



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART IX

#### PENSION SCHEMES, LIFE ANNUITIES ETC

### CHAPTER II

#### PENSION RIGHTS OF DIRECTORS AND EMPLOYEES

#### **220 Taxation of provision for retirement benefits etc. for directors and employees of bodies corporate**

- (1) Subject to section 221 below, where, pursuant to a scheme for the provision of future retirement or other benefits for persons consisting of or including directors or employees of a body corporate (in this Chapter referred to as "a retirement benefits scheme"), the (body corporate in any year of assessment pays a sum with a view to the provision of any such benefits for any director or employee thereof, then (whether or not the accrual of the benefits is dependent on any contingency)—
- (a) the sum paid, if not otherwise chargeable to income tax as income of the director or employee, shall be deemed for all the purposes of the Income Tax Acts to be income of that director or employee for that year of assessment and assessable to tax under Schedule E, and
  - (b) where the payment is made under such an insurance or contract as is mentioned in section 19 or 20 of this Act (relief for life insurance premiums and certain other payments) relief, if not otherwise allowable, shall be given to him under the said section 19 or 20, as the case may be, in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance or contract under which the payment is made had been made with him.
- (2) Subject to section 221 below, where—
- (a) an agreement is in force between a body corporate and a director or employee of that body for the provision for the director or employee of any future

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retirement or other benefits afforded by a retirement benefits scheme, or a person is serving as a director or employee of a body corporate in connection with which there is a retirement benefits scheme relating to persons of the class within which he falls under which any such benefits will be provided for him, and

- (b) the body corporate does not, or does not fully, secure the provision of the benefits by the payment of such sums as are mentioned in subsection (1) above, and
- (c) the circumstances in which the benefits are to accrue are not such as will render the benefits assessable to income tax under Schedule E as emoluments of his office as a director or of his employment,

then (whether or not the accrual of the benefits is dependent on any contingency), in each year of assessment in which the agreement is in force or the director or employee is serving as aforesaid, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual thereof, a sum equal to the annual sum which the body corporate would have had to pay in that year under a contract with a third person which secured the provision by that third person of those benefits or, as the case may be, of those benefits so far as not already secured by the payment of such sums as are mentioned in subsection (1) above, shall be deemed for all the purposes of the Income Tax Acts to be income of the director or employee for that year and assessable to income tax under Schedule E.

- (3) Where the body corporate pays any sum as mentioned in subsection (1) above in relation to several directors or employees, the sum so paid shall, for the purpose of that subsection, be apportioned among them by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

## **221 Exemptions from charge to tax under s. 220**

- (1) The following payments shall be exempted from the operation of section 220(1) above—
  - (a) payments made pursuant to a statutory superannuation scheme, or made to a superannuation fund approved (whether in whole or in part) by the Board for the purposes of section 208 above,
  - (b) payments made pursuant to an excepted provident fund or staff assurance scheme or other similar scheme (as defined in section 224 below), and
  - (c) payments made by way of premium pursuant to a scheme the benefits whereunder are secured by premiums payable by the body corporate, with or without contributions by the directors or employees affected, under life or endowment assurance or life annuity contracts, being a scheme which was in operation before 6th April 1947, and which is not confined, or substantially confined, to directors and persons who, not being directors, are remunerated at a rate exceeding £2,000 a year, or to directors or to such persons.
- (2) Neither subsection (1) nor subsection (2) of section 220 above shall apply so as to cause any sum to be deemed to be income as therein mentioned where the retirement benefits scheme in question is one under which the main benefit afforded to each of the persons to whom the scheme relates is the provision for him of a pension or annuity for his life, and either—
  - (a) that scheme was in operation before 6th April 1944, or

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- (b) that scheme is for the time being approved by the Board under section 222 below.
- (3) Where, in respect of the provision for a director or employee of any future retirement or other benefits, a sum has been deemed to be income of his by virtue either of subsection (1) or of subsection (2) of section 220 above, and subsequently the director or employee proves to the satisfaction of the Board that no payment in respect of, or in substitution for, the benefits has been made and that some event has occurred by reason of which no such payment will be made, and makes application for relief under this subsection within three years from the time when that event occurred, the Board shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate; and if the director or employee satisfies the Board as aforesaid in relation to some particular part of the benefits but not the whole thereof, they may give such relief as may seem to them just and reasonable.
- (4) Where, apart from this subsection, any sum would be deemed, by virtue either of subsection (1) or of subsection (2) of section 220 above, to be income of an employee for any year of assessment, but, by reason of his exercising his employment outside the United Kingdom, he is not assessable to tax under Case I or II of Schedule E in respect of the emoluments of his employment for that year, that subsection shall not apply so as to cause that sum to be deemed to be income of his for that year.

