Payments on Termination of an Office or Employment or Removal from an Office or Employment

Part 05-05-19

This document should be read in conjunction with sections 123, 201 and Schedule 3 of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
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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.

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Introduction

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

In general, all payments made by employers to employees and directors are regarded as "pay" for tax purposes and, in the absence of a specific relief or exemption, employers must operate PAYE on such payments.

Lump sum payments on a redundancy or retirement are eligible for special tax treatment and may be partially or totally exempt from income tax, PRSI and USC.

Note: A lump sum paid under the terms of a contract of employment is taxable in full and does not qualify for exemption or relief.

1 Legislation

1.1 Ex-Gratia Lump-Sum Payments

Section 123 TCA 1997 provides for the taxation under Schedule E of payments that are not otherwise chargeable to income tax, and which are 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).

Section 123 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 income 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. However, for 2018 and subsequent years, any income tax and USC to be charged in respect of these payments is chargeable at the time the payment is made i.e., the receipts basis of assessment.

Examples of payments which are chargeable to tax under section 123 include:

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;

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.

When it is established that payments are chargeable to tax under section 123, there are various reliefs that may apply, subject to certain limits. Section 201 and Schedule 3 TCA 1997 set out the reliefs and exemptions that are available in respect of such payments. Paragraph 3 outlines the various reliefs offered by section 201 and Schedule 3.

1.2 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 determining that a payment is taxed under section 123 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 is chargeable to tax under the ordinary rules of Schedule E i.e. under the provisions of section 112 TCA 1997.

1.3 'Fire and Re-hire'

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).

Where it is considered that a redundancy has taken place, any lump sum payment made by the employer will be chargeable to tax under section 123 TCA 1997 and may qualify for the reliefs available in accordance with section 201 and Schedule 3 TCA 1997. See paragraph 3 below for further details of these reliefs.

Where it is considered that a redundancy has not taken place, any lump sum payment made by the employer will be chargeable to tax under section 112 TCA 1997. In such circumstances, as the payment will not be chargeable to tax under section 123 TCA 1997, the reliefs available in accordance with s201 and Schedule 3 TCA 1997 do not apply.

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. However, a redundancy will generally not be regarded as taking place in the following circumstances:

1. Where there is a 'fire and re-hire' agreement in place at the time of the termination.
2. Where there is an expectation or understanding by either party that an offer of re-hire would be made at some point in the future (irrespective of the terms of such an offer or the length of time between the fire and the re-hire).
3. Where employees move between companies of the same group, for example where an employment with subsidiary company A is terminated, and the employee is subsequently hired by sister company B.

2 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, may vary and can be summarised as outlined below.

2.1 Statutory Redundancy Payments

Statutory redundancy payments made under the Redundancy Payments Act 1967, which apply to genuine redundancy situations as described therein, are exempt from income tax under Schedule E - section 203 TCA 1997 refers. Such payments are also exempt from Universal Social Charge and PRSI. Statutory redundancy payments have no impact on the exemptions and reliefs offered by section 201 and Schedule 3.

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.

As statutory redundancy payments are tax free, amounts should not be included in the relevant payroll submission.

2.2 Covid-19 Related Lay-Off Payment

A new State funded payment known as the "Covid-19 related lay-off payment" (CRLP) was introduced in April 2022. It is payable to individuals who lost the opportunity to accrue reckonable service, for the purposes of statutory redundancy, due to layoffs as a result of Covid-19 related restrictions in the period 13 March 2020 to 31 January 2022. Section 203 TCA 1997 exempts the CRLP from income tax, Universal Social Charge and PRSI.

2.3 Covid-19 Death in Service Payment

Under the Covid-19 Death in Service scheme, a lump sum payment of €100,000 will be paid in respect of the death of a healthcare worker where eligibility and entitlement to a payment under the scheme has been established. Payments from the State will be paid to the estate of health and social care workers whose deaths can be attributed to contracting COVID-19 at work. Section 192M TCA 1997 provides an exemption from income tax, USC and PRSI in respect of payments made under the scheme. Such payments are also exempt from Capital Acquisitions Tax by virtue of section 82(bb) of the Capital Acquisitions Tax Consolidation Act 2003.

