



Finance Act 2004

2004 CHAPTER 12

PART 4

PENSION SCHEMES ETC

CHAPTER 6

SCHEMES THAT ARE NOT REGISTERED PENSION SCHEMES

Modifications etc. (not altering text)

- C1** Pt. 4 Ch. 6 excluded (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **25**

Non-UK schemes

243 Overseas pension schemes: migrant member relief

Schedule 33 contains provision about migrant member relief in respect of contributions under overseas pension schemes.

Commencement Information

- II** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

244 Non-UK schemes: application of certain charges

Schedule 34 contains provision applying certain charges under this Part in relation to non-UK schemes.

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Commencement Information

- I2** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

^{F1}Non-UK schemes: the overseas transfer charge

Textual Amendments

- F1** Ss. 244A-244N and cross-heading inserted (with effect in accordance with Sch. 4 para. 25 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 4 para. 11](#)

244A Overseas transfer charge

- (1) A charge to income tax, to be known as the overseas transfer charge, arises where—
 - (a) a recognised transfer is made to a QROPS, or
 - (b) an onward transfer is made during the relevant period for the original transfer, and the transfer is not excluded from the charge by or under any of sections 244B to 244H.
- (2) Sections 244B to 244H are subject to section 244I (circumstances in which exclusions do not apply).
- (3) In this group of sections, an “onward transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement under a QROPS or former QROPS in relation to a member so as to become held for the purposes of, or to represent rights under, an arrangement under another QROPS in relation to that person as a member of that other QROPS.
- (4) In this group of sections “relevant period” means—
 - (a) in the case of a recognised transfer made on 6 April in any year, the 5 years beginning with the date of the transfer,
 - (b) in the case of any other recognised transfer, the period consisting of the combination of—
 - (i) the period beginning with the date of the transfer and ending immediately before the next 6 April, and
 - (ii) the 5 years beginning at the end of that initial period,
 - (c) in the case of an onward transfer, the period—
 - (i) beginning with the date of the transfer, and
 - (ii) ending at the end of the relevant period for the original transfer (see paragraphs (a) and (b) or, as the case may be, paragraphs (d) and (e)),
 - (d) in the case of a relevant transfer that—
 - (i) is made on 6 April in any year, and
 - (ii) is the original transfer for an onward transfer,
 the 5 years beginning with the date of the relevant transfer, and
 - (e) in the case of a relevant transfer that—
 - (i) is made otherwise than on 6 April in any year, and
 - (ii) is the original transfer for an onward transfer,

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the period consisting of the combination of: the period beginning with the date of the relevant transfer and ending immediately before the next 6 April; and the 5 years beginning at the end of that initial period.

- (5) In this group of sections “the original transfer”, in relation to an onward transfer, means (subject to subsection (6))—
- (a) the recognised transfer in respect of which the following conditions are met—
 - (i) it is from a registered pension scheme to a QROPS,
 - (ii) the sums and assets transferred by the onward transfer directly or indirectly derive from those transferred by it, and
 - (iii) it is more recent than any other recognised transfer in respect of which the conditions in sub-paragraphs (i) and (ii) are met, or
 - (b) where there is no such recognised transfer, the relevant transfer (see paragraph 1(6) of Schedule 34) in respect of which the following conditions are met—
 - (i) it is from a relevant non-UK scheme (see paragraph 1(5) of Schedule 34),
 - (ii) it is a transfer of the whole or part of the UK tax-relieved fund (see paragraph 3 of Schedule 34) of a member of the scheme,
 - (iii) it is to a QROPS, and
 - (iv) the sums and assets transferred by the onward transfer directly or indirectly derive from those transferred by it.
- (6) Where apart from this subsection there would be different original transfers for different parts of an onward transfer, each such part of the onward transfer is to be treated as a separate onward transfer for the purposes of this group of sections.
- (7) In this section and sections 244B to 244N—
- “QROPS” means a qualifying recognised overseas pension scheme, and
 - “former QROPS” means a scheme that has at any time been a QROPS;
 - “ring-fenced transfer fund”, in relation to a QROPS or former QROPS, has the meaning given by paragraph 1 of Schedule 34;
 - “this group of sections” means this section and sections 244B to 244N.

