
STATUTORY INSTRUMENTS

1993 No. 3016

INCOME TAX

**The Retirement Benefits Schemes (Restriction
on Discretion to Approve) (Additional
Voluntary Contributions) Regulations 1993**

Made - - - - *3rd December 1993*
Laid before the House of
Commons - - - - *6th December 1993*
Coming into force - - *27th December 1993*

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(1), 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) Regulations 1993 and shall come into force on 27th December 1993.

Interpretation

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

“approved” in relation to a retirement benefits scheme, means approved by the Board for the purposes of Chapter I of Part XIV of the Taxes Act or before the Board in order for them to decide whether to give approval under section 591;

“benefit certificate” means the certificate referred to in regulation 5(3)(a);

“the Board” means the Commissioners of Inland Revenue;

“contributor”, in relation to a retirement benefits scheme, means a person who has at any time contributed to the scheme;

“death benefit scheme” means a retirement benefits scheme which provides benefit only on the employee’s death;

“freestanding additional voluntary contributions scheme” means a retirement benefits scheme—

(1) 1988 c. 1; section 591(6) was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (c. 39).

- (a) to which a relevant employer of an employee who contributes to the scheme is not a contributor, and
- (b) which provides benefits additional to those provided by an approved retirement benefits scheme to which a relevant employer is a contributor or by a relevant statutory scheme;

“leading scheme”, in relation to an employee, means–

- (a) where the employee has paid voluntary contributions to a main scheme or any other scheme established by a relevant employer of the employee or to which a relevant employer is a contributor, that main scheme, and
- (b) in all other cases, the freestanding additional voluntary contributions scheme from which the main scheme last received a notification in respect of the employee in accordance with regulation 4(2);

“main scheme”, in relation to an employee who is a contributor to a freestanding additional voluntary contributions scheme in respect of service with a relevant employer, means–

- (a) the retirement benefits scheme to which a relevant employer is a contributor and which provides benefits which are supplemented by those provided to the employee by the freestanding additional voluntary contributions scheme; or
- (b) where there is more than one such retirement benefits scheme, the scheme which provides benefits which are supplemented by those provided by the other schemes;

“notice” means notice in writing and “notify” shall be construed accordingly;

“relevant date” has the meaning given by regulation 5(5)(c);

“relevant employer”, in relation to an employee, means–

- (a) the current employer of that employee or, where he has more than one current employer, any of those current employers who are associated, and
- (b) any of two or more associated employers successively of that employee of whom one is that current employer, or one of those associated current employers, and
- (c) either of two employers successively of that employee, where one is that current employer, or one of those associated current employers, and one–
 - (i) has acquired the other, or
 - (ii) has taken over the whole or part of the business of the other, and
- (d) any of two or more employers successively of that employee, where one is that current employer, or one of those associated current employers, and the Board have agreed that service with each of the employers may be regarded as continuous pensionable service;

“section 591” means section 591 of the Taxes Act;

“simplified defined contribution scheme” means a retirement benefits scheme approved by the Board under section 591 by reference to limitations on–

- (a) the aggregate amount of contributions which may be paid by a member and his employer,
- (b) the maximum lump sum which may be provided under the scheme, and
- (c) the benefits payable on death which may be provided under the scheme;

“surplus funds” has the meaning given by regulation 6(2)(d);

“the Taxes Act” means the Income and Corporation Taxes Act 1988.

(2) In these Regulations–

- (a) references to an employee include references to a deceased employee of an employer and to a person who has been an employee of an employer;

- (b) references to an employer include references to a person who was an employer of a deceased employee and to a person who has been an employer of an employee;
 - (c) references to a current employer include references to a person who was an employer of a deceased employee at the time of his death;
 - (d) references to a relevant statutory scheme shall be construed in accordance with section 611A(2) of the Taxes Act as if they were references in Chapter I of Part XIV of that Act.
- (3) For the purposes 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.
- (4) In paragraph (3) 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 Taxes Act(3), shall be construed in accordance with section 416 of that Act(4), and
 - (b) in relation to any employer which is a body corporate other than one mentioned in subparagraph (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.

Introductory

3. These Regulations—

- (a) are made for the purposes of section 591;
- (b) restrict the Board's discretion to approve retirement benefits schemes which are not simplified defined contribution schemes or death benefit schemes by reference to the circumstances in which surplus funds arising from the payment of additional voluntary contributions may be repaid to employees;
- (c) specify the method to be used for calculating the amount of surplus funds.

Restrictions on discretion to approve — freestanding additional voluntary contributions schemes

4.—(1) The Board shall not exercise their discretion under section 591 to approve a retirement benefits scheme which is a freestanding additional voluntary contributions scheme unless the rules of the scheme provide that the administrator of the scheme shall comply with the requirements of this regulation and, where the scheme is the leading scheme in relation to an employee, with the requirements of regulation 6 so far as they concern freestanding additional voluntary contributions schemes.

