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## SCHEDULES

### SCHEDULE 36

#### PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

##### PART 4

##### OTHER PROVISIONS

###### *Pre-commencement ill-health insurance contracts*

- 37 (1) Payments under protected ill-health insurance contracts are not unauthorised member payments.
- (2) Ill-health insurance contracts are contracts providing insurance against a risk relating to non-payment by a member of a pension scheme of contributions under the pension scheme.
- (3) An ill-health insurance contract is protected if it was made before 6th April 2006 under—
- (a) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA before 6th April 2001, or
  - (b) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA.

###### *Pre-commencement loans to sponsoring employers*

- 38 (1) This paragraph applies to a loan if—
- (a) the loan was made before 6th April 2006 by an occupational pension scheme which becomes a registered pension scheme on that date,
  - (b) had this Part had been in force and had the pension scheme been a registered pension scheme at the time when the loan was made, it would have been a loan to a sponsoring employer, and
  - (c) the date by which the total amount owing (including interest) must be paid is on or after 6th April 2006.
- (2) If on or after 6th April 2006 there is no alteration in the repayment terms, section 179 (authorised employer loan) does not apply in relation to the loan.
- (3) If on or after 6th April 2006 there is an alteration in the repayment terms, section 179 applies as if, on the date of the alteration, the pension scheme made a loan to the sponsoring employer of an amount equal to the amount owing (including interest) on that date.
- (4) The postponement of the date by which the total amount owing (including interest) must be paid is not an alteration in the repayment terms if—

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- (a) an amount is outstanding on the date by which the total amount owing should have been paid,
- (b) the postponement is for a period not exceeding five years, and
- (c) there has been no previous postponement on or after 6th April 2006.

*Retirement annuity contracts: carry-back of pre-commencement contributions*

- 39 The repeal by this Act of section 619(4) of ICTA (election on or before 31st January following tax year in which retirement annuity contract premium is paid to treat premium as paid in earlier tax year) does not prevent the making of an election under that provision (in relation to a premium paid in the tax year 2005-06) at any time on or before 31st January 2007.

*Members' contributions to pre-commencement retirement annuity contracts*

- 40 (1) Relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not required to be given in accordance with section 192 (relief at source).
- (2) If relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not given in accordance with section 192, relief in respect of the contributions is to be given in accordance with section 194 (relief on making of claim).
- (3) “Pre-commencement retirement annuity arrangements” means—
- (a) an annuity contract or trust scheme approved under section 620 or 621 of ICTA, or
  - (b) a substituted contract within the meaning of section 622(3) of ICTA.

*Employers' contributions relieved before 6th April 2006*

- 41 To the extent that any contribution paid by an employer under a registered pension scheme was—
- (a) allowed to be deducted for the purposes of Case I or II of Schedule D,
  - (b) deductible under section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),
- for a period beginning before 6th April 2006, it is not allowed to be so deducted, so deductible, or available to be so brought into account for that or any other period in accordance with section 196 (relief for employers in respect of contributions paid).

*Spreading of employer's contributions*

- 42 The power of the Board of Inland Revenue under section 592(6) of ICTA to direct that a sum paid under an exempt approved scheme otherwise than by way of ordinary annual contribution be treated as an expense to be spread over such period of years as the Board think fit continues to apply in relation to sums paid before 6th April 2006.

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*Taxation of annuities paid under pre-commencement retirement annuity contracts*

- 43 (1) Chapter 9 of Part 9 of ITEPA 2003 (taxation of annuities paid under pre-commencement retirement annuity contracts) continues to have effect until such date as the Treasury may by order appoint.
- (2) Chapter 5A of that Part (as inserted by Schedule 31) does not have effect in relation to any annuity to which Chapter 9 applies by virtue of sub-paragraph (1).
- (3) Section 683 of ITEPA 2003 (PAYE income) has effect accordingly.
- (4) An order under sub-paragraph (1) may include any appropriate transitional provision.

*Taxation of pensions accruing (but not taxed) pre-commencement and paid or received post-commencement*

- 44 (1) If an amount which accrued but was not paid before 6th April 2006 would have constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities) had it been paid before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is paid.
- (2) If an amount which accrued but was not received before 6th April 2006 would have constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities) had it been received before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is received.

*Pensions taxed pre-commencement but accruing post-commencement*

- 45 (1) If an amount which was paid but had not accrued before 6th April 2006 constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.
- (2) If an amount which was received but had not accrued before 6th April 2006 constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.

*Application of PAYE to certain annuities in payment at commencement*

- 46 (1) Taxable pension income for the tax year 2006-07 or any subsequent tax year determined in accordance with section 612 of ITEPA 2003 for an annuity to which this paragraph applies is to be treated as being PAYE pension income for the tax year by virtue of section 683(3) of that Act (PAYE income).
- (2) This paragraph applies to an annuity in payment on 5th April 2006 which—
- (a) would be within paragraph 1 (1) but for paragraph 2, or
  - (b) would be within paragraph 1(1)(d) if the annuity did not provide for the immediate payment of benefits.

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*Authorised surplus payments charge: pre-19th March 1986 winding-up*

- 47 Section 207 (authorised surplus payments charge) does not apply to any payment made in pursuance of the winding-up of a pension scheme if the winding-up commenced before 19th March 1986.

*Annual allowance charge: post-commencement contributions to discharge pre-commencement unfunded promises*

- 48 (1) This paragraph applies where, during the period beginning with 6th April 2006 and ending with 7th July 2006, an employer of an individual makes a relevant consolidation contribution in respect of the individual under an arrangement under a registered pension scheme relating to the individual.
- (2) The pension input amount in respect of the arrangement during the pension input period of the arrangement ending in the tax year 2006-07 is to be reduced by the amount of the contribution.
- (3) “Relevant consolidation contribution” means a contribution made by way of discharge of any liability incurred by the employer before 6th April 2006 to pay any pension or lump sum to or in respect of the individual.

