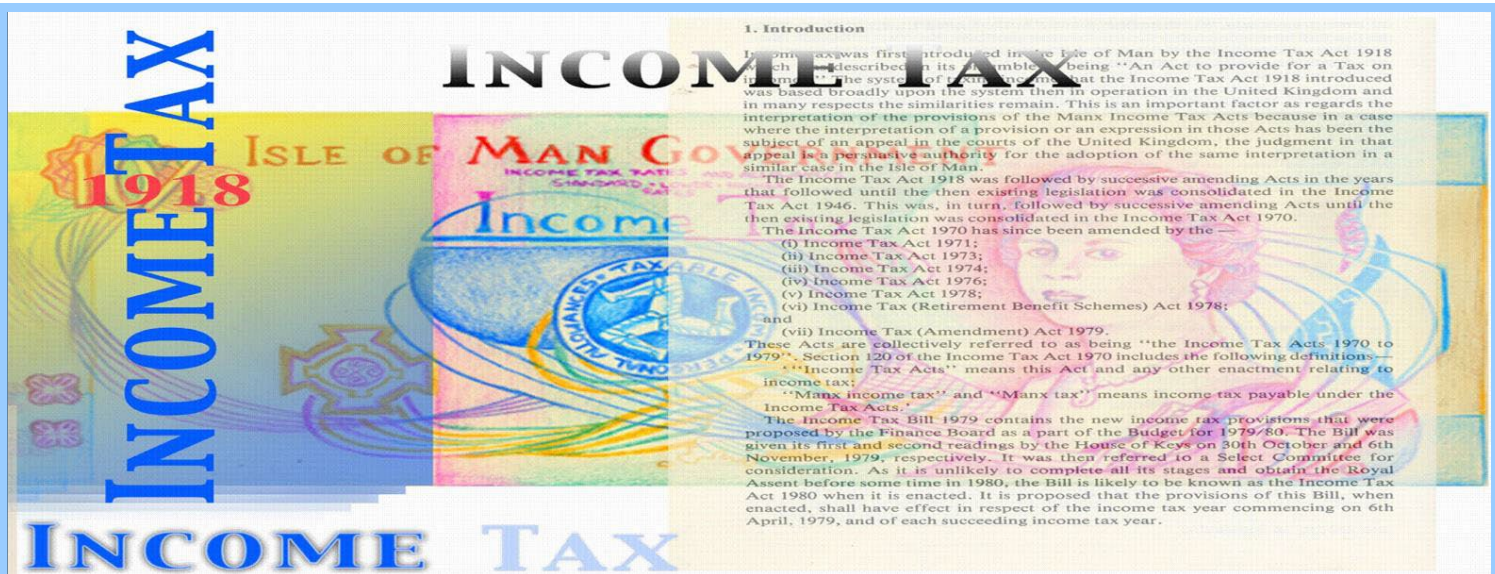




# Isle of Man Government

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# Pension Scheme Administrators Guidance

## Guidance Note – GN62

**PLEASE NOTE:**

This guidance does not affect your right of appeal on points concerning your liability to income tax.

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## 1 Introduction

This Guidance Note is intended for pension scheme administrators and explains the tax implications of the death of a pension scheme member or the transfer of a pension scheme fund.

Practice Note PN221/23 sets out the reporting requirements on the death of a member of an approved pension scheme or the transfer of funds out of an approved pension scheme including details of the relevant notification forms.

This guidance note together with the new Practice Note have both replaced the previous Practice Note 165/10.

## 2 Isle of Man approved pension schemes

### 2.1 Relevant legislation for approving pension schemes

Isle of Man pension schemes can be approved by the Assessor under the following legislation:

- Income Tax (Retirement Benefit Schemes) Act 1978 – ('1978 Act');
- Income Tax Act 1989 – ('1989 Act');
- Section 50B of the Income Tax Act 1970 - ('Section 50B');
- Section 50C of the Income Tax Act 1970 – ('Section 50C'); or
- Part 5A 61H of the Income Tax Act 1970 – ('Section 61H').

When pension schemes are approved by the Assessor under the above legislation, there is an ongoing requirement that the pension scheme rules are being correctly applied by the scheme administrators and comply with the relevant Income Tax legislation and regulations.

It follows therefore that when this is not the case, especially in relation to any reporting requirements or tax implications, then the Scheme's approval status may be withdrawn by the Assessor. Withdrawal of approval results in tax relief no longer being available in respect of pension contributions and any income arising within the pension scheme being taxable.

