



# Finance Act 2004

## 2004 CHAPTER 12

### PART 4

#### PENSION SCHEMES ETC

### CHAPTER 6

#### SCHEMES THAT ARE NOT REGISTERED PENSION SCHEMES

##### *Non-UK schemes*

#### **243 Overseas pension schemes: migrant member relief**

Schedule 33 contains provision about migrant member relief in respect of contributions under overseas pension schemes.

#### **244 Non-UK schemes: application of certain charges**

Schedule 34 contains provision applying certain charges under this Part in relation to non-UK schemes.

##### *Employer-financed retirement benefit schemes*

#### **245 Restriction of deduction for contributions by employer**

- (1) Schedule 24 to the Finance Act 2003 (c. 14) (restriction of deductions for employee benefit contributions) is amended as follows.
- (2) In paragraph 1(2)(b) (when employer makes “employee benefit contribution”), after “benefits to” insert “or in respect of present or former”.
- (3) In sub-paragraph (1) of paragraph 2 (“qualifying benefits”), insert at the end “or

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- (c) is made under an employer-financed retirement benefits scheme.”
- (4) In sub-paragraph (5) of that paragraph (when qualifying benefit treated as provided), after “payment of money” insert “otherwise than under an employer-financed retirement benefits scheme”.
- (5) In paragraph 8 (deductions to which Schedule does not apply), for paragraphs (b) and (c) substitute—
- “(b) in respect of contributions under a registered pension scheme or a section 615(3) scheme,
- (c) in respect of contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions.”.
- (6) In sub-paragraph (1) of paragraph 9 (interpretation), in the definition of “employee benefit scheme”, after “include,” insert “present or former”.
- (7) In that sub-paragraph, after the definition of “the employer” insert—
- ““employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (see section 393A of that Act);”.
- (8) In that sub-paragraph, after the definition of “qualifying expenses” insert—
- ““qualifying overseas pension scheme” has the same meaning as in Schedule 33 to the Finance Act 2004 (see paragraphs 5 and 6 of that Schedule);
- “registered pension scheme” has the same meaning as in Part 4 of that Act (see section 150 of that Act);
- “relevant migrant member” has the same meaning as in Schedule 33 to that Act (see paragraph 4 of that Schedule);
- “section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

## **246 Restriction of deduction for non-contributory provision**

- (1) This section applies in relation to an employer’s expenses of providing benefits to or in respect of present or former employees under an employer-financed retirement benefits scheme in a case where—
- (a) the expenses do not consist of the making of contributions under the scheme, but
- (b) in accordance with generally accepted accounting practice they are shown in the employer’s accounts.
- (2) Unless the benefits are ones in respect of which a person is, on receipt, chargeable to income tax, the expenses—
- (a) are not deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,
- (b) are not expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), and

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- (c) are not to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) But where the benefits are ones in respect of which a person is, on receipt, chargeable to income tax—
  - (a) if the expenses are allowed to be deducted in computing the amount of the profits of the employer to be charged under Case I or II of Schedule D, they are deductible in computing the amount of the profits for the period of account in which they are paid, and
  - (b) for the purposes of the operation of section 75 or 76 of ICTA in relation to the employer, the expenses are referable to the accounting period in which they are paid.
- (4) In this section “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act).

#### **247 Abolition of income tax charge in respect of employer payments**

In Part 6 of ITEPA 2003, omit Chapter 1 (payments by employer for the provision of benefits for an employee under certain schemes to count as employment income of employee).

#### **248 Employer’s cost of insuring against non-payment of benefit**

- (1) Section 307 of ITEPA 2003 (no liability to income tax in respect of chargeable benefit on provision made by employer for a retirement or death benefit) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer’s insolvency.
  - (1B) In subsection (1A) “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A).”
- (3) In subsection (2), for “subsection (1)” substitute “this section”.

#### **249 Taxation of non-pension benefits**

- (1) Chapter 2 of Part 6 of ITEPA 2003 (taxation of non-pension benefits from certain pension schemes) is amended as follows.
- (2) In the heading of the Chapter, for “NON-APPROVED PENSION” substitute “EMPLOYER-FINANCED RETIREMENT BENEFITS”.
- (3) For section 393 substitute—

##### **“393 Application of this Chapter**

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.

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- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.

### **393A Employer-financed retirement benefits scheme**

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
- (a) a registered pension scheme, nor
  - (b) a section 615(3) scheme,
- is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

### **393B Relevant benefits**

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
- (a) on or in anticipation of the retirement of an employee or former employee,
  - (b) on the death of an employee or former employee,
  - (c) after the retirement or death of an employee or former employee in connection with past service,
  - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
  - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
- (2) But—
- (a) benefits charged to tax under Part 9 (pension income),
  - (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
  - (c) excluded benefits,
- are not relevant benefits.
- (3) The following are “excluded benefits”—
- (a) benefits in respect of ill-health or disablement of an employee during service,
  - (b) benefits in respect of the death by accident of an employee during service,
  - (c) benefits under a relevant life policy, and
  - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.

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- (4) In subsection (3)(c) “relevant life policy” means—
- (a) a group life policy as defined in section 539(3) of ICTA (life policies excluded from charges on gains) with respect to which the conditions in section 539A of that Act are met,
  - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which condition 1 in that section would be met if it referred to that individual (rather than each of the individuals insured under the policy) and conditions 3, 4, 5 and 7 in that section are met, or
  - (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).
- (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999.”
- (4) Section 394 (charge on benefit) is amended as follows.
- (5) After subsection (1) insert—
- “(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.”
- (6) In subsection (2), for “administrator of” substitute “person who is (or persons who are) the responsible person in relation to”.
- (7) In subsection (3), for “subsections (1) and (2)” substitute “this section”.
- (8) For sections 395 to 397 substitute—
- “395 Reduction where employee has contributed**
- (1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.
  - (2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under Case VI of Schedule D, is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.
  - (3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.
  - (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.”
- (9) In subsection (1) of section 399 (valuation of benefit in form of loan), for “administrator of” substitute “person who is (or any of the persons who are) the responsible person in relation to”.
- (10) In subsection (2) of that section, for “administrator” substitute “responsible person”.

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(11) For section 400 substitute—

**“399A Responsible person**

- (1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.
- (2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

*Head 1*

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

*Head 2*

If there are one or more persons who control the management of the scheme, that person or each of those persons.

*Head 3*

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

*Head 4*

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

*Head 5*

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

**400 Interpretation**

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

“relevant benefits” has the meaning given by section 393B; and

“responsible person” has the meaning given by section 399A.”

(12) In Part 2 of Schedule 1 to ITEPA 2003 (defined expressions), insert at the appropriate places—

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“employer-financed retirement benefits scheme (in Chapter 2 of Part 6)	section 393A”
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“relevant benefits (in Chapter 2 of Part 6)	section 393B”
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“responsible person (in Chapter 2 of Part 6) section 399A”.

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