HMRC - PTM125500 - Pre A-Day Investments

Transitional Protection - overview

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Paragraphs 37A to 37I Schedule 36 Finance Act 2004

Under the pension rules that applied up to 6 April 2006 pension schemes were permitted to hold interests both directly and indirectly in some types of residential property (See PTM125200) and in some cases tangible moveable property (See PTM125100).

The taxable property provisions will not apply, subject to some conditions, for taxable assets that were legitimately held under the rules operating before 6 April 2006 and which are not improved. This protection is to prevent the imposition of tax charges on property held on 6 April 2006 which was acceptably held under pre 6 April 2006 rules.

The taxable property provisions will not apply, subject to certain conditions, for indirect holdings in taxable assets where the indirect holding was legitimately held under the rules operating before 6 April 2006. This protection is to prevent the imposition of tax charges on indirect interests in property held on 6 April 2006 which was acceptably held under pre 6 April 2006 rules.

There is also transitional protection where a pension scheme legitimately held indirect interests at 6 April 2006 and the indirect vehicle after that date acquires interests in taxable property.

The basic test for transitional protection to apply is that the holding of the relevant interest immediately before 6 April 2006 would not have given grounds for withdrawal of approval of the relevant scheme.

If the transitional conditions are met then the tax charges related to the holding of taxable property by an investment-regulated pension scheme will not apply to that property or that indirect holding.

If the pension scheme holds an interest, whether direct or indirect, that was not permitted before 6 April 2006 it is to be treated for the taxable property charges as acquiring the interest at market value on 6 April 2006. The amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations.

Some pension schemes entered into arrangements to acquire interests in residential property where the interest would not actually be acquired until 6 April 2006 or later. These are commonly known as “off-plan purchases” and were permitted where they did not constitute the holding of residential property as it was defined under the pre 6 April 2006 rules. If the “off-plan purchases” are cancelled or disposed of without the interest in residential property being acquired by the pension scheme there will be no taxable property charges. This is because the pension scheme never acquires taxable property. See the second paragraph under ‘Summary’ below for information about the trading position for off plan purchases that were in the course of development at 5 December 2005.

However if post 6 April 2006 the off-plan properties become residential property they will be deemed to be the acquisition of residential property at that time and no protection will be given. Unauthorised payments charges will arise based on the rules for developing non-residential property into residential property set out under ‘Property converted or adapted as residential property’ on page PTM125200.

If the property became residential property before 6 April 2006 then this will be protected only if the scheme could legitimately hold residential property before 6 April 2006.

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Loss of protection

Certain ownership of residential property was allowed pre 6 April 2006 if the property was occupied as a condition of employment or in connection with commercial property owned by the scheme. Protection will be lost if there is change, on or after 6 April 2006, in the occupation or use that, if it had occurred immediately before 6 April 2006, would have given grounds to withdraw approval. The property becomes taxable property at the date of the change and the amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations.

Protection is given on property that is legitimately held at 6 April 2006 under the rules of the scheme, however this will not extend where substantial improvements to that property are undertaken on or after 6 April 2006. Protection will therefore be lost if on or after 6 April 2006 works begin that materially improve the residential property and the works are not done wholly to comply with a statutory requirement or requirement of a statutory body. The property becomes taxable property at the date the works are substantially completed and the amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations.

Works began before 6 April 2006 if:

a binding contract for them was entered into before that date, or

a substantial amount of the works have been carried out before that date.

The works have to materially improve the property to prevent small improvements endangering protection. Material improvement is where the market value of the property, when the works are substantially completed, exceeds by more than 20% the value that would have applied if the works had not been done.

Works done wholly to comply with a statutory requirement or requirement of a public body will not endanger protection. An example of this would be work done to comply with fire safety requirements of a fire authority. However this does not extend to work that is undertaken to satisfy such regulations as part of a wider scheme of improvement of the property.

