

**2011 No. 702 (C. 27)**

**INCOME TAX**

**CAPITAL GAINS TAX**

**SOCIAL SECURITY**

**The Finance Act 2009, Schedules 55 and 56 (Income Tax Self Assessment and Pension Schemes) (Appointed Days and Consequential and Savings Provisions) Order 2011**

<i>Made</i> - - - -	<i>10th March 2011</i>
<i>Laid before the House of Commons</i>	<i>11th March 2011</i>
<i>Coming into force</i> - -	<i>1st April 2011</i>

The Treasury make the following Order in exercise of the powers conferred by sections 106(2) to (6) and 107(2) to (6) of the Finance Act 2009(a).

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Finance Act 2009, Schedules 55 and 56 (Income Tax Self Assessment and Pension Schemes) (Appointed Days and Consequential and Savings Provisions) Order 2011 and comes into force on 1st April 2011.

(2) In this Order “return period” means each period of three months ending with 31st March, 30th June, 30th September or 31st December for which a return must be made under section 254(2) of the Finance Act 2004 (pension schemes; accounting for tax)(b).

**Appointed days**

2. The day appointed for the coming into force of Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc)(c)—

(a) is 6th April 2011 in relation to a return or other document which—

(i) is required to be made or delivered to Her Majesty’s Revenue and Customs in relation to the tax year 2010-11(d) or any subsequent tax year, and

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(a) 2009 c. 10.

(b) 2004 c. 12.

(c) Relevant amendments are made to Schedule 55 by paragraphs 10 to 14 of Schedule 10 to the Finance Act 2010 (c. 13), which will be brought into force on a day to be appointed by the Treasury under section 35(2) of that Act. From April 2011, relevant amendments are also made to Schedule 55 by Schedule 10 to the Finance (No. 3) Act 2010 (c. 33) by S.I. 2011/703.

(d) See section 4(2) and (4) of the Income Tax Act 2007 (c. 3) for the meaning of the expressions “tax year” and “the tax year 2010-11” for the purposes of the Income Tax Acts, and section 1ZA of the Taxation of Chargeable Gains Act 1992 (c. 12) for the meaning of those expressions for the purposes of enactments relating to capital gains tax.

- (ii) falls within item 1, 2 or 3 of the Table in paragraph 1 of that Schedule, and
- (b) is 1st April 2011 in relation to a return under section 254 of the Finance Act 2004 (pension schemes; accounting for tax) to be made in respect of a return period ending on or after 31st March 2011.

3. The day appointed for the coming into force of Schedule 56 to the Finance Act 2009 (penalty for failure to make payments on time)(a) is 6th April 2011 in relation to an amount of tax(b) which—

- (a) is payable in relation to the tax year 2010-11 or any subsequent tax year, and
- (b) falls within—
  - (i) item 1, 12, 18 or 19 of the Table in paragraph 1 of that Schedule, or
  - (ii) insofar as the tax falls within item 1 of that Table, item 17, 23 or 24 of that Table.

### Consequential amendments and repeals

4. The Taxes Management Act 1970(c) is amended as follows.

5. Omit section 59C (surcharges on unpaid income tax and capital gains tax)(d).

6. In section 69 (recovery of penalty, surcharge or interest)(e)—

- (a) for subsection (1)(b) substitute—
  - “(b) penalties imposed under any paragraph of Schedule 56 to the Finance Act 2009 in respect of an amount falling within any of the following items of the Table in paragraph 1 of that Schedule—
    - (i) item 1, 12, 18 or 19, or
    - (ii) insofar as the tax falls within item 1, item 17, 23 or 24;”;
- (b) in subsection (2) omit “, surcharge”; and
- (c) accordingly, in the heading to that section, omit “, **surcharge**”.

7. Omit—

- (a) section 93 (failure to make return for income tax and capital gains tax)(f); and
- (b) section 93A (failure to make partnership return)(g).

8. In section 100 (determination of penalties by officer of the Board)(h)—

- (a) omit subsection (2)(a); and
- (b) in subsection (6)(a) omit—
  - (i) “section 93(2), (4) or (5) of this Act”, and
  - (ii) “or section 260(1)(b) of the Finance Act 2004”.

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(a) From April 2011, relevant amendments are made to Schedule 56 by Schedule 11 to the Finance (No. 3) Act 2010 (c. 33) by S.I. 2011/703.

(b) See section 16(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) which applies the provisions of the Income Tax Acts, with the necessary modifications, to Class 4 contributions under that Act.

(c) 1970 c. 9.

(d) Section 59C was inserted by sections 194 and 199 of the Finance Act 1994 (c. 9) and has been amended by S.I. 2009/56, 2010/530.

(e) Section 69 was substituted by section 89 of the Finance Act 2001 (c. 9).

