

## **[05.05.19] Payments on Termination of an Office or Employment or Removal From an Office or Employment**

**Sections 123 and 201, and Schedule 3 of the Taxes Consolidation Act, 1997**

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## 1. Introduction

This manual deals with the taxation of termination lump sum payments chargeable to tax under section 123 of the Taxes Consolidation Act 1997 and sets out the exemptions and reliefs that may be claimed by an individual on receipt of such a payment.

This revised manual is a combination of information previously contained in the following manuals:-

**05.01.08; 05.05.19; 05.05.20; 05.05.21; 05.05.25; 07.01.01; and 07.01.17**

## 2. Legislation

### 2.1 Ex-gratia lump-sum payments

Section 123 of the Taxes Consolidation Act 1997 provides for the taxation under Schedule E of payments, that are not otherwise chargeable to income tax, made in connection with the termination of the holding of an office or employment, including the commutation of annual or periodic payments; (e.g. a pension), while section 201 and Schedule 3 set out the reliefs and exemptions that are available in respect of such payments.

The section applies to payments made to present or past holders of an office or employment or to the executors or administrators of such a person's estate.

If the payment is made to the spouse, civil partner or any relative or dependant of the holder or past holder of the office or employment, the payment is treated as having been made to that holder.

A payment to which section 123 applies is treated as having been received on the date of the termination of the office or employment, (or the date on which a commutation is effected), for the purposes of income tax. Universal Social Charge is applicable at the date of payment.

Examples of payments to which section 123 applies are:-

- a) A gratuity or ex-gratia payment given on or after retirement entirely at the discretion of the employer;
- b) Compensation for loss of office;
- c) Payments made on redundancy and termination of employment etc.;
- d) A payment to obtain release from a contingent liability under a contract of service;
- e) A lump sum to commute a pension or pension rights.

To be chargeable under section 123 the payment does not have to be made by the employer. It could be made by a third party. Examples of such situations are:-

- a) Where a payment by company A is made to a director of Company B on the acquisition by Company A of Company B;
- b) In the case of a group of companies, where a director or employee of one group member terminates his or her office or employment and receives a lump sum payment from a different group company;
- c) Payments made from a superannuation fund.

Where consideration other than money is given, (for example, a car), the value of that consideration at the date it was given is treated as a payment of money equal to that value.

## **2.2 Payments arising from an office or employment**

A charge under section 123 only arises where the payment is not otherwise chargeable to tax. Therefore, before accepting that a payment is taxed under that section and qualifies for the reliefs provided for in section 201 and Schedule 3, it is necessary to consider whether the payment is an emolument arising from an office or employment.

Where a payment arises from an office or employment and is in the nature of income, it is chargeable to tax under the ordinary rules of Schedule E by virtue of section 112 TCA 1997. Section 112 applies to salaries, fees, wages, (including inducement payments), perquisites, or profits whatsoever from an office or employment.

In particular, a sum paid under the terms of a contract of employment at the end of the contract, is chargeable to tax under the ordinary rules of Schedule E - i.e. under the provisions of section 112 TCA 1997.

## **2.3 Fire and rehire**

The tax treatment of any payment depends on the circumstances under which the payment is made and the real nature of the agreement between the parties involved (i.e. between the employer and employee). The question of whether or not there is a "redundancy" is a question of fact to be established by examining the circumstances of each individual case.

Payments made on termination of an employment where the employee is subsequently re-employed by the same employer are not regarded as payments within the meaning of section 123 and therefore do not qualify for the reliefs available in accordance with section 201 and Schedule 3 TCA 1997. Any payments made in respect of such "fire and rehire" schemes are fully taxable under section 112 as emoluments arising from the office or employment.



### 3. Additional information

- Revenue Income Tax Leaflet [IT21](#)

### 4. Tax treatment of other lump sums receivable on termination of office or employment

The tax treatment of lump sum payments, other than those to which section 123 applies, varies and can be summarised as follows:

#### 4.1 Statutory redundancy payments

Statutory redundancy payments made under the Redundancy Payments Acts 1967 to 1991 are exempt from income tax under Schedule E (section 203 TCA 1997). They have no impact on the exemptions and reliefs which are available in respect of other redundancy payments.

