

1990 No. 586

INCOME TAX

The Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990

Made - - - - *13th March 1990*

Laid before the House of Commons *14th March 1990*

Coming into force *4th April 1990*

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by paragraph 18(4) of Schedule 6 to the Finance Act 1989(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990 and shall come into force on 4th April 1990.

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;

“centralised scheme” has the meaning that it has for the purposes of paragraph 28 of the Schedule;

“exempt approved scheme” means a scheme which is for the time being within paragraph (a) or (b) of section 592(1) of the Income and Corporation Taxes Act 1988(b);

“relevant statutory scheme” means a scheme within section 611A(1) of the Income and Corporation Taxes Act 1988(c);

“relevant employer” in relation to another employer means –

(a) an employer who is associated with the other employer, or

(b) an employer –

(i) who has acquired, or who has been acquired by or who has merged with, the other employer in circumstances where the other employer had established an exempt approved scheme before 14th March 1989, or

(ii) who has taken over the whole or part of the business of the other employer in those circumstances;

(a) 1989 c.26.

(b) 1988 c.1.

(c) Section 611A was inserted by the Finance Act 1989 (c.26), Schedule 6, paragraphs 15 and 18(1).

“the Schedule” means Schedule 6 to the Finance Act 1989.

(2) For the purpose of this regulation 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.

(3) In paragraph (2) above the reference to control –

- (a) in relation to an employer which is a body corporate and a close company within the meaning of section 414 of the Income and Corporation Taxes Act 1988(a), shall be construed in accordance with section 416 of that Act(b), and
- (b) in relation to an employer which is a body corporate other than one mentioned in sub-paragraph (a) above or a partnership, shall be construed in accordance with section 840 of that Act;

and the like definition to that in the said section 840 shall apply (with the necessary modifications) in relation to an employer which is an unincorporated association as that definition applies to a body corporate.

(4) In these Regulations references to an exempt approved scheme established by an employer include references to such a scheme to which that employer had contributed.

Exempt approved schemes – disapplication of paragraph 5(4) of the Schedule

3.—(1) In relation to any exempt approved scheme of which an employee is a member, the circumstances prescribed for the purposes of paragraph 18(4) of the Schedule as being those in which paragraphs 5(4) of the Schedule shall not have effect as regards that employee’s remuneration in respect of an employment are, subject in each case to the satisfaction of one of the conditions contained in paragraph (3) below, any of those specified in paragraph (2) below.

(2) The circumstances specified in this paragraph are the following –

- (a) before 1st June 1989 the employee became a member of the exempt approved scheme which came into existence before 14th March 1989;
- (b) on or after 1st June 1989 the employee became a member of the exempt approved scheme which came into existence before 14th March 1989, but before the former date his employer was contractually bound to him to provide the benefits provided by the scheme;
- (c) the employee became a member of the exempt approved scheme which came into existence on or after 14th March 1989, but before that date his employer was contractually bound to him to provide the benefits provided by the scheme;
- (d) the employee became a member of a relevant statutory scheme in the circumstances described in regulation 4(2)(a),(b) or (c) below and on or after 1st June 1989 –
 - (i) the office or employment by virtue of which contributions to that scheme were paid became an employment in respect of which the exempt approved scheme was established by his employer, and
 - (ii) one of the conditions contained in regulation 4(3) below was satisfied at the time in relation to his membership of the relevant statutory scheme;

and in paragraph (3) below “the scheme” means the exempt approved scheme referred to in sub-paragraph (a), (b), (c) or (d) above as the case may require.

(3) Subject to paragraph (4) below, the conditions contained in this paragraph are that –

- (a) at all times since the employee became a member of the scheme benefits have continued to accrue to him under the scheme; or
- (b) at all times since he became such a member benefits have continued to accrue to him under the scheme except during one or more periods in any of the circumstances specified in paragraph (5)(b),(c),(d) and (e) below; or

(a) Section 414 was amended by the Finance Act 1989, section 104.

(b) Section 416 was amended by the Finance Act 1989, Schedule 17, Part V.

