

Small self-administered pension schemes

Chapter 19

This chapter should be read in conjunction with Part 30, Chapter 1 and Schedule 23 of the Taxes Consolidation Act (TCA) 1997.

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Introduction

This chapter explains the special requirements that small, self-administered pension schemes must comply with in order to achieve and maintain exempt approved status. These special requirements are additional to the normal approval requirements. Their purpose is to ensure that the scheme is in fact "bona fide established for the sole purpose of providing relevant benefits" under section 772 (2)(a) Taxes Consolidation Act 1997 (TCA) and not a scheme designed for tax avoidance.

Usually, the sole members of "small" schemes are 20% directors. Revenue defines 20% directors as someone who directly or indirectly at any time in the last three years owned or controlled more than 20% of the voting rights in the employer company, or in the parent company of the employer company.¹ Revenue concerns relate to the potential for conflicts of interest, as the individuals involved are the owners of the business, scheme trustees and scheme members.

1. Definition of "small" scheme

A scheme with fewer than 12 members will generally be regarded as "small".² Some schemes with more than 12 members may be regarded as a small scheme – for example, a scheme designed primarily for a few family directors, to whom are added some relatively low paid employees with entitlement to only insignificant benefits, included to bring membership to 12 or more, and a scheme with more than 12 members where most or all of the members are or are connected to 20% directors.

Conversely, it might not be necessary to regard a scheme with fewer than 12 members as small if all the members are at arm's length from each other, from the employer and the trustees. A small insured scheme which becomes self-administered after approval must, from the changeover date, comply with the special requirements.

Irrespective of the number of members involved, a scheme will be regarded as small at any time when 65% or more of the value of the investments of the scheme relate to the provision of benefits for 20% directors of the sponsoring employer(s) and their spouses, civil partners and dependants.

¹ Pensions Manual - Appendix I Glossary

² Pensions Manual - Appendix I Glossary

2. Pensioner trustee

The trustees must include a Revenue approved "pensioner trustee".³ Onerous obligations are placed on the pensioner trustee, in addition to the normal obligations that apply under trust law.

The duties of the pensioner trustee are set out in the following undertaking that the trustee must sign:

"I undertake that in relation to any pension scheme, approved under the Taxes Consolidation Act 1997, of which I am a Trustee that I will:

- a) Not consent to any action which is contrary to any Revenue regulations. I will report immediately to Revenue full particulars of any action to which I am requested to consent which I consider may be contrary to Revenue regulations.
- b) Supply annual accounts, periodic actuarial reports, or any other information required by Revenue.
- c) Not agree to the termination of any scheme of which I am Pensioner Trustee otherwise than in accordance with the terms of the approved winding up provisions.

Nor will I delegate powers to any other Trustee of such a scheme or to any outside person or body on behalf of any other Trustees so as to circumvent the foregoing undertaking.

I further undertake to advise Revenue immediately I cease to be a Trustee of any such approved Scheme."

It is a precondition of Revenue approval under s.774 TCA that at all times the "small" scheme must have a Revenue approved pensioner trustee. The Trust Deed must provide that the pensioner trustee cannot be removed without prior Revenue approval and that the pensioner trustee must be a co-signatory on all financial transactions.

Prior to a resignation by a pensioner trustee, it is the responsibility of the other trustees to arrange for the appointment of a replacement. In cases where this does not occur within 30 days of a resignation, Revenue will withdraw approval from the scheme.

³ Section 2(1) Pensions Act 1990 "pensioner trustee" means a person who is for the time being approved by the Revenue Commissioners to act as such in accordance with requirements imposed under Part 30 of the Taxes Consolidation Act 1997.

If the trust instrument establishing a scheme provides for the trustees to act on majority rather than unanimous decisions, this provision must be qualified so that it does not apply where the question for decision relates to the termination of the scheme.

To qualify for pensioner trustee status, an applicant must be closely involved with occupational pension schemes and their approval. They must have experience in processing approval of schemes, administration of small self-administered schemes and a good working knowledge of Revenue practice. Pensioner trustees should be able to provide a complete range of services: actuarial, legal, investment and administration.

Where a corporate body wishes to act as a pensioner trustee, it is essential that the directors, or a majority of them, should be acceptable as pensioner trustees in their own right. The directors regarded as acceptable should have the power to determine how the corporate body will vote in any proceedings of the pension scheme trustees.

Applications for approval to act as a pensioner trustee should be sent to:

Office of the Revenue Commissioners
Large Cases – High Wealth Individuals Division
Pensions Branch
Ballaugh House
73-79 Lower Mount Street
Dublin 2
DO2 PX37

Alternatively, please use the secure “MyEnquiries” service available in myAccount or ROS.

The application should include a full “pensions C.V.” together with details of any self-administered schemes established and administered by the applicant.

A list of Revenue approved pensioner trustees is available on request.

3. Scheme approval and compliance requirements

Practitioners are encouraged to agree a “standard” trust document and announcement letter with Revenue. The covering letter with each approval application should include:

1. Confirmation that the scheme is documented by the standard deed.
2. Confirmation that the announcement letter has issued.
3. An outline of the scheme’s investment policy.
4. The member’s PPSN.
5. Confirmation that the scheme member is an employee of the employer sponsoring the scheme.

