



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

[^{F1}Income and gains from taxable property

Textual Amendments

- F1** Ss. 185A-185I and cross-heading inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), s. 158(2), [Sch. 21 para. 6](#)

185A Income from taxable property

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment if the pension scheme holds an interest in taxable property in a tax year.
- (2) The amount of the scheme chargeable payment depends on whether a person who holds the interest in the property directly receives profits arising from the interest in the tax year.
- (3) If a person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the greater of—
 - (a) an amount equal to the amount of the annual profits from the interest in the property (see section 185B(1)), and
 - (b) the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Income and gains from taxable property. (See end of Document for details)

- (4) If no person who holds the interest in the property directly receives such profits in the tax year, the amount of the scheme chargeable payment is the amount of the deemed profits from the interest in the property for the year (see sections 185B(2) and 185C).
- (5) But where section 185D applies, the amount of the scheme chargeable payment is the amount found under subsection (3) or (4) as apportioned to the pension scheme in accordance with that section.
- (6) Section 185E makes provision for credits against income tax charged under section 239 (scheme sanction charge) in respect of a scheme chargeable payment treated as made by virtue of this section.

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185B Annual profits and deemed profits

- (1) For the purposes of section 185A(3) the amount of the annual profits from the interest in the property is the total amount of profits received from the interest in the tax year—
 - (a) by each person who holds the interest directly, and
 - (b) at a time when the property is scheme-held taxable property.
- (2) For the purposes of section 185A(3) and (4) the amount of the deemed profits from the interest in the property for the tax year is—

$$DMV10 \times DTPDY$$

where—

DMV is the deemed market value of the interest in the property for the year (see section 185C),

DTP is the number of days in the year for which the property is scheme-held taxable property, and

DY is the number of days in the year.

- (3) In this Part “scheme-held taxable property” means property—
 - (a) which is taxable property, and
 - (b) an interest in which is held by the pension scheme.

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

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185C Deemed market value

- (1) For the purposes of section 185B(2), where no person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is—

$$(MV+UP)\times(1+RPI)$$

where—

MV is the opening market value (see subsection (2)),

UP is the total of any unauthorised payments treated as made by the pension scheme under section 174A in relation to the property in the tax year, other than any such payment treated as made by virtue of the property becoming scheme-held taxable property in the year, and

RPI is the figure expressed as a decimal which represents the percentage increase in the retail prices index between the first day in the tax year on which the property is scheme-held taxable property and the last such day (or, if there is no such increase, is nil).

- (2) In subsection (1) “the opening market value” means—
- (a) if the property is not scheme-held taxable property immediately before the beginning of the tax year, the market value of the interest in the property immediately after the time during the year when the property first becomes scheme-held taxable property, and
 - (b) otherwise, the deemed market value of the interest for the previous tax year.
- (3) For the purposes of section 185B(2), where a person who holds the interest in the property directly during the tax year does so by virtue of a lease of residential property, the deemed market value of the interest for the year is the relevant rental value of the property calculated in accordance with paragraph 34 of Schedule 29A on the following assumptions—
- (a) that the lease was granted when the property first became scheme-held taxable property;
 - (b) that the term of the lease is 50 years;
 - (c) that a fully commercial rent is payable for the first five years of that term;
 - (d) that afterwards the rent is reviewed on an upwards-only basis.

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006](#) (S.I. 2006/1960), reg. 9)

185D Apportionment to pension scheme

- (1) This section applies where the pension scheme holds the interest in the property indirectly for the whole of the period in the tax year for which the property is scheme-held taxable property.
- (2) The amount that would otherwise be the amount of the scheme chargeable payment is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of

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Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—

- (a) by the pension scheme,
- (b) in connection with the acquisition of the interest in the property, and
- (c) at the end of the last day in the tax year on which the property is scheme-held taxable property.

(3) But where—

- (a) the amount found in relation to the pension scheme on the day mentioned in paragraph (c) of subsection (2), differs from
- (b) the amount that would be found in relation to the pension scheme under that subsection on another day in the tax year on which the property is scheme-held taxable property,

the amount to be apportioned to the pension scheme under this section is the average of the amounts produced by applying subsection (2) in relation to the pension scheme on each day in the tax year on which the property is scheme-held taxable property.

Modifications etc. (not altering text)

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185E Credit for tax paid

(1) This section applies where—

- (a) the pension scheme holds the interest in the property indirectly in the tax year,
- (b) a person who holds the interest directly receives profits arising from the interest at a time in the tax year when the property is scheme-held taxable property,
- (c) tax is payable on those profits by that person (assuming them to be the highest part of the person's income for the tax year in which they are received), and
- (d) that tax has been paid.

