SCHEDULES

SCHEDULE 21

TAXABLE PROPERTY HELD BY INVESTMENT-REGULATED PENSION SCHEMES

13 After Schedule 29 insert—

"SCHEDULE 29A

Section 174A

TAXABLE PROPERTY HELD BY INVESTMENT-REGULATED PENSION SCHEMES

PART 1

INVESTMENT-REGULATED PENSION SCHEMES

Schemes other than occupational pension schemes

1 (1) For the purposes of the taxable property provisions a registered pension scheme which is not an occupational pension scheme is an investment-regulated pension scheme if one or more of its members meets the condition in sub-paragraph (2).

(2) The condition is that either—

(a) the member, or

(b) a person related to the member,

is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of an arrangement under the pension scheme relating to the member.

(3) In this Part "the taxable property provisions" means—

(a) section 173(7A) (exception from benefit charge where taxable property held by investment-regulated pension scheme),

(b) section 174A and this Schedule,

(c) sections 185A to 185I (income and gains from taxable property),

(d) section 273ZA (member liability for scheme sanction charge where pension scheme non-UK resident), and

(e) paragraphs 37A to 37I of Schedule 36 (transitional provisions).

Occupational pension schemes

2 (1) For the purposes of the taxable property provisions a registered pension scheme which is an occupational pension scheme is an investment-regulated pension scheme if—

(a) there are 50 or fewer members of the pension scheme, and one or more of those members meets the condition in sub-paragraph (2), or

(b) at least 10% of the members of the pension scheme meet that condition.

(2) The condition is that either—

(a) the member, or

(b) a person related to the member,

is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of the pension scheme.

Separate self-controlled section

3 (1) This paragraph applies in the case of an arrangement under a registered pension scheme if—

(a) the pension scheme is an occupational pension scheme,

(b) the pension scheme is not an investment-regulated pension scheme by virtue of paragraph 2, and

(c) one or more members of the pension scheme meet the condition in sub-paragraph (2).

(2) The condition is that either—

(a) the member, or

(b) a person related to the member,

is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any sums or assets which are linked to an arrangement relating to the member.

(3) For the purposes of sub-paragraph (2) sums or assets are linked to an arrangement relating to a member if—

(a) they are held for the purposes of an arrangement under the pension scheme relating to the member, but

(b) they are not held for the purposes of the arrangement merely by virtue of a just and reasonable apportionment of the sums and assets held for the purposes of the pension scheme.

(4) Where this paragraph applies the arrangement is to be treated for the purposes of this Part as if it were an investment-regulated pension scheme.

(5) The Treasury may by regulations—

(a) amend sub-paragraph (3), and

(b) provide for any of the provisions of this Part to apply to the arrangement with modifications.

Related persons

4 (1) For the purposes of this Part of this Schedule a person is related to a member of a pension scheme if—

(a) the person and the member are connected persons, or

(b) the person acts on behalf of the member or a person connected with the member.

(2) Section 839 of ICTA (connected persons) applies for the purposes of sub-paragraph (1).

Arrangements

5 Where sums or assets held for the purposes of an investment-regulated pension scheme—

(a) are held otherwise than for the purposes of the administration or management of the pension scheme, and

(b) would not, apart from this paragraph, be treated as held for the purposes of any arrangement relating to a member under the pension scheme,

for the purposes of the taxable property provisions the sums or assets are to be treated as held for the purposes of the arrangements under the pension scheme by reference to the respective rights under the scheme of the members to which the arrangements relate.

PART 2

TAXABLE PROPERTY

Taxable property

6 For the purposes of the taxable property provisions property is taxable property if—

(a) it is residential property (see paragraphs 7 to 10), or

(b) it is tangible moveable property (but subject to paragraph 11).

Residential property

7 (1) Subject as follows, for the purposes of the taxable property provisions "residential property" means—

(a) a building that is used or suitable for use as a dwelling,

(b) any land consisting of, or forming part of, the garden or grounds of such a building (including a building on any such land) which is used or intended for use for a purpose connected with the enjoyment of the building,

(c) hotel or similar accommodation (but see paragraph 14(2)), or

(d) a beach hut,

in the United Kingdom or elsewhere.

(2) For the purposes of the taxable property provisions "building" includes—

(a) a structure, and

(b) part of a building or structure.

8 (1) For the purposes of the taxable property provisions a building used for any of the following purposes is not residential property—

(a) a home or other institution providing residential accommodation for children;
(b) a hall of residence for students;
(c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
(d) a hospital or hospice;
(e) a prison or similar establishment.

(2) Where—
(a) a building is used for a purpose specified in sub-paragraph (1),
(b) a building which is not in use was, immediately before it ceased to be in use, used for such a purpose, or
(c) a building which has never been in use is more suitable for use for such a purpose than for use for any other purpose,

no account is to be taken for the purposes of the taxable property provisions of its suitability for use as a dwelling.

9 (1) The Treasury may by order amend this Part of this Schedule to specify descriptions of buildings which are, or are not, to be treated as residential property.

