

**2010 No. 1187**

**INCOME TAX**

**The Financial Assistance Scheme (Tax) Regulations 2010**

*Made* - - - - *6th April 2010*

*Laid before the House of Commons* *7th April 2010*

*Coming into force* - - *1st May 2010*

The Treasury, in exercise of the powers conferred by section 73 of the Finance Act 2009(a), make the following Regulations:

**PART 1**

**Preliminary**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Financial Assistance Scheme (Tax) Regulations 2010 and shall come into force on 1st May 2010.

(2) In these Regulations, unless otherwise stated, any reference to a numbered regulation is a reference to that regulation of the FAS Regulations.

(3) In these Regulations—

“assistance” means—

interim assistance,

non-lump sum assistance,

a lump sum payment under regulation 17D (lump sum payments), and

a payment under regulation 18A (death benefit guarantees) in cases where that payment is in the form of a lump sum;

“the FA 2004” means the Finance Act 2004(b);

“the FAS” means the financial assistance scheme(c);

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(d);

“the FAS scheme manager” means the person appointed by the Secretary of State by regulations under section 286 of the Pensions Act 2004(e) to manage the FAS;

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(a) 2009 c.10.

(b) 2004 c.12.

(c) “The financial assistance scheme” is defined in section 73(2) of the Finance Act 2009.

(d) S.I. 2005/1986, amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241, 2009/792, 2009/1851 and 2010/1149.

(e) 2004 c.35. Section 286 was amended by section 18 of the Pensions Act 2007 (c.22) and section 124 of the Pensions Act 2008 (c.30).

“interim assistance” means—

- an interim ill health payment from the FAS(a), and
- an initial payment from the FAS(b);

“non-lump sum assistance” means—

- an annual payment from the FAS under regulation 17 (annual payments),
- an ill health payment from the FAS(c), and
- an annual payment from the FAS under regulation 17C (annual payments for certain applications in cases of severe ill health);

“qualifying member” has the meaning given by regulation 15(1); and

“qualifying pension scheme” has the meaning given in regulation 9.

## PART 2

### Tax reliefs, etc

#### **Transfer of registered pension scheme assets, etc, to the Secretary of State**

2. A transfer of the property, rights and liabilities of a registered pension scheme(d) to the Secretary of State is to be treated as if it were a payment authorised by section 164(1) of the FA 2004(e) (authorised member payments).

#### **Payments to the Secretary of State**

3.—(1) This regulation applies where as a result of the transfer of the property, rights and liabilities of a registered pension scheme to the Secretary of State an employer is required to pay a sum to the Secretary of State.

(2) Where section 199 of the FA 2004(f) (deemed contributions) would have applied if the payment had been made to the trustees or managers of the scheme, that section applies in relation to the payment in the same way as it applies in relation to a sum paid to the trustees or managers of a registered pension scheme.

(3) Where the payment does not fall within paragraph (2), section 200 of the FA 2004(g) (no other relief for employers in connection with contributions) applies in relation to it in the same way that section applies in relation to a sum other than a contribution paid in connection with the cost of providing benefits under a registered pension scheme.

#### **Lump sum payments by the Financial Assistance Scheme**

4. Subsections (1) and (2) of section 636A of the Income Tax (Earnings and Pensions) Act 2003(h) (exemption for certain lump sums under registered pension schemes) apply to a lump sum payment under regulation 17D and a payment made under regulation 18A in the form of a lump sum as they apply to the lump sums listed in subsection (1).

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(a) “Interim ill health payment” is defined in regulation 2.

(b) “Initial payment” is defined in regulation 2.

(c) “Ill health payment” is defined in regulation 2.

(d) “Registered pension scheme” is defined in section 73(8) of the Finance Act 2009.

(e) Section 164(1) was numbered as such, and subsection (2) was inserted, by paragraph 1(2) of Schedule 29 to the Finance Act 2008 (c.9). The introductory words of subsection (1) were amended by paragraph 6(a) of Schedule 23 to the Finance Act 2006 (c.25). Subsection (2)(d) was repealed by section 75(2)(a) of the Finance Act 2009.