244B Exclusion: member and receiving scheme in same country

- (1) A recognised transfer to a QROPS is excluded from the overseas transfer charge if during the relevant period—
- (a) the member is resident in the country or territory in which the QROPS is established, and
 - (b) there is no onward transfer—
 - (i) for which the recognised transfer is the original transfer, and
 - (ii) which is not excluded from the charge.
- (2) If the member is resident in that country or territory at the time of the transfer mentioned in subsection (1), it is to be assumed for the purposes of subsection (1) that the member will be resident in that country or territory during the relevant period; but if, at a time before the end of the relevant period, the transfer ceases to be excluded by subsection (1) otherwise than by reason of the member's death—
- (a) that assumption is from that time no longer to be made, and
 - (b) the charge on the transfer is treated as charged at that time.

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- (3) An onward transfer to a QROPS (“transfer A”) is excluded from the overseas transfer charge if during so much of the relevant period as is after the time of transfer A—
- (a) the member is resident in the country or territory in which the QROPS is established, and
 - (b) there is no subsequent onward transfer that—
 - (i) is of sums and assets which, in whole or part, directly or indirectly derive from those transferred by transfer A, and
 - (ii) is not excluded from the charge.
- (4) If the member is resident in that country or territory at the time of transfer A, it is to be assumed for the purposes of subsection (3) that the member will be resident in that country or territory during so much of the relevant period as is after the time of transfer A; but if, at a time before the end of the relevant period, the transfer ceases to be excluded by subsection (3) otherwise than by reason of the member's death—
- (a) that assumption is from that time no longer to be made, and
 - (b) the charge on transfer A is treated as charged at that time.

244C Exclusion: [F²receiving scheme in EEA state [F³or Gibraltar], and member resident in UK or EEA state]

- (1) This section applies to a transfer to a QROPS established in an EEA state [F⁴or Gibraltar].
- (2) If the transfer is a recognised transfer, the transfer is excluded from the overseas transfer charge if during the relevant period—
 - (a) the member is resident in [F⁵a relevant territory] (whether or not the [F⁶same relevant territory] throughout that period), and
 - (b) there is no onward transfer—
 - (i) for which the recognised transfer is the original transfer, and
 - (ii) which is not excluded from the charge.
- (3) If the member is resident in [F⁵a relevant territory] at the time of the recognised transfer mentioned in subsection (2), it is to be assumed for the purposes of this section that the member will be resident in [F⁵a relevant territory] during the relevant period; but if, at a time before the end of the relevant period, the transfer ceases to be excluded by subsection (2) otherwise than by reason of the member's death—
 - (a) that assumption is from that time no longer to be made, and
 - (b) the charge on the transfer is treated as charged at that time.
- (4) If the transfer is an onward transfer (“transfer B”), the transfer is excluded from the overseas transfer charge if during so much of the relevant period as is after the time of the onward transfer—
 - (a) the member is resident in [F⁵a relevant territory] (whether or not the [F⁷same relevant territory] at all those times), and
 - (b) there is no subsequent onward transfer that—
 - (i) is of sums and assets which, in whole or part, directly or indirectly derive from those transferred by transfer B, and
 - (ii) is not excluded from the charge.
- (5) If the member is resident in [F⁵a relevant territory] at the time of transfer B, it is to be assumed for the purposes of subsection (4) that the member will be resident in [F⁵a

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relevant territory] during so much of the relevant period as is after the time of transfer B; but if, at a time before the end of the relevant period, the transfer ceases to be excluded by subsection (4) otherwise than by reason of the member's death—

- (a) that assumption is from that time no longer to be made, and
- (b) the charge on transfer B is treated as charged at that time.

[^{F8}(6) In this section “relevant territory” means the United Kingdom or an EEA state.]

Textual Amendments

- F2** Words in s. 244C heading substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **12(2)(a)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in s. 244C heading inserted (18.2.2021 with effect from IP completion day) by [The Pension Schemes \(Qualifying Recognised Overseas Pension Schemes\) \(Gibraltar\) \(Exclusion of Overseas Transfer Charge\) Regulations 2021 \(S.I. 2021/89\)](#), regs. 1, **2(2)(a)**
- F4** Words in s. 244C(1) inserted (18.2.2021 with effect from IP completion day) by [The Pension Schemes \(Qualifying Recognised Overseas Pension Schemes\) \(Gibraltar\) \(Exclusion of Overseas Transfer Charge\) Regulations 2021 \(S.I. 2021/89\)](#), regs. 1, **2(2)(b)**
- F5** Words in s. 244C(2)-(5) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **12(2)(b)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 244C(2) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **12(2)(c)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 244C(4) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **12(2)(c)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F8** S. 244C(6) inserted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **12(2)(d)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

244D Exclusion: receiving scheme is an occupational pension scheme

A transfer to a QROPS is excluded from the overseas transfer charge if—

- (a) the QROPS is an occupational pension scheme, and
- (b) when the transfer is made, the member is an employee of a sponsoring employer of the QROPS.

