

# Discontinuance of Schemes

## Chapter 14

This chapter should be read in conjunction with Part 30, Chapter 1 of the Taxes Consolidation Act 1997.

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## 1 General

An employer is free to cease contributing to an approved pension scheme at any time. Other circumstances may lead to the discontinuance of the scheme, such as the bankruptcy or liquidation of the employer. The existence of discretionary powers to discontinue a scheme will not be regarded as a breach of the requirements that an exempt approved scheme must be established under irrevocable trusts. Revenue should be notified of a scheme's discontinuance in routine cases within three months after the event<sup>1</sup>. However, it is necessary to inform Revenue at an earlier stage in any of the following circumstances:

- If the scheme (to be discontinued) is not yet approved,
- If it is proposed to refund monies to the employer(s),
- If a block transfer is to be made.

Discontinuance of a scheme may be achieved in one of two ways:

- By making it frozen or paid up, or
- By winding-up.

Scheme rules must specify the action to be taken on discontinuance.

## 2 Frozen or paid up schemes

A scheme is paid up when all contributions cease, but the assets of the scheme continue to be held by an administrator to be applied in accordance with the rules of the scheme. It is possible for the scheme to continue to exist in a paid-up form despite the employer ceasing to exist, but this must be done with prior approval of Revenue. This agreement is unlikely if the scheme is in surplus, or there is a strong possibility that a surplus will arise in the future. A paid-up scheme must eventually wind up when no assets or beneficiaries remain.

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<sup>1</sup> Schedule 23, Part 1, Paragraph 3(2)(a) Taxes Consolidation Act 1997 (TCA).

### 3 Winding-up

A scheme may be wound up as soon as it is decided to discontinue it. Where assets and liabilities match, the winding-up may be done by:

- transfer to another approved scheme or to a PRSA
- securing the benefits under individual buy-out bonds, or
- assigning individual scheme policies to the members.

Where the scheme is wound up, the benefits provided should not exceed the maximum approvable if the employee concerned had withdrawn from service on the date when the benefits were determined - see [Chapter 12](#) for further details on withdrawal from service.

The winding-up rule should not provide for payment of a lump sum in lieu of the purchase of a deferred pension, or for an optional refund of the employee's contributions to any employee who is in service when the scheme begins to be wound up.

The rules should also ensure that deferred benefits whether in pension or lump sum form, should not be received earlier than the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme.

### 4 Tax

There should not be any provision in a pension scheme permitting full commutation on grounds of triviality or the pensioner's subsequent ill-health, unless the life office or pension provider concerned has first made satisfactory arrangements for any payment of tax due.

### 5 Surplus on winding-up

If the assets available are clearly more than sufficient to provide all prospective benefits in accordance with the rules, the rules may provide additional benefits within approvable limits. There must be express provision for the return of any remaining surplus to the employer as soon as the liabilities of the scheme are determined and satisfied. The returned amount is liable to tax.

In the case of a group fund, the surplus should be divided among the existing employers on the contribution basis or such other arrangement that has been agreed with Revenue.

## 6 Partial winding-up

A scheme which provides for the participation of more than one employer should provide for that part of the scheme relating to any participating employer to be wound up if that employer goes out of business or leaves the scheme for other reasons. The same considerations apply to a partial winding-up as to a total winding-up.

## 7 Discontinuance at interim stage

Revenue must be informed of the discontinuance of a scheme where a definitive trust deed is not in place and which is operating on an interim trust deed.