Statutory redundancy is calculated on the basis of 2 weeks pay per year of service plus one additional week, subject to a maximum weekly pay figure of €600.

#### 4.2 Pension scheme lump sums

In general, lump sum payments from pension schemes are not taxable under section 123 by virtue of an exemption provided for in section 201(2)(a)(iv).

A pension lump sum may be specifically provided for in the terms of the scheme. This is generally the case in statutory schemes. A scheme may also provide a right of commutation of the annual pension in favour of a lump sum. Regardless of how the lump sum arises it is not taxable under section 123. Such lump sums, to the extent that they exceed €200,000, are taxable under section 790AA. (See [Chapter 27](#) of the Pensions Manual.)

While a pension lump sum is not taxable under section 123, the receipt of such a sum or the right to commute can affect the additional exemption, (see [Paragraph 5.2](#)), or the amount of the Standard Capital Superannuation Benefit exemption available in respect of a lump sum that is taxable under the section. (See [Paragraph 5.5](#) for further details.)

## Exceptions

There are exceptions to the exemption provided in section 201(2)(a)(iv).

These exceptions include:-

- Special severance gratuity payments made under section 7 of the Superannuation and Pensions Act 1963, or similar type payments under other legislation (the discretionary power of a Minister to make special severance gratuity payments);
- Benefits paid under a statutory scheme, other than normal retirement benefits, in connection with the termination of the holding of an office or employment in either the circumstance of redundancy or abolition of office, or for the purposes of facilitating improvements in the organisation of the employing company, organisation or department, leading to greater efficiencies or economies. Normal retirement benefits are the recognised superannuation benefits customarily payable at normal retirement date under the relevant statutory scheme.

These payments are, therefore, brought into charge under section 123.

### 4.3 Pension scheme refund (of contributions)

Any refund of contributions provided for under an approved superannuation scheme or a statutory scheme is not regarded as income in the hands of the employee and it does not reduce his or her entitlement to the exemptions available in respect of other taxable lump sums.

However, a charge to tax at the standard rate is imposed on the pension scheme administrator in respect of such refunds (including interest on the contributions, if any), unless the refund is re-invested in another pension scheme. Note refunds of contributions only apply where the individual has less than 2 years qualifying service as a member of the scheme.

## 5. Exemptions and reliefs under Section 201 and Schedule 3, Taxes Consolidation Act 1997

Termination lump-sum payments, not otherwise chargeable to tax, are chargeable under section 123 TCA 1997 subject to the following exemptions available under section 201 and Schedule 3 TCA 1997.

### 5.1 Basic exemption - Section 201(1)(a) TCA 1997

All individuals are entitled to an exemption on the first €10,160 of a payment. For each **complete** year of service in the office or employment an additional €765 may be granted. The figure of €765 cannot be apportioned to give additional relief for part of a year of service.

### Example of basic exemption

An individual receives an ex gratia payment of €150,000 on 1<sup>st</sup> March 2015 having been employed by the company from 1 May 1979.

The number of complete years of service is 35 years; i.e. from 1 May 1979 to 30<sup>th</sup> April 2014.

Additional basic exemption  $765 \times 35 = €26,775$ .

The 10 months service from 1 May 2014 to 1 March 2015 does not count for the purposes of exemption available in respect of complete years of service. Therefore, the figure of €765 cannot be apportioned to give additional relief for part of a year of service.

The total basic exemption in this case is:  $€10,160 + €26,775 = €36,935$

#### 5.1.1 Calculating years of service

If there is a break in service in the employment, the service before and after the break will count for the purposes of complete years of service. Overall service is to be determined by reference to the total period from date of commencement to date of cessation excluding the period of the break.

#### Example of calculation of years of service

An individual commenced employment on 1 May 1986 and took a career break<sup>1</sup> from 1 March 1996 to 1 July 1999. He was subsequently made redundant on 30 September 2009. His period of service with the company would be calculated as follows:-

1 May 1986 to 1 March 1996 = 9 years 10 months

1 March 1996 to 1 July 1999 - Career break

1 July 1999 to 30 September 2009 = 10 years 3 months

His complete number of years of service is 20 years.

