

Status: Point in time view as at 19/03/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 35 is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 35

Section 72

PENSIONS: SPECIAL ANNUAL ALLOWANCE CHARGE

Modifications etc. (not altering text)

- C1** Sch. 35 applied (with modifications) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Application to Members of Currently-Relieved Non-UK Pension Schemes\) Order 2009 \(S.I. 2009/2031\)](#), arts. 1(1), **2-10**

Special annual allowance charge

- 1 (1) A charge to income tax, to be known as the special annual allowance charge, arises where—
- (a) the total adjusted pension input amount for a tax year in the case of a high-income individual who is a member of one or more registered pension schemes, exceeds
 - (b) the amount of the special annual allowance.
- (2) The individual is a high-income individual if the individual's relevant income for the tax year is £150,000 or more.
- Paragraph 2 makes provision for calculating the individual's relevant income.
- (3) Paragraphs 3 to 16 explain what is the total adjusted pension input amount.
- (4) The special annual allowance is £20,000 (but subject to paragraph 17).
- (5) But if, in calculating the total adjusted pension input amount of the individual for the tax year, a deduction is made in respect of—
- (a) protected pension input amounts (see paragraphs 7 to 14), or
 - (b) a pre-22 April 2009 pension input amount that is such an amount by virtue of paragraph 16(3),
- (or both) the special annual allowance is £20,000 less the amount of the deduction or, if the deduction is £20,000 or more, is nil.
- (6) The person liable to the special annual allowance charge is the individual.
- (7) The individual is liable to the special annual allowance charge whether or not—
- (a) the individual, and
 - (b) the scheme administrator of the pension scheme or schemes concerned, are UK resident, ordinarily UK resident or domiciled in the United Kingdom.
- (8) The special annual allowance charge is a charge at the [^{F1}appropriate rate] in respect of the amount by which—
- (a) the total adjusted pension input amount, exceeds

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(b) the amount of the special annual allowance.

[^{F2}For this purpose “the appropriate rate” is—

- (a) 0% in relation to so much (if any) of the chargeable amount as, when added to the reduced net income amount, does not exceed the basic rate limit,
- (b) 20% in relation to so much (if any) of the chargeable amount, as when so added, exceeds the basic rate limit but does not exceed the higher rate limit, and
- (c) 30% in relation to so much (if any) of the chargeable amount as, when so added, exceeds the higher rate limit.

In this sub-paragraph—

“chargeable amount” means the amount in respect of which the special annual allowance charge is charged, and

“the reduced net income amount” means the amount after taking step 3 in section 23 of ITA 2007 in the case of the individual for the tax year.]

(9) But where—

- (a) the individual's total pension input amount under section 229 of FA 2004 (annual allowance charge) for the tax year, exceeds
- (b) the amount of the annual allowance for the tax year (see section 228 of that Act and orders made under it),

the amount in respect of which the special annual allowance charge is charged is reduced by the amount of the excess.

(10) In calculating the individual's liability to income tax for the tax year the amount of any income tax to which the individual is liable under this section is to be added at Step 7 of the calculation in section 23 of ITA 2007 (which applies as if this Schedule were a provision listed in section 30 of that Act).

(11) The amount in respect of which the special annual allowance charge is charged is not to be treated as income for any purpose of the Tax Acts.

Textual Amendments

- F1** Words in Sch. 35 para. 1(8) substituted (with effect in accordance with art. 1 of the amending S.I.) by [Special Annual Allowance Charge \(Variation of Rate\) Order 2010 \(S.I. 2010/572\)](#), **art. 2**
- F2** Words in Sch. 35 para. 1(8) inserted (with effect in accordance with art. 1 of the amending S.I.) by [Special Annual Allowance Charge \(Variation of Rate\) Order 2010 \(S.I. 2010/572\)](#), **art. 2**

Calculation of relevant income

2 (1) To find the individual's relevant income for the tax year take the following steps—

Step 1

Identify the individual's total income.

Step 2

Add the amount of any deductions made from any employment income of the individual for the tax year under section 193(2) of FA 2004 or made under Chapter 2 of Part 5 of ITEPA 2003 in accordance with paragraph 51 of Schedule 36 to FA 2004.

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Step 3

Deduct the amount of any relief under the provisions listed in section 24 of ITA 2007, other than sections 193(4) and 194(1) of FA 2004, to which the individual is entitled for the tax year.