244E Exclusion: receiving scheme set up by international organisation

- (1) A transfer to a QROPS is excluded from the overseas transfer charge if—
 - (a) the QROPS is established by an international organisation and has effect so as to provide benefits for, or in respect of, past service as an employee of the organisation, and
 - (b) when the transfer is made, the member is an employee of the organisation.
- (2) In this section “international organisation” means an organisation to which section 1 of the International Organisations Act 1968 applies by virtue of an Order in Council under subsection (1) of that section.

244F Exclusion: receiving scheme is an overseas public service scheme

- (1) A transfer to a QROPS is excluded from the overseas transfer charge if—
 - (a) the QROPS is an overseas public service pension scheme, and

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- (b) when the transfer is made, the member is an employee of an employer that participates in the scheme.
- (2) A QROPS is an “overseas public service pension scheme” for the purposes of this section if—
- (a) either—
 - (i) it is established by or under the law of the country or territory in which it is established, or
 - (ii) it is approved by the government of that country or territory, and
 - (b) it is established solely for the purpose of providing benefits to individuals for or in respect of services rendered to—
 - (i) that country or territory, or
 - (ii) any political subdivision or local authority of that country or territory.
- (3) For the purposes of this section, an employer participates in a QROPS that is an overseas public service pension scheme if the scheme has effect so as to provide benefits to or in respect of any or all of the employees of the employer in respect of their employment by the employer.

244G Exclusions: avoidance of double charge, and transitional protections

- (1) A recognised transfer to a QROPS is excluded from the overseas transfer charge if it is made in execution of a request made before 9 March 2017.
- (2) An onward transfer (“the current onward transfer”) is excluded from the overseas transfer charge if—
- (a) the charge has been paid on the original transfer and the amount paid is not repayable, or
 - (b) the charge has been paid on an onward transfer (“the earlier onward transfer”) in respect of which the conditions in subsection (4) are met and the amount paid is not repayable, or
 - (c) the original transfer was made before 9 March 2017, or
 - (d) the original transfer was made on or after 9 March 2017 in execution of a request made before 9 March 2017.
- (3) An onward transfer is excluded from the overseas transfer charge so far as the transfer is made otherwise than out of the member's ring-fenced transfer funds under the scheme from which the onward transfer is made.
- (4) The conditions mentioned in subsection (2)(b) are—
- (a) that the earlier onward transfer was made before the current onward transfer,
 - (b) that the earlier onward transfer was made after the original transfer, and
 - (c) that all the sums and assets transferred by the current onward transfer directly or indirectly derive from those transferred by the earlier onward transfer.

244H Power to provide for further exclusions

The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for a recognised transfer to a QROPS, or an onward transfer, to be excluded from the overseas transfer charge if the transfer is of a description specified in the regulations.

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244I Circumstances in which exclusions do not apply

- (1) Subsection (2) applies if a recognised transfer to a QROPS, or an onward transfer, would (but for this section) be excluded from the overseas transfer charge by any of sections 244B to 244F.
- (2) The transfer is not excluded from the charge if the member has, in connection with the transfer, failed to comply with the relevant information regulation.
- (3) In subsection (2) “the relevant information regulation” means whichever of the following is applicable—
 - (a) regulation 11BA of the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567), or any regulation having effect in place of any of that regulation, as (in either case) from time to time amended, and
 - (b) regulation 3AE of the Pension Schemes (Information Requirements for Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (S.I. 2006/208), or any regulation having effect in place of any of that regulation, as (in either case) from time to time amended.