The supporting documentation required is:

1. Funding report with full details of retained benefits
2. Copy of the relevant pages of the trust deed showing employer name, trustee details, scheme title and commencement date.

Incomplete submissions will be returned.

As a condition of approval, Revenue will expect actuarial reports to be made at intervals not greater than three years and will examine the assumptions that have been used as a basis for funding the scheme. A further condition of continuing approval is a requirement to submit annual accounts within nine months of the end of the year, in line with the statutory requirements of Schedule 23 TCA.

In view of the significance attaching to the investment policy of the trustees, Revenue will need to know, when the application for approval is first considered, and in conjunction with the examination of annual accounts and later actuarial reports, how the funds are to be or have been invested.

4. Investment of funds in small self-administered schemes

All investments by small self-administered schemes must be on an arm's length basis. The investment powers of trustees of small self-administered schemes are circumscribed in a number of areas which are detailed below. The list is intended as a guide and is not exhaustive. A ruling on any specific proposal can be requested.

(i) Loans

Loans to members of schemes or to any other individual having a contingent interest in the scheme or to the employer are prohibited.

(ii) Property investments

A proposal to acquire property as an investment can be approved subject to the following conditions:

- (a) The vendor is at arm's length from the scheme and the employer, including its directors and associated companies.
- (b) The purpose of the acquisition is not for disposal or letting to the employer, including its directors and associated companies.
- (c) Disposal of the property is on an arm's length basis.

- (d) The scheme has sufficient liquid investments to ensure that the requirement to provide benefits, including ill-health and early retirement benefits, can be met. Where the main or only asset is property, the concentration of investments in an asset not readily realisable does not satisfy the overriding need to match investment of the assets with a scheme's liabilities, in particular the requirement to provide benefits; when the first or subsequent retirements take place, a scheme could be compelled to realise its only or main asset in order to pay benefits.
- (e) Purchase of overseas property will only be permitted where there are appropriate arrangements in place to enable the pensioner trustee to maintain control of the asset to ensure that Revenue rules are complied with.
- (f) A transaction which involves the scheme trustees directly in the acquisition and development of property with a view to its disposal will not constitute an investment to which the exemption in Section 774 (2) TCA will apply.
- (g) Any proposal that involves the diversion of the sponsoring employer's taxable activity into the scheme is not acceptable.

(iii) Self-investment

The following types of self-investment are not acceptable:

- (a) Acquisition of property or other fixed assets from the employer, and
 - (b) Acquisition of shares, debentures, etc., in the employing company whether by subscription, bonus issue, purchase from existing shareholders or any other means.
- (iv) "Pride in possession" articles
- Schemes are not permitted to invest in personal chattels such as works of art, jewellery, vintage cars, yachts, etc. Schemes can invest in *choses in action* (a personal property right to an intangible object) which are not tangible, moveable or visible. Examples are company shares, copyrights, and financial futures.
- (v) Private companies
- Investments must be limited to 5% of scheme assets and to 10% of the private company's share capital.

(vi) Transactions deemed to be pensions in payment (section 779A TCA)

Certain transactions made by an Approved Retirement Fund (ARF) as detailed in section 784A(1B) TCA are deemed to be a distribution from the ARF (please see chapter 23 of the Pensions Manual for more information). A similar provision applies to pension schemes. When these transactions occur, the use of scheme assets is treated as a pension payment from the scheme. Any amount treated as a pension payment is no longer regarded as a scheme asset. The transactions are:

- A loan made to the beneficial owner or connected person.
- An acquisition of property from the beneficial owner or connected person.
- A sale of ARF asset to the beneficial owner or connected person.
- An acquisition of residential or holiday property for use by the beneficial owner or connected person.
- An acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person. The distribution arises on the date such use commences. The distribution is the amount of the value of the ARF assets used in connection with the acquisition and any expenditure on improvement or repair of the property.
- An acquisition of shares in a close company in which the beneficial owner or connected person is a participator.

A “close company” means a company under the control of five or fewer participators, or of participators who are directors. Please refer to section 430 TCA for a complete definition.

A “participator”, in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to section 433 TCA for a complete definition.

Definitions of “connected persons” and “relative” are contained in section 10 TCA.

5. Benefits

A final funding review must take place before any benefits are paid. The scheme rules should provide that benefits be secured by either the purchase of an annuity from a life office or in accordance with section 772 (3)(a) TCA.

6. Death benefit

All death-in-service benefits should be insured from the outset insofar as they exceed the value year to year of the member's interest in the fund, based on his accrued pension and other retirement benefits.

7. Full commutation of pension in cases of serious ill-health

Where the rules of the pension scheme include a provision for the full commutation of pension where the member is "in exceptional circumstances of serious ill-health" it has always been the practice to leave the application of the rule in particular cases to the trustees. In large schemes, the arm's length relationship, and in insured schemes, the interest of the life office, each provide a reasonable assurance that the facility will not be abused. Neither factor is present in small self-administered schemes and the rules of such schemes should, therefore, provide for full commutation on serious ill-health grounds to be subject to the agreement of Revenue. In such cases Revenue would seek to establish that proper medical evidence has been obtained and that its terms appeared to warrant a conclusion that the member's expectation of life was very short.

8. General enquiries

Enquiries must disclose the title of the scheme to which they relate and all other relevant facts and figures. Each case is dependent on its facts and it is not possible to deal with purely hypothetical situations.