



INCOME TAX ACT 1995

INCOME TAX (PENSIONS) (TEMPORARY TAXATION) ORDER 2010

Approved by Tynwald 19 October 2010

Coming into operation 22 October 2010

The Treasury makes this Order under section 15 of the Income Tax Act 1995¹.

1 Title

This Order is the Income Tax (Pensions) (Temporary Taxation) Order 2010.

2 Commencement

If approved by Tynwald², this Order comes into operation on 22 October 2010.

3 Amendment to the Income Tax Act 1970

(1) The Income Tax Act 1970³ is amended as follows.

(2) After section 50A insert the heading –

“Relief etc. for international personal and occupational pension schemes”.

(3) After section 50B insert –

“50C Relief for certain personal and occupational pension schemes

(1) Exemption from income tax shall, on a claim being made, be allowed in respect of income derived from investments or deposits if, or to the extent that the Assessor is satisfied that, it is income from investments

¹ 1995 c.12

² As required

³ XXI p.260

or deposits held for the purposes of a pension scheme approved under subsection (2).

- (2) Subject to subsection (3), the Assessor may, if he thinks fit, having regard to the facts of a particular case, and subject to such reasonable conditions, if any, as he thinks proper to attach to the approval, approve a pension scheme for the purposes of this section.
- (3) The Assessor shall not approve a scheme unless the scheme satisfies the conditions in subsection (4) or (5).
- (4) The condition is that the scheme is a personal pension scheme -
 - (a) where the arrangement within the scheme is made by an individual;
 - (b) which is properly established under irrevocable trusts governed by the laws of the Island;
 - (c) whose sole purpose is the provision of relevant benefits for the individual;
 - (d) from which the payment of relevant benefits cannot commence until the member attains the age of 55;
 - (e) in which at least 70% of a member's tax-relieved scheme funds are to provide the member with an income for life;
 - (f) the administrator and at least one trustee of which are resident in the Island; and
 - (g) the administrator of which has a fixed place of business in the Island from which the administrator's business is conducted.
- (5) The condition is that the scheme is an occupational pension scheme -
 - (a) which is properly established under irrevocable trusts in relation to a trade or undertaking;
 - (b) whose sole purpose is the provision of relevant benefits in respect of persons' employment in the trade or undertaking;
 - (c) which is recognised by the employer and employees in the trade or undertaking;
 - (d) from which the payment of relevant benefits cannot commence until the member attains the age of 55;
 - (e) in which at least 70% of a member's tax-relieved scheme funds are to provide the member with an income for life;
 - (f) the administrator and at least one trustee of which are resident in the Island; and
 - (g) the administrator of which has a fixed place of business in the Island from which the administrator's business is conducted.

- (6) The relevant benefit may commence before the member attains the age of 55 if it is payable on the member becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which the member is trained.
- (7) A relevant benefit made under a scheme approved under subsection (2) shall be payable to a person without the deduction of income tax but shall be income in respect of which income tax may be imposed under the Income Tax Acts.
- (8) Any contribution made by a member or any other person into any scheme approved under subsection (2) shall not be allowed as a deduction against the total income of that member or as a deduction against the profit of any person.

50D Charge to tax: unauthorised payments

- (1) Any payment made out of funds which are or have been held for the purposes of a scheme approved under section 50C(2) to or for the benefit of a person and which is not expressly authorised by the rules of the scheme shall be an unauthorised payment and shall be chargeable to income tax on the member in the year of assessment in which the payment is made.
- (2) Any income tax chargeable under subsection (1) shall be accounted for and paid over to the Assessor by the administrator within 14 days of the date on which the unauthorised payment is made.
- (3) Any tax paid by the administrator under subsection (2) –
 - (a) shall be deemed to be paid on behalf of the member; and
 - (b) shall be deducted from the unauthorised payment.
- (4) The administrator shall give to the member written notice of the deduction of the charge in such form as the Assessor may approve.
- (5) The Assessor shall issue to the member a certificate in respect of the deduction and that certificate shall have the same effect as an assessment made upon the member.