Step 4

Deduct the aggregate amount of any relevant contributions, but subject to a maximum of £20,000.

Step 5

Add any amount by which what would otherwise be general earnings or specific employment income of the individual for the tax year has been reduced by a post-22 April 2009 salary sacrifice scheme.

Step 6

If in the tax year the individual makes, or is treated under section 426 of ITA 2007 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid), deduct the grossed up amount of the gift (that is, the amount of the gift grossed up by reference to the basic rate for the tax year).

The result is the individual's relevant income for the tax year unless the result is less than £150,000 and the following provisions provide that the individual's relevant income is to be a different amount.

- (2) If the amount arrived at under sub-paragraph (1) is less than £150,000, take the steps in that sub-paragraph in relation to—
- (a) the tax year before the tax year concerned, and
 - (b) the tax year before that.

If the result is £150,000 or more for either or both of those earlier tax years the individual's relevant income for the tax year is to be assumed to be £150,000.

- (3) If there is a scheme the main purpose, or one of the main purposes, of which is to secure that the individual's relevant income for the tax year is less than £150,000, it is to be assumed to be £150,000.
- (4) In step 4 in sub-paragraph (1) “relevant contributions” are—
- (a) contributions which are relievably pension contributions in relation to the individual and are paid in the tax year,
 - (b) contributions in respect of which the individual is entitled to a tax reduction under section 788 of ICTA and which are paid in the tax year, and
 - (c) contributions paid by the individual for which a deduction is given under Chapter 2 of Part 5 of ITEPA 2003 for the tax year in accordance with paragraph 51 of Schedule 36 to FA 2004.
- (5) In step 5 in sub-paragraph (1) “a post-22 April 2009 salary sacrifice scheme” is a scheme made on or after 22 April 2009 in pursuance of which—
- (a) the individual gives up the right to receive general earnings or specific employment income, and
 - (b) an employer of the individual or any other person agrees to pay contributions (or additional contributions) to a pension scheme in respect of the individual

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or otherwise to secure an increase in the amount of benefits to which the individual or any person who is a dependant of, or is connected with, the individual is actually or prospectively entitled under a pension scheme.

- (6) Section 993 of ITA 2007 (meaning of “connected” person) applies for the purposes of sub-paragraph (5).

Total adjusted pension input amount: general

- 3 (1) The total adjusted pension input amount is to be calculated as follows.
- (2) Arrive at an amount in the same way as the total pension input amount would be arrived at for the purposes of the annual allowance charge in accordance with sections 229 to 237 of FA 2004 (assuming that it were necessary to arrive at it for that purpose) but subject to—
- (a) the modifications of those sections specified in paragraphs 4 and 5, and
 - (b) where paragraph 6 applies, the provisions of that paragraph.
- (3) Then reduce the amount so arrived at by the aggregate of—
- (a) any protected pension input amounts (see paragraphs 7 to 14), and
 - (b) any relevant refunded amounts (see paragraph 15),
- and, if the tax year is the tax year 2009-10, any pre-22 April 2009 pension input amount (see paragraph 16).

Total adjusted pension input amount: modifications of sections 229 to 237 of FA 2004

- 4 (1) Section 229(3) of FA 2004 (no pension input amount for year in which individual becomes entitled to all benefits under arrangement or dies) has effect for arriving at an amount under paragraph 3(2) in relation to an arrangement only if condition A or B is met.
- (2) Condition A is that—
- (a) the arrangement is a defined benefits arrangement under a pension scheme,
 - (b) at the time when the individual becomes entitled to all the benefits that may be provided to the individual under the arrangement or dies, there are at least 20 persons in respect of whom defined benefits arrangements subsist under the pension scheme under which benefits are accruing or scheme pensions are being paid, and
 - (c) the individual's becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.
- (3) Condition B is that—
- (a) the arrangement is under an occupational pension scheme, a public service pension scheme or a group personal pension scheme,
 - (b) the individual's entitlement to the benefits mentioned in section 229(3)(a) of FA 2004 arises only because the ill-health condition is satisfied, and
 - (c) the individual's becoming entitled to any of the benefits that may be provided to or in respect of the individual under the arrangement is not part of a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce

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liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.

- 5 (1) Sections 230(1), 233(1) and 234(1) of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “the pension input period of the arrangement that ends in” were omitted.
- (2) Sections 230 to 237 of FA 2004 have effect for arriving at an amount under paragraph 3(2) as if “tax year” were substituted for “pension input period” in all other places.