In the case of part-time employees the number of years to be taken into account will be based on the number of full years in which the employment was held and there is no apportionment because of the part time nature of the employment.

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<sup>1</sup> In this context a career break is any agreed scheme of flexibility for both staff and employers which affords staff an opportunity to take a period of special leave or time out from employment e.g. for personal reasons, travel or voluntary work. The period of the career break is not treated as service for the purposes of relief under section 201.

In the case of seasonal workers, who have a specific contract providing them with continuing employment for periods each year, and who are employed each year on similar terms, all of the seasonal periods can be combined to arrive at the overall period of service.

#### **Example of calculation of years of service for seasonal worker**

A Bord na Móna turf-cutter was employed for 5 months each year over 24 years. Overall service will be treated as  $5 \times 24 = 120$  months, or 10 complete years.

#### **5.1.2 Employment within a group**

Where the terms of a severance arrangement specify that the payment to an employee is in respect of employment in group companies then the years of service in those companies can be taken into account for the purpose of calculating the total years of service of the holder in the office or employment. Periods of foreign service within the group, (see [Paragraph 5.6](#) with regard to the inclusion of foreign service), should also be taken into consideration for this purpose.

#### **5.2 Increase of €10,000 on the basic exemption – Paragraph 8, Schedule 3 TCA 1997**

The basic tax-free exemption of €10,160 plus €765 for each complete year of service may be increased by a maximum figure of €10,000 if the following two conditions are satisfied:

- The employee has not in the previous ten years claimed relief in excess of the basic tax-free exemption

**and**

- The employee is not a member of an occupational pension scheme, or, if a member of a scheme, the employee has irrevocably given up the right to receive a lump sum from such a scheme.

If an employee receives or is entitled to receive, a pension lump sum then the additional exemption is reduced by the amount of the pension lump sum receivable. Where the pension lump sum is receivable in the future, its actuarial value is taken into account. In practice, the administrator of the pension scheme provides details of the lump sum payable under the scheme or its actuarial value.

**Revenue approval does not have to be sought before including this increase in basic exemption.**

#### **Examples**



### 5.2.1 Individual not a member of an occupational pension scheme

An individual receives an ex gratia payment of €200,000 on 1<sup>st</sup> March 2015 having been employed by the company from 1 May 1979. The complete number of years of service is 35. The individual has not claimed reliefs available in the previous 10 years and is not a member of an occupational pension scheme. As the individual had no previous claim to reliefs he/she is entitled to the increased exemption of €10,000.

Therefore the basic exemption in this case is:-

$$€10,160 + (765 \times 35) + €10,000 = \mathbf{€46,935}.$$

### 5.2.2 Individual is a member of an occupational pension scheme

An individual receives a lump sum payment of €200,000 on 1<sup>st</sup> March 2015 having been employed by the company from 1 May 1979. The complete number of years' service is 35. The individual has not claimed reliefs available in the previous 10 years and has received a tax free lump sum of €5,000 from an occupational pension. The exemption due is as follows:

$$€10,160 + €26,775 (765 \times 35) + €5,000 (€10,000 - €5,000) = \mathbf{€41,935}.$$

Note - If the amount received from the occupational pension scheme was €12,000 the increased exemption would be **nil** as the amount received exceeds the amount of the increased exemption.

### 5.2.3 Individual entitled to a pension lump-sum at a future date

The entitlement to a lump sum payment may arise at a future date after the employment has ceased, (e.g. when the employee reaches normal retirement age), so it is necessary to provide for payments "receivable" as well as those actually received. In practice, the administrator of the scheme will provide details of the lump sum payable under the scheme or of its actuarial value; i.e. the value of the amount receivable at the date of cessation.

**Example**

An individual receives a lump sum of €29,000 when he leaves his job after 11 years and 5 months. The present day value of his pension scheme entitlement to a lump sum at 65 years is €2,500. The exemption due is:-

$$€10,160 + (765 \times 11) + (€10,000 - €2,500) = €26,075$$

### **5.3 Exemption for amounts paid by an employer in respect of retraining of a former employee**

Where an employer pays the cost of retraining an employee as part of a redundancy package the cost of the retraining, up to a maximum of €5,000, will be exempt from tax, provided:-

- a) The employee is a person who has more than 2 years continuous full time service;
- b) The retraining is part of a redundancy package and is designed to improve skills or knowledge used either in obtaining employment or setting up a business; and
- c) The retraining is completed within 6 months of the termination of employment.

