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STATUTORY INSTRUMENTS

1987 No. 352

INCOME TAX

The Pension Scheme Surpluses
(Administration) Regulations 1987

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Made - - - -	*3rd March 1987*
Laid before the House of	
Commons - - - -	*13th March 1987*
Coming into force - -	*7th April 1987*

The Treasury, in exercise of the powers conferred upon them by Part I of Schedule 12 to the Finance Act 1986(**1**) hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Pension Scheme Surpluses (Administration) Regulations 1987 and shall come into force on 7th April 1987.

Interpretation

2. In these Regulations unless the context otherwise requires—

"administrator"means the person or persons having the management of an exempt approved scheme;

"the Board"means the Commissioners of Inland Revenue;

"excluded payment"has the meaning given to it by regulation 4;

"Schedule 12"means Schedule 12 to the Finance Act 1986;

a"surplus payment"means a payment out of funds of an exempt approved scheme which is a payment (not being an excluded payment) to which paragraph 1(1) of Schedule 12 refers;

a"tax payment"means the amount equal to 40 per cent. of a surplus payment to which paragraph 1(2) of Schedule 12 refers.

Pension scheme surplus payment—administrator to make return and account for tax payment

3.—(1) The administrator shall—

(**1**) 1986 c. 41.

    (a) on making a surplus payment to an employer deduct out of it the relevant tax payment, and

    (b) within 14 days after making the surplus payment make a return to the Board in accordance with paragraph (2).

(2) The return to which paragraph (1) refers shall contain the following particulars—

    (a) the full name or description and tax office reference of the scheme;

    (b) the name and address and tax office reference of the employer concerned;

    (c) details of the surplus payment including—

        (i) the date when it was made, and

        (ii) where the surplus payment (or part) is a transfer of an asset or of money's worth (within the meaning of paragraph 1(9) of Schedule 12) the market value of the asset or money's worth concerned;

    (d) the amount of the tax payment.

Excluded payments

4. An excluded payment is a payment by the administrator which falls within any of the following descriptions—

    (a) Any payment to the employer—

        (i) by way of reimbursement of expenditure properly incurred by the employer in respect of an obligation of the administrator in respect of the scheme;

        (ii) by way of interest on or repayment of a loan from the employer;

        (iii) by way of loan or investment of scheme funds provided it is a loan or investment showing a reasonable commercial return;

        (iv) which the administrator is obliged to make under the provisions of a scheme to enable the employer to obtain the discharge by a member of the scheme of some monetary obligation due to the employer which arises out of a criminal, negligent or fraudulent act or omission by the member concerned.

    (b) a reimbursement of a payment by the employer of a state scheme premium to which section 42 or 45 of the Social Security Pensions Act 1975(**2**) applies.

Payment of tax

5.—(1) The tax payment shall be due at the time by which the return under regulation 3 is to be made and unless the Board otherwise authorises shall be made with that return.

(2) The tax payment so due shall be payable by the administrator without the making of any assessment.

Assessments of tax upon employer and administrator

6.—(1) Subject to the provisions of this Regulation the amount of the tax payment to which regulation 3(1) refers shall be assessed upon the employer under Case VI of Schedule D as an amount of income tax or corporation tax, as the case may be, for the chargeable period in which the surplus payment is made.

(2) The amount of tax charged and due under the assessment under paragraph (1) shall be reduced by the amount paid to the Board by the administrator in respect of the tax payment payable under

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(**2**) 1975 c. 60; sections 42 and 45 were amended by paragraph 25 of Schedule 5 to the Social Security Act 1985 (c. 53). Section 45 was also amended by section 22 of the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 3 of the Social Security Act 1980 (c. 30) and paragraph 5 of Schedule 3 to the Social Security Act 1985.

regulation 5 and, subject to any appeal, the reduced amount shall in all respects be treated as an amount of tax due and payable under an assessment to which paragraph (6) applies and which is final and conclusive.

(3) If, by the end of the sixtieth day after the date of the notice of the assessment to which paragraph (2) refers, the full amount of the tax due and payable under the assessment, together with interest payable, has not been paid to the Board, the amount of tax and interest remaining unpaid may be assessed upon the administrator (under Case VI of Schedule D) in the name of the employer.

(4) The amount of the tax and interest so charged by an assessment upon the administrator shall (subject to any appeal within that period) be due and payable by the administrator within 14 days after the date of the notice of the assessment under paragraph (3) as an amount of tax due and payable under an assessment which is final and conclusive.

(5) Where an amount due and payable under paragraph (3) has been paid by the administrator he may recover a sum equal to that amount from the employer.

(6) The Taxes Management Act 1970(**3**) shall apply to any assessment of tax under these Regulations as if—

(a) the assessment were an assessment specified in sections 55(1) (recovery of tax not postponed) and 86(2) (interest on tax), and

(b) subsections (3) and (4) of section 86 were omitted and"the reckonable date"for the purposes of section 86 were the 30th day after the date when these Regulations come into force or the 15th day after the date when a surplus payment is made (whichever is later).

Other returns

7. Where the Board has reason to believe that a surplus payment has been made to an employer in respect of which no return or an incorrect return has been made under regulation 3, they may, by notice in writing, require the administrator or the employer concerned, within the time limited by the notice, to furnish to the Board a return (or further return) containing the particulars to which regulation 3 refers.

Amounts recoverable to be separate from other amounts recoverable under Tax Acts

8. Any amount recoverable by the Board from an administrator or employer under these Regulations, whether by assessment or otherwise, shall be treated as an amount recoverable from the administrator or employer, as the case may be, in a separate capacity from other amounts which may be recoverable under the Tax Acts.

Peter Lloyd
Tim Sainsbury
Two of the Lords Commissioners of Her
3rd March 1987   Majesty's Treasury

(**3**) 1970 c. 9.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made by the Treasury under Part I of Schedule 12 to the Finance Act 1986, provide for the administration procedures in relation to tax payments deductible out of pension scheme surplus payments made to employers by pension scheme administrators.

Regulation 1 provides for the title to and commencement of the Regulations.

Regulation 2 provides definitions.

Regulation 3 provides for the administrator to make a return of surplus payments (and for the contents of the return) and to account for tax payments.

Regulation 4 specifies payments which are not to be subject to tax payments under the Regulations.

Regulation 5 provides for the date when the tax payment is due and for payment by the scheme administrator.

Regulation 6 provides for assessments to recover tax and interest to be made upon the employer or scheme administrator concerned.

Regulation 7 enables the Board in specified circumstances to require returns from the employer or the scheme administrator.

Regulation 8 provides that amounts recoverable from an employer or scheme administrator are to be treated as recoverable from them in a capacity separate from other amounts recoverable under the Tax Acts.