



Income Tax Office

HM Government of Gibraltar

OCCUPATIONAL PENSION SCHEMES AND RETIREMENT ANNUITY CONTRACTS GUIDANCE NOTES

This guide is for general guidance only. It must not be treated as a complete and authoritative statement of the law on any particular case.

Issued by:-
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PART 1**INTRODUCTION**

- 1.1 These notes relate to various aspects of the documentation and administration of schemes and contracts, the benefits that can be provided there from, and the tax consequences. They give some indication of the manner in which the Commissioner will exercise his discretion.

- 1.2 All applications for approval of retirement benefits schemes and retirement annuity contracts or enquiries about the subject matter of these Notes should be made to the Commissioner of Income Tax, Income Tax Office, Gibraltar.

PART 2
**RETIREMENT BENEFITS SCHEME:
APPROVED SCHEME:
ADMINISTRATOR**

RETIREMENT BENEFITS SCHEME

- 2.1 The term “retirement benefits scheme” means a deed, agreement, and series of agreements or other arrangements providing “relevant benefits” for a single employee or a group of employees. The term “relevant benefits” means any pension, lump sum, gratuity or other like benefits given or to be given on retirement or on death, or in anticipation of retirement, or in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefits which are to be afforded solely by reason of disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason.
- 2.2 The term “retirement benefits scheme” is not limited to an arrangement made while the employee is still in service and includes the creation of an enforceable right to a pension or other benefits for an employee who has already retired or is on the point of retirement. On the other hand the payment by the employer of an ex-gratia pension which can be discontinued at any time, or of a single ex-gratia lump sum of which the employee had no previous expectation does not constitute a “retirement benefit scheme” even though the pension or payment falls within the definition of “relevant benefits”.

APPROVED SCHEMES

- 2.3 To be capable of being approved, a scheme must:
- (a) be established under irrevocable trust. This does not mean that the scheme must necessarily be operated by means of a formal trust deed, but that policies or other assets must be set aside to provide relevant benefits for employees, and must be held by a trustee or trustees, who may be, or include, the employer on trusts which ensure that except as to any residual surplus, the moneys are not available to the employer. The trust may be established by deed, or by resolution of a board of directors (provided that the resolution is *intra vires*) or in the case of a partnership by a resolution of the partners. It may be in a separate trust deed or declaration of trust, or included in one instrument with the scheme rules, or, where policies only are used, may be incorporated in the policy;
 - (b) be connected with the carrying on of business or exercise of functions wholly or partly in Gibraltar and set up for persons performing duties for which they will be chargeable to tax in Gibraltar on their earnings, or set up by an exempt company or qualifying company registered in Gibraltar;

(c) have as its main purpose the provision of retirement or other benefits for employees on retirement at normal retirement age or earlier on incapacity, or on early retirement, or for widows and dependants of employees on their death;

(d) include specific provisions -

(i) to prohibit loans to members or proprietary directors of the Company providing the pension, or a Company which controls that Company, or to any other person (for example, relatives) having a contingent interest under the Scheme;

(ii) to prohibit the purchase of residential property except in Gibraltar and other than for the beneficial occupation by proprietary directors or their relatives;

(iii) to prohibit investments in the share capital of the company providing the pension or associated companies including preference shares;

(iv) to restrict to 50% of the value of the fund at any one time invested in aggregate to:-

(1) loan capital or debentures of the employers or connected persons;

(2) the value of residential property in Gibraltar owned by the pension fund;

(3) the value of the property owned by the pension fund and occupied by employers for business purposes:

All investments made in unquoted securities must be subject to an independent valuation made on behalf of the trustees and that all investments dealings must be at arm's length and at commercial rates;

(e) have as one of the trustees of a self-administered scheme a pensioner trustee approved by the Commissioner of Income Tax who needs to be a person or body widely involved with the Income Tax Office in negotiations concerning the approval of occupational pension schemes and will be required to give an undertaking that he will not consent to any termination of a scheme of which he is a trustee otherwise than in accordance with the approved terms of the winding-up rule.

ADMINISTRATOR

2.4 The scheme must provide for an administrator or trustee having management of the scheme to be a person resident in Gibraltar through whom all benefits must be paid and who will be responsible to the Commissioner of Income Tax for the payment of tax on benefits and to provide him with returns, accounts and reports as may be required by him from time to time. (also see paragraphs 19/11 - 12).

The Commissioner of Income Tax will require the Administrator to sign an undertaking to this effect.

PART 3
MEMBERSHIP OF SCHEMES

GENERAL

- 3.1 Membership of an approved scheme must be confined to employees of the employer or employers participating in the scheme. "Employee" includes all full-time and part-time staff except proprietary directors, directors and employees who either alone or together with his/her spouse and/or children, is or becomes the beneficial owner of shares which when added together carry more than 20% of the voting rights in the Company providing the pension or in a company which controls that company.
- 3.2 With effect from 1 July 2008, a proprietary director, director or employee who is precluded from membership of an occupational pension scheme by paragraph 3.1 shall be allowed to become a member of an approved scheme.
- 3.3 A person who is assessed to tax on the gains or profits from any trade, business, profession or vocation carried on by him either alone or in partnership cannot be provided in respect of those earnings, with benefits from an approved scheme set up for ordinary employees, but may take out a retirement annuity contract (see Part 21). An employee who becomes a partner should be treated as having withdrawn from service and given the normal options available under the scheme (see Part 12).
- 3.4 Every employee who is eligible for membership must be notified of his rights under the scheme (see paragraph 19.8.).

TEMPORARY ABSENCE AND SECONDMENT

- 3.5 If an employee is temporarily absent from employment or is seconded to another employer he may remain in full membership of an approved scheme for a period even though no remuneration is paid during his absence, so long as there is a definite expectation to return to service and he does not become a member of another retirement benefits scheme for the period of absence. If these conditions are satisfied the rules of the scheme may give the employer or administrator discretion to permit continued membership for up to 3 years. The Commissioner should be consulted before a member is retained in full membership under any other circumstances.
- 3.6 If an employee is away from work because of ill health but is receiving pay which will not continue beyond normal retirement date under a sick pay or permanent health insurance scheme, he may remain a member of the approved scheme whether or not there is in his case a clear expectation of return to service.

PART 4 CONTRIBUTIONS BY EMPLOYEES

GENERAL

4.1 It makes no difference to the approval of a scheme whether its members are or are not required to contribute.

ORDINARY ANNUAL CONTRIBUTIONS

4.2 The member is entitled to have his ordinary annual contribution to an approved scheme, whether it secures benefits for himself or for others after his death, allowable as a deduction in assessing his liability to tax for the year of assessment in which the contribution is paid (see paragraph 4.3). An “ordinary annual contribution” is regarded as a fixed amount, or a varying one calculated as a percentage of earnings or on some other stated basis, which is payable each year until normal retirement or completion of maximum reckonable service.

LIMIT ON CONTRIBUTIONS

4.3 Subject to paragraph 4.7 below, the aggregate of a member’s ordinary annual contributions including voluntary contributions to all approved schemes in any year shall be limited for tax relief purposes to a maximum of one sixth of the member’s assessable income (i.e. within the limits of Rule 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992) and this limitation must be written into the rules of the scheme. Furthermore, total employee’s contributions, voluntary or otherwise, must be restricted if necessary to ensure that the member’s aggregate benefits from his employer’s schemes are within approvable limits.

VOLUNTARY CONTRIBUTIONS

4.4 Members may be permitted by the scheme rules to pay voluntary contributions in order to secure increased or additional benefits (whether or not they pay any other contribution) provided that this is not the major purpose of a scheme otherwise giving very small benefits. Voluntary contributions which qualify as ordinary annual contributions to an approved scheme are allowable as deductions in determining tax liability. Payments once begun should be terminated only if the member’s circumstances have so changed since he started making voluntary contributions that to continue paying them would involve him in financial hardship. But in practice if there is an understanding that, barring such unforeseen circumstances, the members will continue to make them on a uniform basis for not less than five years (or until retirement if that be earlier) they may be allowed as ordinary annual contributions.

DURATION OF CONTRIBUTIONS

4.5 A member's contributions should not normally continue after normal retirement date or earlier withdrawal from the scheme.

