STATUTORY INSTRUMENTS

2011 No. 732

The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2011

Amendment of the Taxation of Pension Schemes (Transitional Provisions) Order 2006

3. After article 23 (modification of paragraph 34 of Schedule 36) insert—

“**Pension commencement lump sums where no pension is paid before death**

23ZA.—(1) Subject to articles 23ZD and 23ZE, in a case where an individual has received a pension commencement lump sum, or part of a pension commencement lump sum, but dies before becoming entitled to the pension in connection with the lump sum, Schedule 36(**1**) is modified as follows.

(2) For paragraph 31(3) (entitlement to lump sums exceeding 25% of uncrystallised rights – the pension condition) substitute—

“(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.”.

(3) In paragraph 34(2) (entitlement to lump sums exceeding 25% of uncrystallised rights – modifications to Schedule 29)—

(a) in the substituted sub-paragraph (7A)(**2**) for the definition of AC substitute—

“AC is the value of the individual’s uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212(**3**) (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.”;

(b) omit substituted sub-paragraph (7AA); and

(c) after the substituted sub-paragraph (7B) insert—

“(7BA) In determining AC, section 212 shall apply as if “the value assumptions” means the basis upon which the scheme administrator determined the amount of the lump sum to be paid.”.

(**1**) Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in Part 4 of the Finance Act 2004.

(**2**) The substituted sub-paragraphs (7A) and (7B) were amended, and sub-paragraph (7AA) was inserted, by paragraph 25 of Schedule 23 to the Finance Act 2006 (c. 25). Section 161 of that Act deems these amendments to have come into force on 6th April 2006.

(**3**) Section 212 was amended by paragraph 18 of Schedule 23 to the Finance Act 2006. Section 161 of that Act deems this amendment to have come into force on 6th April 2006.

Pension commencement lump sums and multiple pensions

23ZB.—(1) Article 23ZC applies where—

(a) there is a single pension commencement lump sum;

(b) the lump sum is paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme; and

(c) an individual becomes entitled to all of the pensions in connection with which the pension commencement lump sum is paid within the specified period.

(2) Article 23ZD applies where—

(a) there is a single pension commencement lump sum;

(b) the scheme administrator anticipated that the lump sum would be paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme;

(c) an individual received the lump sum, or part of the lump sum, but died before becoming entitled to any of the pensions; and

(d) the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions in connection with the lump sum within the specified period.

(3) Article 23ZE applies where—

(a) there is a single pension commencement lump sum;

(b) the scheme administrator anticipated that the lump sum would be paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme;

(c) an individual received the lump sum, or part of the lump sum, but died before the end of the specified period after becoming entitled to at least one but not all of the pensions; and

(d) the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions in connection with the lump sum within the specified period.

(4) The three types of pension are—

(a) a scheme pension under a defined benefits arrangement;

(b) a scheme pension under a money purchase arrangement;

(c) a lifetime annuity.

(5) The "specified period" is the period of six months beginning with the earliest date on which the individual becomes entitled to any of the pensions or on which the scheme administrator considers, had the individual not died, that the individual would have become so entitled.

Individual becomes entitled to the pensions

23ZC.—(1) In a case to which this article applies, Part 4 is modified as follows.

(2) For section 166(2)(a) (lump sum rule) substitute—

"(a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the last of the pensions in connection with which it is paid, and".

(3) In paragraph 31(3) of Schedule 36 for "on the same date" substitute "within a period of six months beginning with the earliest date on which the individual becomes entitled to any of the pensions".

Individual dies before becoming entitled to any of the pensions

23ZD.—(1) In a case to which this article applies, Schedule 36 is modified as follows.

(2) For paragraph 31(3) substitute—

"(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the scheme administrator considers that the individual would have become entitled to any of the pensions.".

(3) In paragraph 34(2)—

(a) in the substituted sub-paragraph (7A) for the definition of AC substitute—

"AC is the value of the individual's uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.";

(b) omit sub-paragraph (7AA); and

(c) after the substituted sub-paragraph (7B) insert—

"(7BA) In determining AC, section 212 shall apply as if "the value assumptions" means the basis upon which the scheme administrator determined the amount of the lump sum to be paid.".

Individual dies after becoming entitled to at least one but not all of the pensions

23ZE.—(1) In a case to which this article applies, Part 4 is modified as follows.

(2) For section 166(2)(a) substitute—

"(a) in the case of a pension commencement lump sum, immediately before the latest time when the person becomes entitled to any of the pensions in connection with which it was anticipated that it would be paid, and".

(3) For paragraph 31(3) of Schedule 36 substitute—

"(3) The pension condition is that, the scheme administrator considers that, had the individual not died, the individual would have become entitled to all of the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of six months beginning with the earliest date on which the individual became entitled to any of the pensions.".

(4) In paragraph 34(2) of Schedule 36—

(a) in the substituted sub-paragraph (7A) of paragraph 2 of Schedule 29, for the definition of AC substitute—

"AC is CB + UCB where—

CB is the amount crystallised, prior to death, on the individual becoming entitled to pensions in connection with which the lump sum is paid (see section 216(**4**)) (but this is subject to sub-paragraphs (7AA) and (7B)), and

UCB is the value of the individual's uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (but this is subject to sub-paragraphs (7B) and (7BA)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.", and

(b) after the substituted sub-paragraph (7B) of paragraph 2 of Schedule 29, insert—

"(7BA) In determining AC, section 212 shall apply as if "the value assumptions" means the basis upon which the scheme administrator determined the amount of the lump sum to be paid."."

(**4**) Section 216 was amended by paragraphs 31 and 42 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 30 of Schedule 23 to the Finance Act 2006 and paragraph 5 of Schedule 29 to the Finance Act 2008 (c. 9). These amendments are treated as having come into force on 6th April 2006. Section 216 was also amended by paragraph 1(3) of Schedule 29 to the Finance Act 2008.