

2007 No. 3537

INCOME TAX

**The Employer-Financed Retirement Benefits (Excluded Benefits
for Tax Purposes) Regulations 2007**

<i>Made</i>	- - - -	<i>14th December 2007</i>
<i>Laid before the House of Commons</i>		<i>17th December 2007</i>
<i>Coming into force</i>	- -	<i>8th January 2008</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(a):

Citation and commencement

1.—(1) These Regulations may be cited as the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 and come into force on 8th January 2008.

(2) These Regulations have effect for the tax year 2006-07 and subsequent tax years.

Interpretation

2.—(1) In these Regulations—

“employee” includes a former employee;

“employer” includes—

(a) a former employer; and

(b) a person who has assumed the responsibility for providing a benefit in place of the person who employed the employee;

“ill-health” means physical or mental impairment;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;

“relevant benefit” means a benefit to which Chapter 2 of Part 6 of ITEPA 2003 applies.

(2) References to a member of a person's family shall be construed in accordance with section 721(4) of ITEPA 2003(b), but this is subject to regulation 3(4).

Excluded benefits

3.—(1) A relevant benefit—

(a) 2003 c. 1. Section 393B was inserted, together with section 393A, by way of substitution for section 393 as originally enacted, by section 249(3) of the Finance Act 2004 (c.12). Subsection (4A) of section 393B was inserted by paragraph 21 of Schedule 20 to the Finance Act 2007 (c. 11).

(b) Section 721(4) was amended by regulation 168 of S.I. 2005/3229.

- (a) that is provided (or to be provided) in any of the circumstances mentioned in paragraphs (a) to (c) of section 393B(1) of ITEPA 2003;
- (b) that is described in the Schedule; and
- (c) that is provided to a qualifying person,

is an excluded benefit for the purposes of section 393B(3)(d) of ITEPA 2003.

(2) The following are qualifying persons for the purposes of paragraph (1)—

- (a) in the case of the benefit described in paragraph 2 (accommodation provided for performance of duties - employees) or paragraph 16 (equipment for disabled employees) of the Schedule, the employee,
- (b) in the case of the benefit described in paragraph 3 of the Schedule (accommodation provided for performance of duties – members of employees’ families), a member of the employee’s family,
- (c) in the case of any other benefit described in Part 1 of the Schedule—
 - (i) the employee, and
 - (ii) after any of the events specified in paragraph (3), a member of the employee’s family,
- (d) in the case of any other benefit described in Part 3 of the Schedule—
 - (i) the employee, and
 - (ii) after the employee’s death, a member of the employee’s family.

(3) The events mentioned in paragraph (2)(c)(ii) are—

- (a) the employee’s death;
- (b) the employee’s taking up residence elsewhere (than in the living accommodation concerned) as a result of ill-health;
- (c) the employee’s taking up residence elsewhere (than in the living accommodation concerned) following—
 - (i) a separation,
 - (ii) the annulment or divorce of a marriage, or
 - (iii) the nullity or dissolution of a civil partnership.

(4) Where the event mentioned in paragraph (3)(c)(ii) or (iii) has occurred, the ex-spouse or ex-civil partner shall be treated as a member of the employee’s family.

Dave Hartnett

Mike Hanson

14th December 2007

Two Commissioners for Her Majesty’s Revenue and Customs

PART 1

LIVING ACCOMMODATION AND RELATED BENEFITS

*Accommodation provided by local authority***1.** Living accommodation if—

- (a) it is provided by a local authority, and
- (b) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) would not have applied to the provision of that accommodation by virtue of section 98 of that Act (accommodation provided by local authority) if the employee had remained in that employment.

*Accommodation provided for performance of duties - employees***2.—(1)** Living accommodation if—

- (a) the employee had been in continuous occupation of the same or similar living accommodation during the five years immediately preceding the employee's retirement,
 - (b) throughout that period of five years—
 - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that accommodation by virtue of section 99 of that Act (accommodation provided for performance of duties), and
 - (ii) for any tax year before 2003-04, the accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99,
 - (c) the employee continued to occupy the same or similar accommodation after retirement.
- (2) In determining whether the occupation of living accommodation is continuous, the following breaks in occupation shall be disregarded—
- (a) any one break not exceeding six months,
 - (b) breaks not exceeding one month each,
 - (c) breaks (of any duration) resulting from the employee's ill health.
- (3) Living accommodation is not within this paragraph if it is improved property.

