
STATUTORY INSTRUMENTS

2016 No. 1036

INCOME TAX

The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) (Amendment) Regulations 2016

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| <i>Made</i> | - - - - | <i>31st October 2016</i> |
| <i>Laid before the House of Commons</i> | - - - - | <i>1st November 2016</i> |
| <i>Coming into force</i> | - - | <i>1st December 2016</i> |

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 393B(3)(d) and (4A) of the Income Tax (Earnings and Pensions) Act 2003(1).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) (Amendment) Regulations 2016 and come into force on 1st December 2016.

(2) The amendments in regulations 3 and 4 have effect for the tax year 2016-17 and subsequent tax years.

Amendment of the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007

2. The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007(2) are amended as follows.

3. After regulation 3(2)(cd)(3) insert—

“(ce) in the case of the benefits described in paragraph 22 (trivial benefits) of the Schedule—

(i) the employee(4), and

(1) 2003 c. 1; section 393B was inserted by section 249 of the Finance Act 2004 (c. 12). Section 393B(3) was amended by paragraphs 101 and 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 393B(4A) was inserted by paragraph 21 of Schedule 20 to the Finance Act 2007 (c. 11).

(2) S.I. 2007/3537, amended by S.I. 2011/2281; there are other amending instruments but none is relevant.

(3) Regulations 3(2)(ca) to (cd) were inserted by S.I. 2011/2281.

(4) Regulation 2 of S.I. 2007/3537 provides that a reference to an employee includes a former employee.

(ii) a member of the employee’s family or household⁽⁵⁾.”.

4. After paragraph 21 of the Schedule⁽⁶⁾ insert—

“Trivial benefits

22.—(1) The provision of a benefit which would have been exempted by virtue of sections 323A and 323B of ITEPA 2003⁽⁷⁾ (exemption from income tax for trivial benefits provided by employers) if it had been provided in the course of the employee’s employment.

(2) For the purposes of sub-paragraph (1)—

(a) section 323A(2) of ITEPA 2003 (close company restriction) applies where—

(i) the former employer is a close company⁽⁸⁾ when the benefit is provided, and

(ii) the former employee is—

(aa) a person who was a director or other office-holder at any time when the former employer was a close company, or

(bb) a member of the family or household of such a person, and

(b) a benefit provided to a member of the family or household of the former employee is included in the calculation of the amount allocated under section 323B(4) of ITEPA 2003 (amount allocated in respect of a benefit).”.

Jim Harra

Jennie Granger

Two of the Commissioners for Her Majesty’s
Revenue and Customs

31st October 2016

(5) Family or household is defined in section 721(5) of the Income Tax (Earnings and Pensions) Act 2003.

(6) Paragraphs 18 to 21 of the Schedule were inserted by [S.I. 2011/2281](#).

(7) Sections 323A to 323C were inserted by section 13 of the Finance Act 2016 ([c. 24](#)).

(8) Section 989 of the Income Tax Act 2007 ([c. 3](#)) defines a “close company” for the purposes of the Income Tax Acts.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 (S.I. 2007/3537) (“the 2007 Regulations”), which exempt specified benefits under an employer-financed retirement benefits scheme from the charge to tax under section 394 of the Income Tax (Earnings and Pensions) Act 2003 Act (c. 1) (“ITEPA 2003”).

These Regulations amend the 2007 Regulations to exempt the provision of trivial benefits to or in respect of a former employee that would have been exempted under sections 323A and 323B of ITEPA 2003 had they been provided to or in respect of a current employee.

Regulation 1 provides that the amendments made by this instrument have effect for the tax year 2016-17 and subsequent tax years. Power to make legislation with retrospective effect is contained in section 393B(4A) of ITEPA 2003 which allows Regulations made under section 393B(3)(d) to include provision having effect in relation to times before they are made.

The 2007 Regulations exempt benefits provided to a qualifying person. Regulation 3 inserts a new regulation 3(2)(ce) into the 2007 Regulations. This provides that for the purposes of the new paragraph 22 inserted by regulation 4 of these Regulations, an employee or former employee and members of the employee’s or former employee’s family or household are qualifying persons.

Regulation 4 inserts a new paragraph 22 into Part 3 of the Schedule to the 2007 Regulations to include an exemption for the provision of trivial benefits to or in respect of a former employee that would have been exempted had they been provided to or in respect of a current employee.

A Tax Information and Impact Note covering this instrument was published on 9th December 2015 alongside the draft Finance Bill 2016 Measure to insert sections 323A to 323C into ITEPA 2003 and is available on the website at <https://www.gov.uk/government/publications/income-tax-exemption-for-trivial-benefits-in-kind>. It remains an accurate summary of the impacts that apply to this instrument.