TEMPORARY ABSENCE

4.6 During a period of temporary absence (see paragraphs 3, 4 and 3.5), a member's contributions may be either suspended or continued. If they are continued, they shall be based on any salary scale applicable to the member, or any increased remuneration paid to employees of the same rank. Tax relief will be due if the member's ordinary annual contributions are paid by him on any of the bases quoted above, whether continuing in the member's absence or made up by him after suspension and within the same tax year; otherwise the Commissioner of Income Tax should be consulted.

CONTROLLING DIRECTORS

4.7 The overall employee and employer ordinary annual contributions including voluntary and special contributions to all approved schemes in any year of assessment in respect of a controlling director shall be limited for tax relief purposes to a maximum of 25% of earned income. (i.e. within the limits of Rule 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992). A controlling director is a proprietary director, director or employees who either alone or together with his/her spouse and/or children, is or becomes the beneficial owner of shares which when added together carry more than 20% of the voting rights in the Company providing the pension or in a company which controls that company.

PART 5**CONTRIBUTIONS BY EMPLOYERS****GENERAL**

5.1 It is a condition of approval of a scheme that the employer must contribute to it and the Commissioner of Income Tax will not exercise his discretion to approve a scheme if the employer's contributions appear to be mere token contributions of insignificant amounts.

ORDINARY ANNUAL CONTRIBUTIONS TO AN APPROVED SCHEME

5.2 Subject to paragraph 4.7, any ordinary annual contribution paid by an employer to an approved scheme is allowed as an expense in the year in which it is paid.

5.3 The amount allowed must not exceed the amount contributed by the employer to a scheme in respect of employees engaged in a trade or undertaking the profits of which are assessable to tax in Gibraltar on the employer. Thus an allowance cannot be given in respect of a person who has not been in his employment, and where the employer carries on two or more separate businesses each with its own employees, the employer's contributions in respect of particular employees can be allowed only against the profits of the business in which they are employed. (See paragraph 15.4 as to centralised schemes for the employees of more than one employer).

SPECIAL CONTRIBUTIONS TO AN APPROVED SCHEME

5.4 If a contribution to an approved scheme is not an ordinary annual contribution but a special contribution (made for example to provide benefits for back service or augment benefits already secured or make up an actuarial deficiency in the fund), the Commissioner of Income Tax may, subject to paragraph 4.7, require the allowance be spread forward over a period of years. This will not normally be required if the aggregate of all special contributions made by the employer to approved schemes in the same accounting year does not exceed the greater of the employer's corresponding aggregate ordinary annual contributions or £10,000.

5.5 The period of the spread is usually determined by dividing the aggregate special contribution by the amount of the employer's current aggregate ordinary annual contribution, subject to a maximum of five years and to a minimum divisor of £10,000. If the quotient exceeds 1 but does not exceed 1.5, the special contribution will be normally allowed over 2 years rather than 1; in all other cases, a fraction of a year will be rounded down if it is equal or is less than $\frac{1}{2}$, and rounded up if it exceeds $\frac{1}{2}$. If a fraction is rounded up, the allowance in each of the relevant years except the last will be an amount equal to the greater of the employer's aggregate ordinary annual contributions at the time the special contributions is made and £10,000, the balance being allowed in the final year. Once determined the period of spread will not be varied because of subsequent fluctuations in the ordinary annual contributions. Re-computation will be necessary if a further special contribution is paid before the first one has been wholly allowed.

5.6 The effect of approval of schemes is to prevent the employer's contributions from being treated as remuneration of the employees.

PART 6

TOTAL BENEFITS ON RETIREMENT AT NORMAL RETIREMENT DATE

GENERAL

6.1 This part sets out the maximum total benefits that may be provided under an approved scheme for members who retire at normal retirement date. In determining whether the benefits to be provided under a scheme for a particular employee or class of employees are within the approvable limits, the Commissioner of Income Tax will aggregate them with benefits for those employees from all other retirement benefit schemes set up by the employer in question, or to which he has contributed (part 4). This should be borne in mind throughout this part and other parts dealing with limits on benefits in particular circumstances.

NORMAL RETIREMENT AGE

6.2 The principal limits on benefits which govern approval are expressed in terms of pension payable on retirement at a specified age usually referred to as the normal retirement age. This age should be the age at which those employees participating in a scheme do in fact retire. Any age within the range of 55 to 75 both for men and women is acceptable if it satisfies this test.

6.3 Any proposal to adopt an age outside the range in the preceding paragraph will require special consideration. If a low normal retirement age is accepted some additional restrictions on benefits may be necessary. For example, the maximum benefits permissible for late entrants to a scheme with normal retirement age of 60-65 would not be appropriate for a scheme with a very low normal retirement age whose members might expect to take up other pensionable employment.

6.4 Normal retirement date will not, of course, necessarily be the birthday at which normal retirement age is reached, but may be any convenient date such as the last day of a month or the nearest scheme anniversary date.

MAXIMUM TOTAL BENEFITS

6.5 The aggregate benefits payable to an employee who retires at normal retirement date after 40 years service with the same employer, when expressed as an annual amount payable for life and taking into account any benefits paid as lump sums, should not exceed two-thirds of his final remuneration. An accrual rate not exceeding $1/60^{\text{th}}$ of the final remuneration for each year of service is approvable for any period of service of 40 years or less (a pension on this basis is commonly described as a pension of $N/60^{\text{ths}}$, N being the number of years of service with the employer providing the benefits).

FINAL REMUNERATION

6.6 For the purposes of arriving at maximum approvable benefits, the scheme rules must provide for “final remuneration” to be calculated as:

The average of the total emoluments for any period of 3 (three) or more consecutive years ending not earlier than ten years before the normal retirement date.”

6.7 Each year’s remuneration may be increased in proportion to the increase in the cost of living (SEE FOOTNOTE) for the period from the end of the year up to normal retirement date. “Final remuneration” so increased is known as “Dynamised Final Remuneration”.

LATE ENTRANTS

6.8 Benefits in excess of those which would be produced by a basic rate of $1/60^{\text{th}}$ of final remuneration for each year of service may be approved under the Commissioner’s discretion for employees who cannot, by reason of the date of their entry into the scheme, complete 40 years service before normal retirement date. A pension of $2/3$ rds of final remuneration cannot be approved for very short period of service but subject to any deduction required for retained benefits from previous occupations, approved schemes may provide a pension $2/3$ rds of final remuneration for service of not less than 20 years to normal retirement date. An improvement of an accrual rate of 60^{ths} is usually also permissible for employees with between nine and twenty years service to normal retirement date as in the following scale (known as “uplifted 60^{ths} ”).

| YEARS OF SERVICE TO NORMAL RETIREMENT AGE | MAXIMUM PENSION (expressed as a fraction of final remuneration) |
|--|--|
| 1 - 8 | $1/60^{\text{th}}$ for each year |
| 9 | $10/60^{\text{th}}$ |
| 10 | $12/60^{\text{th}}$ |
| 11 | $14/60^{\text{th}}$ |
| 13 | $18/60^{\text{th}}$ |
| 14 | $21/60^{\text{th}}$ |
| 15 | $24/60^{\text{th}}$ |
| 16 | $27/60^{\text{th}}$ |
| 17 | $30/60^{\text{th}}$ |
| 18 | $33/60^{\text{th}}$ |
| 19 | $36/60^{\text{th}}$ |
| 20 | $40/60^{\text{th}}$ |

There is no objection to the interpolation of fractions of a year into this scale.

FOOTNOTE

Increases in the cost of living may be measured by the index of retail prices published By the Gibraltar Government.

BENEFITS NOT BASED ON FINAL REMUNERATION

6.9 Schemes which do not calculate their benefits by reference to the approved formula of final remuneration in paragraphs 6.6-6.7 but base them on some other formula, e.g. a fixed amount of pension for each year of service, or a fixed amount regardless of service, or money purchase schemes where the pension is the amount that can be bought by the fund built up for the individual member from his own and the employer's contributions, are subject to the same overall limits on benefits as final salary schemes.

6.10 Particularly in money purchase schemes the benefits may sometimes turn out to be excessive. A rule providing for restriction of benefits may be necessary and it may be a condition of approval that potentially excessive benefits are to be reported to the Commissioner of Income Tax but in suitable cases where the contribution rates are such that benefits will not exceed or are very unlikely to exceed the maximum allowable, a rule restricting them may be dispensed with provided that the scheme in question is the sole scheme of the employer relating to the particular employees.