(2) The administrator of the scheme shall—

- (a) when contributions are first paid to the scheme by an employee to whom benefits are accruing under the main scheme in relation to that employee, and
- (b) when contributions are first paid by an employee under the scheme following a change of employment as a result of which benefits are accruing to the employee under a different main scheme in relation to that employee, and

(2) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26).

(3) Section 414 was amended by section 104 of the Finance Act 1989.

(4) Section 416 was amended by Part V of Schedule 17 to the Finance Act 1989.

- (c) when the scheme receives a transfer value in respect of an employee from another freestanding additional voluntary contributions scheme and part of that transfer value represents contributions paid during the period that benefits were accruing under the main scheme in relation to the employee,

notify the administrator of that main scheme of the event in question and of the account number of the employee in the scheme within a period of 60 days following receipt by him of the relevant information.

(3) The administrator of the scheme shall keep a separate record of the funds held for the purposes of paying benefits by virtue of the employee's contributions during each period that benefits are accruing under a different main scheme.

(4) The administrator of the scheme shall not pay any benefit, nor make any repayment of surplus funds to an employee or his personal representative, unless he has received a benefit certificate in respect of that employee from the administrator of the main scheme or, where the scheme is not the leading scheme in relation to the employee, an authorisation from the administrator of that leading scheme.

(5) Any payment which is to be made by the administrator of the scheme to or for the benefit of an employee or his personal representative to which section 599A of the Taxes Act(5) applies—

- (a) shall be made as soon as possible following receipt of notice from the leading scheme in relation to the employee of the benefits which may be paid by the scheme;
- (b) shall be accompanied by a certificate signed by the administrator making the payment showing the amount which, after deduction of income tax at the basic rate for the year of assessment in which the repayment is made, would equal the amount paid to the employee or his personal representative, being the amount which the employee or the personal representative will be required to include in the return of his or the employee's income for that year of assessment.

(6) Where a transfer of accumulated funds is made to another freestanding additional voluntary contributions scheme the administrator of the scheme shall notify the administrator of the main scheme of the date of the transfer within the period of 60 days following that date.

(7) As soon as possible after—

- (a) any change in the name or address of the administrator of the scheme, or
- (b) the appointment of a new administrator of the scheme,

the administrator of the scheme shall notify his name and address to the administrator of the main scheme.

Restriction on discretion to approve — other schemes

5.—(1) The Board shall not exercise their discretion under section 591 to approve a retirement benefits scheme, which is not a freestanding additional voluntary contributions scheme, unless the rules of the scheme provide that the administrator of the scheme shall comply with the requirements of this regulation and, where the scheme is the leading scheme in relation to an employee, with the requirements of regulation 6 so far as they concern main schemes.

(2) The administrator of the scheme shall keep for the period of six years following the year of assessment in which the relevant date occurred a record of—

- (a) any information notified to him by the administrator of a freestanding additional voluntary contributions scheme providing benefits to an employee which are additional to those provided by the scheme as to—

(5) Section 599A was inserted by paragraph 12 of Schedule 6 to the Finance Act 1989 and amended by section 19(2) of the Finance (No. 2) Act 1992 (c. 48).

- (i) the name of that scheme and the name and address of the administrator of that scheme, and
 - (ii) the account number of the employee in that scheme; and
 - (b) any information notified to him by the administrator of the leading scheme in relation to an employee as to the kinds and the amounts of benefits that have been secured under every freestanding additional voluntary contributions scheme which provides benefits to the employee which are additional to those provided by the scheme.
- (3) Where the scheme is the main scheme in relation to an employee, but is not the leading scheme in relation to that employee, the administrator of the scheme shall—
- (a) within the period of 30 days following receipt by him of information that the relevant date has passed, provide the administrator of the leading scheme with a certificate showing the information specified in paragraph (4); and
 - (b) at the same time notify the administrator of any other approved freestanding additional voluntary contributions scheme providing benefits which are additional to those provided by the scheme that a benefit certificate has been provided to the administrator of the leading scheme in relation to the employee.
- (4) The information specified in this paragraph is—
- (a) the amount of pension and pension equivalent which is payable to the employee, or which will be so payable in the first year for which the pension is payable (on the assumptions that the employee survives to the end of that year and that pension equivalent is, or will be, payable as such) under every scheme established by a relevant employer of the employee or to which a relevant employer is a contributor;
 - (b) the amount of pension which is or will be payable to the widow or widower of the employee in the first year following the death of the employee under every scheme established by a relevant employer of the employee or to which a relevant employer is a contributor;
 - (c) the percentage by which the amounts of pension referred to in sub-paragraphs (a) and (b) may be increased annually under the rules of the scheme or, where the rules of the schemes do not provide for increases by a specific percentage each year, the average of the percentages by which pensions payable under the schemes referred to in those sub-paragraphs have been increased in each of the three years preceding the relevant date;
 - (d) the maximum amount of pension and pension equivalent which can be paid to the employee in the circumstances described in sub-paragraph (a);
 - (e) the maximum amount of pension which can be paid to the widow or widower of the employee in the circumstances described in sub-paragraph (b);
 - (f) in relation to the maximum amount referred to in sub-paragraph (d), the details of the calculation of that amount and, in particular, whether in calculating that amount he has taken final remuneration to be—
 - (i) the amount of annual remuneration on which the scheme benefits are calculated, or
 - (ii) the highest amount of annual remuneration on which, under the rules of the scheme, benefits could be calculated, or
 - (iii) the average of the total amounts of emoluments paid by a relevant employer to the employee during each of the last three years of assessment from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1973⁽⁶⁾ or the Income Tax (Employments) Regulations 1993⁽⁷⁾, disregarding in calculating those total amounts in relation to an employee to whom section 590C of the Taxes