244J Persons liable to charge

- (1) In the case of a recognised transfer to a QROPS, the persons liable to the overseas transfer charge are—
 - (a) the scheme administrator of the registered pension scheme from which the transfer is made, and
 - (b) the member,and their liability is joint and several.
- (2) In the case of an onward transfer, the persons liable to the overseas transfer charge are—
 - (a) the scheme manager of the QROPS, or former QROPS, from which the transfer is made, and
 - (b) the member,and their liability is joint and several.
- (3) Subsections (1) and (2) are subject to subsection (4), and subsections (2) and (4) are subject to subsection (5).
- (4) If a transfer is one required by section 244B or 244C to be initially assumed to be excluded by that section but an event occurring before the end of the relevant period means that the transfer is not so excluded, the persons liable to the overseas transfer charge in the case of the transfer are—
 - (a) the scheme manager of any QROPS, or former QROPS, under which the member has, at the time of the event, ring-fenced transfer funds in which any of the sums and assets referred to in section 244K(6) in the case of the transfer are represented, and
 - (b) the member,and their liability is joint and several.
- (5) The scheme manager of a former QROPS is liable to the overseas transfer charge in the case of a transfer (“the transfer concerned”) only if the former QROPS—

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- (a) was a QROPS when a relevant inward transfer was made, and
- (b) where a relevant inward transfer was made before 9 March 2017, was a QROPS at the start of 9 March 2017;

and here “relevant inward transfer” means a recognised or onwards transfer to the former QROPS (at a time when it was a QROPS) of sums and assets which, to any extent, are represented by sums or assets transferred by the transfer concerned.

- (6) A person is liable to the overseas transfer charge whether or not—
 - (a) that person, and
 - (b) any other person who is liable to the charge,
 are resident or domiciled in the United Kingdom.

244K Amount of charge

- (1) Where the overseas transfer charge arises in the case of a transfer, the charge is 25% of the transferred value.
- (2) If the transfer is from a registered pension scheme established in the United Kingdom, the transferred value is the total of—
 - (a) the amount of any sums transferred, and
 - (b) the value of any assets transferred,
 but this is subject to subsections (5) to (9).
- (3) If the transfer is from a registered pension scheme established in a country or territory outside the United Kingdom, the transferred value is the total of—
 - (a) the amount of any sums transferred that are attributable to UK-relieved funds of the scheme, and
 - (b) the value of any assets transferred that are attributable to UK-relieved funds of the scheme,
 but this is subject to subsections (5) to (9).
- (4) If the transfer is from a QROPS or former QROPS, the transferred value is the total of—
 - (a) the amount of any sums transferred that are attributable to the member's ring-fenced transfer funds under the scheme, and
 - (b) the value of any assets transferred that are attributable to the member's ring-fenced transfer funds under the scheme,
 but this is subject to subsections (5) to (9).
- (5) If the lifetime allowance charge arises in the case of the transfer and is to be deducted from the transfer, paragraphs (a) and (b) of subsections (2) to (4) are to be read as referring to what is to be transferred after deduction of the lifetime allowance charge.
- (6) If the transfer is one initially assumed to be excluded by section 244B or 244C but an event occurring before the end of the relevant period means that the transfer is not so excluded, the sums and assets mentioned in whichever of subsections (2) to (4) is applicable include only those that at the time of the event are represented in any of the member's ring-fenced transfer funds under any QROPS or former QROPS.
- (7) If the operator pays the charge on the transfer and does so—
 - (a) otherwise than by deduction from the transfer, and

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- (b) out of sums and assets held for the purposes of, or representing accrued rights under, the scheme from which the transfer is made,
the transferred value is the amount given by subsections (2) to (6) grossed up by reference to the rate specified in subsection (1).
- (8) If the operator pays the charge on the transfer and does so by deduction from the transfer, the transferred value is the amount given by subsections (2) to (6) before the deduction.
- (9) If the member pays the charge on the transfer, the transferred value is the amount given by subsections (2) to (6) without any deduction for the charge.
- (10) The provisions of this Part relating to the lifetime allowance charge apply (whether or not in relation to the transfer) as if the overseas transfer charge did not arise in the case of the transfer.
- (11) In this section—
“the operator” means—
(a) the scheme administrator of the scheme from which the transfer is to be made if that scheme is a registered pension scheme, or
(b) the scheme manager of the scheme from which the transfer is to be made if that scheme is a QROPS or former QROPS;
“UK-relieved funds”, in relation to a registered pension scheme established in a country or territory outside the United Kingdom, has the meaning given by section 242B.