In the case of an investment-regulated pension scheme that before 6 April 2006 was a self-invested personal pension (SIPP) or a small self-administered scheme (SSAS) improvement work on a property that was held indirectly at 6 April 2006 will lose protection if that work was begun on or after 5 December 2005. If that work is not substantially completed until on or after 6 April 2006 then the property will become taxable property when it is substantially completed. If the work was substantially completed before 6 April 2006 it will become taxable property at that date. In either case the amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculation that is made in order to determine the amount of the scheme chargeable payment when the property is disposed of.

Section 590 Schemes

If a scheme was approved under the mandatory provisions of section 590 Income and Corporation Taxes Act 1988 after 5 December 2005 it has no transitional protection for any interests in taxable property held at 6 April 2006. If the pension scheme holds any such interest it is treated for the taxable property charges as acquiring the interest at market value on 6 April 2006. The amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations to determine the scheme chargeable payment on disposal.

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Extension of transitional protection for indirect holdings

There is transitional protection where a pension scheme legitimately held indirect interests at 6 April 2006 and the indirect vehicle after that date acquires interests in taxable property. There are different conditions for residential property and tangible moveable property.

An example of these indirect interests is an investment-regulated pension scheme that before 6 April 2006 was a Small Self-Administered Scheme (SSAS) was permitted to invest in shares of any unquoted company up to a limit of 30% of the voting power or 30% of the dividend rights.

The six conditions for transitional protection to apply in respect of residential property are:

the pension scheme acquired the interest in the vehicle that it holds on 6 April 2006 before that date

the pension scheme was not prohibited from holding the interest in the vehicle before 6 April 2006

immediately before 6 April 2006 the vehicle had a residential property rental business and held five or more residential properties for that rental business

between 6 April 2006 and the date when the vehicle acquires a direct interest in residential property, the pension scheme never holds an interest in the vehicle that it would have been prohibited from holding if it had held that interest immediately before 6 April 2006

the vehicle acquires the direct interest in residential property for the purposes of its property rental business

the property once acquired is not occupied or used by a member of the pension scheme or by a person connected with such a member.

The four conditions for transitional protection to apply in respect of tangible moveable property are:

the pension scheme acquired before 6 April 2006 the interest in the vehicle that it holds on that date

the pension scheme was not immediately before 6 April 2006 prohibited from holding that interest in the vehicle

between 6 April 2006 and the date on which the vehicle acquires a direct interest in the tangible moveable property, the pension scheme never holds an interest in the vehicle that it would have been prohibited from holding if it had held that interest immediately before 6 April 2006

the vehicle acquires the interest in the property for the purposes either of a trade, profession or vocation it carries on or of the vehicle’s administration or management.

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Extension of transitional protection for indirect holdings: Loss of protection

Protection will be lost as set out in the following paragraphs. The indirect holding becomes taxable at the date of the first trigger event and the amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations to determine the amount of the scheme chargeable payment on the disposal of the property.

Residential Property

Transitional protection is lost in respect of residential property when:

the pension scheme’s interest in the vehicle, which holds the property directly, changes such that the pension scheme would have been prohibited from holding that interest if the pension scheme had held it immediately before 6 April 2006

the property ceases to be used for the purposes of the person’s property rental business

the property is occupied or used by a member of the pension scheme or by a person connected with such a member.

Tangible Moveable Property

Transitional protection is lost in respect of tangible moveable property when either:

the interest the pension scheme has in the vehicle, which holds the property directly, changes such that the pension scheme would have been prohibited from holding that interest if the pension scheme had held it immediately before 6 April 2006

the tangible moveable property, while still held by the vehicle directly, ceases to be used for the purposes either of the trade, profession or vocation it carries on or for the vehicle’s administration or management.

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Summary

Most of the transitional protection rules were set out in a technical note issued on the day of the 2005 pre-budget report (PBR) (5th December 2005). The table below sets out the announcement that was made at that time and sets out the transitional provisions by reference to different scheme types.

