

2006 No. 207

INCOME TAX

The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006

<i>Made</i>	- - - -	<i>1st February 2006</i>
<i>Laid before the House of Commons</i>		<i>2nd February 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred upon them by paragraphs 3(2), (5) and (6), 4(2) and (4), 7, 12 and 19 of Schedule 34 to the Finance Act 2004(a), make the following Regulations:

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 and shall come into force on 6th April 2006.

(2) In these Regulations—

“the Act” means the Finance Act 2004 any reference (without more) to a numbered section or Schedule is a reference, as the case requires, to the section of, or Schedule to, the Act which bears that number;

“benefit crystallisation event 8” means the event which constitutes benefit crystallisation event 8 in section 216;

“recognised overseas pension scheme” has the meaning given by section 150(8); and

“relevant non-UK scheme” has the same meaning given by paragraph 1(5) of Schedule 34.

(a) 2004 c. 12. The functions of the Commissioners of Inland Revenue, including those under which this instrument is made, were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11).

PART 2

Application and computation of UK tax charges

Computation of a member's UK tax-relieved fund under a relevant non-UK scheme

2. The amount of a member's UK tax-relieved fund under a relevant non-UK scheme is the aggregate of—

- (a) the amounts which, for each tax year before that in which the computation falls to be made, would have been arrived at in relation to arrangements under the relevant non-UK scheme relating to the individual as pension input amounts under sections 230 to 238 of the Act (annual allowance) as they apply by virtue of paragraph 8 of Schedule 34 to the Act, and
- (b) the amount which would be so arrived at if the period beginning with 6th April of the tax year in which the computation falls to be made; and ending immediately before the making of the computation, were a tax year,

assuming that section 229(3) did not apply.

Computation of a member's relevant transfer fund

3. The amount of a member's relevant transfer fund under a relevant non-UK scheme (that scheme being referred to here as "the RNUKS") is the sum of—

- (a) the amount crystallised by virtue of benefit crystallisation event 8 on the transfer from a UK registered scheme to the RNUKS; and
- (b) so much of the member's UK tax-relieved fund under any other relevant non-UK scheme as has been transferred to the RNUKS but has not been subject to the unauthorised payments charge; and
- (c) so much of the member's relevant transfer fund under any other relevant non-UK scheme as has been transferred to the RNUKS—
 - (i) without being subject to the unauthorised payments charge; and
 - (ii) at a time when the other relevant non-UK scheme is a recognised overseas pension scheme.

Attributing payments to particular funds under a relevant non-UK scheme

4.—(1) This regulation applies to determine to which part of a relevant non-UK scheme a payment to, or in respect of, a member is referable.

(2) It shall be assumed that—

- (a) payments made by the scheme to or in respect of the member are made out of the member's UK tax-relieved fund in priority to any other fund under that scheme; and
- (b) the amount of the member's UK tax-relieved fund is reduced by the amount paid out of the scheme.

(3) If the member's UK tax-relieved fund is nil, or has been reduced to nil, it shall be assumed that—

- (a) payments made by the scheme to or in respect of the member are made out of the relevant transfer fund in priority to any other fund under that scheme; and
- (b) the amount of the relevant transfer fund is reduced by the amount paid out of the scheme.

PART 3

Modifications to Part 4 of the Finance Act 2004 in respect of relevant non-UK schemes

5. Part 4 of the Finance Act 2004 shall be modified in respect of relevant non-UK schemes, within the meaning of paragraph 1(5) of Schedule 34, in accordance with the following provisions of these Regulations.

Modification of pension rules

6. In section 165, in pension rules 4 and 6 omit from “but a scheme pension” to the end.

Modification of pension death benefit rules

7. In section 167 in pension death benefit rules 3 and 5 omit from “but a dependants’ scheme pension” to the end.

Modification of section 227

8. In section 227(3)(b) for “scheme administrator” substitute “scheme manager”.

Modification of section 231

9. In section 231—

(a) in subsection (3)—

- (i) in paragraph (b) for “the retail prices index” substitute “a relevant index”;
- (ii) omit paragraph (c); and

(b) at the end add—

“(4) In this section “relevant index” means—

- (a) an index of the movement of retail prices maintained, or officially recognised, by the government of the country or territory in which the recognised overseas scheme is established; or
- (b) if there is no such index as is mentioned in paragraph (a) of this definition, the retail prices index.”.

Modification of section 235

10. In section 235—

(a) in subsection (3)—

- (i) in paragraph (b) for “the retail prices index” substitute “a relevant index”;
- (ii) omit paragraph (c); and

(b) at the end of the section add—

“(4) In this section “relevant index” means—

- (a) an index of the movement of retail prices maintained, or officially recognised, by the government of the country or territory in which the recognised overseas scheme is established; or
- (b) if there is no such index as is mentioned in paragraph (a) of this definition, the retail prices index.”.