Where a redundancy programme which includes retraining grants is introduced by an employer the retraining grant must be available to all eligible employees. The exemption does not apply where there is any arrangement in place allowing the employee to get money or money's worth in respect of some, or all, of the retraining grant.

The grant cannot be included as a monetary element as any part of a redundancy package.

The exemption does not apply for any retraining provided to a spouse, civil partner or any other dependant of the employer.

### **5.4 Payments made either on the death of, or on account of injury to or disability of, the holder of an office or employment**

Under section 201(2)(a) TCA 1997, payments made in connection with either

- a) the termination of the holding of an office or employment on the death of the holder, or
- b) made on account of injury to or disability of the holder of an office or employment,

are relieved from the charge to income tax. Note the payment must be chargeable as a payment on retirement or removal from office in accordance with section 123 TCA 1997 and the payment must be made on account of the death, injury to or disability of the holder of the office or employment which resulted in the termination of that office or employment.

With effect from 27 March 2013 (the date of passing of Finance Act 2013) such payments are subject to an exemption limit of €200,000. This is a life-time limit and previous payments exempted under section 201(2)(a) should be included when calculating it. If two or more payments are made on account of death or injury in respect of the same or different offices or employments they should be aggregated for the purposes of the exemption.

### Example

An employee is injured in a workplace accident which leaves him with a permanent disability. The employer decides on 1 October 2015 to make an ex-gratia payment of €245,000 in recognition of the injury to and disability of the employee.

#### Section 201(2)(a) exemption

|   |            |
|---|------------|
| Injury or disability ex-gratia payment          | = €245,000 |
| Exemption due under section 201(2)              | = €200,000 |
| Balance taxable at the employee's marginal rate | = €45,000  |

Where the employee receives any further ex-gratia payments from another employer in respect of disability or injury there will be no further exemption.

Note, however, that the exemption amount for payments on death, injury or disability is not included when calculating the cap on the exemptions in respect of any part of the payment arising from the termination of any future office or employment the employee may have. (See [Paragraph 5.7.](#))

### 5.4.1 Employer obligations

Details of all lump sum payments made and treated by employers as exempt by reference to section 201 (2)(a) TCA 1997 and made after 25 March 2005 must be reported to the Revenue Commissioners not later than 46 days after the end of the year of assessment in which the payment was made.

The details to be forwarded to the appropriate Revenue office responsible for the income tax affairs of the employee / office holder are:-

- The name and address of the employee to whom the payment was made;
- The employee's personal public service number (PPS No.);

- The amount of the payment made; and
- The basis on which the payment is not subject to tax.

In circumstances where the payment is on account of injury or disability of the holder of the office or employment, particulars of the injury or disability must also be indicated.

### **5.5 Standard Capital Superannuation Benefit (SCSB) – Paragraph 6, Schedule 3 TCA 1997**

Standard Capital Superannuation Benefit commonly referred to as SCSB, which is available to all employees, generates an exemption additional to the increased basic exemption. This additional exemption is the amount by which the SCSB for the office or employment in respect of which the payment is made exceeds the basic exemption. “Basic exemption” for this purpose includes the basic €10,160, the additional exemption of €765 per year, and the increase of up to €10,000 on the basic exemption ([Paragraph 5.2.](#)), where claimed.

The formula for calculating SCSB is:

$$\frac{A \times B}{15} - C$$

where:

**A** is the average annual remuneration for the last 36 months service to date of termination of the office or employment,

**B** is the number of complete years of service in the office or employment, and

**C** is either the -

amount of any tax-free lump sum received under an approved pension scheme, or

the current value of any tax-free lump sum receivable in the future under an approved pension scheme.

In relation to **A**, if an employee has less than 3 years paid service with an employer prior to the date of leaving, the pay for the whole period of service shall be included when calculated the annual average. Pay from a previous employment is not included except where the previous employment was in another member company of the same group of companies.

