

EXPLANATORY MEMORANDUM TO

THE SPECIAL ANNUAL ALLOWANCE CHARGE (APPLICATION TO MEMBERS OF CURRENTLY-RELIEVED NON-UK PENSION SCHEMES) ORDER 2009

2009 No. 2031

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

This Order ensures that the rules applying the special annual allowance charge in the Finance Act 2009 work properly in the context of non-UK pension schemes when the member or the member's employer is receiving UK tax relief for contributions paid to the scheme.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

Because paragraph (2) of article 1 provides that the Order has effect from the tax year 2009-2010, it is retrospective. The authority for this is contained in sub-paragraph (2)(a) of paragraph 20 of Schedule 35 to the Finance Act 2009 which provides that an Order made under paragraph 20(1) may include provision having effect in relation to times before it is made.

4. **Legislative Background**

4.1 Section 72 and Schedule 35 to the Finance Act 2009 introduce an income tax charge called the special annual allowance charge at 20 per cent for certain individuals on certain pension contributions and benefits accrued. This income tax charge is on pension contributions and benefits accrued in excess of a special annual allowance of £20,000 for individuals whose relevant income is £150,000 or more. It will not apply in respect of an individual's normal pattern of regular pension contributions or the normal way in which their pension benefits accrued before 22 April 2009. The special annual allowance may be increased up to £30,000 for those with a pattern of non regular pension savings.

4.2 UK tax relief is available to migrant workers and their employers in the UK for contributions to schemes established outside the UK either

- under the migrant member relief provisions in Schedule 33 to the Finance Act 2004 or
- under double taxation arrangements or
- where there was an entitlement before 6 April 2006 to corresponding relief for pension contributions under paragraph 51 of Schedule 36 to the Finance Act

2004 and under article 15 of The Taxation of Pension Schemes (Transitional Provisions) Order 2006 [S.I. 2006/572].

4.3 Schedule 35 contains an order-making power to modify the provisions so that they work properly in the context of members of pension schemes established outside the UK that are not registered pension schemes but for which UK tax relief is being given.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government announced in the 2009 Budget that from April 2011 tax relief on pension contributions will be restricted for those with incomes of £150,000 and over. Relief will be tapered away so that for those with incomes of £180,000 and over it will be worth 20 per cent, the same as to a basic rate taxpayer.

7.2 To prevent individuals making substantial additional pension contributions in order to take advantage of pensions tax relief while relief is still available to them at rates higher than the basic rate, legislation was included in the 2009 Finance Act to prevent forestalling in this way in the period between the 2009 Budget and April 2011.

7.3 This Order modifies Schedule 35 to the Finance Act 2009. It makes sure that the anti-forestalling provisions apply to high-income individuals, who are receiving UK tax relief in respect of the pension contributions they and their employers pay to schemes established outside the UK. They have effect for the 2009-2010 and 2010-2011 tax years.

7.4 The Order also provides equivalent protections from the restrictions on tax relief for members of non-UK schemes, who became or become resident in the UK between 6 April 2006 and 5 April 2011, compared to those provided for individuals, who remain UK resident throughout that period.

Consolidation

7.5 Not applicable

8. Consultation outcome

A draft was made available to the members of the Public Finance Bill Committee, the House of Commons library and to bodies that had made Finance Bill representations about the way in which the special annual allowance charge is to apply to members of non-UK pension schemes. No representations requesting changes to the draft were received.

9. Guidance

The International pages of the Registered Pension Scheme Manual will be updated to reflect this Order at the next available opportunity. This manual is publicly available on the HMRC website at www.hmrc.gov.uk/manual/rpsmanual/index.htm.

10. Impact

An Impact Assessment (IA) has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

11. Regulating small business

The legislation applies to small business but no additional burden for small businesses has been identified.

12. Monitoring & review

The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

Contact

- 13.** Stephen Webb at HM Revenue & Customs (tel: 020 7147 2872 or e-mail: stephen.t.webb@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.