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STATUTORY INSTRUMENTS

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**2006 No. 1960**

**INCOME TAX**

**The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes)(Amendment) 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 Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by paragraphs 4(2) and (4), 7 and 7A of Schedule 34 to the Finance Act 2004<sup>(1)</sup>, and now exercisable by them<sup>(2)</sup>, make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2006 and shall come into force on 11th August 2006.

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

**Amendment of the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006**

2. The Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006<sup>(3)</sup> are amended as follows.

3. In regulation 1(2) insert at the end—

““taxable property” has the meaning in Schedule 29A to the Act<sup>(4)</sup>;

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

“transfer member” of a scheme has the meaning in paragraph 1(8) of Schedule 34 to the Act.”

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(1) [2004 c. 12](#); paragraph 7A was inserted by paragraph 14 of Schedule 21 to the Finance Act 2006 ([c. 25](#)).

(2) The functions of the Commissioners of Inland Revenue 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](#)).

(3) S.I. [2006/207](#).

(4) Schedule 29A was inserted by paragraph 13 of Schedule 21 to the Finance Act 2006.

4. In regulation 3(c) omit paragraph (ii) and the word “and” which precedes it.
5. After regulation 3 insert—

**“Computation of a member’s taxable asset transfer fund**

**3A.—**(1) The amount of a member’s taxable asset transfer fund under a relevant non-UK scheme (“the RNUKS”) is the sum of—

- (a) the amount crystallised by virtue of benefit crystallisation event 8 on the transfer from a UK registered pension scheme to the RNUKS; and
- (b) so much of the member’s taxable asset transfer fund under any other relevant non-UK scheme as has been transferred to the RNUKS without being subject to the unauthorised payments charge.

(2) Accordingly, the member’s taxable asset transfer fund (“TATF”) shall form part of the member’s relevant transfer fund (“RTF”), except in a case where the member’s RTF consists solely of a UK tax-relieved fund which has been transferred to the RNUKS.”

6. In regulation 4(2)(b) after “reduced” insert “(but not below nil)”.
7. In regulation 4(3) for “it shall be assumed” to the end substitute—

“the following Rules apply (with an earlier Rule applying in preference to a later Rule).

*Rule 1*

Where an unauthorised payment is treated as made by the scheme to the transfer member by virtue of section 174A(5)—

- (a) the payment shall be treated as made out of the member’s RTF and TATF, but
- (b) the interest in taxable property, in respect of which the unauthorised payment is treated as made, shall represent the payment and form part of the member’s RTF and TATF (an “appropriated asset”), up to an amount equal to the amount of that payment.

*Rule 2*

Accordingly, if a scheme transfers that appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, to another pension scheme, that transfer shall be treated as a transfer of the whole or part, as the case may be, of the member’s RTF and TATF (limited to the amount of the unauthorised payment) to that other scheme, falling (if appropriate) within regulation 3A(1)(b).

*Rule 3*

If a scheme disposes of (other than to another pension scheme) an appropriated asset (or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly), or part of it, any other property which directly or indirectly represents proceeds of either of those interests (limited to the amount of the unauthorised payment) shall form part of the member’s RTF and TATF.

*Rule 4*

This Rule applies to payments made by the scheme to or in respect of the member, other than—

- (a) a transfer of an interest in taxable property or an interest in a vehicle through which the scheme holds the interest in the taxable property indirectly, and
- (b) payments treated as made by virtue of section 174A.

So far as the member's RTF and TATF are not represented by appropriated assets—

- (a) where the member has both an RTF and a TATF, and the amount of his RTF exceeds the amount of his TATF, such payments shall, to the extent of that excess, be treated as made out of his RTF (but not his TATF) and as reducing the RTF, and subject thereto
- (b) such payments are made out of the member's RTF and TATF in priority to any other fund under that scheme, and reduce (but not below nil) the amount of the RTF and TATF.”

8. After regulation 4(3) add—

“(4) In paragraph (3), references to payments made or treated as made by virtue of section 174A include references to payments treated as made by regulations under paragraph 37 of Schedule 29A, or paragraph 7A of Schedule 34, to the Act.”

