



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 6

SCHEMES THAT ARE NOT REGISTERED PENSION 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.

^{F1}(2)

(3) In sub-paragraph (1) of paragraph 2 (“qualifying benefits”), insert at the end “or (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.”.

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- (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;”.

Textual Amendments

F1 S. 245(2) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(5\)](#)

Modifications etc. (not altering text)

C1 Pt. 4 Ch. 6 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [25](#)

C2 S. 245 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [15](#), [16](#)

Commencement Information

I1 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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 ^[F2]Part 2 of ITTOIA 2005^[F3] or Part 3 of CTA 2009 (trading income)],

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- (b) are not expenses of management of the employer for the purposes of [F⁴Chapter 2 of Part 16 of CTA 2009] (expenses of management: companies with investment business), and
 - [F⁵(c) are not to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012.]
- (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 [F⁶Part 2 of ITTOIA 2005][F⁷or Part 3 of CTA 2009 (trading income),] 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 [F⁸in relation to the employer of [F⁹section 76 of FA 2012] or Chapter 2 of Part 16 of CTA 2009,] 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).

Textual Amendments

- F2** Words in s. 246(2)(a) inserted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 650\(2\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))
- F3** Words in s. 246(2)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 578\(2\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F4** Words in s. 246(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 578\(2\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F5** S. 246(2)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 120\(2\)](#)
- F6** Words in s. 246(3)(a) inserted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 650\(3\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))
- F7** Words in s. 246(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 578\(3\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F8** Words in s. 246(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 578\(3\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F9** Words in s. 246(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 120\(3\)](#)

Commencement Information

- I2** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

[F¹⁰246A Case where no relief for provision by an employer

- (1) An employer's expenses of providing relevant benefits to or in respect of a present or former employee (“the employee”) under an employer-financed retirement benefits scheme (whether or not by the making of contributions under the scheme) are not subject to relief if subsection (2) applies.
- (2) This subsection applies where—
 - (a) the provision of the relevant benefits results in a reduction in the benefits payable to or in respect of the employee under a registered pension scheme, or
 - (b) a reduction in the benefits payable to or in respect of the employee under a registered pension scheme results in the provision of the relevant benefits.

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- (3) But if the extent to which contributions paid by the employer under the registered pension scheme in respect of the employee are subject to relief has been restricted in accordance with regulations under section 196A, the employer's expenses of providing the relevant benefits are not prevented from being subject to relief to the extent that is just and reasonable.
- (4) The references in this section to expenses of an employer being subject to relief are to—
- (a) their being deductible in computing the amount of the profits of the employer for the purposes of Part 2 of ITTOIA 2005 [^{F11}or Part 3 of CTA 2009 (trading income)],
 - (b) their being expenses of management of the employer for the purposes of [^{F12}Chapter 2 of Part 16 of CTA 2009] (expenses of management: companies with investment business), or
 - (c) their being [^{F13}ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012],
- (depending on which is appropriate in relation to the employer).
- (5) In this section—
- “employer-financed retirement benefits scheme”, and
 “relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).]

Textual Amendments

- F10** S. 246A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 40, 64\(1\)](#)
- F11** Words in s. 246A(4)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 579\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F12** Words in s. 246A(4)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 579\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F13** Words in s. 246A(4)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 121](#)

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).

Commencement Information

- I3** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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.

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(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”.

Commencement Information

I4 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

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.

(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.

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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.
- (4) In subsection (3)(c) “relevant life policy” means—
- ^{F14}(a) an excepted group life policy as defined in section 480 of ITTOIA 2005,]
 - (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^{F15}—
 - (i) condition A in section 481 of that Act would be met if paragraph (a) in that condition referred to the death, in any circumstances or except in specified circumstances, of that individual (rather than the death in any circumstances of each of the individuals insured under the policy) and if the condition did not include paragraph (b), and
 - (ii) conditions C and D in that section and conditions A and C in section 482 of that Act 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).

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- (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 [F16subsubsection (2) of that section], 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”.
- (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

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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—

“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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Textual Amendments

F14 Words in s. 249(3) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 651\(2\)\(a\)](#), Sch. 2 para. 161 (with Sch. 2)

F15 Words in s. 249(3) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 651\(2\)\(b\)](#), Sch. 2 para. 161 (with Sch. 2)

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004,
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F16 Words in s. 249(8) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 651\(3\), Sch. 2 para. 161](#) (with Sch. 2)

Commencement Information

I5 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see [s. 284](#)

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2004, Cross Heading: Employer-financed retirement benefit schemes.