STATUTORY INSTRUMENTS

2012 No. 764

CORPORATION TAX
INCOME TAX
STAMP DUTY
STAMP DUTY LAND TAX
STAMP DUTY RESERVE TAX

The Postal Services Act 2011 (Taxation) Regulations 2012

Made - - - -	*8th March 2012*
Laid before the House of Commons - - - -	*9th March 2012*
Coming into force in accordance with regulation 1(1)	

The Treasury make the following Regulations in exercise of the power conferred by sections 23 and 89(2) of the Postal Services Act 2011(**1**).

PART 1

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Postal Services Act 2011 (Taxation) Regulations 2012 and come into force immediately after the coming into force of both—

(a) the first order made under section 17(2) (transfer of qualifying accrued rights to new public scheme) of the Act by virtue of an order made under section 25(4) and (5) of the Act ("the specified day order"); and

(b) the first order made under section 21(1) (transfer of assets of the RMPP) of the Act by virtue of the specified day order.

(**1**) 2011 c. 5. The taxes in respect of which provision is made in these Regulations are relevant taxes for the purposes of section 23(9) of the Postal Services Act 2011.

(2) Regulation 3 has effect in relation to the accounting period which begins on or before and ends on or after the date on which the first order made under section 17(2) of the Act comes into force by virtue of the specified day order, and subsequent accounting periods.

(3) Regulations 4 and 5 have effect in relation to accounting periods beginning on or after the date on which the first order made under section 17(2) of the Act comes into force by virtue of the specified day order.

Interpretation

2.—(1) In these Regulations—

"accounting period" is to be read in accordance with Chapter 2 of Part 2 of the Corporation Tax Act 2009(**2**) (accounting periods);

"Accrued Rights" means the rights transferred from the RMPP to the new public scheme pursuant to an order made under section 17(2) of the Act;

"the Accrued Rights Transfer" means the transfer of Accrued Rights from the RMPP to the new public scheme;

"the Act" means the Postal Services Act 2011;

"the Assets Transfer" means the transfer of assets of the RMPP pursuant to an order made under section 21(1) of the Act;

"excluded contributions" means contributions paid to the RMPP in advance of 31st March 2012 in respect of amounts falling due after that date under the existing Schedule of Contributions of the RMPP;

"the final accounting period" means the accounting period which ended immediately before the first qualifying accounting period;

"the first qualifying accounting period" means the first accounting period which begins on or after the date on which the first order made under section 17(2) of the Act comes into force by virtue of an order made under section 25(4) and (5) of the Act;

"the new public scheme" means the new public scheme established pursuant to an order made under section 17(1) of the Act;

"Part 4" means Part 4 (pension schemes etc) of the Finance Act 2004(**3**);

"POL" means the Post Office Limited (registered number 02154540);

"RMGL" means the Royal Mail Group Limited (registered number 04138203);

"the Transfer" means the Accrued Rights Transfer and the Assets Transfer;

"the Transitional Provisions Order" means the Taxation of Pension Schemes (Transitional Provisions) Order 2006(**4**);

a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in the Finance Act 2004; and

expressions which are defined, or are otherwise explained, in section 280 (abbreviations and general index) have the same meaning in these Regulations as they have in Part 4.

(2) For the purposes of paragraph (1) "Schedule of Contributions" has the same meaning as in section 227(2) of the Pension Act 2004(**5**).

(**2**) 2009 c. 4.
(**3**) 2004 c.12.
(**4**) S.I. 2006/572; relevant amending instruments are S.I. 2006/1962, S.I. 2006/2004 and S.I. 2009/1989.
(**5**) 2004 c. 35.

PART 2

Corporation Tax

De-recognition of the obligations and assets of the RMPP

3.—(1) Paragraph (2) applies where—

(a) RMGL or POL recognises a debit or credit in its accounts, in accordance with generally accepted accounting practice; and

(b) the debit or credit is recognised in that company's accounts as a consequence of—

(i) the Accrued Rights Transfer;

(ii) the division of the RMPP in accordance with an order made under section 18 of the Act (division of the RMPP into different sections);

(iii) an amendment of the RMPP in accordance with an order made under section 19 of the Act (amendments of the RMPP) in connection with an order under section 17 or section 18 of the Act; or

(iv) the Assets Transfer.

(2) In computing the profits, gains or losses of that company for the purposes of corporation tax, no amount is to be brought into account in respect of the debit or credit.

(3) In this regulation—

(a) "accounts" has the meaning given by section 17(1) of the Corporation Tax Act 2010(**6**) (interpretation); and

(b) "generally accepted accounting practice" has the same meaning as in section 1127 of the Corporation Tax Act 2010 (generally accepted accounting practice and related expressions).

