

2001 No. 118

INCOME TAX

The Personal Pension Schemes (Conversion of Retirement Benefits Schemes) Regulations 2001

<i>Made</i>	-	-	-	-	<i>23rd January 2001</i>
<i>Laid before the House of Commons</i>					<i>24th January 2001</i>
<i>Coming into force</i>	-	-			<i>6th April 2001</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by paragraphs 2 and 4 of Schedule 23ZA to the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Personal Pension Schemes (Conversion of Retirement Benefits Schemes) Regulations 2001 and shall come into force on 6th April 2001.

Interpretation

2.—(1) In these Regulations—

“administrator”—

- (a) in relation to a retirement benefits scheme, has the meaning given by section 611AA(b) and, in relation to a scheme which secures relevant benefits falling within section 591(2A)(c) by means of an annuity contract, includes the insurance company with which the contract is made; and
- (b) in relation to a personal pension scheme, means the person referred to in section 638(1);

“the Board” means the Commissioners of Inland Revenue;

“continuing member” means a person who—

- (a) is a member of the eligible scheme which is the subject of the application under paragraph 3 of Schedule 23ZA; and
- (b) is to remain a member of the scheme if it becomes a personal pension scheme;

“controlling director” means a person who is, or was within the 10 years immediately preceding the date of the application under paragraph 3 of Schedule 23ZA, in relation to a relevant employer—

- (a) a director (as defined in section 612(1)); and
- (b) within paragraph (b) of section 417(5);

“conversion assets value” means the sum which has been calculated, within the period of

(a) 1988 c. 1. Schedule 23ZA was inserted by paragraph 27 of Schedule 13 to the Finance Act 2000 (c. 17).
(b) Section 611AA was inserted by section 103 of the Finance Act 1994 (c. 9).
(c) Section 591(2A) was inserted by section 107(3) of the Finance Act 1994.

three months ending with the date of the application under paragraph 3 of Schedule 23ZA, as representing a member's benefits under the retirement benefits scheme which is the subject of that application;

"conversion payment" means the amount to be held subject to a personal pension scheme representing an individual member's benefits at the date of change;

"date of change" has the meaning given in paragraph 3(2) of Schedule 23ZA;

"eligible scheme" means a retirement benefits scheme to which Schedule 23ZA applies(a);

"Part XIV" means Part XIV of the Taxes Act (pension schemes etc.);

"permitted amount" has the meaning given by regulation 7(4);

"personal pension scheme" has the meaning given in section 630(b);

"prescribed member" means a person who falls within one or more of the classes prescribed by regulation 6;

"qualifying scheme" means a retirement benefits scheme which, if the conditions prescribed under paragraph 2(3)(d) of Schedule 23ZA were met, would be an eligible scheme;

"relevant employer" means an employer by reference to employment with whom a continuing member is entitled to benefits under the eligible scheme;

"relevant year" means the year of assessment in which the application for approval as a personal pension scheme is made;

"retirement benefits scheme" has the meaning given in section 611(c); and

"the Taxes Act" means the Income and Corporation Taxes Act 1988.

- (2) In these Regulations, except where the context otherwise requires—
- (a) a reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
 - (b) a reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation;
 - (c) a reference in a paragraph to a lettered sub-paragraph is a reference to the sub-paragraph bearing that letter in that paragraph; and
 - (d) a reference to a numbered section or Schedule is a reference to the section of, or Schedule to, the Taxes Act bearing that number.

Application to convert eligible scheme to personal pension scheme

3.—(1) The trustees of a qualifying scheme may apply to the Board for approval of the scheme as a personal pension scheme if the conditions prescribed in paragraphs (2) and (3) are satisfied.

(2) The first condition is that regulation 7 (valuation of prescribed member's benefits) has been complied with in respect of each prescribed member of the scheme.

(3) The second condition is that the value of the fund of a prescribed member, who is to be a continuing member of the scheme, does not exceed the permitted amount.

Documents to accompany application

- 4.—(1) An application for approval under paragraph 3 of Schedule 23ZA must—
- (a) state the date from which the trustees propose the approval should have effect; and
 - (b) be accompanied by the statements specified in paragraph (2) and the documents specified in paragraph (3).
- (2) The statements, which must be signed by or on behalf of the trustees, are—
- (a) a statement that assets have been identified in respect of each continuing member's entitlement under the proposed personal pension scheme;
 - (b) a statement showing how the assets referred to in sub-paragraph (a) were identified; and

(a) See paragraph 2 of Schedule 23ZA.

(b) Section 630 was amended by Schedule 11 to the Finance Act 1995 (c. 4) and paragraph 5 of Schedule 13 to the Finance Act 2000.

(c) Section 611 has been amended by paragraph 9(1) of Schedule 10 to the Finance Act 1999 (c. 16) and paragraph 4 of Schedule 13 to the Finance Act 2000.