With effect from 1 January 2011 the amount of the tax-free sum which can be received from an approved pension fund has been restricted to €200,000. Therefore **C** above cannot exceed a maximum €200,000 in SCSB computations for 2011 and subsequent years.



Finance Act 2014 amended Schedule 3 paragraph 1(1) in the definition of SCSB by amending “emoluments” to “taxable emoluments”. This amendment has no effect on the established method of computing the SCSB. Taxable emoluments means any income that is assessable under Schedule E including such income where it is relieved by another provision of the Act, such as

- the travel pass scheme,
- the value of any shares appropriated to employees and directors under an approved profit sharing scheme,
- the cycle to work scheme, and
- contributions to pension schemes by employees and office holders.

### Example

Average annual emoluments for previous 3 years = €180,000

Total years of service = 39

Pension lump sum = 1.5 times salary = €270,000

Maximum pension lump sum tax-free = €200,000

Basic and increased exemption =  $10160 + (765 \times 39)$  = €39,995

SCSB calculation =  $(180,000/15 \times 39) - 200,000$  (capped) = €268,000

Additional exemption =  $(268,000 - 39,995)$  = €228,005

Total exemptions = €268,000

Maximum exemption available = €200,000 (See [Paragraph 5.7](#). below.)

## 5.6 Foreign Service Relief - Section 201(4) and Schedule 3, TCA 1997

Where an employee exercised part of the duties of his or her employment abroad a further exemption was available in respect of the period of employment abroad. This relief ceased to apply to payments received on or after 27 March 2013 in accordance with section 14 Finance Act 2013.

Up to 27 March 2013 an individual could claim foreign service relief and, subject to the following conditions, would have been entitled to full exemption on his or her lump sum payment where his or her service in the employment included a period of foreign service –

- a) Where three-quarters of the total service down to the termination date comprised of foreign service, or

- b) Where the total period of service exceeded ten years the last ten years service down to the termination date was foreign, or
- c) Where the total period of service exceeded twenty years, one-half of the total service was foreign and any ten of the last twenty years' service down to the termination date was foreign.

**Note** - only one of the above conditions had to be met in order for the exemption to apply.

### 5.6.1 Partial relief for foreign service

If an individual did not satisfy the requirements for full exemption there was provision to allow for a deduction in accordance with Schedule 3 whereby the chargeable lump sum was reduced by an amount calculated by multiplying the chargeable amount by the number of years spent abroad over the total number of years' service.

#### Example

An individual received a lump sum payment of €90,000 in 2011. The individual was employed abroad for 5 years out of a total of 25 years service. His final pay for his last three years employment was €60,000 per annum. He also received a lump sum from an approved pension scheme of €40,000.

His chargeable lump sum will be reduced as follows:-

|   |                              |
|---|------------------------------|
| Gross lump sum                                  | = €90,000                    |
| Exemption due [ $€10,160 + (765 \times 25)$ ]   | = €29,285                    |
| SCSB [ $(€180,000/3)/15 \times 25$ ] - €40,000  | = €60,000                    |
| Additional exemption (€60,000 - €29,285)        | = <u>€30,715</u>             |
| Chargeable                                      | = €30,000                    |
| Foreign Service exemption $€30,000 \times 5/25$ | = <u>€6,000</u><br>= €24,000 |

### 5.6.2 Foreign service in determining the basic exemption and SCSB

While foreign service relief ceased to apply in respect of payments made on or after 27 March 2013, any periods of foreign service are to be included as part of overall service for the purposes of determining the basic exemption or SCSB that may be due in respect of any ex-gratia payment. This is applicable whether the individual was employed by one employer or served in different member companies in the same group.

The employment does not have to have commenced in Ireland. For example, an individual begins his career in a Belgian company which is a member of a large multinational group. After ten years he moves to a group company based in Ireland. If his employment is terminated while serving in Ireland he will be entitled to include the ten years for the purposes of increasing his basic exemption and for the number of years' service for SCSB relief.

