
STATUTORY INSTRUMENTS

1996 No. 3113

INCOME TAX

The Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) (Amendment) Regulations 1996

Made - - - - *9th December 1996*
Laid before the House of
Commons - - - - *11th December 1996*
Coming into force - - *1st January 1997*

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(1), 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) (Amendment) Regulations 1996 and shall come into force on 1st January 1997.

Interpretation

2. In these Regulations “the principal Regulations” means the Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990(2) and, except where the context otherwise requires, “regulation” means a regulation of the principal Regulations.

Amendments to the principal Regulations

3. In regulation 2(1) after the definition of “the Schedule” there shall be added the following definition—

““the Taxes Act” means the Income and Corporation Taxes Act 1988(3).”

4. For the words “Income and Corporation Taxes Act 1988”, in each place where they occur in the principal Regulations other than in the definition of “the Taxes Act” in regulation 2(1) (inserted by regulation 3 of these Regulations), there shall be substituted the words “Taxes Act”.

(1) 1989 c. 26.

(2) S.I. 1990/586, to which there are amendments not relevant to these Regulations.

(3) 1988 c. 1.

5. After regulation 5 there shall be added the following regulation—

“Mis-sold pension contracts - further disapplication of paragraphs 5(4) and 6(5) of the Schedule

6.—(1) In relation to any exempt approved scheme or 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 prescribed in paragraph (2) below.

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

(a) the employee or the person concerned either—

- (i) was eligible, or reasonably likely to become eligible, to be a member of the scheme before 1st June 1989 but, in the circumstances specified in paragraph (3) below, did not become a member, or
- (ii) became a member of the scheme before that date but, in the circumstances specified in paragraph (4) below, ceased to be a member; and

(b) by way of compensation for loss suffered, or reasonably likely to be suffered, by that employee or that person as a result of the circumstances specified in paragraph (3) or (4) below—

- (i) the employee became or, as the case may be, was reinstated as, a member of the exempt approved scheme, or became a member of another exempt approved scheme established by the same employer or by an employer who was a relevant employer in relation to that employer, or
- (ii) the person became or, as the case may be, was reinstated as, a member of the relevant statutory scheme (“the original scheme”), or became a member of another relevant statutory scheme by virtue of the same office or employment, or of another relevant statutory scheme having the same rules as the original scheme or, where the other relevant statutory scheme is a scheme established in another part of the United Kingdom, corresponding to the original scheme, and
- (iii) a capital sum was paid (whether or not to the trustees of the exempt approved scheme or relevant statutory scheme concerned) in respect of that employee or that person.

(3) The circumstances specified in this paragraph are where, acting in reliance on bad investment advice at least some of which was given during the period beginning with 29th April 1988 and ending with 31st May 1989, the employee or the person became a member of a personal pension scheme or entered into a retirement annuity contract.

(4) The circumstances specified in this paragraph are where, acting in reliance on bad investment advice at least some of which was given during the period beginning with 29th April 1988 and ending with 30th June 1994, the employee or the person—

- (a) ceased to be a member of, or to pay contributions to, the scheme and instead became a member of a personal pension scheme or entered into a retirement annuity contract;
- (b) ceased to be a member of the scheme as a result of the transfer of accrued rights of his under the scheme to a personal pension scheme; or

- (c) ceased to be a member of the scheme and instead (by virtue of such a provision as is mentioned in section 591(2)(g) of the Taxes Act⁽⁴⁾) entered into arrangements for securing relevant benefits by means of an annuity contract.

(5) In this regulation—

“bad investment advice” means investment advice in respect of which an action against the person who gave it has been, or may be, brought—

- (a) in or for negligence;
- (b) for breach of contract;
- (c) by reason of a breach of a fiduciary obligation; or
- (d) by reason of a contravention which is actionable under section 62 of the Financial Services Act 1986⁽⁵⁾;

“investment advice” means advice such as is mentioned in paragraph 15 of Schedule 1 to the Financial Services Act 1986;

“personal pension scheme” has the meaning given by section 630(1)⁽⁶⁾ of the Taxes Act;

“relevant benefits” has the meaning given by section 612(1) of the Taxes Act;

“retirement annuity contract” means a contract made before 1st July 1988 and approved by the Board under or by virtue of any provision of Chapter III of Part XIV of the Taxes Act;

“trustees”, in relation to a scheme which is not set up or established under a trust, means the administrator of the scheme within the meaning given by section 611AA⁽⁷⁾ of the Taxes Act in so far as it applies to a non-trust scheme.”

*S C T Matheson
G H Bush*

9th December 1996

Two of the Commissioners of Inland Revenue

⁽⁴⁾ Section 591(2)(g) was amended by section 107(2) of, and Part V(12) of Schedule 26 to, the Finance Act 1994 (c. 9).

⁽⁵⁾ 1986 c. 60.

⁽⁶⁾ Section 630 was renumbered as subsection (1) of that section by paragraph 2(2) of Schedule 11 to the Finance Act 1995 (c. 4) which also amended the definition of “personal pension scheme” in that section.

⁽⁷⁾ Section 611AA was inserted by section 103(1) of the Finance Act 1994.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990 (S.I.1990/586) (“the principal Regulations”).

The principal Regulations provide for the disapplication of the earnings cap when calculating tax relief on contributions to exempt approved retirement benefits schemes and relevant statutory schemes in the circumstances specified in those Regulations.

These Regulations, in addition to amendments of a drafting nature (regulations 3 and 4), prescribe in regulation 5 additional circumstances in which the earnings cap is disapplied, namely where, as a result of bad investment advice, a person fails to become, or ceases to be, a member of an exempt approved retirement benefits scheme or a relevant statutory scheme and instead becomes a member of a personal pension scheme or enters into a retirement annuity contract, and subsequently as part of compensation for loss suffered becomes, or is reinstated as, a member of an exempt approved retirement benefits scheme or a relevant statutory scheme.