



Finance Act 1970

1970 CHAPTER 24

PART II

INCOME TAX AND CORPORATION TAX

CHAPTER II

OCCUPATIONAL PENSION SCHEMES

19 Conditions for approval of schemes

- (1) The Board shall approve any retirement benefits scheme for the purposes of this Chapter if the scheme satisfies all of the prescribed conditions, that is to say the conditions set out in subsection (2) below, and the conditions as respects benefits in Part I of Schedule 5 to this Act.
- (2) The said conditions are—
 - (a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee (as defined in this Chapter), being benefits payable to, or to the widow, children or dependants or personal representatives of, the employee,
 - (b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him,
 - (c) that there is a person resident in the United Kingdom who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter,
 - (d) that the employer is a contributor to the scheme,
 - (e) that the scheme is established in connection with some trade or undertaking carried on in the United Kingdom by a person resident in the United Kingdom,

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- (f) that, where the employer is a company, no service of a person, in whatever capacity, rendered by him while he is a controlling director of the company is taken into account for any of the purposes of the scheme,
 - (g) that in no circumstances, whether during the subsistence of the scheme or later, can any amount be paid by way of repayment of an employee's contributions under the scheme.
- (3) If in the opinion of the Board the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time by notice in writing to the administrator withdraw their approval on such grounds, and from such date, as may be specified in the notice.
- (4) Where an alteration has been made in a retirement benefits scheme, the scheme shall, for the purposes of this Chapter, be deemed to have become a new scheme coming into being on the date of the alteration, and accordingly no approval given as respects the scheme before the alteration shall apply after the date of the alteration:
- Provided that this subsection shall not apply to an alteration approved by the Board. "
- (5) For the purpose of determining whether a retirement benefits scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and, if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them but otherwise those conditions shall be taken to be satisfied in the case of none of them.
- (6) No approval shall be given as respects any period before 6th April 1970.

20 Discretionary approval

- (1) The Board may, if they think fit, having regard to the facts of a particular case, and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter notwithstanding that it does not satisfy one or more of the prescribed conditions.
- (2) The Board may in particular approve by virtue of this section a scheme—
- (a) which exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years' service, or
 - (b) which exceeds the limits imposed by the prescribed conditions as respects benefits payable on the death of the employee, and in particular which provides a pension for the employee's widow, or
 - (c) which provides for the return in certain contingencies of employees' contributions, or
 - (d) which relates to a trade or undertaking carried on only partly in the United Kingdom, and by a person not resident in the United Kingdom.
- (3) In applying this section to an existing scheme the Board shall exercise their discretion, in such cases as appear to them appropriate, so as—
- (a) to preserve benefits earned or rights arising out of service before approval under this Chapter or before the date on which section 23 of this Act comes into force, whichever is the earlier, and
 - (b) to preserve any rights to death-in-service benefits conferred by rules of the scheme in force on 26th February 1970.