(2) An order under this paragraph which amends this Part of this Schedule in a way that results in buildings becoming treated as not being residential property may provide that the amendment has effect from a date earlier than that on which the order was made.

10 (1) Residential property is not taxable property in relation to a pension scheme if Condition A or B is met.

(2) Condition A is met if the property is (or, if unoccupied, is to be) occupied by an employee who—
(a) is neither a member of the pension scheme nor connected with such a member,
(b) is not connected with the employer, and
(c) is required as a condition of employment to occupy the property.

(3) Condition B is met if the property is (or, if unoccupied, is to be)—
(a) occupied by a person who is neither a member of the pension scheme nor connected with such a member, and
(b) used in connection with business premises held as an investment of the pension scheme.

(4) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

Tangible moveable property

11 (1) The Treasury may by order provide that, for the purposes of the taxable property provisions, any specified description of tangible moveable property is treated as not being taxable property.

(2) An order under this paragraph may include provision having effect in relation to times before it is made.

PART 3

ACQUISITION AND HOLDING OF TAXABLE PROPERTY

Acquisition

12 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme acquires an interest in property if it comes to hold the interest.

(2) Sub-paragraph (1) applies however the pension scheme comes to hold the interest, whether that is—

- (a) by act of the parties to a transaction,
- (b) by order of a court or other authority,
- (c) by or under any statutory provision, or
- (d) by operation of law.

(3) For instances of deemed acquisition, see paragraphs 27 to 29.

Holding

13 (1) For the purposes of the taxable property provisions an investment-regulated pension scheme holds an interest in property if the scheme holds the interest directly or indirectly.

(2) In the taxable property provisions references to a person holding an interest in property include, in the case of—

- (a) an investment-regulated pension scheme,
- (b) an arrangement under a pension scheme, or
- (c) a trust which is not a pension scheme,

references to the interest in the property being held for the purposes of the pension scheme, the arrangement or the trust.

Direct holding

14 (1) For the purposes of the taxable property provisions a person holds an interest in property directly if the person (whether jointly, in common or alone)—

- (a) holds the property or any estate, interest, right or power in or over the property,
- (b) has the right to use, or participate in arrangements relating to the use of, that property or a description of property to which that property belongs, or
- (c) has the benefit of any obligation, restriction or condition affecting the value of any estate, interest, right or power in or over the property,

under the law of any country or territory.

(2) But a person does not hold an interest in residential property consisting of hotel accommodation directly unless—

(a) the person holds part only of the hotel accommodation or any estate, interest, right or power in or over such a part and, as a result, any person has a right to use or occupy that or any other part of the hotel accommodation, or

(b) the person has a right to use, or participate in arrangements relating to the use of, part only of the hotel accommodation or a description of property to which that part belongs.

(3) For the purposes of the taxable property provisions a person holds an interest in property directly if the person is entitled (whether jointly, in common or alone) to receive payments determined by reference to the value of or the income from the property.

(4) Sub-paragraph (3) is subject to paragraph 15.

Exception to direct holding

15 (1) A person does not hold an interest in taxable property directly by virtue of paragraph 14(3) where Conditions A to C are met.

(2) Condition A is that—

(a) the person is entitled to receive the payments by virtue of a policy of life insurance, a contract for a life annuity or a capital redemption policy, and

(b) the policy or contract is issued by an insurance company.

(3) Condition B is that the property—

(a) does not constitute a linked asset, or

(b) has been appropriated by the insurance company to an internal linked fund.

(4) Condition C is that—

(a) where the person is an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle the pension scheme, either alone or together with one or more associated persons, to receive payments representing 10% or more of the market value of or the income from the property,

(b) where the person is a pension scheme other than an occupational pension scheme, the policy or contract, either by itself or taken together with one or more associated policies, does not entitle an arrangement under the pension scheme, either alone or together with one or more associated persons, to receive such payments, or

(c) otherwise, the policy or contract does not entitle the person to receive such payments.

(5) But for the purposes of applying paragraph 14(3) for determining whether a pension scheme holds an interest in taxable property directly or indirectly, this paragraph does not apply if the purpose or one of the purposes for which the person holds rights under the policy or contract is to enable a member

of the pension scheme or a person connected with such a member to occupy or use the property.

(6) For the purposes of sub-paragraph (4) "associated policy" means a policy or contract which entitles an associated person to receive payments determined by reference to the value of or the income from the property.

(7) For the definition of "associated person" see paragraph 30.

(8) For the purposes of this paragraph—

"capital redemption policy" means a contract made in the course of a capital redemption business, as defined in section 458(3) of ICTA;

"internal linked fund" has the meaning given by—

(a) the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under FISMA 2000, or

(b) rules made by the Authority under that Act and having effect for the time being in place of the Sourcebook; and

"linked asset" means an asset of the insurance company which is identified in its records as an asset by reference to the value of which benefits provided for under a policy or contract are to be determined.

