
STATUTORY INSTRUMENTS

2000 No.

INCOME TAX

The Personal Pension Schemes (Restriction on Discretion to Approve and Conversion of Retirement Benefits Schemes) Regulations 2000

Made - - - -

Laid before the House of Commons

Coming into force - -

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 638A of, and 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 (Restriction on Discretion to Approve and Conversion of Retirement Benefits Schemes) Regulations 2000 and shall come into force on 1st October 2000.

Interpretation

2. —(1) In these Regulations—

“administrator”—

(a) in relation to a retirement benefits scheme has the meaning given by section 611AA of the Taxes Act(b) and, in relation to a scheme which secures relevant benefits falling within section 591(2A) of the Taxes Act(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) of the Taxes Act;

“the Board” means the Commissioners of Inland Revenue;

“controlling director” has the meaning given in paragraph 5(5) of Schedule 23 (occupational pension schemes approved before 23rd July 1987);

“conversion payment” means the amount to be held subject to a personal pension scheme representing an individual member’s benefits at the time that an eligible scheme becomes a personal pension scheme pursuant to the approval of an application under paragraph 3 of Schedule 23ZA;

“conversion value” means the amount which has been calculated as representing a member’s benefits under a qualifying retirement benefits scheme at the time when that scheme

(a) 1988 c.1. Section 638A was inserted by section 94(1) of the Finance Act 1998 (c.36). Schedule 23ZA was inserted by paragraph 27 of Schedule 13 to the Finance Act 2000 (c.).

(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

becomes, or would become, a personal pension scheme on the approval of an application under paragraph 3 of Schedule 23ZA;

“eligible scheme” means a retirement benefits scheme to which Schedule 23ZA applies^(a)

“money purchase scheme” has the meaning given in section 181 of the Pensions Schemes Act 1993^(b) or section 176 of the Pensions Schemes (Northern Ireland) Act 1993^(c);

“Part XIV” means Part XIV of the Taxes Act (pension schemes etc);

“Pension Schemes Office” means the Pension Schemes Office of the Board;

“personal pension scheme” has the meaning given in section 630^(d);

“prescribed amount” has the meaning given by regulation 6(4);

“prescribed member” means a person who falls within one or both of the classes prescribed by regulation 5;

“qualifying retirement benefits scheme” means a retirement benefits scheme which, if it satisfied any conditions imposed under paragraph 2(3)(d) of Schedule 23ZA, would be an eligible scheme;

“relevant year” means the tax year in which the application for approval as a personal pension scheme is made;

“tax year” means a year of assessment; 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 an eligible scheme may apply to the Board for approval of the scheme as a personal pension scheme if the conditions prescribed in paragraphs (2) to (4) are satisfied.

(2) The first condition is that the scheme—

- (a) has been valued, within the period of three tax years preceding the tax year in which the application is made, in accordance with the requirements of Part 13 (funding and surpluses) of the Occupational Pension Schemes Practice Notes published by the Pension Schemes Office in July 1997 as read, where applicable, with Appendices VIII and IX to those Notes^(e); and
- (b) has been found, when valued as mentioned in sub-paragraph (a), not to have funds exceeding the amount required to meet its obligations on the basis of that valuation.

(3) The second condition is that regulation 6 (valuation of prescribed member’s benefits) has been complied with in respect of each prescribed member of that scheme.

(4) The third condition is that the migration value in respect of a prescribed member does not exceed the prescribed amount.

^(a) See paragraph 2 of Schedule 23ZA.

^(b) 1993 c. 48.

^(c) 1993.c. 49.

^(d) Section 630, and in particular the definition of “personal pension scheme”, was amended by Schedule 11 to the Finance Act 1995 (c. 4).

^(e) Appendix VIII contains notes issued by the Association of British Insurers on 17th March 1994 as to the maximum permissible funding rates on earmarked insurance contracts. Appendix IX contains notes issued by the Pension Schemes Office on 30th May 1996 as to the maximum permissible funding for small self-administered schemes.

Documents to accompany application

- 4.**—(1) An application for approval under paragraph 3 of Schedule 23ZA shall—
- (a) contain the date from which the trustees propose the approval should have effect; and
 - (b) be accompanied by the documents specified in paragraph (2).
- (2) The documents are—
- (a) a certificate by the trustees that assets have been identified in respect of each member who is to become a member of the personal pension scheme for which approval is sought,
 - (b) a statement that the assets so identified will constitute all or part of the funds subject to the personal pension scheme if approval is given;
 - (c) a statement showing how the assets referred to in sub-paragraph (a) were identified;
 - (d) a copy of the rules which the trustees propose should apply to the personal pension scheme if approval is given;
 - (e) a certificate stating when and how the requirements of regulation 3(2) were satisfied; and
 - (f) documents showing how the requirements of regulations 6 and 7 were satisfied.

Classes of individual members prescribed in relation to Board's power to refuse approval

- 5.** The classes of individual member of a qualifying retirement benefits scheme which are prescribed for the purposes of paragraph 4(1) of Schedule 23ZA are—
- (a) controlling directors; and
 - (b) persons who in any of the six tax years immediately preceding the relevant year have had earnings which exceeded one half of the prescribed sum (within the meaning given by section 590C(2)(cap on earnings)(a)) for that year.

Valuation of prescribed member's benefits

6.—(1) Before making an application for approval under Part IV of Chapter XIV, the trustees of a qualifying retirement benefits scheme shall ascertain whether the value of assets, which are held for the purposes of providing benefits ("the relevant assets value") in respect of each prescribed member to whom the proposed personal pension scheme is to apply, exceeds the prescribed amount.

(2) The relevant assets value shall be calculated in accordance with Part 13 of the Occupational Pension Scheme Practice Notes published by the Pension Schemes Office in July 1997(b).

(3) If the relevant assets value in respect of a prescribed member exceeds the prescribed amount, regulation 7 applies to that member.

(4) In these Regulations "the prescribed amount" means the maximum amount that may be transferred from a retirement benefits scheme in respect of a member calculated in accordance with the guidance issued by the Pension Schemes Office in June 2000 entitled "Transfers from Approved Retirement Benefit Schemes and Relevant Statutory Schemes to Personal Pension Schemes"(c).

Action if relevant assets value exceeds prescribed sum

7.—(1) If this regulation applies to a prescribed member, he may not become a member of the proposed personal pension scheme unless and until the relevant assets value in respect of him has been reduced to the permitted amount in accordance with paragraph (2).

(2) The reduction required by paragraph (1) shall be effected —

(a) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c.26) and amended by section 107 of the Finance Act 1993
(b) ISBN ????
(c) ISBN ????

- (a) in accordance with the rules of the qualifying retirement benefits scheme; and
- (b) with the agreement of the member.

Restriction on Board’s discretion to approve personal pensions schemes: general

8.—(1) The Board shall not exercise their discretion to approve a personal pension scheme under section 631 in circumstances where the scheme is established under a trust or trusts by a person mentioned in section 632(1)(f)(a), unless either paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied if—

- (a) the scheme is a trust scheme within the meaning given by section 124(1) of the Pensions Act 1995(b) or Article 121(1) of the Pensions (Northern Ireland) Order 1995(c); and
- (b) the trust deed for the scheme contains a provision that—
 - (i) would operate in the event of there being fewer than 12 scheme members, and
 - (ii) falls within the description specified in regulation 9 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(d).

(3) This paragraph is satisfied if—

- (a) an application has been made under section 2 of the Welfare Reforms and Pensions Act 1999(e) or article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999(f) for the registration of the scheme as a stakeholder pension scheme; and
- (b) the approval of the scheme by the Board as a personal pension scheme is conditional on that registration taking place.

