

## SCHEDULES

### SCHEDULE 33

Section 243

#### OVERSEAS PENSION SCHEMES: MIGRANT MEMBER RELIEF

##### *Relief for members' etc. contributions*

- 1 (1) An individual who is a relevant migrant member of a qualifying overseas pension scheme is entitled to relief under section 188 (relief for contributions by or on behalf of members of registered pension schemes) in respect of relievable pension contributions paid during a tax year if the individual—
  - (a) has relevant UK earnings chargeable to income tax for that year,
  - (b) is resident in the United Kingdom when the contributions are paid, and
  - (c) has notified the scheme manager of an intention to claim relief under that section.
- (2) Section 190 (annual limit for relief under section 188) applies in relation to the aggregate of the amount of relief to which an individual is entitled under section 188 by virtue of sub-paragraph (1) and any to which the individual is so entitled apart from that sub-paragraph.
- (3) Relief to which an individual is entitled under section 188 by virtue of sub-paragraph (1) is to be given in accordance with section 194 (relief on making of claim) (so that nothing in sections 191 to 193 applies in relation to such relief).
- (4) Section 195 (transfer of certain shares to be treated as payment of contribution) has effect as if the references to sections 188 to 194 included sections 188 to 190 and 194 as they apply by virtue of this paragraph.
- (5) No deduction may be allowed under Chapter 2 of Part 5 of ITEPA 2003 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers) in respect of contributions under a pension scheme (but subject to Part 4 of Schedule 36).

##### *Relief for employers' contributions*

- 2 (1) Subsections (2) to (5) of section 196 (relief for contributions by employer) apply in relation to relevant migrant member contributions paid by an employer as in relation to contributions paid by an employer under a registered pension scheme in respect of an individual.
- (2) Section 200 (no other relief for employers in connection with contributions) applies as if the reference to contributions under a registered pension scheme included relevant migrant member contributions.
- (3) “Relevant migrant member contributions” means contributions paid 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.

3 In ITEPA 2003, after section 308 insert—

**“308A Exemption of contributions to overseas pension scheme**

- (1) No liability to income tax arises in respect of earnings where an employer makes contributions under a qualifying overseas pension scheme in respect of an employee who is a relevant migrant member of the pension scheme.
- (2) In subsection (1)—
  - “qualifying overseas pension scheme”, and
  - “relevant migrant member”,
 have the same meaning as in Schedule 33 to FA 2004 (overseas pension schemes: migrant member relief).”

*Meaning of “relevant migrant member”*

- 4 For the purposes of this Schedule an individual who is a member of an overseas pension scheme is a relevant migrant member of the pension scheme, in relation to any contributions, if the individual—
- (a) was not resident in the United Kingdom when first a member of the pension scheme,
  - (b) was a member of the pension scheme at the beginning of the period of residence in the United Kingdom which includes the time when the contributions are paid,
  - (c) was, immediately before the beginning of that period of residence, entitled to tax relief in respect of contributions paid under the pension scheme under the law of the country or territory in which the individual was then resident, and
  - (d) has been notified by the scheme manager that information concerning events that are benefit crystallisation events in relation to the individual and the pension scheme will be given to the Inland Revenue.

*Meaning of “qualifying” overseas pension scheme*

- 5 (1) For the purposes of this Schedule an overseas pension scheme is a qualifying overseas pension scheme if—
- (a) the scheme manager has given to the Inland Revenue notification that it is an overseas pension scheme and has provided any such evidence that it is an overseas pension scheme as the Inland Revenue may require,
  - (b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be an overseas pension scheme,
  - (c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed benefit crystallisation information requirements imposed on the scheme manager, and
  - (d) the overseas pension scheme is not excluded from being a qualifying overseas pension scheme by sub-paragraph (3).
- (2) In sub-paragraph (1)(c) “prescribed benefit crystallisation information requirements” means requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information relating to events that are benefit crystallisation events in relation to members of the pension scheme who have at any time been relevant migrant members of the pension scheme.

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*Status: This is the original version (as it was originally enacted).*

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- (3) An overseas pension scheme is excluded from being a qualifying overseas pension scheme if the Inland Revenue has decided that—
  - (a) there has been a failure to comply with any prescribed benefit crystallisation information requirements imposed on the scheme manager and the failure is significant, and
  - (b) by reason of the failure it is not appropriate that relief from tax should be given in respect of contributions under the pension scheme,and has notified the person or persons appearing to be the scheme manager of that decision (but subject to sub-paragraph (5) and paragraph 6).
- (4) A failure to comply with prescribed benefit crystallisation information requirements is significant if—
  - (a) the amount of information which has not been provided is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.
- (5) The Inland Revenue —
  - (a) may at any time after an overseas pension scheme becomes excluded from being a qualifying overseas pension scheme decide that the pension scheme is to cease to be so excluded, and
  - (b) must notify the scheme manager of the decision.
- 6 (1) This paragraph applies where an overseas pension scheme is excluded from being a qualifying overseas pension scheme by a decision of the Inland Revenue under paragraph 5(3).
- (2) The scheme manager may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme manager may elect (in accordance with section 46 (1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this paragraph is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this paragraph against a decision must be brought within the period of 30 days beginning with the day on which the notification of the decision was given.
- (6) The Commissioners before whom an appeal under this paragraph is brought must consider whether the overseas pension scheme ought to have been excluded from being a qualifying overseas pension scheme.
- (7) If they decide that the overseas pension scheme ought to have been excluded from being a qualifying overseas pension scheme, they must dismiss the appeal.
- (8) If they decide that the overseas pension scheme ought not to have been excluded from being a qualifying overseas pension scheme, the pension scheme is to be treated as having remained a qualifying overseas pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).