(9) For the purposes of this paragraph an annuity is a life annuity if it is—

(a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and

(b) payable for a term ending at a time ascertainable only by reference to the end of a human life,

and for this purpose it does not matter that the annuity may in some circumstances end before or after the life.

Indirect holding

16 (1) For the purposes of the taxable property provisions a person holds an interest in property indirectly if the person does not hold the interest directly but (whether jointly, in common or alone)—

(a) holds an interest in a person who holds the interest in the property directly, or

(b) holds an interest in a person who holds the interest in the property indirectly by virtue of paragraph (a) or this paragraph.

(2) For the purposes of the taxable property provisions a person holds an interest in another person if—

(a) the person holds an interest, right or power in or over that other person, or

(b) the person lends money to that other person to fund the acquisition by that other person of an interest in taxable property.

(3) But sub-paragraph (2)(b) does not apply where—

(a) the loan is an authorised employer loan made by a pension scheme to or in respect of a sponsoring employer (see section 179),

(b) the interest in the property is acquired so that the property may be used for the purposes of a trade, profession or vocation carried on by the sponsoring employer or for the purposes of the sponsoring employer's administration or management, and

(c) after the acquisition, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.

(4) In the taxable property provisions references to a person holding an interest in another person include, in the case of—

(a) an investment-regulated pension scheme,

(b) an arrangement under a pension scheme, or

(c) a trust which is not a pension scheme,

references to the interest in the other person being held for the purposes of the pension scheme, the arrangement or the trust.

(5) Paragraphs 17 to 19 explain what it means for a person to hold an interest in another person by virtue of sub-paragraph (2)(a) in a case where that other person is a company, collective investment scheme or trust.

(6) The Treasury may by regulations—

(a) amend paragraphs 17 to 19, or

(b) amend this Part of this Schedule for the purposes of explaining what it means for a person to hold an interest, right or power in or over another person in other cases.

(7) This paragraph is subject to paragraphs 20 to 26.

17 (1) For the purposes of paragraph 16 a person holds an interest in a company if—

(a) the person has, or is entitled to acquire, share capital or voting rights in the company,

(b) the person has, or is entitled to acquire, a right to receive or participate in distributions of the company,

(c) the person is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit, or

(d) the person, either alone or together with other persons, has control of the company.

(2) In sub-paragraph (1) references to a person being entitled to do anything apply where a person—

(a) is currently entitled to do it at a future date, or

(b) will at a future date be entitled to do it.

(3) In sub-paragraph (1) "control" has the meaning given by section 416 of ICTA.

18 (1) For the purposes of paragraph 16 a person holds an interest in a collective investment scheme if the person is a participant in the scheme.

(2) In this Schedule—

(a) "collective investment scheme" has the meaning given by section 235 of FISMA 2000, and

(b) "participant", in relation to such a scheme, has the meaning given by subsection (2) of that section.

19 (1) For the purposes of paragraph 16 a pension scheme holds an interest in a trust if Condition A or B is met.

(2) Condition A is that—

(a) the pension scheme has a relevant interest in the trust,

(b) the pension scheme, a member of the pension scheme or a person connected with such a member has made a payment to the trust on or after the acquisition of the interest, and

(c) the payment is not one to which sub-paragraph (7) applies.

(3) Condition B is that—

(a) a member of the pension scheme or a person connected with such a member has a relevant interest in the trust,

(b) the pension scheme has made a payment to the trust on or after the acquisition of the interest, and

(c) the payment is not one to which sub-paragraph (7) applies.

(4) For the purposes of applying paragraph 16 for determining whether a pension scheme holds an interest in property indirectly, a person other than the pension scheme holds an interest in a trust if —

(a) the person has a relevant interest in the trust,

(b) the person has made a payment to the trust on or after the acquisition of the interest, and

(c) the payment is not one to which sub-paragraph (7) applies.

(5) For the purposes of this paragraph a person has a relevant interest in a trust if—

(a) any property which may at any time be comprised in the trust or any derived property is, or will or may become, payable to or applicable for the benefit of the person in any circumstances, or

(b) the person enjoys a benefit deriving directly or indirectly from any property which is comprised in the trust or any derived property.

(6) In sub-paragraph (5) "derived property", in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or income from, that property.

(7) This sub-paragraph applies to a payment if—

(a) it is made as part of an arm's length transaction by which property or a benefit is to be provided in return for the payment, and

(b) it is made otherwise than for the purposes of enabling a member of the pension scheme or a person connected with such a member to occupy or use any property.

(8) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

(9) This paragraph does not apply in relation to a unit trust scheme within the meaning of section 237(1) of FISMA 2000 (but see paragraph 18).

Exceptions to indirect holding

20 (1) A pension scheme does not hold an interest in property indirectly through a vehicle through which the pension scheme would otherwise hold the interest in the property indirectly where one of the following paragraphs applies in relation to the vehicle, and, in particular—

(a) paragraph 21 makes provision in relation to holding through vehicles which carry on trading activities,

(b) paragraph 22 makes provision in relation to holding through Real Estate Investment Trusts,

(c) paragraphs 23 to 25 make provision in relation to holding through other kinds of vehicles, and

(d) paragraph 26 makes provision in relation to holding through a vehicle which holds the interest in the property directly by virtue of paragraph 14(3) (receipt of payments determined by reference to value of or income from property).