2.4 Pension Scheme Lump Sums

Lump sum payments from pension schemes are specifically excluded from the scope of section 123 by virtue of section 201(2)(a)(iv) TCA 1997. 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, by virtue of section 201(2)(a)(iv).

Such lump sums, to the extent that they exceed €200,000, are taxable under section 790AA (see Tax and Duty Manual (TDM) Chapter 27 of the Pensions Manual for further information).

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 increased exemption and the amount of the Standard Capital Superannuation Benefit (SCSB) exemption available in respect of a lump sum that is taxable under the section. Please see paragraph 3.4 and paragraph 3.5 for further details on the increased exemption and the SCSB.

Exceptions

There are exceptions to the exemption provided for in section 201(2)(a)(iv) TCA 1997.

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.

2.5 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.

3 Exemptions and Reliefs under section 201 and Schedule 3 TCA 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.

3.1 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 income tax, by virtue of section 201(1A), 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.

Revenue recognised that restrictions introduced following the commencement of the COVID-19 pandemic may have caused delays in the completion of retraining courses. Therefore, for individuals who were made redundant in 2020, Revenue concessionally agreed to relax the requirement that retraining must be completed within 6 months of the termination of employment. In such cases, the retraining must be completed within 6 months of the course becoming available.

This concession applied for terminations up to 1 May 2021. For employments terminated after 1 May 2021, any retraining must be completed within 6 months of the termination of the employment in the usual manner in order for this exemption to apply.

3.2 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) an injury to or disability of the holder of an office or employment,

are relieved from the charge to income tax, subject to the life-time limit noted below.

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 exempt 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, those payments should be aggregated for the purposes of the exemption.

Example - Ex-Gratia Disability Payment

Grace was injured in a workplace accident which left her with a permanent disability. Her employer decides on 1 October 2020 to make an ex-gratia payment of €245,000 in recognition of her injury and disability.

Section 201(2)(a) Exemption:

Injury or disability ex-gratia payment	€245,000
Less exemption due under section 201(2)(a)	(€200,000)
Balance Taxable at the employee's marginal rate	€45,000

If Grace receives any further ex-gratia payments from another employer in respect of disability or injury, there will be no further exemption as she has utilised her full €200,000 threshold on such payments.

Note: Payments made either on account of injury to, or disability of, the holder of an office or employment are disregarded 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 3.8).

Employer Obligations

The details of all lump sum payments that are made and treated by employers as exempt from tax by reference to section 201(2)(a) TCA must be reported to Revenue not later than 46 days after the end of the year of assessment in which the payment was made.

Section 201(2A) states that the details below must be provided to Revenue by the employer via MyEnquiries to the appropriate Revenue Division responsible for the income tax affairs of the employee/office holder:

- the name and address of the employee to whom the payment was made;
- the employee's personal public service number (PPSN);
- 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 to, or disability of, the holder of the office or employment, particulars of the injury or disability must also be indicated.

3.3 Basic exemption - Subsections (1)(a) and (5) of section 201 TCA 1997

All individuals are entitled to an exemption on the first €10,160 of a payment which is chargeable to tax under section 123. 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 relief for a partial year of service.

For reporting obligations pertaining to the basic exemption please see paragraph 5 below.

Example - Calculation of Basic Exemption

Jim receives an ex-gratia payment of €150,000 on 1 March 2020 when his employment was terminated, having been employed by the company from 1 May 1984.

Jim completed 35 years of service (from 1 May 1984 to 30 April 2019).

Basic Exemption:

- €10,160, plus
- €765 for each complete year of service: €765 x 35 = €26,775

The 10 months service from 1 May 2019 to 1 March 2020 does not count towards the basic exemption calculation as it was not a complete year of service. The €765 cannot be apportioned to give additional relief for a partial year of service.