RETAINED BENEFITS

6.11 Benefits accruing at a rate of N/60ths may be provided irrespective of the benefits the employee has earned during previous occupation whether carried on in Gibraltar or not ("retained benefits"). If, however, it is desired to give more than N/60ths, on the "uplifted 60ths" scale, the benefits under the present employer's scheme (s) must be restricted so that when aggregated with the pension equivalent of the retained benefits, they will not exceed 2/3rds of the employee's final remuneration. Retained benefits include;

- (a) pensions, whether deferred or already in payment, including any part of a deferred pension which is commutable, but not including any pension from any national scheme;
- (b) the annuity equivalent of lump sums received or receivable including any already received in commutation of pension;
- (c) retirement annuity under contracts and trust schemes or annuities, and the annuity equivalent of lump sums, from personal pension schemes related to non-pensionable service with the current or an earlier employer, or to previous periods of self-employment (either alone or in partnership), but excluding those relating to a current occupation, and;
- (d) the annuity equivalent of amounts received by way of refund of contributions and any interest thereon if they were received after the age of 45 and exceeded £2,000.

BENEFITS ON RETIREMENT - OTHER CONDITIONS FOR APPROVAL

- 6.12 No pension shall be assignable, and no pension shall be capable of being surrendered except to the limited extent explained in paragraph 11.6 in order to provide a pension for a widow, widower or dependant. These conditions apply to all pensions payable under approved schemes, whether to the employee himself or to other persons, and whether payable in retirement at normal retirement age or from other dates.
- 6.13 A pension for the employee himself may not commence before normal retirement date if he is still in service and must be payable for his life (as a minimum period) except that the rules may provide for forfeiture in exceptional circumstances e.g. if the pensioner attempts to assign his pension.

OPEN MARKET OPTIONS

- 6.14 Where the rules of a scheme and the terms of the policy used to underwrite it permits, a pension may be purchased on the open market with the policy proceeds, from another Life Office approved by the Commissioner of Income Tax offering more favourable annuity rates, rather than being taken automatically from the insurers under the policy but the rules and the policy conditions should provide for a direct transfer to the purchase price between the two offices, or if considered appropriate, for the payment to be made through a pension consultant, approved by the Commissioner of Income Tax, arranging the transaction.

PART 7

INCREASES OF PENSIONS IN PAYMENT

ADVANCE PROVISION FOR INCREASES

7.1 If desired, rules may provide in advance for increases in pensions to off-set rises in the cost of living (SEE FOOTNOTE). They may include a commitment to raise pensions in step with the full increases in the cost of living after retirement but if this is considered impracticable, other acceptable formulae include;

- (a) fixed increases of not more than 3% per annum compound, whether or not the increases in the cost of living reaches that level, or
- (b) provision for regular review of pensions in payment and for increases (not exceeding the rise in the cost of living since the pension came into payment), at the employer's or administrator's discretion, having regard to the availability of funds or bonuses on policies, or
- (c) a combination of (a) and (b), or
- (d) increases reflecting the rise in the cost of living but not exceeding a stated maximum percentage per annum compound. If the maximum percentage is to be acceptable for funding purposes (see part 17) and for valuing the pension for commutation (see part 8) it must be reasonable in the light of long term trends in the cost of living.

A scheme which chooses one of these four formulae for providing increases of pensions in payment does not necessarily have to use the same formulae for calculating increases on deferred pensions, in respect of the period of deferment (see paragraph 12.3).

FOOTNOTE

Increases in the cost of living may be measured by the index of retail prices published by the Gibraltar Government.

INCREASES WITHOUT PRIOR PROVISION OR COMMITMENT

7.2 If there is no special provision in the rules as mentioned in the previous paragraph surpluses in the scheme or special contributions by the employer may be used (under a suitable amendment to the rules, or on existing power of augmentation, or a special supplementary arrangement, or by the purchase of annuities):

- (a) to increase pensions in payment up to the maximum approvable (according to whether retirement was at, or before or after normal retirement date and whether there were any retained benefits) less any pension surrendered to provide for a widow, widower or dependant, and less any pension that has been commuted, or the pension equivalent of any lump sum, and/or
- (b) to increase pensions in payment (whether or not increased as at (a) at a fixed rate not exceeding 3% per annum compound from the date of retirement, or in proportion to the rise in the cost of living since that date, or by a lesser amount.

POST RETIREMENT LUMP SUMS

7.3 Any provision for increases in benefits after retirement to be paid in the form of a tax free lump sum will not be approved.

PART 8

LUMP SUM BENEFITS AND COMMUTATION

GENERAL

8.1 An employee on retirement may opt to take a lump sum up to 100% of the accumulated pension fund.

8.2 Commutation is allowed only at the date at which the pension becomes payable.

RETAINED LUMP SUM BENEFITS

8.3 A lump sum may be given irrespective of lump sums the employee has earned during previous occupations whether carried on in Gibraltar or not (“retained lump sum benefits”).

Retained lump sum benefits include:

- (a) lump sums received or receivable from any scheme (whether in Gibraltar or overseas) other than one from a national scheme, including sums received or receivable in commutation of pension;
- (b) sums received or receivable in commutation of retirement annuities under contracts and trust schemes;
- (c) amounts received by way of refund of contributions and any interest thereon, if they were received after the age of 45 and exceed £2,000.

In practice, though they have an enhanced value by reason of early payment, lump sums already received may be taken at their actual amount.

COMMUTATION - SERIOUS ILL HEALTH

8.4 An approved scheme may permit full commutation of an employee’s pension if at the time it becomes payable the employee is in “exceptional circumstances of ill health”. This phrase is to be interpreted strictly and narrowly. It is not intended to refer to the kind of ill health which prevents somebody from working, but to cases where the expectation of life is unquestionably very short. The inclusion of a rule on these lines in an approved scheme is accepted on condition that it will be interpreted invariably in this sense and that adequate medical evidence will always be obtainable by the Administrator.

8.5 An employee leaving service in mid-career in such serious ill health may receive a commutation payment immediately, on the footing that he/she is retiring on incapacity grounds and is commuting an immediate pension. An employee who has left service with an entitlement to a pension deferred to normal retirement age and becomes seriously ill before the pension commencement date may, if the rules of a scheme so permit, opt to convert his/her deferred pension into an immediate pension and commute the latter immediately provided that the pension is not secured by an annuity contract or policy which has been bought in the name of the employee or assigned to him/her.

COMMUTATION FACTORS

8.6 If an approved scheme permits a retiring employee to commute pension to provide a lump sum the reduction in pension must be commensurate with the amount of the lump sum. The relationship between the lump sum and pension must be calculated on an approved basis appropriate to the particular scheme and (subject to variations of age and sex) must be consistent for all members of one scheme and for schemes which have a substantial common membership.

8.7 The Commissioner of Income Tax will accept a “commutation factor” of 9:1 for men and 11:1 for women, i.e. £1 of pension may be commuted for a lump sum of £9 in the case of a man and for £11 in the case of a woman.

8.8 A scheme may provide for individual calculations by a qualified actuary for every commutation. These must be consistent with other calculations made for the same individual and for other purposes of the scheme.

8.9 A scheme may use a specially calculated table, which will be subject to review at intervals. Continued approval of the scheme will depend on the table being changed if any of the assumptions on which it is based have to be varied.

PART 9

RETIREMENT BEFORE AND AFTER NORMAL RETIREMENT DATE

RETIREMENT BEFORE NORMAL RETIREMENT DATE

9.1 Any employee whose employment terminates not more than ten years before he reaches normal retirement date and not earlier than age fifty may take his lump sum, and begin to receive his pension immediately.

TOTAL BENEFITS

9.2 The maximum immediate pension (including the annuity equivalent of any lump sum) will be $1/60^{\text{th}}$ of final remuneration for each year of actual service with a maximum of forty years, (see part 6).

ILL HEALTH

9.3 If retirement is caused by ill health, an employee with service of not less than ten years may receive the same pension and lump sum benefits as he could have received had he remained in service until normal retirement date.

9.4 Ill health” means physical or mental deterioration which is bad enough to prevent the individual from following his normal employment, or which seriously impairs his earning capacity. It does not mean simply a decline in energy or ability.