(2) In the taxable property provisions "vehicle", in relation to a pension scheme which holds an interest in taxable property indirectly, means a person through whom the pension scheme holds the interest in the property.

(3) For the purposes of the taxable property provisions a person holds an interest in a vehicle directly if the person holds an interest of the kind mentioned in paragraph 16(2) in the vehicle.

(4) For the purposes of the taxable property provisions a person holds an interest in a vehicle indirectly if the person does not hold the interest directly but—

(a) holds an interest in a person who holds an interest in the vehicle directly, or

(b) holds an interest in a person who holds the interest in the vehicle indirectly by virtue of paragraph (a) or this paragraph.

21 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—

(a) the vehicle's main activity is the carrying on of a trade, profession or vocation,

(b) the pension scheme does not, whether alone or together with one or more associated persons, have control of the vehicle, and

(c) neither a member of the pension scheme nor a person connected with such a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.

(2) But this paragraph does not apply if the purpose or one of the purposes for which the pension scheme holds the interest in the vehicle is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.

(3) In sub-paragraph (1)—

(a) "control" has the same meaning as in section 416 of ICTA (reading references in that section to a company as references to the vehicle and references to associates as including associated persons), and

(b) "controlling director", in relation to a vehicle, means a director to whom paragraph (b) of section 417(5) of that Act applies (reading the reference to associates in that paragraph as including associated persons).

(4) For the purposes of this paragraph a pension scheme or an arrangement under a pension scheme has control of a vehicle if the pension scheme or the arrangement holds such interest as would, if the pension scheme or the arrangement were a person, mean that the person had control of the vehicle.

(5) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

(6) For the definition of "associated person" see paragraph 30.

22 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where the vehicle is—

(a) a company to which Part 4 of the Finance Act 2006 (Real Estate Investment Trusts) applies, or

(b) a member of a group to which that Part applies.

(2) But this paragraph does not apply if the purpose or one of the purposes for which the pension scheme holds the interest in the vehicle is to enable a member of the pension scheme or a person connected with such a member to occupy or use the property.

(3) Section 839 of ICTA (connected persons) applies for the purposes of sub-paragraph (2).

23 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—

(a) Conditions A to C are met in relation to the vehicle, and

(b) paragraph 24 applies to the pension scheme's interest in the vehicle.

(2) Condition A is that—

(a) the total value of the assets held directly by the vehicle is at least £1 million, or

(b) the vehicle holds directly at least three assets which consist of an interest in residential property,

and no asset held directly by the vehicle which consists of an interest in taxable property has a value which exceeds 40% of the total value of the assets held directly by the vehicle.

(3) Condition B is that, if the vehicle is a company—

(a) it is resident in the United Kingdom and is not a close company, or

(b) it is not resident in the United Kingdom and would not be a close company if it were resident in the United Kingdom.

(4) Condition C is that the vehicle does not have as its main purpose, or one of its main purposes, the direct or indirect holding of an animal or animals used for sporting purposes.

(5) For the purposes of sub-paragraph (2)—

(a) assets must be valued in accordance with generally accepted accounting practice,

(b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and

(c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.

(6) The Treasury may by order—

(a) increase the amount for the time being specified in paragraph (a) of sub-paragraph (2), or

(b) increase the percentage for the time being specified in that sub-paragraph.

24 (1) For the purposes of paragraph 23 this paragraph applies to the interest held directly or indirectly by a pension scheme in a vehicle where—

(a) Condition A is met, and

(b) Condition B or C is met.

(2) Condition A is that the pension scheme does not hold the interest in the vehicle for the purpose of enabling a member of the pension scheme or a person connected with such a member to occupy or use the property.

(3) Condition B is that—

(a) the pension scheme is an occupational pension scheme, and

(b) the pension scheme does not, either alone or together with one or more associated persons, directly or indirectly hold an interest in the vehicle to which sub-paragraph (5) applies.

(4) Condition C is that—

(a) the pension scheme is not an occupational pension scheme, and

(b) no arrangement under the pension scheme, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which sub-paragraph (5) applies.

(5) This sub-paragraph applies to the following interests—

(a) 10% or more of the share capital or issued share capital of the vehicle;

(b) 10% or more of the voting rights in the vehicle;

(c) a right to receive 10% or more of the income of the vehicle;

(d) such interest in the vehicle as gives an entitlement to 10% or more of the amounts distributed on a distribution in relation to the vehicle;

(e) such interest in the vehicle as gives an entitlement to 10% or more of the assets of the vehicle on a winding-up or in any other circumstances;

(f) such interest in the vehicle as gives rise to income or gains from a specific property.

(6) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.

(7) For the definition of "associated person" see paragraph 30.