The total basic exemption in this case is €36,935 (i.e. €10,160 + €26,775).

If the basic exemption covers the ex-gratia lump sum payment, there is no tax due on the lump sum and the employer will not deduct tax.

Example - Lump sum less than basic exemption amount

Anna received an ex-gratia lump sum of €17,000 when her employment was terminated after 10 years and 6 months of service.

Anna's basic exemption is €17,810 (i.e., €10,160 + [€765 x 10])

There will be no tax due on the lump sum of €17,000 as it is less than the basic exemption of €17,810.

3.3.1 Calculating Years of Service

a) 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 breaks in service, for example, a career break[1] or temporary lay-off.

Example - Calculation of Years of Service

Michael commenced employment on 1 May 1997 and took a career break from 1 March 2007 to 1 July 2010. He was subsequently made redundant on 30 September 2020. His period of service with the company would be calculated as follows:

1 May 1997 to 28 February 2007	9 years 10 months
1 March 2007 to 30 June 2010	Career break
1 July 2010 to 30 September 2020	10 years 3 months

His complete number of years of service is 20 years.

b) In the case of part-time employees or employees who work-share, 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.

In the case of seasonal workers, who have a specific contract providing them with continuing employment for periods each year, and who are employed

[1] 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 and Schedule 3 TCA 1997.

each year on similar terms, all of the seasonal periods can be combined to arrive at the overall period of service.

Example - Calculation of Years of Service for Seasonal Worker:

A turf-cutter was employed for 5 months each year over 24 years. His period of service will be calculated as follows:

5 x 24 = 120 months, or 10 complete years.

c) Employees have a statutory entitlement to certain protective leave and employers are required to treat such employees as though they are not absent from work. The employee's absence whilst on protective leave should not affect any of their rights or entitlements, except for their right to remuneration.

As a result, an employee on unpaid protective leave remains in service and this leave is not regarded as a gap or break in service. While not an exhaustive list, examples of protective leave include carer's leave, maternity leave and parental leave.

Example - Calculation of Years of Service for Protective Leave Cases

Pauline commenced employment on 1 January 2014 and took parental leave from 1 July 2022 to 31 December 2022. She was subsequently made redundant on 31 December 2025. Her period of service with the company would be calculated as follows:

1 January 2014 to 30 June 2022	8 years 6 months
1 July 2022 to 31 December 2022	Parental Leave
1 January 2023 to 31 December 2025	3 years

Her complete number of years of service is 12 years.

3.3.2 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.

3.4 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 €10,000 if the following two conditions are satisfied:

1. the employee has not in the previous ten years claimed relief in excess of the basic tax-free exemption, and

2. 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 tax-free lump sum from such a scheme.

The value of the tax-free ex-gratia lump sum available can be increased by the difference between €10,000 and the "relevant capital sum" (RCS) (see paragraph 3.6 for further details on the RCS).

Where the RCS exceeds €10,000, no additional relief is available. Where the RCS is less than €10,000 the additional relief available is equal to €10,000 less the amount of the relevant capital sum. Revenue approval does not have to be sought before including the increase in basic exemption for an individual. For reporting obligations pertaining to the increase of €10,000 on the basic exemption please see paragraph 5 below.

Example - Individual not a member of an Occupational Pension Scheme

Mary received an ex-gratia payment of €200,000 on 1 March 2020 having been employed by the company from 1 May 1984. Her complete number of years of service is 35.

The relevant capital sum in this case is zero as Mary is not a member of an occupational pension scheme and has no entitlement to a future tax-free lump sum pension payment. As Mary has not claimed any relief under section 201 in the previous 10 years and the relevant capital sum is zero, Mary is entitled to an increased exemption of €10,000.

Mary's total basic exemption is as follows:

Standard Basic Exemption [€10,160 + (€765 x 35)]	€36,935
Increase in Basic Exemption	€10,000
Total	€46,935

Therefore, the basic exemption in this case is €46,935.