## **222 Approval of retirement benefits schemes**

- (1) Subject to section 223 below, the Board shall approve a retirement benefits scheme for the purpose of subsection (2) of section 221 above unless it appears to them that the scheme does not fall within the said subsection (2) by reason of the fact that the main benefit afforded thereby is not such as is therein mentioned, or that, although the main benefit is such as aforesaid, the scheme fails to satisfy some one or more of the following conditions, that is to say—
- (a) that that benefit will accrue only on retirement at a specified age or on earlier retirement through incapacity or on death,
  - (b) that the nature of the benefits afforded by the scheme is the same in relation to all the persons to whom the scheme relates,
  - (c) that the proportion between the value of the pensions or annuities provided for by the scheme, in so far as they are not commutable, and the value of all other benefits afforded thereby, including the value of so much, if any, of the said pensions or annuities as is commutable, is reasonably comparable to the proportion between the values of such benefits respectively as are usually afforded by statutory superannuation schemes,
  - (d) that the aggregate value of the benefits, of whatever nature, afforded by the scheme is reasonably comparable to the aggregate value of the benefits usually afforded by statutory superannuation schemes in like circumstances,
  - (e) that the pensions or annuities provided for by the scheme are not assignable, either in whole or in part, and
  - (f) that no service of a person, in whatever capacity, rendered by him while he is a controlling director of the body corporate is taken into account for any of the purposes of the scheme:

Provided that the Board may, if they think fit, having regard to the facts of the particular case, approve a scheme, the main benefit afforded whereby is such as is mentioned in

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subsection (2) of section 221 above notwithstanding that it may not, in one or more respects, satisfy the whole of the aforesaid conditions.

- (2) Where the Board have given their approval to a scheme, they may at any time, by notice in writing to the body corporate in question, withdraw their approval on such grounds, and as from such date, as may be specified in the notice.

### **223 Aggregation and severance of schemes**

- (1) References in this Chapter to a retirement benefits scheme shall be construed in accordance with the following provisions, that is to say—

- (a) references to such a scheme shall, in relation to a deed, agreement, series of agreements, or other arrangements providing for retirement or other benefits for persons of two or more classes, be construed as references to so much thereof as relates to persons of a single class, and accordingly a deed, agreement, series of agreements, or other arrangements so providing shall be treated for the purposes of this Chapter as constituting two or more retirement benefits schemes relating respectively to the different classes, and
- (b) references to such a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for retirement or other benefits for persons consisting of or including a director or employee, or directors or employees, of a body corporate (or, in a case falling within paragraph (a) above, to so much thereof as relates to a person or persons of any one class), notwithstanding that it or they relates or relate only to a small number of directors or employees, or to a single director or employee.

- (2) For the purpose—

- (a) of determining, in the case of a retirement benefits scheme which was in operation before 6th April 1944, whether the scheme falls within subsection (2) of section 221 above as respects the nature of the main benefit afforded thereby, and
- (b) of determining, in the case of a retirement benefits scheme submitted for the approval of the Board, whether the scheme so falls, and whether the conditions specified in subsection (1) of section 222 above are satisfied,

the scheme shall be considered in conjunction with any other retirement benefits scheme or schemes subsisting in connection with the body corporate and relating to persons of the class to which the scheme in question relates, and—

- (i) if the main benefit afforded by all those schemes taken together is such as is mentioned in subsection (2) of the said section 221, each of them shall be taken to fall within that subsection as respects the nature of the main benefit afforded thereby, and, if it is not, none of them shall be taken so to fall, and
- (ii) if the said conditions are satisfied in the case of all of them taken together, those conditions shall be taken to be satisfied in the case of each of them, and, if not, those conditions shall be taken to be satisfied in the case of none of them.

