Contributions by Employers

Chapter 4

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Table of Contents

4.1 General ... 2

4.2 Ordinary annual contributions ... 2

4.3 Special Contributions ... 3

4.4 Contributions under one-person arrangements ... 5

4.5 Expenditure allowed in the year of payment ... 5

4.6 Certain schemes deemed to be “exempt approved” ... 5

4.7 Contribution to an approved scheme which is not “exempt approved” ... 6

4.8 Refund of employer contributions ... 6

4.9 Contributions in corporate groups and following corporate reorganisations, etc. ... 7

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

4.1 General

One of the conditions for approval of a pension scheme is that the employer must contribute to it (section 772(2)(d) Taxes Consolidation Act 1997 (TCA)). Subject to the considerations mentioned in Chapter 5 and any funding requirements imposed by the Pensions Acts (as regulated by the Pensions Authority) the timing of the contributions is a matter for the employer.

While Revenue will not insist that there be a stated minimum level of employer contributions, such contributions must be “meaningful” in the context of the establishment of, operation of, and the provision of benefits under, a scheme. For instance, where an employer bears the cost of establishment and ongoing operation of the scheme, in addition to meeting the costs of the provision of death in service benefits under the scheme, such overall contributions would generally be considered to be meaningful.

Employer contributions which amount to not less than 10% of the total ordinary annual contributions to a scheme (exclusive of employee voluntary contributions) would always be considered to be meaningful.

It will always be open for employers and their advisers to approach Revenue to discuss individual schemes. Such queries can be addressed using the secure “MyEnquiries” service available in myAccount or ROS.

4.2 Ordinary annual contributions

Ordinary annual contributions paid by an employer to an exempt approved scheme are allowed as a deduction for tax purposes. Section 774(6) TCA provides that the amount of the contributions shall be allowed to be deducted as an expense incurred in the year in which the sum is paid. No deduction can be given for any provision for an amount due but not paid. The amount deductible must not exceed the amount contributed by the employer to the scheme in respect of employees engaged in a trade or undertaking, the profits of which are assessable to Irish tax on the employer. Where the employer carries on two or more separate businesses, each with its own employees, the employer's contributions in respect of each group of employees can be allowed only against the profits of the business in which the group is employed. Please, however, refer to **paragraph 4.9** which considers the position where an employer makes pension contributions in respect of the employees of another employer in corporate reorganisation cases.

Please see **Chapter 5.7** for the standard methodology for funding and benefit calculations.

4.3 Special Contributions

Where a contribution is not an ordinary annual contribution but a special contribution (for example, to provide benefits for “back service”, to augment benefits already secured or to make up an actuarial deficiency in the fund) Revenue may require that the allowance be spread forward over a period of years.

This will not normally be required where the aggregate of all special contributions made by an employer to exempt approved schemes in the same chargeable period does not exceed the greater of the employer's corresponding aggregate ordinary annual contributions or €6,350.

The period of the spread is usually determined by dividing the aggregate special contribution by the aggregate ordinary annual contribution, subject to a maximum of five years and to a minimum divisor of €6,350.

In the following examples**,** OAC stands for “ordinary annual contribution” and SC stands for “special contribution”.

	(A)	(B)	(C)	(D)
	OAC	SC	(B)/(A)	Allowance
Max. spread	€2,000	€40,000	20 *	1st year €8,000
				2nd year €8,000
				3rd year €8,000
				4th year €8,000
				5th year €8,000

* The minimum divisor is €6,350, which would give a spread of 6.3 years (€40,000 / €6,350). However, the maximum spread is five years.

The divisor to determine the spread period for a special contribution paid during a short chargeable period will normally be equal to

- the greater of the actual ordinary annual contribution paid during the short period in question or

- €6,350.

If the quotient exceeds 1 but does not exceed 1.5, the special contribution will be allowed over two years.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded up	€8,000	€10,000	1.25	1st year	€8,000
				2nd year	€2,000

In all other cases a fraction of a year will be rounded up or down to the nearest full year.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded down	€8,000	€18,000	2.25	1st year	€9,000
				2nd year	€9,000

If a fraction is rounded up, the allowance in each of the relevant years except the last will be equal to the greater of

- the employer's aggregate ordinary annual contribution at the time the special contribution is made or
- €6,350,

the balance being allowed in the final year.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded up	€8,000	€22,000	2.75	1st year	€8,000
				2nd year	€8,000
				3rd year	€6,000

Once determined, the period of spread will not be varied because of subsequent fluctuations in the ordinary annual contribution. Re-computation will be necessary if a further special contribution is paid before the first one has been wholly allowed or if the employer should cease to trade.