Example - Individual is a member of an Occupational Pension Scheme

Tony receives an ex-gratia lump sum payment of €200,000 on 1 March 2018 having been employed by the company from 1 May 1982. The complete number of years' service is 35. Tony has not claimed any relief under section 201 in the previous 10 years. He has received a tax-free lump sum of €5,000 from an occupational pension. The relevant capital sum in this case is therefore €5,000.

Tony's total basic exemption is as follows:

Standard Basic Exemption [€10,160 + (€765 x 35)]	€36,935
Increase in Basic Exemption (€10,000 - €5,000)	€5,000
Total	€41,935

Therefore, the basic exemption in this case is €41,935.

Note: If the tax-free amount received from the occupational pension scheme was €12,000 the increase in the basic exemption would be nil as the relevant capital sum of €12,000, exceeds the amount of the increased exemption.

Example – Individual entitled to a tax-free Pension Lump Sum at a later date

Martin receives an ex-gratia lump sum of €29,000 when he leaves his job after 11 years and 5 months.

The actuarial value/present day value of his pension scheme entitlement to a tax-free lump sum at normal retirement age is €2,500. In this case the relevant capital sum amounts to €2,500. (See paragraph 3.6 for more details on the present value of pension scheme lump sum entitlements).

Martin's total basic exemption is as follows:

Standard Basic Exemption [€10,160 + (€765 x 11)]	€18,575
Increase in Basic Exemption (€10,000 - €2,500)	€7,500
Total	€26,075

Therefore, the basic exemption in this case is €26,075.

3.5 Standard Capital Superannuation Benefit (SCSB) – Paragraph 6, Schedule 3 TCA 1997

The Standard Capital Superannuation Benefit, commonly referred to as the SCSB, is available to all employees and generates an additional exemption to the increased basic exemption (see paragraph 3.4). 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 where claimed (see paragraph 3.3).

The formula for calculating the SCSB is: $\frac{A \times B}{15} - C$

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

This includes all taxable emoluments including, but not limited to, salary, bonuses, commission, overtime, holiday pay, and BIK notional pay. "Taxable emoluments" means any income that is assessable to tax under Schedule E, including such income where it is relieved by another provision of the Act, such as:

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

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 calculating 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.

Where an employee has taken unpaid leave and there is no salary for a number of weeks in the previous 36 months, other prior weeks beyond the previous 36 months, (i.e., weeks from months 37, 38 or 39, etc.) are allowed to be added when calculating the average salary over the last 3 years of continued service to arrive at the average annual taxable emoluments figure.

This is permitted provided the individual did not receive any other taxable emoluments during the period of unpaid leave. Where an individual, for example, continued to receive a contribution to a health insurance scheme but no other emoluments, this would not be considered a period of unpaid leave for the purposes of the calculation. Examples of periods of unpaid leave would include unpaid maternity leave, unpaid paternity leave or unpaid parental leave.

B: is the number of complete years of service in the office or employment

Only complete years of service are counted for the purposes of the reliefs and partial years are not taken into account. If there is a break in service, the service before and after the break will count for the purposes of complete years of service. See paragraph 3.3.1 or further details on how years of service are calculated.

C: is the Relevant Capital Sum

The relevant capital sum is defined in section 1(1) of Schedule 3 TCA 1997. It is discussed in detail in paragraph 3.6 below.

Example – Total exemption including SCSB Calculation

Lorna recently retired from her job. She had 39 complete years of service and was paid a salary of €180,000 per annum for her last 10 years of employment. She received a pension lump sum of 1.5 times her salary on retirement.

What exemptions are available to Lorna if she is paid an ex-gratia lump sum by her employer?

A:	Average annual emoluments for previous 3 years	€180,000
B:	Total years of service	39
C:	Relevant capital sum	€200,000*

*The amount of the tax-free sum which can be received from an approved pension fund is restricted to €200,000 by virtue of section 790AA TCA 1997. Therefore, C above cannot exceed a maximum of €200,000.