*Annual allowance charge: enhanced protection*

- 49 (1) This paragraph applies if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in the case of an individual.
- (2) Sections 227 to 238 (annual allowance charge) do not apply in relation to the individual for any tax year if that paragraph applies in relation to the individual throughout the tax year.

*Saving of sections 605 and 651A of ICTA*

- 50 The repeal by this Act of sections 605 and 651A of ICTA (information powers) does not affect the operation of those sections, or regulations under them, in relation to times before 6th April 2006.

*Individuals with pre-commencement entitlement to corresponding relief*

- 51 (1) This paragraph applies where the Board of Inland Revenue allow contributions made by an individual under a pension scheme as deductions under Chapter 2 of Part 5 of ITEPA 2003 for the tax year 2005-06 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers).
- (2) Where the individual makes contributions under the pension scheme for any subsequent tax year, the Board of Inland Revenue may allow the contributions as deductions under Chapter 2 of Part 5 of that Act if, as well as the Board of Inland Revenue being satisfied that the conditions in section 355 of that Act are met, the scheme manager complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.
- (3) Schedule 34 (non-UK schemes: application of certain charges) applies in relation to the pension scheme and the individual as if allowing the contributions as deductions

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under Chapter 2 of Part 5 of ITEPA 2003 by virtue of sub-paragraph (2) were the giving of relief by virtue of Schedule 33 (overseas pension schemes: migrant member relief).

- (4) “Prescribed benefit crystallisation information requirements” means requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information relating to events that are benefit crystallisation events in relation to the individual.
- (5) The references in sub-paragraphs (2) and (3) to the pension scheme include a pension scheme to which there has been a block transfer from the pension scheme on or after 6th April 2006.
- (6) “Block transfer” has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.

*Continuing operation of section 392 of ITEPA 2003*

- 52 Section 392 of ITEPA 2003 (non-approved schemes: relief where no benefits are paid or payable) continues to have effect in relation to a sum charged to tax by virtue of section 386 of ITEPA 2003 or section 595 of ICTA (charges on payments to schemes) before 6th April 2006.

*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 to tax under Case VI of Schedule D by virtue 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.
- 54 (1) This paragraph has effect if—

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- (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 of the employee or any other individual designated by the employee, or
  - (b) the scheme was entered into before 1st September 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
  - “relative”, in relation to an employee, means—
    - (a) the wife or husband of the employee,
    - (b) the widow or widower of the employee,
    - (c) a child of the employee, or
    - (d) a dependant of the employee.
- 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.

*Inheritance tax*

- 56 (1) This paragraph applies in relation to a fund or scheme—

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- (a) which is not a registered pension scheme or a superannuation fund to which section 615(3) of ICTA applies, but
  - (b) to which section 151 of the Inheritance Tax Act 1984 (c. 51) (treatment of pension rights) applied immediately before 6th April 2006.
- (2) If no contributions are made under the fund or scheme on or after that date—
- (a) section 151 of the Inheritance Tax Act 1984 continues to apply to the fund or scheme on and after that date for all purposes of that Act, and
  - (b) property which is part of or held for the purposes of the fund or scheme does not constitute relevant property for the purposes of Chapter 3 of Part 3 of that Act (settlements without interest in possession).
- (3) In any other case, paragraphs 57 and 58 apply to the fund or scheme on and after that date.
- 57 (1) The proportion of the assets of the fund or scheme which at any time is the protected proportion of those assets does not at that time constitute relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (settlements without interest in possession).
- (2) “The protected proportion” of the assets of the fund or scheme at a time is—

$$\frac{\text{ACV}}{V} \times 100$$

where—

V is the market value of the assets of the fund or scheme at that time, and

ACV is the adjusted commencement value, that is an amount equal to the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (3).

- (3) The adjustments are—
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
  - (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.
- (4) “Relevant payments” are payments other than—
- (a) payments of costs or expenses, or
  - (b) payments which are (or will be) income of any person for any of the purposes of income tax.
- 58 (1) Section 151 of the Inheritance Tax Act 1984 (treatment of pension rights) continues to apply to so much of the assets of the fund or scheme at any time as does not exceed the amount that is the protected amount at that time.
- (2) But sub-paragraph (1) does not affect the operation of subsection (1)(d) of section 58 of that Act (because paragraph 57 makes provision about the extent to which the assets of the fund or scheme constitute relevant property within the meaning given by that section).

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- (3) If inheritance tax has not previously been chargeable (otherwise than only because of this paragraph) by reference to the value of the assets of the fund or scheme on or after 6th April 2006, the protected amount is an amount equal to the amount of the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (4).
- (4) The adjustments are—
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
  - (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.
- (5) If inheritance tax would (apart from this paragraph) have previously been chargeable by reference to the value of the assets of the fund or scheme on one or more occasions on or after 6th April 2006, the protected amount is what it was immediately before the occasion, or (where there has been more than one) the last occasion, on which inheritance tax would have been so chargeable (“the relevant tax occasion”), but—
- (a) reduced by the value of the property on which inheritance tax would have been chargeable on the relevant tax occasion, and
  - (b) subject to the adjustments provided by sub-paragraph (6).
- (6) The adjustments are —
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for the month in which the relevant tax occasion fell, and
  - (b) a reduction by the amount of any payments made under the fund or scheme since the relevant tax occasion.
- (7) “Relevant payments” are payments other than—
- (a) payments of costs or expenses, or
  - (b) payments which are (or will be) income of any person for any of the purposes of income tax.



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