9. After regulation 4 insert—

**“Taxable property provisions to apply to a transfer member of a relevant non-UK scheme (to payments referable to his taxable asset transfer fund)**

4A. The—

- (a) taxable property provisions, and
- (b) regulations made under paragraph 37 of Schedule 29A or paragraph 7A of Schedule 34,

apply to a transfer member of a relevant non-UK scheme, in relation to payments treated as made by those provisions or regulations which are referable to the member's taxable asset transfer fund under the scheme, but subject to the modifications in regulations 4B to 4D.

**Unauthorised payments charge to apply (in lieu of scheme chargeable payment)**

4B.—(1) The scheme chargeable payment provisions in sections 185A to 185I(6) shall not apply to a relevant non-UK scheme.

(2) But, during such time as an appropriated asset forms the whole or part of a transfer member's TATF—

- (a) the scheme shall be treated as making unauthorised payments to that member equal in amount to the scheme chargeable payments (in respect of income and gains) which would have been computed in accordance with those sections, and
- (b) the transfer member shall be liable to pay the unauthorised payments charge in respect of such payments.

(3) Where the scheme's interest in taxable property is not wholly referable to the transfer member's TATF, the amount of the unauthorised payment shall be proportionately reduced.

**Modification of paragraph 15 of Schedule 29A**

4C. Paragraph 15 of Schedule 29A applies to the transfer member of a relevant non-UK scheme as if “insurance company” included any person—

- (a) resident in a country or territory outside the European Economic Area,

- (b) whose business consists of, or includes, the effecting or carrying out of contracts of long-term insurance (within the meaning in Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(7)), and
- (c) who is regulated in the conduct of that business by—
  - (i) 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.

**Modifications of paragraphs 29 and 31 of Schedule 29A**

**4D.**—(1) This regulation applies where—

- (a) a relevant non-UK scheme acquires an interest in taxable property;
- (b) the interest is acquired in the circumstances mentioned in paragraph 32(3), (5) (excluding paragraphs (a) and (b)) or (6) (excluding paragraphs (a) and (b)) of Schedule 29A(8); 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) shall not be the relevant rental value of the property (as provided by paragraph 34(2) of Schedule 29A).

(3) Each payment of rent (or the aggregate of such payments during a year, if there are more than one) shall be treated, for the purposes of the taxable property provisions, as if the pension scheme or other person who acquired the interest were being granted a lease for the period for which the rent is paid, in consideration of the rent (or aggregate) so paid.”

*David Varney*

*Mike Eland*

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

20th July 2006

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(7) S.I. 2001/544.

(8) Schedule 29A was inserted by paragraph 13 of Schedule 21 to the Finance Act 2006 (c. 25).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (S.I.2006/207). A pension scheme is a relevant non-UK scheme if scheme funds have been relieved from U.K. tax under exemptions or reliefs for overseas pension schemes, or if it has received a “relevant transfer” from another scheme, representing U.K. tax-relieved funds. A member is a “transfer member” if a relevant transfer related to him.

The principal effects of the amendments are (1) to apply the “taxable property provisions” introduced by Schedule 21 to the Finance Act 2006 (which create tax charges if a scheme directly or indirectly holds an interest in residential property or tangible moveable property) to transfer members of relevant non-UK schemes, so far as the funds are referable to the members' “taxable asset transfer fund” (that is, amounts transferred directly or indirectly from U.K. registered pension schemes) and (2) to provide rules to identify the members' taxable asset transfer fund.

Regulation 1 provides for citation, commencement and effect. The power to make the retrospective provision made by Regulation 1(2) is conferred by paragraphs 7(2)(a) and 7A(2)(b) of Schedule 34 to the Finance Act 2004.

Regulation 2 provides for the amendment of the Pensions Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006. Regulations 3, 4 and 6 make technical amendments to those Regulations.

Regulation 5 defines a transfer member's taxable asset transfer fund (which in many cases will form part of their “relevant transfer fund”). Regulations 7 and 8 provide rules to determine if payments are made out of the member's taxable asset transfer fund and relevant transfer fund.

Regulation 9 introduces provisions applying the “taxable property provisions” to transfer members of relevant non-UK schemes, so far as the funds are referable to the members' taxable asset transfer fund, with modifications. The main modification is in the inserted regulation 4B which provides that the scheme chargeable payment provisions in sections 185A to 185I of the Finance Act 2004 (which give rise to a scheme sanction charge on the scheme administrator) are replaced with equivalent unauthorised payments charges on the transfer member.

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.gov.uk/ria/simplifying-pensions.pdf](http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf).