

EXPLANATORY MEMORANDUM TO

The Inheritance Tax (Qualifying Non-UK Pension Schemes) Regulations 2008

2008 No. xxx

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

These Regulations provide for the definition of a qualifying non-UK pension scheme, to which certain inheritance tax charges will not apply.

3. Matters of special interest to the Select Committee on Statutory Instruments

These Regulations will have effect retrospectively on and after 6 April 2006. The Regulations are entirely relieving because they restore to certain non-UK pension schemes protection from inheritance tax charges. Section 271A(3) of the Inheritance Tax Act 1984 provides authority for this retrospection.

4. Legislative Background

- 4.1 The Inheritance Tax Act 1984 provides for inheritance tax charges on property held in a relevant property settlement. These may include charges when property is transferred into a settlement, periodic charges on property held under a settlement and charges when property is transferred out of a settlement. Inheritance tax charges also arise on transfers of value out of an individual's estate. This can include property held when an individual dies, because the rules treat a person as having made a transfer of value of all the property in their estate immediately before their death.
- 4.2 Sums and assets held under a pension scheme may be subject to these inheritance tax charges. However, the Inheritance Tax Act 1984 contains certain provisions that generally exempt from the charges sums and assets held under a registered pension scheme or a section 615(3) scheme (section 615(3) schemes are certain occupational pension schemes set up in the UK for an individual employed wholly outside the UK). These are contained in sections 12(2), 58(1)(d), 58(2A)(b), 151 and 152 of the Inheritance Tax Act 1984.
- 4.3 Before changes were made to the pension tax rules at 6 April 2006, protection from inheritance tax charges applied also to certain non-UK pension schemes. But changes included in the Finance Act 2004 (which had effect from 6 April 2006) restricted the protection to registered pension schemes and section 615(3) schemes only. Registered pension schemes are as defined in section 150(2) of the Finance Act 2004. .

4.4 [Paragraph 18 of Schedule 29 to the Finance Bill 2008] contains provision to extend the protection from inheritance tax charges given to registered pension schemes and section 615(3) schemes to qualifying non-UK pension schemes. The provisions give a regulation-making power to prescribe requirements an overseas pension scheme must meet to be a qualifying non-UK pension scheme. The regulations specify that such a scheme must, in the country in which it is established, satisfy certain regulatory requirements and be tax-recognised. If the country in which the scheme is established has no system of tax-recognition, or, in case of a country outside the EEA, no system of regulation, or the scheme is one that is established by an international organisation, then the scheme must provide for 70% of the funds in the member's pension scheme to be paid out as a pension income for life.

5. Extent

This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Before 6 April 2006 protection from inheritance tax charges applied to certain superannuation schemes. As well as UK pension schemes, this could also include pension schemes that were established overseas. The Finance Act 2004 introduced significant changes to the tax regime for pension schemes, which took effect from April 2006. As part of these changes protection from inheritance tax charges was restricted to registered pension schemes and section 615(3) schemes. It no longer, therefore, applied to schemes established overseas that were not pension schemes registered in the UK. The policy intention was to limit the inheritance tax protection to pension schemes that were tax-recognised and regulated. It was not intended to remove the protection entirely from all non-UK pension schemes.

7.2 The amendments made by [paragraph 18 of Schedule 29 Finance Bill 2008], together with these Regulations made under section 271A Inheritance Tax Act, will, as intended, restore the inheritance tax protection to certain non-UK pension schemes that are broadly equivalent to registered pension schemes.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it is expected to have only negligible impact on business, charities or voluntary bodies.

9. Contact

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