RETIREMENT AFTER NORMAL RETIREMENT DATE

9.5 It will be permissible for the Commissioner of Income Tax, at his discretion, to allow an employee to retire after reaching normal retirement date provided that the employee’s age does not exceed seventy-five years.

PART 10

BENEFITS ON DEATH IN SERVICE

GENERAL

10.1 Throughout this part all references to “widow” are to be used as including a widower of a female employee.

10.2 Final remuneration need not be defined for this part in the same terms as for the calculation of other benefits. It may also be defined in any of the following ways:

- (a) where basic salary only is involved, the annual rate thereof being received immediately before death;
- (b) basic salary as above, plus the average fluctuating emoluments during the three years (or the whole period of the employment if less) up to the date of death.

In the case of an employee who before he died had suffered a reduction in earnings because of ill health, the date on which he fell ill may be substituted for the date of death, and the appropriate cost of living addition may be added to final remuneration.

LUMP SUM BENEFITS

10.3 On death in service before normal retirement date a lump sum may be provided not exceeding four times the deceased employee’s final remuneration. This limit is subject to any restriction required by paragraph 10.9.

10.4 A refund of the employee’s own contributions with or without interest, may be paid in addition to any other lump sum. Such interest is regarded as an element in the calculation of a benefit from the scheme and is not true interest for tax purposes.

10.5 The lump sum may be paid to the employee’s legal personal representatives or nominated beneficiary, or distributed at the discretion of the employer or administrator. The money may continue to be held under the rules of the pension scheme for a period not exceeding two years if this is necessary for the administrator to determine who is to benefit, and interest may be credited provided that the total lump sum thus payable (excluding any refunded contributions and interest thereon) does not exceed four times final remuneration. The money should be paid over to the recipients (or to a trust for their benefit) promptly once they have been selected, or transferred to a separate account outside the scheme if they have not been selected after two years.

WIDOWS' AND DEPENDANTS' PENSIONS

10.6 In addition to the lump sum an approved scheme may provide a pension for a widow or dependant, of an amount not exceeding 2/3rds of the maximum pension that could have been approved for the employee if he had no retained benefits from earlier occupations and had retired on ill health grounds on the date of his death.

10.7 Where there are both a widow and dependants, or no widow but more than one dependant, separate pensions may be provided for each, but no pension may be greater than specified in the preceding paragraph, nor must the total exceed the full amount of the ill health pension that could have been provided for the employee himself. Subject to these limits, the benefits may be shared in any manner desired.

10.8 A widow's pension may be deferred at her request, for example until she herself reaches retirement age, or it may be paid immediately on death, and it may continue for life, or it may cease on remarriage. If it is deferred, no objection will be raised in practice to rules giving an actuarial increase instead of (not in addition to) a cost of living increase for the period of deferment. A pension payable to a dependant other than a surviving spouse should commence immediately after the member's death. A pension for a child must cease when the child ceases to be a dependant. Pensions payable to other dependants may continue for life irrespective of any later change in the dependant's circumstances.

RETAINED BENEFITS

10.9 For the purposes of the limits set out in paragraphs 10.3, 10.6 and 10.7 "retained death benefits" must be taken into account and the current benefits payable to the same person restricted if necessary so that the respective totals do not exceed the appropriate maxima.

Retained Death Benefits include:

- (a) death in service benefits derived from earlier employments whether or not in Gibraltar;
- (b) death in service benefits receivable under retirement annuity contracts and trust schemes related to non-pensionable service with the current or an earlier employer, or previous periods of self-employment.

The following may, however, be ignored:

- (i) refunds of employee's contributions;
- (ii) refunds of premiums on death under retirement annuity contracts.

PART 11

BENEFITS ON DEATH AFTER RETIREMENT

GENERAL

11.1 Throughout this Part all references to “widow” are to be read as including a widower of a female employee.

WIDOWS’ AND DEPENDANTS’ PENSIONS

11.2 An approved scheme may provide a pension for a widow or dependant of an amount not exceeding 2/3rds of the maximum pension that could have been approved for the employee if he had had no retained benefits from earlier occupation.

11.3 Where there are both a widow and dependants, or no widow but more than one dependant, separate pensions may be provided for each, but no one pension may be greater than specified in the preceding paragraph, nor must the total exceed the full amount of the maximum pension that could have been provided for the employee himself. Subject to these limits, the benefits may be shared in any manner desired.

11.4 Widows’ and dependants’ pensions may commence on the employee’s death and may continue for life, or may cease on re-marriage. A pension for a child must cease when the child ceases to be a dependant. Pensions payable to other dependants may continue for life irrespective of any later change in their circumstances.

BENEFITS FROM EARLIER EMPLOYMENT

11.5 For the purposes of the limits set out in paragraphs 11.2 and 11.3 pensions derived from earlier employment or annuities receivable under retirement annuity contracts and trust schemes related to non-pensionable service in the same or an earlier employment or to previous periods of self-employment must be taken into account and current pensions payable to the same person restricted if necessary so that they do not exceed the appropriate maxima.

ALLOCATED WIDOWS’ AND DEPENDANTS’ PENSIONS

11.6 An employee may surrender part of his own pension to provide a pension for his widow or, alternatively, a dependant, coming into payment on his death after retirement, of an amount not exceeding the reduced pension that he himself retains.

LUMP SUM BENEFITS

- 11.7 No lump sum benefits may be paid if death occurs after retirement except that if the employee does not live to enjoy his pension for five years an immediate lump sum equal to the instalments falling due after the pensioner's death may be paid in as an alternative to continuing the pension, and in addition to any widow' and dependants' pensions. For the purposes of calculating the lump sum, cost of living increases as defined in the retail price index published by the Gibraltar Government, can be taken into account.

PART 12

WITHDRAWAL FROM SERVICE

GENERAL

12.1 In this part, the term “withdrawal from service” is regarded as covering all circumstances of leaving service, otherwise than by death, not giving rise to immediate payment of benefits. The benefits which may be provided in these circumstances are:

- (a) The provision of deferred, or frozen pension and/or deferred lump sum in the scheme;
- (b) the purchase of a deferred annuity and/or deferred lump sum from a Life Office;
- (c) a refund of the member’s own contributions (with or without interest);
- (d) the payment of a transfer value to the scheme of a subsequent employer (transfer payments are dealt with separately in Part 13).

DEFERRED PENSIONS

12.2 If a withdrawing employee’s benefits are to be preserved by providing him with a deferred benefit the maximum amount (including the annuity equivalent of any deferred lump sum) is normally computed on the same basis as for early retirement otherwise than on grounds of ill health (see part 9), i.e. $1/60^{\text{th}}$ of final remuneration for each year of actual service with a maximum of 40 years.

12.3 The maximum amount which can be provided in accordance with paragraph 12.2 above may be increased, when the payment begins, by a percentage not exceeding the percentage increase in the cost of living published by the Gibraltar Government, from the date when the employee withdrew from service so that the purchasing power of the pension may be maintained throughout the period of deferment.

12.4 Except in the case of certain employments for which an unusually low normal retirement age has been accepted, a deferred pension may in practice begin at any one of the following items:

- (i) the normal retirement date under the scheme in which the benefits were secured;
- (ii) any earlier date in the case of ill health;
- (iii) at any time between the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme (see paragraph 9.1) and normal retirement date under that scheme;
- (iv) a later date still if the employee establishes that he is still in employment, but not later than the attainment of age 75.

DEFERRED BENEFITS - LUMP SUMS

12.5 A lump sum of up to 100% of the capital value of the pension may be payable, to an employee who has left the service, at normal retirement date under the scheme in which the benefits are secured, or at an earlier date on grounds of ill health.

DEFERRED BENEFITS - DEATH BEFORE PAYABLE DATE

12.6 A withdrawing employee who is granted deferred benefits under the scheme may also be given a right to benefits if he dies before the deferred benefits become payable. In these circumstances any lump sum benefit will be governed by the practice in relation to death in service benefits. Pensions for a widow, widower and/or dependants may also be provided.