21 Certain approved schemes: exemptions and reliefs

- (1) This section has effect as respects—
- (a) any approved scheme which is shown to the satisfaction of the Board to be established under irrevocable trusts, or
 - (b) any other approved scheme as respects which the Board, having regard to any special circumstances, direct that this section shall apply,
- and any scheme which is for the time being within paragraph (a) or (b) above is in this Chapter referred to as an " exempt approved scheme ".
- (2) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Board are satisfied that, it is income from investments or deposits held for the purposes of the scheme.
- (3) Any sum paid by an employer by way of contribution under the scheme shall for the purposes of Case I or II of Schedule D, and of the provisions of Chapter I of Part) (II of the Taxes Act relating to expenses of management, be allowed to be deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid:
- Provided that—
- (a) the amount of an employer's contributions which may be so deducted shall not exceed the amount contributed by him under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to tax (that is to say United Kingdom income tax or corporation tax),
 - (b) a sum not paid by way of an ordinary annual contribution shall for the purposes of this subsection be treated, as the Board may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Board think proper.
- (4) Any ordinary annual contribution paid under the scheme by an employee shall, in assessing tax under Schedule E, be allowed to be deducted as an expense incurred in the year of assessment in which the contribution is paid.
- (5) Relief shall not be given under section 19 or 20 of the Taxes Act (life assurance premiums and other payments) in respect of any payment in respect of which an allowance can be made under subsection (4) above.
- (6) There shall be exempt from tax chargeable under Case VII of Schedule D any gain accruing to a person from his acquisition and disposal of investments if, or to such extent as the Board are satisfied that, the investments are or were held by him or on his behalf for the purposes of the scheme.
- (7) For the purposes of capital gains tax a gain shall not be a chargeable gain where it accrues to a person on his disposal of investments if, or to such extent as the Board are satisfied that, those investments were held by him or on his behalf for the purposes of the scheme.
- (8) Nothing in this section shall be construed as affording relief in respect of any sums to be brought into account under section 314 of the Taxes Act (pension business of insurance companies).

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- (9) This section has effect only as respects income arising or gains accruing or contributions paid at a time when the scheme is an exempt approved scheme.
- (10) Neither section 208 nor 209 of the Taxes Act (relief for superannuation funds and statutory pension schemes) shall apply as respects an exempt approved scheme, and the said section 208 shall cease to have effect on 6th April 1972 or such later date as the Treasury may by order in a statutory instrument made before 6th April 1972 appoint.
- (11) Neither subsection (1) nor subsection (2) of section 220 of the Taxes Act (which will be superseded by section 23 of this Act) shall apply to an approved scheme.

22 Certain statutory schemes: exemptions and reliefs

- (1) This section has effect as respects any statutory scheme established under a public general Act.
- (2) Any contribution paid under the scheme by any officer or employee shall, in assessing tax under Schedule E, be allowed to be deducted as an expense incurred in the chargeable period for which the contribution is paid and relief shall not be given under section 19 or 20 of the Taxes Act in respect of any contribution allowable as a deduction under this subsection.
- (3) This section has effect subject to section 210 of the Taxes Act (disallowance of contributions for widows' and other pensions).
- (4) This section shall come into force on such date as the Treasury may by order in a statutory instrument appoint.

23 Taxation in respect of certain schemes

- (1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency)—
 - (a) the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for all the purposes of the Income Tax Acts to be income of that employee for that year of assessment and assessable to tax under Schedule E, and
 - (b) where the payment is made under such an insurance or contract as is mentioned in section 19 of the Taxes Act, relief, if not otherwise allowable, shall be given to that employee under the said section 19 in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance or contract under which the payment is made had been made with him.
- (2) Subject to the provisions of this Chapter, where—
 - (a) the circumstances in which any relevant benefits under a retirement benefits scheme are to accrue are not such as will render the benefits assessable to income tax under Schedule E as emoluments of the employee in respect of whom the benefits are paid, and
 - (b) the provision of those benefits is not, or is not fully, secured by the payment of sums by the employer with a view to the provision of those benefits,

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then (whether or not the accrual of the benefits is dependent on any contingency) an amount equal to the cost, estimated in accordance with subsection (3) below, of securing the provision by a third person of the benefits or, as the case may be, of the benefits so far as not already secured by the payment of such sums as are mentioned in subsection (1) above, shall be deemed for all purposes of the Income Tax Acts to be income of the employee for the year or years of assessment specified in the said subsection (3) and assessable to income tax under Schedule E.

- (3) The cost referred to in subsection (2) above shall be estimated either—
- (a) as an annual sum payable in each year of assessment in which the scheme in question is in force or the employee is serving, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual thereof, or
 - (b) as a single sum payable in the year of assessment in which falls the date when the employee acquired the right to the relevant benefits, or the date when he acquired the right to any increase in the relevant benefits,
- as may be more appropriate in the circumstances of the case.
- (4) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.
- (5) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.
- (6) This section shall come into force on 6th April 1972 or such later date as the Treasury may appoint by order in a statutory instrument made before 6th April 1972, and shall so come into force both for schemes set up before the date so appointed and schemes set up later.

