under the tax legislation of a country or territory in which it is established if it meets both Primary Condition 1 and Primary Condition 2 and either Condition A or Condition B.

Primary Condition 1

The scheme is open to persons resident in the country or territory in which it is established.

Primary Condition 2

The scheme is established in a country or territory where there is a system of taxation of personal income under which tax relief is available in respect of pensions and—

- (a) tax relief is not available to the member on contributions made to the scheme by the member or, if the member is an employee, by their employer, in respect of earnings to which benefits under the scheme relate;
- (b) the scheme is liable to taxation on its income and gains and is of a kind specified in the Schedule to these Regulations; or
- (c) all or most of the benefits paid by the scheme to members who are not in serious ill-health are subject to taxation.

For the purposes of this condition “tax relief” includes the grant of an exemption from tax.

Condition A

(2) The scheme is approved or recognised by, or registered with, the relevant tax authorities as a pension scheme in the country or territory in which it is established.

Condition B

(3) If no system applies for the approval or recognition by, or registration with, relevant tax authorities of pension schemes in the country or territory in which it is established—

- (a) the scheme must be resident there;
- (b) the scheme rules must provide that at least 70% of a member’s relevant scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, or, in the case of a member who has died, so provided immediately before the member’s death; and
- (c) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) must be payable no earlier than they would be if pension rule 1 applied.

(3) 1968 c. 48; section 1(1) was amended by section 1(1) of the International Organisations Act 1981 (c. 9).

Requirements for schemes recognised for tax purposes

- 6.—(1) This regulation is satisfied if paragraph (2), (3) or (4) applies.
- (2) This paragraph applies if the scheme is an occupational pension scheme and there is a body in the country or territory in which it is established—
- (a) which regulates occupational pension schemes; and
 - (b) which regulates the scheme in question.
- (3) This paragraph applies if the scheme is not an occupational scheme and there is a body in the country or territory in which it is established—
- (a) which regulates pension schemes other than occupational pension schemes; and
 - (b) which regulates the scheme in question.
- (4) This paragraph applies if neither paragraph (2) nor (3) applies by reason only that no such regulatory body exists in the country or territory and—
- (a) the scheme is established in another member State, Norway, Iceland or Liechtenstein; or
 - (b) the scheme is one where—
 - (i) the scheme rules provide that at least 70% of a member’s relevant scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, or, in the case of a member who has died, so provided immediately before the member’s death, and
 - (ii) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) are payable no earlier than they would be if pension rule 1 applied.
- (5) In this regulation “occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004.

Requirements for schemes established by international organisations

7. This regulation is satisfied if—
- (a) the scheme rules provide that at least 70% of a member’s relevant scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, or, in the case of a member who has died, so provided immediately before the member’s death, and
 - (b) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) are payable no earlier than they would be if pension rule 1 applied.

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Two of the Commissioners for Her Majesty’s
Revenue and Customs

12th January 2010

SCHEDULE

Regulation 5

SPECIFIED SCHEMES

A complying superannuation plan as defined in section 995-1 (definitions) of the Income Tax Assessment Act 1997 of Australia (as amended by the Tax Law Amendment (Simplified Superannuation) Act 2007 of Australia)(4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the requirements which a non-UK pension scheme must satisfy for the purposes of section 271A of the Inheritance Act 1984 (c. 51) (“the Act”).

Regulation 1 provides for citation, commencement and effect. The Regulations shall have effect from 6 April 2006. Authority for the retrospective effect is given by section 271A(3) of the Act, which provides that regulations made under section 271A may include provision having effect in relation to times before the regulations are made if it does not increase any person’s liability to tax.

Regulation 2 provides for interpretation.

Regulation 3 sets out the scope of the Regulations.

Regulations 4 to 7 set out the requirements which must be satisfied by various non-UK pension schemes. Regulation 5 specifies the conditions which must be satisfied in order for a scheme to be recognised for tax purposes under the tax legislation of a country or territory in which it is established. Regulation 6 makes provision as to regulatory requirements to which the pension scheme must be subject. Regulation 7 makes provision in relation to schemes established by international organisations.

The Australian legislation referred to in this instrument can be found at the website <http://law.ato.gov.au>.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

(4) The terms used in the definition of “complying superannuation plan” are further defined in the Superannuation Industry (Supervision) Act 1993 of Australia and the Retirement Savings Accounts Act 1997 of Australia.