Restriction on discretion to approve: conversion of eligible schemes

9.—(1) The Board shall not approve an eligible scheme as a personal pension scheme on an application under paragraph 3 of Schedule 23ZA 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 was, within the ten years immediately preceding the application under paragraph 3 of Schedule 23ZA, a controlling director.

Restriction on discretion to approve: controlling directors’ death benefits

10.—(1) The restriction imposed by this regulation is that the accumulated value shall be applied after the death of a person to whom regulation 6 applied in accordance with paragraph (3) or (4) in the event mentioned in that paragraph.

(2) In paragraph (1) “the accumulated value” means the total of—

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

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

- (a) wholly to secure the payment to the surviving spouse or dependant of an annuity which satisfies the conditions in section 636 (annuity after death of member)(g); or

(a) Section 632 was amended by S.I. 1997/2388, 1998/993 and 2000/????.
 (b) 1995 c.26.
 (c) S.I. 1995/3213.
 (d) S.I. 1991/1614.Regulation 9 was inserted by S.I. 1998/728 and amended by S.I. 1998/1315.
 (e) 1999 c.30.
 (f) S.I. 1999/3147 (N.I. 11).
 (g) 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.

- (b) to secure the payment of income withdrawals by the surviving spouse or dependant with respect to which the conditions in section 636A (income withdrawals after death of member)(a) are satisfied and, as to any amount not used for that purpose to secure the payment to the surviving spouse or dependant of such an annuity as is referred to in sub-paragraph (a); or
- (c) as to not more than 25% to secure the payment of a lump sum to the surviving spouse or dependant and as to the balance to secure the payment to the surviving spouse or dependant 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).

(4) If the administrator of a personal pension scheme, having taking all reasonable steps, is satisfied that there is no surviving spouse or dependant to whom an annuity referred to in paragraph (3)(a) or income withdrawals referred to in paragraph (3)(b) 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 eligible 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 an individual referred to in regulation 8(2) by way of a lump sum on his pension date (as defined in section 630(1)) out of the migration payment unless the administrator of the personal pension scheme has obtained from the administrator of the retirement benefits scheme making the conversion payment a certificate specifying the maximum lump sum calculated in accordance with Part 10 (leaving pensionable service) of the Pensions Schemes Practice Notes published by the Pension Schemes Office in July 1997(b).

(3) The restriction imposed by this paragraph is that the amount which 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—

$$\mathbf{B+E.}$$

Here—

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

E is the amount produced by multiplying B by the percentage increase in the retail prices index between —

- (a) the month in which the migration payment was made, in connection with which the certificate mentioned in paragraph (2) was given, and
- (b) the last month for which that index had been published at the date of the payment by way of lump sum.

(5) The reference in paragraph (4) to the retail prices index shall be construed in accordance with section 833(2) (c) as if that paragraph were contained in the Income Tax Acts.

Name
Name

Date Two of the Commissioners of Inland Revenue

(a) 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 by [paragraph 12 of Schedule 13 to the Finance Act 2000.
 (b) Publication details?
 (c) 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 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 classes of member of a scheme in respect of whom additional requirements are imposed (“prescribed members”). Prescribed members are controlling directors and those who, in any of the six years preceding that in which the application is made, had earnings which exceeded one half of the cap on earnings imposed by section 590C(2) of the Taxes Act.

Regulation 6 prescribes a requirement as to the valuation of the assets held to provide benefits in respect of a prescribed member. Regulation 7 prescribes action to be taken before a prescribed member, in respect of whom the relevant assets value exceeds the prescribed sum at the time of the valuation, may become a member of the resulting personal pension scheme.

Regulation 8 imposes a general restriction on the Board’s discretion to approve personal pension schemes set up by a trust deed

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.

Copies of the Occupational Pension Schemes Practice Notes, to which reference is made in the Regulations are available from the Inland Revenue Pension Schemes Office, Yorke House, PO Box 62, Castle Meadow Road, Nottingham, NG2 1BG.