Extinguishment of relevant losses of RMGL

4.—(1) With effect from the first day of the first qualifying accounting period, the relevant losses of RMGL are to be treated for the purposes of corporation tax as extinguished.

(2) The amount of the relevant losses that are to be treated as extinguished in accordance with paragraph (1) is the sum of the relevant loss incurred in each accounting period prior to the final accounting period.

(3) In this regulation a loss is a relevant loss for an accounting period ("the relevant accounting period") if—

(a) the loss was incurred in the trade carried on by RMGL in the relevant accounting period; and

(b) the loss is included in the losses carried forward to the first qualifying accounting period as an unrelieved loss in accordance with section 45 of the Corporation Tax Act 2010 (carry forward of trade loss against subsequent trade profits),

but this paragraph is subject to paragraph (4).

(4) A loss is not a relevant loss for the purposes of paragraph (3) to the extent that it is attributable to deductions in the computation of the loss for an accounting period for contributions that are excluded contributions.

(5) For the purposes of this regulation—

(**6**) 2010 c. 4.

(a) losses incurred by RMGL are the losses computed in accordance with section 47 of the Corporation Tax Act 2009 (losses calculated on the same basis as profits); and

(b) a loss is an unrelieved loss for an accounting period if no relief has been given in respect of the loss under section 37 (relief for trade losses against total profits) or Part 5 of the Corporation Tax Act 2010 (group relief).

Extinguishment of trading losses of POL

5.—(1) With effect from the first day of the first qualifying accounting period, the relevant losses of POL are to be treated for the purposes of corporation tax as extinguished.

(2) In this regulation "relevant losses" means the aggregate of the losses incurred in each accounting period prior to the final accounting period calculated in accordance with paragraph (3). This paragraph is subject to paragraph (4).

(3) The amount of the loss for each accounting period ("the relevant accounting period") is found by—

(a) calculating—

(i) the amount of the loss incurred in the trade carried on by POL in the relevant accounting period which is carried forward to the first qualifying accounting period as an unrelieved loss in accordance with section 45 of the Corporation Tax Act 2010 ("L"); and

(ii) the amount of deductions in the computation of the loss for that relevant accounting period for, or in connection with, contributions in respect of qualifying members of the RMPP ("P"); and

(b) comparing the figures given by L and P for each accounting period and where—

(i) L is greater than P, the relevant loss for that period is the amount equal to P;

(ii) L is less than P, the relevant loss for that period is the amount equal to L; and

(iii) L and P are the same, the relevant loss for that period is the amount equal to P.

(4) A loss is not a relevant loss for the purposes of this regulation to the extent that it is attributable to deductions in the computation of the loss for an accounting period for payments in relation to contributions that are excluded contributions.

(5) For the purposes of this regulation—

(a) losses incurred by POL are the losses computed in accordance with section 47 of the Corporation Tax Act 2009; and

(b) a loss is an unrelieved loss for an accounting period if no relief has been given in respect of the loss under section 37 or Part 5 of the Corporation Tax Act 2010.

Exemption from corporation tax

6.—(1) BCL is exempt from corporation tax for any accounting period that begins and ends before 1st April 2015.

(2) For the purposes of this regulation "BCL" means the private company limited by shares incorporated on 8th February 2012 with the registered number 07941521 and with the name BIS (Postal Services Act 2011) Company Limited.

PART 3

Income Tax

CHAPTER 1

Transfer of Accrued Rights from the RMPP to the new public scheme

New public scheme to be treated as a registered pension scheme

7. The new public scheme is to be treated as a registered pension scheme for the purposes of Part 4.

Transfer to be treated as a recognised transfer

8.—(1) For the purposes of Part 4, the Transfer is to be treated as a recognised transfer of sums or assets held for the purposes of, or representing accrued rights under, the RMPP in connection with a member of that scheme within the meaning of section 169(1).

(2) Paragraph (3) applies where the Accrued Rights Transfer has resulted in the transfer to the new public scheme of Accrued Rights in respect of a scheme pension to which a member of the RMPP has become entitled ("the original scheme pension").

(3) The sums and assets which represented rights in respect of the original scheme pension are to be treated, after the Accrued Rights Transfer, as being applied towards the provision of a scheme pension for the purposes of regulations 3 and 5 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006(**7**) (the "Transfer of Sums and Assets Regulations").

