



Finance Act 1995

1995 CHAPTER 4

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Pensions

58 Personal pensions: income withdrawals.

Schedule 11 to this Act has effect for the purpose of enabling income withdrawals to be made under a personal pension scheme where the purchase of an annuity is deferred.

59 Pensions: meaning of insurance company etc.

- (1) Part XIV of the Taxes Act 1988 (pension schemes etc.) shall be amended as follows.
- (2) In section 591 (discretionary approval of retirement benefits schemes) the following subsection shall be substituted for subsection (3)—
 - “(3) In subsection (2)(g) above “insurance company” has the meaning given by section 659B.”
- (3) In section 599 (charge to tax: commutation of entire pension in special circumstances) the following subsection shall be substituted for subsection (8)—
 - “(8) In subsection (7) above “insurance company” has the meaning given by section 659B.”
- (4) In section 630 (personal pension schemes: interpretation) the following definition shall be substituted for the definition of “authorised insurance company”—
 - ““authorised insurance company” has the meaning given by section 659B.”
- (5) The following sections shall be inserted after section 659A—

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“659B Definition of insurance company.

- (1) In sections 591(2)(g) and 599(7) “insurance company” means one of the following—
 - (a) a person authorised under section 3 or 4 of the^{M1} Insurance Companies Act 1982 (or any similar previous enactment) to carry on long term business;
 - (b) a friendly society carrying on long term business;
 - (c) an EC company falling within subsection (3) below.
- (2) In Chapter IV of this Part “authorised insurance company” means a company that is an insurance company within the meaning given by subsection (1) above.
- (3) An EC company falls within this subsection if it—
 - (a) lawfully carries on long term business, or lawfully provides long term insurance, in the United Kingdom, and
 - (b) fulfils the requirement under subsection (5) below or that under subsection (6) below or that under subsection (7) below.
- (4) For the purposes of subsection (3) above an EC company—
 - (a) lawfully carries on long term business in the United Kingdom if it does so through a branch in respect of which such of the requirements of Part I of Schedule 2F to the^{M2} Insurance Companies Act 1982 as are applicable have been complied with;
 - (b) lawfully provides long term insurance in the United Kingdom if such of those requirements as are applicable have been complied with in respect of the insurance.
- (5) The requirement under this subsection is that—
 - (a) a person who falls within subsection (8) below is for the time being appointed by the company to be responsible for securing the discharge of the duties mentioned in subsection (9) below, and
 - (b) his identity and the fact of his appointment have been notified to the Board by the company.
- (6) The requirement under this subsection is that there are for the time being other arrangements with the Board for a person other than the company to secure the discharge of those duties.
- (7) The requirement under this subsection is that there are for the time being other arrangements with the Board designed to secure the discharge of those duties.
- (8) A person falls within this subsection if—
 - (a) he is not an individual and has a business establishment in the United Kingdom, or
 - (b) he is an individual and is resident in the United Kingdom.
- (9) The duties are the following duties that fall to be discharged by the company—
 - (a) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 597(3);
 - (b) any duty to pay tax charged under section 599(3) and (7);

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- (c) any duty imposed by regulations made under section 605;
 - (d) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 648A(1).
- (10) For the purposes of this section—
- (a) references to an EC company shall be construed in accordance with section 2(6) of the ^{M3}Insurance Companies Act 1982;
 - (b) references to long term business shall be construed in accordance with section 1(1) of that Act;
 - (c) references to the provision of long term insurance in the United Kingdom shall be construed in accordance with section 96A(3A) of that Act;
 - (d) a friendly society is a friendly society within the meaning of the ^{M4}Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act).

659C Effect of appointment or arrangements under section 659B.

- (1) This section shall have effect where—
- (a) in accordance with section 659B(5) a person is for the time being appointed to be responsible for securing the discharge of duties, or
 - (b) in accordance with section 659B(6) there are for the time being arrangements for a person to secure the discharge of duties.
- (2) In such a case the person concerned—
- (a) shall be entitled to act on the company’s behalf for any of the purposes of the provisions relating to the duties;
 - (b) shall secure (where appropriate by acting on the company’s behalf) the company’s compliance with and discharge of the duties;
 - (c) shall be personally liable in respect of any failure of the company to comply with or discharge any such duty as if the duties imposed on the company were imposed jointly and severally on the company and the person concerned.”

Marginal Citations

- M1** 1982 c. 50.
- M2** 1982 c. 50.
- M3** 1982 c. 50.
- M4** 1992 c. 40.

60 Application of section 59.

- (1) Section 59(2) above and the new section 659B, so far as relating to section 591(2)(g), shall apply in relation to a scheme not approved by virtue of section 591 before the day on which this Act is passed.
- (2) Section 59(3) above and the new section 659B, so far as relating to section 599(7), shall apply where tax is charged under section 599 on or after the day on which this Act is passed.