25 (1) This paragraph contains provisions supplementary to paragraph 24.

(2) Where—

(a) paragraph 23(1) does not apply in relation to a vehicle in which the pension scheme directly or indirectly holds an interest merely because Condition C in paragraph 24(4) is not met in relation to an arrangement under the pension scheme, and

(b) accordingly, the pension scheme holds an interest in property indirectly through the vehicle,

the interest in the property is to be treated as held through the vehicle for the purposes of another arrangement under the pension scheme only if that arrangement, either alone or together with one or more associated persons, directly or indirectly holds an interest in the vehicle to which paragraph 24(5) applies.

(3) Sub-paragraph (4) applies for determining the percentage of an interest held by a person in a vehicle at a time when the person holds that interest indirectly.

(4) That percentage is equal to the percentage of the total taxable amount that would be apportioned to the person under paragraphs 41 to 43—

(a) where the person is not the pension scheme, if the person were the pension scheme, and

(b) in any case, if the person were treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.

(5) For the definition of "associated person" see paragraph 30.

26 (1) This paragraph applies to a vehicle in which a pension scheme directly or indirectly holds an interest where—

(a) the vehicle holds the interest in the property directly by virtue of paragraph 14(3) merely because it does not meet Condition C in paragraph 15(4), and

(b) sub-paragraph (2) applies in relation to the pension scheme.

(2) This sub-paragraph applies in relation to the pension scheme if—

(a) where the pension scheme is an occupational pension scheme, the pension scheme is not, either alone or together with one or more associated persons, deemed to be entitled to 10% or more of the market value of or the income from the property, or

(b) where the pension scheme is not an occupational pension scheme, no arrangement under the pension scheme, either alone or together with one or more associated persons, is deemed to be so entitled.

(3) For the purposes of this paragraph the percentage of the market value of or the income from the property to which a person is deemed to be entitled at any time is—

$$IG \times TTA$$

where—

IG is the percentage of the market value of or the income from the property to which the vehicle that holds the interest in the property directly is entitled at that time, and

TTA is the percentage of the total taxable amount that would be apportioned to the person at that time on the assumptions mentioned in sub-paragraph (4).

(4) Those assumptions are—

(a) if the person is not the pension scheme, that the person is the pension scheme, and

(b) in any case, that the person is treated as making an unauthorised payment by virtue of the vehicle coming to hold the interest in the property directly at that time.

(5) For the definition of "associated person" see paragraph 30.

Deemed acquisition

27 Where—

(a) an investment-regulated pension scheme holds an interest in property which is not taxable property, and

(b) that property becomes taxable property otherwise than by reason of its conversion or adaptation as residential property,

the pension scheme is treated for the purposes of the taxable property provisions as acquiring an interest in the property.

28 (1) Subject to paragraph 29, this paragraph applies where—

(a) an investment-regulated pension scheme holds an interest in taxable property indirectly, and

(b) there is an increase in the extent of the interest held directly in a vehicle by the pension scheme or another vehicle.

(2) The pension scheme is to be treated for the purposes of this Schedule as—

(a) having disposed of the interest in the property immediately before the increase in the extent of the interest in the vehicle, and

(b) having re-acquired the interest immediately afterwards.

(3) The extent of the interest held directly in a vehicle by a person is to be determined for the purposes of this paragraph and paragraph 29 in accordance with paragraphs 42 and 43.

29 (1) Where there is an increase in the extent of the interest held directly in the vehicle otherwise than by reason of the acquisition of a further interest in the vehicle, paragraph 28 does not apply unless the condition in sub-paragraph (2) is met.

(2) The condition is that the event by which the extent of the interest held directly in the vehicle increases forms part of a scheme or arrangement the main purpose or one of the main purposes of which is—

(a) to enable the amount of the unauthorised payment treated as arising on the original acquisition of the interest in the property by the pension scheme to be lower than it otherwise would have been, or

(b) to prevent an unauthorised payment from being treated as made on that original acquisition.

(3) Unless that condition is met, the increase in the extent of the interest is also to be disregarded for the purposes of paragraphs 24 to 26.

Associated persons

30 (1) For the purposes of this Part of this Schedule "associated person", in relation to a pension scheme, means—

(a) any member of the pension scheme,

(b) any person connected with such a member,

(c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme,

(d) any arrangement (under that or another pension scheme) relating to a person connected with such a member, and

(e) any associated pension scheme.

(2) For the purposes of sub-paragraph (1) a pension scheme is associated with another pension scheme if members representing at least 10% by value of one pension scheme are members of the other pension scheme or connected with such members.

(3) The percentage by value represented by a member of a pension scheme is—

$$\frac{AM}{AA} \times 100$$

where—

AM is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of an arrangement under the pension scheme relating to the member, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme.

(4) For the purposes of this Part of this Schedule "associated person", in relation to an arrangement under a pension scheme, means—

(a) the member of the pension scheme to which that arrangement relates,

(b) any person connected with such a member,

(c) any arrangement (under that or another pension scheme) relating to a member of the pension scheme to which that arrangement relates, and

(d) any arrangement (under that or another pension scheme) relating to a person connected with such a member.