(f) Section 199(2) was amended by paragraph 14(3) of Schedule 29 to the Finance Act 2008.

(g) Paragraph (a) of section 200 was amended by paragraph 649 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c.5). Paragraphs (a) and (b) were amended by paragraph 577 of Schedule 1 to the Corporation Tax Act 2009 (c.4).

(h) 2003 c.1. Section 636A was inserted by paragraph 11 of Schedule 31 to the FA 2004.

## PART 3

### Lifetime allowance

#### Application of relevant lifetime allowance provisions

5.—(1) The relevant lifetime allowance provisions apply in relation to assistance from the FAS as they apply in relation to benefits that are provided under a registered pension scheme.

(2) For the purposes of the relevant lifetime allowance provisions, unless the context requires otherwise—

- (a) a qualifying member is to be treated as if that qualifying member were a member of a registered pension scheme; and
- (b) the FAS is to be treated as if it were a registered pension scheme and the FAS scheme manager is to be treated as its scheme administrator.

(3) Subject to regulations 6 to 11 of these Regulations, the relevant lifetime allowance provisions are—

- (a) sections 214 to 226 and 263 of the FA 2004 (lifetime allowance charge and penalty in relation to relevant benefit accrual);
- (b) Part 2 of Schedule 36 to the FA 2004 (lifetime allowance charge transitional provisions);
- (c) orders made under section 218(3) of the FA 2004 (individual's lifetime allowance and standard lifetime allowance); and
- (d) enhanced lifetime allowance regulations.

(4) "Enhanced lifetime allowance regulations" has the meaning given by section 256(2) of the FA 2004 (enhanced lifetime allowance regulations).

#### Amount of charge

6. For the purposes of section 215 of the FA 2004(a) (amount of charge) a payment under regulation 18A in the form of a lump sum is to be treated as if it was a lump sum death benefit.

#### Benefit crystallisation events and amounts crystallised

7.—(1) In relation to assistance from the FAS, this table sets out—

- (a) the events which are benefit crystallisation events in relation to the individual; and
- (b) the amount which is crystallised by each of those events

in place of section 216 of the FA 2004 (lifetime allowance charge – benefit crystallisation events and amounts crystallised).

<i>Benefit crystallisation events</i>	<i>Amount crystallised</i>
1. Subject to paragraph (3), the individual becoming entitled for the first time to interim assistance in respect of membership of a qualifying pension scheme.	$(20xP) - RPSBCE$
2. Subject to paragraphs (3) and (4), the individual becoming entitled for the first time to one of the forms of non-lump sum assistance in respect of membership of a qualifying pension scheme in a case where the individual has not previously become entitled to one of the forms of interim assistance in respect of that scheme.	$(20xP) - RPSBCE$

(a) Section 215 was amended by paragraph 41 of Schedule 10 to the Finance Act 2005 (c.7), paragraph 15 of Schedule 29 to the Finance Act 2008 and paragraph 14 of Schedule 2 to the Finance Act 2009.

3. The individual becoming entitled for the first time to an annual payment under regulation 17 in respect of membership of a qualifying pension scheme having previously become entitled to an initial payment in respect of that scheme.	Where paragraph (5) applies— $(20xP17) - BCE1$ Where paragraph (5) does not apply, nil.
4. The individual becoming entitled for the first time to an ill health payment from the FAS in respect of membership of a qualifying pension scheme having previously become entitled to an interim ill health payment in respect of that scheme.	Where paragraph (6) applies— $(20xP17A) - BCE1$ Where paragraph (6) does not apply, nil.
5. The individual becoming entitled to a lump sum payment under regulation 17D in respect of membership of a qualifying pension scheme in a case where the individual has not previously become entitled to interim assistance in respect of that scheme.	The amount of the lump sum paid to the individual.
6. A person becoming entitled to a lump sum in respect of the individual under regulation 18A in respect of the individual's membership of a qualifying pension scheme.	The amount of the lump sum.