244L Accounting for overseas transfer charge by scheme managers

- (1) In this section “charge” means overseas transfer charge for which the scheme manager of a QROPS or former QROPS is liable.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for or in connection with—
(a) the payment of charge, including due dates for payment,
(b) the charging of interest on charge not paid on or before its due date,
(c) notification by the scheme manager of errors in information provided by the scheme manager to the Commissioners in connection with charge or the scheme manager's liability for overseas transfer charge,
(d) repayments to scheme managers under section 244M of amounts paid by way of charge, and
(e) the making of assessments, repayments or adjustments in cases where the correct amount of charge has not been paid by the due date for payment of the charge.
- (3) The regulations may, in particular—
(a) modify the operation of any provision of the Tax Acts, or
(b) provide for the application of any provision of the Tax Acts (with or without modification).

244M Repayments of charge on subsequent excluding events

- (1) This section applies if—

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- (a) overseas transfer charge arose on a transfer at the time the transfer was made, and
 - (b) at a time during the relevant period for the transfer, circumstances arise such that, had those circumstances existed at the time the transfer was made, the transfer would at the time it was made have been excluded from the charge by sections 244B to 244F or under section 244H.
- (2) Any amount paid in respect of charge on the transfer is to be repaid by the Commissioners for Her Majesty's Revenue and Customs so far as not already repaid.
- (3) Subsection (2) does not give rise to entitlement to repayment of, or cancellation of liabilities to, interest or penalties in respect of late payment of charge on the transfer.
- (4) Repayment under this section to the scheme administrator of a registered pension scheme, or the scheme manager of a QROPS or former QROPS, is conditional on prior compliance with any requirements to give information to the Commissioners, about the circumstances in which the right to the repayment arises, that are imposed on the prospective recipient under section 169 or 251 (but repayment is not conditional on compliance with any time limits so imposed for compliance with any such requirements).
- (5) Repayment under this section is not a relievable pension contribution.
- (6) Repayment under this section to the member is conditional on making a claim, and such a claim must be made no later than one year after the end of the relevant period for the transfer concerned.
- (7) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for or in connection with claims or repayments under this section, including provision—
- (a) requiring claims,
 - (b) about who may claim,
 - (c) imposing conditions for making claims, including conditions about time limits,
 - (d) as to additional circumstances in which repayments may be made,
 - (e) modifying the operation of any provision of the Tax Acts, or
 - (f) applying any provision of the Tax Acts (with or without modifications).

244N Discharge of liability of scheme administrator or manager

- (1) In this section “operator” means—
- (a) the scheme administrator of a registered pension scheme, or
 - (b) the scheme manager of a QROPS or former QROPS.
- (2) If an operator is liable under section 244J, the operator may apply to an officer of Revenue and Customs for the discharge of the operator's liability on the following ground.
- (3) The ground is that—
- (a) the operator reasonably believed that there was no liability to the overseas transfer charge on the transfer concerned, and
 - (b) in all the circumstances of the case, it would not be just and reasonable for the operator to be liable to the charge on the transfer.

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- (4) On receiving an application under subsection (2), an officer of Revenue and Customs must decide whether to discharge the operator's liability.
- (5) An officer of Revenue and Customs must notify the operator of the decision on the application.
- (6) The discharge of the operator's liability does not affect the liability of any other person to overseas transfer charge on the transfer concerned.
- (7) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision supplementing this section, including provision for time limits for making an application under this section.]

Employer-financed retirement benefit schemes

245 Restriction of deduction for contributions by employer

- (1) Schedule 24 to the Finance Act 2003 (c. 14) (restriction of deductions for employee benefit contributions) is amended as follows.

^{F9}(2)

- (3) In sub-paragraph (1) of paragraph 2 (“qualifying benefits”), insert at the end “or
(c) is made under an employer-financed retirement benefits scheme.”
- (4) In sub-paragraph (5) of that paragraph (when qualifying benefit treated as provided), after “payment of money” insert “otherwise than under an employer-financed retirement benefits scheme”.
- (5) In paragraph 8 (deductions to which Schedule does not apply), for paragraphs (b) and (c) substitute—
 - “(b) in respect of contributions under a registered pension scheme or a section 615(3) scheme,
 - (c) in respect of contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions.”.
- (6) In sub-paragraph (1) of paragraph 9 (interpretation), in the definition of “employee benefit scheme”, after “include,” insert “present or former”.
- (7) In that sub-paragraph, after the definition of “the employer” insert—

““employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (see section 393A of that Act);”.
- (8) In that sub-paragraph, after the definition of “qualifying expenses” insert—

““qualifying overseas pension scheme” has the same meaning as in Schedule 33 to the Finance Act 2004 (see paragraphs 5 and 6 of that Schedule);

“registered pension scheme” has the same meaning as in Part 4 of that Act (see section 150 of that Act);

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“relevant migrant member” has the same meaning as in Schedule 33 to that Act (see paragraph 4 of that Schedule);

“section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

Textual Amendments

F9 S. 245(2) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(5\)](#)

Modifications etc. (not altering text)

C2 S. 245 modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), 15, 16

Commencement Information

I3 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

246 Restriction of deduction for non-contributory provision

- (1) This section applies in relation to an employer’s expenses of providing benefits to or in respect of present or former employees under an employer-financed retirement benefits scheme in a case where—
 - (a) the expenses do not consist of the making of contributions under the scheme, but
 - (b) in accordance with generally accepted accounting practice they are shown in the employer’s accounts.
- (2) Unless the benefits are ones in respect of which a person is, on receipt, chargeable to income tax, the expenses—
 - (a) are not deductible in computing the amount of the profits of the employer for the purposes of ^{F10}Part 2 of ITTOIA 2005^{F11} or Part 3 of CTA 2009 (trading income)],
 - (b) are not expenses of management of the employer for the purposes of ^{F12}Chapter 2 of Part 16 of CTA 2009] (expenses of management: companies with investment business), and
 - ^{F13}(c) are not to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012.]
- (3) But where the benefits are ones in respect of which a person is, on receipt, chargeable to income tax—
 - (a) if the expenses are allowed to be deducted in computing the amount of the profits of the employer to be charged under ^{F14}Part 2 of ITTOIA 2005^{F15} or Part 3 of CTA 2009 (trading income),] they are deductible in computing the amount of the profits for the period of account in which they are paid, and
 - (b) for the purposes of the operation ^{F16}in relation to the employer of ^{F17}section 76 of FA 2012] or Chapter 2 of Part 16 of CTA 2009,] the expenses are referable to the accounting period in which they are paid.
- (4) In this section “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act).

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Textual Amendments

- F10** Words in s. 246(2)(a) inserted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 650\(2\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))
- F11** Words in s. 246(2)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 578\(2\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F12** Words in s. 246(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 578\(2\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F13** S. 246(2)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 120\(2\)](#)
- F14** Words in s. 246(3)(a) inserted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 650\(3\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))
- F15** Words in s. 246(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 578\(3\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F16** Words in s. 246(3)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 578\(3\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F17** Words in s. 246(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 120\(3\)](#)

Commencement Information

- I4** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

[^{F18}246A] Case where no relief for provision by an employer

- (1) An employer's expenses of providing relevant benefits to or in respect of a present or former employee (“the employee”) under an employer-financed retirement benefits scheme (whether or not by the making of contributions under the scheme) are not subject to relief if subsection (2) applies.
- (2) This subsection applies where—
 - (a) the provision of the relevant benefits results in a reduction in the benefits payable to or in respect of the employee under a registered pension scheme, or
 - (b) a reduction in the benefits payable to or in respect of the employee under a registered pension scheme results in the provision of the relevant benefits.
- (3) But if the extent to which contributions paid by the employer under the registered pension scheme in respect of the employee are subject to relief has been restricted in accordance with regulations under section 196A, the employer's expenses of providing the relevant benefits are not prevented from being subject to relief to the extent that is just and reasonable.
- (4) The references in this section to expenses of an employer being subject to relief are to—
 - (a) their being deductible in computing the amount of the profits of the employer for the purposes of Part 2 of ITTOIA 2005 [^{F19}or Part 3 of CTA 2009 (trading income)],
 - (b) their being expenses of management of the employer for the purposes of [^{F20}Chapter 2 of Part 16 of CTA 2009] (expenses of management: companies with investment business), or
 - (c) their being [^{F21}ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012],(depending on which is appropriate in relation to the employer).

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(5) In this section—

“employer-financed retirement benefits scheme”, and
“relevant benefits”,

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).]

