

2006 No. 1958

INCOME TAX

**The Pensions Schemes (Taxable Property Provisions)
Regulations 2006**

<i>Made</i> - - - -	<i>20th July 2006</i>
<i>Laid before the House of Commons</i>	<i>21st July 2006</i>
<i>Coming into force</i> - -	<i>11th August 2006</i>

The Treasury, in exercise of the powers conferred upon them by section 273ZA of, and paragraphs 33(4), 34(4), 36 and 37 of Schedule 29A to, the Finance Act 2004(a), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Pensions Schemes (Taxable Property Provisions) Regulations 2006 and shall come into force on 11th August 2006.

(2) These Regulations shall have effect from 6th April 2006.

Interpretation

2. In these Regulations—

“taxable property” has the meaning in Schedule 29A;

“taxable property provisions” has the meaning in paragraph 1(3) of that Schedule; and

any reference (without more) to a numbered section or Schedule is a reference to that section of, or Schedule to, the Finance Act 2004.

Provisions supplementing Schedule 29A

3. Paragraphs 33 and 34 of Schedule 29A shall apply to land outside the United Kingdom as if—

(a) “chargeable interest” (in section 48(1) of the Finance Act 2003(b)) applied to such land, and

(b) in relation to such land, the meaning of “lease” in paragraphs 1 and 19 of Schedule 17A to the Finance Act 2003(c), included any interest corresponding to a lease,

and “rent” and “tenant” shall be construed accordingly.

(a) 2004 c. 12; section 273ZA and Schedule 29A were inserted by paragraphs 10 and 13 of Schedule 21 to the Finance Act 2006 (c. 25) respectively.

(b) 2003 c. 14.

(c) Schedule 17A was inserted by paragraph 22(2) of Schedule 39 to the Finance Act 2004.

4. Paragraph 32 of Schedule 29A (and the remainder of the taxable property provisions excepting paragraph 34 of that Schedule) shall apply to—

- (a) a licence to use or occupy residential property (for a consideration which is wholly or partly rent), and
- (b) the right to use, or participate in arrangements relating to the use of, taxable property or a description of taxable property to which the property in question belongs (for a consideration which is wholly or partly rent),

as if each payment of rent represented the grant, to the pension scheme or other person who acquired the interest in taxable property, of a lease of the taxable property for the period for which the rent is paid, and in consideration of the rent so paid.

5. Paragraph 33 of Schedule 29A shall apply to—

- (a) tangible moveable property,
- (b) a licence to use or occupy residential property (for a consideration wholly or partly other than rent), and
- (c) the right to use, or participate in arrangements relating to the use of, taxable property or a description of taxable property to which the property in question belongs (for a consideration wholly or partly other than rent),

as they apply to a chargeable interest in property.

6. Paragraph 34 of Schedule 29A shall apply to tangible moveable property.

Application of paragraphs 3 and 4 of Schedule 17A to the Finance Act 2003

7.—(1) The following provisions—

- (a) paragraph 3(1) and (2) of Schedule 17A to the Finance Act 2003 (leases that continue after a fixed term), and
- (b) paragraph 4(1), (2) and (5) of that Schedule (treatment of leases for indefinite term),

apply for the purposes of paragraph 34(2) of Schedule 29A, for determining the amount of rent payable, with the following modifications.

(2) Each extension of the original fixed term by paragraph 3(2) or 4(1) of Schedule 17A shall be treated as the grant of a new lease for the period of the extension.

(3) Accordingly, an investment-regulated pension scheme is to be treated as making an unauthorised payment within section 174A(1)(a) to a member of the scheme, on the occasion of each such extension.

Application of paragraph 8 of Schedule 17A to the Finance Act 2003

8.—(1) Paragraph 8(1) and (2) of Schedule 17A to the Finance Act 2003 (adjustment where rent ceases to be uncertain) shall apply for the purposes of paragraph 34(2) of Schedule 29A, for determining the amount of rent payable, with the following modifications.

(2) If the result of the recalculation as at the date referred to in paragraph 8(1)(a) or (b) of Schedule 17A is that the rent paid or payable in respect of the first five years of the term is greater than the rent originally calculated, an investment-regulated pension scheme is to be treated as making an unauthorised payment within section 174A(1) to a member of the scheme, based on the difference between the two calculations.

(a) Section 174A was inserted by paragraph 5 of Schedule 21 to the Finance Act 2006.

Variation of a lease to give rise to an additional unauthorised payment

9.—(1) An investment-regulated pension scheme is to be treated as making an unauthorised payment within section 174A(1) to a member of the pension scheme, if—

- (a) a lease of taxable property is varied (whether or not in pursuance of a provision in the lease) so as to increase the amount of the rent; and
- (b) the increase falls to be regarded as abnormal (within the meaning of paragraph 15 of Schedule 17A to the Finance Act 2003).

(2) The variation shall be treated for the purposes of the taxable property provisions as if it were the grant of a lease in consideration of the additional rent made payable by the variation.

Scheme chargeable payment on income and gains from non-U.K. taxable property

10.—(1) This regulation applies to a registered pension scheme which—

- (a) is for the time being established in a country or territory outside the United Kingdom, and
- (b) falls within the circumstances mentioned in section 273ZA(1)(a) and (c).