(2) For the purposes of these Regulations, an individual becomes entitled to—

- (a) assistance from the FAS when that individual first acquires an actual (rather than a prospective) right to receive that assistance and the amount of that assistance has been determined by the FAS scheme manager; and
- (b) a lump sum under regulation 17D immediately before the individual becomes entitled to the non-lump sum assistance to which the lump sum relates.

(3) The individual becoming entitled to interim assistance, an annual payment under regulation 17 or an ill health payment from the FAS in respect of membership of a qualifying pension scheme does not result in a benefit crystallisation event where that entitlement is solely as a result of the transfer to the Secretary of State of property, rights and liabilities which represent the rights to which the individual had, prior to the transfer, become entitled in respect of a scheme pension under that scheme.

(4) The individual becoming entitled to an annual payment under regulation 17 or an ill health payment from the FAS does not result in a benefit crystallisation event where the individual had previously become entitled to—

- (a) an initial payment or an interim ill health payment, as the case may be, from the FAS prior to the coming into force of these Regulations; or
- (b) a payment under regulation 17H (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment).

(5) This paragraph applies where the value of  $(20xP17)$  is more than the value of BCE1.

(6) This paragraph applies where the value of  $(20xP17A)$  is more than the value of BCE1.

(7) In this regulation—

“BCE 1” is the amount crystallised at the first benefit crystallisation event in the table in paragraph (1) following the individual becoming entitled to the relevant interim assistance;

“P” is the value of the assistance which will be payable to the individual in the period of 12 months beginning with the day on which the individual becomes entitled to assistance (assuming assistance remains payable throughout that period at the rate at which it is payable on that day);

“P17” is the value of the assistance which would have been payable to the individual in the period of 12 months beginning with the day on which the individual became entitled to an initial payment if—

the individual had become entitled to assistance in the form of an annual payment under regulation 17 on that day,

that assistance had remained payable throughout that period at the rate at which it would have been payable on that day, and

the individual had chosen not to commute any of that assistance for a lump sum;

“P17A” is the value of the assistance which would have been payable to the individual in the period of 12 months beginning with the day on which the individual became entitled to an interim ill health payment if—

the individual had become entitled to assistance in the form of an ill health payment on that day,

that assistance had remained payable throughout that period at the rate at which it would have been payable on that day, and

the individual had chosen not to commute any of that assistance for a lump sum; and

“RPSBCE” is the amount, if any, crystallised by the second or fifth benefit crystallisation event, as the case may be, under section 216 of the FA 2004 in respect of rights under the registered pension scheme of which the individual was a member prior to the transfer of the property, rights and liabilities which represent those rights to the Secretary of State.

### **Persons liable to charge**

8. Section 217 of the FA 2004 (persons liable to charge) applies as if—

(a) in subsection (1), the words after “individual” were omitted; and

(b) in subsections (2), (3) and (4), the references to a “relevant lump sum death benefit” were references to a payment under regulation 18A in the form of a lump sum.

### **Availability of individual’s lifetime allowance**

9.—(1) Section 219(6) of the FA 2004(a) (availability of individual’s lifetime allowance) applies as if after the words in brackets there appeared “and regulation 7(2)(b) of the Financial Assistance Scheme (Tax) Regulations 2010”.

(2) A payment under regulation 18A in the form of a lump sum is to be treated as the payment of a lump sum death benefit for the purposes of section 219(7) of the FA 2004.

### **Transitional provisions: Part 2 of Schedule 36 to the FA 2004**

10. For the purposes of paragraph 12(2)(b) of Schedule 36 to the FA 2004 (enhanced protection), a transfer of the property, rights and liabilities of a registered pension scheme to the Secretary of State is to be treated as a permitted transfer.

