

2010 No. 429

INCOME TAX

The Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010

Made - - - - - *24th February 2010*
Laid before the House of Commons *25th February 2010*
Coming into force - - - *19th March 2010*

The Treasury make this Order in exercise of the powers conferred by paragraphs 19(3), (4), 20(1) and (2) of Schedule 35 to the Finance Act 2009(a).

Citation commencement and effect

1.—(1) This Order may be cited as the Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010 and shall come into force on 19th March 2010

(2) This Order shall have effect for the tax year 2009-10 and subsequent tax years.

Amendment of Schedule 35 to the Finance Act 2009

2. Schedule 35 to the Finance Act 2009 (special annual allowance charge) is amended as follows.

3.—(1) In sub-paragraph (1) of paragraph 7 (protected pension input amounts: general)—

- (a) omit the “and” at the end of paragraph (e), and
- (b) insert at the end

“, and

(g) paragraph 13A makes provision about single contributions made in accordance with agreements entered into not later than 22 April 2009.”.

(2) In sub-paragraph (2) of paragraph 7 for “13” substitute “13A”.

4.—(1) In sub-paragraph (4) of paragraph 8 (protected pension input amounts: existing defined benefits arrangements) omit paragraphs (a) and (b) and after “if” substitute “the conditions set out in sub-paragraph (4A) or (4B) are met.”.

(2) After that sub-paragraph insert—

“(4A) The conditions in this sub-paragraph are that—

- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and

- (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.

(4B) The conditions in this sub-paragraph are that—

- (a) benefits began accruing to or in respect of the individual under the arrangement on or after 22 April 2009 but before the relevant end date and continued until that date,
- (b) the arrangement was made in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, and
- (c) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under that arrangement and ending with the relevant end date.

(4C) If the conditions in sub-paragraph (4D) are met, the amount arrived at under paragraph 3(2) in relation to the arrangement which is attributable otherwise than to the paying of relevant added years contributions is a protected pension input amount to the extent specified in sub-paragraph (4F).

(4D) The conditions in this sub-paragraph are that—

- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
- (b) the cessation date was on or after 22 April 2009,
- (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which some or all of the benefits accruing under the arrangement were accruing in circumstances in which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
- (d) the individual does not make more than one arrangement under a pension scheme other than that under which the old arrangement was an arrangement in the period of 3 months beginning with the cessation date,
- (e) the individual made the arrangement for one of the reasons set out in sub-paragraph (4E),
- (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date,
- (g) there is no material difference between the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement and the rules of the pension scheme under which such benefits were calculated under the old arrangement, and
- (h) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under the arrangement and ending with the relevant end date.

(4E) The reasons referred to in sub-paragraph (4D)(e) are that—

- (a) the individual’s employer had entered into a re-organisation of its pension provisions and the making of the arrangement was a consequence of that re-organisation, or

- (b) the making of the arrangement was due to a relevant business transfer within the meaning of paragraph 12(8A) of Schedule 36 to FA 2004(a).

(4F) The amount arrived at under paragraph 3(2) in relation to the arrangement is a protected pension input amount to the extent that it does not exceed the amount which would have been a protected pension input amount in respect of the old arrangement for the accrual period had the old arrangement continued during that period.

(4G) The accrual period is the period in the tax year—

- (a) beginning with the date on which the individual became an active member of a pension scheme by reference to the arrangement (“the joining date”) or, if the joining date was in an earlier tax year, the first day of the tax year, and
- (b) ending with the last day of the tax year or, if earlier, the date on which the individual ceased being an active member of the pension scheme by reference to the arrangement.”.

(3) For sub-paragraph (5) of paragraph 8 substitute—

“(5) If—

- (a) there is a material change in the rules of the pension scheme under which benefits are calculated under the arrangement during a period referred to in sub-paragraph (4A)(b), (4B)(c) or (4D)(h), and
- (b) the amount arrived at under paragraph 3(2) in relation to the arrangement would have been a protected pension input amount under sub-paragraph (4) or (4C) had it not been for the material change,
the amount so arrived at, to the extent that it is attributable otherwise than to the paying of relevant added years contributions, is a protected pension input amount to the extent that it is not attributable to that change.”

5.—(1) In sub-paragraph (4) of paragraph 9 (protected pension input amounts: existing cash balance arrangements) omit paragraphs (a) and (b) and after “if” substitute “the conditions set out in sub-paragraph (4A) or (4B) are met.”.

(2) After that sub-paragraph insert—

“(4A) The conditions in this sub-paragraph are that—

- (a) benefits have been accruing to or in respect of the individual under the arrangement since before 22 April 2009 and until the relevant end date, and
- (b) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with 22 April 2009 and ending with the relevant end date.

(4B) The conditions in this sub-paragraph are that—

- (a) benefits began accruing to or in respect of the individual under the arrangement on or after 22 April 2009 but before the relevant end date and continued until that date,
- (b) the arrangement was made in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, and
- (c) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits began accruing under that arrangement and ending with the relevant end date.