*Accommodation provided for performance of duties – members of employees' families***3.—(1)** Living accommodation provided to a member of the employee's family after the employee's death if—

- (a) the employee died before retirement and Condition A is satisfied; or
 - (b) the employee died after retirement and Condition B is satisfied.
- (2) Condition A is that—
- (a) the employee had been in occupation of the same or similar living accommodation at any time during the five years immediately preceding the employee's death,
 - (b) at any time during that period of five years—
 - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that accommodation by virtue of section 99 of that Act, or
 - (ii) for a tax year before 2003-04, the accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99,

(3) Condition B is that the living accommodation was living accommodation described in paragraph 2 immediately before the employee's death.

(4) In determining whether the occupation of living accommodation is continuous, the breaks in occupation mentioned in paragraph 2(2) shall be disregarded.

(5) Living accommodation is not within this paragraph if it is improved property.

Accommodation provided for ministers of religion

4.—(1) Living accommodation if—

- (a) the employee had been employed as a minister of a religious denomination—
 - (i) for the period of five years immediately preceding the employee's retirement,
 - (ii) immediately preceding the employee's death, or
 - (iii) if the employee retired immediately after a period of ill-health, immediately preceding the beginning of that period, and
- (b) at any time while the employee had been a minister, either—
 - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that or some other living accommodation provided to the employee by the employer by virtue of section 99 of that Act, or
 - (ii) for a tax year before 2003-04, such accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99.

(2) The condition in sub-paragraph (1)(a)(iii) is not satisfied unless and until the employer has received evidence from a registered medical practitioner that the employee is incapable of carrying on the occupation.

Accommodation provided as result of security threat

5. Living accommodation if—

- (a) at any time before the employee's retirement or death—
 - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that or similar accommodation provided to the employee by the employer by virtue of section 100 of that Act (accommodation provided as result of security threat), and
 - (ii) for any tax year before 2003-04, such accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 100,
- (b) except that the employment has been terminated, the conditions set out in paragraphs (a) to (c) of section 100 continue to be satisfied.

Removal expenses

6.—(1) A benefit provided by the employer in connection with a change of residence if—

- (a) it is a benefit of a description within section 280 of ITEPA 2003;
- (b) there would have been no liability to income tax by virtue of section 271 of ITEPA 2003 if—
 - (i) the benefit had been provided in the course of the employment,
 - (ii) the change of residence had met the conditions in section 273 of ITEPA 2003,
 - (iii) the last day of the tax year after that in which the change of residence occurred had constituted the limitation day;
- (c) the former residence is living accommodation described in this Part.

(2) If the cash equivalent of the benefit determined in accordance with the rules in section 203 of ITEPA 2003 exceeds £8,000—

- (a) the excess is not within the description in this paragraph; and

- (b) in determining whether there would have been no liability to income tax by virtue of section 271 of ITEPA 2003 for the purposes of sub-paragraph (1)(b), the excess shall be disregarded.

Repairs and alterations to living accommodation

7. Works—

- (a) in respect of which there would have been no liability to income tax by virtue of section 313 of ITEPA 2003 if they had been carried out in relation to living accommodation provided by reason of the employee's employment;
- (b) that are carried out in relation to living accommodation described in this Part; and
- (c) that do not have the effect of the living accommodation becoming improved property.

Council tax etc. paid for living accommodation

8. Payments or reimbursements if—

- (a) they are of a description within section 314(2) of ITEPA 2003;
- (b) section 314 would have applied to them if the living accommodation had been of a description within subsection (1) of that section;
- (c) they are in respect of living accommodation described in this Part.

PART 2

INTERPRETATION OF PART 1

Similar accommodation

9.—(1) All living accommodation is similar to other living accommodation unless, at the time the employee or member of the employee's family starts to occupy the new accommodation, its market value exceeds that of the accommodation occupied immediately prior to it by more than 20%.

(2) Where the living accommodation is not capable of being sold separately (whether because it forms part of larger premises in multiple occupation or otherwise), its market value shall be taken to be such amount as would be obtained if the factors that prevented its separate sale were disregarded.

