

1988 No. 1436

INCOME TAX

**The Occupational Pension Schemes
(Transitional Provisions) Regulations 1988**

Made - - - - 11th August 1988

Laid before the House of Commons 11th August 1988

Coming into force 2nd September 1988

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 1(2) of Schedule 23 to the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Transitional Provisions) Regulations 1988 and shall come into force on 2nd September 1988 but shall have effect in accordance with regulation 12.

Interpretation

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

“the Board” means the Commissioners of Inland Revenue;

“business” includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;

“control”, in relation to a body corporate or partnership, has the meaning given to it by section 840; and the definition of “control” in that section applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate;

“relevant employer” means –

(a) an associated employer, or

(b) an employer –

(i) who has acquired, or who has been acquired by, or who has merged with, an employer who had established a scheme before 17th March 1987, or

(ii) who has taken over the whole or part of the business of such an employer;

“section” means a section of, and “Schedule” means Schedule 23 to, the Income and Corporation Taxes Act 1988(b);

“total pension” means in relation to an employee the aggregate of all benefits (including the value in terms of an annual pension of any lump sum or sums received or receivable by the employee) —

(a) 1988 c.1; paragraph 1(2) was substituted by the Finance Act 1988 (c.39), section 56. (b) Schedule 23 was amended by the Finance Act 1988 (c.39), section 56.

- (a) from schemes established by his employer, or to which his employer has contributed, and
- (b) from schemes to which his employer has not contributed and which provide benefits in addition to those provided by schemes to which he has contributed.

(2) For the purpose of these Regulations an employer is associated with another employer if (directly or indirectly) one is controlled by the other or if both are controlled by a third person, and the expression "associated employer" shall be construed accordingly.

Disapplication of paragraphs 2, 3, 4 and 6 of the Schedule

3.—(1) Subject to regulation 4, the provisions contained in paragraphs 2, 3, 4 and 6 of the Schedule shall not apply in the circumstances prescribed in any one or more of paragraphs (2) to (4) below.

(2) The circumstances prescribed in this paragraph are circumstances where –

- (a) before 17th March 1987 an employee was a member of a scheme (in this paragraph and in regulation 4 referred to as "the scheme"); and
- (b) on or after that date –
 - (i) benefits cease to accrue to the employee under the scheme and he becomes a member of another scheme established by his employer, or a scheme established by a relevant employer, (in this paragraph and in regulation 4 referred to as "the new scheme"); or
 - (ii) benefits cease to accrue to the employee under the scheme by reason of his secondment or posting to another employer if –
 - (a) at the end of the period of his secondment or posting he becomes a member of a scheme established by the employer by whom he was seconded or posted, or by a relevant employer, and
 - (b) at the time of his secondment or posting he had a definite expectation that the condition contained in sub-paragraph (a) of this paragraph would be met; or
 - (iii) benefits cease to accrue to the employee under the scheme by reason of his unpaid absence if, within one month of returning to work, he becomes a member of a scheme established by the employer who established the scheme, or a scheme established by a relevant employer; or
 - (iv) benefits cease to accrue to the employee under the scheme by reason of her pregnancy or confinement if, within one month of returning to work, she becomes a member of a scheme established by the employer who established the scheme, or a scheme established by a relevant employer; or
 - (v) benefits cease to accrue to the employee under the scheme (where the circumstances are other than those specified in paragraphs (ii), (iii) or (iv)) if, within one month of benefits ceasing so to accrue, benefits again accrue to the employee under that scheme; or
 - (vi) the employee becomes a member of a scheme which provides benefits in addition to those under the scheme of which he remains a member.

(3) The circumstances prescribed in this paragraph are circumstances where an employee was not a member of a scheme before 17th March 1987 but is to be regarded as being a member of that scheme before that date by virtue of regulation 2(2)(b) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1984(a).

(4) The circumstances prescribed in this paragraph are circumstances where an employer was contractually bound to an employee before 17th March 1987 to provide benefits for him but a scheme had not been established before that date.

(a) S.I. 1984/614.

4. Regulation 3(1) does not apply in the circumstances prescribed in regulation 3(2) so as to disapply paragraph 2 of the Schedule unless on 17th March 1987 the rules of either the scheme or the new scheme or of both schemes allowed for the accrual of benefits in excess of the rate of one-sixtieth of the employee's relevant annual remuneration for each year of service.

Modification of paragraph 2 of the Schedule

5.—(1) In the circumstances prescribed in paragraph (2) below, paragraph 2 of the Schedule shall apply with the modifications prescribed in paragraph (3) below.

(2) The circumstances prescribed in this paragraph are circumstances where a pension attributable to a transfer payment is provided for an employee in respect of service with a former employer of his other than a relevant employer.

(3) The modifications prescribed in this paragraph are that –

(a) in paragraph 2 of the Schedule at the end of sub-paragraph (2) there shall be added the words –

“(excluding any pension attributable to a transfer payment provided for the employee in respect of service with a former employer of his other than a relevant employer)”;

(b) after that sub-paragraph there shall be added the following sub-paragraph –

“(3) In this paragraph a “relevant employer” has the same meaning as in the Occupational Pension Schemes (Transitional Provisions) Regulations 1988.”.

