

1987 No. 1749

INCOME TAX

**The Occupational Pension Schemes
(Additional Voluntary Contributions) Regulations 1987**

Made - - - - - *5th October 1987*

Laid before the House of Commons *5th October 1987*

Coming into force *26th October 1987*

ARRANGEMENT OF REGULATIONS

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The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 10 of Schedule 5 to the Finance Act 1970(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987 and shall come into force on 26th October 1987.

(a) 1970 c.24; paragraph 10 was extended by paragraph 6A(4) which was inserted by the Finance (No.2) Act 1987 (c.51), Schedule 3, paragraph 12.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires –

“the Board” means the Commissioners of Inland Revenue;

“scheme administrator” means the administrator of a scheme;

“scheme member” means a member of a scheme;

“section” means a section of the Finance Act 1970;

“tax month” means a period beginning on the 6th day of any month and ending on the 5th day of the following month;

“the Schedule” means Part II of Schedule 5 to the Finance Act 1970;

“year of assessment” means a year beginning with 6th April in any year and ending with 5th April in the following year.

(2) The Table below indexes other definitions in these Regulations –

<i>Term defined</i>	<i>Regulation</i>
annual claim	6
interim claim	6
scheme	4

Prescribed cases and conditions: introductory

3. Regulations 4 and 5 respectively prescribe the cases in which, and the conditions subject to which, relief under section 21(4)(a) shall be given in accordance with sub-paragraphs (2) and (3) of paragraph 6A(b) of the Schedule.

Prescribed cases

4. The prescribed cases are cases where a retirement benefits scheme (“scheme”) is –

(a) one to which the employer of a scheme member is not a contributor and which provides benefits in addition to those provided by a scheme to which he is a contributor; and

(b) an “exempt approved scheme” within the meaning of section 21(1).

Prescribed conditions

5.—(1) The prescribed conditions are that a scheme member shall –

(a) at or before the time at which he first pays a contribution from which he deducts an amount equal to income tax at the basic rate on the contribution; and

(b) without prejudice to the condition in sub-paragraph (a), within 30 days of being so required to do by notice in writing given by the scheme administrator;

furnish to the scheme administrator in writing the particulars specified in paragraph (2).

(a) Subsection (4) was amended by the Finance (No.2) Act 1987 (c.51), Schedule 3, paragraph 4(1) and subsection (4A) was added by that paragraph. (b) Paragraph 6A (2) and (3) was inserted by the Finance (No.2) Act 1987, Schedule 3, paragraph 12. A relevant amendment was made to paragraph 6 by the Finance (No.2) Act 1987, Schedule 3, paragraph 11.

(2) The particulars specified in this paragraph are –

- (a) his full name and address;
- (b) his national insurance number and tax office reference;
- (c) an estimate of his remuneration for the year of assessment;
- (d) the full name and address of his employer who makes contributions to a retirement benefits scheme approved under section 20(a);
- (e) the full name and address of the scheme administrator of any retirement benefits scheme referred to in sub-paragraph (d) and the full name or title of any such scheme.

Claims: introductory

6.—(1) Amounts recoverable by a scheme administrator under paragraph 6A(3)(b) of the Schedule shall be recovered on a claim made to the Board for the purpose of these Regulations.

(2) Subject to paragraph (3), a claim shall be for a year of assessment (“annual claim”).

(3) A claim may also be made in accordance with regulation 7 for a tax month (“interim claim”).

(4) Notwithstanding the provisions of any other enactment, the Board shall not be under an obligation to make any payment under regulation 7 or 8 earlier than the end of the month following the month in which the claim is received.

Interim claims

7.—(1) Subject to paragraph (3), an interim claim for a tax month may be made by a scheme administrator within 6 months after the end of the tax month for which it is made.

(2) A claim under this regulation may not be based on an estimate but may only be made to recover an amount deducted in respect of contributions paid in the tax month.

(3) An interim claim may not be made for the tax month ending 5th October or any subsequent month until the annual claim for the preceding year of assessment has been made by the scheme administrator and received by the Board.

(4) If the amount claimed is established to the Board’s satisfaction they shall pay the amount to the claimant; if they are not so satisfied they shall pay to the claimant any lesser amount established to their satisfaction.

(5) Where a scheme administrator discovers that an amount paid to him under paragraph (4) was excessive he shall bring into account in the interim claim made by him next after the discovery (in this regulation referred to as “the subsequent claim”) the amount of the excess; and if that amount exceeds the amount deducted in respect of the tax month for which the subsequent claim is made –

- (a) the scheme administrator shall repay the amount of the excess to the Board with the claim; and
- (b) if he fails so to do that amount shall immediately be recoverable by the Board in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

(a) Subsection (1) was amended by the Finance (No.2) Act 1987 (c.51), Schedule 3, paragraph 3(2); subsection (2) was amended by the Finance Act 1971 (c.68), section 21(4), by the Finance Act 1981 (c.35), section 32(1), and by the Finance (No.2) Act 1987, Schedule 3, paragraph 3(3) and (4); subsection (2A) was inserted by the Finance Act 1981, section 32(2); and subsections (4), (5) and (6) were added by the Finance (No.2) Act 1987, Schedule 3, paragraph 3(5).

