

## **Deduction for Expenses in Respect of Annual Membership Fees Paid to a Professional Body**

### **Part 05-02-18**

This document should be read in conjunction with sections 114 and 118(5E) of the Taxes Consolidation Act 1997 (TCA 1997)

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## 1. Introduction

This manual sets out guidance for the interpretation of section 114 TCA 1997 in relation to professional membership fees and advises of the circumstances where Revenue considers an expense has been incurred wholly, exclusively and necessarily for the purposes of an individual's employment.

## 2. Tax deductibility of employee expenses – Section 114 TCA 1997

### 2.1 General position

In addition to expenses of travel necessarily incurred, section 114 TCA 1997 provides for a tax deduction in respect of expenses incurred wholly, exclusively and necessarily by an individual in the performance of the duties of his or her employment.

### 2.2 Professional memberships

Professional membership fees are only deductible under section 114 TCA where those fees are incurred **wholly, exclusively and necessarily** by an individual in the performance of the duties of his or her employment.

Additionally, fees payable in respect of courses of study, examinations, etc. necessary to become a member of a relevant professional body may be refunded without deduction of tax where they are relevant to the business of the employer – See the [Examinations, courses and subscriptions](#) section of the Revenue website for further information.

The following guidance about annual membership fees applies to office holders in like manner as it applies to employees.

## 3. Operation of payroll deduction

Where an employer pays a professional membership fee or registration fee on behalf of his or her employees, deductions of Income Tax, PRSI and the Universal Social Charge (USC) must be made from pay in respect of the value of the membership fee paid by the employer on behalf of an employee.

However, for ease of administration and to avoid unnecessary claims under section 114 TCA 1997, where –

- an employer pays a membership fee to a professional body on behalf of an employee or reimburses such a fee to an employee; and
- a deduction under section 114 TCA 1997 would be available,

deductions of Income Tax, PRSI and USC need not be made from pay in respect of the amount reimbursed or the notional income amount attributable to the cost of such annual membership or registration fee. As this taxing treatment incorporates the value of the deduction that would have been available under section 114 TCA 1997, the employee cannot then claim an expense deduction in respect of the cost of the annual membership.

It should be noted that, for the tax years 2004 to 2010, section 118(5E) TCA 1997 provided that expenses incurred by an employer on behalf of an employee in connection with the payment (or reimbursement) of annual membership fees of a professional body were not subject to a benefit in kind charge, where such membership was regarded as “relevant to the business” of the employer. This section was repealed in Finance Act 2011 and ceased to apply from the tax year 2011 in relation to memberships paid for or reimbursed by an employer.

#### **Example 1**

In 2019 Paul has a professional membership which is paid for by his employer. The membership is wholly, exclusively and necessarily for the purpose of his employment.

As the membership meets the criteria of section 114 TCA 1997, Paul’s employer does not need to deduct Income Tax, PRSI and USC in respect of the cost of the annual membership fee for Paul.

Paul cannot subsequently claim an expense deduction for the cost of the membership using myAccount or by completing a Form 12 as he has not suffered tax on this amount.

#### **4. Circumstances in which professional membership fees are incurred wholly, exclusively and necessarily in the carrying on of an office or employment**

As explained in [Chapter 2.2](#), professional membership fees are only deductible under section 114 TCA 1997 where those fees are incurred wholly, exclusively and necessarily by an individual in the performance of the duties of his or her employment. There is no automatic entitlement to one subscription for professional

membership fees. Each employee's circumstances will need to be examined in the context of the section 114 TCA 1997 requirements.

While this chapter acts as a guide as to when Revenue consider that professional membership fees are incurred wholly, exclusively and necessarily by an individual in the performance of the duties of his or her employment, this guidance is not exhaustive. Where an employer or employee considers that professional membership fees were incurred wholly, exclusively and necessarily in the performance of the duties of the employee and those fees are not covered in the guidance below, such expenses may still be allowable where the employer or employee is able to demonstrate to Revenue that the employee would be unable to carry out the duties of his or her employment if he or she did not hold such membership.