PART 4

AMOUNT AND TIMING OF UNAUTHORISED PAYMENT

Introduction

31 (1) This Part of this Schedule has effect for determining—

(a) the amount of an unauthorised payment treated as made to a member of an investment-regulated pension scheme by virtue of section 174A, and

(b) the time when such a payment is treated as made.

(2) The amount is determined by—

(a) finding the total taxable amount in relation to the unauthorised payment (see paragraphs 32 to 40),

(b) apportioning that amount to the pension scheme (see paragraphs 41 to 43),

(c) in a case to which paragraph 28 applies (acquisition etc of further interest in vehicle), making an adjustment under paragraph 44 to the amount mentioned in paragraph (b), and

(d) apportioning that amount to the member to whom the payment is treated as made in accordance with paragraph 45.

Acquisition: basic rules

32 (1) This paragraph applies to a case within subsection (1) of section 174A (acquisition of an interest in taxable property).

(2) The unauthorised payment is treated as made when the interest in the property is acquired by the pension scheme.

(3) If the interest in the property is acquired because the pension scheme or another person comes to hold the interest directly, the total taxable amount in relation to the unauthorised payment is—

(a) the amount of consideration, in money or money's worth, given directly or indirectly for the interest, plus

(b) the amount of any fees and other costs incurred in connection with the acquisition.

(4) Sub-paragraph (3) is subject to paragraphs 33 to 35.

(5) If the interest in the property is acquired because the pension scheme or another person comes to hold an interest in a person who already holds the interest in the property directly or indirectly, the total taxable amount in relation to the unauthorised payment is—

(a) the market value, at the date the interest in the person is acquired, of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.

(6) If the interest in the property is treated as acquired by the pension scheme by virtue of paragraph 27 or 28, the total taxable amount in relation to the unauthorised payment is—

(a) the market value, at the date the interest is treated as acquired, of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.

(7) This paragraph is subject to paragraph 36.

Acquisition: further provisions

33 (1) This paragraph applies where—
(a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the property within the meaning of section 48(1) of the Finance Act 2003,
(b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
(c) the whole or part of the consideration for the interest is consideration other than rent.

(2) The provisions of the Finance Act 2003 listed in sub-paragraph (3) apply for determining the amount of the consideration (or the part that is not rent) as they apply for determining the amount of chargeable consideration for a land transaction for the purposes of Part 4 of that Act.

(3) Those provisions are—
(a) paragraphs 2 to 8 and 9 to 16 of Schedule 4 (chargeable consideration);
(b) section 51 (contingent, uncertain or unascertained consideration);
(c) section 52 (annuities etc: chargeable consideration limited to twelve years' payments).

(4) The Treasury may by regulations provide—
(a) for those provisions to apply with modifications to cases to which this paragraph applies, and
(b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.

34 (1) This paragraph applies where—
(a) an investment-regulated pension scheme acquires an interest in taxable property because it acquires a chargeable interest in the property within the meaning of section 48(1) of the Finance Act 2003,
(b) the interest is acquired because the pension scheme or another person comes to hold the interest directly, and
(c) the whole or part of the consideration for the acquisition is rent.

(2) The amount of the consideration (or the part that is rent) is to be taken to be the relevant rental value of the property; and paragraphs 2(4)(a), 3 and 8 of Schedule 5 (rent) to the Finance Act 2003 apply for determining that value.

(3) The following provisions of the Finance Act 2003 apply for the purposes of sub-paragraph (2) for determining the amount of rent payable as they apply for determining the amount of rent payable under a lease to which that Act applies—

(a) paragraphs 2, 5 to 7A, 9 and 16 of Schedule 17A (further provisions relating to leases);
(b) (subject to the provisions mentioned in paragraph (a)) the provisions mentioned in paragraph 33(3).

(4) The Treasury may by regulations provide—
(a) for the provisions mentioned in sub-paragraph (2) or (3) to apply with modifications to cases to which this paragraph applies, and
(b) for any other provisions of Part 4 of the Finance Act 2003 to apply (with or without modifications) to such cases.

(5) For the purposes of this paragraph where on an assignment of a lease the assignee assumes the obligation to pay rent, the assumption counts as consideration for the assignment.

35 (1) This paragraph applies where—
(a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
(b) the interest is acquired for less than its market value, and
(c) immediately before the acquisition the interest was held by a registered pension scheme which was not an investment-regulated pension scheme.

(2) This paragraph also applies where—
(a) an investment-regulated pension scheme acquires an interest in taxable property because the pension scheme or another person comes to hold the interest directly,
(b) the interest is acquired for less than its market value, and
(c) tax relief is available under section 188 or 196 in respect of the transfer of the interest.

(3) The amount of the consideration for the interest is treated as—
(a) the market value, at the date the interest is acquired, of the interest in the property held by the person who holds it directly, or
(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.