DEFERRED BENEFITS UNDER INDIVIDUAL POLICIES

12.7 Instead of providing deferred benefits from the scheme itself for an employee who has left the service, a scheme may permit the benefits (within the limits explained in paragraphs 12.2 and 12.3) to be provided by an assignment to the employee of a paid up insurance or annuity policy already held for the purposes of the scheme, or by purchase of an annuity bond in the employee's own name. Benefits on the employee's death before the pension commencement date may be given provided that the amount of such benefits available in lump sum form does not exceed four times the deceased's final remuneration in the employment giving rise to the deferred pension, plus a refund of his own contributions with interest to the date of his death.

12.8 The policy or annuity bond must be endorsed before it is given to the employee to ensure that it cannot be assigned or surrendered to show the extent (in monetary terms) to which benefits may be taken in lump sum form either as commutation or on death.

WITHDRAWAL FROM ACTIVE MEMBERSHIP WHILST STILL IN SERVICE

12.9 If an employee ceases to be a member of a scheme without leaving the employer's service he should not be treated as having withdrawn from service but his benefits should be frozen and held under the rules until he retires or does in fact leave service.

WITHDRAWAL FROM EMPLOYMENT BUT CONTINUE AS ACTIVE MEMBER

12.10 A Member of an approved Pension Scheme in Gibraltar will be permitted to continue as an active member and make contributions to such pension scheme even whilst not in employment.

REFUNDS OF CONTRIBUTIONS

12.11 Scheme rules may only provide for employee's leaving service in the first five years of scheme membership, a refund of their own contributions, with or without interest. The amount so refunded will be liable to tax (see paragraph 18.4).

12.12 If an employee who has received a refund of contributions is subsequently re-employed by the same employer, he may be re-admitted to the scheme, if again

eligible, but if benefits are to be provided by reference to both periods of service the refund must be repaid to the scheme or treated as a lump sum benefit for the purpose of determining whether limits on pension and lump sum are satisfied.

PART 13

TRANSFER PAYMENTS

GENERAL

- 13.1 The purpose of the practice relating to transfer payments is to permit payments between schemes approved by the Commissioner of Income Tax with the minimum of restriction necessary to ensure that funds which have been built up in approved schemes may not be transferred out of those schemes and paid out in a manner incompatible with approval.
- 13.2 The transfer payments generally referred to in this Part are those made when individual employees change their jobs and move from the scheme of one employer to that of another.
- 13.3 There will be no charge to Income Tax on the Administrator of an Approved Scheme in respect of any transfer payment made in accordance with the following paragraphs.
- 13.4 A transfer payment shall represent the whole of an employee's benefits under the transferring scheme and where a transfer payment is to be made when an employee changes his job, and his benefits have been provided under two or more separate schemes, it will be necessary for the benefits under both or all schemes to be transferred.

INDIVIDUAL INSURED SCHEME: CONTINUATION OF SCHEME BY NEW EMPLOYER

- 13.5 .If there is an individual insured scheme for an employee leaving service it may be possible for the new employer to take an assignment of the policy and assume the former employer's responsibilities. Such an arrangement, of course, constitutes a new retirement benefits scheme, and must be referred to the Commissioner of Income Tax for approval.

BLOCK TRANSFERS

- 13.6 When groups of employees enter a new scheme of the same employer on the reorganisation of his pension arrangements or following mergers, reorganisations or takeover of companies or changes in the ownership of the business, the Commissioner should be consulted about the treatment of any transfers of assets or payments from one scheme to another. There will usually be amendments of the rules or approval of new schemes to be dealt with at the same time. The objective will be as explained in paragraph 13.1 and the freedom from Income Tax mentioned in paragraph 13.3 applies also to approved block transfers.

PERMITTED TRANSFERS

13.7 The rules of an approved scheme may provide for transfer payments to be made to or received from any other scheme or fund approved by the Commissioner of Income Tax (i.e Occupational Pension Schemes and Personal Pension Schemes).

The rules of an approved scheme may also provide for transfer payments to be made from a Retirement Annuity Contract to an Occupational Pension Scheme.

13.8 Any transfers made in accordance with the preceding paragraphs will not prejudice any existing approval of either scheme provided that certain conditions are complied with. It will, of course, be necessary for the approved rules of the paying and receiving schemes to make provision for the payment or receipt to transfer values with any necessary conditions or restrictions.

13.9 The receiving scheme may provide:

(a) the maximum benefits normally appropriate to the member's service with his new employer, plus

(b) the additional benefits which the transfer payment is sufficient to buy if invested by the receiving scheme, or if it is applied by way of premium under the relevant policy,

but (a) plus (b) must not exceed 2/3rds of the employee's final remuneration, less any retained benefits in respect of still earlier occupations.

13.10 The receiving scheme will not refund an employee's contributions on his leaving the employment covered by the receiving scheme if the rules of the transferring scheme would have prohibited such a refund on leaving the earlier employment.

13.11 Approval will normally be given to the payment of a transfer value between a Gibraltar approved scheme and an overseas scheme provided that the following conditions are satisfied:

(a) no transfer is made without the member's written consent;

(b) the rules of the Gibraltar scheme and the overseas scheme are in terms which permit such a transfer;

(c) the overseas scheme is an approved scheme; and

(d) the receiving scheme is willing to receive the payment.

Full particulars, including a certified copy of the overseas scheme governing documentation, should be obtained and sent to the Commissioner of Income Tax for consideration.

PART 14

DISCONTINUANCE OF SCHEMES

GENERAL

14.1 Provisions may be made in the documentation governing an approved scheme for its discontinuance in certain circumstances (e.g. the bankruptcy or liquidation of the employer) or at the discretion of the employer or administrator. The existence of discretionary powers to discontinue a scheme will not be regarded as a breach of the requirement that an approved scheme must be established under irrevocable trusts, but the rule setting out the action to be taken on discontinuance must satisfy certain requirements before the scheme can be approved. Discontinuance of a scheme may be achieved in one of two ways, by making a frozen or paid up, or by winding up. These are dealt with in succeeding paragraphs. (The term “closed scheme” is usually applied to one closed to new members but otherwise continuing to receive contributions and proceeding normally).

FROZEN OR PAID UP SCHEMES

14.2 Discontinuance of a scheme need involve no more than making it frozen or paid up. All contributions cease, but the assets of the scheme continue to be held by or on behalf of the administrator and are applied to provide benefits according to the rules when existing members retire or die, or withdraw from service. A frozen scheme must of course eventually be wound up.

WINDING UP

14.3 Alternatively the scheme may be wound up as soon as it is decided to discontinue it. The benefits provided on the winding up of a scheme otherwise than by means of transfer payments to a new scheme should not exceed the maximum allowable if the employee had withdrawn from service on the date when the benefits were determined (see paragraphs 12.2 and 12.5).

14.4 If there is a trust fund, assets should be realised and the proceeds applied to secure benefits, in accordance with the rules and within the limits mentioned in the preceding paragraphs, for members themselves and, where applicable, their widows, widowers, children or dependants. An order of priority as between classes of members may be specified in the winding up rule, e.g. person in receipt of pensions may be given preference over those with contingent interests and present employees. The rules of the scheme may provide that, in the event of a surplus of money arising, benefits may be augmented within allowable limits, but there must be express provision for the return of any eventual surplus to the employer as soon as the liabilities of the scheme are satisfied. The amount so returned will be liable to tax (see paragraph 18.9) and the surplus may not, therefore, be paid direct to a third party to be applied for some other purposes.

- 14.5 As the scheme is ceasing to exist, benefits must be secured either by means of transfer payments to other schemes or by the purchase as appropriate of immediate or deferred non-assignable annuity contracts or other suitable policies from a Life Office approved by the Commissioner of Income Tax.
- 14.6 The winding up rule should not provide for a refund of the employee's own contributions to any employee who is still in service when the scheme begins to be wound up. The benefits secured should be in annuity form and the terms of the contract or policy should ensure that deferred benefits, whether in pension or lump sum form, are not received earlier than the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme unless the employee becomes incapacitated. There should not be any provision permitting full commutation on grounds of the member's subsequent serious ill health.
- 14/7 See paragraph 15.5 as to the winding up of centralised schemes.