Total adjusted pension input amount: modification in cases of avoidance scheme

- 6 (1) This paragraph applies if there is a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to the special annual allowance charge, the annual allowance charge or the lifetime allowance charge by reducing the amount arrived at in accordance with paragraph 3(2) in relation to an arrangement under a pension scheme for the tax year (or for reducing that amount and the amount so arrived at for other tax years).
- (2) If the amount calculated under sub-paragraph (3) exceeds that arrived at in accordance with paragraph 3(2) in relation to the arrangement for the tax year, the amount so calculated is to be treated as if it were the amount so arrived at.
- (3) The amount is calculated by deducting—
- (a) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the beginning of the tax year, from
 - (b) the amount of the consideration that might be expected to be received in respect of an assignment (or assignation) of the benefits to which the individual or any dependant of the individual has a prospective entitlement under the arrangement at the end of the tax year.
- (4) That calculation is to be made on the assumptions that—
- (a) the benefits are capable of assignment (or assignation),
 - (b) the assignment (or assignation) is by a transaction between parties at arm's length, and
 - (c) any power to reduce entitlement to the benefits does not exist.
- (5) If the arrangement ceases to exist during the tax year, the reference in sub-paragraph (3)(b) to the end of the tax year is to the time immediately before it ceases to exist.
- (6) Section 236 of FA 2004 applies for adjusting the amount in sub-paragraph (3) (b) as for adjusting the closing value of an individual's rights as calculated under section 234(5) of that Act (but as if references to the pension input period were to the tax year and whether or not the arrangement is a defined benefits arrangement).

Protected pension input amounts: general

- 7 (1) The following paragraphs make provision for protected pension input amounts in respect of arrangements under registered pension schemes—
- (a) paragraph 8 makes provision about existing defined benefits arrangements,
 - (b) paragraph 9 makes provision about existing cash balance arrangements,

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- (c) paragraph 10 makes provision about other existing money purchase arrangements under occupational pension schemes and public service pension schemes,
 - (d) paragraph 11 makes provision about other existing money purchase arrangements under other schemes,
 - (e) paragraph 12 makes provision about existing hybrid arrangements, ^{F3}... [^{F4}, and
 - (g) paragraph 13A makes provision about single contributions made in accordance with agreements entered into not later than 22 April 2009.]
 - (f) paragraph 13 makes provision about new and re-activated arrangements.
- (2) Paragraph 14 makes anti-avoidance provision in relation to all the varieties of arrangements covered by paragraphs 8 to [^{F5}13A].

Textual Amendments

- F3** Word in Sch. 35 para. 7(1)(e) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **3(1)(a)**
- F4** Sch. 35 para. 7(1)(g) and word inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **3(1)(b)**
- F5** Word in Sch. 35 para. 7(2) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **3(2)**

Protected pension input amounts: existing defined benefits arrangements

- 8 (1) This paragraph applies in respect of a defined benefits arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme.
- (2) If the individual pays relevant added years contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant added years contributions are contributions paid—
- (a) with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual,
 - (b) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
 - (c) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
 - (d) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made

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pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.

- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant added years contributions it is a protected pension input amount if [^{F6}the conditions set out in sub-paragraph (4A) or (4B) are met.]

[^{F7}(4A) The conditions in this sub-paragraph are that—

- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and
- (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.

(4B) The conditions in this sub-paragraph are that—

- (a) benefits began accruing to or in respect of the individual under the arrangement on or after 22 April 2009 but before the relevant end date and continued until that date,
- (b) the arrangement was made in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, and
- (c) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under that arrangement and ending with the relevant end date.

(4C) If the conditions in sub-paragraph (4D) are met, the amount arrived at under paragraph 3(2) in relation to the arrangement which is attributable otherwise than to the paying of relevant added years contributions is a protected pension input amount to the extent specified in sub-paragraph (4F).