Improved property

10.—(1) Living accommodation is improved property if works have been carried out to it which—

- (a) materially improve it; and
- (b) are not carried out wholly for the purposes of complying with a statutory requirement or a requirement imposed by a government department, a statutory body or a person holding a statutory office.

(2) For the purposes of sub-paragraph (1), a property is materially improved by works if—

- (a) its market value on the date the works are substantially completed ("MVW") exceeds what would have been its market value on that date if the works had not been carried out ("MV"); and
- (b) the amount by which MVW exceeds MV is greater than 20% of MV.

(3) Where the living accommodation is not capable of being sold separately (whether because it forms part of larger premises in multiple occupation or otherwise), both MVW and MV shall be

taken to be such amount as would be obtained if the factors that prevented its separate sale were disregarded.

(4) For the purposes of sub-paragraph (1)(b)—

“statutory body” means a body set up by or under an enactment (including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament);

“statutory office” means a body set up by or under such an enactment; and

“statutory requirement” means a requirement imposed by provision made by or under such an enactment.

PART 3

OTHER BENEFITS

Non-cash benefits received before 6th April 1998

11. The provision of a non-cash benefit if—

- (a) it was received in connection with the termination of the employee’s employment,
- (b) that termination took place before 6th April 1998.

Welfare counselling

12. The provision of welfare counselling which would have been exempted by virtue of the Income Tax (Benefits in Kind) (Exemption for Welfare Counselling) Regulations 2000(a) if it had been provided in the course of the employee’s employment.

Recreational benefits

13. The provision of recreational benefits if no liability to income tax would have arisen by virtue of section 261 of ITEPA 2003 if it had been provided in the course of the employee’s employment.

Annual parties and similar functions

14. The provision of an annual party or similar annual function if no liability to income tax would have arisen by virtue of section 264 of ITEPA 2003 if it had been provided in the course of the employee’s employment.

Writing of wills etc.

15. The provision of a service for the writing of a will or similar testamentary document if the cash equivalent of the benefit determined in accordance with the rules in section 203 of ITEPA 2003 does not exceed £150.

Equipment for disabled employees

16.—(1) The provision of a benefit which—

- (a) was first provided in the course of the employee’s employment; and
- (b) satisfied Conditions 1 to 5 of regulation 3 of the Income Tax (Benefits in Kind) (Exception for Employment Costs resulting from Disability) Regulations 2002(b) (“the 2002 Regulations”) at that time.

(a) S.I. 2000/2080.
(b) S.I. 2002/1596.

(2) The replacement, whenever provided, for a hearing aid or other equipment, services or facilities mentioned in Condition 3 of the 2002 Regulations where the aid, equipment, services or facilities are no longer usable or appropriate to the needs of the employee.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exempt specified non-cash benefits provided to former and current employees under an employer-financed retirement benefits scheme from the charge to tax on employer-financed benefits under section 394 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”).

Regulation 1 provides for the citation, commencement and effect of these Regulations.

Regulation 2 provides for the interpretation of certain expressions.

Regulation 3 provides for the exclusion (from tax) of the benefits specified in the Schedule.

Part 1 of the Schedule describes certain benefits that consist of, or relate to, living accommodation.

Paragraph 1 exempts living accommodation that had been provided by a local authority employer. Paragraph 2 exempts accommodation that had been provided for the proper performance of the employee’s duties, and paragraph 3 extends a similar exemption to family members staying on in the accommodation after the employee’s death. Paragraph 4 exempts accommodation for ministers of religion. Paragraph 5 exempts accommodation provided because the employee’s security was at risk. Paragraphs 6 to 8 exempt removal expenses, repairs and alterations and council tax.

Part 2 of the Schedule contains interpretation provisions for use with Part 1. Paragraph 9 is about similar accommodation and is relevant primarily where an exemption extends to replacement accommodation. Paragraph 10 is designed to counter abuse in the form of extensive improvements to property.

Part 3 of the Schedule describes other types of benefit.

Paragraph 11 exempts the provision of benefits that were provided in connection with the termination of employment before 6th April 1998. Paragraphs 12 to 16 exempt welfare counselling, recreational benefits, annual parties and similar functions, the writing of wills and the provision of equipment for the disabled.

Most of the exemptions for the benefits described in both Parts mirror, with necessary modification to reflect the situation of employees who have since retired or died, exemptions conferred in computing employment income under ITEPA 2003.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.