(4) Paragraph (5) applies where the Accrued Rights Transfer has resulted in the transfer to the new public scheme of Accrued Rights in respect of a dependants' scheme pension to which a dependant of a member of the RMPP has become entitled in respect of the member ("the original dependants' scheme pension").

(5) The sums and assets which represented rights in respect of the original dependants' scheme pension are to be treated, after the Accrued Rights Transfer, as being applied towards the provision of a dependants' scheme pension for the purposes of regulation 8 of the Transfer of Sums and Assets Regulations.

CHAPTER 2

Continued application of "A day" transitional provisions after the Accrued Rights Transfer

"Enhanced protection" to continue after the Accrued Rights Transfer

9. Where the Accrued Rights Transfer has taken place—

(a) the Transfer is to be treated as a permitted transfer within the meaning of paragraph 12(7) of Schedule 36 for the purposes of paragraphs 12, 13 and 15 ("enhanced protection") of that Schedule(**8**); and

(b) that permitted transfer is to be treated as falling within paragraph 12(8)(c).

(**7**) S.I. 2006/499; amended by S.I. 2011/733; there are other amending instruments but none is relevant.

(**8**) Paragraph 12 was amended, so far as is relevant, by paragraphs 1 and 53 of Schedule 10 to the Finance Act 2005 (c. 7), paragraphs 1, 16 and 17 of Schedule 20 and table 2 in Part 3 of Schedule 27 to the Finance Act 2007 (c. 11). Paragraph 13 was amended by paragraphs 1 and 53(1) and (7) of Schedule 10 to the Finance Act 2005. Paragraph 15 was amended by paragraphs 1, 37 and 40 of Schedule 23 to the Finance Act 2006 (c. 25) and paragraphs 1, 16 and 19 of Schedule 20 to the Finance Act 2007.

Rights to take benefit before normal minimum pension age to continue after the Accrued Rights Transfer

10.—(1) Paragraphs (2) and (3) apply where—

(a) the RMPP was a protected pension scheme under paragraph 22(2) of Schedule 36(**9**) in relation to a member; and

(b) the Accrued Rights Transfer has taken place.

(2) The Transfer is to be treated as a block transfer within the meaning of paragraph 22(6) of Schedule 36 for the purposes of paragraphs 21 and 22 (rights to take benefit before normal minimum pension age) of that Schedule.

(3) In relation to the retirement condition in paragraph 22(7) of Schedule 36—

(a) the requirement in paragraph (a) is to be treated as met if the member becomes entitled to all the benefits payable to the member under arrangements under both the RMPP and the new public scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date; and

(b) in respect of the requirement in paragraph (b), direct or indirect references to a sponsoring employer in Condition 1, 2 or 3 in sub-paragraphs (7A), (7B), (7C) or (7E) (as the case may be) are to be read as references to a sponsoring employer of the RMPP.

Entitlement to lump sums exceeding 25% of uncrystallised rights to continue after the Accrued Rights Transfer

11.—(1) Paragraph (2) applies where—

(a) the RMPP was a protected pension scheme under paragraph 31(4) of Schedule 36 in relation to a member; and

(b) the Accrued Rights Transfer has taken place.

(2) The Transfer is to be treated as a block transfer within the meaning of paragraph 22(6) of Schedule 36 for the purposes of paragraphs 31 to 34(**10**) (entitlement to lump sums exceeding 25% of uncrystallised rights) of that Schedule.

Transitional protection for stand-alone lump sums to continue after the Accrued Rights Transfer

12.—(1) Paragraph (2) applies where—

(a) the RMPP was entitled to pay a stand-alone lump sum under article 25(3) (stand-alone lump sums: definition) of the Transitional Provisions Order to an individual which, if it had been paid, would have been a stand-alone lump sum paid in circumstances where article 25B(4) (circumstance C) applied; and

(b) the Accrued Rights Transfer has taken place.

(2) The Transfer is to be treated as a block transfer within the meaning of paragraph 22(6) of Schedule 36 for the purposes of article 25D(4)(c) of the Transitional Provisions Order.

(**9**) Paragraph 22 was amended by paragraphs 1, 54 and 55 of Schedule 10 to the Finance Act 2005, paragraphs 1 and 43 of Schedule 23 to the Finance Act 2006 and paragraphs 423 and 432(3) of Schedule 1 to the Corporation Tax Act 2010.