Annual claims

8.—(1) An annual claim for a year of assessment may, subject to paragraph (2), be made at any time within 6 years after the end of the year of assessment.

(2) Where in relation to any year of assessment a scheme administrator has received and not repaid in full any amount on an interim claim he shall within 6 months after the end of the year of assessment make an annual claim.

(3) A claim under this regulation –

- (a) may not be based on an estimate but may only be made to recover an amount deducted in respect of contributions paid in the year of assessment, and
- (b) shall bring into account payments made in respect of the year of assessment; and for the purpose of this regulation “aggregate interim payments” means the aggregate of payments made (and not repaid) on interim claims.

(4) Where the aggregate interim payments shown by an annual claim exceeds the amount deducted for the year of assessment –

- (a) the scheme administrator shall repay the amount of the excess to the Board with the claim; and
- (b) if he fails so to do, that amount shall immediately be recoverable by the Board in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

(5) If a scheme administrator fails to make an annual claim under paragraph (2) within the time limited by that paragraph, the Board may issue a notice to the scheme administrator showing the aggregate interim payments for the year, and stating that the Board are not satisfied that the amount due to the scheme administrator for the year of assessment exceeds the lower amount stated in the notice.

(6) If an annual claim is not delivered to the Board within 14 days after the issue of a notice under paragraph (5), the amount of the difference between the aggregate amount and the amount stated in the notice shall immediately be recoverable by the Board in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

(7) Where an annual claim has been made and the scheme administrator subsequently discovers that an error or mistake has been made in the claim the scheme administrator may make a supplementary claim within the time limited by paragraph (1).

Claims: supplementary provisions

9.—(1) Section 42 of the Taxes Management Act 1970(a) (procedure for making claims) shall not apply to a claim under these Regulations.

(2) No appeal shall lie from the Board's decision on an interim claim.

(3) An appeal shall be to the Special Commissioners from the Board's decision on an annual claim, and the appeal shall be brought by giving written notice to the Board within 30 days of receipt of written notice of the decision.

(4) No payment made or other thing done on or in relation to an interim claim shall prejudice the decision on an annual claim.

(5) Part V of the Taxes Management 1970(b) (appeals and other proceedings) shall apply to an appeal under paragraph (3), and on an appeal the Special Commissioners may vary the decision appealed against whether or not the variation is to the advantage of the appellant.

(a) 1970 c.9. (b) Relevant amendments were made to section 45 by the Finance Act 1984 (c.43), section 127 and Schedule 22, paragraph 2, and by section 128(6), and Schedule 23, Part XIII; to section 48 by the Finance (No.2) Act 1975 (c.45), section 45(4); to section 50 by the Finance (No.2) Act 1975, section 67(2); to section 53 by the Finance Act 1972 (c.41), section 129(1); to section 56 by the Finance (No.2) Act 1975, section 45(3). Section 56A was inserted by the Finance Act 1984 (c.43), section 127 and Schedule 22, paragraph 7; and section 57B by the Finance Act 1984, section 127 and Schedule 22, paragraph 4.

(6) All such assessments, payments and repayments shall be made as are necessary to give effect to the Board's decision on an annual claim, or to any variation of that decision on appeal.

(7) Claims under these Regulations –

- (a) shall contain such information and be in such form as the Board may prescribe (and forms prescribed for annual claims may require a report to be given by the scheme administrator's auditor);
- (b) shall contain declarations to the effect that –
 - (i) sufficient records in respect of the scheme are maintained so as to enable the requirements of these Regulations to be satisfied, and
 - (ii) the information contained in the claim (including the declaration referred to in paragraph (i)) is correct; and
- (c) shall be signed by the scheme administrator or by an authorised representative in the service of the scheme administrator.

Recovery on withdrawal of approval of schemes

10. Where a scheme administrator furnishes to the Board information in accordance with regulation 12(2) he shall at the time that he furnishes the information –

- (a) pay to the Board the amount (if any) referred to in regulation 12(3)(d); and
- (b) if he fails so to do, that amount shall immediately be recoverable by the Board in the same manner as tax charged by an assessment on the scheme administrator which has become final and conclusive.

Recovery of amounts by assessment

11.—(1) Section 30 of the Taxes Management Act 1970(a) (recovery of overpayment of tax, etc) shall apply in relation to the payment by the Board of an amount –

- (a) paid under these Regulations to which a scheme administrator was not entitled, or
- (b) recoverable from a scheme administrator under regulation 7(5), regulation 8(4) or (6) or regulation 10,

as if it had been income tax repaid to the scheme administrator to which he was not entitled.

(2) An assessment made by virtue of this regulation shall be made by the Board and, subject to the provisions of these Regulations, the Taxes Management Act 1970 shall apply as if the assessment were an assessment to tax for the year of assessment in respect of which the amount was paid or is recoverable.

