

**2011 No. 2281**

**INCOME TAX**

**The Employer-Financed Retirement Benefits (Excluded Benefits  
for Tax Purposes) (Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>14th September 2011</i>
<i>Laid before the House of Commons</i>		<i>14th September 2011</i>
<i>Coming into force</i>	- -	<i>7th October 2011</i>

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by sections 393B(3)(d) and (4A) of the Income Tax (Earnings and Pensions) Act 2003(a).

**Citation and commencement**

1. These Regulations may be cited as the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) (Amendment) Regulations 2011 and shall come into force on 7th October 2011.

**Amendment of the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007**

2. The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007(b) are amended as follows.

3. In regulation 1(2) (citation and commencement), for "These" substitute "Subject to paragraph (3), these".

4. After regulation 1(2) insert—

“(3) These Regulations have effect—

- (a) so far as they relate to tuition fees, as described in paragraph 18 of the Schedule, for the tax year 2009-2010 and subsequent tax years; and
- (b) so far as they relate to resettlement commutation, resettlement grants, gratuity earnings and the provision of independent inquest advice, as described in paragraphs 19, 20 and 21 of the Schedule, for the tax year 2010-2011 and subsequent tax years.”.

5. In regulation 2(1) (interpretation) insert in the appropriate places—

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- (a) 2003 c. 1. Sections 393 to 393B were inserted by way of substitution for section 393 as originally enacted by section 249(3) of the Finance Act 2004 (c.12). Section 393B(3)(d) was subsequently amended by paragraph 102(2) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) so that the power to make regulations is vested in the Commissioners for Her Majesty's Revenue and Customs. Subsection (4A) of section 393B was inserted by paragraph 21 of Schedule 20 to the Finance Act 2007 (c.11).
  - (b) S.I. 2007/3537, to which there are amendments not relevant to these Regulations.

““armed forces” means the regular forces and the reserve forces as defined in section 374 of the Armed Forces Act 2006(a) and former members of both;”;

““medical discharge” means the discharge from service of a member of the armed forces because the member is medically unfit to continue in service due to injury or illness caused or worsened by service in the armed forces;”.

### **Excluded benefits**

6. After regulation 3(2)(c) (excluded benefits) insert—

- “(ca) in the case of the benefits described in paragraph 18 (tuition fees for armed forces personnel) of Part 3 of the Schedule (other benefits)—
- (i) a member of the armed forces, and
  - (ii) after the death or medical discharge of a member of the armed forces, a member of his or her family,
- (cb) in the case of the benefits described in paragraph 19 (armed forces resettlement commutation and resettlement grants schemes) of the Schedule, a member of the armed forces, and
- (cc) in the case of the benefits described in paragraph 20 (the armed forces gratuity earnings scheme) of the Schedule—
- (i) a member of the armed forces, and
  - (ii) after the death of a member of the armed forces, a member of his or her family or the personal representatives of the member of the armed forces, and
- (cd) in the case of the benefits described in paragraph 21 (independent inquest advice service) of the Schedule—
- (i) a member of the family of the armed forces member, or
  - (ii) a brother or sister of the member of the armed forces.”.

### **Exclusions in respect of armed forces personnel**

7. At the end of Part 3 of the Schedule (other benefits) insert—

#### **“Tuition fees for armed forces personnel**

**18.**—(1) The payment of tuition fees for higher level learning and qualification level learning.

(2) For the purposes of this paragraph—

“higher level learning” means full or part time study towards the achievement of a higher level learning qualification;

“higher level learning qualification” means a qualification at Level 3 or above on the Qualifications and Credit Framework or such other equivalent qualification in respect of which qualifying persons may claim tuition fees;

“qualification level learning” means a first qualification at Level 3 or above on the Qualifications and Credit Framework, a first vocational qualification which is the equivalent of the preceding qualification, a first undergraduate degree (including a foundation degree), a first Higher National Certificate, a first Higher National Diploma or such other equivalent qualifications in respect of which qualifying persons may claim tuition fees;

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(a) 2006 c. 52.

“the Qualifications and Credit Framework” is a national framework which accommodates qualifications and operates across England, Wales and Northern Ireland<sup>(a)</sup>;

“tuition fees” means the fees charged by the provider of a course of study leading to a higher level learning qualification or to qualification level learning and such fees may include registration, examination and accreditation fees.

#### **Armed Forces Resettlement Commutation and Resettlement Grants Schemes**

**19.** The provision of a lump sum in connection with resettlement commutation or resettlement grants of the description given in the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010<sup>(b)</sup>.

#### **Armed Forces Gratuity Earnings Scheme**

**20.** The provision of gratuity earnings of the description given in the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010.

#### **Independent Inquest Advice Service**

**21.** The provision of independent inquest advice in connection with the death in service of a member of the armed forces.”.

*Mike Eland*  
*Steve Lamey*

14th September 2011

Two of the Commissioners for Her Majesty’s Revenue and Customs

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(a) The Office of Qualifications and Examinations Regulation together with its partner regulators in Wales (the Department for Education and Skills) and Northern Ireland (Council for Curriculum Examinations and Assessment) is responsible for the regulation of the Qualifications and Credit Framework.

(b) S.I. 2010/832.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 (“the 2007 Regulations”), which exempt specified benefits under an employer-financed retirement benefits scheme from the charge to tax under section 394 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”).

These Regulations amend the 2007 Regulations to include an exemption for the payment of tuition fees for a member of the armed forces in respect of certain further and higher education. After the member’s death or medical discharge, an eligible member of his or her family may be entitled to the provision of the benefit and these Regulations also add an exemption to the 2007 Regulations in respect of such provision.

The Regulations also amend the 2007 Regulations to include an exemption in respect of the provision of gratuity earnings, resettlement commutation or resettlement grants to a member or former member of the armed forces. The exemption extends to where the member dies in service and a member of his or her family or the member’s personal representative is entitled to gratuity earnings.

These Regulations further amend the 2007 Regulations to include an exemption for the provision of independent inquest advice to members of the family or brothers or sisters of a member of the armed forces in connection with the death in service of that member.

Section 393B(4A) ITEPA 2003 permits regulations to be made with retrospective effect. The exemptions created by these Regulations have effect for the tax years 2009-2010 and subsequent tax years so far as they relate to tuition fees and for the tax year 2010-2011 and subsequent tax years so far as they relate to benefits in respect of gratuity earnings, resettlement commutation or resettlement grants under the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010 (S.I. 2010/832) and to the provision of independent inquest advice.

A Tax Information and Impact Note covering this instrument has been prepared and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

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