Basic Exemption:

- Standard Basic Exemption [€10,160 + (€765 x 39)] €39,995
- Increase in Basic Exemption €0
  (Nil as the relevant capital sum exceeds €10,000*)*
- Total €39,995

SCSB calculation: [(€180,000)/15 x 39] – €200,000 (capped) €268,000

Additional exemption arising from SCSB (€268,000 – €39,995) €228,005

Total Exemption:

- Basic Exemption €39,995
- Plus Additional Exemption from SCSB €228,005
- Total €268,000

Maximum Exemption Available €200,000*

*Under section 201(8) a lifetime limit of €200,000 applies to each individual. See paragraph 3.8. below for details on the maximum relief available

3.6 The Relevant Capital Sum (RCS)

Schedule 3(1)(1) TCA 1997 defines the "relevant capital sum" (RCS). The value placed on the RCS directly impacts a person's entitlement to the Increase in Basic Exemption (paragraph 3.4) and the SCSB (paragraph 3.5).

The RCS is the value of any tax-free lump sum received from an occupational pension scheme and includes the present value of any future tax-free lump sum receivable from such a scheme.

Once the RCS is calculated, the tax-free amount due under both the Increased Basic Exemption and the SCSB are reduced by the value of the RCS.

The relevant capital sum in relation to an office or employment includes:

1. the amount of any tax-free lump sum which an employee has received from an occupational pension,

2. the net present value of an entitlement to a tax-free lump sum - where the entitlement to a tax-free lump sum payment arises at a future date after the employment has ceased (e.g., when the employee reaches normal retirement age), the present-day value of that future lump sum is taken into account. In practice, the administrator of the pension scheme will provide details of the lump sum payable under the scheme or of its actuarial value (the value of the amount receivable at the date of cessation of employment),

   and

3. the net present value of any tax-free lump sum arising from an option to commute a pension, in whole or in part, in favour of a lump sum. An employer's pension scheme may give the individual an option to commute in whole or part, a pension annuity in exchange for a tax-free lump sum under the scheme. In this case the relevant capital sum includes the present value (at the date of termination) of the lump sum to which the individual may become entitled in the future if this option is exercised.

   This figure is included in the RCS calculation whether or not the option is exercised.

Where an individual wishes to surrender their entitlement to receive the above mentioned tax-free lump sum from the occupational pension scheme, he / she must sign an irrevocable waiver to this effect and forward same to the administrator of the pension scheme on or before the date of termination of the employment. A copy of this waiver letter should be retained with the employer's payroll records.

Detailed guidance on the appropriate method to be used to calculate the present value of the pension lump sum for the purposes of the RCS calculation is available in Appendix V of the Revenue Pensions Manual.

3.7 Impact of Covid-19 Supports on exemptions

As outlined above the exemptions available are calculated by reference to an employee's length of service and, in the case of the SCSB, with reference also to an employee's average taxable emoluments in the 36 months prior to the termination of the employment. A person's length of service and average taxable emolument may be impacted where he/she previously received a Covid-19 support.

Length of Service

As discussed above (in paragraph 3.3.1), 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. Any period of temporary lay-off due to the Covid-19 restrictions will constitute a break in service for the purposes of calculating total complete years of service.

A period, for which a taxpayer was in receipt of the Pandemic Unemployment Payment (PUP) is considered a break in service for the purposes of calculating total years of service.

Average taxable emoluments

Payments made to employees under the Temporary Wage Subsidy Scheme (TWSS) are assessable to income tax under Schedule E and should therefore be included when calculating the average emoluments for the purposes of determining the SCSB.

Where an individual was in receipt of the PUP, the amount received should not form part of the 36-month average salary calculation as it was not a payment paid by the employer. Instead, the calculation may incorporate a period before the temporary layoff to bring the total period of paid emoluments up to 36 months.

Example – Calculation of SCSB where an employee was in receipt of the PUP

Tom was made redundant from his employment on 30 June 2022 having worked for his employer since 1 May 2001 on a salary of €90,000 per annum. From the period 1 April 2020 to 31 July 2021, he was in receipt of the PUP as his employer ceased trading due to the Covid-19 restrictions. He was not entitled to a lump sum pension on retirement. What exemptions are available to Tom if he is paid an ex-gratia lump sum by his employer?