- (c) a statement showing for each individual whom the trustees propose should be a continuing member, if approval is given, whether the whole of each asset so identified has been appropriated to that individual's personal pension fund and, if not, what part of the asset has been so appropriated.
- (3) The documents are—
- (a) a copy of the rules and other scheme instruments which the trustees propose should apply to the personal pension scheme if approval is given;
 - (b) the written consent, to the making of the application, of each relevant employer; and
 - (c) documents showing how the requirements of regulations 7 and 8 were satisfied.

Board's discretion to refuse approval: prescribed descriptions of retirement benefits scheme

5.—(1) The descriptions of eligible scheme which are prescribed in respect of the Board's discretion to refuse approval under Schedule 23ZA are all descriptions of eligible scheme other than a simplified defined contribution scheme.

(2) In this regulation "simplified defined contribution scheme" has the meaning given by regulation 2 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(a).

Board's discretion to refuse approval: prescribed classes of individual member

6.—(1) The classes of individual member of an eligible scheme which are prescribed for the purposes of paragraph 4(1) of Schedule 23ZA are—

- (a) in the case of a scheme of which a controlling director is to be a continuing member, the classes mentioned in paragraph (2); and
 - (b) in any other case, the class mentioned in paragraph (3).
- (2) The classes referred to in paragraph (1)(a) are those comprising—
- (a) controlling directors;
 - (b) persons who are connected with a person falling within sub-paragraph (a); and
 - (c) members of the scheme—
 - (i) whose age at the proposed date of change will be not less than 45 years; and
 - (ii) whose remuneration derived from their employment with the relevant employer is, or was, for any year of assessment falling (wholly or partly) during the period of six years prior to the date on which the application is made, more than the permitted maximum for the year of assessment in which the application is made.
- (3) The class referred to in paragraph (1)(b) is that comprising members of the scheme—
- (a) whose age at the proposed date of change will be not less than 45 years; and
 - (b) whose remuneration derived from employment with the relevant employer is, or was, for any year of assessment falling (wholly or partly) during the period of six years prior to the date on which the application is made, more than the permitted maximum for the year of assessment in which the application is made.
- (4) For the purposes of paragraph (2) a person is connected with another if he is—
- (a) that person's husband or wife;
 - (b) that person's brother, sister, parent or remoter forebear, child or remoter lineal descendant;
 - (c) the husband or wife of a brother, sister, parent or remoter forebear, child or remoter lineal descendant of that person; or
 - (d) a brother, sister, parent or remoter forebear, child or remoter lineal descendant of that person's husband or wife.
- (5) In this regulation—
- "permitted maximum" has the meaning given in section 590C(2)(b); and
 - "remuneration" has the meaning given in section 612(1).

(a) S.I. 1993/3016.

(b) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c. 26). There are amendments not relevant for the purposes of the present instrument. The permitted maximum for the year of assessment 2000–01 is £91,800.

Valuation of prescribed member's benefits

7.—(1) Before making an application for approval as a personal pension scheme, the trustees of a qualifying scheme shall ascertain whether the conversion assets value, in respect of any prescribed member to whom they intend the proposed personal pension scheme to apply, exceeds the permitted amount.

(2) The conversion assets value must be calculated in accordance with normal actuarial practice.

(3) If the conversion assets value in respect of a prescribed member exceeds the permitted amount, regulation 8 applies to that member.

(4) In these Regulations “the permitted amount” means the maximum amount as described in regulation 8(3) of the Personal Pension Schemes (Transfer Payments) Regulations 2001(a).

Prescribed members whose conversion assets value exceeds permitted amount

8.—(1) If—

- (a) this regulation applies to a prescribed member; and
- (b) the Board have exercised their discretion under section 611(3)(b) to treat the eligible scheme as two (or more) separate schemes;

the restriction in paragraph (2) applies to the prescribed member.

(2) The restriction is that the prescribed member may not become a member of the resultant personal pension scheme at the date of change, unless, before that date, the value of the prescribed member's fund, calculated in accordance with normal actuarial practice, is shown to be less than or equal to the permitted amount.

Restriction on discretion to approve: conversion of qualifying scheme

9.—(1) The Board shall not approve a qualifying scheme as a personal pension scheme unless the proposed personal pension scheme complies with the restrictions imposed by regulations 10 and 11 in the case of an individual to whom paragraph (2) applies.

(2) This paragraph applies to an individual who is a controlling director and whom the trustees of the scheme which is the subject of the application under Schedule 23ZA intend should be a continuing member.

Restriction on discretion to approve: controlling directors' death benefits

10.—(1) The restriction imposed by this regulation is that the accumulated value must be applied, after the death of a controlling director, in accordance with paragraph (3) or (4).

(2) In this regulation “the accumulated value” means the total of—

- (a) the conversion payment; and
- (b) any sum attributable to growth through investment of the conversion payment.

(3) If the controlling director has died before any benefits have been paid to him under the arrangements represented by the accumulated value, the accumulated value must be applied—

- (a) wholly to secure the payment of an annuity which satisfies the conditions in section 636 (annuity after death of member)(c);
- (b) to secure the payment of income withdrawals with respect to which the conditions in section 636A (income withdrawals after death of member)(d) are satisfied and, as to any amount not used for that purpose, to secure the payment of such an annuity as is referred to in sub-paragraph (a); or

(a) S.I. 2001/119.

