



# Finance Act 1998

## 1998 CHAPTER 36

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### INCOME TAX AND CORPORATION TAX

#### *Pensions*

#### **92 Approved retirement benefit schemes etc**

Schedule 15 to this Act (which makes provision in relation to cases where a scheme has been approved for the purposes of Chapter I of Part XIV of the Taxes Act 1988 or an approval for those purposes has ceased to have effect) shall have effect.

#### **93 Benefits received under non-approved retirement benefits scheme**

(1) In section 596A(4) of the Taxes Act 1988 (charge to tax on benefits under non-approved schemes: amount charged to tax), for paragraph (b) substitute—

“(b) in the case of a non-cash benefit, whichever is the greater of—

(i) the amount which would be chargeable to tax under section 19(1) if the benefit were taxable as an emolument of the employment under Case I of Schedule E, or

(ii) the cash equivalent of the benefit determined in accordance with section 596B.”.

(2) In section 596B(9) of that Act (supplementary provisions: person by whom expenditure incurred on improvement of living accommodation), for paragraph (b) substitute—

“(b) the employer or former employer; or

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- (c) any person, other than the recipient, who is connected with a person falling within paragraph (a) or (b) above.”.

(3) After section 596B of that Act insert—

**“596C Notional interest treated as paid if amount charged in respect of beneficial loan**

- (1) This section applies where a person is chargeable to tax under section 596A in any year of assessment on an amount which consists of or includes an amount representing the cash equivalent of the benefit of a loan determined (by virtue of section 596B(1)(a)) in accordance with Part II of Schedule 7.
  - (2) Where this section applies, the person chargeable is treated as having paid interest on the loan of the same amount as the cash equivalent so determined.
  - (3) The interest is treated as paid for all the purposes of the Tax Acts (other than those relating to the charge under section 596A) but not so as to make it—
    - (a) income of the person making the loan, or
    - (b) relevant loan interest to which section 369 applies (mortgage interest payable under deduction of tax).
  - (4) The interest is treated as accruing during and paid at the end of the year of assessment or, if different, the period in that year during which the loan is outstanding.”.
- (4) This section applies to benefits received in the year 1998-99 and subsequent years of assessment.

**94 Approval of personal pension schemes**

(1) After section 638 of the Taxes Act 1988 there shall be inserted the following section—

**“638A Power to prescribe restrictions on approval**

- (1) The Board—
  - (a) may by regulations restrict their discretion to approve a personal pension scheme; and
  - (b) shall not approve any such scheme if to do so would be inconsistent with any regulations under this section.
- (2) The restrictions that may be imposed by regulations under this section may be imposed by reference to any one or more of the following, that is to say—
  - (a) the benefits for which the scheme provides;
  - (b) the investments held for the purposes of the scheme;
  - (c) the manner in which the scheme is administered;
  - (d) any other circumstances whatever.
- (3) The following provisions of this section apply where—
  - (a) any regulations are made under this section imposing a restriction (“the new restriction”) on the Board’s discretion to approve a personal pension scheme;

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- (b) the new restriction did not exist immediately before the making of the regulations; and
  - (c) that restriction is one imposed by reference to circumstances other than the benefits for which the scheme provides.
- (4) Subject to subsections (5) and (6) below, a personal pension scheme which is an approved scheme immediately before the day on which the regulations imposing the new restriction come into force shall cease to be approved at the end of the period of 36 months beginning with that day if, at the end of that period, the scheme—
  - (a) contains a provision of a prohibited description, or
  - (b) does not contain every provision which is a provision of a required description.
- (5) The Board may by regulations provide that subsection (4) above is not to apply in the case of the inclusion of such provisions of a prohibited description, or in the case of the omission of such provisions of a required description, as may be specified in the regulations.
- (6) For the purposes of subsection (4) above—
  - (a) a provision contained in a scheme shall not be treated as being of a prohibited description to the extent that it authorises the retention of an investment held immediately before the day of the making of the new regulations; and
  - (b) so much of any provision contained in a scheme as authorises the retention of an investment held immediately before that day shall be disregarded in determining if any provision of the scheme is of a required description.
- (7) In this section—
  - (a) references to a provision of a prohibited description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which, if contained in a personal pension scheme, would prevent the Board from approving it; and
  - (b) references to a provision of a required description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which must be contained in a personal pension scheme before the Board may approve it.”
- (2) Accordingly, in section 631(2) of that Act (power to approve schemes), for “638” there shall be substituted “638A”.