Modification of section 275

11.—(1) In the heading of section 275 at the end add “and Non-EEA annuity provider”.

(2) At the end of the section add—

“(3) In this Part “non-EEA annuity provider” means a person resident in a country or territory outside the European Economic Area—

- (a) whose normal business includes the provision of annuities; and
- (b) who is regulated in the conduct of that business—
 - (i) by the government of that country or territory; or
 - (ii) a body established under the law of that country or territory for the purpose of regulating such business.”.

Modification of section 276

12. In section 276(2) for “scheme administrator” substitute “scheme manager”.

Modification of section 279

13.—(1) Section 279(1) shall be modified as follows.

(2) At the appropriate points in the alphabetical list insert—

““applicable pension scheme”, in relation to a pension sharing order in respect of a member’s spouse or ex-spouse, means a scheme which is—

- (a) a recognised overseas pension scheme within the meaning of this Part; or
- (b) a scheme which is recognised for tax purposes under the law of either the country or territory in which it is situate or that of the country or territory in which the pension sharing order is made;”;(a) and

““ex-spouse”, in relation to a member, means the other party to a marriage with the member that has been dissolved or annulled;”;

(3) For the definitions of “pension credit” and “pension debit” substitute—

““pension credit” and “pension debit” mean respectively the amount by which—

- (a) the entitlement of a member’s spouse or ex-spouse under an applicable pension scheme, is increased; and
- (b) the entitlement of a member under a qualifying recognised overseas pension scheme is decreased, pursuant to a pension sharing order;”.

(4) For the definition of “pension sharing order or provision” substitute—

““pension sharing order” means an order of a court, by virtue of which amounts are transferred from a recognised overseas pension scheme of a member to an applicable pension scheme of that member’s spouse or ex-spouse, in or in connection with proceedings relating to the dissolution or annulment of the marriage of the parties;”.

Modification of Schedule 28

14.—(1) Schedule 28 is modified as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (a) after “registered medical practitioner” insert “or a recognised medical practitioner”;
- (b) at the end of the paragraph add—

“In this paragraph “recognised medical practitioner” means a medical practitioner practising outside the United Kingdom who is authorised, licensed or registered to practise

(a) See, in relation to overseas schemes recognised for the purposes of Part 4, the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2004.

medicine in the country or territory, outside the United Kingdom, in which either the scheme or the member is resident.”.

(3) In the following provisions for “scheme administrator” substitute “scheme manager”.

The provisions are—

- (a) paragraph 1(a);
 - (b) paragraph 2 (in each place where the expression occurs);
 - (c) paragraph 10(3)(b);
 - (d) paragraph 13(3);
 - (e) paragraph 16(1) and (2);
 - (f) paragraph 24(3)(b); and
 - (g) paragraph 27(3).
- (4) Omit paragraphs 3(1)(b), 6(1)(c), 17(1)(b) and 20(1)(c).
- (5) In paragraph 15(2)(b) and (3) omit “, in the opinion of the scheme administrator”.
- (6) At the end of the Schedule add—

“PART 3

Relevant Non UK Schemes- interpretation

Construction of references to insurance companies

28.—(1) In this Schedule, in its application to a scheme established in a country or territory outside the European Economic Area, any reference to an insurance company includes a non-EEA annuity provider.

(2) Section 275(3) defines “non-EEA annuity provider”.

Modification of Schedule 29

15.—(1) Schedule 29 is modified as follows.

(2) In paragraph 1 after sub-paragraph (4) insert—

“(4A) In determining whether all or part of the member’s lifetime allowance is available—

- (a) an amount treated as crystallising by virtue of benefit crystallisation event 8 shall be disregarded; and
- (b) the amount of the allowance available shall be reduced by the aggregate of—
 - (i) the amount of any previous pension commencement lump sum paid to or in respect of the member by a recognised overseas pension scheme, to the extent that the lump sum is referable to the member’s relevant transfer fund, and
 - (ii) the amount which would have crystallised by virtue of the member becoming entitled to a pension, had the scheme paying it been a registered pension scheme, to the extent that it is so referable.

(4B) For the purposes of sub-paragraph (4A) “the member’s relevant transfer fund” has the meaning given in paragraph 4(2) of Schedule 34(a).”.

(3) In paragraph 2—

- (a) in sub-paragraph (6) for the definition of AAC substitute—

“AAC is the aggregate of—

(a) As to the regulations referred to in that paragraph see Part 2 of this instrument.

