

2000 No. 1088

INCOME TAX

**The Retirement Benefits Schemes (Restriction on Discretion
to Approve) (Additional Voluntary Contributions)
(Amendment) Regulations 2000**

<i>Made</i> - - - -	<i>14th April 2000</i>
<i>Laid before the House of Commons</i>	<i>19th April 2000</i>
<i>Coming into force</i>	<i>10th May 2000</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 591(6) of the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) (Amendment) Regulations 2000 and shall come into force on 10th May 2000.

Interpretation

2. In these Regulations, “the principal Regulations” means the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(b) and “regulation” means a regulation of the principal Regulations.

Amendment of regulation 5 of the principal Regulations

3. In regulation 5(5)—
- (a) in sub-paragraph (a) before the word ““pension”” there shall be inserted the words “subject to regulation 5A,”;
 - (b) in sub-paragraph (b) before the words ““pension equivalent”” there shall be inserted the words “subject to regulation 5A,”.

Insertion of new regulation 5A in the principal Regulations

4. After regulation 5 there shall be inserted the following regulation—

(a) 1988 c. 1. Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (c. 39), section 107 of, and Part V(12) of Schedule 26 to, the Finance Act 1994 (c. 9), and section 59(2) of the Finance Act 1995 (c. 4).
(b) S.I. 1993/3016.

“Special rules for determining pension and pension equivalent

5A.—(1) This regulation shall apply in determining whether—

- (a) any amount is payable for the purposes of the meaning of “pension” given by regulation 5(5)(a), or
- (b) any additional amount is payable for the purposes of the meaning of “pension equivalent” given by regulation 5(5)(b).

(2) Where the rules of a scheme established by a relevant employer, or to which a relevant employer is a contributor, provide for any benefit payable to any person as the result of a credit under a pension sharing order or provision to be treated as provided separately from any benefits which are provided under the scheme for that person as an employee, any pension sharing order or provision in favour of an employee who is an ex-spouse which affects the amount or additional amount payable shall not be taken into account in relation to that employee.

(3) Subject to paragraph (4), where any pension sharing order or provision made against an employee who is an ex-spouse affects the amount or additional amount payable, the order or provision shall not be taken into account in relation to that employee and accordingly—

- (a) any amount payable shall be treated as increased by an amount equal to the relevant reduction;
- (b) any additional amount payable shall be treated as increased by the amount produced by multiplying the relevant reduction by 2.25.

(4) Paragraph (3) shall not apply where the employee is a moderate earner.

(5) In this regulation—

- (a) “ex-spouse” has the meaning given by section 659D(1)(a) of the Taxes Act;
- (b) “moderate earner” means an employee—
 - (i) who is not a controlling director of a company which is his employer, and
 - (ii) whose earnings at the date at which his marriage was dissolved or annulled were not more than 25 per cent. of the permitted maximum for the year of assessment in which the dissolution or annulment occurred;
- (c) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of the Welfare Reform and Pensions Act 1999(b) or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(c);
- (d) “the permitted maximum” has the meaning given by section 590C(d) of the Taxes Act 1988;
- (e) “the relevant date” has the meaning given by regulation 5(5)(c);
- (f) “the relevant reduction” means the total amount by which the employee’s benefits or future benefits under the scheme are reduced under section 31 of the Welfare Reform and Pensions Act 1999, or Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, on the relevant date.

(6) For the purposes of paragraph (5)(b)(i), an employee is a controlling director of a company which is his employer if he is a director of the company to whom section 417(5)(b) of the Taxes Act 1988 applies either—

- (a) at the date on which the marriage was dissolved or annulled, or
- (b) at any time within the period of ten years before that date.

(a) Section 659D was inserted by paragraph 17 of Schedule 10 to the Finance Act 1999 (c. 16).

(b) 1999 c. 30.

(c) S.I. 1999/3147 (N.I. 11).

(d) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c. 26) and was amended by section 107(4) and (5) of the Finance Act 1993 (c. 34).

(7) For the purposes of paragraph (5)(b)(ii), an ex spouse's earnings shall be taken to be the total amounts of emoluments—

(a) which were paid to the ex-spouse in consequence of pensionable service to which the scheme relates during the year of assessment before the year of assessment in which the marriage was dissolved or annulled, and

(b) from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1993(a).”

Amendment of regulation 6 of the principal Regulations

5. In regulation 6(7) for the word “respectively” there shall be substituted the words “respectively, read together with regulation 5A,”.

14th April 2000

Nick Montagu
Tim Flesher
Two of the Commissioners of Inland Revenue

(a) S.I. 1993/744, amended by S.I. 1993/2276, 1994/775 and 1212, 1995/216, 447, 853, 1223 and 1284, 1996/804, 980, 1312, 2381, 2554 and 2631, 1997/214, 1998/2484, and 1999/70, 824 and 2155.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (S.I. 1993/3016) (“the principal Regulations”). The principal Regulations impose restrictions relating to the repayment to an employee of surplus funds arising from the provision of benefits under schemes to which the employee pays additional voluntary contributions and also restrict the Board of Inland Revenue’s discretion to approve such schemes under section 591 of the Income and Corporation Taxes Act 1988 (c. 1).

Regulation 4 of the principal Regulations restricts the Board’s discretion in relation to schemes which are freestanding additional voluntary contributions schemes where the rules of the scheme do not require the administrator to comply with the requirements of the regulation and, so far as they concern such schemes, of regulation 6 of the principal Regulations (calculation of surplus funds). Regulation 5 of the principal Regulations makes similar provision in relation to schemes which are not freestanding additional voluntary contributions schemes.

The purpose of the amendments made by these Regulations is to ensure that, in general, the operation of the principal Regulations is not affected where a pension sharing order or provision is made in favour of an ex-spouse under the Welfare Reform and Pensions Act 1999 (c. 30) or the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). There is an exception in relation to an employee against whom such order or provision is made who would be a moderate earner if the order or provision were taken into account.

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

Regulation 3 amends regulation 5(5) of the principal Regulations in consequence of the amendments made by regulation 4 of these Regulations.

Regulation 4 inserts a new regulation 5A in the principal Regulations providing for special rules for determining the meaning of “pension” and “pension equivalent” given by regulation 5(5) of the principal Regulations where a pension sharing order or provision has been made.

Regulation 5 amends regulation 6(7) of the principal Regulations in consequence of the amendments made by regulation 3 of these Regulations.

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