### 5.7 Restriction on maximum relief available – section 201(8)

A lifetime cap of €200,000 on the basic and increased exemption and the additional deduction in respect of SCSB, was introduced in respect of payments made on or after 1 January 2011. This maximum figure of €200,000 includes the total value of any amounts of relief previously granted to the claimant in respect of any previous ex-gratia payments.

The cap does not include the €5,000 exemption in respect of the cost of training, or the exemption in respect of payments made on death, injury or disability.

#### Example of restriction of relief available

|   |            |
|---|------------|
| Average annual emoluments for previous 3 years =          | €98,000    |
| Total years of service =                                  | 35         |
| Pension lump sum =  | NIL        |
| Basic and increased exemption = $10160 + (765 \times 35)$ | = €36,935  |
| SCSB = $(98,000/15 \times 35) - \text{NIL}$               | = €228,667 |
| Additional exemption $(228,667 - 36,935)$                 | = €191,732 |
| Total exemptions  | = €228,667 |
| Maximum exemption allowed                                 | = €200,000 |

#### Example

##### Aggregation of previous reliefs given with current reliefs for the purposes of the restriction

|   |          |
|---|----------|
| Average annual emoluments for previous 3 years =          | €108,000 |
| Total years of service =                                  | 30       |
| Pension lump sum =  | €121,500 |
| Basic and increased exemption = $10160 + (765 \times 30)$ | = 33,110 |
| SCSB = $(108,000/15 \times 30) - 121,500$                 | = 94,500 |

|  |           |
|--|-----------|
| Additional exemption (94,500 – 33,110)                           | = 61,390  |
| Total exemptions   | = 94,500  |
| Exemptions granted in respect of previous lump sum 110,000 (say) |           |
| Maximum exemptions available = 200,000                           |           |
| Exemptions restricted, therefore, to €200,000 – 110,000          | = €90,000 |

## 6. Amount chargeable to tax

The excess of any taxable lump sum over the relevant exemption figure is chargeable to tax as extra income earned in the year of assessment in which the termination of the employment occurs. Where an employee is already paying tax at the higher rate of income tax all of the extra income will be charged to tax at the higher rate.

The taxable element of the lump sum is not regarded as reckonable income for the purpose of PRSI but is liable for the USC.

### Example

Jenny commenced employment with Company X on 6/6/1997 and retired on 8/6/2015 (18 full years of service). She received a retirement lump sum from the employer of €60,000. This is her first lump sum. She also received a lump sum of €11,000 from an approved pension scheme.

Her pay for the last 36 months to date of leaving is €95,000 (from 9/6/2012 to 8/6/2015). The amount of the lump sum which will be treated as exempt from tax, is:



- Basic exemption of €23,930 [ $€10,160$  plus ( $€765 \times 18$  years)]  
and an additional
- SCSB of €27,000 [ $(€95,000/3)/15 \times 18$ ] - €11,000] less the basic exemption €23,930 = €3,070

The total exemption is, therefore, €27,000

The increased exemption of €10,000 is not due in this case as the pension scheme lump sum of €11,000 is greater than €10,000.

The taxable amount of her lump sum is therefore €33,000 ( $€60,000 - €27,000$ ).

### Example

John was made redundant on 6 June 2015. He worked for 18 years with company X.

His pay for the final 36 months of employment was €95,000.

### Payments due on leaving

|                |      |
|----------------|------|
| Normal salary  | €800 |
| Arrears of pay | €300 |
| Bonus          | €500 |
| Holiday pay    | €200 |

These payments are all taxable in full under PAYE and do not form part of the redundancy package.

### Redundancy Package

|                                     |  |
|-------------------------------------|--|
| Non-statutory redundancy            | €40,000                                      |
| Statutory Redundancy                | €22,200 [ $(18 \times 2 \times 600) + 600$ ] |
| Pay in lieu of notice               | €765   |
| Company car valued at               | €4,000                                       |
| Tax-free lump sum from pension fund | €7,000                                       |
| Total package                       | €73,965                                      |

Statutory redundancy (€22,000) is exempt from tax and is therefore ignored.