(**10**) Paragraph 31(7) was amended by paragraphs 1 and 55 of Schedule 10 to the Finance Act 2005. Paragraph 34 was amended by paragraphs 1 and 57 of Schedule 10 to the Finance Act 2005, paragraphs 1 and 25 of Schedule 25 to the Finance Act 2006, paragraph 13 of Schedule 29 to the Finance Act 2008 (c. 9) and paragraphs 62 and 82 to Schedule 16 of the Finance Act 2011 (c. 11). Paragraph 34 was also amended by paragraphs 1, 8 and 11 of Schedule 18 to the Finance Act 2011 with effect for the tax year 2012-13 and subsequent tax years.

Transitional protection for continued life cover (75+) to continue after the Accrued Rights Transfer

13.—(1) Paragraph (2) applies where—

(a) the conditions A to C and E in article 6 of the Transitional Provisions Order were satisfied in relation to a member of the RMPP; and

(b) the Accrued Rights Transfer has taken place.

(2) Conditions A to C and E in article 6 of the Transitional Provisions Order are to be treated as satisfied in respect of the new public scheme and the RMPP.

(3) Condition D in article 6 of the Transitional Provisions Order is to be treated as satisfied in respect of the new public scheme where the rules of that scheme in relation to life cover lump sums are the same as the equivalent rules of the RMPP relating to those sums on 10th December 2003.

Transitional protection in relation to dependants' scheme pension limit to continue after the Accrued Rights Transfer

14.—(1) Paragraph (2) applies where—

(a) a member of the RMPP in respect of whom a dependants' scheme pension is payable was actually entitled to one or more relevant existing pensions, as defined in paragraph 10(2) of Schedule 36, under that scheme on 5th April 2006; and

(b) the Accrued Rights Transfer has taken place.

(2) The transitional protection afforded by article 24 (disapplication of dependants' scheme pension limit) of the Transitional Provisions Order applies to a dependants' scheme pension payable under the new public scheme in respect of that member.

Transitional provision in relation to serious ill-health lump sums and pension protection lump sum death benefits to continue after the Accrued Rights Transfer

15.—(1) Paragraphs (3) and (5) apply where—

(a) the Accrued Rights Transfer has taken place; and

(b) the requirements in paragraph (2) are met.

(2) The requirements are that, in relation to article 33(2) (serious ill-health lump sums, pension protection lump sum death benefits and annuity protection lump sum death benefits) of the Transitional Provisions Order—

(a) condition A was met in respect of an individual in relation to the RMPP immediately before the Accrued Rights Transfer; and

(b) condition B had been met in respect of that individual in relation to the RMPP.

(3) Article 33(3) (modification of paragraph 4(2) of Schedule 29(**11**) (serious ill-health lump sum)) of the Transitional Provisions Order is to be treated as applying to the new public scheme subject to the modification in paragraph (4).

(4) A pension paid by the new public scheme is to be treated as a relevant existing pension, as defined by paragraph 10(2) of Schedule 36, if it would have been a relevant existing pension had it been paid by the RMPP.

(5) Article 33(4) (modification of paragraph 14(3) of Schedule 29(**12**) (pension protection lump sum death benefit)) of the Transitional Provisions Order is to be treated as applying to the new public scheme as if it provided as follows—

(**11**) Paragraph 4 was amended by paragraphs 23 and 28 of Schedule 16 to the Finance Act 2011.
(**12**) Paragraph 14 was amended by paragraphs 32 and 34 of Schedule 16 to the Finance Act 2011.

"(4) In paragraph 14(3) of Schedule 29 (pension protection lump sum death benefit)—

(a) for the definition of "AC" substitute—

"AC is the value of the individual's pre-commencement pension rights under the RMPP as defined in paragraph 20(3) and (5) of Schedule 36",

(b) for the definition of "AP" substitute—

"AP is the aggregate of the amounts of pension paid—

(a) under the RMPP in respect of the period before the Accrued Rights Transfer, and

(b) under the new public scheme in respect of the period on and after the day on which the Accrued Rights Transfer takes place,

between 6th April 2006 and the member's death.", and

(c) for the definition of TPLS substitute—

"TPLS is the total amount of pension protection lump sum death benefit previously paid in respect of the pension paid under—

(a) the RMPP in respect of the period before the Accrued Rights Transfer, and

(b) the new public scheme in respect of the period on and after the day on which the Accrued Rights Transfer takes place.""

Transitional protection in relation to payments to children aged 23 or over to continue after the Accrued Rights Transfer

16.—(1) Paragraph (2) applies where the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights in respect of which article 34 (payments to children aged 23 or over) of the Transitional Provisions Order applied.

(2) The Transfer is to be treated as a block transfer within the meaning of article 34B(4) for the purposes of article 34(6).

