

2011 No. 2696

INCOME TAX

**The Employment Income Provided Through Third Parties
(Excluded Relevant Steps) Regulations 2011**

<i>Made</i>	- - - -	<i>9th November 2011</i>
<i>Laid before the House of Commons</i>		<i>10th November 2011</i>
<i>Coming into force</i>	- -	<i>6th December 2011</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 554Y of the Income Tax (Earnings and Pensions) Act 2003^(a), make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Employment Income Provided Through Third Parties (Excluded Relevant Steps) Regulations 2011 and come into force on 6th December 2011.

(2) The Regulations have effect in relation to relevant steps taken on and after 9th December 2010.

Interpretation

2. In these Regulations—

“Part 7A” means Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (employment income provided through third parties); and

“relevant non-UK scheme” means a scheme within paragraph 1(5) of Schedule 34 to FA 2004^(b).

Disapplication of Chapter 2 of Part 7A: relevant steps arising or deriving from UK tax-relieved funds and relevant transfer funds

3.—(1) Chapter 2 of Part 7A (treatment of relevant steps for income tax purposes) does not apply by reason of a relevant step if the subject of the relevant step is a sum of money or asset which represents or which has (wholly or partly) arisen or derived (directly or indirectly) from a sum of money or assets which represents or has represented—

- (a) a UK tax-relieved fund under a relevant non-UK scheme, or
- (b) a relevant transfer fund under a relevant non-UK scheme.

(2) Paragraph (3) applies if the sum of money or asset which is the subject of the relevant step only partly—

^(a) 2003 c. 1. Section 554Y was inserted, with the rest of Part 7A of the Act, by Schedule 2 to the Finance Act 2011 (c. 11).
^(b) 2004 c. 12.

- (a) represents, or
- (b) arises or derives from a sum of money or assets which represents or has represented, a fund mentioned in paragraph (1).

(3) The relevant step is to be treated for the purposes of this Part as being two separate relevant steps—

- (a) one in relation to the sum of money or asset so far as it represents or arises or derives from a sum of money or assets which represents or has represented a fund mentioned in paragraph (1), and
- (b) one in relation to the sum of money or asset so far as it does not represent or arise or derive from a sum of money or assets which represents or has represented a fund mentioned in paragraph (1),

and paragraph (1) applies only in relation to the separate relevant step mentioned in sub-paragraph (a).

(4) In order to give effect to paragraph (3), the sum of money or asset which is the subject of the relevant step is to be apportioned between the two separate relevant steps on a just and reasonable basis.

(5) In paragraph (1)—

“relevant transfer fund” has the meaning given in paragraph 4(2) of Schedule 34 to FA 2004;

“UK tax-relieved fund” has the meaning given in paragraph 3(2) of Schedule 34 to FA 2004.

Disapplication of Chapter 2 of Part 7A: relevant steps arising or deriving from a payment from a registered pension scheme that has been subject to the unauthorised payments charge

4.—(1) Chapter 2 of Part 7A does not apply by reason of a relevant step if the subject of the relevant step is a sum of money or asset which has (wholly or partly) arisen or derived (directly or indirectly) from a payment—

- (a) made by a registered pension scheme,
- (b) that was subject to the unauthorised payments charge.

(2) Paragraph (3) applies if the sum of money or asset which is the subject of the relevant step only partly arises or derives from a payment mentioned in paragraph (1).

(3) The relevant step is to be treated for the purposes of Part 7A as being two separate relevant steps—

- (a) one in relation to the sum of money or asset so far as it arises or derives from a payment mentioned in paragraph (1), and
- (b) one in relation to the sum of money or asset so far as it does not arise or derive from a payment mentioned in paragraph (1),

and paragraph (1) applies only in relation to the separate relevant step mentioned in sub-paragraph (a).

(4) In order to give effect to paragraph (3), the sum of money or asset which is the subject of the relevant step is to be apportioned between the two separate relevant steps on a just and reasonable basis.

(5) In this regulation, “the unauthorised payments charge” means the charge under section 208 of FA 2004.

Modification of section 554S in Part 7A

5. For the purposes of applying these Regulations, section 554S(2) in Part 7A applies as if after the reference to section 554W (and before the reference to section 554X) there were a reference to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations disapply Chapter 2 of Part 7A of the Income Tax (Earnings and Pensions) Act 2003 ("the 2003 Act") in relation to—

– relevant steps the subject of which is a sum of money or asset relating to UK tax-relieved funds or relevant transfer funds under a relevant non-UK scheme (as defined in Schedule 34 to the Finance Act 2004); and

– payments made by a registered pension scheme that have been subject to an unauthorised payments charge under Part 4 of that Act.

The Regulations have retrospective effect from 9th December 2010 pursuant to the power contained in section 554Y(4) of the 2003 Act.

Part 7A of the 2003 Act was inserted by the Finance Act 2011. This Part contains rules that will apply in certain circumstances where employees and their employers enter into arrangements which result in a payment of money or the provision of an asset by a third party rather than the employer. The new rules create a tax charge which will apply when a relevant step arises, for example, on the making of certain loans of money or assets by third parties to the employee, the earmarking of money or assets for the employee by a third party and on the outright payments of money or transfers of assets to the employee by a third party. The tax charge occurs where these relevant steps are not otherwise charged to tax as earnings from the employment.

Regulation 3 excludes tax charges from arising by virtue of Chapter 2 of Part 7A of the 2003 Act by reason of a relevant step where the subject of the relevant step is a sum of money or asset which represents, or which has arisen or derived from a sum of money that represents, a UK tax relieved fund or a relevant transfer fund under a relevant non-UK scheme. It also provides for there to be two separate steps when the sum of money or assets only partly so represents or so arises from such a fund and for the apportionment of the sum of money or asset between the two steps on a just and reasonable basis.

Regulation 4 excludes tax charges from arising by virtue of Chapter 2 of Part 7A of the 2003 Act by reason of a relevant step where the subject of the relevant step is a sum of money or asset which has arisen or derived from a payment made by a registered pension scheme that was subject to the unauthorised payments charge. It also provides for there to be two separate steps when the sum of money or assets only partly so arises from such a scheme and for the apportionment of the sum of money or asset between the two steps on a just and reasonable basis.

Regulation 5 modifies section 554S of the 2003 Act in consequence of these Regulations.

A Tax Information and Impact Note covering this instrument was published on 23rd March 2011 alongside the Budget and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

STATUTORY INSTRUMENTS

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