(f) Section 93 was substituted by sections 196 and 199 of, and paragraph 25 of Schedule 19 to, the Finance Act 1994 (c. 9). Section 93 has been amended by sections 91 and 92 of the Finance Act 2007 (c.11), S.I. 2009/56, 2009/2035.

(g) Section 93A was inserted by sections 196 and 199 of, and paragraph 26 of Schedule 19 to, the Finance Act 1994 (c. 9). Section 93A has been amended by section 123(8) to (11) of the Finance Act 1996 (c.8), sections 91, 92 and 114 of, and Part 5(3) of Schedule 27 to, the Finance Act 2007 (c.11), S.I. 2009/56.

(h) Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26). Subsection (6)(a) was amended by paragraph 38 of Schedule 19 to the Finance Act 1998 (c. 36), section 91(1) of the Finance Act 2001 (c. 9) and section 260(5) and Part 3 of Schedule 42 to the Finance Act 2004 (c. 12).

- 9.** In section 100B (appeals against penalty determinations)(a)—
- (a) in subsection (1) omit “sections 93 and 93A of this Act and”; and
  - (b) in subsection (2) for “Subject to sections 93(8) and 93A(7) of this Act on” substitute “On”.
- 10.**—(1) In section 107A (relevant trustees)(b)—
- (2) In subsection (2)—
- (a) in paragraph (a)—
    - (i) omit “, 93”;
    - (ii) after “Schedule 41 to the Finance Act 2008” insert “or Schedule 55 to the Finance Act 2009”;
  - (b) for paragraph (c) substitute—
    - “(c) to a penalty under Schedule 56 to the Finance Act 2009; or”; and
  - (c) for “interest, payment or surcharge” substitute “interest or payment”.
- (3) In subsection (3)—
- (a) for paragraph (a) substitute—
    - “(a) in relation to a penalty under paragraph 4 of Schedule 55 to the Finance Act 2009 in respect of a return or other document falling within item 1, 2 or 3 of the Table in paragraph 1 of that Schedule, the beginning of the penalty date as defined in paragraph 1(4) of that Schedule;”
  - (b) in paragraph (b), omit “other”;
  - (c) for paragraph (c) substitute—
    - “(c) in relation to—
      - (i) a penalty under Schedule 56 to the Finance Act 2009 in respect of an amount falling within item 1, 12, 18 or 19 of the Table in paragraph 1 of that Schedule, or
      - (ii) a penalty under that Schedule in respect of an amount falling within item 17, 23 or 24 of that Table so far as the tax falls within item 1,
 the beginning of the penalty date as defined in paragraph 1(4) of that Schedule;”.
- (4) Omit subsection (4).
- 11.** For section 824(1)(c) of the Income and Corporation Taxes Act 1988 (repayment supplements: surcharges) (c) substitute—
- “(c) a penalty payable under any paragraph of Schedule 56 to the Finance Act 2009 in respect of an amount falling within any of the following items of the Table in paragraph 1 of that Schedule—
    - (i) item 1, 12, 18 or 19; or
    - (ii) insofar as the tax falls within item 1, item 17, 23 or 24; and”.
- 12.** In section 178 of the Finance Act 1989 (setting of rates of interest)(d), in subsection (2)(f) omit “59C, ”.

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- (a) Section 100B was substituted by section 167 of the Finance Act 1989 (c. 26). Section 100B has been amended by sections 196 and 199 of, and paragraph 31 of Schedule 19 to, the Finance Act 1994 (c.9), section 115 of the Finance Act 1995 (c. 4), S.I. 2009/56, 2009/571.
  - (b) Section 107A was inserted by section 103 of the Finance Act 1995 (c. 4). Section 107A has been amended by paragraphs 65 and 75 of Schedule 36 to the Finance Act 2008 (c. 9), S.I.2009/571, 2010/530.
  - (c) 1988 c. 1. Section 824(1) was substituted by sections 196 and 199 of, and paragraph 41 of Schedule 19 to, the Finance Act 1994 (c. 9).
  - (d) 1989 c. 26. Section 178(2) (f) has been amended by sections 196 and 199 of, and paragraph 44 of Schedule 19 to, the Finance Act 1994 (c. 9) and paragraph 13 of Schedule 18 to and Part 5(8) of Schedule 41 to the Finance Act 1996 (c. 8).

**13.** In section 16(1) of the Social Security Contributions and Benefits Act 1992 (application of Income Tax Acts to class 4 contributions)(a) after paragraph (b), insert—

“and

(c) the provisions of Schedules 55 and 56 to the Finance Act 2009,”.

**14.** In section 260 of the Finance Act 2004 (pension schemes; accounting return)(b), omit subsections (1) to (5).

**15.** In the Finance Act 2009(c)—

(a) in section 68 (employment loss relief), omit subsection (4); and

(b) in section 108 (suspension of penalties during currency of agreement for deferred payment), omit the first row of the Table in subsection (5).