50E Supplementary charge on unauthorised payments

- (1) In addition to the income tax charge specified in 50D(1), if an unauthorised payment is made, the member will be liable to a supplementary charge of 20% of the unauthorised payment's value.
- (2) The value of the unauthorised payment to be used for calculating the supplementary charge shall be that before making any deduction in accordance with section 50D(3)(b).
- (3) The Assessor may, if he thinks fit, remit any supplementary charge or portion of a charge payable under this section.
- (4) The supplementary charge shall be payable to the Assessor by the administrator as a debt due in all respects as if it were income tax due under the Income Tax Acts.
- (5) The supplementary charge shall be accounted for and paid over to the Assessor by the administrator within 14 days of the date on which the relevant payment is made.
- (6) Any supplementary charge paid by the administrator under subsection (4) –
 - (a) shall be deemed to be paid on behalf of the member; and
 - (b) shall be deducted from the unauthorised payment.
- (7) The administrator shall give to the member written notice of the deduction of the supplementary charge in such form as the Assessor may approve.
- (8) The Assessor shall issue to the member a certificate in respect of the deduction and that certificate shall have the same effect as an assessment made upon the member.
- (9) A member of an approved scheme may appeal to the Commissioners against a supplementary charge under this section in the same manner as an appeal against an assessment to income tax and the Commissioners may confirm, rescind or amend the charge.

50F Administration

- (1) If an individual is in receipt of “relevant income” within the meaning of the Income Tax (Rates of Income Tax) (Resident Individuals) (Capping) Order 2010⁴ or in any similar Order which revokes and replaces that Order and that individual also receives an unauthorised payment under section 50D(1), the maximum amount of income tax under the Order shall be increased by a sum equal to 20% of the unauthorised payment.
- (2) Despite anything in –
 - (a) Chapter I of Part III of the Pension Schemes Act 1993 (of Parliament) as it has effect in the Isle of Man⁵; or
 - (b) any Regulations made under that Act,a personal pension scheme approved under section 50C(2) shall be regarded for the purposes of that Chapter as an appropriate scheme and an appropriate scheme certificate may be issued accordingly in accordance with section 7(1)(b) of that Act.
- (3) The Treasury may by regulations –
 - (a) restrict the Assessor’s discretion to approve a scheme under section 50C(2) by reference to such criteria or circumstances as may be specified in the regulations; and
 - (b) introduce procedures which the administrator of such a scheme must follow in order to gain approval.
- (4) Regulations under subsection (3) shall not come into operation unless they are approved by Tynwald.
- (5) In sections 50C, 50D, 50E and this section “administrator” means the person responsible for the management of a scheme approved under section 50C(2).
- (6) In section 50C “relevant benefits” means any pension, annuity, lump sum, gratuity or other like benefit given or to be given on retirement or death, or in anticipation of retirement.

⁴ SD 19/10

⁵ SD 531/95

(7) In sections 50D, 50E and this section “unauthorised payment” has the meaning given by section 50D(1).”.

(4) After section 50F insert the heading –

“Continuation of Exemptions, Allowances and Relief”.

4 Amendment to the Income Tax (Retirement Benefit Schemes) Act 1978

(1) The Income Tax (Retirement Benefit Schemes) Act 1978⁶ is amended as follows.

(2) After section 9 insert –

9A Charge to tax on commutation of some or all of an employee’s pension after death of employee

(1) This section 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.

(2) The value of any employee’s funds under this section shall be chargeable to a tax (hereinafter referred to in this section as ‘the tax’).

(3) Where any amount is chargeable to the tax the administrator of the scheme shall be charged to the tax on that amount and the tax charged shall be payable to the Assessor.

(4) The tax shall be at the rate of 7½%.

(5) Subsection (4) may be amended by order of the Treasury to specify a different rate of tax.

(6) An order under this section shall not come into operation unless it is approved by Tynwald.

⁶ 1978 c.9

- (7) The tax payable to the Assessor under subsection (3) shall be accounted for and paid over to the Assessor by the administrator of the scheme –
- (a) on or before the date on which the employee's funds are distributed; or
 - (b) within 6 months of the date of death of the employee,
- whichever is the earlier.
- (8) Any tax paid under subsection (7), shall be deducted from the value of the employee's funds.
- (9) The Treasury may make such regulations as are necessary for the purpose of implementing this section.
- (10) Regulations made under subsection (9) may, in particular, provide for the method by which the value of the employee's funds may be calculated and different methods may be provided for different purposes.
- (11) Regulations under subsection (9) shall not come into operation unless they are approved by Tynwald.”.
- (3) After section 11A(4) insert –
- “(5) If an individual is in receipt of “relevant income” within the meaning of the Income Tax (Rates of Income Tax) (Resident Individuals) (Capping) Order 2010⁴ or in any similar Order which revokes and replaces that Order and that individual also receives a payment to which subsection (1) applies, the maximum amount of income tax under the Order shall be increased by the a sum equal to 20% of the payment.”.
- (4) In section 11B(1) substitute -
- “within the meaning of section 1 of the principal Act” with “as defined in section 1(2)(b) of the Income Tax Act 1970 and within the meaning of section 1(3A) of that Act”.
- (5) After section 11D insert –