PART 15

CENTRALISED SCHEMES

GENERAL

- 15.1 The Commissioner of Income Tax is prepared to exercise his discretion to approve schemes in which two or more employers participate, provided that certain conditions are satisfied. These conditions differ accordingly to whether the employers are associated or non-associated.
- 15.2 Any proposal to establish a centralised scheme, to admit an employer to participation, or to retain an employer in the scheme if there is doubt whether he satisfies the conditions for participation, should be submitted in advance to the Commissioner for consideration.
- 15.3 Each employer participating in the scheme must be under an obligation to observe the rules of the scheme. This condition is usually met by the employer being a party to the documents governing the scheme or undertaking the necessary obligations by a separate document.
- 15.4 To comply with paragraphs 5.1 and 5.3 each employer must contribute in respect of his own employees exclusively.
- 15.5 The rules must provide for the withdrawal of an employer who ceases to be sufficiently closely associated with, or related to, the others or who goes out of business or who leaves the scheme for other reasons. This usually involves the segregation of an appropriate proportion of the scheme assets and the application thereto of the winding-up rule. If however, the receding employer is continuing in business the segregated assets may form the nucleus of a new scheme or to be transferred to another scheme in which the employer has become eligible to participate. In such a case the Commissioner normally, if asked, may agree to the continued participation for a limited period of an employer who has ceased to be sufficiently closely associated if he needs time to set up his new pension arrangements.

ASSOCIATED EMPLOYERS: GENERAL

- 15.6 To be accepted as an associate the employers must be sufficiently closely associated to be treated as carrying on a single trade or undertaking, or must all belong to a group of companies forming a single financial unit, e.g. if they are parent and subsidiary, or fellow subsidiaries of the same parent. For this purpose a company may be regarded as a subsidiary if at least 50% of its shareholding control is owned by the other, directly or indirectly.
- 15.7 Alternatively, even though no parent/subsidiary relationship exists, there may be enough links between the employers to warrant a centralised scheme based on

close association through a permanent community of interests.

15/2

ASSOCIATED EMPLOYERS: FUNDING

15.8 A scheme for associated employers may adopt any method of funding (see Part 17) which would be acceptable for the scheme of a single employer.

ASSOCIATED EMPLOYERS: BENEFITS

15.9 A centralised scheme for associated employers may provide benefits based on the employee's final remuneration up to the normal limits. The employee's total service within the group, irrespective of moves from one participating employer to another, is regarded as constituting a single unbroken employment, except for periods of overseas service when he is not effectively chargeable to tax in Gibraltar.

NON-ASSOCIATED EMPLOYERS: GENERAL

15.10 Even where there is no close relationship or association between the employers, it may be possible to approve a centralised scheme for employers who are not even related either by trade or profession. In all cases the Commissioner of Income Tax must be satisfied that the scheme will be properly administered and that the financial arrangements to be adopted are sound.

15.11 The Commissioner of Income Tax is prepared to consider all proposals for centralised schemes of this sort on their merits and he should be consulted as soon as the sponsoring body is in a position to explain the main features of the proposed scheme. It will not be possible, to have employees as members concurrently of a centralised scheme for non-associated employers and another scheme of their employer.

NON-ASSOCIATED EMPLOYERS: FUNDING

15.12 The basis of funding will be such that each employer will provide the benefits for his own employees exclusively.

NON-ASSOCIATED EMPLOYERS: FUNDING

15.13 A scheme for non-associated employers may provide total benefits at normal retirement date of up to 1/60th of final remuneration up to a maximum of 40 years.

PART 16

OVERSEAS EMPLOYERS AND OVERSEAS EMPLOYEES

OVERSEAS EMPLOYER

- 16.1 A scheme established by an overseas employer operating in Gibraltar can be approved if it relates wholly to persons who perform their duties in Gibraltar and are chargeable to tax in Gibraltar. .
- 16.2 It is a condition of such approval that a person resident in Gibraltar , e.g. the Gibraltar Branch Manager, should be appointed to act as the Administrator in relation to all the Administrator's duties and liabilities.
- 16.3 All pensions payable under the approved scheme must be paid via the Gibraltar agent subject to deduction of tax under PAYE.

OVERSEAS EMPLOYER - EMPLOYEE PERMANENTLY TRANSFERRED ABROAD

- 16.4 If an employee working in Gibraltar for an overseas employer, who is a member of an approved scheme is transferred to duties abroad in circumstances such that his earnings will cease to be chargeable to tax in Gibraltar, his accrued benefits to that date should remain frozen in the approved scheme unless a special arrangement for the transfer of his benefits is approved.

OVERSEAS EMPLOYEES

- 16.5 The contributions paid into a scheme which has not been approved by the Commissioner of Income Tax in respect of employees who perform their duties in Gibraltar and are chargeable to tax in Gibraltar, and where such employees are only on secondment to an employer in Gibraltar, will not be tax deductible.

PART 17

FUNDING OF APPROVED SCHEMES

GENERAL

17.1 The amount of tax relief given in respect of approved schemes is controlled indirectly by the imposition of limits and conditions on the benefits provided. If, therefore, a scheme is to be and remain approved, the Commissioner of Income Tax must be satisfied not only that the rights and benefits are approved but also that the contributions and any investment income on which tax relief is given are reasonable in amount in relation to the benefits to be provided. "Funding" has therefore always been and will continue to be important.

SELF ADMINISTERED SCHEMES

17.2 If the scheme funds are directly invested by the administrator, actuarial reports or advice given in connection with the setting up of the scheme and any reports during its operation must be furnished to the Commissioner of Income Tax.

17.3 If the scheme provides benefits representing a stated proportion of the employee's average or final remuneration, reasonable estimates of future increases in remuneration may be taken into account by the actuary when calculating the future liabilities of the scheme and the contributions required.

17.4 The Commissioner of Income Tax accepts that surpluses may arise if an actuary takes a prudent view of long term yields and of the experience of the fund in relation to mortality, withdrawals, etc. and that these surpluses may, for example be used to increase pensions already in payment, to offset increases in the cost of living, but the deliberate building up of funds for the purposes of increasing pensions in payment must be restricted to schemes where there is provision in the rules for reviews of pensions in payment and for increases.

17.5 If large surpluses are held, approval may, in the last resort, be withdrawn unless acceptable proposals are forthcoming for dealing with the situation, usually by reducing contributions or provide further benefits within approvable limits. Where the excess funds cannot be reduced to a level acceptable to the Commissioner of Income Tax it may have to be returned to the employer and taxed (see paragraph 18.9).

17.6 An approved scheme, whether self-administered or insured, may provide benefits on a "money purchase" basis (so that each member's benefits are those which the accumulated contributions or premiums paid by and for him are sufficient to produce). The contributions or premiums must not be so high that they are likely to produce benefits at normal retirement date exceeding approvable limits.

INSURED SCHEMES - POOLED PREMIUMS

17.7 Paragraphs 17.2 - 17.5 apply also to an insured scheme operated by means of controlled funding, or deposit administration, with premiums not earmarked to provide benefits for individual employees. Actuarial reports will not however usually be required if the terms of the relevant policy ensure that the future contributions agreed between the employer and the Life Office will take account of any surplus arising from e.g. investment yield greater than had been anticipated or the experience of the scheme.

INSURED SCHEMES - EARMARKED POLICIES

17.8 A scheme funded by means of “earmarked” policies may use deferred annuity or pure endowment contracts to secure retirement benefits and term life contracts to secure death in service benefits. Or both types of benefits may be secured by endowment assurances.

17.9 Policy proceeds may be more than sufficient to provide the benefits under the scheme rules, particularly when the use of the Life Offices own immediate annuity rates or the exercise of an option to buy from another Life Office (an open market option) permits the pension to be bought more cheaply.

17.10 Excess policy proceeds may be used to provide further benefits within approvable limits but, subject to this, the surplus must be set off against other premiums due under the scheme, or returned to the employer subject to tax.

PART 18

TAX TREATMENT OF APPROVED SCHEMES AND PAYMENTS BY APPROVED SCHEMES

TAXATION OF PENSIONS

18.1 All pensions paid under any scheme which is approved, or being considered for approval are chargeable to tax under Section 6(1) of the Income Tax Act and PAYE must be operated on payment. The administrator or trustee managing the fund is responsible for applying PAYE and accounting for the tax to the Commissioner of Income Tax.

CONTRIBUTIONS BY EMPLOYERS

18.2 The amount of ordinary annual contributions paid by an employer to an approved scheme is deductible as an expense in the year in which it is paid. If a contribution to an approved scheme is not an ordinary annual contribution but a special contribution, the Commissioner may require that the allowance be spread over a period of years.