**16.** In the Taxes (Interest Rate) Regulations 1989(d), omit regulation 3(1)(aa).

**17.** In regulation 2(4)(a) of the Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006(e), for the words “section 260(1) (accounting return)” substitute “Schedule 55 to the Finance Act 2009 (penalty for failure to make returns)”.

**18.** In Schedule 3 to the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (responsibilities and liabilities of sub-scheme administrators in respect of a sub-scheme – Finance Act 2004)(f)—

(a) in the fifteenth entry in the Table in Part I—

(i) omit “(1), (4) and” ,

(ii) for “Penalties for failure to make a return within S254” substitute “Penalty for fraudulently or negligently making an incorrect return under S254”, and

(b) after Part I insert the following—

## “PART 1A

### Other legislation

Schedule 55 to the Finance Act 2009 (penalty for failure to make returns)”.

**19.** In the Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) Regulations 2006(g), in the last paragraph of Schedule 2—

(a) in sub-paragraph (d) for “(failure to deliver accounting return)” substitute “(fraudulently or negligently making an incorrect return)”, and

(b) at the end of sub-paragraph (j) insert the following —

“; or

(k) Schedule 55 to the Finance Act 2009 (penalty for failure to make returns)”.

### Savings

**20.** Articles 4 to 7, 8 (a) and (b)(i), 9 to 13, 15 and 16 have no effect in relation to—

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- (a) 1992 c.4. Paragraph 16(1) (b) was substituted by sections 196 and 199 of, and paragraph 45 of Schedule 19 to, the Finance Act 1994 (c. 9).
- (b) 2004 c. 12. See regulation 3 of S.I. 2006/569 in relation to the application of section 260 to sub-scheme administrators.
- (c) 2009 c. 10.
- (d) S.I. 1989/1297; relevant amending instruments are 1996/3187, 1998/310.
- (e) S.I. 2006/136.
- (f) S.I. 2006/569, amended by S.I. 2007/793.
- (g) S.I. 2006/570.

- (a) a return or other document which is required to be made or delivered to Her Majesty's Revenue and Customs, or
- (b) an amount of tax which is payable,  
in relation to the tax year 2009-10 or any previous tax year.

**21.** Articles 8(b)(ii), 14 and 17 to 19 have no effect in respect of a return period ending on or before 31st December 2010.

**22.** For the purposes of regulation 20 of the Stamp Duty Reserve Tax Regulations 1986<sup>(a)</sup> (which applies certain provisions of the Taxes Management Act 1970, in some cases subject to modifications, for the purposes of stamp duty reserve tax), articles 6, 7(a), 8(a) and 9 have no effect.

*Angela Watkinson*

*James Duddridge*

10th March 2011

Two of the Lords Commissioners of Her Majesty's Treasury

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(a) S.I. 1986/1711; relevant amending instruments are S.I. 1988/835, 1993/3110, 1997/2430, 1999/3264, 2009/56.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 2 of this Order appoints 6th April 2011 as the day on which the penalty regime for failure to make returns in Schedule 55 to the Finance Act 2009 comes into force in respect of income tax self assessment returns. Those returns affected are those required to be made or delivered to HMRC in relation to the tax year 2010-11 or any subsequent tax year.

Article 2 of this Order also appoints 1st April 2011 as the day on which the penalty regime for failure to make returns in Schedule 55 to the Finance Act 2009 comes into force in respect of pension scheme returns. Section 254 of the Finance Act 2004 requires a scheme administrator of a registered pension scheme to make returns to HMRC of the income tax to which the scheme administrator is liable. The pension scheme returns affected are those to be made under section 254 in respect to a return period ending on or after 31st March 2011.

Article 3 appoints 6th April 2011 as the day on which the penalty regime for failure to make payments on time in Schedule 56 to the Finance Act 2009 comes into force in respect of the amounts of tax falling within the income tax self assessment regime. Those amounts of tax affected are those which are payable in relation to the tax year 2010-11 or any subsequent tax year.

Articles 4 to 19 provide for consequential amendments and the repeal of the existing penalty regimes for failure to make income tax self assessment returns, failure to make pension scheme returns and failure to pay amounts of tax within the income tax self assessment regime.

Articles 20 and 21 provide that returns and amounts of tax within the income tax self assessment regime in relation to the tax year 2009-10 or any previous tax year, and pension scheme returns in relation to return periods ending on or before 31st December 2010, will be dealt with under the pre Finance Act 2009 penalty regimes.

Article 22 provides that the existing penalty regime will continue to apply for the purposes of regulation 20 of the Stamp Duty Reserve Tax Regulations 1986.

A full Impact Assessment of the effect that the interest harmonisation and late filing and late payment penalties reform will have on the costs of business and the voluntary sector was published by HMRC on 14 April 2009 and is available at <http://www.hmrc.gov.uk/better-regulation/ia.htm>.

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