(b) Section 611(3) was amended by paragraph 4(3) of Schedule 13 to the Finance Act 2000.

(c) Section 636 was amended by paragraph 1 of Schedule 11 to the Finance Act 1995 and paragraph 13 of Schedule 10 to the Finance Act 1999.

(d) Section 636A was inserted by paragraph 1 of Schedule 11 to the Finance Act 1995 and amended by paragraph 14 of Schedule 10 to the Finance Act 1999 and paragraph 12 of Schedule 13 to the Finance Act 2000.

- (c) as to not more than 25 per cent., to secure the payment of a lump sum and, as to the balance, to secure the payment of such an annuity as is referred to in sub-paragraph (a) or of such income withdrawals and annuity as are referred to in sub-paragraph (b).

This paragraph is subject to the qualification in paragraph (4).

(4) If the administrator of a personal pension scheme is satisfied, having taking all reasonable steps—

- (a) that there is no surviving spouse to whom an annuity referred to in paragraph (3)(a), or income withdrawals referred to in paragraph (3)(b), can be paid; and
(b) if the arrangement so requires, that there is no dependant to whom such an annuity or income withdrawals can be paid;

the whole of the accumulated value may be applied to secure the payment of a lump sum.

Restrictions on discretion to approve: lump sum benefits to controlling directors under proposed personal pension scheme

11.—(1) The restrictions imposed by this regulation are those specified in paragraphs (2) and (3).

(2) The restriction specified in this paragraph is that no amount may be paid to a controlling director by way of a lump sum on his pension date (as defined in section 630(1)) out of the conversion payment unless, within six months beginning with the date of change, the administrator of the retirement benefits scheme which is the subject of the application under Schedule 23ZA has given such a lump sum certificate as would be required under the rules of the retirement benefits scheme if it were making a transfer payment to a personal pension scheme.

(3) The restriction specified in this paragraph is that the amount that may be paid by way of lump sum as mentioned in paragraph (2) shall not exceed the sum found by the formula in paragraph (4).

(4) The formula referred to in paragraph (3) is—

B x EF

Here—

B is the amount shown in the certificate mentioned in paragraph (2); and

EF is the greater of 1 and the fraction in paragraph (5).

(5) The fraction referred to in paragraph (4) is—

R1

R2

Here—

R1 is the value of the retail prices index for the last month for which that index had been published at the date when the lump sum referred to in paragraph (2) was calculated; and

R2 is the value of that index for the last month for which that index had been published at the time of the approval by the Board of the application under Schedule 23ZA.

(6) The references in paragraph (5) to the retail prices index shall be construed in accordance with section 833(2)(a) as if that paragraph were contained in the Income Tax Acts.

Tim Flesher

Dave Hartnett

23rd January 2001

Two of the Commissioners of Inland Revenue

(a) Section 833(2) was amended by Schedule 2 to the Transfer of Functions (Registration and Statistics) Order 1996 (S.I. 1996/273).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the way in which retirement benefits schemes which are money-purchase schemes (“occupational money purchase schemes”) may apply to the Inland Revenue for approval as personal pension schemes. Schedule 23ZA to the Income and Corporation Taxes Act 1988 (c. 1), inserted by paragraph 27 of Schedule 13 to the Finance Act 2000 (c. 17), introduces the possibility of conversion of occupational money purchase schemes into personal pension schemes.

Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 provides definitions for terms used in them.

Regulation 3 prescribes the conditions to be satisfied before an application can be made for conversion from an occupational pension scheme to a personal pension scheme, whilst regulation 4 prescribes the documents which are to accompany an application.

Regulation 5 prescribes descriptions of scheme in respect of which the Board may refuse applications for conversion under Schedule 23ZA unless prescribed conditions are satisfied. These are all schemes other than simplified defined contribution schemes.

Regulation 6 prescribes classes of member of a scheme in respect of whom specific requirements are imposed (“prescribed members”). There are two classes of schemes for the purposes of this regulation. In the case of a scheme of which a controlling director is a member, the classes of prescribed members are controlling directors, those who are persons connected with them and those who are aged not less than 45 years at the proposed date of change and who have, or in the preceding six years have had, earnings exceeding the cap on earnings for the calculation of pension benefits prescribed by section 590C(2) of the Income and Corporation Taxes Act 1988 for the year in which the application under Schedule 23ZA is made. In the case of a scheme of which no controlling director is to be a continuing member, the prescribed members are those aged not less than 45 years at the date of change and who have, or in the preceding six years have had, earnings exceeding the cap.

Regulation 7 prescribes a requirement as to the valuation of the assets held to provide benefits in respect of a prescribed member.

Regulation 8 prescribes action to be taken before a prescribed member, in respect of whom the conversion assets value exceeds the permitted amount at the time of the valuation, may become a member of the resulting personal pension scheme.

Regulations 9, 10 and 11 impose restrictions on the Board’s discretion to approve an application under regulation 3 in respect of the lump sum benefits payable to controlling directors and the death benefits payable to their dependants.

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