STATUTORY INSTRUMENTS

2010 No.

INCOME TAX

The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2010

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred upon them by sections 282(A1) and 283(2) of the Finance Act 2004(**a**).

Citation, commencement and effect

1.—(1) This Order may be cited as the Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2010 and shall come into force on XX.

(2) Article 2 shall have effect in respect of lump sums paid on or after 6th April 2006.

Amendment of the Taxation of Pension Schemes (Transitional Provisions) Order 2006

2. The Taxation of Pension Schemes (Transitional Provisions) Order 2006(**b**) after article 23 insert—

> "**Pension commencement lump sums where no pension is paid before death**
>
> **23ZA.**—(1) Subject to articles 23ZD and 23ZE, this article applies in a case where an individual has received a pension commencement lump sum but dies before becoming entitled(**c**) to the pension in connection with which it is paid, Schedule 36(**d**) is modified as follows.
>
> (2) For paragraph 31(3) (entitlement to lump sums exceeding 25% of uncrystallised rights – the pension condition) substitute—

(a) 2004 c.12; Section 282(1A) was inserted by section 75 of the Finance Act 2009 (c. 10).
(b) S.I. 2006/572; relevant amending instruments are S.I. 2006/2004, 2008/2990 and 2009/1172.
(c) Section 165(3) of the Finance Act 2004 defines when a person becomes entitled to a pension under a registered pension scheme. Section 165(3) was amended by paragraph 7 of Schedule 10 to the Finance Act 2005 (c. 7).
(d) Article 1(2) of S.I. 2006/572 provides that a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in Part 4, and that "Part 4" means Part 4 of the Finance Act 2004.

"(3) The pension condition is that, had the individual not died, it was expected that the individual would have become entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.".

(3) In paragraph 34(2), in the substituted sub-paragraph (7A) of paragraph 2 of Schedule 29, for the definition of AC (**a**) (entitlement to lump sums exceeding 25% of uncrystallised rights – modifications to Schedule 29), substitute—

"AC is the value of the individual's uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (valuation of uncrystallised rights for the purposes of section 210(**b**)) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.".

Pension commencement lump sums and multiple pensions

23ZB.—(1) Article 23ZC applies where—

(a) there is a single pension commencement lump sum,

(b) that lump sum is payable in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme, and

(c) an individual becomes entitled to all of the pensions in connection with which the pension commencement lump sum is payable within the specified period.

(2) Article 23ZD applies where—

(a) there is a single pension commencement lump sum,

(b) that lump sum is paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme, and

(c) it was expected that the individual would be entitled to all of the pensions in connection with which the pension commencement lump sum was paid within the specified period,

but the individual died before becoming entitled to any of the pensions.

(3) Article 23ZE applies where—

(a) there is a single pension commencement lump sum,

(b) that lump sum is paid in connection with at least two of the three types of pension listed in paragraph (4) from the same registered pension scheme, and

(c) it was expected that the individual would be entitled to all of the pensions in connection with which the pension commencement lump sum was paid within the specified period,

but the individual died before the end of the specified period after becoming entitled to at least one but not all of the pensions.

(4) The three types of pension are—

(a) a scheme pension under a defined benefits arrangement(**c**);

(**a**) The substituted sub-paragraphs (7A) and (7B) of paragraph 2 of Schedule 29 of the Finance Act 2004 (contained in paragraph 34(2) of Schedule 36 to that Act) were amended, and sub-paragraph (7AA) was inserted, by paragraph 25 of Schedule 23 to the Finance Act 2006 (c. 25). Section 161 of that Act deems these amendments to have come into force on 6th April 2006.

(**b**) Sections 210 and 212 were amended by paragraphs 16 and 18 of Schedule 23 to the Finance Act 2006. Section 161 of that Act deems these amendments to have come into force on 6th April 2006.

(**c**) Paragraph 2 of Schedule 28 to the Finance Act 2004 defines "scheme pension" and section 152(6) defines "defined benefits arrangement". Paragraph 2 was amended by paragraph 11 of Schedule 10 to the Finance Act 2005, paragraph 20 of Schedule 23 to the Finance Act 2006 and paragraph 7(2) of Schedule 20 to the Finance Act 2007 (c. 11). The amendments made by the Finance Act 2006 and the Finance Act 2007 are deemed to have come into force on 6th April 2006, see section

(b) a scheme pension under a money purchase arrangement(**a**);

(c) a lifetime annuity(**b**).

(5) The "specified period" is the period of three months beginning with the earliest date on which the individual becomes entitled to any of the pensions or would have been so entitled had the individual not died.

Individual becomes entitled to the pensions

23ZC.—(1) In a case to which this article applies, Part 4 of the 2004 Act is modified as follows.

(2) For section 166(2)(a) (lump sum rule) substitute—

"(a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the last of the pensions in connection with which it is paid, and".

(3) In paragraph 31(3) of Schedule 36 for "on the same date" substitute "within a period of three months beginning with the earliest date on which the individual becomes entitled to any of the pensions".

Individual dies before becoming entitled to any of the pensions

23ZD.—(1) In a case to which this article applies, Schedule 36 of Part 4 of the 2004 Act is modified as follows.

(2) For paragraph 31(3) substitute—

"(3) The pension condition is that, had the individual not died, it was expected that the individual would have become entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of three months beginning with the earliest date on which it was expected that the individual would have become entitled to any of the pensions.".