17.—(1) Paragraph (2) applies where the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights in respect of which article 34A (payments to financially dependent children aged 23 or over) of the Transitional Provisions Order applied.

(2) The Transfer is to be treated as a block transfer within the meaning of article 34B(4) for the purposes of article 34A(5).

18.—(1) Paragraph (2) applies where—

(a) Condition D in article 34A(3) of the Transitional Provisions Order was met in relation to a pension death benefit payable in respect of a member of the RMPP so that article 34A was capable of applying to the payment of a pension death benefit; and

(b) the Accrued Rights Transfer has taken place.

(2) The Transfer is to be treated as a block transfer within the meaning of article 34B(4) for the purpose of article 34A(5).

Transitional protection in relation to lump sum death benefits to continue after the Accrued Rights Transfer

19.—(1) Paragraph (2) applies where—

(a) the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights in respect of a member; and

(b) after the Accrued Rights Transfer a lump sum is paid under the new public scheme in respect of the death of that member which—

(i) meets the condition in sub-paragraph (b) of article 40(1) (lump sum death benefits — death of member) in respect of the administrator of the RMPP for the period before the Accrued Rights Transfer and in respect of the administrator of the new public scheme for the period on and after the day on which the Accrued Rights Transfer takes place; and

(ii) had the Transfer not taken place, would have met the conditions in sub-paragraphs (a) and (c) to (e) of article 40(1) of the Transitional Provisions Order.

(2) Article 40(2) is to be treated as applying to the payment of the lump sum under the new public scheme.

CHAPTER 3

Miscellaneous provisions

Liability of scheme administrator of the new public scheme in respect of an individual's annual allowance charge for the tax year in which the Accrued Rights Transfer takes place

20.—(1) Paragraph (2) applies where—

(a) the Accrued Rights Transfer has taken place; and

(b) the requirements in section 237B(1) (liability of scheme administrator)(**13**) are met in respect of an individual in relation to the RMPP for the tax year in which the Accrued Rights Transfer took place.

(2) The Transfer is to be treated as a transfer of all the sums or assets held for the purposes of, or representing accrued rights under, the RMPP so as to become held for the purposes of, or to represent rights under, the new public scheme within the meaning of section 237B(9).

Transitional protection under paragraph 14 of Schedule 18 to the Finance Act 2011 ("fixed protection") to continue after the Accrued Rights Transfer

21.—(1) Paragraphs (2) and (3) apply where—

(a) the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights in respect of an individual—

(i) who was an active member of the RMPP immediately before the Accrued Rights Transfer; and

(ii) to whom paragraph 14 (lifetime allowance charge: transitional provision) of Schedule 18 to the Finance Act 2011(**14**) applies.

(2) In paragraph 14(13)—

(a) paragraph (a) is disapplied; and

(b) for paragraph (b) substitute—

"(b) the percentage by which the retail prices index for the month of September in the previous tax year is higher than it was for the same month in the period of 12 months (or nil per cent if it is not higher)."

(**13**) Section 237B was inserted by paragraphs 1 and 15 of Schedule 17 to the Finance Act 2011.
(**14**) 2011 c.11.

(3) The “retail prices index” means—

(a) the general index of retail prices (for all items) published by the Statistics Board; or

(b) if that index is not published for the relevant month, any substituted index or index figures published by the Statistics Board.

Calculation of pension input amount where there is an adjustment to benefit entitlement after the Accrued Rights Transfer

22.—(1) Paragraph (2) applies where—

(a) the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights; and

(b) as a result of the Transfer there is an adjustment to reduce the entitlement of an individual to benefits under the new public scheme and a corresponding adjustment to increase the entitlement of that individual to benefits under the RMPP.

(2) The adjustment and corresponding adjustment referred to in subsection (1)(b) are to be disregarded when arriving at the pension input amount for the RMPP and the new public scheme under sections 234 to 236A (pension input amount: defined benefits arrangements)(**15**).

Provision in relation to double taxation relief arrangements

23.—(1) Paragraph (2) applies where—

(a) immediately prior to the Accrued Rights Transfer a member of the RMPP had pensionable service in respect of the period prior to 1st October 1969;

(b) at any time after the Accrued Rights Transfer the recipient of a pension in respect of that member is resident outside the United Kingdom in a country which has entered into a double taxation relief arrangement with the United Kingdom; and

(c) as a result of the Transfer, there has been a change to the tax treatment of the pension payable in respect of that member in the new scheme under that double taxation relief arrangement.