(4D) The conditions in this sub-paragraph are that—

- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
- (b) the cessation date was on or after 22 April 2009,
- (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which some or all of the benefits accruing under the arrangement were accruing in circumstances in which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
- (d) the individual does not make more than one arrangement under a pension scheme other than that under which the old arrangement was an arrangement in the period of 3 months beginning with the cessation date,
- (e) the individual made the arrangement for one of the reasons set out in sub-paragraph (4E),
- (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date,

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- (g) there is no material difference between the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement and the rules of the pension scheme under which such benefits were calculated under the old arrangement, and
 - (h) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under the arrangement and ending with the relevant end date.
- (4E) The reasons referred to in sub-paragraph (4D)(e) are that—
- (a) the individual’s employer had entered into a re-organisation of its pension provisions and the making of the arrangement was a consequence of that re-organisation, or
 - (b) the making of the arrangement was due to a relevant business transfer within the meaning of paragraph 12(8A) of Schedule 36 to FA 2004 .
- (4F) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it does not exceed the amount which would have been a protected pension input amount in respect of the old arrangement for the accrual period had the old arrangement continued during that period.
- (4G) The accrual period is the period in the tax year—
- (a) beginning with the date on which the individual became an active member of a pension scheme by reference to the arrangement (“the joining date”) or, if the joining date was in an earlier tax year, the first day of the tax year, and
 - (b) ending with the last day of the tax year or, if earlier, the date on which the individual ceased being an active member of the pension scheme by reference to the arrangement.]
- [^{F8}(5) If—
- (a) there is a material change in the rules of the pension scheme under which benefits are calculated under the arrangement during a period referred to in sub-paragraph (4A)(b), (4B)(c) or (4D)(h), and
 - (b) the amount arrived at under paragraph 3(2) in relation to the arrangement would have been a protected pension input amount under sub-paragraph (4) or (4C) had it not been for the material change,
 the amount so arrived at, to the extent that it is attributable otherwise than to the paying of relevant added years contributions, is a protected pension input amount to the extent that it is not attributable to that change.]
- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme.
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement.

Textual Amendments

- F6** Words in Sch. 35 para. 8(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **4(1)**

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- F7** Sch. 35 para. 8(4A)-(4G) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **4(2)**
- F8** Sch. 35 para. 8(5) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **4(3)**

Protected pension input amounts: existing cash balance arrangements

- 9 (1) This paragraph applies in respect of a cash balance arrangement if the arrangement is under an occupational pension scheme or a public service pension scheme.
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid—
- (a) in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
 - (b) on a quarterly or more frequent basis during the period beginning with that date or (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
 - (c) at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.
- (4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable otherwise than to the paying of relevant additional voluntary contributions it is a protected pension input amount if [^{F9}the conditions set out in sub-paragraph (4A) or (4B) are met.]
- [^{F10}(4A) The conditions in this sub-paragraph are that—
- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and
 - (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.
- (4B) The conditions in this sub-paragraph are that—
- (a) benefits began accruing to or in respect of the individual under the arrangement on or after 22 April 2009 but before the relevant end date and continued until that date,
 - (b) the arrangement was made in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, and

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- (c) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under that arrangement and ending with the relevant end date.
- (4C) If the conditions in sub-paragraph (4D) are met, the amount arrived at under paragraph 3(2) in relation to the arrangement which is attributable otherwise than to the paying of relevant additional voluntary contributions is a protected pension input amount to the extent specified in sub-paragraph (4E).
- (4D) The conditions in this sub-paragraph are that—
- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
 - (b) the cessation date was on or after 22 April 2009,
 - (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which some or all of the benefits accruing under the arrangement were accruing in circumstances in which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
 - (d) the individual does not make more than one arrangement under a pension scheme other than that under which the old arrangement was an arrangement in the period of 3 months beginning with the cessation date,
 - (e) the individual made the arrangement for one of the reasons set out in paragraph 8(4E),
 - (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date,
 - (g) there is no material difference between the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement and the rules of the pension scheme under which such benefits were calculated under the old arrangement, and
 - (h) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits started accruing under the arrangement and ending with the relevant end date.
- (4E) The amount arrived at under paragraph 3(2) is a protected pension input amount to the extent that it does not exceed the amount which would have been a protected pension input amount in respect of the old arrangement for the accrual period had the old arrangement continued during that period.
- (4F) For the purposes of sub-paragraph (4E) the accrual period has the meaning set out in paragraph 8(4G).]
- [^{F11}(5) If—
- (a) there is a material change in the rules of a pension scheme under which benefits are calculated under an arrangement during a period referred to in sub-paragraph (4A)(b), (4B)(c) or (4D)(h), and

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- (b) the amount arrived at under paragraph 3(2) in relation to the arrangement would have been a protected pension input amount under sub-paragraph (4) or (4C) had it not been for the material change,
the amount so arrived at, to the extent that it is attributable otherwise than to the paying of relevant additional voluntary contributions, is a protected pension input amount to the extent that it is not attributable to that change.]
- (6) But even in that case the whole of the amount so arrived at, to the extent that it is so attributable, is a protected pension input amount if the material change affects at least 50 active members of the pension scheme.
- (7) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when benefits cease to accrue to or in respect of the individual under the arrangement.