- (a) the amounts crystallised by each benefit crystallisation event (other than benefit crystallisation event 8) which has occurred in relation to the member before the member becomes entitled to the lump sum (or treated as crystallised) on each occasion on which entitlement to a pension arises; and
 - (b) the amount which would have crystallised, had the scheme paying it been a registered pension scheme —
 - (i) on entitlement arising to any pension commencement lump sum, to the extent that the lump sum is referable to the member’s relevant transfer fund, or
 - (ii) on entitlement arising to a pension, to the extent that it is so referable.”;
- (b) after sub-paragraph (6) insert—
- “(6A) The member’s becoming entitled to a pension commencement lump sum, or to a pension, as mentioned in paragraph (b) of the definition of AAC in paragraph (6) shall be treated as a benefit crystallisation event for the purposes of sub-paragraph (7).”.
- (4) In paragraph 4—
- (a) in sub-paragraph (1)(a) after “registered medical practitioner” insert “or a recognised medical practitioner”;
 - (b) at the end of the paragraph add—

“(3) In sub-paragraph (1) “recognised medical practitioner” means a medical practitioner practising outside the United Kingdom who is authorised, licensed or registered to practise medicine in the country or territory, outside the United Kingdom, in which either the scheme or the member is resident.
- (4) In determining whether all or part of the member’s lifetime allowance is available—
- (a) an amount crystallising by virtue of benefit crystallisation event 8 shall be disregarded; and
 - (b) the amount of the allowance available shall be reduced by the aggregate of—
 - (i) the amount of any previous pension commencement lump sum which has been paid to or in respect of the member by a recognised overseas pension scheme, to the extent that it is referable to the member’s relevant transfer fund and
 - (ii) the amount which would have crystallised on the member becoming entitled to a pension, had the scheme paying it been a registered pension scheme, to the extent that it is so referable.”.
- (5) In paragraph 5(1)(c) after “benefit crystallisation event” insert—
- “, other than an event which constitutes benefit crystallisation event 8”.
- (6) At the end of paragraph 7 add—
- “(6) In determining whether all or part of the member’s lifetime allowance is available—
- (a) an amount crystallising by virtue of benefit crystallisation event 8 shall be disregarded; and
 - (b) the amount of the allowance available shall be reduced by the aggregate of—
 - (i) the amount of any previous pension commencement lump sum which has been paid to or in respect of the member by a recognised overseas pension scheme, to the extent that it is referable to the member’s relevant transfer fund and
 - (ii) the amount which would have crystallised on the member becoming entitled to a pension, had the scheme paying it been a registered pension scheme, to the extent that it is so referable.”.
- (7) At the end of paragraph 10 add—
- “(4) In determining whether all or part of the member’s lifetime allowance is available—

- (a) an amount crystallising by virtue of benefit crystallisation event 8 shall be disregarded; and
 - (b) the amount of the allowance available shall be reduced by the aggregate of—
 - (i) the amount of any previous pension commencement lump sum which has been paid to or in respect of the member by a recognised overseas pension scheme, to the extent that the lump sum is referable to the member’s relevant transfer fund, and
 - (ii) the amount which would have crystallised on the member becoming entitled to a pension, had the scheme paying it been a registered pension scheme, to the extent that it is so referable.”.
- (8) In paragraph 11 after sub-paragraph (b) insert—
- “(bb) it is not paid from the relevant transfer fund of a qualifying recognised overseas pension scheme.”.
- (9) In paragraph 4(1)(a), and paragraph 19(1)(d) and (2)(e) for “scheme administrator” substitute “scheme manager”.

Modification of Schedule 32

16. In paragraph 11(6) of Schedule 32—
- (a) for “the retail prices index” (in both places) substitute “a relevant index”; and
 - (b) at the end add—
 - “Here “relevant index” means—
 - (a) an index of the movement of retail prices maintained, or officially recognised, by the government of the country or territory in which the recognised overseas scheme is established; or
 - (b) if there is no such index as is mentioned in paragraph (a) of this definition, the retail prices index.”.

Modification of Schedule 34

17. In Schedule 34 after paragraph 19 add—

“Revenue and Customs discretion

- 19A.—(1) Sub-paragraph (2) applies to—
- (a) the member payment provisions to a payment made (or treated by this Part as made) to or in respect of—
 - (i) a relieved member of a relevant non-UK scheme, or
 - (ii) a transfer member of such a scheme;
 - (b) the annual allowance provisions in relation to an individual who is a currently-relieved member of a currently-relieved non-UK scheme; and
 - (c) the lifetime allowance provision charge in relation to an individual who is a relieved member of a relieved non-UK pension scheme.
- (2) If it appears to an officer of Revenue and Customs that, by reason of some non-compliance with the requirements set out in this Part, which in the officer’s view does not materially affect the nature of a payment, the payment, or the member in respect of whom it is payable, would be treated less favourably by the strict application of the provisions mentioned in paragraph (1) than in the officer’s view is appropriate, sub-paragraph (3) applies.
- (3) If this sub-paragraph applies, an officer of Revenue and Customs—
- (a) may decide, and

(b) if requested to do so by a member falling within any of the descriptions in paragraphs (a) to (c) of sub-paragraph (1), shall decide, whether, notwithstanding the non-compliance referred to in sub-paragraph (2), the treatment which, but for that non-compliance, would have applied under this Part should apply to the payment or the member (as the case may be).