(2) The amount determined under subsection (3) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment treated as made by virtue of the pension scheme holding the interest in the property in the tax year.

(3) That amount is a proportion of the tax payable and paid determined by reference to the proportion of the amount that would otherwise be the amount of the scheme chargeable payment that is apportioned to the pension scheme under section 185D.

(4) Where—

- (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
- (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,

the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Income and gains from taxable property. (See end of Document for details)

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185F Gains from taxable property

- (1) An investment-regulated pension scheme is to be treated as having made a scheme chargeable payment where—
 - (a) in a tax year the pension scheme holds an interest in property which is taxable property or which has been taxable property at any time whilst the interest has been held by the pension scheme (a “taxable interest”),
 - (b) a gain is treated as accruing to the pension scheme in respect of the taxable interest in the tax year, and
 - (c) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year exceeds the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year.
- (2) The amount of the scheme chargeable payment is an amount equal to the difference between—
 - (a) the total amount of gains treated as accruing to the pension scheme in respect of taxable interests in the tax year, and
 - (b) the total amount of losses treated as accruing to the pension scheme in respect of taxable interests in the tax year,(but this is subject to section 185G(10)).
- (3) A gain or loss is treated as accruing to a pension scheme in respect of a taxable interest in a tax year if—
 - (a) by virtue of section 185G a chargeable gain or allowable loss is treated for the purposes of this section as accruing in the tax year to the person who holds the taxable interest directly, or
 - (b) in the tax year the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly (see section 185H).

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185G Disposal by person holding directly

- (1) For the purposes of this section the person (“the transferor”) who holds the taxable interest directly is to be treated as holding an asset (a “taxable asset”) consisting of the interest.
- (2) For the purpose of determining—
 - (a) whether the transferor disposes of the taxable asset,

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- (b) when such a disposal takes place, and
 - (c) whether a chargeable gain or allowable loss is treated for the purposes of section 185F as accruing to the transferor on a disposal of the taxable asset in a tax year and, if so, the amount of the chargeable gain or allowable loss,
- TCGA 1992 is to be treated as applying to the transferor and the taxable asset, but subject as follows.
- (3) TCGA 1992 is to be treated as applying as if—
- (a) throughout the tax year the transferor were resident^{F2}... and domiciled in the United Kingdom,
 - (b) no allowable losses accrued to the transferor in any previous tax year,
 - ^{F3}(c)
 - (d) notice under section 16(2A) (losses) of that Act were given by the transferor in relation to the year in respect of any loss treated as accruing to the transferor in the year from a disposal of the taxable asset,
 - (e) section 45(1) (wasting assets) of that Act did not apply to a disposal of the taxable asset,
 - (f) for the purposes of section 53 (indexation allowance) of that Act the transferor were not chargeable to corporation tax in respect of any chargeable gain accruing to the transferor from a disposal of the taxable asset,
 - (g) section 171(1) (transfers within a group) of that Act did not apply to a disposal of the taxable asset (so that no election could be made in relation to such a disposal under section 171A (notional transfers within a group) of that Act), and
 - (h) sections 222 to 224 (relief on disposal of private residence) of that Act did not apply to a gain on a disposal of the taxable asset by virtue of section 225 (private residence occupied under terms of settlement) of that Act.
- (4) Where the taxable asset became taxable property whilst held directly by the pension scheme, TCGA 1992 is to be treated as applying to a disposal of the asset as if—
- (a) the asset had been acquired by the transferor at the time it became taxable property, and
 - (b) the amount deductible under section 38(1)(a) (consideration for acquisition of asset) of that Act in respect of the disposal were the amount of the unauthorised payment treated as made by the pension scheme at that time.
- (5) Subsections (6) to (8) apply where the pension scheme holds the taxable asset indirectly.
- (6) TCGA 1992 is to be treated as applying to a disposal of the asset as if the amount deductible under section 38(1) of that Act in respect of the disposal were—
- (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable asset up to the time of the disposal, less
 - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable asset by virtue of this section or section 185H.
- (7) The amount that would otherwise be the amount of the consideration for which the disposal is made (or treated as made) is to be scaled down by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Income and gains from taxable property. (See end of Document for details)