(2) Liability to pay the scheme sanction charge so far as relating to a scheme chargeable payment treated as made by the pension scheme—

- (a) under section 185A(a) (income from taxable property) by virtue of the pension scheme holding an interest in the property, or
- (b) under section 185F(b) (gains from taxable property) by virtue of a gain treated as accruing to the pension scheme in respect of an interest in the property,

(“the property enjoyment scheme sanction charge”) shall be determined under this regulation and not under section 239 (see section 239(6)(c)).

(3) Any member of the pension scheme resident or ordinarily resident in the United Kingdom, for the purposes of whose arrangement the interest in taxable property referred to in section 273ZA(1)(a) is held, is liable to pay the property enjoyment scheme sanction charge, subject to paragraphs (4) to (6).

(4) Where the interest in taxable property is held by the pension scheme for the purposes of more than one arrangement, the property enjoyment scheme sanction charge shall be apportioned between the members whose arrangements they are, on a just and reasonable basis.

(5) A member shall be liable to the property enjoyment scheme sanction charge (so far as relating to a scheme chargeable payment treated as made under section 185F) as if any scheme chargeable payment mentioned in Condition 2 were treated as made in the renewed residence period, if the following conditions apply, subject to paragraph (6).

Condition 1

The member has, for four out of the seven tax years immediately preceding the tax year in which the time of departure falls (see Condition 4), been resident in the United Kingdom during any part of the year, or ordinarily resident in the United Kingdom during the year (“the original residence period”).

Condition 2

A scheme chargeable payment would otherwise be treated as made under section 185F, in any part of a tax year or tax year—

- (a) later than the time of departure, and
- (b) during which the member is resident outside the United Kingdom, and ordinarily resident outside the United Kingdom (“the non-resident period”).

(a) Section 185A was inserted by paragraph 6 of Schedule 21 to the Finance Act 2006.

(b) Section 185F was inserted by paragraph 6 of Schedule 21 to the Finance Act 2006.

(c) Section 239(6) was inserted by paragraph 8 of Schedule 21 to the Finance Act 2006.

Condition 3

There is a later part of a tax year, or tax year, during which he becomes resident in the United Kingdom or ordinarily resident in the United Kingdom (“the renewed residence period”).

Condition 4

There are fewer than five tax years falling between—

- (a) the time after the original residence period, when he ceased to be resident or ordinarily resident in the United Kingdom (“the time of departure”), and
- (b) the renewed residence period.

(6) Where—

- (a) the member is resident or ordinarily resident in the United Kingdom during only part of a tax year, and for a later part of that tax year is not so resident or ordinarily resident, and
- (b) a gain or loss is treated as accruing to the pension scheme under section 185F(3) at a time during that year when the member is so resident or ordinarily resident,

any such gain (in so far as it exceeds any such loss) shall be treated as giving rise to a separate scheme chargeable payment under section 185F made by the scheme as at that time, and liability to the scheme sanction charge on that payment shall be determined under paragraph (3), not (5).

(7) Where paragraph (5) applies, nothing in any enactment imposing any limit on the time within which an assessment to tax may be made shall prevent an assessment to the property enjoyment scheme sanction charge from being made on the member at any time before the end of two years after the 31st January next following the tax year in which the renewed residence period falls.

Dave Watts

Frank Roy

20th July 2006

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations have two principal effects. The first is to supplement the tax rules in Schedule 29A of the Finance Act 2004 (inserted by Schedule 21 to the Finance Act 2006) for determining the total taxable amount when an investment-regulated pension scheme acquires a direct or indirect interest in taxable property (that is, residential property or tangible moveable property). The second is to make a member of a registered pension scheme which is established outside the United Kingdom, and holds an interest in taxable property located outside the United Kingdom, liable to pay the scheme sanction charge in respect of income and gains from that property.

Regulation 1 provides for citation, commencement and effect. The power to make the retrospective provision made by Regulation 1(2) is conferred by section 273ZA(6)(b) of, and paragraphs 36(4)(b) and 37(2)(b) of Schedule 29A (“Schedule 29A”) to, the Finance Act 2004.

Regulation 2 provides for interpretation.

Regulation 3 applies the valuation provisions in paragraphs 33 and 34 of Schedule 29A to land outside the United Kingdom. Regulation 4 modifies the taxable property provisions for licences to use residential property and timeshares, at a rent by treating each payment of rent as an acquisition of an interest in taxable property. Regulations 5 and 6 apply valuation provisions to tangible moveable property, licences to use residential property and timeshare arrangements.

Regulation 7 applies valuation provisions for leases that continue after a fixed term and leases for an indefinite term, with modifications where an original fixed term is extended. Regulation 8 applies the valuation provisions in paragraph 8 of Schedule 17A to the Finance Act 2003 (leases for uncertain or variable rent: adjustment when rent ceases to be uncertain) with modifications.

Regulation 9 provides that an unauthorised payment is to be treated as made to a member of an investment-regulated pension scheme where a lease of taxable property is varied to increase the rent by an abnormal amount.

Regulation 10 makes a member of a registered pension scheme which is established outside the United Kingdom, and holds an interest in taxable property located outside the United Kingdom, liable to pay the scheme sanction charge in respect of income and gains from that property.

The Board of Inland Revenue published a regulatory impact assessment covering the provisions of Part 4 of the Finance Act 2004, and subordinate legislation under it, on 8th April 2004. That assessment, and an Appendix covering later legislative changes, are available on the Revenue and Customs website at www.hmrc.govuk/ria/simplifying-pensions.pdf.

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