#### 4.1 Statutory requirement for membership of a professional body or to hold a practising certificate

Where it is a statutory requirement to be a registered member of a designated professional body, association, society, council, etc. in order to exercise a particular profession and an individual is employed in that professional capacity, a deduction under section 114 TCA 1997 is allowed in respect of the annual registration or membership fees in such instances.

In addition to membership of a professional body, association, council, etc., an employee may also be statutorily required to hold a current practicing certificate before they can carry out the duties of his or her employment.

A deduction under section 114 TCA 1997 is allowed in respect of both the annual membership fees payable to such body, association, etc. and in respect of the cost of the practising certificate or licence where there is a statutory requirement that an individual must hold a current practising certificate or licence issued by the body, association, etc. before that individual can carry out the duties of his or her employment.

##### **Example 2**

Pauline is a health professional and is employed in that capacity. Under the Health and Social Care Professionals Act 2005, Pauline is obliged to be registered with the Health and Social Care Professionals Council, which was set up under that Act, in order to perform the duties of her employment. Her employer pays her annual registration fee.

As Pauline cannot legally practice without this registration, the expense incurred by her employer is a qualifying expense for the purposes of section 114 TCA 1997 as it was incurred wholly, exclusively and necessarily for the purposes of her employment. In this instance, the employer does not need to deduct Income Tax,

USC and PRSI from Pauline's salary in respect of the cost of the annual registration fee.

**Example 3**

Lisa is an architect and is employed in that capacity. However, before Lisa can practice as an architect, there is a statutory requirement (under the Building Control Act 2007) to be registered with the Royal Institute of the Architects of Ireland in order to perform the duties of her employment. Her employer pays her annual registration fee.

As Lisa cannot legally practice without this registration, the expense incurred by her employer is a qualifying expense for the purposes of section 114 TCA 1997 as it was incurred wholly, exclusively and necessarily for the purposes of her employment. In this instance, the employer does not need to deduct Income Tax, USC and PRSI from Lisa's salary in respect of the cost of the annual registration fee.

**Example 4**

A legal practice employs Olive, a solicitor, in that capacity. Legally, Olive cannot practice as a solicitor unless she is a member of the Law Society with an up to date practising certificate. Her employer pays her annual membership fee.

The expense is a qualifying expense for the purposes of section 114 TCA 1997 as it was incurred wholly, exclusively and necessarily for the purposes of her employment as she cannot practice as a solicitor without being a member of the Law Society. In this instance, the employer does not need to deduct Income Tax, USC and PRSI from Olive's salary in respect of the cost of the annual membership fee or the cost of the practicing certificate.

**Example 5**

Pamela is a solicitor but is employed as a commentator by a radio station. Her employer pays Pamela's relevant annual fees to the Law Society.

It is not necessary for Pamela to be a solicitor in order to be a radio commentator. In this instance, the appropriate deductions must be made from her salary in respect of the notional income amount attributable to such annual membership fee.

## 4.2 Where statutory provisions restrict the ability of an individual to fulfil the duties of an office or employment

In other instances, while there is no statutory requirement for membership of a professional body, certain statutory provisions may restrict the ability of an individual to fulfil the full duties of an office or employment unless he or she is a member of a relevant professional body.

In these circumstances Revenue is prepared to recognise expenses incurred on membership of the relevant professional body as meeting the requirements of section 114 TCA 1997.

For example, an individual registered with, or a member of, a professional body, association, society, council, etc., may have a right, by virtue of such registration or membership, to plead or be heard in representing a client of his or her employer before a particular appellate body or tribunal.

A deduction under section 114 TCA 1997 is allowed in respect of the annual registration or membership fees in such instances where the duties of the employment require the individual to appear and plead before such a tribunal.

#### **Example 6**

Fred is employed as a tax consultant. He is a member of a recognised taxation body and his duties require him to appear and plead on behalf of the firm's clients before the Tax Appeals Commission.

Fred's employer pays his annual membership fee to his taxation body - this body is recognised by statute as allowing its members a right to be heard before the Tax Appeals Commission. In this instance, Fred's employer will not need to deduct Income Tax, USC and PRSI from his salary in respect of the cost his annual membership fee.

#### **Example 7**

Patrick is an accountant and a tax consultant employed by an accounting firm. It is a condition of Patrick's employment that he may be required to appear and plead on behalf of the firm's clients before the Tax Appeals Commission.