Taxable elements of redundancy package are:-

|                          |               |
|--------------------------|---------------|
| Non-statutory redundancy | €40,000       |
| Pay in lieu of notice    | €765          |
| Company car              | <u>€4,000</u> |
| Total lump sum           | €44,765       |

**Calculation of exemption due:**

Basic Exemption [ $€10,160 + (€765 \times 18)$ ] = €23,930

Increased Exemption [ $€10,160 + (€10,000 - €7,000) + (€765 \times 18)$ ] = €26,930

SCSB [ $(€95,000/3)/15 \times 18 - €7,000$ ] = €31,000

Additional exemption €31,000 – €26,930 = €4,070

The taxable lump sum is therefore (€44,765 - €26,930 - €4,070) = €13,765

## 7. Top-Slicing Relief - Paragraph 10 Schedule 3 TCA 1997

**Note.** Top slicing relief is no longer be available on any ex-gratia lump sum payments made on or after 1 January 2014 to employees and office holders in respect of either redundancy or on termination of the office or employment.

Schedule 3 of the TCA 1997 provided for an additional relief known as top slicing relief (TSR) which was available after the end of the year in which the payment was made. This relief ensured that the lump sum was not taxed at a rate higher than the individual's effective rate of tax for the 3 years prior to the year of the redundancy payment.

For the year of assessment 2013 top slicing relief was not available on ex-gratia lump sums made to employees and office holders in respect of either redundancy or on terminations of the employment where the ex-gratia payment was €200,000 or more.

**Example**

An employee receives an ex-gratia payment of €225,000 on 1 June 2013 as part of a redundancy package. Average annual emoluments for previous 3 years = €98,000

Total years of service = 35

Pension lump sum = NIL

Basic and increased exemption =  $10160 + (765 \times 35) = 36,935$

SCSB =  $(98,000/15 \times 35) - \text{NIL} = 228,667$

Maximum exemptions available = 200,000

Taxable element of lump sum (€225,000 – €200,000) = €25,000

Top slicing Relief = NIL as the gross lump sum exceeds €200,000

## 7.1 Calculation of Top Slicing Relief

The formula to calculate the relief due is as follows:-

$$A - \frac{(P \times T)}{I}$$

“A” is the tax applicable to the taxable lump sum i.e. the liability on the income for the year of assessment including the chargeable lump sum, less the liability for that year on the individual’s income as if the payment had not been made;

“P” is the chargeable amount of the lump sum;

“T” is the aggregate of the amounts of tax payable on the individual’s total income for the 3 years of assessment prior to the year of assessment for which the lump-sum payment is treated as received; and

“I” is the aggregate of the individual’s taxable incomes for those 3 years.

### Example of calculation of TSR

An individual received a redundancy payment on 30/4/2013 of which €90,000 is chargeable to tax after reliefs and exemptions. Details of the taxable income and tax payable for the 3 years prior to the year of redundancy are as follows:-

|           | <u>Taxable income</u> | <u>Tax payable</u> |
|-----------|-----------------------|--------------------|
| 2010      | €85,000               | €18,740            |
| 2011      | €95,000               | €22,460            |
| 2012      | €105,000              | €25,464            |
| Aggregate | €285,000              | €66,664            |

“A” Tax payable on the taxable portion of the lump sum in 2013 is €34,940.

“P” Chargeable Amount is €90,000

“T” Aggregate amount of tax payable is €66,664

“I” Aggregate taxable income is €285,000

Top Slicing Relief computation:-

$$\begin{aligned}
 & A - \frac{(P \times T)}{I} \\
 & = €34,940 - \frac{(€90,000 \times €66,664)}{€285,000} \\
 & = €34,940 - €21,051.78 = €13,888.22
 \end{aligned}$$

Top slicing relief to be granted in 2013 was €13,888.22. Top Slicing Relief was normally given by way of review after the end of the year of assessment.

## 7.2 Aggregation of ex-gratia payments

Where either –

- two or more payments are made in respect of the same person, or
- two or more payments are made in respect of the same office or employment, or
- where two or more payments are made in respect of different offices or employments,

then the amounts will be aggregated to determine whether the limit of €200,000 or more has been breached for the purposes of granting top slicing relief or not.