Textual Amendments

- F9** Words in Sch. 35 para. 9(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **5(1)**
- F10** Sch. 35 para. 9(4A)-(4F) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **5(2)**
- F11** Sch. 35 para. 9(5) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **5(3)**

Protected pension input amounts: other existing money purchase arrangements under occupational and public service pension schemes

- 10 (1) This paragraph applies in respect of a money purchase arrangement, other than a cash balance arrangement, if the arrangement is under an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme.
- (2) If the individual pays relevant additional voluntary contributions under the arrangement in the tax year, the amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to those contributions.
- (3) Relevant additional voluntary contributions are additional voluntary contributions paid—
- in pursuance of an agreement which was made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time,
 - on a quarterly or more frequent basis during the period beginning with that date of (if later) when they first became payable and ending with the relevant end date without any failure to pay contributions payable during that period on more than an insignificant number of occasions, and
 - at a rate which has not increased during that period otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.

Status: Point in time view as at 19/03/2010.

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- [^{F12}(4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in—
- (a) sub-paragraph (5) if the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date, or
 - (b) sub-paragraph (5A) if the individual has been an active member of the pension scheme by reference to the arrangement since on or after 22 April 2009 (“the joining date”) and until the relevant end date and the arrangement was entered into in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009.]
- (5) That amount is a protected pension input amount to the extent that it is attributable to contributions paid—
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
 - (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before noon on 22 April 2009 or made pursuant to a written application received by or on behalf of the scheme administrator of the pension scheme before that time.
- [^{F13}(5A) That amount is a protected pension input amount to the extent that it is attributable to contributions paid—
- (a) on a quarterly or more frequent basis without any failure to pay contributions on or after the joining date on more than an insignificant number of occasions, and
 - (b) at a rate which has not increased during the period beginning with the joining date and ending with the relevant end date otherwise than in accordance with the agreement referred to in sub-paragraph (4)(b).
- (5B) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in sub-paragraph (5C) if—
- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
 - (b) the cessation date was on or after 22 April 2009,
 - (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
 - (d) the individual did not make more than one such new arrangement in the period of one month beginning with the cessation date,
 - (e) the individual made the new arrangement for one of the reasons set out in paragraph 8(4E), and

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- (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date.
- (5C) The amount is a protected pension input amount to the extent that it is attributable to contributions paid under the arrangement which—
- (a) do not exceed the amount which would have been a protected pension input amount as a result of contributions made under the old arrangement for the accrual period had that arrangement continued during that period,
 - (b) are paid on a quarterly or more frequent basis from the date (“the joining date”) on which the individual became an active member of the pension scheme by reference to the arrangement without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
 - (c) are paid at a rate which is no higher than the rate at which the contributions under the old arrangement were paid and which has not increased during the period from the joining date and ending with the relevant end date.
- (5D) For the purposes of sub-paragraph (5C) the accrual period has the meaning set out in paragraph 8(4G).]
- (6) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

Textual Amendments

- F12** Sch. 35 para. 10(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **6(1)**
- F13** Sch. 35 para. 10(5A)-(5D) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **6(2)**

Protected pension input amounts: other existing money purchase arrangements under other pension schemes

- 11 (1) [^{F14}Sub-paragraph (2)] applies in respect of a money purchase arrangement, other than a cash balance arrangement, if—
- (a) the arrangement is under a scheme other than an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme, and
 - (b) the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it is attributable to contributions paid—
- (a) on a quarterly or more frequent basis since before 22 April 2009 without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and

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- (b) at a rate which has not increased during the period beginning with that date and ending with the relevant end date otherwise than in accordance with an agreement made before that date.

(3) If the individual—

- (a) was not an active member of the pension scheme by reference to the arrangement immediately before 22 April 2009, but
- (b) a written application to become such an active member was received by or on behalf of the scheme administrator of the pension scheme before noon on 22 April,

the references to before 22 April 2009 (and to that date) in sub-paragraphs (1)(b) and (2) are to the date on which the individual became such an active member pursuant to the application.