(c) benefits continued to accrue to him under the scheme at all times after he became such a member until they ceased so to accrue and –

(i) he became a member of another exempt approved scheme, whenever it came into existence, (in this paragraph and in paragraph (5) below referred to as “the other scheme”) in any of the circumstances specified in that paragraph, and

(ii) at all times since benefits have continued to accrue to him under the other scheme, or have continued so to accrue to him except as stated in sub-paragraph (b) above,

and this condition shall apply in relation to the cessation of the accrual of benefits under that other scheme (and under any further scheme of which the employee has become a member in any of those circumstances) as it applies in relation to the scheme and for the purposes of that application “the scheme” and “the other scheme” shall be construed accordingly.

(4) Where any of the schemes referred to in paragraph (3) above is a centralised scheme, benefits shall not be regarded as continuing to accrue to an employee under that scheme for the purposes of the relevant condition in that paragraph unless they continue so to accrue by virtue of his being employed by the same employer or by two or more employers who are relevant employers in relation to each other.

(5) The circumstances specified in this paragraph are circumstances where –

(a) benefits ceased to accrue to the employee under the scheme and he thereupon became a member of the other scheme which was established by his employer or by an employer who was a relevant employer in relation to his employer;

(b) benefits ceased to accrue to the employee under the scheme by reason of his secondment or posting to another employer and –

(i) at the end of the period of his secondment or posting he again became a member of the scheme or became a member of the other scheme which was established by the employer by whom he was seconded or posted or by an employer who was a relevant employer in relation to that employer, and

(ii) at the time of his secondment or posting he had a definite expectation that the condition contained in paragraph (i) of this sub-paragraph would be fulfilled;

(c) benefits ceased to accrue to the employee under the scheme by reason of his unpaid absence and, within one month of returning to work, he again became a member of the scheme or became a member of the other scheme which was established by the employer who established the scheme or by an employer who was a relevant employer in relation to that employer;

(d) benefits ceased to accrue to the employee under the scheme by reason of her pregnancy or confinement and, within one month of returning to work, she again became a member of the scheme or became a member of the other scheme which was established by the employer who established the scheme or by an employer who was a relevant employer in relation to that employer;

(e) benefits ceased to accrue to the employee under the scheme for a period not exceeding one month in circumstances other than those specified in sub-paragraph (b), (c) or (d) above.

Relevant statutory schemes – disapplication of paragraph 6(5) of the Schedule

4.—(1) In relation to any relevant statutory scheme of which a person is a member, the circumstances prescribed for the purposes of paragraph 18(4) of the Schedule as being those in which paragraph 6(5) of the Schedule shall not have effect as regards that person’s remuneration in respect of an office or employment are, subject in each case to the satisfaction of one of the conditions contained in paragraph (3) below, any of those specified in paragraph (2) below.

(2) The circumstances specified in this paragraph are the following –

(a) before 1st June 1989 the person became by virtue of his office or employment a member of the relevant statutory scheme which was established before 14th March 1989;

- (b) on or after 1st June 1989 the person became a member of the relevant statutory scheme which was established before 14th March 1989, but before the former date he was entitled by virtue of his office or employment to be provided with the benefits provided by the scheme;
- (c) the person became a member of the relevant statutory scheme which was established on or after 14th March 1989, but before that date he was entitled by virtue of his office or employment to be provided with the benefits provided by the scheme;
- (d) the person became a member of an exempt approved scheme in the circumstances described in regulation 3(2)(a),(b) or (c) above and on or after 1st June 1989 –
 - (i) the employment in respect of which contributions to that scheme were made became an office or employment by virtue of which contributions were paid to the relevant statutory scheme, and
 - (ii) one of the conditions contained in regulation 3(3) above was satisfied at the time in relation to his membership of the exempt approved scheme;

and in paragraph (3) below “the scheme” means the relevant statutory scheme referred to in sub-paragraph (a),(b),(c) or (d) above as the case may require.

(3) The conditions contained in this paragraph are that –

- (a) at all times since the person became a member of the scheme benefits have continued to accrue to him under the scheme; or
- (b) at all times since he became such a member benefits have continued to accrue to him under the scheme except during one or more periods in any of the circumstances specified in paragraph (4)(b),(c),(d) and (e) below; or
- (c) if benefits have ceased to accrue to him under the scheme –
 - (i) he has become a member of another such scheme by virtue of the same office or employment, or of another such scheme having the same rules as the scheme or, where the other such scheme is a scheme established in another part of the United Kingdom, corresponding to the scheme, (in this paragraph and in paragraph (4) below referred to in either case as “the other scheme”) in any of the circumstances specified in that paragraph, and
 - (ii) at all times since benefits have continued to accrue to him under the other scheme, or have continued to accrue to him except as stated in sub-paragraph (b) above,

and this condition shall apply in relation to the cessation of the accrual of benefits under the other scheme (and under any further scheme of which the person has become a member in any of the circumstances referred to above) as it applies in relation to the scheme and for the purposes of that application “the scheme” and “the other scheme” shall be construed accordingly.