Two notification forms are available to assist pension scheme administrators to meet the required reporting conditions for deaths and transfers.

These forms are available on the [forms page](#) of the Income Tax Division website:

- Pensions Notification Form (R260) – Death of a Member
- Pensions Notification Form (R261) – Transfer Request

### 2.2 Pension Arrangements

Where a member's fund has been administered as segregated arrangements, the Assessor may consider which arrangements are in payment but only after taking into account evidence of how those arrangements have been segregated in practice. Evidence needs to be provided to show that segregated arrangements have been set up and administered accordingly. Where evidence is not provided or does not satisfactorily demonstrate segregation in practice then the member's fund will be viewed as one complete scheme.

### 3 Notification of Death of Member

#### 3.1 Occupational Pension Schemes - approved under the 1978 Act

Section 9A the 1978 Act *"applies where:*

- a) benefits came into payment before the death of the employee and the scheme holds employee's funds after that employee's death; or*
- b) benefits became payable after the death of the employee and the scheme holds employee's funds following the cessation of payments; and*

*the employee's pension is commuted in accordance with this section"* (i.e. where funds are being distributed out of the scheme as a single payment).

Where this is the case then the remaining value of any member's funds shall be chargeable to income tax at the rate of 7.5%. The tax charge will be accounted for and paid to the Assessor by the scheme administrator:

- on or before the date on which the member's funds are distributed; or
- within 6 months of the date of death of the member,

whichever is the earlier.

**Schedule 1 of the 1978 Act requires that *"the administrator shall notify the Assessor of any amounts chargeable to tax under sections 8, 9 or 10 within 21 days of such amounts being paid"*.**

#### 3.2 Personal Pension Schemes - approved under the 1989 Act

Section 8 of the 1989 Act allows for the return of contributions plus reasonable interest, on the death of a member, in circumstances where no benefits have commenced payment (including payment of pension commencement lump sum) from the pension scheme and no pension is payable to a surviving beneficiary. This value can be paid out by the scheme administrator free of income tax.

Section 8A and 8B of the 1989 Act deal with the tax on the balance of a member's funds on death of that member after the commencement of payment of benefits. If a member's pension is in payment and the cessation of the payment of any annuity or final withdrawal of funds allows for the return of a balance of the member's funds on the death of a member, then the remaining fund is dealt with in accordance with Statutory Documents 510/08 and 512/08. The amount distributed from the fund is subject to income tax at the prescribed rate of 7.5%. The tax charge must be accounted for and paid to the Assessor by the scheme administrator:

- on or before the date on which the member's funds are distributed; or
  - within 6 months of the date of death of the member,
- whichever is the earlier.

However, if the funds are not being distributed, but are transferred to another approved pension scheme for the surviving beneficiary then no tax will be payable on the transfer value.

Section 24 of the 1989 Act allows the Assessor to withdraw her approval of the Scheme if the above conditions are not met.

### **3.3 International Pension Schemes - approved under Section 50B**

Section 50B approved pension schemes are international pension schemes and are only available to individuals who are not resident on the Island. No Isle of Man income tax relief is granted on contributions made into these schemes and no charge to Isle of Man income tax is levied on the death of the non-resident scheme member.

There is therefore no reporting requirement on these Schemes approved under Section 50B upon the death of a member.

However, if a non-resident member was to commence residence in the Isle of Man then the fund would no longer meet the required conditions for Section 50B approval. As a result the Assessor may withdraw the approval status and any income arising within the pension scheme would become taxable.

### **3.4 International Pension Schemes - approved under Section 50C**

Section 50C approved pension schemes are international pension schemes which are available to scheme members who can be either resident or non-resident in the Isle of Man. No Isle of Man income tax relief is granted on contributions made into these schemes and the benefits paid out of a Section 50C scheme will be subject to Isle of Man income tax. The tax charged will depend on the marginal rate of Isle of Man income tax applicable to the member or, upon death, the relevant beneficiary. Where the recipient is not resident for Isle of Man tax then the taxation is in line SD811/10.

There is therefore no reporting requirement by the Scheme Administrators upon the death of a member for Section 50C schemes. Any payments made to a resident recipient following a member's death will however be treated as being their taxable income.