[^{F15}(3A) If the individual—

- (a) has been an active member of a pension scheme by reference to an arrangement (“the old arrangement”) in circumstances in which the amount arrived at under paragraph 3(2) in relation to the arrangement has been to any extent a protected pension input amount by virtue of this paragraph, and
- (b) no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of the pension scheme by reference to the old arrangement, made an arrangement (“the new arrangement”) which is a money purchase arrangement other than a cash balance arrangement under a different pension scheme which is neither an occupational pension scheme nor a public service pension scheme and does not form part of a group personal pension scheme,

the amount arrived at under paragraph 3(2) in relation to the new arrangement is a protected pension input amount to the extent specified in sub-paragraph (3B).

(3B) The amount is a protected pension input amount to the extent that it is attributable to contributions paid under the new arrangement which—

- (a) are paid on a quarterly or more frequent basis from the date (“the joining date”) on which the individual became an active member of the pension scheme by reference to the new arrangement without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
- (b) are paid at a rate which is no higher than the rate at which contributions under the old arrangement were paid and which has not increased during the period beginning with the joining date and ending with the relevant end date.

(3C) Sub-paragraph (3B) does not apply in relation to any contributions made under the new arrangement if—

- (a) the old arrangement has been re-activated within the meaning of paragraph 13(7) on or after the joining date, or
- (b) the individual has made more than one new arrangement on or after the joining date.]

(4) In this paragraph “the relevant end date” means the end of the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.

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Textual Amendments

- F14** Words in Sch. 35 para. 11(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **7(1)**
- F15** Sch. 35 para. 11(3A)-(3C) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **7(2)**

Protected pension input amounts: existing hybrid arrangements

- 12 (1) This paragraph applies in respect of a hybrid arrangement under a pension scheme if any one or more of paragraphs 8 to 11 would be applicable in relation to it.
- (2) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount if and to the extent of the greater or greatest amount that it would be if the arrangement were an arrangement under whichever (if any) of paragraphs 8 to 11 are applicable in relation to it.
- (3) Paragraph 8 is applicable in relation to it as in relation to a defined benefits arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits.
- (4) Paragraph 9 is applicable in relation to it as in relation to a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are cash balance benefits.
- (5) Paragraph 10 or 11 is applicable in relation to it as in relation to a money purchase arrangement other than a cash balance arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits.

Protected pension input amounts: new and re-activated arrangements

- 13 (1) This paragraph applies in respect of an arrangement if—
- (a) the arrangement is made or re-activated on or after 22 April 2009,
- (b) the arrangement—
- (i) is under an occupational pension scheme or forms part of a group personal pension scheme and (in either case) relates to an employment of the individual, or
- (ii) is a public service pension scheme,
- (c) there is no material change in the rules of the pension scheme under which benefits are calculated under the arrangement in the relevant period or any such material change in the relevant period affects at least 50 active members of the pension scheme, and
- (d) throughout the relevant period there are at least 20 persons in respect of whom arrangements subsist under the pension scheme under which benefits are accruing on the same basis as those under the arrangement.
- (2) If the arrangement falls within sub-paragraph (1)(b)(i), this paragraph does not apply in respect of it if—

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- (a) the provision of benefits under it is not part of the normal pattern of pension provision made by the person who is the employer in relation to the employment of the individual for the employees of the employer generally, or
 - (b) the persons mentioned in sub-paragraph (1)(d) are not employees of that person.
- (3) “The relevant period” is the period—
- (a) beginning when the arrangement is made or re-activated, and
 - (b) ending at the same time as the tax year or, if earlier, the time when the individual ceases to be an active member of the pension scheme by reference to the arrangement.
- (4) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount except to the extent that it is attributable to the payment of added years contributions or additional voluntary contributions.
- (5) “Added years contributions” are contributions paid with a view to securing that the calculation of benefits under the arrangement is by reference to a period of service in excess of pensionable service by the individual.
- (6) An arrangement relates to an employment of the individual if—
- (a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or
 - (b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.
- (7) An arrangement is “re-activated” if the individual, having ceased to be an active member of the pension scheme by reference to the arrangement, again becomes such a member.