(4C) If the conditions in sub-paragraph (4D) are met, the amount arrived at under paragraph 3(2) in relation to the arrangement which is attributable otherwise than to the paying of relevant additional voluntary contributions is a protected pension input amount to the extent specified in sub-paragraph (4E).

(a) Paragraph 12(8A) was inserted by paragraph 17 of Schedule 20 to the Finance Act 2004 (c.11).

(4D) The conditions in this sub-paragraph are that—

- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
- (b) the cessation date was on or after 22 April 2009,
- (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which some or all of the benefits accruing under the arrangement were accruing in circumstances in which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
- (d) the individual does not make more than one arrangement under a pension scheme other than that under which the old arrangement was an arrangement in the period of 3 months beginning with the cessation date,
- (e) the individual made the arrangement for one of the reasons set out in paragraph 8(4E),
- (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date,
- (g) there is no material difference between the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement and the rules of the pension scheme under which such benefits were calculated under the old arrangement, and
- (h) there is no material change in the rules of the pension scheme under which benefits to or in respect of the individual are calculated under the arrangement in the period beginning with the date on which benefits started accruing under the arrangement and ending with the relevant end date.

(4E) The amount arrived at under paragraph 3(2) is a protected pension input amount to the extent that it does not exceed the amount which would have been a protected pension input amount in respect of the old arrangement for the accrual period had the old arrangement continued during that period.

(4F) For the purposes of sub-paragraph (4E) the accrual period has the meaning set out in paragraph 8(4G).”.

(3) For sub-paragraph (5) of paragraph 9 substitute—

“(5) If—

- (a) there is a material change in the rules of a pension scheme under which benefits are calculated under an arrangement during a period referred to in sub-paragraph (4A)(b), (4B)(c) or (4D)(h), and
- (b) the amount arrived at under paragraph 3(2) in relation to the arrangement would have been a protected pension input amount under sub-paragraph (4) or (4C) had it not been for the material change,

the amount so arrived at, to the extent that it is attributable otherwise than to the paying of relevant additional voluntary contributions, is a protected pension input amount to the extent that it is not attributable to that change.”.

6.—(1) For sub-paragraph (4) of paragraph 10 (protected pension input amounts: other existing money purchase arrangements under occupational and public service pension schemes) substitute—

“(4) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in—

- (a) sub-paragraph (5) if the individual has been an active member of the pension scheme by reference to the arrangement since before 22 April 2009 and until the relevant end date, or
- (b) sub-paragraph (5A) if the individual has been an active member of the pension scheme by reference to the arrangement since on or after 22 April 2009 (“the joining date”) and until the relevant end date and the arrangement was entered into in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009.”.

(2) After sub-paragraph (5) of paragraph 10 insert—

“(5A) That amount is a protected pension input amount to the extent that it is attributable to contributions paid—

- (a) on a quarterly or more frequent basis without any failure to pay contributions on or after the joining date on more than an insignificant number of occasions, and
- (b) at a rate which has not increased during the period beginning with the joining date and ending with the relevant end date otherwise than in accordance with the agreement referred to in sub-paragraph (4)(b).

(5B) To the extent that the amount arrived at under paragraph 3(2) in relation to the arrangement is attributable to contributions other than relevant additional voluntary contributions it is a protected pension input amount to the extent specified in sub-paragraph (5C) if—

- (a) the arrangement was made no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of a pension scheme other than that under which it is an arrangement (“the cessation date”),
- (b) the cessation date was on or after 22 April 2009,
- (c) the arrangement under that other pension scheme by reference to which the individual was an active member of that pension scheme (“the old arrangement”) was one in the case of which the amount arrived at under paragraph 3(2) in relation to the old arrangement was to any extent a protected pension input amount by virtue of this paragraph,
- (d) the individual did not make more than one such new arrangement in the period of one month beginning with the cessation date,
- (e) the individual made the new arrangement for one of the reasons set out in paragraph 8(4E), and
- (f) the old arrangement has not been re-activated within the meaning of paragraph 13(7) on or after the cessation date.

(5C) The amount is a protected pension input amount to the extent that it is attributable to contributions paid under the arrangement which—

- (a) do not exceed the amount which would have been a protected pension input amount as a result of contributions made under the old arrangement for the accrual period had that arrangement continued during that period,
- (b) are paid on a quarterly or more frequent basis from the date (“the joining date”) on which the individual became an active member of the pension scheme by reference to the arrangement without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
- (c) are paid at a rate which is no higher than the rate at which the contributions under the old arrangement were paid and which has not increased during the period from the joining date and ending with the relevant end date.

(5D) For the purposes of sub-paragraph (5C) the accrual period has the meaning set out in paragraph 8(4G).”.

7.—(1) In sub-paragraph (1) of paragraph 11 (protected pension input amounts: other existing money purchase arrangements under other pension schemes) for “This paragraph” substitute “Sub-paragraph (2)”.