36 (1) The Treasury may by regulations make provision with respect to—
(a) what is to count as consideration for the acquisition of an interest in taxable property, and
(b) the determination of the amount of such consideration.

(2) The Treasury may by regulations make provision with respect to the determination of the market value of an interest held in taxable property.

(3) Regulations under this paragraph may, in particular, make provision for cases where an investment-regulated pension scheme acquires—
(a) an interest in taxable property outside the United Kingdom,
(b) a licence to use or occupy taxable property, or
(c) an interest in taxable property which is tangible moveable property.

(4) Regulations under this paragraph may—

(a) amend this Part of this Schedule, and

(b) include provision having effect in relation to times before they are made.

Post-acquisition unauthorised payments

37 (1) The Treasury may by regulations make provision for an investment-regulated pension scheme which has acquired an interest in taxable property to be treated as making one or more further unauthorised payments where—

(a) the amount of consideration for the acquisition was determined on the basis of a reasonable estimate, and the actual amount of the consideration turns out to be higher than the estimated amount,

(b) in the case of an interest which is a lease, there is a variation in the rent payable under the lease, or

(c) in such a case, the amount of consideration for the acquisition was determined on an assumption about the length of the term of the lease, and the lease continues after the end of the term.

(2) Regulations under this paragraph may—

(a) amend section 174A or this Schedule (apart from this paragraph), and

(b) include provision having effect in relation to times before they are made.

(3) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under regulations under this paragraph.

Improvement of taxable property

38 (1) This paragraph applies to a case within subsection (2) of section 174A (improvement of taxable property).

(2) An unauthorised payment is treated as made when a payment is made in connection with the improvement works.

(3) The total taxable amount in relation to the unauthorised payment is the amount of the payment mentioned in sub-paragraph (2).

Conversion or adaptation as residential property

39 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).

(2) The unauthorised payment is treated as made on the occurrence of whichever of the following first occurs after the property has become residential property—

(a) the substantial completion of the works to convert or adapt the property;

(b) the interest in the property ceasing to be held by the pension scheme.

(3) But if the property becomes residential property after the end of the period of three years beginning with the date on which the first payment was made in connection with the works to convert or adapt the property, the unauthorised payment is treated as made when the property becomes residential property.

(4) If the works began before the end of the period of twelve months beginning with the acquisition of the interest in the property by the pension scheme, the total taxable amount in relation to the unauthorised payment is—

(a) the amount of consideration for the interest, determined in accordance with paragraphs 32 to 36, plus

(b) the development costs (see sub-paragraph (7)).

(5) If the works began after the end of that period, the total taxable amount in relation to the unauthorised payment is—

(a) the relevant market value (see sub-paragraph (6)), plus

(b) the development costs (see sub-paragraph (7)).

(6) In this paragraph "the relevant market value" means—

(a) the market value, at the date the works began, of the interest in the property held by the person who holds it directly, or

(b) if the interest in the property is a lease at a rent, the amount of consideration that would be treated as given by the person for the lease by virtue of paragraph 34 if it were assigned to the person at that time.

(7) In this paragraph "the development costs" means the total cost of the works to convert or adapt the property at the time when the unauthorised payment is treated as made.

(8) Where, at the time the unauthorised payment is treated as made—

(a) an amount will be payable for the works only if some uncertain future event occurs, or

(b) an amount will cease to be payable for the works if some uncertain future event occurs,

the development costs are to be determined on the assumption that the amount will be payable or, as the case may be, will not cease to be payable.

(9) Where, at that time, an amount payable for the works—

(a) depends on uncertain future events, or

(b) cannot otherwise be ascertained,

that amount is to be determined for the purposes of sub-paragraph (7) on the basis of a reasonable estimate.

40 (1) This paragraph applies to a case within subsection (3) of section 174A (conversion or adaptation as residential property).

(2) This paragraph applies if —

(a) sub-paragraph (8) of paragraph 39 has effect when an unauthorised payment is treated as made under that paragraph,

(b) an amount estimated under that sub-paragraph later becomes ascertained, and

(c) the ascertained amount is more than the estimated amount.

(3) An unauthorised payment is treated as made when the amount becomes ascertained.

(4) The total taxable amount in relation to the unauthorised payment is the difference between the ascertained amount and the estimated amount.

(5) References in the taxable property provisions to unauthorised payments treated as made under section 174A include references to payments treated as made under this paragraph.

Apportionment to pension scheme

41 (1) This paragraph applies for determining—

(a) whether the amount of an unauthorised payment treated as made by an investment-regulated pension scheme under section 174A consists of the whole of the total taxable amount in relation to the payment, and

(b) if not, how much of the total taxable amount comprises the amount of the unauthorised payment.

(2) The pension scheme is treated as making an unauthorised payment equal to the whole of the total taxable amount where Condition A, B or C is met.

(3) Condition A is that the pension scheme directly holds the interest in the taxable property which gives rise to the unauthorised payment.