^{F16}Protected pension input amounts: contribution paid in accordance with agreement entered into on or before 22 April 2009

Textual Amendments

F16 Sch. 35 para. 13A inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), 8

- 13A. The amount arrived at under paragraph 3(2) in relation to an arrangement which relates to an employment of the individual is a protected lump sum input amount if it is attributable to a single contribution which—
- (a) is paid on or after 22 April 2009, and
 - (b) is paid, in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, not later than the date specified for payment in the agreement.]

Protected pension input amounts: anti-avoidance

- 14 No amount is a protected pension input amount by virtue of any of paragraphs 8 to ^{F17}13A] if the individual is during the tax year a party to a scheme the main purpose, or one of the main purposes, of which is to avoid or reduce liability to

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the special annual allowance charge, the annual allowance charge or the lifetime allowance charge.

Textual Amendments

- F17** Word in Sch. 35 para. 14 substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **9**

Relevant refunded amounts

- 15 (1) The amount arrived at under paragraph 3(2) in relation to an arrangement is a relevant refunded amount to the extent that it does not exceed the amount of a contributions refund lump sum paid to the individual (or the personal representatives of the individual).
- (2) A lump sum is a contributions refund lump sum if—
- (a) it is paid to the individual by a pension scheme in respect of an arrangement,
 - (b) it is not a lump sum of any of the descriptions listed in section 166(1) of FA 2004,
 - (c) it is paid during the period of one year beginning immediately after the end of the tax year,
 - (d) its amount does not exceed the adjusted contributions amount for the tax year, and
 - (e) the individual is a high-income individual for the tax year.
- (3) The adjusted contributions amount for the tax year is the amount of any relevant relievable pension contributions less any relevant deductions.
- (4) “Relevant relievable pension contributions” are contributions which—
- (a) are relievable pension contributions in relation to the individual, and
 - (b) are paid to the pension scheme under the arrangement in the tax year,
- but subject as follows.
- (5) If the pension scheme is an occupational pension scheme or a public service pension scheme or forms part of a group personal pension scheme, contributions are relevant relievable pension contributions only if they—
- (a) are additional voluntary contributions, and
 - (b) are not relevant additional voluntary contributions within the meaning of paragraph 9(3) or 10(3).
- (6) If the pension scheme is not an occupational pension scheme or a public service pension scheme and does not form part of a group personal pension scheme—
- (a) contributions are not relevant relievable pension contributions if they fall within paragraph 11(2), and
 - (b) if the tax year is the tax year 2009-10, contributions paid before 22 April 2009 are not relevant relievable pension contributions if they were paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis.
- (7) “Relevant deductions” are—

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- (a) the amount of any previous contributions refund lump sum previously paid by the pension scheme since the end of the tax year in respect of the arrangement,
- (b) the amount of any pension debit to which the rights of the individual under the arrangement became subject in the tax year,
- (c) where during the tax year there was a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under any other pension scheme that is a registered pension scheme or a qualifying recognised overseas pension scheme, the amount of any sums, and the market value of any assets, transferred, and
- (d) the amount crystallised by any benefit crystallisation events which occurred in relation to the individual and the arrangement in the tax year.

Pre-22 April 2009 pension input amount

- 16 (1) This paragraph makes provision for the extent (if any) to which the amount arrived at under paragraph 3(2) in relation to an arrangement is a pre-22 April 2009 pension input amount.
- (2) In relation to a defined benefits arrangement or cash balance arrangement, a pre-22 April 2009 pension input amount is such proportion of what would otherwise be the amount arrived at under paragraph 3(2) as, on a just and reasonable apportionment, relates to the period beginning with 6 April 2009 and ending with 21 April 2009.
- (3) In relation to a money purchase arrangement that is not a cash balance arrangement, a pre-22 April 2009 pension input amount is so much of the amount of the contributions within section 233 of FA 2004 as are paid in the period beginning with 6 April 2009 and ending with [F1822] April 2009, other than any contributions paid pursuant to an agreement for the payment of contributions on a quarterly or more frequent basis.
- (4) In relation to a hybrid arrangement, a pre-22 April 2009 pension input amount is the greater or greatest of the amounts under the sub-paragraph or sub-paragraphs applicable in relation to it.
- (5) For this purpose—
- (a) sub-paragraph (2) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are defined benefits or cash balance benefits, and
 - (b) sub-paragraph (3) is applicable in relation to the arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under it are other money purchase benefits.