- (b) in connection with the acquisition of the interest in the property which constitutes the taxable asset, and
 - (c) at the time of the disposal.
- (8) Subsection (6) is subject to section 42 of TCGA 1992 (part disposals); but in the application of that section in relation to the taxable asset the amount of the consideration for the disposal is to be taken to be that amount apart from subsection (7).
- (9) Where the taxable asset was not taxable property for the whole period beginning with—
 - (a) the time when the pension scheme acquired the asset, or
 - (b) if later, the time when the asset first became taxable property,and ending with the disposal, the amount that would otherwise be the amount of any chargeable gain or allowable loss treated as accruing on a disposal of the asset is to be reduced by reference to the proportion of the period for which the asset was not taxable property.
- (10) Where—
 - (a) the taxable asset is a wasting asset consisting of tangible moveable property, and
 - (b) by virtue of section 185F, a loss is treated as accruing to the pension scheme from a disposal of the asset in a tax year,the loss is only to be allowed as a deduction from any gains treated as accruing to the pension scheme by virtue of that section from other disposals in the year of taxable assets which are wasting assets consisting of tangible moveable property.

Textual Amendments

- F2** Words in s. 185G(3)(a) omitted (with effect in accordance with Sch. 46 para. 132 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 120](#)
- F3** S. 185G(3)(c) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 53](#)

Modifications etc. (not altering text)

- C16** Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185H Disposal of interest in vehicle

- (1) This section applies for the purposes of section 185F where the pension scheme or another vehicle ceases to hold all or part of an interest in a vehicle through which the pension scheme holds the taxable interest indirectly.
- (2) The pension scheme is to be treated as disposing of the interest in the vehicle through which the pension scheme holds the taxable interest indirectly.
- (3) The amount of the gain or loss treated as accruing to the pension scheme on the disposal of the interest in the vehicle is the difference between—
 - (a) the deemed consideration received for the disposal of the interest, and
 - (b) the deemed consideration given for the interest.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Income and gains from taxable property. (See end of Document for details)

- (4) The deemed consideration received for the disposal of the interest in the vehicle is the difference between—
- (a) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately before that time, and
 - (b) the market value of the taxable interest at the time of the disposal, apportioned to the pension scheme in accordance with subsection (5) immediately after that time.
- (5) An amount mentioned in subsection (4) is to be apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,
 - (b) in connection with the acquisition of the taxable interest, and
 - (c) at the time at which the amount is to be apportioned to the pension scheme in accordance with that subsection.
- (6) The deemed consideration given for the interest in the vehicle is—
- (a) the total amount of unauthorised payments treated as made by the pension scheme in respect of the taxable interest up to the time of the disposal, less
 - (b) the amount found under paragraph (a) to the extent that it has already been taken into account in calculating the gains or losses accruing to the pension scheme in respect of the taxable interest by virtue of section 185G or this section.

Modifications etc. (not altering text)

C16 Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

185I Credit for tax paid

- (1) This section applies where by virtue of section 185F a pension scheme is to be treated as making a scheme chargeable payment which is to any extent attributable—
- (a) to a chargeable gain treated by virtue of section 185G as accruing to another person on a disposal of a taxable asset, or
 - (b) to a gain treated by virtue of section 185H as accruing to the pension scheme as a result of another person disposing of an interest in a vehicle through which the pension scheme holds a taxable interest indirectly.
- (2) Where—
- (a) tax is payable in respect of the disposal by the person who makes the disposal, and
 - (b) that tax has been paid,
- the amount determined under subsection (3) or (4) (as appropriate) is to be allowed as a credit against any income tax charged under section 239 in respect of the scheme chargeable payment.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Income and gains from taxable property. (See end of Document for details)

- (3) In a case within paragraph (a) of subsection (1), that amount is a proportion of the amount of tax paid and payable determined by reference to the proportion of the amount of consideration for the disposal that is apportioned under section 185G(7).
- (4) In a case within paragraph (b) of subsection (1), that amount is the amount of tax paid and payable apportioned to the pension scheme by applying paragraphs 41 to 43 of Schedule 29A to it as if it were the total taxable amount in relation to an unauthorised payment treated as made—
- (a) by the pension scheme,
 - (b) in connection with an acquisition of the taxable interest by the person disposing of the interest in the vehicle, and
 - (c) at the time of the disposal.
- (5) Where—
- (a) by virtue of this section an amount is allowed as a credit against income tax charged under section 239, and
 - (b) the amount of tax payable and paid by reference to which the amount of the credit was calculated is subsequently varied,
- the amount of the credit is to be varied accordingly, and any necessary adjustments are to be made to give effect to the variation (whether by making assessments or otherwise).]

Modifications etc. (not altering text)

- C16** Ss. 185A-185I restricted by S.I. 2006/207, reg. 4B (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pensions Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\)\(Amendment\) Regulations 2006 \(S.I. 2006/1960\)](#), reg. 9)

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