(2) The tax charged under Chapter 5A (pensions under registered pension schemes) of Part 9 of the Income Tax (Earnings and Pensions) Act 2003(**16**) in respect of the member’s pension under the new public scheme must not exceed the tax which would have been charged in respect of that pension under that section had the pension been paid by the RMPP.

(3) For the purposes of this regulation, a “double taxation relief arrangement” means an arrangement that has effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010(**17**).

Further protection in relation to changes to tax treatment of Accrued Rights as a result of the Transfer

24.—(1) Paragraph 2 applies where—

(a) the Accrued Rights Transfer has resulted in the transfer from the RMPP to the new public scheme of Accrued Rights in respect of a member;

(b) as a result of the Transfer, there has been a change to the tax treatment of one or both of the following—

(**15**) Sections 234 to 236 were amended by paragraphs 1 and 10 to 12, and section 236A was inserted by paragraphs 1 and 13, of Schedule 17 to the Finance Act 2011.
(**16**) 2003 c.1. Chapter 5A was inserted into Part 9 by paragraphs 1 and 6 of Schedule 31 to the Finance Act 2004 (c. 12).
(**17**) 2010 c. 8.

(i) those Accrued Rights under the new public scheme;

(ii) the member's rights under the RMPP; and

(c) no other provision in these Regulations applies to that change.

(2) The tax charged under the provisions in paragraph (3) in respect of the member's Accrued Rights under the new public scheme and the member's rights under the RMPP must not exceed the tax which would have been charged under those provisions in respect of those rights had the Transfer not taken place.

(3) The provisions are—

(a) section 208 (unauthorised payments charge)(**18**);

(b) section 209 (unauthorised payments surcharge) in relation to surchargeable unauthorised member payments within the meaning of section 210(**19**);

(c) section 214 (lifetime allowance charge)**;**

(d) section 227 (annual allowance charge)(**20**); and

(e) Chapter 5A of Part 9 of the Income Tax (Earnings and Pensions) Act 2003.

PART 4

Stamp Duty, Stamp Duty Land Tax and Stamp Duty Reserve Tax

Stamp Duty

25. Stamp duty is not chargeable on an instrument making or executing the Assets Transfer.

Stamp Duty Land Tax

26. A land transaction entered into on, or in consequence of, or in connection with, the Assets Transfer is exempt from the charge to stamp duty land tax.

27. A land transaction entered into on, or in consequence of, or in connection with, the Assets Transfer is not a notifiable transaction within the meaning of section 77 of the Finance Act 2003(**21**).

Stamp Duty Reserve Tax

28. Stamp duty reserve tax is not chargeable on an agreement to transfer chargeable securities made in relation to, in connection with, or by or under, the Assets Transfer.

Michael Fabricant
James Duddridge
Two of the Lords Commissioners of Her Majesty's Treasury

8th March 2012

(**18**) Section 208 was amended by paragraphs 1 and 14 of Schedule 23 to the Finance Act 2006 (c. 25) and paragraphs 10 and 12 of Schedule 2 to the Finance Act 2009 (c. 10).
(**19**) Section 209 was amended by paragraphs 1 and 15 of Schedule 23 to the Finance Act 2006 and paragraphs 10 and 13 of Schedule 2 to the Finance Act 2009. Section 210 was amended by paragraphs 1 and 16 of Schedule 23 to the Finance Act 2006.
(**20**) Section 227 was amended by paragraph 45 of Schedule 16 and paragraphs 1 and 3 of Schedule 17 to the Finance Act 2011.
(**21**) 2003 c. 14; section 77 was substituted by sections 94(1) and (2) of the Finance Act 2008 (c. 9).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Postal Services Act 2011 (c. 5) ("the Act") makes provision for the transfer of the historic deficit of the Royal Mail Pension Plan (the "RMPP") to the government. Part 2 of the Act provides powers for the Secretary of State to establish a new statutory pension scheme ("the new public scheme"), transfer rights from the RMPP to the new public scheme, remove liabilities from the RMPP and transfer assets from the RMPP to the government. These Regulations make provision in relation to the taxation consequences of the restructuring of the RMPP and the new public scheme in relation to accrued rights of members of the RMPP and the transfer of assets of the RMPP.

Regulation 1(1) provides for the Regulations to come into force immediately after the coming into force of both the first order made under the Act effecting the transfer of accrued rights from the RMPP to the new public scheme and the first order made effecting the transfer of the assets of the RMPP**.** Regulation 1(2) provides that regulation 3 will have effect in relation to the accounting period which is current on the date on which the first order effecting the transfer of accrued rights comes into force and subsequent accounting periods. The power to make regulations with limited retrospective effect is found in section 23(5) of the Act. Regulation 1(3) provides that regulations 4 and 5 will have effect in relation to accounting periods beginning on or after the date on which the first order effecting the transfer of accrued rights comes into force.