## **95 Personal pensions: charge on withdrawal of approval**

- (1) After section 650 of the Taxes Act 1988 (withdrawal of approval) there shall be inserted the following section—

### **“650A Charge on withdrawal of approval from arrangements**

- (1) Where any personal pension arrangements cease to be approved arrangements by virtue of the exercise by the Board of their power under section 650(2), tax shall be charged in accordance with this section.

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- (2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value (taking that value at the relevant time) of the appropriate part of the assets held at that time for the purposes of the relevant scheme.
- (3) In subsection (2) above—
- “the appropriate part”, in relation to the value of any assets, is so much of those assets as is properly attributable, in accordance with the provisions of the scheme and any just and reasonable apportionment, to the arrangements in question; and
- “the relevant time” means the time immediately before the date from which the Board’s approval is withdrawn.
- (4) Subject to subsection (5) below, the person liable for the tax charged under this section shall be the scheme administrator for the relevant scheme.
- (5) If, in any case where an amount of tax has been charged under this section and has not been paid—
- (a) there is at any time no person who, as the scheme administrator for the relevant scheme, may be assessed to that amount of tax, or is liable to pay it,
  - (b) the scheme administrator for that scheme cannot for the time being be traced,
  - (c) there has been such a failure by the scheme administrator for that scheme to meet a liability to pay that amount as the Board consider to be a failure of a serious nature, or
  - (d) it appears to the Board that a liability of the scheme administrator for that scheme to pay that amount of tax is a liability that he will be, or (were there an assessment) would be, unable to meet out of assets held in accordance with the scheme for the purposes of those arrangements,
- the Board shall be entitled to assess the unpaid tax on the person who made the arrangements in question as if the tax charged under this section, to the extent that it is unpaid, were assessable under this section on that person, instead of on the scheme administrator.
- (6) An assessment to tax made by virtue of subsection (5)(c) above shall not be out of time if it is made within three years after the date on which the tax which the scheme administrator has failed to pay first became due from him.
- (7) For the purposes of this section the value of an asset is, subject to subsection (8) below, its market value, construing “market value” in accordance with section 272 of the 1992 Act.
- (8) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (9) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.
- (9) Those persons are—
- (a) the person who (whether or not before the making of the loan) made the arrangements in relation to which the Board’s approval has been withdrawn;

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- (b) any other person who has at any time (whether or not before the making of the loan) made contributions under those arrangements; and
  - (c) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (a) or (b) above.
- (10) In this section “the relevant scheme”, in relation to any personal pension arrangements, means the scheme in accordance with which those arrangements were made.
- (11) Section 839 shall apply for the purposes of this section.”
- (2) In section 650 of that Act (withdrawal of approval), the following subsection shall be inserted after subsection (5)—
- “(6) The power of the Board under this section to withdraw their approval in relation to any arrangements made under a personal pension scheme shall be exercisable for the purposes of section 650A notwithstanding that the time from which the approval is withdrawn is a time from which, by virtue of section 631(4) or 638A(4), the whole scheme ceases to be an approved scheme.”
- (3) After section 239A of the Taxation of Chargeable Gains Act 1992 there shall be inserted—

*“Personal pension schemes*

**239B Withdrawal of approval of approved arrangements**

- (1) This section applies where tax is charged in accordance with section 650A of the Taxes Act (tax charged on the withdrawal of the Board’s approval in relation to approved personal pension arrangements).
- (2) For the purposes of this Act the appropriate part of the assets which at the relevant time are held for the purposes of the relevant scheme—
  - (a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 650A(2) of the Taxes Act; but
  - (b) shall not be deemed to be disposed of by any person at that time.
- (3) The person who shall be deemed in accordance with subsection (2)(a) above to have acquired the appropriate part of the assets shall be the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time.
- (4) In this section—
  - “the appropriate part” and “the relevant time” have the meanings given by subsection (3) of section 650A of the Taxes Act for the purposes of subsection (2) of that section; and
  - “the relevant scheme” has the same meaning as in that section.”
- (4) This section has effect in relation to any case in which the date from which the Board’s approval is withdrawn is a date on or after 17th March 1998, except a case where the notice under section 650(2) of the Taxes Act 1988 was given before that date.