This is subject to the qualification in sub-paragraph (4).

(4) An officer of Revenue and Customs shall not make a decision under sub-paragraph (3) that, notwithstanding the difference referred to in sub-paragraph (2), the provisions of this Part shall apply to the payment or the member unless—

- (a) it appears to the officer that the effect of the decision would be to reduce the total cumulative tax liability in respect of the charges mentioned in subparagraph (1) of the member whose tax liability would be affected by it, taking one year with another;
- (b) the officer has first given at least 28 days' notice of his intention to make the decision to the member whose tax liability would be affected by it; and
- (c) the member has—
 - (i) consented to the making of the decision; or
 - (ii) failed to respond to the notice within the period specified in paragraph (b).

(5) If an officer of Revenue and Customs decides under sub-paragraph (3) that—

- (a) the conditions for the exercise of his discretion under that paragraph are not met; or
- (b) the conditions for its exercise are met, but that it is otherwise inappropriate for him to exercise it in favour of the member,

the member may appeal against the decision.

(6) Subsections (3) to (5) of section 170 apply for the purposes of a decision by an officer of Revenue and Customs under sub-paragraph (3) as they apply to a decision under section 169(5).

(7) The Commissioners before whom an appeal under paragraph (5) is brought must consider—

- (a) whether the conditions for the exercise of the discretion of an officer of Revenue and Customs have been met; and
- (b) if they are satisfied that those conditions have been met, whether the discretion ought to have been exercised in favour of the member.

(8) If they decide that the conditions for the exercise of that discretion have not been met, they must dismiss the appeal.

(9) If they decide that the conditions for the exercise of that discretion have been met, they must decide whether the discretion ought to have been exercised in favour of the member.

(10) If they decide that although the conditions are met, the discretion ought not to have been exercised in favour of the member, they must dismiss the appeal.

(11) If they decide that the discretion ought to have been exercised in favour of the member they may so decide and the provisions of this Part shall apply accordingly to the member or the payment in question (as the case may be).

(12) A decision under sub-paragraph (8) or (10) is final but subject to any further appeal or any determination on, or in consequence of, a case stated.”.

David Varney
Steve Lamey

1st February 2006

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations serve two purposes. First, they provide a method of computing the amount to be charged to UK tax in respect of a payment by a relevant non-UK pension scheme which is referable to a member's UK tax-relieved funds and secondly they modify the provisions of Part 4 of the Finance Act 2004 ("the Act") in its application to relevant non-UK schemes.

Regulation 1 provides for the citation and commencement of the instrument and the interpretation of certain terms used in it.

Regulation 2 provides the method of computing the amount of a member's UK tax-relieved fund under a relevant non-UK scheme.

Regulation 3 provides the method of computing the amount of a member's relevant transfer fund under a relevant non-UK scheme.

Regulation 4 provides the rule for attributing payments out of a relevant non-UK scheme which are made to, or in respect of, a member to the member's UK tax-relieved fund and the relevant transfer fund.

Regulation 5 introduces the modifications to the Part 4 of the Act.

Regulations 6 to 17 make the modifications. The purpose of the modifications is to ensure that the new regime for pensions which are subject to UK taxation set out in Part 4 of the Act works in the context of relevant non-UK schemes as defined in paragraph 1(5) of Schedule 34 to the Act.

Regulation 17 makes a modification to Schedule 34 by inserting a notional paragraph 19A. This provides the Inland Revenue with a discretionary power to mitigate, in relation to relevant non-UK schemes, the charges to tax which would otherwise arise under Part 4 of the Act, if it appears to them that any difference in the operation of the relevant non-UK scheme from that prescribed by Part of the Act is not material, and that it is appropriate to mitigate the effect of the strict rules.

A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8 April 2004, and is available on the Inland Revenue website at www.inlandrevenue.gov.uk/ria/simplifying-pensions.pdf or obtained by writing to Inland Revenue, Capital & Savings Ministerial Correspondence Unit, 1st Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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**The Pensions Schemes (Application of UK Provisions to
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£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0099 2/2006 160099T 19585