SCSB calculation is as follows – A X B - C

15

A - Average annual emoluments for previous 3 years:

PUP payments do not form part of the average salary calculation for previous 3 years. The period before the temporary layoff is taken into account instead to bring the total period of paid emoluments up to 36 months.

10 months from 1 September 2021 – 30 June 2022	€75,000
26 months from 1 February 2018 – 31 March 2020	€195,000
Total	€270,000
Average annual emoluments for previous 3 years	€90,000

B - Total years of service

The 15 months during which Tom was not working and was in receipt of the PUP are excluded giving a total of 19 full years of service with his employer.

C – Relevant Capital Sum

Nil – no entitlement to a tax-free pension lump sum.

Basic Exemption:

- Standard Basic Exemption [€10,160 + (€765 x 19)] €24,695
- Increase in Basic Exemption €10,000

(Full increase available as no pension lump sum entitlement)

- Total €34, 695
- SCSB calculation: [(€90,000)/15 x 19] – €0 €114,000

3.8 Restriction on Maximum Relief Available – Section 201(8)

There is a lifetime cap of €200,000 on the basic and increased exemption and the additional deduction in respect of SCSB. 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 payments made which qualified for either:

- the €5,000 exemption in respect of the cost of training (See paragraph 3.1 for more information), or
- the exemption in respect of payments made on death, injury or disability (See paragraph 3.2 for more information).

Example - Restriction of Relief Available

Martina recently retired from her job. She had 35 complete years of service and was paid a salary of €98,000 per annum for her last 10 years of employment. She does not have an occupational pension.

What exemptions are available to Martina if she is paid an ex-gratia lump sum by her employer?

Average annual emoluments for previous 3 years	€98,000
Total years of service	35
Relevant Capital Sum	NIL
Basic Exemption:	
• Standard Basic Exemption [€10,160 + (€765 x 35)]	€36,935
• Plus increase in Basic Exemption	€10,000
• Total	€46,935
SCSB calculation: [(€98,000)/15 x 35] – €0	€228,667
Additional Exemption arising from SCSB (€228,667 – €46,935)	€181,732
Total Exemptions:	
• Basic Exemption	€46,935
• Additional Exemption from SCSB	€181,732
• Total Exemption	€228,667
Maximum Exemption Available (capped at €200,000)	€200,000

Example - Restriction of Relief Available (Aggregation of Previous Reliefs Given with Current Reliefs)

Alan recently retired from his job. He had 30 complete years of service and was paid a salary of €108,000 per annum for his last 10 years of employment. He received a lump sum from his pension of €121,500 on retirement.

Alan has been granted ex-gratia lump sum exemptions from a previous employer in the past of €110,000. This payment did not relate injury or disability.

What exemptions are available to Alan if he is paid an ex-gratia lump sum by his employer?

Basic Exemption:

- Standard Basic Exemption [€10,160 + (€765 x 30)] €33,110
- Increase in Basic Exemption €0 *
- Total €33,110

*The increased exemption of €10,000 is not due in this case as the pension scheme tax-free lump sum already received is greater than €10,000, meaning the relevant capital sum is greater than €10,000.

SCSB calculation: [€108,000/15 x 30] – €121,500 €94,500

Additional Exemption arising from SCSB (€94,500 – €33,110) €61,390

Total Exemption:

- Basic Exemption €33,110
- Additional Exemption from SCSB €61,390
- Total Exemption that would be available (if no cap) €94,500
- Maximum Exemptions Available with cap (see below) €90,000

Exemption Cap:

- Limit €200,000
- Exemptions granted in respect of previous ex-gratia lump sum (€110,000)
- Remaining exemption available €90,000

4 Amount Chargeable to Tax

The balance of any lump sum taxable under section 123, which exceeds the available exemptions, is chargeable to tax as income in the year of assessment in which the termination of the employment occurs. However, for 2018 and subsequent years, any income tax to be charged in respect of these payments is chargeable at the time the payment is made.