### **Information and penalties**

11.—(1) Subject to regulation 12(2) of these Regulations, the Registered Pension Schemes (Provision of Information) Regulations 2006(b) do not apply in relation to the FAS.

(2) Sections 261 and 262 of the FA 2004 (enhanced lifetime allowance regulations: documents and information – penalties) apply to the reporting obligation in regulation 13 of these Regulations as if it was imposed by enhanced lifetime allowance regulations.

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(a) Section 219 was amended by paragraph 31 of Schedule 23 to the Finance Act 2006 and paragraph 10 of Schedule 20 to the Finance Act 2007 (c.11).

(b) S.I. 2006/567, to which there are amendments not relevant to these Regulations.

(3) Section 98 of the Taxes Management Act 1970(a) (special returns, etc: penalties) applies to the reporting obligations in regulations 14 to 18 of these Regulations as if they were listed in the second column of the Table in that section.

### **Percentage of standard lifetime allowance expended on the happening of a benefit crystallisation event**

**12.**—(1) The percentage of standard lifetime allowance(b) expended on the happening of each benefit crystallisation event for the purposes of these Regulations is found by applying the formula—

$$\left( \frac{AC}{RSLA} \right) \times 100$$

where—

“AC” is the amount crystallised by the benefit crystallisation event; and

“RSLA” is the relevant standard lifetime allowance at the time of that event.

(2) The total percentage of standard lifetime allowance expended in relation to a qualifying member is the sum of—

- (a) the percentages found in accordance with this regulation in respect of that member; and
- (b) the percentages found in accordance with regulation 7 of the Registered Pension Schemes (Provision of Information) Regulations 2006 (percentage of standard lifetime allowance expended on the happening of a registered pension scheme benefit crystallisation event) in respect of that member.

### **Information provided by qualifying members to the FAS scheme manager about enhanced lifetime allowance**

**13.** If a qualifying member intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection, the qualifying member must notify the FAS scheme manager of the reference number issued by the Commissioners for Her Majesty’s Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(c) in respect of that entitlement.

### **Information provided by the FAS scheme manager to qualifying members about liability for a lifetime allowance charge**

**14.** If assistance other than a payment under regulation 18A in the form of a lump sum results in a lifetime allowance charge, within three months of the benefit crystallisation event the FAS scheme manager must provide the qualifying member with a notice stating—

- (a) the chargeable amount in respect of the benefit crystallisation event;
- (b) how that chargeable amount has been calculated; and
- (c) the amount of the resulting charge to tax.

### **Information provided by the FAS scheme manager to qualifying members about benefit crystallisation events**

**15.**—(1) The FAS scheme manager must provide a statement containing the information in paragraph (2) to each qualifying member—

- (a) who has become entitled to receive assistance, at least once in each tax year; or

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(a) 1970 c.9. Section 98 was amended in particular by section 164 of the Finance Act 1989 (c.26).

(b) “Standard lifetime allowance” is defined in section 218 of the FA 2004.

(c) S.I. 2006/131; relevant amending instruments are S.I. 2006/3261 and 2009/56.

- (b) in respect of whom a benefit crystallisation event has occurred, within three months of that event,

or, if the member has died, the FAS scheme manager must provide the statement to the member's personal representatives.

(2) The information is the percentage of standard lifetime allowance expended in relation to the member by—

- (a) benefit crystallisation events in respect of the FAS; and
- (b) benefit crystallisation events under section 216 of the FA 2004 prior to the transfer to the Secretary of State mentioned in regulation 2 of these Regulations except for a benefit crystallisation event which relates to a liability or pension obligation which is not discharged under section 161 of the Pensions Act 2004 as modified by paragraph 3D of Schedule 1 to the FAS Regulations 2005.

(3) No obligation to provide a statement under paragraph (1)(b) arises if a statement is required to be provided under sub-paragraph (a) of that paragraph or under regulation 16(1)(a) of these Regulations.

(4) For the purposes of paragraph (1)(a), a qualifying member becomes entitled to receive assistance in the circumstances set out in regulation 7(2) of these Regulations.

