

SCHEDULES

SCHEDULE 36

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

PRE-COMMENCEMENT PENSION SCHEMES

Deemed registration of existing schemes

- 1 (1) Any pension scheme which, immediately before 6th April 2006, is—
- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
 - (b) a former approved superannuation fund (see sub-paragraph (3)),
 - (c) a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue on that date as if it were such a relevant statutory scheme,
 - (d) an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured but which does not provide for the immediate payment of benefits,
 - (e) a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
 - (f) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA, or
 - (g) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA,
- is to be treated as becoming a registered pension scheme on that date.
- (2) Where immediately before 6th April 2006 a retirement benefits scheme is, in accordance with section 611 of ICTA, treated as two or more separate schemes, the reference in sub-paragraph (1)(a) to an approved retirement benefits scheme is to such of the separate schemes as are approved (and not to the whole retirement benefits scheme).
- (3) For the purposes of sub-paragraph (1)(b) any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of ICTA 1988 ICTA 1970 is a former approved superannuation fund unless since 5th April 1980—
- (a) the fund has been approved for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefits schemes), or
 - (b) any sum has been paid under the fund by way of contribution.

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- (4) Sub-paragraph (1)(a) or (g) applies in relation to a pension scheme approved (for the purposes of Chapter 1, or under Chapter 4, of Part 14 of ICTA) on or after 6th April 2006 if the approval has effect for a period ending with 5th April 2006.
- (5) This paragraph is subject to paragraph 2 (opt-out).

Opting out of deemed registration

- 2 (1) Paragraph 1 (1) does not apply to a pension scheme if the relevant administrator has, at any time before 6th April 2006, notified the Inland Revenue that the pension scheme is not to become a registered pension scheme on that date.
- (2) If, by virtue of sub-paragraph (1) of this paragraph, sub-paragraph (1) of paragraph 1 does not apply to a pension scheme within any of paragraphs (a) to (d), (f) and (g) of that sub-paragraph, income tax is to be charged at the rate of 40% on the relevant amount.
- (3) The relevant amount is an amount equal to the aggregate of—
 - (a) the amount of the sums held for the purposes of the pension scheme immediately before 6th April 2006, and
 - (b) the market value (at that time) of the assets held for the purposes of the pension scheme at that time.
- (4) The liability to income tax is a liability of the person who is the relevant administrator on 5th April 2006 or, if more than one person is the relevant administrator on that date, is a joint and several liability of those persons.
- (5) Where tax is charged in accordance with sub-paragraph (2), for the purposes of TCGA 1992 the assets which immediately before 6th April 2006 are held for the purposes of the pension scheme—
 - (a) are to be treated as having been acquired at that time for a consideration equal to the amount on which tax is charged by virtue of sub-paragraph (2) by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets on that date, and
 - (b) are not to be treated as having been disposed of by any person at that time.
- (6) “Relevant administrator” means—
 - (a) in the case of a pension scheme within paragraph 1(1)(a), (b) or (c), the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA,
 - (b) in the case of a pension scheme within paragraph 1(1)(d) or (f), the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised,
 - (c) in the case of a pension scheme within paragraph 1(1)(e), the trustees of the scheme or fund, and
 - (d) in the case of a pension scheme within paragraph 1(1)(g), the person who is referred to in section 638 (1) of ICTA.
- (7) If paragraph 1 (1) does not apply to a pension scheme by virtue of sub-paragraph (1), sections 431B(2) and 466(2B) of ICTA (meaning of pension business: pension scheme ceasing to be a registered pension scheme) apply as if the pension scheme had ceased to be a registered pension scheme at the beginning of 6th April 2006.

Power to modify rules of existing schemes

- 3
- (1) The Board of Inland Revenue may by regulations make any modifications of the rules of pension schemes to which paragraph 1 (1) applies if the modifications appear appropriate in consequence of, or in connection with, the provision made by this Part (or the repeals made by this Act in consequence of the provision made by this Part).
 - (2) Any modifications of the rules of a pension scheme made by the regulations have effect until the earlier of—
 - (a) the first date after 5th April 2006 on which amendments of the rules of the pension scheme take effect, and
 - (b) the end of the tax year 2008-09.
 - (3) The modifications that may be made by the regulations include, in particular—
 - (a) modifications for relieving pension schemes of obligations to make payments which, on and after 6th April 2006, would be unauthorised payments, and
 - (b) modifications of provisions (however expressed) referring to any limit contained in, or relevant in relation to approval under or for the purposes of, any provision of Part 14 of ICTA (pension schemes etc.) as it has effect at any time before 6th April 2006.

Scheme administrator

- 4
- (1) Where under paragraph 1 (1) a pension scheme is treated as becoming a registered pension scheme on 6th April 2006, (despite anything in section 270) the following person is, or the following persons are, to be treated as becoming the scheme administrator of the pension scheme on that date.
 - (2) If the pension scheme is within paragraph 1(1)(a), (b) or (c) immediately before that date, the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA immediately before that date is or are to be treated as becoming the scheme administrator.
 - (3) If the pension scheme is within paragraph 1(1)(d) or (f) immediately before that date, the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised, is or are to be treated as becoming the scheme administrator.
 - (4) If the pension scheme is within paragraph 1(1)(e) immediately before that date, the trustees of the scheme or fund are to be treated as becoming the scheme administrator.
 - (5) If the pension scheme is within paragraph 1(1)(g) immediately before that date, the person who is referred to in section 638 (1) of ICTA in relation to the pension scheme immediately before that date is to be treated as becoming the scheme administrator.

Post-commencement withdrawal of approval

- 5
- (1) The repeal by this Act of—
 - (a) section 591B (1) of ICTA (withdrawal of approval of retirement benefits scheme),
 - (b) section 620(7) of ICTA (withdrawal of approval of retirement annuity contract), and

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- (c) section 650 (1) of ICTA (withdrawal of approval of approved personal pension arrangements),
does not prevent the withdrawal of an approval under any of those provisions at any time after 5th April 2006 (from any earlier date until 6th April 2006).
- (2) A withdrawal of approval made under any of those provisions by virtue of subparagraph (1) has the same consequences as a withdrawal of approval made under the provision concerned before 6th April 2006, so that (in particular)—
- (a) sections 591C and 591D of ICTA (tax on cessation of approval of retirement benefits scheme), or
 - (b) sections 650A and 651 of ICTA (charge on cessation of approval of personal pension arrangements and appeal against such withdrawal of such approval),
- apply where they would have applied had the approval been withdrawn before that date.

Pre-commencement liabilities of scheme administrator

- 6 Any liabilities or obligations of—
- (a) the administrator of a retirement benefits scheme (within the meaning of Chapter 1 of Part 14 of ICTA), or
 - (b) the scheme administrator of a personal pension scheme (within the meaning of Chapter 4 of Part 14 of ICTA),
- incurred in relation to the scheme before 6th April 2006 or by virtue of paragraph 4 are (on and after that date) to be treated as liabilities or obligations of the scheme administrator of the scheme.