

2006 No. 206

INCOME TAX

**The Pension Schemes (Categories of Country and Requirements
for Overseas Pension Schemes and Recognised Overseas
Pension Schemes) Regulations 2006**

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

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 150(7) and (8) of the Finance Act 2004(a), and now exercisable by them(b), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 and shall come into force on 6th April 2006.

(2) In these Regulations a reference, without more, to a numbered section or Schedule is a reference to the section of, or Schedule to, the Finance Act 2004 which is so numbered.

Requirements of an overseas pension scheme

2.—(1) For the purposes of section 150(7) (meaning of overseas pension scheme) an overseas pension scheme must—

- (a) satisfy the requirements in paragraphs (2) and (3); or
- (b) be established (outside the United Kingdom) by an international organisation for the purpose of providing benefits for, or in respect of, past service as an employee of the organisation and satisfy the requirements in paragraph (4).

(2) This paragraph is satisfied if—

- (a) the scheme is an occupational pension scheme and there is, in the country or territory in which it is established, a body—
 - (i) which regulates occupational pension schemes; and
 - (ii) which regulates the scheme in question;

(a) 2004 c. 12.

(b) The functions of the Commissioners of Inland Revenue ("the former Commissioners"), including those under which this instrument is made, were transferred to the Commissioners for Her Majesty's Revenue and Customs ("the new Commissioners") by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 12). Section 50 of that Act provides that a reference in any other enactment to the former Commissioners is to be construed as reference to the new Commissioners in so far as is appropriate in consequence of section 5.

- (b) the scheme is not an occupational pension scheme and there is in the country or territory in which it is established, a body—
 - (i) which regulates pension schemes other than occupational pension schemes; and
 - (ii) which regulates the scheme in question; or
- (c) neither sub-paragraph (a) or (b) is satisfied by reason only that no such regulatory body exists in the country or territory and—
 - (i) the scheme is established in another member State, Norway, Iceland or Liechtenstein; or
 - (ii) the scheme’s rules provide that at least 70% of a member’s UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing that individual with an income for life, and the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) are payable no earlier than they would be if pension rule 1 in section 165 applied.

(3) This paragraph is satisfied if the scheme is recognised for tax purposes.

A scheme is “recognised for tax purposes” under the tax legislation of a country or territory in which it is established if it meets the primary conditions and also meets one of Conditions A and B.

Primary condition 1

The scheme is open to persons resident in the country or territory in which it is established.

Primary condition 2

The scheme is established in a country or territory where there is a system of taxation of personal income under which tax relief is available in respect of pensions and —

- (a) tax relief is not available to the member on contributions made to the scheme by the individual or, if the individual is an employee, by their employer, in respect of earnings to which benefits under the scheme relate; or
- (b) all or most of the benefits paid by the scheme to members who are not in serious ill-health are subject to taxation.

For the purposes of this condition “tax relief” includes the grant of an exemption from tax.

Condition A

The scheme is approved or recognised by, or registered with, the relevant tax authorities as a pension scheme in the country or territory in which it is established.

Condition B

If no system exists for the approval or recognition by, or registration with, relevant tax authorities of pension schemes in the country or territory in which it is established—

- (a) it must be resident there; and
- (b) its rules must provide that—
 - (i) at least 70% of a member’s UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, and
 - (ii) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) must be payable no earlier than they would be if pension rule 1 in section 165 applied.

(4) In the case of an overseas pension scheme falling within paragraph (1)(b) the requirements are that—

- (a) the scheme rules must provide that at least 70% of a member’s UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, and

- (b) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) under the scheme must be payable no earlier than they would be if pension rule 1 in section 165 applied.

(5) In this regulation—

“international organisation” means an organisation to which section 1 of the International Organisations Act 1968(a) applies by virtue of an Order in Council under subsection (1) of that section;

occupational pension scheme” has the meaning given by section 150(5); and

“UK tax-relieved scheme funds” means, in relation to a member, the sum of the member’s UK tax-relieved fund and his relevant transfer fund, as defined respectively by regulations 2 and 3 of the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006(b).

Recognised overseas pension schemes: prescribed countries or territories and prescribed conditions

3.—(1) For the purposes of section 150(8) (recognised overseas pension schemes), in addition to satisfying the requirements set out in regulation 2 above, the pension scheme must—

- (a) be established in a country or territory mentioned in paragraph (2); or
- (b) satisfy the requirement in paragraph (4).

(2) The countries and territories referred to in paragraph (1)(a) are—

- (a) the member States of the European Communities, other than the United Kingdom;
- (b) Iceland, Liechtenstein and Norway; and
- (c) any country or territory in respect of which there is in force an Order in Council under section 788 of the Income and Corporation Taxes Act 1988 (c) giving effect in the United Kingdom to an agreement which contains provision about—
 - (i) the exchange of information between the parties, and
 - (ii) non-discrimination.

(3) For the purposes of paragraph (2)(c)(ii) an agreement “contains provision about non-discrimination” if it provides that the nationals of a Contracting State shall not be subjected in the territory of the other Contracting State to any taxation, or any requirement connected to such taxation, which is other than, or more burdensome than, the taxation and connected requirements to which the nationals of the other State are or may be subjected in the same circumstances.

(4) The requirement is that, at the time of a transfer of sums or assets which would, subject to these Regulations, constitute a recognised transfer, the rules of the scheme must provide that—

- (a) at least 70% of the sums transferred will be designated by the scheme manager for the purpose of providing the member with an income for life;
- (b) the pension benefits (and any lump sum associated with those benefits) payable to the member under the scheme, to the extent that they relate to the transfer, are payable no earlier than they would be if pension rule 1 in section 165 applied; and
- (c) the scheme is open to persons resident in the country or territory in which it is established.

David Varney
Steve Lamey

1st February 2006

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

(a) 1968 c. 48: section 1(1) was amended by section 1(1) of the International Organisations Act 1981 (c. 9).

(b) S.I. 2006/207.

(c) 1988 c. 1. Section 788 has been amended by paragraphs 1 and 2 of Schedule 30, and the relevant entry in Part II (13) of Schedule 40 to the Finance Act 2000 (c. 17), section 88 of the Finance Act 2002 (c. 23) and section 198 of the Finance Act 2003 (c. 14).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 1 provides for the citation and commencement of the Regulations.

Regulation 2 prescribes the requirements imposed under section 150(7) of the Finance Act 2004 (c. 12) which an overseas pension scheme must satisfy for the purposes of Part 4.

Regulation 3 sets out the requirements prescribed under section 150(8) which an overseas pension scheme must satisfy in order to be treated as a recognised overseas pension scheme. Such a scheme must either be established in another EEA State, or in a country or territory with which the United Kingdom has a double taxation agreement providing for the exchange of information between the fiscal authorities of the United Kingdom and the overseas country or territory and for non-discrimination between UK Nationals and nationals of the overseas country or territory. If it is not established in such a country or territory a scheme may nonetheless be recognised if it satisfies the requirements prescribed in regulation 3(4).

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 website of HM Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf or by writing to the Capital & Savings Ministerial Correspondence Unit, 1st Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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