## 7.3 Joint assessment cases where both individuals have income

The following procedures applied for years to 2013 inclusive in respect of married couples and civil partners who were jointly assessed (under either section 1017 or 1031C) or who were taxed under separate assessment within joint assessment (under either section 1023 or 1031H of the Taxes Consolidation Act 1997) **AND where both individuals were**, in any of the years previous to the receipt of the lump sum, in receipt of **income in their own right**.

To determine the top slicing relief that is due in such cases it is necessary to carry out two computations:-

*Computation A includes*

- a) the joint income of both individuals for the purposes of “**T**” in the TSR formula, and
- b) the tax payable on the joint income of the individuals for the purposes of “**T**” in the formula.



**Computation B**

Computation B included only the income and tax payable of the spouse or civil partner who received the termination payment - as if separate assessment had applied.

**The most beneficial TSR should then be given to the taxpayer.**

**Example:** A taxable lump sum of €90,000 was paid on 30/4/2012 to the non-assessable spouse or other civil partner.

Personal and PAYE tax credits are due each year.

| <b>PAYE Income</b> | <b>Income Assessable Spouse / Nominated Civil Partner</b> | <b>Non-assessable Spouse / Other Civil Partner</b> |
|--------------------|---|--|
| 2009               | €60,000   | €25,000  |
| 2010               | €70,000   | €25,000  |
| 2011               | €80,000   | €25,000  |
| 2012               | €90,000   | €10,000<br>€90,000 (lump sum)                      |

**Computation under joint assessment:**

| <b>Year</b>  | <b>Taxable Income</b> | <b>Tax Payable</b> |
|--------------|-----------------------|--------------------|
| <b>2009</b>  | €85,000               | €18,740.00         |
| <b>2010</b>  | €95,000               | €22,460.00         |
| <b>2011</b>  | €105,000              | €25,464.00         |
| <b>Total</b> | <b>€285,000</b>       | <b>€66,664.00</b>  |

Top slicing relief:  $A - (P \times T/I)$

“A” Tax chargeable on the taxable portion of the lump sum is €34,940.

“P” Chargeable Amount is €90,000

“T” Aggregate amount of tax payable is €66,664

“I” Aggregate taxable income is €285,000

$$\begin{aligned} \text{€34,940} - (\text{€90,000} \times \frac{\text{€66,664}}{\text{€285,000}}) &= \text{€13,888.21} \end{aligned}$$

**Notional computation as if separate assessment applied:**

| Year         | Taxable Income | Tax Payable   |
|--------------|----------------|---------------|
| 2009         | €25,000        | €2,680        |
| 2010         | €25,000        | €2,440        |
| 2011         | €25,000        | €2,150        |
| <b>Total</b> | <b>€75,000</b> | <b>€7,270</b> |

“A” Tax chargeable on the taxable portion of the lump sum is €32,960.

“P” Chargeable Amount is €90,000

“T” Aggregate amount of tax payable is €7,270

“I” Aggregate taxable income is €75,000

Top slicing relief:

$$\begin{aligned} &€32,960 - (\text{€}90,000 \times \frac{\text{€}7,270}{\text{€}75,000}) = \text{€}24,236 \end{aligned}$$

Under these circumstances, the more beneficial top slicing relief of €24,236 would be allowed.

## 8. Employer Procedures and Application of PAYE

The basic exemption of €10,160 plus €765 for each complete year of service and the additional exemption (SCSB less the basic exemption plus the annual exemption) may be allowed by the employer before applying PAYE to the lump sum payment - specific prior Revenue **approval is not required**.

In respect of the amount of any ex-gratia payment in excess of the exemptions the employer is required to deduct and to account to Revenue for tax under PAYE on the excess. The employer is required to maintain satisfactory supporting records of redundancy/termination payments made.

## 9. Application of Universal Social Charge

Any relevant emoluments paid which are in excess of the exemptions under section 201 and Schedule 3 are subject to Universal Social Charge. Note that while income tax is charged in the year of termination, (section 123(4) TCA 1997), USC is charged on payments in the year in which they are received.

Section 531AN of the Taxes Consolidation Act 1997 charges Universal Social Charge on the aggregate income for the year of assessment which includes relevant

emoluments in the tax year, and relevant emoluments that are paid in whole or in part for a tax year other than the tax year during which payment is made.

A more recent version of this manual is available.