- (3) The Board may, if they think fit—

- (a) approve a part of a retirement benefits scheme, or
- (b) approve such a scheme notwithstanding that, having regard to another such scheme subsisting in connection with the body corporate, the scheme in question is to be treated by virtue of subsection (2) above as not falling within

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subsection (2) of the said section 221 or as not satisfying the conditions aforesaid,

and where, under this subsection, the Board approve a part of a scheme, neither subsection (1) nor subsection (2) of section 220 above shall apply so as to cause any sum to be deemed to be income of a director or employee by reference to the provision for him of benefits afforded by that part of the scheme or of any part of such benefits.

## 224 Supplementary provisions

(1) In this Chapter, except where the context otherwise requires—

"controlling director" means a director of a company, the directors whereof have a controlling interest therein, who is the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company ("company" meaning, for the purposes of this definition, one within the Companies Act 1948 or the Companies Act (Northern Ireland) 1960);

"director" means—

- (a) in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body,
- (b) in relation to a body corporate the affairs whereof are managed by a single director or similar person, that director or person,
- (c) in relation to a body corporate the affairs whereof are managed by the members themselves, a member of the body corporate,

and includes any person who is to be or has been a director;

"employee", in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee ;

"excepted provident fund or staff assurance scheme or other similar scheme" means so much as relates to persons remunerated at a rate of £2,000 a year, or at a less rate, of any retirement benefits scheme as to which the following conditions are satisfied, that is to say—

- (a) that the sums paid by the body corporate pursuant to the scheme in question in respect of any person for any period do not exceed ten per cent. of his remuneration for that period, and do not exceed £100 in the case of a period of a year or a correspondingly less or greater amount in the case of a shorter or longer period, and
- (b) that no other retirement benefits scheme which relates to employees of the body corporate who are of the class to which the scheme in question relates, and who are remunerated as aforesaid, is subsisting for the time being, or, if there is any such other scheme subsisting, that it (so far as it relates to persons remunerated as aforesaid) and the scheme in question taken together satisfy the requirement specified in paragraph (a) of this definition ;

"retirement or other benefit" means any pension, annuity, lump sum, gratuity or other like benefit to be given on retirement, or in anticipation of retirement, or, in connection with past service, after retirement, or to be given on or in anticipation of or in connection with any change in the nature of the service of the person in question, except that it does not include any pension,

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annuity, lump sum, gratuity or other like benefit which is to be afforded solely by reason of the death or disability of a person occurring during his service, and for no other reason ;

" service " means service as an employee or director of the body corporate in question, and "retirement" shall be construed accordingly;

" statutory superannuation scheme " means a scheme set up by or approved under any enactment relating to superannuation or set up by or approved under any regulations relating to superannuation made under any enactment by any Minister or Government Department (including a Northern Ireland Minister and a Northern Ireland Government Department).

- (2) Where an alteration has been made in a retirement benefits scheme at any time after 5th April 1947, the scheme shall, for the purposes of this Chapter, be deemed to have become a new scheme coming into being on the date of the alteration:

Provided that this subsection shall not apply to an alteration approved by the Board.

- (3) Any reference in this Chapter to the provision for a person of retirement or other benefits includes a reference to the provision of benefits payable to that person's spouse, children, dependants or personal representatives, and any reference therein to the provision for a person of a pension or annuity for his life includes a reference to the provision (either in addition or as an alternative to the pension or annuity payable for his life) of a pension or annuity payable to that person's spouse or to any child or dependant of that person, for the life of the spouse, child or dependant.
- (4) Any reference in this Chapter to the provision of retirement or other benefits, or of a pension or annuity, by a body corporate includes a reference to the provision thereof by means of a contract with a third person.
- (5) It shall be the duty of a body corporate—
- (a) to deliver to the inspector, within the three months beginning with the date on which the scheme comes into being, particulars of any retirement benefits scheme other than a scheme referred to in section 221(1) above, and
  - (b) when required to do so by notice given by the inspector, to furnish within the time limited by the notice such further particulars as he may require with regard to any retirement benefits scheme subsisting in connection with the body corporate or to the persons to whom it relates.

## **225 Application to unincorporated societies, etc.**

This Chapter shall apply in relation to unincorporated societies or other bodies as it applies in relation to bodies corporate :

Provided that the reference in this section to unincorporated societies or other bodies shall be deemed not to include a reference to individuals in partnership.