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## 96 Information relating to personal pension schemes etc

(1) After section 651 of the Taxes Act 1988 there shall be inserted the following section—

### “651A Information powers

- (1) The Board may by regulations make any of the following provisions—
- (a) provision requiring prescribed persons to furnish to the Board, at prescribed times, information relating to any of the matters mentioned in subsection (2) below;
  - (b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;
  - (c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;
  - (d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;
  - (e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.
- (2) The matters referred to in subsection (1) above are—
- (a) any personal pension scheme which is or has been approved; and
  - (b) any personal pension arrangements which are or have been approved.
- (3) A person who fails to comply with regulations made under subsection (1)(e) above shall be liable to a penalty not exceeding £3,000.
- (4) Regulations under this section may make different provision for different descriptions of case.
- (5) In this section “prescribed” means prescribed by regulations made under this section.”

(2) Section 652 of the Taxes Act 1988 (information about payments) shall cease to have effect.

(3) In the Table in section 98 of the Taxes Management Act 1970 (penalties for failure to provide information etc.)—

- (a) in the first column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—

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“regulations under section 651A(1)(b) to (d);”;

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- (b) in that column, the entry relating to section 652 of the Taxes Act 1988 shall be omitted; and

- (c) in the second column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—

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“regulations under section 651A(1)(a);”.

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- (4) Subsections (2) and (3)(b) above shall come into force on such day as the Treasury may by order appoint.

## **97 Notices to be given to scheme administrator**

- (1) After section 653 of the Taxes Act 1988 there shall be inserted the following section—

### **“653A Notices to be given to scheme administrator**

- (1) Where—

- (a) the Board, or any officer of the Board, is authorised or required by or in consequence of any provision of this Chapter to give a notice to the person who is the scheme administrator of a personal pension scheme, but
- (b) there is for the time being no scheme administrator for that scheme or the person who is the scheme administrator for that scheme cannot be traced,

that power or duty may be exercised or performed by giving that notice, instead, to the person specified in subsection (2) below.

- (2) That person is—

- (a) the person who established the scheme; or
- (b) any person by whom that person has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

- (3) The giving of a notice in accordance with this section shall have the same effect as the giving of that notice to the scheme administrator and, without prejudice to section 650A(5), shall not impose an additional obligation or liability on the person to whom the notice is actually given.”

- (2) This section has effect in relation to the giving of notices at any time on or after the day on which this Act is passed.

## **98 Assessments on scheme administrators**

- (1) Part XIV of the Taxes Act 1988 (pension schemes etc.) shall have effect, and shall be deemed always to have had effect, with the following section inserted as the first section of Chapter VI of that Part—

### **“658A Charges and assessments on administrators**

- (1) Tax charged under Chapter I or IV of this Part on the administrator of a scheme—

- (a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but
- (b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.

- (2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person

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who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.

- (3) Where tax charged under Chapter I of this Part on the administrator of a scheme is assessable by virtue of section 606 or 606A on a person who is not a relevant person for the purposes of subsection (1) above, the assessment shall be made by the Board.
- (4) In this section “administrator”, in relation to a scheme, means the person who is—
- (a) the administrator of the scheme within the meaning given by section 611AA; or
  - (b) the scheme administrator, as defined in section 630.
- (5) This section is without prejudice to section 591D(4).”
- (2) In section 9 of the Taxes Management Act 1970 (self-assessment), in subsection (1), for “subsection (2)” there shall be substituted “subsections (1A) and (2)”; and after that subsection there shall be inserted the following subsection—
- “(1A) The tax to be assessed on a person by a self-assessment shall not include any tax which, under Chapter I or IV of Part XIV of the principal Act, is charged on the administrator of a scheme (within the meaning of section 658A of that Act) and is assessable by the Board in accordance with that section.”
- (3) Subsection (2) above shall have effect for the year 1998-99 and subsequent years of assessment and shall be deemed to have had effect for the years 1996-97 and 1997-98.