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- (3) Section 59(4) above and the new section 659B, so far as relating to Chapter IV of Part XIV, shall apply in relation to a scheme not approved under that Chapter before the day on which this Act is passed.
- (4) Subsection (5) below applies where—
- (a) a scheme is approved under Chapter IV of Part XIV before the day on which this Act is passed,
 - (b) on or after that day the person who established the scheme proposes to amend it, and
 - (c) the scheme as proposed to be amended would make provision such that, if the scheme had not been approved before that day, section 59(4) above and the new section 659B (so far as relating to that Chapter) would allow the Board to approve it.
- (5) The Board may at their discretion approve the amendment notwithstanding anything in Chapter IV of Part XIV, and if the amendment is made—
- (a) section 59(4) above and the new section 659B, so far as relating to that Chapter, shall apply in relation to the scheme, and
 - (b) any question as to the validity of the Board's approval of the scheme shall be determined accordingly.

61 Cessation of approval of certain retirement benefits schemes.

- (1) After section 591B of the Taxes Act 1988 there shall be inserted—

“591C Cessation of approval: tax on certain schemes.

- (1) Where an approval of a scheme to which this section applies ceases to have effect, tax shall be charged in accordance with this section.
- (2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme (taking that value as it stands immediately before that date).
- (3) Subject to section 591D(4), the person liable for the tax shall be the administrator of the scheme in his capacity as such.
- (4) This section applies to a retirement benefits scheme in respect of which either of the conditions set out below is satisfied.
- (5) The first condition is satisfied in respect of a scheme if, immediately before the date of the cessation of the approval of the scheme, the number of individuals who are members of the scheme is less than twelve.
- (6) The second condition is satisfied in respect of a scheme if at any time within the period of one year ending with the date of the cessation of the approval of the scheme, a person who is or has been a controlling director of a company which has contributed to the scheme is a member of the scheme.
- (7) For the purposes of subsection (6) above a person is a controlling director of a company if he is a director of it and within section 417(5)(b) in relation to it.

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591D Section 591C: supplementary.

- (1) For the purposes of section 591C(2) the value of an asset is, subject to subsection (2) below, its market value, construing “market value” in accordance with section 272 of the 1992 Act.
- (2) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (3) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.
- (3) The persons are—
 - (a) any employer who has at any time contributed to the scheme;
 - (b) any company connected with such an employer;
 - (c) any member of the scheme;
 - (d) any person connected with any member of the scheme.
- (4) Where the administrator of the scheme is constituted by persons who include a person who is an approved independent trustee in relation to a scheme, that person shall not be liable for tax chargeable by virtue of section 591C.
- (5) A person is an approved independent trustee in relation to a scheme only if he is—
 - (a) approved by the Board to act as a trustee of the scheme; and
 - (b) not connected with—
 - (i) a member of the scheme;
 - (ii) any other trustee of the scheme; or
 - (iii) an employer who has contributed to the scheme.
- (6) For the purposes of section 596A(9) income and gains accruing to a scheme shall not be regarded as brought into charge to tax merely because tax is charged in relation to the scheme in accordance with section 591C.
- (7) The reference in section 591C(1) to an approval of a scheme ceasing to have effect is a reference to—
 - (a) the scheme ceasing to be an approved scheme by virtue of section 591A(2);
 - (b) the approval of the scheme being withdrawn under section 591B(1); or
 - (c) the approval of the scheme no longer applying by virtue of section 591B(2);and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly.
- (8) For the purposes of section 591C and this section a person is a member of a scheme at a particular time if at that time a benefit—
 - (a) is being provided under the scheme, or
 - (b) may be so provided,in respect of any past or present employment of his.
- (9) Section 839 shall apply for the purposes of this section.”

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- (2) After section 239 of the ^{M5}Taxation of Chargeable Gains Act 1992 there shall be inserted—

“ Retirement benefits schemes

239A Cessation of approval of certain schemes.

- (1) This section applies where tax is charged in accordance with section 591C of the Taxes Act (tax on certain retirement benefits schemes whose approval ceases to have effect).
- (2) For the purposes of this Act the assets which at the relevant time are held for the purposes of the scheme—
- (a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 591C(2) of the Taxes Act by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at that time; but
 - (b) shall not be deemed to be disposed of by any person at that time;
- and in this subsection “the relevant time” means the time immediately before the date of the cessation of the approval of the scheme.
- (3) Expressions used in subsection (2) above and in section 591C of the Taxes Act have the same meanings in that subsection as in that section.”
- (3) This section shall apply in relation to any approval of a retirement benefits scheme which ceases to have effect on or after 2nd November 1994 other than an approval ceasing to have effect by virtue of a notice given before that day under section 591B(1) of the Taxes Act 1988.

Marginal Citations

M5 1992 c. 12.

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