24 Exceptions from charge to tax under last preceding section

- (1) Neither subsection (1) nor subsection (2) of the last preceding section shall apply where the retirement benefits scheme in question is—
- (a) an approved scheme, or
 - (b) a statutory scheme, or
 - (c) a scheme set up by a Government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees.
- (2) Neither subsection (1) nor subsection (2) of the last preceding section shall apply for any year of assessment where, apart from those subsections, the employee is not assessable to tax for that year under Case I or II of Schedule E in respect of the emoluments of his employment.
- (3) Where, in respect of the provision for an employee of any relevant benefits, a sum has been deemed to be income of his by virtue either of subsection (1) or subsection (2) of the last preceding section, and subsequently the employee proves to the satisfaction of the Board that no payment in respect of, or in substitution for, the benefits has been made and that some event has occurred by reason of which no such payment will be

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made, and makes application for relief under this subsection within six years from the time when that event occurred, the Board shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate; and if the employee satisfies the Board as aforesaid in relation to some particular part of the benefits but not the whole thereof, the Board may give such relief as may seem to them just and reasonable.

25 Definition of retirement benefits scheme

- (1) In this Chapter " retirement benefits scheme " means, subject to the provisions of this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any national scheme providing such benefits.
- (2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for relevant benefits notwithstanding that it or they relates or relate only to—
 - (a) a small number of employees, or to a single employee, or
 - (b) the payment of a pension starting immediately on the making of the arrangements.
- (3) The Board may, if they think fit, treat a retirement benefits scheme relating to employees of two or more different classes or descriptions as being for the purposes of this Chapter two or more separate retirement benefits schemes relating respectively to such one or more of those classes or descriptions of those employees as the Board think fit.
- (4) For the purposes of this section, and of any other provision of this Chapter—
 - (a) employees may be regarded as belonging to different classes or descriptions if they are employed by different employers, and
 - (b) a particular class or description of employee may consist of a single employee, or any number of employees, however small.

26 Interpretation and supplemental

- (1) In this Chapter, except where the context otherwise requires—
 - " administrator " in relation to a retirement benefits scheme means the person or persons resident in the United Kingdom having the management of the scheme;
 - " approved scheme " means a retirement benefits scheme for the time being approved by the Board for the purposes of this Chapter ;
 - " controlling director " means a director of a company, the directors whereof have a controlling interest therein, who is the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means to control, more than five per cent, of the ordinary share capital of the company;
 - " director " in relation to a company includes—
 - (a) in the case of a company the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body,
 - (b) in the case of a company the affairs whereof are managed by a single director or similar person, that director or person,
 - (c) in the case of a company the affairs whereof are managed by the members themselves, a member of that company, and includes a person who is to be or has been a director;

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- " employee "—
- (a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and
 - (b) in relation to any employer, includes a person who is to be or has been an employee, and " employer " and other cognate expressions shall be construed accordingly;
- " exempt approved scheme " has the meaning given by section 21(1) of this Act;
- " pension " includes annuity ;
- " relevant benefits " means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason ;
- " service " means service as an employee of the employer in question and other expressions, including " retirement ", shall be construed accordingly ;
- " statutory scheme " means a retirement benefits scheme established by or under any enactment—
- (a) the particulars of which are set out in any enactment, or in regulations made under any enactment, or
 - (b) which has been approved as an appropriate scheme by a Minister or government department (including a Northern Ireland Minister or government department).
- (2) Any reference in this Chapter to the provision of relevant benefits, or of a pension, for employees of an employer includes a reference to the provision thereof by means of a contract between the administrator or the employer and a third person.
- (3) Schedule 5 to this Act shall have effect for supplementing this Chapter, which is there referred to as the principal Chapter, and that Schedule shall be construed as one with this Chapter.