Textual Amendments

- F18** S. 246A inserted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 40](#), 64(1)
- F19** Words in s. 246A(4)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 579\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F20** Words in s. 246A(4)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 579\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F21** Words in s. 246A(4)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 121](#)

247 Abolition of income tax charge in respect of employer payments

In Part 6 of ITEPA 2003, omit Chapter 1 (payments by employer for the provision of benefits for an employee under certain schemes to count as employment income of employee).

Commencement Information

- I5** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

248 Employer’s cost of insuring against non-payment of benefit

(1) Section 307 of ITEPA 2003 (no liability to income tax in respect of chargeable benefit on provision made by employer for a retirement or death benefit) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer’s insolvency.

(1B) In subsection (1A) “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A).”

(3) In subsection (2), for “subsection (1)” substitute “this section”.

Commencement Information

- I6** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

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249 Taxation of non-pension benefits

- (1) Chapter 2 of Part 6 of ITEPA 2003 (taxation of non-pension benefits from certain pension schemes) is amended as follows.
- (2) In the heading of the Chapter, for “NON-APPROVED PENSION” substitute “EMPLOYER-FINANCED RETIREMENT BENEFITS”.
- (3) For section 393 substitute—

“393 Application of this Chapter

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.
- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.

393A Employer-financed retirement benefits scheme

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
 - (a) a registered pension scheme, nor
 - (b) a section 615(3) scheme,is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

393B Relevant benefits

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
 - (a) on or in anticipation of the retirement of an employee or former employee,
 - (b) on the death of an employee or former employee,
 - (c) after the retirement or death of an employee or former employee in connection with past service,
 - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
 - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
- (2) But—
 - (a) benefits charged to tax under Part 9 (pension income),

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- (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
 - (c) excluded benefits,

are not relevant benefits.
- (3) The following are “excluded benefits”—
 - (a) benefits in respect of ill-health or disablement of an employee during service,
 - (b) benefits in respect of the death by accident of an employee during service,
 - (c) benefits under a relevant life policy, and
 - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.
- (4) In subsection (3)(c) “relevant life policy” means—
 - [^{F22}(a) an excepted group life policy as defined in section 480 of ITTOIA 2005,]
 - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which^{F23}—
 - (i) condition A in section 481 of that Act would be met if paragraph (a) in that condition referred to the death, in any circumstances or except in specified circumstances, of that individual (rather than the death in any circumstances of each of the individuals insured under the policy) and if the condition did not include paragraph (b), and
 - (ii) conditions C and D in that section and conditions A and C in section 482 of that Act are met, or]
 - (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).
- (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRP(A) 1999 or Article 25(1) of WRP(NI)O 1999.”
- (4) Section 394 (charge on benefit) is amended as follows.
- (5) After subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.”
- (6) In subsection (2), for “administrator of” substitute “person who is (or persons who are) the responsible person in relation to”.
- (7) In subsection (3), for “subsections (1) and (2)” substitute “this section”.
- (8) For sections 395 to 397 substitute—

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“395 Reduction where employee has contributed

- (1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.
 - (2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under [F24 subsection (2) of that section], is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.
 - (3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.
 - (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.”
- (9) In subsection (1) of section 399 (valuation of benefit in form of loan), for “administrator of” substitute “person who is (or any of the persons who are) the responsible person in relation to”.
- (10) In subsection (2) of that section, for “administrator” substitute “responsible person”.
- (11) For section 400 substitute—

“399A Responsible person

- (1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.
- (2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

Head 1

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

Head 2

If there are one or more persons who control the management of the scheme, that person or each of those persons.

Head 3

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

Head 4

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Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

Head 5

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

400 Interpretation

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

“relevant benefits” has the meaning given by section 393B; and

“responsible person” has the meaning given by section 399A.”

(12) In Part 2 of Schedule 1 to ITEPA 2003 (defined expressions), insert at the appropriate places—

“employer-financed retirement benefits scheme (in Chapter 2 of Part 6)	section 393A”
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“relevant benefits (in Chapter 2 of Part 6)	section 393B”
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“responsible person (in Chapter 2 of Part 6)	section 399A”.
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Textual Amendments

F22 Words in s. 249(3) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 651\(2\)\(a\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))

F23 Words in s. 249(3) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 651\(2\)\(b\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))

F24 Words in s. 249(8) substituted (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 651\(3\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#))

Commencement Information

I7 Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)