CONTRIBUTIONS BY EMPLOYEES

18.3 The aggregate of a member's ordinary annual contributions including voluntary contributions to all approved schemes in any year shall be limited for tax relief purposes to a maximum of 1/6th of the member's assessable income (i.e. within the limits of Rule 21. (1) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992. For example, the total allowances including social insurance contributions, life assurance premiums, widows' and orphans' pension scheme contributions and retirement benefit scheme contributions will be restricted to 1/6th of the employee's assessable income.

TAX ON REFUND OF CONTRIBUTIONS

18.4 Where, on the termination of employment of an individual an amount is received by that individual by way of a refund of the contributions paid by him (and interest if any) to an approved scheme, the amount so refunded shall be taxed at the rate of 10% (Section 14 and Rule 4(b) of the Rates of Tax Rules of the Income Tax Act).

18.5 No tax shall be payable upon the amount of any contributions (and interest if any), referred to in the preceding paragraph and refunded in accordance with the rules of the scheme to:-

- (a) An individual who became a member of such a scheme before 1 July 1987
- (b) the widow, widower or a dependent child or relative of an individual;

REPAYMENTS TO AN EMPLOYER FROM AN APPROVED SCHEME

18.6 Rule 5. (1) (h) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 imposes liability to tax, as a receipt of trade, business, profession or vocation, on a payment made from an approved scheme to an employer. Such a payment will be either a surplus in a scheme which cannot be used in any of the ways set out in paragraphs 17.4 and 17.10 or a surplus remaining after the liabilities of a scheme have been satisfied on winding up (see paragraph 14.4). Scheme rules will need to specify that the Commissioner's consent must be obtained before any payment is made to an employer.

INCOME OF SCHEME TRUSTEES

18.7 Income derived from investments or deposits held for the purposes of a scheme established in Gibraltar is exempt from income tax by section 7 (1) (q) of the Income Tax Act.

PENSIONS PAYABLE FROM AN OVERSEAS SOURCE

18.8 Because of the requirements that PAYE must be applied to pensions, a scheme will not be approved if the pension will be, or (e.g. by the exercise of an open market option) may become, payable from an overseas source.

CHARGE TO TAX: UNAUTHORISED PAYMENTS AND PAYMENTS AFTER CESSATION OF APPROVAL

18.9 If a payment is made to or for the benefits of an employee from funds which are or have been held for the purposes of a scheme approved by the Commissioner of Income Tax and the payment is not expressly authorised by the rules of the scheme, the employee is liable to tax on the payment under Section 6 of the Income Tax Act for the year of assessment in which it is paid. Tax may similarly be charged if the payment is made under an unapprovable amendment of the scheme and approval lapses or is withdrawn from the time the amendment became effective.

TRANSFER PAYMENTS - EXEMPTION FROM INCOME TAX

18.10 Transfer payments to approved schemes within or outside Gibraltar passing accrued rights from one scheme to another will be exempt from tax

PART 19

APPLICATION FOR APPROVAL AND INFORMATION PROVISIONS

GENERAL

- 19.1 The procedure for applying for approval under Rule 5. (1) (h) and Rule 21. (1) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 is set out in paragraph 19.2 below. The application should be made by or on behalf of the administrator and addressed to the Commissioner of Income Tax. To save further correspondence and avoid delay in dealing with the application, it should be accompanied by the appropriate documents and information (see paragraph 19.5).
- 19.2 The Commissioner of Income Tax has prescribed a series of application forms which incorporate the information to be provided. There are two types: PEN 1 for schemes open to more than one employee and PEN 2 for individual arrangements. These will be supplied by the Commissioner for use by all practitioners and may be obtained by writing to the Pensions Section at the Income Tax Office. An undertaking signed by the scheme administrator will have to accompany the application for approval. PEN 3 is appropriate for schemes open to more than one employee and for individual arrangements and PEN 4 for Retirement Annuity Contracts.
- 19.3 The application should be submitted before the end of the first year of assessment for which approval is required. Thus in a case of a scheme established or amended to secure approval with effect from 1 March 2001, application for approval covering the tax year 2000/01 should be made not later than 30 June 2001.

DRAFT DOCUMENTS

- 19.4 The Commissioner is prepared to consider and comment on draft documents which have been agreed by the employer, administrator and other interested parties. He will also be prepared to discuss any special problems which may arise.

NEW SCHEMES

- 19.5 Application for approval of a new scheme is to be supported by a copy of each deed, board resolution or other instrument constituting the scheme, the scheme rules, details of membership i.e. names, addresses and dates of admission to the scheme, all announcements made to employees about the scheme, and in appropriate cases, e.g. when the scheme is self administered, actuarial reports or advice received by the administrator or employer and a list of investments of the scheme.

INTERIM DEED PROCEDURE

19.6 Where the rules and other documents are complicated and cannot be executed in their final form before the date on which the scheme is to come into operation, the Commissioner of Income Tax will normally accept that the scheme is effectively established by an interim deed or declaration creating an irrevocable trust in relation to the monies or policies to be held there under, and setting out the main purposes of the scheme. Immediate relief on a provisional basis will be allowed in respect of contributions being made by employees, provided the Commissioner is satisfied that all the essential features of the scheme have been communicated in writing to every member (see paragraph 19.8). The employer will not obtain relief under Rule 5. (1) (h) in respect of his contributions until the scheme is formally approved but such relief will be given from the effective date of approval.

EXISTING SCHEMES

19.7 Where an alteration is made to a scheme no approval already given will continue to apply unless the alteration is approved by the Commissioner of Income Tax. Copies of amendments etc. must, therefore, be forwarded to the Commissioner and approved if any approval already given is not to lapse. Formal notification that an alteration has been approved will be sent by the Commissioner to the administrator of his agent.

INFORMATION TO EMPLOYEES

19.8 If a retirement benefits scheme is to be approved, every member and every employee who has a right to be a member must be given written particulars of all essential features of the scheme which concern him e.g. :

- (a) main benefits, including those -
 - on normal retirement
 - on death in service
 - on death after retirement
 - on withdrawal before retirement
 - on early retirement
 - on late retirement
- (b) basis of contributions by members where the scheme is contributory, and administrative arrangements for collection. Any provisions governing the effect of temporary absence should be explained;
- (c) how the scheme as a whole is financed and the basis on which the employer contributes to it;
- (d) the legal constitution of the scheme including reference to the enactment under which it is or will be approved by the Commissioner of Income Tax;

- (e) particulars of the administrator, trustees and, where appropriate, any committee of management, including methods of appointment and replacement;
- (f) broad details of powers of amendment of benefits or rules and how changes can be effected.

If the scheme covers several categories of staff and benefits vary from one to another, it will suffice if each employee is given merely the information currently applicable to him.

19.9 If an alteration made to a scheme already approved affects any of the essential features as described in the preceding paragraph, it will be necessary for the members who are concerned to be informed of the change before the alteration itself is approved.

19.10 Information may be given by sending it or delivering it in writing to each employee or by exhibiting it conspicuously at the place of work and drawing each employee's attention to it in writing.

INFORMATION TO THE COMMISSIONER OF INCOME TAX

19.11 Apart from information required in support of an application for approval other obligations to provide information about retirement benefits schemes and payments there under are imposed on employers and administrators. If an administrator defaults, disappears or dies, the employer becomes responsible in his place and when the employer is resident outside Gibraltar any branch or agent in Gibraltar is equally responsible.

19.12 In the case of every approved scheme, the Commissioner of Income Tax may ask for particulars of contributions paid, contributions refunded, commutations payments, other lump sum payments, payments made to the employer and any other details of the scheme. Copies of accounts prepared for the scheme should be submitted annually. If necessary, the Commissioner may issue a notice to the employer or administrator formally requesting particulars within thirty days.

19.13 The Commissioner of Income Tax will require a copy of an actuarial valuation report to be submitted at least once every three years and may occasionally require other information in order to ensure that the approved rules are complied with.