### **Information provided by the FAS scheme manager to personal representatives**

**16.—**(1) The FAS scheme manager must notify to the personal representatives of a deceased qualifying member—

- (a) the percentage of standard lifetime allowance expended by, and the amount and the date of payment of, a payment in the form of a lump sum under regulation 18A in relation to the member; and
- (b) the total percentage of standard lifetime allowance expended in relation to the member, at the date of the notification, by—
  - (i) benefit crystallisation events in respect of the FAS; and
  - (ii) benefit crystallisation events under section 216 of the FA 2004 prior to the transfer to the Secretary of State mentioned in regulation 2 of these Regulations except for a benefit crystallisation event which relates to a liability or pension obligation which is not discharged under section 161 of the Pensions Act 2004 as modified by paragraph 3D of Schedule 1 to the FAS Regulations 2005,

but excluding from that percentage any amount covered by paragraph (a).

(2) The information required by paragraph (1)(a) must be provided no later than the last day of the period of three months beginning with the day on which the assistance payment is made.

(3) The information required by paragraph (1)(b) must be provided no later than the last day of the period of two months beginning with the day on which a request for it is received from the member's personal representatives.

### **Information provided by the FAS scheme manager to Her Majesty's Revenue and Customs**

**17.—**(1) If assistance results in a lifetime allowance charge or would have done but for the qualifying member's entitlement to an enhanced lifetime allowance, or to enhanced protection, within three months of the benefit crystallisation event the FAS scheme manager must provide a report to Her Majesty's Revenue and Customs setting out—

- (a) the name, date of birth, address and national insurance number of the member;
- (b) the date of the relevant benefit crystallisation event;
- (c) the amount crystallised by the event;
- (d) if the member has benefited from an enhanced lifetime allowance or enhanced protection, the reference number issued under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 in respect of that entitlement; and

- (e) in cases where the member is liable to a lifetime allowance charge, the amount of tax due in respect of each chargeable amount as constitutes a lump sum amount and each chargeable amount as constitutes a retained amount<sup>(a)</sup>.

(2) For the purposes of paragraph (1)(e), a chargeable amount that constitutes a retained amount includes cases where it is assumed under regulation 7 of these Regulations that the member has not chosen to commute any portion of non-lump sum assistance for a lump sum.

### **Information provided by personal representatives to Her Majesty's Revenue and Customs**

**18.—**(1) Where—

- (a) a payment in the form of a lump sum is made in respect of a deceased qualifying member under regulation 18A; and
- (b) that payment, of itself or together with any other such payment or any relevant lump sum death benefit paid by a registered pension scheme in respect of the individual, results in a lifetime allowance charge,

the personal representatives of the member shall provide to Her Majesty's Revenue and Customs the information specified in paragraph (2).

(2) The information is—

- (a) a statement that a payment in the form of a lump sum has been paid by the FAS under regulation 18A;
- (b) the name of any registered pension scheme from which, and the name and address of the scheme administrator by whom, the benefits were paid;
- (c) the name of the deceased member in respect of whom the benefits were paid;
- (d) the amount and date of the payment by the FAS;
- (e) the amount and date of the payment of any benefits by a registered pension scheme; and
- (f) the chargeable amount in respect of which a lifetime allowance charge is payable by virtue of the payments.

(3) The information required shall be provided on or before the later of—

- (a) the end of the period of 13 months beginning with the death of the member; or
- (b) the end of the period of 30 days beginning with the date on which the personal representatives (or any of them) became aware that paragraph (1) applied to the deceased member.

(4) Where a requirement to provide information under this regulation arises after the period specified in paragraph (3) has expired, the information shall be provided no later than the last day of the period of 30 months beginning with the death of the member.

(5) If the personal representatives discover after the latest date for providing information under paragraph (4) any information required to be provided under paragraph (1), that information shall be provided no later than the last day of the period of 3 months beginning with the discovery of that information.

