STATUTORY INSTRUMENTS

2006 No. 133

INCOME TAX

The Registered Pension Schemes (Co-ownership of Living Accommodation) Regulations 2006

Made - - - -	*25th January 2006*
Laid before the House of Commons	*26th January 2006*
Coming into force - -	*6th April 2006*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 173(8)(a) of the Finance Act 2004(**a**), and now exercisable by them(**b**), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Registered Pension Schemes (Co-ownership of Living Accommodation) Regulations 2006, and shall come into force on 6th April 2006.

Circumstances in which these Regulations apply

2.—(1) These Regulations apply if, for the whole or part of a tax year, living accommodation is held—

(a) partly by persons for the purposes of a registered pension scheme, and

(b) partly by persons for other purposes.

(2) In these Regulations—

an "owner" means a person for whom the living accommodation is held;

a "pension scheme owner" means a person who is an owner by virtue of paragraph (1)(a);

a "scheme member" means an individual who is a member of the registered pension scheme mentioned in paragraph (1)(a).

The living accommodation benefit

3.—(1) If these Regulations apply, a benefit is provided.

(2) In these Regulations the benefit is called "the living accommodation benefit".

(3) The amount of the living accommodation benefit is calculated in the same way as the cash equivalent of the benefit is calculated under Chapter 5.

(**a**) 2004 c. 12.

(**b**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(4) For the purposes of the calculation required by paragraph (3)—

(a) references in Chapter 5 to the employee are to be treated as references to an individual for whom the living accommodation is provided,

(b) references in Chapter 5 to the employer are to be treated as references to the registered pension scheme, and

(c) references in Chapter 5 to the taxable period are to be treated as references to the period (consisting of the whole or part of a tax year) for which these Regulations apply.

(5) In this regulation "Chapter 5" means Chapter 5 of Part 3 of the Income Tax (Employments and Pensions) Act 2003(**a**) (taxable benefits: living accommodation).

The pension scheme owner's benefit

4.—(1) The amount of the living accommodation benefit must be apportioned among the owners according to their respective shares and interests.

(2) In these Regulations, the amount of the living accommodation benefit so apportioned to a pension scheme owner is called "the pension scheme owner's benefit".

The private owner's benefit

5.—(1) The pension scheme owner's benefit must be apportioned.

(2) If the living accommodation is used to provide a benefit for persons who consist of, or include—

(a) one particular scheme member, or

(b) a member of the scheme member's family or household,

the pension scheme owner's benefit is apportioned to the scheme member.

(3) If the living accommodation is used to provide a benefit for persons who consist of, or include—

(a) a scheme member or a member of the scheme member's family or household, and

(b) another scheme member or a member of that other scheme member's family or household,

the pension scheme owner's benefit is apportioned among those scheme members.

(4) If paragraph (3)(b) applies in relation to more than one scheme member, the pension scheme owner's benefit is apportioned among all the scheme members in relation to whom paragraph (3)(a) or (3)(b) applies.

(5) If paragraph (3) applies, the amount of the pension scheme benefit apportioned to any particular scheme member is to be such part of that benefit as is just and reasonable.

(6) Section 721 of the Income Tax (Employments and Pensions) Act 2003 (definitions) applies for the purpose of determining the members of a scheme member's family or household.

(7) In these Regulations the amount of the pension scheme owner's benefit apportioned under this regulation to a scheme member is called "the private owner's benefit".

Unauthorised payments to members of registered pension schemes

6.—(1) A pension scheme owner is to be treated as having made an unauthorised payment under section 173 of the Finance Act 2004 to a scheme member to whom regulation 5(7) applies.

(2) The amount of the unauthorised payment is equal to the amount of the private owner's benefit.

(**a**) 2003 c. 1.

Paul Gray
Mike Eland
25th January 2006 Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply where living accommodation is owned partly by a registered pension scheme and partly by other persons. The Regulations provide for a charge to income tax to arise in certain circumstances.

Regulation 1 provides for citation and commencement.

Regulation 2 sets out the circumstances in which these Regulations apply.

Regulation 3 provides that, if these regulations apply, there is a benefit ("the living accommodation benefit"). The living accommodation benefit is calculated in the same way as a benefit is calculated under Chapter 5 of Part 3 of the Income Tax (Employments and Pensions) Act 2003 (c. 1) (taxable benefits: living accommodation).

Regulation 4 provides for the living accommodation benefit to be apportioned, with the amount apportioned to the registered pension scheme being called "the pension scheme owner's benefit".

Regulation 5 provides for the pension scheme owner's benefit to be apportioned, with the amount finally apportioned to a scheme member being referred to as "the private owner's benefit".

Regulation 6 provides that the registered pension scheme is to be treated as having made an unauthorised payment to the scheme member to whom an amount has been apportioned under regulation 5. The amount of the unauthorised payment is the same as the amount of the private owner's benefit.

Other enactments, contained in Part 4 of the Finance Act 2004 (c. 12), provide for an unauthorised payment to be charged to income tax: see, in particular, section 208 of that Act (unauthorised payments charge).

The Board of Inland Revenue published a regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it, on 8 April 2004. The assessment is available on the website for Her Majesty's Revenue and Customs at www.hmrc.gov.uk/ria/simplifying-pensions.pdf or (for hard copies) by writing to the Ministerial Correspondence Unit, 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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£3.00

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E0065 1/2006 160065T 19585