Regulation 2 defines the terms used in these Regulations.

Part 2 deals with corporation tax.

Regulation 3 makes provision for the taxation consequences of the removal of the pension obligations from the accounts of Royal Mail Group Limited and Post Office Limited. The Regulation provides that where either Royal Mail Group Limited or Post Office Limited recognises a debit or credit in its accounts in accordance with generally accepted accounting practice and the debit or credit is recognised in consequence of a transaction in connection with an order under section 17(2), section 18, section 19 or section 21 of the Act, no amount is to be brought into account in respect of the debit or credit in computing the profits, gains or losses of that company for corporation tax purposes.

Regulation 4 makes provision which extinguishes unused trading losses incurred by the Royal Mail Group Limited in relation to deductions given for contributions to the RMPP, with one exception, which would otherwise have been carried forward from accounting periods prior to the accounting period in which the order first made under section 17(2) of the Act comes into force. The exception relates to contributions paid to the RMPP in advance of 31st March 2012 but which are in respect of amounts falling due after that date.

Regulation 5 makes similar provision for extinguishing the unused trading losses incurred by Post Office Limited in relation to deductions given for contributions to the RMPP.

Regulation 6 provides that the BIS (Postal Services Act 2011) Company Limited ("BCL") shall be exempt from corporation tax for accounting periods ending before 1st April 2015. BCL is a fund established under section 21(1)(c) of the Act for the purposes of holding assets of the RMPP prior to their disposal.

Part 3 deals with income tax.

Chapter 1 of Part 3 makes provision in relation to the transfer of accrued rights from the RMPP to the new public scheme.

Regulation 7 provides for the new public scheme to be treated as a registered pension scheme for the purposes of Part 4 of the Finance Act 2004 (c. 12) ("FA 2004"). Registered pension schemes are those which meet certain requirements and qualify for tax-favoured treatment. Regulation 8(1) provides that the transfer of accrued rights from the RMPP to the new public scheme and the transfer of the assets of the RMPP to the government is to be treated as a recognised transfer of sums or assets within the meaning of section 169(1) of FA 2004. This prevents the transfer giving rise to an unauthorised payment charge under Chapter 5 of Part 4 of FA 2004. Paragraphs (2) to (5) of regulation 8 set out how the transfer is to be treated for the purposes of certain provisions in the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (S.I. 2006/499) to ensure that rights under the new public scheme are treated as if they were rights under the RMPP. This provision is capable of having retrospective effect. The power to make regulations with limited retrospective effect is found in s23(5) of the Act.

Chapter 2 of Part 3 ensures that any transitional provisions in relation to the changes to pensions legislation which came into force on 6th April 2006 ("A day") that applied to accrued rights under the RMPP will apply in the same way to the new public scheme after the transfer. These provisions are contained in Schedule 36 to FA 2004 and the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (S.I. 2006/572).

Regulation 9 provides that where an individual was entitled to enhanced protection from the lifetime allowance charge in respect of an arrangement under the RMPP, the protection will continue after the transfer in the new public scheme.

Regulation 10 provides that if a member of the RMPP were entitled to take benefits before normal minimum pension age, the member would continue to be entitled to do so under the new public scheme.

Regulation 11 provides that individuals who were entitled to lump sums exceeding 25% of uncrystallised pension rights on 5th April 2006 (and have not claimed primary or enhanced protection) will continue to be entitled to take these lump sums after the transfer of benefits to the new public scheme.

Regulation 12 makes provision for individuals who were entitled on 5th April 2006 to take all their uncrystallised rights as a lump sum known as a stand-alone lump sum. These individuals will continue to be able to take a stand-alone lump sum under the new public scheme after the transfer.

Regulation 13 makes provision in relation to life cover lump sums which may be paid where a member dies after the age of 75. Where a member had a right to a life cover lump sum under the RMPP, this right will continue to apply to the new public scheme after the transfer.

Regulation 14 applies to dependants' scheme pensions payable in respect of members of the RMPP where the rule set out in paragraphs 16A, B and C of Schedule 28 to FA 2004 limiting the scheme pension had been disapplied and ensures that the limit will continue to be disapplied once the pension is payable by the new public scheme.