(6) S.I. 1973/334.

(7) S.I. 1993/744.

- Act(8) applies any excess over the permitted maximum for the year in question which is found for the purposes of that section;
- (g) where the relevant date is the date of the employee’s death, instead of the amount referred to in sub-paragraph (a) and the maximum amount referred to in sub-paragraph (d), the amount of any benefit consisting of a lump sum payable in that event and the maximum amount of that benefit.
- (5) In this regulation–
- (a) “pension” means any amount payable by way of a pension or an annuity before any option is exercised to commute any part of that pension or annuity into a lump sum, or to allocate any such part to another person;
- (b) “pension equivalent” means the additional amount that would be payable as an annuity if every twelve pounds payable by way of a lump sum under the rules of the scheme (otherwise than by commutation) were payable as an additional annuity of one pound (any amount left over being treated as an annuity of one pound);
- (c) “the relevant date” means the date on which–
- (i) benefits cease to accrue to the employee under an approved retirement benefits scheme to which a relevant employer of the employee is a contributor, otherwise than by reason of his unpaid absence, and are not continuing to accrue to him under any other scheme to which a relevant employer is a contributor, or
- (ii) benefits become payable to the employee under an approved retirement benefits scheme to which a relevant employer of the employee is a contributor, or
- (iii) the employee dies,
- whichever occurs first;
- (d) “scheme” in sub-paragraphs (a) and (b) of paragraph (4) means–
- (i) an approved retirement benefits scheme; or
- (ii) a relevant statutory scheme.
- (6) The administrator of the scheme shall–
- (a) notify the administrator of the leading scheme in relation to an employee of any information notified to him as to–
- (i) the name of any other approved freestanding additional voluntary contributions scheme providing benefits additional to those provided by the scheme and the name and address of the administrator of the scheme, and
- (ii) the account number of the employee in that scheme; and
- (b) notify the administrator of every approved freestanding additional voluntary contributions scheme providing benefits additional to those provided by the scheme of any change in his name or address.
- (7) As soon as possible following his appointment, any new administrator of the scheme shall notify his name and address to the administrator of every approved freestanding additional voluntary contributions scheme providing benefits additional to those provided by the scheme.

Calculation of surplus funds

6.—(1) As soon as possible following receipt of the benefit certificate or, where the leading scheme is the main scheme in relation to the employee, as soon as possible after the relevant date referred to in regulation 5(3), the administrator of the leading scheme in relation to the employee

(“the leading administrator”) shall calculate, in relation to each kind of benefit to be provided by every approved freestanding additional voluntary contributions scheme which, in return for contributions paid while the employee was a member of the main scheme, provides benefits which are additional to those provided by the main scheme, the amount (if any) of any over-provision in relation to that kind of benefit at that relevant date.

(2) Where that calculation shows that there is an over-provision in relation to that kind of benefit, the leading administrator shall notify the employee or his personal representative that he may elect within the period of three months following the date of the notification to use the over-provision—

- (a) to have a benefit provided of a kind not already provided by the scheme, or
- (b) in the case of a benefit consisting of a pension, to have the pension increased annually by reference to increases not exceeding the increases in the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer or at a rate not exceeding the rate of three per cent. with yearly rests, or
- (c) to have the benefit increased by taking final remuneration to be another of the amounts referred to in regulation 5(4)(f), or
- (d) to have the amount of the accumulated funds of the scheme which, in the opinion of the leading administrator, are not required to secure payment of that kind of benefit (in this regulation referred to as “surplus funds”) repaid to him, or
- (e) to have any combination of those courses followed.