Patrick's employer pays his annual membership fees to his accountancy body and his taxation body - both bodies are recognised by statute as allowing their members a right to be heard before the Tax Appeals Commission. Although both bodies allow Patrick the right to be heard before the Tax Appeals Commission, it is not necessary for him to have both memberships in order to be heard. The expense of only one of these membership fees has been incurred wholly, exclusively and necessarily for the purposes of his employment.

In this instance, Patrick's employer will not need to deduct Income Tax, USC and PRSI from his salary in respect of the cost of one annual membership fee only. His employer must deduct Income Tax, USC and PRSI from his salary in respect of the cost of the second membership fee.

### 4.3 Where annual professional membership fees are commercially necessary

In certain circumstances an employee failing to hold a professional membership or practising certificate would prevent an employer from carrying on its trade. In these circumstances Revenue is prepared to recognise expenses incurred on membership of the relevant professional body as meeting the requirements of section 114 TCA 1997.

Examples of commercial necessity would include:

- Where failure for employees to hold a professional membership or practicing certificate would invalidate the terms of the employer's indemnity insurance policy.
- Where failure to hold a professional membership or practicing certificate would prevent potential customers from entering into business contracts with the employer.

Where the employer or employee considers that an expense was commercially necessary, the employer or employee must be able to demonstrate that the employee would be unable to carry out his or her duties if he or she did not hold such professional membership or practicing certificate.

#### **Example 8**

Tim works in real estate valuation. His employer cannot acquire an indemnity policy unless all valuation staff are members of or are trainee members of professional valuation bodies. In this instance, the appropriate deductions need not be made from Tim's salary in respect of the notional income amount attributable to such annual membership fee.

### 4.4 Indispensable condition of the tenure of employment

In certain circumstances an employee may be required by his or her employer to hold a professional membership qualification or practising certificate. Revenue is prepared to recognise expenses incurred on membership of the relevant professional body as meeting the requirements of section 114 TCA 1997 where all the following conditions apply:

- the duties of the employee and the duties of the employment require the exercise or practice of the occupation or profession in respect of which the annual membership fee refers;
- the employee so exercises or practices the occupation or profession in respect of which the annual membership fee refers; **and**
- membership of the professional body is an indispensable condition of the tenure of the employment.



Indicators that a membership or certificate is required to be held as part of the tenure of an individual's employment include:

- if a requirement is included in his or her employment contract to hold such membership;
- if all staff in the same role are required to hold the particular membership or certificate (or an equivalent membership or certificate);
- if the staff member would be dismissed or transferred if he or she -
  - did not acquire such membership or certificate,
  - did not hold such membership or certificate, or
  - failed to maintain his or her membership or certificate;
- if job advertisements for the same role require the membership or certificate to be held.

More than one indicator should be met for this condition to apply.

Generally, only one membership per employee may be provided tax-free where multiple memberships allow the employee to carry out the same or similar duties (such as in the case of an accountant acting as a tax advisor).

#### **Example 9**

Helen, an accountant, is employed as an 'in house' accountant with responsibility for preparation of accounts and related matters. Under Helen's employment contract it is an indispensable condition of the tenure of her employment that she be a member of a recognised accountancy body. If she failed to maintain this membership, her position would be reviewed, and she would be dismissed or transferred to another department which did not require its staff to hold such a membership.

Helen's employer pays her annual membership fee to the relevant accountancy body. In this instance, the appropriate deductions need not be made from her salary in respect of the notional income amount attributable to such annual membership fee.

#### **Example 10**

Audrey is a solicitor and works in a legal research area in the Public Sector but does not practice as a solicitor. There are other employees in her role who are not solicitors. Her employer has advised her that she will retain her role as a legal researcher even if she does not maintain her professional membership.

Her employer pays her annual subscription to the Law Society. In this instance, the employer must deduct Income Tax, USC and PRSI from Audrey's salary in respect of the cost of the annual membership fee.

This is because although Audrey works in a legal research role, she is not working as a practising solicitor and it is not an indispensable condition of the tenure of her employment that she retain her membership of the Law Society.