Disapplication of paragraphs 3, 4, 6 and 7 of the Schedule

6.—(1) The provisions contained in paragraphs 3, 4, 6 and 7 of the Schedule shall not apply in the circumstances prescribed in either or both of paragraphs (2) and (4) below.

(2) The circumstances prescribed in this paragraph are circumstances where, subject to paragraph (3) below, the amount of an employee's total pension is not more than £104 a year.

(3) In a case where the pension is secured in part by voluntary contributions paid by the employee paragraph 7 shall apply unless the aggregate of the benefits secured for the employee by –

(a) the voluntary contributions, and

(b) all schemes established by his employer or to which his employer has contributed,

are commuted.

(4) The circumstances prescribed in this paragraph are circumstances where –

(a) the rules of a scheme provide that the trustees or administrator of the scheme have power to commute, in whole or in part, the pension secured for an employee if he is in exceptional circumstances of serious ill health, and

(b) the trustees or administrator have exercised such power in relation to the employee.

Disapplication of paragraph 5(2) of the Schedule

7.—(1) The provision contained in paragraph 5(2) of the Schedule shall not apply in circumstances where –

(a) a charge to income tax under Schedule E on an employee arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares, and

(b) the shares or interest in shares were acquired, or the right to acquire the shares was granted, before 17th March 1987.

(2) For the purposes of this regulation "share" includes stock and this regulation applies in relation to any security (as defined in section 254(1)) issued by a body corporate as it applies to a share in that body corporate.

Disapplication of paragraph 5(3) of the Schedule

8. The provision contained in paragraph 5(3) of the Schedule shall not apply in circumstances where an employee within paragraph (a) of sub-paragraph (3) of that paragraph ceased to be a controlling director before 17th March 1987.

Modification of paragraph 5(3) and (4) of the Schedule

9.—(1) In the circumstances prescribed in paragraph (2) below, paragraphs 5(3) and (4) of the Schedule shall apply with the modifications prescribed in paragraph (3) below.

(2) The circumstances prescribed in this paragraph are circumstances where the relevant annual remuneration of an employee within paragraph 5(3)(b) of the Schedule exceeds the permitted maximum.

(3) The modifications prescribed in this paragraph are that –

- (a) at the end of paragraph 5(3) of the Schedule there shall be added the words –
"or, in the case of an employee within paragraph (b), the permitted maximum if greater"; and
- (b) in paragraph 5(4) of the Schedule –
 - (i) for the word "higher" there shall be substituted "highest",
 - (ii) at the end of paragraph (a) the word "and" shall be omitted, and
 - (iii) at the end of paragraph (b) there shall be inserted the words "and, (c) the permitted maximum".

Disapplication of paragraph 7 of the Schedule

10.—(1) The provisions contained in paragraph 7 of the Schedule shall not apply in the circumstances prescribed in this regulation.

(2) The circumstances prescribed in this regulation are circumstances where –

- (a) before 8th April 1987 an employee had entered into arrangements for the payment of voluntary contributions (in this paragraph referred to as "the original arrangements"); and
- (b) on or after that date –
 - (i) the employee (having ceased to pay voluntary contributions whether or not on or after that date) –
 - (a) recommences to pay such contributions under the original arrangements, or
 - (b) commences to pay such contributions under other arrangements provision for which is made by the rules of a scheme established by his employer; or
 - (ii) the employee ceases to pay voluntary contributions under the original arrangements and commences to pay such contributions under arrangements provision for which is made by the rules of a scheme established by a relevant employer; or
 - (iii) any one or more of the terms of the original arrangements in relation to –
 - (a) the amount of the voluntary contributions,
 - (b) the date on which such contributions are paid, or
 - (c) the manner in which such contributions are invested,is varied.

Authorisation of the Board to direct

11. This regulation authorises the Board to direct that the Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate.

Effect of Regulations and of directions made under regulation 11

12. These Regulations –

- (a) shall take effect as from 17th March 1987, and
- (b) authorise any direction given under regulation 11 to take effect as from 17th March 1987 or any later date.

A. J. G. Isaac
T. J. Painter

11th August 1988

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the disapplication and modification of provisions contained in Schedule 23 to the Income and Corporation Taxes Act 1988 ("the Schedule") (occupational pension schemes approved before 23rd July 1987) in the circumstances prescribed in them; authorise the Commissioners of Inland Revenue ("the Board") to direct that the Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate; and provide that the Regulations shall take effect as from 17th March 1987 and that any direction given under them shall take effect as from that date or any later date.

Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 contains definitions.

Subject to regulation 4, regulation 3 disapplies paragraphs 2 to 4 and 6 of the Schedule, and regulations 6, 7, 8 and 10, respectively, disapply paragraphs 3, 4, 6 and 7, paragraph 5(2), paragraph 5(3), and paragraph 7 of the Schedule.

Regulations 5 and 9, respectively, modify paragraphs 2 and 5(3) and (4) of the Schedule.

Regulation 11 authorises the Board to make directions.

Regulation 12 provides for the effect of the Regulations and of directions made under regulation 11.

Authority for the retrospective effect of these Regulations (and of any direction given under regulation 11) is given by paragraph 1(2A) of the Schedule as inserted by section 56 of the Finance Act 1988.

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