1 In their heyday, self-directed pension schemes came to be treated as your private on-shore Cayman Islands, in which you could hang fine art on your wall, have a holiday home on the continent or drive a classic car bought by your pension scheme funded by tax relievable contributions. That age was brought to an end by the 8 February 1979 memo from the Joint Office (the Revenue Superannuation Funds Office and the Occupational Pension Board), which said in para 15:

> It is unlikely that the SFO will be prepared to approve a small self-administered scheme which invest a significant amount of its funds in works of art or other valuable chattels or non-income producing assets which could well be made available for the personal use of scheme members …

2 The current law is in the Finance Act 2004 s174A (supplemented by sch 29A), inserted by the FA 2006 with effect from 6 April 2006. An investment-regulated pension scheme is treated as making an unauthorised (ie taxable) payment if it acquires an interest in taxable property or if a property held by it is converted to become residential.

investment-regulated scheme

3 An occupational pension scheme is an investment-regulated scheme is it has fifty or fewer members and one or more of them or a person related to the member "is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purposes of the pension scheme." (FA 2004 sch 29A. para 2) Paragraph 1 in respect of other scheme is similar, but the number of members is not relevant.

taxable property

4 There are two categories of taxable property, (a) residential property and (b) tangible moveable property. (FA 2004 sch 29A. para 6)

(a) residential property

5 Schedule 29A para 7 defined residential property as (a) a building that is used or suitable for use as a dwelling, (b) land, part of, the grounds of such a building used or intended for use in connection with building, (c) a hotel or similar accommodation, or (d) a beach hut. Paragraphs 8 and 10 provide the following two sets of properties which are not residential for the taxable property provisions:

(a) (paragraph 8) buildings which are (a) for the provision of resident accommodation for children, (b) a hall of residence for students, (c) for the provision of resident accommodation and care for persons in need of personal care (for old age, disability, dependence on alcohol or drugs, mental disorder), a hospital or hospice, or a prison or similar establishment; and

(b) (paragraph 10) buildings in respect of which either condition A or B in the next para are met.

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6 The property is or is to be occupied by, in the case of A, an employee and, in the case of B, a person, who is neither a member of the pension scheme nor connected with such a member. In addition:

(a) condition A requires the employee not to be connected with the employer and to be required as a condition of employment to occupy the property; and

(b) condition B requires the property to be used in connection with business premises held as an investment of the pension scheme.

"Connected" has the meaning in the Corporation Tax Act 2010 s1122, which includes persons related to each other by the family relationship in that section.

7 The exceptions in para 10 were considered in the decision in J&A Young (Leicester) Limited v HMRC [2015] UKFTT 0638 (TC), which provides guidance about these conditions. In this case the pension scheme owned a factory and yard used by the scheme employer for its business. The scheme acquired a nearby house as a residence for the employer's East European employees; and HMRC asserted that it was taxable property. The tribunal held that Condition A was not met, because the employees were able to live at the house but were not required to do so, but condition B was satisfied on the grounds that the house was used in connection with the yard which was business premises held by the scheme as an investment.

(b) tangible moveable property

8 All tangible moveable property is taxable property, except any specified by the Treasury by order (FA 2004, sch 29A, para 11) By the Investment-regulated Pension Schemes (Exception of Tangible Moveable Property) Order 2006, SI 2006/1959, reg 2 there are two exceptions:

(a) gold bullion; and

(b) chattels, with a market value not greater than £6,000, held indirectly by the scheme, used solely for the administration or management of the person holding it directly, and which neither a scheme member, nor anyone connected to a scheme member occupies or has use of or any right of occupation or use.

other points

9 Amongst the details not included in this brief summary:

(a) the taxable property provisions apply to not only property owned directly by the pension scheme but also to property held indirectly;

(b) property being developed is not residential until it first becomes suitable for use as a dwelling;

(c) plant and machinery can be and probably are chattels;

(d) these provision are in addition all other lawa about pension scheme investment.

END