Textual Amendments

F18 Word in Sch. 35 para. 16(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Special Annual Allowance Charge \(Protected Pension Input Amounts\) Order 2010 \(S.I. 2010/429\)](#), arts. 1(1), **10**

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Increased special annual allowance

- 17 (1) This paragraph has effect where the mean of the infrequent money purchase contributions amount for the tax years 2006-07, 2007-08 and 2008-09 (“the relevant mean”) exceeds £20,000.
- (2) Where the relevant mean is less than £30,000, this Schedule has effect as if the references in paragraph 1(4) and (5) to £20,000 were instead to the relevant mean.
- (3) Where the relevant mean is £30,000 or more, this Schedule has effect as if those references were instead to £30,000.
- (4) The “infrequent money purchase contributions amount” for a tax year is the aggregate of any relevant contributions paid in the tax year—
- (a) under money purchase arrangements, other than cash balance arrangements, under registered pension schemes, and
 - (b) less frequently than on a quarterly basis;
- (and so is nil if no such contributions were so paid).
- (5) But if the infrequent money purchase contributions amount for a tax year would otherwise be greater than the annual allowance for the tax year, it is to be taken to be the annual allowance for the tax year.
- (6) “Relevant contributions” means contributions which are—
- (a) relievable pension contributions by or on behalf of the individual, or
 - (b) contributions paid by an employer of the individual in respect of the individual.

Taxation of contributions refund lump sums

- 18 Part 4 of FA 2004 applies in relation to a contributions refund lump sum as if it were a short service refund lump sum in excess of the limit specified in section 205(4) (a) of that Act (so that it is not an unauthorised payment and is liable to tax at the rate chargeable on a short service refund lump sum).

Power to amend

- 19 (1) The Treasury may by order made by statutory instrument amend paragraph 1(8) so as to vary the rate of the special annual allowance charge.
- (2) An order under sub-paragraph (1) may make provision for there to be different rates in different circumstances.
- (3) The Treasury may by order made by statutory instrument amend paragraphs 2 to 18.
- (4) An order under sub-paragraph (3) may make provision having effect in relation to times before it is made if it does not increase any person's liability to tax.
- (5) No order may be made under sub-paragraph (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (6) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.

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Currently-relieved non-UK pension schemes

- 20 (1) The Treasury may by order made by statutory instrument make provision for this Schedule to apply in relation to individuals who—
- (a) are or have been members of currently-relieved non-UK pension schemes, or
 - (b) have been members of overseas pension schemes that were not currently-relieved non-UK pension schemes,
- subject to such modifications as are specified in the order.
- (2) An order under sub-paragraph (1) may—
- (a) include provision having effect in relation to times before it is made,
 - (b) confer discretion on the Commissioners for Her Majesty's Revenue and Customs or officers of Revenue and Customs, and
 - (c) make different provision for different cases.
- (3) A statutory instrument containing an order under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.

Tax years to which Schedule applies

- 21 (1) This Schedule has effect for the tax year 2009-10 and subsequent tax years (with the result that paragraph 18 has effect for the tax year 2010-11 and subsequent tax years).
- (2) But the Treasury may by order make provision for this Schedule to cease to have effect after the tax year specified in the order (but so that paragraph 18 continues to have effect for the following tax year).

Minor amendment

- 22 In paragraph 49 of Schedule 36 to FA 2004 (annual allowance charge: enhanced protection), insert at the end—
- “(3) This paragraph does not apply for the purposes of the special annual allowance charge.”

Interpretation

- 23 (1) In this Schedule—
- “group personal pension scheme” means arrangements administered on a group basis under a personal pension scheme which are available to employees of the same employer or of employers which are members of the same group of companies;
 - “personal pension scheme” means a pension scheme that is neither an occupational pension scheme nor a public service pension scheme;
 - “scheme” (otherwise than in the expression “pension scheme”) includes any arrangement, agreement, understanding, transaction or series of transactions (whether or not legally enforceable).
- (2) For the purposes of the definition of “group personal pension scheme” a company and all of its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on; and for this purpose “75% subsidiary” has the meaning given by section 838 of ICTA.

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- (3) Expressions used in this Schedule and in any provisions of Part 4 of FA 2004 have the same meaning in this Schedule as they have in the provisions of that Part in which they are used.

Status:

Point in time view as at 19/03/2010.

Changes to legislation:

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