
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Cross Heading: Surrender and allocation of rights etc.. (See end of Document for details)

SCHEDULES

SCHEDULE 10

PENSION SCHEMES ETC.

Surrender and allocation of rights etc.

38 After section 172 insert—

“172A Surrender

- (1) Subsection (2) applies if a member of a registered pension scheme surrenders or agrees to surrender—
 - (a) any benefit, other than an excluded pension, to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) The pension scheme is to be treated as making an unauthorised payment to the member.
- (3) Subsection (4) applies if a person surrenders or agrees to surrender—
 - (a) any benefit, other than an excluded pension, to which the person has a prospective entitlement under an arrangement under the pension scheme relating to a member of a pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to a member of the pension scheme under the pension scheme.
- (4) The pension scheme is to be treated as making an unauthorised payment to the person in respect of the member.
- (5) Subsections (2) and (4) do not apply to—
 - (a) a surrender pursuant to a pension sharing order or provision,
 - (b) a surrender (or agreement to surrender) by the member in return for the conferring on a dependant of an entitlement to benefits after the member's death,
 - (c) a transfer of (or agreement to transfer) benefits or rights so as to become benefits or rights under another arrangement under the pension scheme relating to the member or dependant,
 - (d) a surrender of (or agreement to surrender) benefits or rights in order to fund the making of an authorised surplus payment,
 - (e) a surrender (or agreement to surrender) which constitutes an assignment (or agreement to assign) within section 172, or

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- (f) any surrender (or agreement to surrender) of a description prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(f) may include provision having effect in relation to times before they are made.
- (7) Subsections (2) and (4) do not apply to the surrender of a benefit to which the member (or a dependant of the member) has a prospective entitlement, or to which the person has a prospective entitlement in respect of a member, under an arrangement that is a defined benefits arrangement or cash balance arrangement unless—
 - (a) in consequence of the surrender, the actual or prospective entitlement of another member (or dependant of another member) of the pension scheme, or of another person in respect of another member, to benefits under the scheme is increased, and
 - (b) the two members are or have been connected persons.
- (8) The amount of the unauthorised payment is the consideration that might be expected to be received if what is surrendered were assigned by a transaction between parties at arm's length and any power to reduce the entitlement to the benefit or right did not exist.
- (9) In this section “surrender”, in relation to any benefit or right of a member (or dependant of a member) of a pension scheme or other person, includes any schemes, arrangements or understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to reduce the member's (or dependant's), or person's, entitlement to the benefit or right.
- (10) An excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.
- (11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

172B Increase in rights of connected person on death

- (1) This section applies if—
 - (a) at any time after the death of a relevant member of a registered pension scheme, there is an increase in the pension rights of another member of the pension scheme which is attributable to the death, and
 - (b) the dead member and other member were connected persons immediately before the death.
- (2) A member of a registered pension scheme is a relevant member if, immediately before his death, any of his rights under the pension scheme are—
 - (a) rights to benefit to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme, or
 - (b) rights representing the member's unsecured pension fund, alternatively secured pension fund, dependant's unsecured pension fund or dependant's alternatively secured pension fund in respect of an arrangement under the pension scheme.

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- (3) There is at any time an increase in the pension rights of the other member of the pension scheme which is attributable to the death if—
 - (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which he is actually or prospectively entitled under the pension scheme at that time, exceeds
 - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before that time, in consequence of the death (ignoring for the purposes of paragraphs (a) and (b) any power to reduce the entitlement to the benefits).
- (4) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member's personal representatives) of an amount equal to the excess (but subject to subsection (6)).
- (5) The amount which would (apart from this subsection) constitute the unauthorised payment is to be reduced by so much of the excess as arises—
 - (a) from the payment of any transfer lump sum death benefit in respect of the dead member so as to become held for the purposes of, or to represent accrued rights under, an arrangement relating to the other member,
 - (b) from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member, or
 - (c) in any manner prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(c) may include provision having effect in relation to times before they are made.
- (7) This section does not apply if—
 - (a) at the time of the increase mentioned in subsection (1)(a) there at least 20 members of the pension scheme, and
 - (b) the benefits to which each of them is actually or prospectively entitled under the pension scheme are increased at the same rate in consequence of the death.
- (8) This section does not apply if the increase in the pension rights of the other member is brought about by an assignment (or agreement to assign) within section 172.
- (9) Section 839 of ICTA (connected persons) applies for the purposes of this section.

172C Allocation of unallocated employer contributions

- (1) This section applies if—
 - (a) contributions are paid under a registered pension scheme by an employer otherwise than in respect of any individual,
 - (b) in any tax year any of the contributions become held for the purposes of the provision of benefits to or in respect of a member of the pension scheme under any relevant arrangement or arrangements (“the allocated contributions”),

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- (c) the amount of the allocated contributions exceeds the permitted maximum, and
 - (d) the member and the employer, or the member and any person connected with the employer at any time during the tax year, are connected persons at any time during the tax year.
- (2) An arrangement is a relevant arrangement if it is—
- (a) a money purchase arrangement that is not a cash balance arrangement, or
 - (b) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, money purchase benefits other than cash balance benefits.
- (3) “The permitted maximum” is—
- (a) the maximum amount of relief to which the member is entitled under section 188 (relief for contributions) in respect of relievable pension contributions paid during the tax year (see section 190), less
 - (b) the amount of any contributions paid by employers under any registered pension scheme in respect of the member in the tax year.
- (4) But if the member is also a member of one or more other registered pension schemes, the permitted maximum in relation to each of the registered pension schemes of which he is a member is—

$$\frac{PM}{N}$$

where—

PM is the amount arrived at under subsection (3), and

N is the number of registered pension schemes of which he is a member.

- (5) The pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives).
- (6) The amount of the unauthorised payment is the amount by which the amount of the allocated contributions exceeds the permitted maximum.
- (7) Section 839 of ICTA (connected persons) applies for the purposes of this section.

172D Limit on increase in benefits

- (1) This section applies where, at any time during any pension input period in respect of a relevant arrangement relating to a member of an occupational pension scheme that is a registered pension scheme, the member and—
 - (a) a sponsoring employer, or
 - (b) a person connected with a sponsoring employer.
 are connected persons.
- (2) If—

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- (a) the pension input amount for the pension input period in respect of the relevant arrangement, exceeds
 - (b) the notional unconnected person input amount for the pension input period in respect of the relevant arrangement,

the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives) of an amount equal to the excess.
- (3) A relevant arrangement is an arrangement under the pension scheme that is—
 - (a) a defined benefits arrangement,
 - (b) a cash balance arrangement, or
 - (c) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, defined benefits or cash balance benefits.
- (4) The pension input amount for a pension input period in respect of the relevant arrangement is to be determined in accordance with—
 - (a) sections 230 to 232 if the relevant arrangement is a cash balance arrangement,
 - (b) sections 234 to 236 if it is a defined benefits arrangement, and
 - (c) section 237 if it is a hybrid arrangement,

treating references in those sections to the individual as to the member and treating section 237 as if the references to input amount B were omitted.
- (5) The notional unconnected person input amount for the pension input period in respect of the relevant arrangement is what the pension input amount, as so determined, would have been if the member were connected with—
 - (a) a sponsoring employer, or
 - (b) a person connected with a sponsoring employer,

at no time during the pension input period.
- (6) Section 839 of ICTA (connected persons) applies for the purposes of this section.”

Commencement Information

II Sch. 10 para. 38 in force at 6.4.2006, see Sch. 10 para. 64(1)

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