“11E Supplementary charge on unauthorised payments to or for employees

- (1) In addition to the income tax charge on a payment to which subsection 11A(1) applies if an unauthorised payment is made, the employee shall be liable to a supplementary charge of 20% of the value of the unauthorised payment.
- (2) The Assessor may, if he thinks fit, remit any supplementary charge or portion of a charge payable under this section.
- (3) The value of the unauthorised payment to be used for calculating the supplementary charge shall be the value of the payment prior to any deduction specified in subsection 11B(1).
- (4) The supplementary charge shall be payable to the Assessor by the payer as a debt due in all respects as if it were income tax due under the Income Tax Acts.
- (5) The supplementary charge shall be accounted for and paid over to the Assessor by the payer within 14 days of the date on which the payment is made.
- (6) Any supplementary charge paid by the payer under subsection (4) –
 - (a) shall be deemed to be paid on behalf of the employee; and
 - (b) shall be deducted from the payment.
- (7) The payer shall give to the employee written notice of the deduction of the supplementary charge in such form as the Assessor may approve.
- (8) The Assessor shall issue to the employee a certificate in respect of the deduction and that certificate shall have the same effect as an assessment made upon the employee.
- (9) An employee may appeal to the Commissioners against a supplementary charge under this section in the same manner as an appeal against an assessment to income tax and the Commissioners may confirm, rescind or amend the charge.”.

5 **Amendments to the Income Tax Act 1989**

(1) The Income Tax Act 1989⁷ is amended as follows.

(2) After subsection 25(4) insert –

“(5) If an individual is in receipt of “relevant income “ within the meaning of the Income Tax (Rates of Income Tax) (Resident Individuals) (Capping) Order 2010⁴ or in any similar Order which revokes and replaces that Order and that individual also receives a payment to which subsection (2) applies, the maximum amount of the tax under the Order shall be increased by an amount equal to 20% of the payment.”.

(3) After section 25 insert –

“25A Supplementary charge on unauthorised payments etc

(1) In addition to the income tax charge on a payment to which subsection 25(2) applies if an unauthorised payment is made, the individual will be liable to a supplementary charge of 20% of the value of the unauthorised payment.

(2) The Assessor may, if he thinks fit, remit any supplementary charge or portion of a charge payable under this section.

(3) The value of the payment to be used for calculating the supplementary charge shall be the value of the payment prior to any payment specified in subsection 25(3).

(4) The supplementary charge shall be a debt due in all respects as if it were income tax due under the Income Tax Acts.

(5) The supplementary charge shall be payable by the individual referred to in subsection 25(1)(b), whether or not that individual is the recipient of the payment.

(6) An individual may appeal to the Commissioners against a supplementary charge under this section in the same manner as an appeal against an assessment to income tax and the Commissioners may confirm, rescind or amend the charge.”.

⁷ 1989 c.10

6 Revocation

The Income Tax (Approved Pension Schemes) (Rate of Tax on Unauthorised Payments) Order 2008⁸ is revoked.

MADE

20th September 2010



Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Income Tax Act 1970 in order to provide tax relief for income derived from investments and deposits held for the purposes of certain approved personal and occupational pension schemes. The amendment also provides that the Income Tax (Rates of Income Tax) (Resident Individuals) (Capping) Order 2010 or in any similar Order which revokes and replaces that Order will not apply to any income received by way of an unauthorised payment from such a scheme. It also provides for a supplementary charge of 20% to be raised on any unauthorised payment made and that a scheme approved by the Assessor under 50C will be an appropriate scheme for the contracting out provisions in Pension Schemes Act 1993 (an Act of Parliament) as it has effect in the Isle of Man.

In addition, the Order amends the Income Tax (Retirement Benefit Schemes) Act 1978 and the Income Tax Act 1989 so that the capping order does not apply to any income received by way of an unauthorised payment. It also amends both Acts by introducing a supplementary charge of 20% on any unauthorised payment made.

The Order further amends the Income Tax (Retirement Benefit Schemes) Act 1978 in order to permit an employee's pension fund to be commuted after the employee's death and taxed at a rate of 7½%. It also amends this Act by linking the rate of tax charged on an unauthorised payment to the higher rate of income tax payable by a non-corporate taxpayer.

Lastly, the Order revokes the Income Tax (Approved Pension Schemes) (Rate of Tax on Unauthorised Payments) Order 2008.

⁸ SD 511/08