(3) If, at the end of the period of three months referred to in paragraph (2), the employee or his personal representative has not notified the leading administrator that he has elected to use the over-provision in one of the ways described in sub-paragraphs (a) to (e) of that paragraph, the leading administrator shall assume that he has elected to use it in the way described in sub-paragraph (d) of that paragraph.

(4) As soon as possible after notification to him of any election to use the over-provision in one of the ways described in sub-paragraphs (a) to (e) of paragraph (2), or after the expiry of the period of three months referred to in that paragraph, the leading administrator shall notify the administrator of each freestanding additional voluntary contributions scheme referred to in paragraph (1) of the amount of that kind of benefit which is to be provided under that scheme and that any surplus funds are to be repaid to the employee or his personal representative.

(5) Where the leading scheme in relation to the employee is a freestanding additional voluntary contributions scheme, the leading administrator shall notify the administrator of the main scheme of the total amount of each kind of benefit which is to be provided under every freestanding additional voluntary contributions scheme to which the employee has contributed in respect of an employment with a relevant employer.

(6) For the purposes of this regulation there is an over-provision in relation to a kind of benefit where—

- (a) in the case of a benefit consisting of a pension where a lump sum is not also payable otherwise than by commutation, the amount of pension which is payable to the employee or will be so payable in the first year for which it is payable (on the assumption that the employee survives to the end of that year) under—
 - (i) every scheme established by a relevant employer of the employee or to which a relevant employer is a contributor, and
 - (ii) every approved freestanding additional voluntary contributions scheme to which the employee has contributed in respect of an employment with a relevant employer, exceeds the amount certified under regulation 5(3), or calculated by the leading administrator, to be the maximum amount of pension which can be paid in that year under the main scheme in relation to that employee;

- (b) in the case of a benefit consisting of a pension and a lump sum which is payable otherwise than by commutation, the amount of pension and pension equivalent which is payable to the employee, or will be so payable in the first year for which the pension is payable (on the assumptions that the employee survives to the end of that year and that pension equivalent is, or will be, payable as such) under every scheme referred to in paragraphs (i) and (ii) of sub-paragraph (a) exceeds the amount certified under regulation 5(3), or calculated by the leading administrator, to be the maximum amount of pension and pension equivalent which can be paid under the main scheme in relation to the employee;
 - (c) in the case of a benefit consisting of a pension which is, or will be, payable to the widow or widower of the employee, the amount of pension which is or will be payable in the first year following the death of the employee under every scheme referred to in paragraphs (i) and (ii) of sub-paragraph (a) exceeds the amount which can be certified under regulation 5(4)(e) as the maximum amount of pension which can be paid to the widow or widower of that employee;
 - (d) in the case of a benefit consisting of a lump sum payable on the death of the employee, the amount payable under every scheme referred to in paragraphs (i) and (ii) of sub-paragraph (a) exceeds the amount which can be certified under regulation 5(4)(g) as the maximum amount which can be paid.
- (7) In paragraph (6), “pension” and “pension equivalent” have the meanings given by regulation 5(5)(a) and (b) respectively and in sub-paragraph (a)(i) of that paragraph “scheme” has the meaning given by regulation 5(5)(d).

*S. C. T. Matheson
C. W. Corlett*

3rd December 1993

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 591(6) of the Income and Corporation Taxes Act 1988 (“section 591(6)”) provides that regulations made by the Commissioners of Inland Revenue (“the Board”) for the purposes of that section may restrict the Board’s discretion to approve a retirement benefits scheme by reference to the benefits provided by the scheme, the investments held for the purposes of the scheme, the manner in which the scheme is administered or any other circumstances whatsoever.

These Regulations, which come into force on 27th December 1993, 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. By virtue of paragraph 33(4) of Schedule 6 to the Finance Act 1989, the method of calculation of surplus funds provided by the Regulations also applies for the purpose of calculating surplus funds of retirement benefits schemes approved by the Board before 27th July 1989.

Regulation 1 provides for citation and commencement.

Regulation 2 contains definitions and provides for determining whether an employer is associated with another employer.

Regulation 3 is introductory.

Regulation 4 restricts the Board’s discretion in relation to retirement benefits 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.

Regulation 5 restricts the Board’s discretion to approve schemes which are not freestanding additional voluntary contributions schemes where the rules of the scheme do not require the administrator of the scheme to comply with the requirements of the regulation and, so far as they concern main schemes, of regulation 6.

Regulation 6 provides for the calculation of surplus funds.

Other regulations made under section 591(6) are contained in the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 (S.I.1991/1614).