(2) After sub-paragraph (3) of paragraph 11 insert—

“(3A) If the individual—

- (a) has been an active member of a pension scheme by reference to an arrangement (“the old arrangement”) in circumstances in which the amount arrived at under paragraph 3(2) in relation to the arrangement has been to any extent a protected pension input amount by virtue of this paragraph, and
- (b) no later than the end of the period of 3 months beginning with the date on which the individual ceased being an active member of the pension scheme by reference to the old arrangement, made an arrangement (“the new arrangement”) which is a money purchase arrangement other than a cash balance arrangement under a different pension scheme which is neither an occupational pension scheme nor a public service pension scheme and does not form part of a group personal pension scheme,

the amount arrived at under paragraph 3(2) in relation to the new arrangement is a protected pension input amount to the extent specified in sub-paragraph (3B).

(3B) The amount is a protected pension input amount to the extent that it is attributable to contributions paid under the new arrangement which—

- (a) are paid on a quarterly or more frequent basis from the date (“the joining date”) on which the individual became an active member of the pension scheme by reference to the new arrangement without any failure to pay contributions payable on or after that date on more than an insignificant number of occasions, and
- (b) are paid at a rate which is no higher than the rate at which contributions under the old arrangement were paid and which has not increased during the period beginning with the joining date and ending with the relevant end date.

(3C) Sub-paragraph (3B) does not apply in relation to any contributions made under the new arrangement if—

- (a) the old arrangement has been re-activated within the meaning of paragraph 13(7) on or after the joining date, or
- (b) the individual has made more than one new arrangement on or after the joining date.”.

8. After paragraph 13 (protected pension amounts: new and re-activated arrangements) insert—

“Protected pension input amounts: contribution paid in accordance with agreement entered into on or before 22 April 2009

13A. The amount arrived at under paragraph 3(2) in relation to an arrangement which relates to an employment of the individual is a protected lump sum input amount if it is attributable to a single contribution which—

- (a) is paid on or after 22 April 2009, and
- (b) is paid, in accordance with the terms of a written agreement between the individual and the employer made not later than 22 April 2009, not later than the date specified for payment in the agreement.”.

9. In paragraph 14 (protected pension input amounts: anti-avoidance), for “13” substitute “13A”.

10. In paragraph 16(3) (pre-22 April 2009 pension input amount, money purchase arrangements that are not cash balance arrangements), for “21” substitute “22”.

Amendment of the Special Annual Allowance Charge (Application to Members of Currently-Relieved Non-UK Pension Schemes) Order 2009

11. In the Special Annual Allowance Charge (Application to Members of Currently-Relieved Non-UK Pension Schemes) Order 2009(a), in article 9 (modification of paragraph 16(3) of Schedule 35), in the substituted sub-paragraph (3)(a), for “21” substitute “22”.

Frank Roy
Steve McCabe

24th February 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2009/2031

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 35 to the Finance Act 2009 (“FA 2009”) and the Special Annual Allowance Charge (Application to Members of Currently-Relieved Non-UK Pension Schemes) Order 2009 (S.I 2009/2031).

Article 1 provides for citation, commencement and effect. The Order has retrospective effect from 22 April 2009.

Article 2 introduces the amendments to Schedule 35 to FA 2009 which deals with the special annual allowance charge.

Article 3 amends paragraph 7 of Schedule 35. “Protected lump sum input amounts” as defined in paragraph 13A (which is inserted by article 8 of this Order) are added to the list of items that are to be disregarded when calculating the “total adjusted pension input amount”.

Article 4 amends paragraph 8 which deals with defined benefit arrangements. Two new categories of contributions are added to the contributions that are protected pension input amounts under this paragraph. The first category is certain benefits accruing under an arrangement which was entered into on or after 22 April 2009 in accordance with a written agreement made on or before 22 April 2009. The second category is certain benefits accruing under a new arrangement which commenced on or after 22 April 2009 where there was a transfer to the new arrangement due to a relevant business transfer or re-organisation of pension arrangements. Article 5 makes the same amendments to paragraphs 9 which deals with cash balance arrangements.

Article 6 amends paragraph 10 which deals with money purchase arrangements under occupational and public service pension schemes. Protection is extended to certain benefits payable under an arrangement that was entered into in accordance with a written agreement made on or before 22 April 2009. The paragraph is further amended to extend protection to certain contributions payable under a new arrangement where there was a transfer to the new arrangement due to a relevant business transfer or re-organisation of pension arrangements. Article 7 makes the same amendments to paragraph 11 which deals with other money purchase arrangements under other pension schemes.

Article 8 inserts paragraph 13A. Paragraph 13A provides for a new category of protected pension input amounts – contributions paid in accordance with agreements entered into on or before 22 April 2009. Article 9 contains a consequential amendment to paragraph 14 extending the anti-avoidance provision contained in that paragraph to the new paragraph 13A.

Article 10 amends paragraph 16 (pre-22 April 2009 pension input amount). The date “21 April 2009” in sub-paragraph (3) is amended to “22 April 2009”. Article 11 contains a corresponding amendment to the Special Annual Allowance Charge (Application to Members of Currently-Relieved Non-UK Pension Schemes) Order 2009 (S.I. 2009/2031).

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the voluntary or private sectors is foreseen.

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