4.4 Contributions under one-person arrangements

Where contributions under one-person arrangements and insured schemes using earmarked policies are paid over a short period to secure the benefits of an individual member, Revenue will accept that no spreading is required even if the benefits are primarily for past service, provided that:

a) payments are uniformly spread over at least three policy years, and

b) payments extend up to normal retirement date, meaning that the final payment is made on the policy anniversary immediately preceding normal retirement date or, depending on the terms of the policy, on some other appropriate date not more than two years before normal retirement date.

4.5 Expenditure allowed in the year of payment

The following types of expenditure will normally be allowed as an expense in the year in which they are paid, without any necessity to consider spreading:

a) legal and other expenses on establishment of the scheme.

b) special contributions payable by instalments over a period of five or more years, or paid annually on a specified basis where, although the amounts may be liable to fluctuate, substantial variations in successive years are not expected to occur.

c) special contributions that are certified as made solely to finance cost of living pension increases for existing pensioners, or any part which is so certified.

4.6 Certain schemes deemed to be “exempt approved”

The outright purchase of an annuity (Hancock Annuity) for an employee at the time of, or after, his or her retirement, or a scheme set up not long before retirement by the payment of a single premium will constitute an exempt approved scheme, if it is approved and if the annuity is the subject of a trust. If there is no trust, a direction that the scheme is exempt approved may be made but, save in exceptional circumstances, the direction will not be made against the wishes of the employer. If the transaction is exempt approved (whether because it is the subject of a trust or by virtue of direction) the purchase price or single premium will then be an allowable contribution, but not an ordinary annual contribution, and will be treated in the same way as a special contribution (see **paragraph 4.3**).

4.7 Contribution to an approved scheme which is not "exempt approved"

Any relief in respect of contributions to an approved scheme which is not "exempt approved" will generally be under the ordinary rules of Schedule D and governed entirely by the provisions of section 81(2) TCA. If the members are related to the employer or, where the employer is a company, to persons having any substantial beneficial interest in its share capital, the position will be examined closely, because to qualify for relief, the payment must be made wholly and exclusively for the purposes of the employer's trade. A contribution of a capital nature – that is, one "bringing into existence an asset or an advantage for the enduring benefit of a trade" – is not an allowable deduction.

Contributions must be paid separately or clearly separated from the employer's other assets. There will then normally be no difficulty about the allowance of ordinary annual contributions paid on a regular basis. Other contributions – for example, lump sum payments securing benefits for back service – may not qualify for relief and the matter will be one for consideration by the Revenue officer dealing with the employer's accounts.

A Hancock type annuity qualifying for simple approval may provide for the purchase of a commutable annuity up to the normal limits on the same terms as an exempt approved scheme. The sole consideration in opting for simple or exempt approval is the matter of claiming relief in the year of payment under the ordinary rules of Schedule D or claiming relief under section 774 TCA and thereby perhaps involving spread forward relief. Lump sums may be provided only by way of commutable annuity.

Any arrangement, "Hancock" or "exempt approved", set up after the point of retirement may only provide non-commutable benefits with any lump sum element of the package being treated as a payment on termination of service subject to tax under section 123 TCA.

The point of retirement covers the period from the time that definite intention to retire is expressed up to the point of retirement, during which time the employer makes provision for the payment of benefits and provision for the cost of providing such benefit.

4.8 Refund of employer contributions

A refund of premiums or contributions paid in error may be made without approval by Revenue, provided that:

a) The premiums were paid in error because, for example, a direct debit mandate was not altered or cancelled immediately after a member left pensionable service or retired, or after a scheme was discontinued, and

b) The period over which the overpayment occurred was less than one year, and

c) The amount involved is less than €5,000.

4.9 Contributions in corporate groups and following corporate reorganisations, etc.

As noted in **paragraph 4.2,** section 774(6) TCA provides tax relief for contributions made by an employer under an occupational pension scheme which is established in respect of employees of that employer.

There may, however, be cases where a company makes contributions to an employee pension scheme

- in respect of individuals who are not employees of the company when the contributions are made, or
- which is operated by another company, where the scheme members are employees of the contributor company.

Finance Act 2019 amended section 774(6) TCA to allow tax relief for relief for pension contributions made by a "relevant contributor", which means a company which contributes to occupational pension schemes set up for employees of another company in certain defined circumstances, including in corporate group structures, a merger, an amalgamation, a reconstruction, a merger, a division and a joint venture.

To qualify for relief:

- the contributions must be made on foot of a legally binding agreement between two or more companies (one of which is the "relevant contributor") in a group or under a scheme of reconstruction, a merger, a division or a joint venture;
- the scheme members must be current or former employees of one of the parties to the agreement; and
- the contributions would be deductible under section 774(6) TCA if the company making the contribution was the employer of the scheme members for whom the contributions are paid.

Revenue will also allow a deduction under section 774(6) TCA for such contributions if they are made for employees or former employees of a company which is not a party to an agreement as described above but is subject to such an agreement.

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