Clarification and guidance on the pre 6 April 2006 pension rules can be found at

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There is also transitional protection where a pension scheme legitimately held indirect interests at 6 April 2006 and the indirect vehicle after that date acquires interests in taxable property.

The basic test for transitional protection to apply is that the holding of the relevant interest immediately before 6 April 2006 would not have given grounds for withdrawal of approval of the relevant scheme.

If the transitional conditions are met then the tax charges related to the holding of taxable property by an investment-regulated pension scheme will not apply to that property or that indirect holding.

If the pension scheme holds an interest, whether direct or indirect, that was not permitted before 6 April 2006 it is to be treated for the taxable property charges as acquiring the interest at market value on 6 April 2006. The amount of the unauthorised payment is the market value on that date. This value is also taken as the acquisition cost for any capital gains calculations.

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The four conditions for transitional protection to apply in respect of tangible moveable property are:

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the pension scheme was not immediately before 6 April 2006 prohibited from holding that interest in the vehicle

between 6 April 2006 and the date on which the vehicle acquires a direct interest in the tangible moveable property, the pension scheme never holds an interest in the vehicle that it would have been prohibited from holding if it had held that interest immediately before 6 April 2006

the vehicle acquires the interest in the property for the purposes either of a trade, profession or vocation it carries on or of the vehicle’s administration or management.

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Clarification and guidance on the pre 6 April 2006 pension rules can be found at

There will be no protection for any off-plan purchases made after PBR Day.

Where a property was purchased by a SSAS under the pre 1991 rules the investment will be protected, provided it is not materially improved (unless for a statutory requirement) after midnight on PBR day. There will be no protection if there is any post-PBR material improvement expenditure (unless for a statutory requirement).

There will be no protection if the indirect investment is not allowed under the current regime.

No protection for any investments in residential property made by small mandatory approved schemes set up and approved after midnight on PBR day.

in the table PBR means 5 December 2005

in the table A-Day means 6 April 2006.

All terminology and reference to scheme types relates to the pension rules applying pre A Day. Refer to the relevant pre A-Day guidance manuals for those schemes for any clarification of the terms and rules.

Purchases regarded as having been made

In the table above, a purchase is regarded as having been made where:

both exchange of contracts and completion; or conclusion of unconditional missives and the settlement of the transaction, has taken place before the appropriate time (the appropriate time will, depending on the context, be either midnight on PBR day or midnight on 5 April 2006)

exchange of contracts or conclusion of unconditional missives takes place before the appropriate time, or

there is some other binding obligation to purchase before the appropriate time.

Purchases regarded as not having been made

A purchase will not be regarded as having been made at the appropriate time where:

exchange of contracts or conclusion of unconditional missives takes place after the appropriate time, or

the scheme is not legally bound to purchase prior to the appropriate time so, for example, the purchase of an option to buy property would not count.

Improvement expenditure is regarded as having been made before an appropriate time where:

the scheme has, before that time, entered into a binding contract for the work to be carried out, or

the work is not subject to a binding contract, but, before that time, a substantial amount of the works have been carried out.

Where a SIPP had acquired a property - for example off-plan - with the intention of holding it as an investment but as a result of the taxable property changes announced at the 2005 pre-budget report the decision was taken to dispose of that property it is not axiomatic that this disposal would be classified as “trading”. Each situation is decided on its own particular facts and general guidance regarding the approach to be taken in determining whether a transaction is to be regarded as trading or investment can be found in the Business Income Manual from BIM60000 onwards.

But if the asset was acquired with the intention to hold as an investment (See BIM60030) and was disposed of following the taxable property changes, unless there has been a change of intention (of the type discussed in BIM60060) normally resulting in some form of physical change to the asset, this transaction is unlikely to be regarded as a trading one.

In the case of off-plan, the fact that it was in the process of being developed at 5 December 2005 in accordance with the contract originally entered into between the developer and the SIPP, would not make it a trading transaction for the SIPP where the development continues.

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