Regulation 15 applies to serious ill-health lump sums and pension protection lump sum death benefits. The regulation prevents an individual who had an actual right to payment of a relevant pension at A day and was, therefore, prevented from being paid a serious ill-health lump sum under the RMPP, being paid a serious ill-health lump sum after the transfer. It also allows for a serious ill-health lump sum or pension protection lump sum death benefit that would have been payable as an authorised payment under the RMPP, to be paid as an authorised payment after the transfer. This prevents an unauthorised payment charge arising.

Regulations 16 to 18 provide that pension death benefits paid or capable of being paid without a tax charge arising to dependent children aged 23 or over under the RMPP can be paid by the new public scheme. These provisions apply to specified payments made to children aged 23 or over who are still in full time education or vocational training or who, on reaching that age or ceasing full time education or training, are suffering from physical or mental deterioration which is sufficiently serious to prevent normal employment and to financially dependent children aged 23 or over (for example certain carers). Regulation 18 allows for payments under the new public scheme to meet the conditions where transitional protection was capable of applying under the RMPP because entitlement to a pension death benefit for such a child was subject to the discretion of the trustees of the scheme and that discretion was capable of being exercised so that entitlement could have arisen before 1st July 2008.

Regulation 19 makes provision for lump sum death benefits payable in respect of the death of a member of the RMPP who died before A day. Where, after the transfer, a lump sum is paid in respect of the death of such a member which would, had the transfer not taken place qualified for transitional protection under the RMPP, this protection will continue in the new public scheme.

Chapter 3 of Part 3 contains provisions relating to the liability of the scheme administrator to pay an individual's annual allowance charge, fixed protection, calculation of pension input amounts, double taxation relief arrangements and adverse changes to tax treatment resulting from the transfer.

Regulation 20 applies where, before the transfer, an individual was entitled to request that the scheme administrator of the RMPP pay the annual allowance charge for the tax year in which the transfer takes place on the individual's behalf in return for an actuarial reduction to benefits under the scheme (this is known as "scheme pays"). The regulation provides that the transfer is treated as a transfer of all the sums or assets representing rights under the RMPP so that the individual may give a scheme pays notice (specifying that the individual and the scheme administrator will be jointly liable for the annual allowance charge) to the new public scheme instead of to the RMPP.

Regulation 21 provides that individuals who are active members of the RMPP immediately before the transfer will not lose fixed protection (which operates to reduce or mitigate the lifetime allowance charge) under Schedule 18 to the Finance Act 2011 (c.11) as a result of the transfer. It provides that where rights under the new public scheme increase in accordance with the retail prices index this will not result in the loss of fixed protection.

Regulation 22 modifies the rules that apply when calculating the pension input amount in circumstances where, as a result of the transfer, there has been an adjustment to an individual's benefits under the new public scheme and a corresponding adjustment to that individual's benefits under the RMPP. In certain cases, for example some early retirements, the new public scheme may make an actuarial reduction to an individual's benefits and the RMPP may increase the member's benefits by a corresponding amount. Regulation 22 provides that the reduction and increase are disregarded for the purposes of calculating the pension input amount so that adjustments relating to the transfer do not artificially give rise to an annual allowance charge.

Regulation 23 ensures that where the taxation of a pension under a double taxation relief arrangement changes as a result of the transfer, the tax charged in the United Kingdom will not exceed the tax which would have been paid if the transfer had not taken place and the pension had continued to be paid by the RMPP. It applies where a member of the RMPP had pensionable service in respect of the period prior to 1st October 1969 (when Royal Mail was a government department); the pension in respect of that member is being paid to a person resident outside the UK in a country which has entered into a double taxation convention and, as a result of the transfer, the UK has acquired taxing rights in respect of that pension under the double taxation convention.

Regulation 24 applies where the taxation of a member's accrued rights that have been transferred to the new public scheme or the member's rights under the RMPP changes as a result of the transfer in circumstances which are not otherwise covered by these Regulations. The tax charged under the specified provisions in respect of those rights after the transfer will not exceed the tax which would have been paid had those rights continued to be held under the RMPP.

Part 4 deals with stamp duty, stamp duty land tax and stamp duty reserve tax.

Regulation 25 provides that an instrument making or executing the transfer of assets from the RMPP to the government ("the assets transfer") is not chargeable to stamp duty.

Regulation 26 provides that land transactions entered into on, or in consequence of, or in connection with the assets transfer are exempt from the charge to stamp duty land tax. Regulation 27 provides that land transactions entered into on, or in consequence of, or in connection with, the assets transfer are not notifiable transactions within section 77 of the Finance Act 2003.

Regulation 28 provides that any agreement to transfer chargeable securities made in relation to, in connection with, or by or under, the assets transfer is not chargeable to stamp duty reserve tax.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.