### **3.5 Pension Freedom Schemes - approved under Section 61H**

There will be no charge to income tax on the funds remaining in a Section 61H approved Pension Freedom Scheme when paid out following the death of the member. However, the funds in the scheme must be paid out within two years of the member's death as required per Section 61P of the Income Tax Act 1970. Where this is not possible, the Assessor of Income Tax must be informed.

## **4 Notification of Transfers**

### **4.1 Transfers which don't need the Assessor's clearance**

Certain transfers between pension schemes can be made without seeking the Assessor's clearance:

- Transfers from one Isle of Man approved pension scheme to another, assuming all other conditions of the scheme are met.
- Where a transfer is being made from an approved pension scheme to a pension scheme that is administered in the United Kingdom or Isle of Man and has been registered with HM Revenue

& Customs under the provisions of the Finance Act 2004 (of Parliament), and the scheme member is resident in the United Kingdom at the date of transfer.

- But, please note: this does not include schemes sited in countries other than the United Kingdom or Isle of Man which have some form of HM Revenue & Customs approval or registration.
- From the date of this guidance note, the Assessor will allow pension transfers from approved pension schemes to schemes for which HM Revenue & Customs have been duly notified that the scheme is a Recognised Overseas Pension Scheme (ROPS) and which is operating outside of the UK or Isle of Man under the following circumstances:
  - that, disregarding investment growth since its approval, the funds in the transferring approved pension scheme that relate to the transferring member must have originated solely from a transfer received from a foreign non-approved pension scheme;
  - that the Member of the receiving scheme is resident in the country of that foreign receiving scheme at the date of transfer;
  - that the pension transfer must be to a pension scheme that has been registered with HM Revenue & Customs, under the provisions of the Finance Act 2004 (of Parliament), at the time of the transfer; and
  - that the transfer must be to a pension scheme in a country which would permit an equivalent transfer to an Isle of Man pension scheme. The trustees of the transferring scheme will also need to satisfy themselves that the intended receiving scheme rules permit an equivalent transfer to the Isle of Man.
- Transfers from 50B schemes.

Whilst the Assessor's clearance is not required to make the above transfers they should still be notified to the Assessor using form R261 within 60 days following the date of the transfer.

Any transfer from an approved pension scheme not covered by the above will require the Assessor's prior clearance using form R261.

## 4.2 Transfers made without clearance

Unless made in accordance with section 4.1 above, or following clearance from the Assessor, any transfer payment out of an approved pension scheme will constitute an unauthorised payment and may be subject to both an unauthorised payment charge of the Higher Rate and a supplementary charge of an additional 20%. Such charges are raised under section 50D and 61Q of the Income Tax Act 1970, section 11A of the Income Tax (Retirement Benefit Schemes) Act 1978 or section 25 of the Income Tax Act 1989.

Please note that transfers from approved pension schemes in respect of Defined Benefits (DB) are not permitted directly into a Pension Freedom Scheme (PFS) and such a transfer would constitute an unauthorised payment.

### **4.3 Pension Freedom Schemes (PFS) - approved under Part 5 of Section 61H of the Income Tax Act 1970**

Please note, except for transfers from a PFS to another PFS, transfers into a PFS are not permitted without the prior payment of the 10% pension transfer fee and the subsequent issue of a transfer authorisation letter from the Assessor.

### **4.4 Foreign Schemes**

The Assessor's current practice is that clearance requests for transfers to foreign pension schemes are likely to be denied where:

- the receiving scheme is not authorised or recognised by the tax and/or regulatory authority of the country in which it is established;
- the receiving scheme is established in a country which does not tax pension income; or
- the scheme is transferred to a country other than where the member is resident unless there is good reason to do so.

It should be noted that the Isle of Man has signed up to a large number of Double Taxation Agreements (DTAs) and many of these DTAs contain Pension Articles which allocate taxation rights. In relation to any transfer to a foreign scheme the pension trustees and administrators should be aware of the content of these DTAs which can be found on the income tax [International Agreements website](#).

## **5 Value of Member's Benefits**

Section 2A (2) of the Income Tax (Retirement Benefit Schemes) Act 1978 describes the conditions applying to lump sums: in particular that they must not exceed 30% of the total value of the benefits payable to the member at the time. In the case of a defined benefits scheme, the Assessor will accept that the 'total value' can be taken to be a value not exceeding 20 times the annual rate of pension payable by the approved scheme on the nominated date.