Information

12.—(1) The Board may by notice in writing require any person who is, or who at any time has been, –

- (a) a scheme administrator to whom contributions have been paid under paragraph 6A(2) and (3) of the Schedule, or
- (b) a scheme member who has paid such contributions,

to furnish to them within such time (not being less than 14 days) as may be provided in the notice such information and in such form as may be prescribed in the notice.

(2) If the Board by notice under section 19(3)(b) withdraw their approval of a scheme in relation to which contributions have been paid under paragraph 6A(2) and (3) of the Schedule, the scheme administrator shall within 30 days furnish to the Board in relation to that scheme the information prescribed in paragraph (3).

(a) Section 30 was substituted by the Finance Act 1982 (c.39), section 149(1). (b) Subsection (3) was amended by the Finance (No.2) Act 1987 (c.51), Schedule 3, paragraph 2(1).

(3) The information prescribed in this paragraph is –

- (a) the full name, address, national insurance number and tax office reference of each scheme member who has paid contributions after the date specified in the notice (in this regulation referred to as “the relevant contributions”);
- (b) the amount of the relief obtained under section 21(4) by means of the relevant contributions;
- (c) the amount of such relief actually due; and
- (d) the difference between the relief referred to in sub-paragraph (b) and that referred to in sub-paragraph (c).

(4) If a scheme member who has paid contributions under paragraph 6A(2) and (3) of the Schedule fails to comply with the requirements of regulation 5(1)(b), the scheme administrator to whom such contributions have been made shall within 30 days furnish to the Board the information prescribed in paragraph (5).

(5) The information prescribed in this paragraph is –

- (a) the full name, address, national insurance number and tax office reference of the scheme member;
- (b) the amount of relief obtained by him under section 21(4) by means of such contributions;
- (c) the amount of such relief actually due; and
- (d) the difference between the relief referred to in sub-paragraph (b) and that referred to in sub-paragraph (c).

Inspection of records

13.—(1) Every scheme administrator to whom contributions have been paid under paragraph 6A(2) and (3) of the Schedule shall, whenever required so to do, make available for inspection by a person authorised by the Board for that purpose all books, documents and other records (including all particulars furnished under regulation 5) in his possession or under his control relating to –

- (a) such contributions paid to him,
- (b) the scheme to which the contributions relate, and
- (c) the scheme member who paid the contributions.

(2) Where records are maintained by computer the scheme administrator shall provide the person making the inspection with all facilities necessary to obtain information from them.

(3) Subject to paragraph (4) all books, documents and records referred to in paragraph (1), shall be preserved by the scheme administrator in such manner as may be approved by the Board so as to be available for inspection under this regulation for a period of three years following the termination of the scheme to which they relate.

(4) All particulars furnished under regulation 5 shall be so preserved for a period of three years following the date on which the scheme member to whom they relate ceased to be a member of a scheme.

A. J. G. Isaac
B. Pollard

5th October 1987

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement paragraph 6A of Schedule 5 to the Finance Act 1970 (which was inserted by paragraph 12 of Schedule 3 to the Finance (No.2) Act 1987) which provides for relief by deduction from contributions made to approved occupational schemes to which employees, but not their employers, are contributors and which provide benefits additional to benefits provided by schemes to which their employers are contributors.

Paragraph 6A(2) provides that an employee who is entitled to relief under section 21(4) of the Finance Act 1970 in respect of a contribution may deduct from the contribution when he pays it, and may retain, an amount equal to income tax at the basic rate. Paragraph 6A(3) provides that the administrator of a scheme shall accept the amount paid after deduction in discharge of an employee's liability to the same extent as if the deduction had not been made, and may recover an amount equal to the deduction from the Commissioners of Inland Revenue ("the Commissioners").

Regulation 1 provides for citation and commencement and regulation 2 for interpretation.

Regulation 3 introduces regulations 4 and 5 which, respectively, prescribe the cases in which, and the conditions subject to which, relief shall be given in accordance with paragraph 6A(2) and (3).

Regulation 6 introduces regulations 7 and 8 which, respectively, provide a system of interim and annual claims by which scheme administrators may recover from the Commissioners amounts equal to those deducted under paragraph 6A(2) of the Schedule. Regulation 9 contains supplementary provisions including a right of appeal against decisions on annual claims.

Regulation 10 provides that when, following the withdrawal of approval of a scheme, the scheme administrator furnishes information to the Commissioners he shall at the same time pay to them the difference between the amount (if any) of relief obtained under section 21(4) of the Finance Act 1970 by means of contributions paid under paragraph 6A(2) and (3) of the Schedule to that Act and the amount of such relief actually due.

Regulation 11 provides for the recovery by assessment from administrators of schemes of amounts paid to them by the Commissioners to which they are not entitled, which are recoverable in default or which are recoverable following the withdrawal of approval of a scheme.

Regulation 12 provides that the Commissioners may require a present, or former, administrator of a scheme, or an employee who has contributed to a scheme, to furnish them with information. In addition, the regulation provides that if the Commissioners withdraw their approval of a scheme, or if a member of a scheme fails to comply with regulation 5(1)(b), the administrator of that scheme shall furnish information to them.

Regulation 13 provides for the inspection by a person authorised by the Commissioners of books, documents and records.