19.14 No payments shall be made out of an approved scheme unless the Commissioner's approval has been obtained.

PART 20

WITHDRAWAL OF APPROVAL

- 20.1 If in the opinion of the Commissioner of Income Tax the facts concerning any scheme or its administration cease to warrant continuance of approval, it may be withdrawn. Withdrawal is effected by a notice in writing to the Administrator, specifying the grounds for, and the operative date of, the withdrawal. The operative date will normally be that of a particular event which has made the scheme no longer approvable but in some cases may be the beginning of a tax year or even the date of commencement of the scheme, according to the circumstances.
- 20.2 An unacceptable amendment to a scheme will cause approval to lapse automatically. Approval may also be withdrawn for such reasons as serious breaches of the rules - e.g. payment of excessive or unauthorised benefits, overfunding to an unacceptable extent and persistent failure by the Administrator to furnish information or meet the scheme's tax liabilities.
- 20.3 The following taxation consequences arise following withdrawal of approval:
- (a) all the exemptions and reliefs conferred in relation to approved schemes, including those for contributions by employers and employees, are forfeit from the date of withdrawal;
 - (b) the employees are liable to tax under Section 6(1) of the Income Tax Act on any payment made to them or for their benefit out of funds which are or have been held for the purposes of the scheme if the payments would not have been expressly authorised by the rules of the scheme before the operative date of withdrawal;
 - (c) tax continues to be chargeable:
 - (i) on repayments to employees of contributions paid up to the date the scheme's approval was withdrawn;
 - (ii) on repayments to an employer out of funds held at any time for the purposes of the scheme.

PART 21

RETIREMENT ANNUITY CONTRACTS

THE PROVIDER

21.1 A contract will only be approved if it is established by one of the following:

- (a) a company registered in Gibraltar lawfully carrying on in Gibraltar the business of granting annuities on human life; or
- (b) a bank or similar institution registered in Gibraltar and authorised to sell in Gibraltar annuities on human life.

21.2 If the provider ceases to be authorised to carry on investment business as described in the preceding paragraph, notice of such cessation shall be given immediately by the administrator to the Commissioner of Income Tax.

ADMINISTRATOR

21.3 The provider must appoint a person who must be resident in Gibraltar through whom all benefits should be paid and who will be responsible to the Commissioner for the payment of tax on benefits (also see paragraphs 2.4 and 19.11-19.12).

ELIGIBILITY

21.4 Relief from tax may be obtained in respect of premiums paid under an approved retirement annuity contract which is taken out by an individual who is chargeable to tax in Gibraltar on income derived from self employment whether alone or in partnership or from employment which is not pensionable or who is not entitled to any benefits under a pension scheme set up by his employer.

CONTRACTS

21.5 It is not necessary for the individual to enter into a contract under which level annual premiums are payable until maturity. As an alternative, the Commissioner is prepared to consider for approval a single or variable annual premium contract (or series of such contracts taken out by an individual).

21.6 Whichever type of contract is entered into, no provision will be approvable which could result in a return of premiums being made in any circumstances to the individual during his lifetime.

21.7 A contract will need to provide that no annuity payable under it shall be capable of surrender, assignment or commutation except as described in paragraph 21.17 and that no loan-back facility will be allowed i.e. a policy cannot be mortgaged or charged as security for a loan,

21.8 Although it is a requirement for approval of a contract that during the lifetime of the individual it provides only for payment of an annuity to him, this does not preclude the benefits being funded on a cash accumulation basis rather than in terms of an annuity based on rates current at the time of payment of each premium. The contract must, however, make it clear that the moneys accrued in the policy at maturity are to be applied in a manner which gives the contract holder a right only to the specific benefits stated in paragraphs 21.13 - 21.18.

21.9 A contract which provides for a lump sum payable on death of an individual will need to specify what part of the annual premium is paid towards that death benefit. This element of the premium will come within the 20% restrictions (see paragraph 21.19) but should be in itself restricted to 5% of net relevant earnings.

TRANSFER PAYMENTS

21.10 Transfer payments may be made from retirement annuity contracts to approved occupational schemes.

OPEN MARKET OPTION

21.11 Where the rules of a scheme and the terms of the policy used to underwrite it permit, a pension may be purchased on the open market with the policy proceeds from another Life Office approved by the Commissioner offering more favourable annuity rates rather than being taken automatically from the insures under the policy, but the rules and the policy conditions should provide for a direct transfer of the purchase price between the two offices, and if considered appropriate, for payment to be made through a pension consultant, approved by the Commissioner, arranging the transaction.

DISCONTINUANCE

21.12 Where the contract holder ceases to be an individual who is eligible for tax relief because he has entered pensionable employment, payment of premiums may cease and the policy be made paid up with benefits payable at maturity in accordance with its terms and conditions. In no case can the policy be surrendered in these circumstances. These requirements will also apply if the contract holder voluntarily decides to discontinue payment of premiums.

Wef 1 July 2011 a contract holder who has entered pensionable employment may continue to pay the premiums on the policy, but will only be able to claim tax relief on one or other of the schemes.

BENEFITS

21.13 Since there are no limits on the amount of benefits that may be paid under a retirement annuity contract (except in so far as the relationship between a lump sum taken in commutation and the remaining annuity is concerned) the principles set out in Part 17 of the Notes in relation to occupational schemes have no bearing in retirement annuity contracts.

21.14 The annuity payable to an individual must not commence before he attains the age of 55 or after he attains the age of 75. Subject to the Commissioner's discretion, payment to an individual of an annuity may commence before he attains the age of 55 on ill-health or special occupation.

21.15 An annuity may be payable to an individual for life or a term certain (not exceeding ten years), notwithstanding his death within that term. In the case of an annuity which is to continue for a term certain, the annuity will be assignable by will, or under the rules of intestacy.

21.16 The contract may provide for the payment after the individual's death of an annuity to the individual's widow or widower or to a dependant provided that the annuity payable is not greater than the annual amount paid or payable to the individual.

21.17 Subject to paragraph 21.18, the contract holder may obtain by way of commutation on part of the annuity payable to him, a lump sum not exceeding three times the annual amount of the remaining part of the annuity. A reduction may be necessary if any lump sum benefits have been taken from a previous scheme. Where under an "open market option" (see paragraph 21.11) a contract holder's benefits become payable by the Life Office to which the value of the accrued rights in the original contract has been transferred, the amount of any commutation payment should be calculated by reference to the terms of the substituted contract and payment of any lump sum should be made by that second Life Office out of the moneys paid to it by the first.

21.18 A contract holder may on retirement choose not to purchase an annuity and instead commute the whole 100% of the accumulated pension fund as a tax free lump sum.

TAXATION

21.19 The aggregate premiums paid to approved contracts by an individual must not exceed 20% of the member's net relevant earnings for the tax year in which the premiums are paid. (The term "net relevant earnings" has the meaning given in paragraph 21.20 below).

However as from 1 July 2012 the cap on the amount of annual contributions that can be made is removed

Tax relief on contributions will be limited to the lesser of 20% of earned income or £35,000.00

- 21.20 “Net relevant earnings” means, in relation to an individual, the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions failing to be made from the relevant earnings in computing for the purposes of income tax his total income for that year.
- 21.21 Relevant earnings includes income arising in respect of remuneration from an office or employment or from a trade, profession or vocation either alone or in partnership but does not include unearned income or remuneration as director of an investment company.
- 21.22 Any annuity payable shall be treated as earned income arising in Gibraltar and shall be charged to tax under Section 6(1) of the Income Tax Act. The tax shall be deducted at source by the locally appointed agent or administrator and paid over to the Commissioner of Income Tax.
- 21.23 Where for any tax year the amount of premiums relieved (as in paragraph 21.19) against the net relevant earnings is less than the total premiums paid, the balance may be carried back up to six tax years. This will not apply to individuals who were in pensionable employment at any time during that period.

WEF 24 June 2009 no carry back will be allowed in respect of premiums paid after this date

WEF 1 July 2012 where for any tax year the amount of premiums relieved (as in paragraph 21.19) against the net relevant earnings is less than the total premiums paid, the balance may be carried back up to one tax year. This will not apply to individuals who are members of a statutory pension scheme any time during that period.

APPROVAL

- 21.24 Application for approval of a retirement annuity contract must be made in writing and must be accompanied by a copy of the contract. Before tax relief can be given, it will also be necessary to furnish to the Commissioner of Income Tax, evidence of payment of the relevant premium payable under the contract.
- 21.25 Application for approval of a contract to be entered into for the purposes of the open market option (see paragraph 21.11) must be made before the moneys are transferred by the original insurer.