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 USC.

Example - Amount Chargeable to Tax

Jenny commenced employment with company X on 7 June 1999 and retired on 9 June 2020 (18 full years of service). She received an ex-gratia lump sum from her employer of €60,000. She also received a tax-free lump sum of €11,000 from an approved pension scheme.

Her pay for the 36 months prior to her retirement is €95,000 (from 9 June 2017 to 9 June 2020). The amount of the ex-gratia lump sum which will be treated as exempt from tax is:

Basic Exemption:

- Standard Basic Exemption [€10,160 + (€765 x 18)] €23,930
- Increase in Basic Exemption* €0
- Total Basic Exemption €23,930

SCSB calculation: [(€95,000/3)/15 x 18] – €11,000* €27,000

Additional Exemption arising from SCSB (€27,000 – €23,930) €3,070

The total exemption €27,000

*The relevant capital sum in this case is €11,000 – the amount of the tax-free lump sum previously received from the approved pension scheme. The increased exemption of €10,000 is not due in this case as relevant capital sum of €11,000 is greater than €10,000.

The taxable amount of her ex-gratia lump sum is therefore €33,000 (i.e., €60,000 - €27,000).

Example - Amount Chargeable to Tax (Redundancy Package)

John was made redundant on 6 June 2020. He worked for 18 years with company X.

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

Company X owed John the following payments 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.

His redundancy package was as follows:

- Non-statutory redundancy €40,000
- Statutory Redundancy [(18 x 2 x 600) + 600] €22,200
- Non-contractual pay in lieu of notice* €765
- Company car valued at €4,000
- Tax-free lump sum from approved pension fund €7,000
- Total Package €73,965

*If an employment contract provides for payment in lieu of notice, the payment is taxable as pay and the exemptions do not apply.

Statutory redundancy (€22,200) is exempt from tax

The taxable elements of redundancy package are:

- Non-statutory redundancy: €40,000
- Non-contractual pay in lieu of notice €765
- Company car €4,000
- Total Lump Sum €44,765

Calculation of Exemption Due:

• Standard Basic Exemption [€10,160 + (€765 x 18)]	€23,930
• Increase in Basic Exemption (€10,000 - €7,000*)	€3,000
• Total Basic Exemption	€26,930
SCSB calculation: [(€95,000/3)/15 x 18] – €7,000*	€31,000
Additional Exemption arising from SCSB (€31,000 – €26,930)	€4,070
The total exemption	€31,000

The taxable amount of his lump sum is therefore €13,765 (i.e., €44,765 - €31,000).

*The relevant capital sum in this case is €7,000 – the amount of the tax-free lump sum due from the approved pension scheme.

5 Employer Procedures and Application of PAYE

An employer may apply the basic exemption, the increased basic exemption or SCSB when issuing an ex-gratia lump sum termination payment to an (ex) employee as specific Revenue approval is not required in advance of granting such exemptions. However, the employer must be satisfied that the employee in question meets the qualifying criteria for an exemption before granting the exemption.

An employee may make a claim for an exemption via myEnquiries on myAccount where it was not granted by his or her employer.

The employer must include the taxable and non-taxable amounts of the termination payment on their Payroll Submission for the period that it is paid to the (ex) employee.

- The non-taxable amount (i.e., any amount relieved by the basic/increased exemption or SCSB, retraining on redundancy, or payments made on death, injury or disability of an employee) should be returned via line item 49 on the payroll submission.
- Statutory redundancy should not be included in the payroll submission as it is not regarded as being chargeable to tax under section 123.
- The taxable lump sum amount (i.e., the amount of any ex-gratia payment in excess of the exemptions) should be reported via line item 48 as the employer is required to deduct and to account to Revenue for the income tax and USC under the PAYE system on the excess.

The employer is required to maintain satisfactory supporting records of redundancy/termination payments made – both taxable and non-taxable element.