(3) In paragraph 34(2), in the substituted sub-paragraph (7A) of paragraph 2 of Schedule 2, for the definition of AC substitute—

"AC is the value of the individual's uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid calculated in accordance with section 212 (valuation of uncrystallised rights for the purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of rights on that date.".

Individual dies after becoming entitled to at least one but not all of the pensions

23ZE.—(1) In a case to which this article applies, Part 4 of the 2004 Act is modified as follows.

(2) For section 166(2)(a) substitute—

"(a) in the case of a pension commencement lump sum, immediately before the latest time when the person became entitled to any of the pensions in connection with which it was paid, and".

161(2) of the Finance Act 2006 and paragraph 24(3) of Schedule 20 to the Finance Act 2007. Paragraph 2 was also amended by regulation 2 of S.I. 2007/493.

(**a**) Section 152(2) of the Finance Act 2004 defines "money purchase arrangement".

(**b**) Paragraph 3 of Schedule 28 to the Finance Act 2004 defines "lifetime annuity". Paragraph 3 was amended by paragraph 13 of Schedule 10 to the Finance Act 2005 and regulation 2 of S.I. 2007/493. Paragraph 3(2CA) was inserted by paragraph 2 of Schedule 29 to the Finance Act 2008 (c. 9), which came into force on 21 July 2008, and repealed by section 75(2)(d) of the Finance Act 2009, which came into force on 21 July 2009.

(3) For paragraph 31(3) of Schedule 36 substitute—

"(3) The pension condition is that it was expected that, had the individual not died, the individual would have become entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) within a period of three months beginning with the earliest date on which the individual became entitled to any of the pensions.".

(4) In paragraph 34(2) of Schedule 36, in the substituted sub-paragraph (7A) of paragraph 2 of Schedule 29, for the definition of AC substitute—

"AC is CB + UCB where—

CB is the amount crystallised, prior to death, on the individual becoming entitled to pensions in connection with which the lump sum is paid (see section 216(**a**)) (but this is subject to sub-paragraphs (7AA) and (7B)), and

UCB is the value of the individual's uncrystallised rights on the date of death under arrangements under the pension scheme in connection with which the lump sum is paid, calculated in accordance with section 212 (valuation of uncrystallised rights for the purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of rights on that date.".

Name
Name

Date 2010 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Taxation of Pension Schemes (Transitional Provisions) Order 2006 ("the principal Order") in order to make further transitional provision in relation to the taxation of pensions.

Article 1 provides for the citation, commencement and effect of this Order. The Order has retrospective effect, from 6th April 2006. That is the effective day of the pensions taxation simplification measures enacted by the Finance Act 2004 (known as "A Day"), as well as the date of coming into force of the principal Order. Section 282(A1) of the Finance Act 2004 provides that an order made under Part 4 of that Act may include provision having effect in relation to times before the order is made if that provision does not increase any person's liability to tax.

Article 2 amends the principal Order by inserting articles 23ZA to 23ZE.

The inserted article 23ZA provides for cases when an individual has received a pension commencement lump sum but dies before becoming entitled to the pension or pensions in connection with which it is paid. This article modifies paragraphs 31 and 34 of Schedule 36 to the Finance Act 2004 which make transitional provision to entitle tax free lump sums exceeding 25% of uncrystallised benefits in certain circumstances. Modifications are made to paragraph 31(3) of that Schedule, which sets out the pension condition to be satisfied in order for this entitlement to

(a) Section 216 was amended by paragraphs 31 and 42 of Schedule 10 to the Finance Act 2005, paragraph 30 of Schedule 23 to the Finance Act 2006 and paragraph 5 of Schedule 29 to the Finance Act 2008. These amendments are treated as having come into force on 6th April 2006. Section 216 was also amended by paragraph 1(3) of Schedule 29 to the Finance Act 2008.

apply, and to the definition of "AC" substituted by paragraph 34(2) of that Schedule, which provides for the calculation of the permitted maximum.

The inserted articles 23ZB to 23ZE provide for cases where there is a single pension commencement lump sum, payable in connection with at least two of the three types of pensions (described below), from the same registered pension scheme and an individual becomes, or had the individual not died, would have become, entitled to all of the pensions in connection with which the pension commencement lump sum is payable within a period of three months. The three types of pension are: a scheme pension under a defined benefits arrangement, a scheme pension under a money purchase arrangement and a lifetime annuity.

Article 23ZC applies where the individual becomes entitled to all of the pensions in connection with which the lump sum is paid. Article 23ZC modifies section 166(2)(a) of the Finance Act 2004, which provides for when an individual becomes entitled to a pension commencement lump sum, and paragraph 31(3) of Schedule 36 to that Act, to allow entitlement to the pensions to occur within a period of three months.

Article 23ZD goes on to make provision for where an individual dies before becoming entitled to any of the pensions in connection with which the lump sum is paid, by modifying paragraphs 31(3) and 34(2) of Schedule 36 to the Finance Act 2004, and article 23ZE provides for when an individual dies after becoming entitled to at least one but not all of the pensions in connection with which the lump sum is paid, by modifying section 166(2)(a) of, and paragraphs 31(3) and 34(2) of Schedule 36 to, the Finance Act 2004.