

## CHAPTER 2 Retirement annuities

Interpretation and general ). ITA67 s195B(3) and (6), s235(6) to (9) and s238(3) and (4); FA69 s65(1) and Sch5 Ptl; FA72 Sch1 PtIII par4; FA93 s10(1); FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 Ptl par 5(3) 783.—(1) (a) In this section—

“director” means—

(i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person,

(iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person who is 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 or has been an employee;

“investment company” means a company the income of which consists mainly of investment income;

“investment income”, in relation to a company, means income which, if the company were an individual, would not be earned income;

“proprietary director” means a director of a company who is either 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 15 per cent of the ordinary share capital of the company;

“proprietary employee”, in relation to a company, means an employee 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 15 per cent of the ordinary share capital of the company;

“sponsored superannuation scheme” means a scheme or arrangement relating to service in particular offices or employments and having for its object or one of its objects the making of provision in respect of persons serving in those offices or employments against—

(i) future retirement or partial retirement,

(ii) future termination of service through death or disability, or

(iii) similar matters,

being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement).

(b) For the purposes of the definitions of “proprietary director” and “proprietary employee”, ordinary share capital which is owned or controlled as is specified in those definitions by a person, being a spouse or an infant child of a director or employee, or by the trustee of a trust for the benefit of a person or persons, being or including any such person or such director or employee, shall be deemed to be owned or controlled by such director or employee and not by any other person.

(c) For the purposes of the definition of “sponsored superannuation scheme”, a person shall be treated as bearing by reason of his or her service the cost of any payment made or agreed to be made in respect of his or her service if that payment or the agreement to make it is treated under the Income Tax Acts as increasing the person's income or would be so treated if he or she were chargeable to tax under Schedule E in respect of his or her emoluments from that service.

(2) (a) For the purposes of this Chapter, an office or employment shall be a pensionable office or employment only if service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death before the age of 70 years or some lower age or disability before the age of 70 years or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the State or the holder is chargeable to tax in respect of the office or employment.

(b) For the purposes of paragraph (a), service in an office or employment shall not be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he or she does not) participate in the scheme by exercising or refraining from exercising an option open to him or her by virtue of that service.

(3) For the purposes of this Chapter but subject to subsection (4), “relevant earnings”, in relation to an individual, means any income of the individual chargeable to tax for the year of assessment in question, being either—

(a) income arising in respect of remuneration from an office or employment of profit held by the individual, other than a pensionable office or employment,

(b) income from any property which is attached to or forms part of the emoluments of any such office or employment of profit held by the individual, or

(c) income which is chargeable under Schedule D and is immediately derived by the individual from the carrying on or exercise by the individual of his or her trade or profession either as an individual or, in the case of a partnership, as a partner personally acting in the partnership;

but does not include any remuneration from an investment company of which the individual is a proprietary director or a proprietary employee.

(4) For the purposes of this Chapter, the relevant earnings of an individual shall not be treated as the relevant earnings of his or her spouse, notwithstanding that the individual's income chargeable to tax is treated as his or her spouse's income.

(5) The Revenue Commissioners may make regulations prescribing the procedure to be adopted in giving effect to this Chapter in so far as such procedure is not otherwise provided for and, without prejudice to the generality of the foregoing, may by such regulations—

(a) prescribe the manner and form in which claims for relief from or repayment of tax are to be made,

(b) prescribe the time limit for the making of any such claim,

(c) require the trustees or other persons having the management of an approved trust scheme to deliver from time to time such information and particulars as the Revenue Commissioners may reasonably require for the purposes of this Chapter, and

(d) apply for purposes of this Chapter or of the regulations any provision of the Income Tax Acts (with or without modifications).

(6) Where any person, for the purpose of obtaining for that person or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.