(6) Where personal representatives are required to provide information under this regulation by virtue of a payment or payments in the form of a lump sum being made under regulation 18A in respect of the deceased member along with the payment of one or more relevant lump sum death benefits under Part 4 of the FA 2004 in respect of the deceased member, regulation 10 of the Registered Pension Schemes (Provision of Information) Regulations 2006 does not apply in relation to the payment or payments under Part 4 of the FA 2004.

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(a) "Retained amount", in relation to the lifetime allowance provisions, is defined in section 215(7) of the FA 2004.



## PART 4

### Miscellaneous

#### **Transitional provisions: lump sums**

19. For the purposes of—

- (a) paragraph 2 of Schedule 29 to the FA 2004 as modified by paragraph 28(3) of Schedule 36 to that Act; and
- (b) regulation 25D of the Taxation of Pension Schemes (Transitional Provisions) Order 2006(a),

the reference to a pension commencement lump sum in the definition of “APCLS” in paragraph 2(6) of Schedule 29 shall be taken to include a lump sum under regulation 17D.

*Dave Watts*  
*Tony Cunningham*

6th April 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

#### **EXPLANATORY NOTE**

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

The Financial Assistance Scheme Regulations 2005 (“the 2005 Regulations”) establish a financial assistance scheme (“FAS”) which allows payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members have not been satisfied in full. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 (“the 2010 Regulations”) amended the 2005 Regulations so that, amongst other things—

- the property, rights and liabilities of those occupational pension schemes are to be transferred to the Secretary of State in certain circumstances, and
- the FAS will be able to pay lump sums that are similar to some of the lump sums that registered pension schemes are permitted to pay.

These Regulations make certain tax provisions as a consequence of the 2010 Regulations.

Regulation 2 provides that a registered pension scheme which transfers its property, rights and liabilities to the Secretary of State does not make an unauthorised payment that would result in the scheme administrator incurring an income tax charge under Part 4 of the Finance Act 2004.

Regulation 3 provides that where, following a transfer an employer is required to make payments to the Secretary of State that would otherwise have been made to the trustees or managers of the registered pension scheme, the employer can benefit from the same tax relief on those payments that would have been available if the payment had been made to the trustees or managers.

Apart from when a tax charge is generated under regulation 5, regulation 4 provides that the new lump sums that the FAS will pay will not generate a charge to income tax for the recipient.

Regulation 5 provides that the provisions in and made under Part 4 of the Finance Act 2004 which in certain circumstances impose a charge to tax – known as a lifetime allowance charge – on members of registered pension schemes will also apply where an individual receives payments from the FAS, including the new lump sums provided for by the 2010 Regulations. These

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(a) S.I. 2006/572, amended by S.I. 2006/2004; there are other amending instruments but none is relevant.

provisions include the imposition of penalties for failures to report certain events in relation to the lifetime allowance charge.

Regulations 6 to 10 make adjustments to the provisions on the lifetime allowance charge to ensure that they work in the context of the FAS. In particular, regulation 7 sets out the circumstances in which an assistance payment from the FAS will count towards the assessment of whether an individual is liable to the lifetime allowance charge in place of the equivalent provisions for registered pension schemes in the Finance Act 2004.

Regulations 11 to 18 contain a bespoke reporting mechanism under which information must be provided in relation to the lifetime allowance charge to the scheme manager of the FAS, to and in respect of those who receive assistance from the FAS and to Her Majesty's Revenue and Customs. These arrangements operate in place of the usual reporting arrangements in respect of the lifetime allowance charge and registered pension schemes. The penalties for failures to make the reports – or to make them correctly – that apply in relation to registered pensions schemes are also imposed.

Regulation 19 contains a minor consequential provision to ensure that in certain cases individuals cannot benefit from an extra tax free payment from the FAS in addition to tax free lump sums paid from a registered pension scheme.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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**2010 No. 1187**

**INCOME TAX**

The Financial Assistance Scheme (Tax) Regulations 2010

£5.75