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

- (a) benefits ceased to accrue to the person under the scheme and he thereupon became a member of the other scheme;
- (b) benefits ceased to accrue to the person under the scheme by reason of his secondment or posting to another office or employment and –
 - (i) at the end of the period of his secondment or posting he again became a member of the scheme or became a member of the other scheme, and
 - (ii) at the time of his secondment or posting he had a definite expectation that the condition contained in paragraph (i) of this sub-paragraph would be fulfilled;
- (c) benefits ceased to accrue to the person under the scheme by reason of his unpaid absence and, within one month of returning to work, he again became a member of the scheme or became a member of the other scheme;
- (d) benefits ceased to accrue to the person under the scheme by reason of her pregnancy or confinement and, within one month of returning to work, she again became a member of the scheme or became a member of the other scheme;

- (e) benefits ceased to accrue to the person under the scheme for a period of time, in circumstances other than those specified in sub-paragraph (a),(b),(c) or (d) above, and notwithstanding that period of cessation the person is entitled under the scheme to have remuneration taken into account for any year of assessment in arriving at –
- (i) his relevant annual remuneration for the purposes of calculating benefits, and
 - (ii) his remuneration for that year for the purposes of any restriction on the aggregate amount of contributions payable, in excess of that which, if the scheme were a retirement benefits scheme to which Part II of the Schedule applies, would be the permitted maximum for that year (within the meaning of paragraph 20 of the Schedule).

Additional voluntary contributions – further disapplication of paragraphs 5(4) and 6(5) of the Schedule

5.—(1) In relation to an exempt approved scheme or a relevant statutory scheme (in this regulation referred to in either case as “the AVC scheme”) which provides benefits in addition to those provided by an exempt approved scheme or a relevant statutory scheme of which an employee or a person is a member, the circumstances prescribed for the purposes of paragraph 18(4) of the Schedule, as being those in which neither paragraph 5(4) nor paragraph 6(5) of the Schedule shall have effect as regards that employee’s or that person’s remuneration in respect of an office or employment, shall include those specified in paragraph (2) below.

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

- (a) in relation to the exempt approved scheme which provides benefits to which the benefits provided by the AVC scheme are additional, paragraph 5(4) of the Schedule does not have effect as regards the employee’s remuneration in respect of an employment by virtue of regulation 3 above, or
- (b) in relation to the relevant statutory scheme which provides benefits to which the benefits provided by the AVC scheme are additional, paragraph 6(5) of the Schedule does not have effect as regards the person’s remuneration in respect of an office or employment by virtue of regulation 4 above,

and the employee or the person became a member of the AVC scheme in circumstances other than those specified in regulation 3(2) or 4(2) above.

A. J. G. Isaac
L. J. H. Beighton

13th March 1990

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 4th April 1990, provide for the disapplication of the earnings cap when calculating tax relief on contributions to exempt approved retirement benefits schemes and relevant statutory schemes established before 14th March 1989 in circumstances where the employee was a member of the scheme before 1st June 1989 and has at all times since remained such a member or joins a scheme coming into existence on or after 14th March 1989 in circumstances specified in the Regulations (which are broadly where there is continuity of employment since 1st June 1989) and has at all times since remained such a member.

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

Regulation 3 prescribes the circumstances in which the earnings cap on contributions is disapplied in relation to exempt approved retirement benefits schemes and specifies the circumstances in which continuity of membership of a scheme is assumed.

Regulation 4 prescribes the circumstances in which the earnings cap on contributions is disapplied in relation to relevant statutory schemes and specifies the circumstances in which continuity of membership of a scheme is assumed.

Regulation 5 prescribes further circumstances in which the earnings cap on contributions is disapplied in relation to schemes which provide benefits which are additional to those provided by exempt approved schemes or relevant statutory schemes in relation to which the cap is disapplied by regulation 3 or 4.

£1.35 net

ISBN 0 11 003586 0

Printed in the United Kingdom for HMSO

745 WO644 C28 3/90 452 7102 O/N 88174