Contributions by Employers

Chapter 4

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

General

4.1

It is a condition of approval of a scheme that the employer must contribute to it but, subject to the considerations mentioned in Chapter 5 and any funding requirements imposed by the Pensions Acts (as regulated by the Pensions Authority), the timing of the contributions is a matter for the employer.

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

In other circumstances, an employer's contributions, which amount to not less than 10% of the total ordinary annual contributions to a scheme (exclusive of employee voluntary contributions), would always be considered to be meaningful.

It will always be open for employers and their advisers to approach the Financial Services (Pensions), Large Cases Division, to discuss the circumstances of particular schemes.

Ordinary Annual Contributions

4.2

Any ordinary annual contribution paid by an employer to an exempt approved scheme is allowed as a deduction for tax purposes. Section 774(6), Taxes Consolidation Act (TCA) 1997, provides that the amount of the contributions shall be allowed to be deducted as an expense incurred in the year in which the sum is paid. No deduction can be given in respect of any provision for an amount due but not actually paid. The amount deductible must not exceed the amount contributed by the employer to the scheme in respect of employees engaged in a trade or undertaking, the profits of which are assessable to Irish tax on the employer. Thus, an allowance cannot be given in respect of a person who is not in the employer's employment, or in respect of an employee whose duties are not related to the business in respect of which the scheme is established. Where the employer carries on two or more separate businesses, each with its own employees, the employer's contributions in respect of each group of employees can be allowed only against the profits of the business in which the group is employed.

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

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Special Contributions

4.3

If a contribution is not an ordinary annual contribution but a special contribution (made e.g. to provide benefits for back service, to augment benefits already secured or to make up an actuarial deficiency in the fund), the Financial Services (Pensions), Large Cases Division may require that the allowance be spread forward over a period of years.

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

The period of the spread is usually determined by dividing the aggregate special contribution by the aggregate ordinary annual contribution, subject to a maximum of 5 years and to a minimum divisor of €6,350.

In the following examples**, OAC** (Ordinary Annual Contribution), **SC** (Special Contribution)

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

* The minimum divisor is €6,350, which would give a spread of 6.3 years (i.e. 40,000 / 6,350).
However, the maximum spread is 5 years.

The divisor for the purposes of determining the spread period in relation to a special contribution paid during a short chargeable period will normally be equal to the greater of the actual ordinary annual contribution paid during the short period in question or €6,350.

If the quotient exceeds 1 but does not exceed 1.5, the special contribution will be allowed over 2 years.

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

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In all other cases a fraction of a year will be rounded down if it equals or is less than ½, and rounded up if it exceeds ½.

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

If a fraction is rounded up, the allowance in each of the relevant years except the last will be an amount equal to the greater of the employer's aggregate ordinary annual contribution at the time the special contribution is made and €6,350, the balance being allowed in the final year.

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

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

4.4

In relation to contributions under one-man arrangements and insured schemes using earmarked policies where contributions are paid over a short period to secure the benefits of an individual member, the Financial Services (Pensions), Large Cases Division will accept that no spreading is required even if the benefits are primarily for past service, provided that -

(a) Payments are uniformly spread over at least 3 policy years, **and**

(b) Payments extend up to normal retirement date in the sense that the final one is made on the policy anniversary immediately preceding normal retirement date, or, depending on the terms of the policy, on some other appropriate date not more than 2 years before normal retirement date.

4.5

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

(a) Legal and other expenses on establishment of the scheme.

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(b) Special contributions payable by instalments over a period of 5 or more years, or paid annually on a specified basis where, although the amounts may be liable to fluctuate, substantial variations in successive years are not expected to occur.

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

4.6

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

Contribution to an Approved Scheme which is not "Exempt Approved"

4.7

Any relief in respect of contributions to an approved scheme which is not "exempt approved" will generally be under the ordinary rules of Schedule D and governed entirely by the provisions of section 81(2) TCA 1997. If the members are related to the employer or, where the employer is a company, to persons having any substantial beneficial interest in its share capital, the position will be examined closely for the reason that to qualify for relief, the payment must be made wholly and exclusively for the purposes of the employer's trade. A contribution of a capital nature i.e. one "bringing into existence an asset or an advantage for the enduring benefit of a trade" would not be an allowable deduction. Contributions must be paid away or clearly alienated from the employer's other assets. There will then normally be no difficulty about the allowance of ordinary annual contributions paid on a regular basis. Other contributions, e.g. lump sum payments securing benefits for back service, may not qualify for relief and the matter will be one for consideration by the Revenue officer dealing with the employer's accounts.

A Hancock type annuity qualifying for simple approval may provide for the purchase of a commutable annuity up to the normal limits on the same terms as an exempt approved scheme. The sole consideration in opting for simple or exempt approval is the matter of claiming relief in the year of payment under the ordinary rules of Schedule D or claiming relief under section 774 TCA 1997 and thereby perhaps involving spread forward relief. Lump sums may be provided only by way of commutable annuity.

Any arrangement, "Hancock" or "exempt approved", set up after the point of retirement may only provide non-commutable benefits with any lump sum element of the package

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being treated as a payment on termination of service subject to tax under section 123 TCA 1997.

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

Refund of Employer Contributions

4.8

A refund of premiums or contributions paid in error may be made without contacting the Financial Services (Pensions), Large Cases Division, provided that:-

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

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

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

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