(4) Condition B is that—

(a) the pension scheme holds the interest in the property indirectly through one vehicle, and

(b) that vehicle is wholly owned by the pension scheme.

(5) Condition C is that—

(a) the pension scheme holds the interest in the property indirectly through more than one vehicle (a "chain" of vehicles), and

(b) each vehicle in the chain is wholly owned by another vehicle in the chain or by the pension scheme.

(6) Where—

(a) the pension scheme holds the interest in the property indirectly through one vehicle, and

(b) the vehicle is not wholly owned by the pension scheme,

the amount of the unauthorised payment is a proportion of the total taxable amount determined by reference to the extent of the pension scheme's interest in the vehicle.

(7) Where—

(a) the pension scheme holds the interest in the property indirectly through one or more chains of vehicles, and

(b) one or more vehicles in such a chain is not wholly owned by another vehicle in the chain or by the pension scheme,

the amount of the unauthorised payment is the amount or the total of all the amounts found under sub-paragraph (8) for each chain through which the pension scheme owns the interest in the property.

(8) The amount is a proportion of the total taxable amount determined by reference to the extent of the interest held directly by the pension scheme or another vehicle in the chain in each vehicle in the chain—
(a) starting with the vehicle which holds the interest in the property directly, and
(b) ending with the vehicle in which the pension scheme directly holds an interest.

(9) For the purposes of this paragraph a vehicle is wholly owned by a person if no other person directly holds an interest in the vehicle.

(10) This paragraph is subject to paragraph 44.

42 (1) References in this Schedule to the extent of an interest held directly by a person in a vehicle are references to the proportion of the interests of everyone who directly holds an interest in the vehicle which on a just and reasonable apportionment is represented by that interest.

(2) Sub-paragraph (1) is subject to paragraph 43, which explains how to determine the extent of a person's interest in a vehicle for the purposes of the taxable property provisions where the vehicle is a company.

(3) The Treasury may by regulations—
(a) amend paragraph 43, or
(b) amend this Part of this Schedule for the purposes of explaining how to determine the extent of a person's interest in a vehicle in other cases.

(4) Regulations under sub-paragraph (3) may include provision having effect in relation to times before they are made.

43 (1) For the purposes of this Schedule, and except in a case to which sub-paragraph (3) applies, the extent of a person's interest in a company is determined by reference to whichever of the following gives the person the greatest interest in the company—
(a) the percentage of the share capital or issued share capital of the company owned by the person;
(b) the percentage of the voting rights in the company owned by the person;
(c) the percentage of all the income of the company to which the person has a right;
(d) the percentage of the amounts distributed on a distribution in relation to the company to which the person has a right;
(e) the percentage of the assets of the company to which the person has a right on a winding-up or in any other circumstances;
(f) where the person has a right to a percentage of a particular asset or description of assets of the company, or of the income or gains from such an asset or description (either generally or in particular circumstances), that percentage or the highest of all the percentages found under this paragraph.

(2) For the purposes of sub-paragraph (1) a person is treated as owning or having a right to anything which the person will only acquire—

(a) at some future date,
(b) if the person exercises a right to acquire it, or
(c) if some other uncertain future event occurs or does not occur.

(3) Where—
(a) a person has an interest in a company as a result of lending the company money to fund the acquisition of an interest in taxable property, and
(b) this sub-paragraph gives the person a greater interest in the company than any interest given by sub-paragraph (1),

for the purposes of this Schedule the extent of the person's interest in the company is determined by the proportion that the value of the loan bears to the total value of the assets held directly by the company.

(4) For the purposes of sub-paragraph (3)—
(a) assets must be valued in accordance with generally accepted accounting practice,
(b) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically), and
(c) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used.

Deemed acquisition: adjustment

44 (1) This paragraph applies where an investment-regulated pension scheme is treated as acquiring an interest in taxable property by virtue of paragraph 28 (increase in extent of interest in vehicle).

(2) The amount of the unauthorised payment treated as made by the pension scheme is—

$$UP - UPB$$

Where—

UP is the amount that would have been the amount of the unauthorised payment apart from this paragraph; and

UPB is the amount that would have been the amount of any unauthorised payment treated as made by the pension scheme if it had acquired the interest in the property immediately before the increase in the extent of the interest in the vehicle (assuming the total taxable amount in relation to the unauthorised payment to be that given under paragraph 32(5)).

Apportionment to member

45 (1) This paragraph has effect for determining—
(a) whether the whole of an unauthorised payment treated as made by a pension scheme is to be treated as made to a member of the scheme, and

(b) if not, how much of the unauthorised payment is to be treated as made to the member.

(2) If the interest in the taxable property which gives rise to the unauthorised payment is held by the pension scheme for the purposes of—

(a) the arrangement under the pension scheme relating to the member, and

(b) at least one other arrangement under the pension scheme,

the unauthorised payment is to be apportioned on a just and reasonable basis between all of the arrangements for the purposes of which the interest in the property is held.

(3) Otherwise, the whole of the unauthorised payment is to be treated as made to the member."

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2006, Paragraph 13.