

PENSION SCHEMES

General

As in Ireland, there is no legal requirement for an employer to operate a pension scheme in England and Wales. If there is no employer sponsored pension scheme, there are obligations to make a stakeholder pension arrangement available for contributions by the employee, in much the same way as a PRSA must be made available to employees in Ireland.

Broadly speaking, the tax advantages of pension schemes are similar in the UK and Ireland. An employer's pension scheme must be registered with HM Revenue & Customs (HMRC) to attract tax relief. The scheme represents a tax efficient way of increasing employee remuneration and provides a good incentive for employees to join the scheme.

The types of schemes found are broadly similar to those in Ireland. Many of the broad rules arise from a common 19th century origin in Civil Servant Superannuation schemes.

Defined benefit/final salary schemes provide for a guaranteed level of pension dependent upon the final salary level and the number of years of contribution. They are usually only offered by large companies because of the significant costs and risks. Typically employers contribute around 14% of basic salary. There can be liability to make substantial additional funding, if there are shortfalls in the fund or if annuity rates fall.

Under a defined contributions or "money purchase" scheme, the size of a pension depends on the value of savings in the scheme at the age of retirement. Employers who contribute to these schemes typically contribute about 6% of basic salary. There is no guarantee as to the level of pension which can be purchased from such a scheme.

Hybrid schemes involve mixed elements of final salary and money purchase schemes. They can also arise because of transfers between one scheme and another.

Types of Schemes

There are several types of money purchase scheme.

- (a) Defined contribution occupational pension scheme
These are set up by employers and the pension assets are held in trust with trustees managing the scheme.
- (b) Group, personal and stakeholder pensions
Employers arrange access to personal pensions for their employees, managed by a third party such as an insurance company, stockbroker etc.
- (c) Small Self Administered Pension Funds
As in Ireland these are occupational schemes which are open only to a small number of people. They are typically partners and owner/managers. They may use their own pension arrangements and self direct pension investments. Because of these there are restrictions on investments and an independent trustee is required to police the restrictions.
- (d) Executive pension plans
These are policies held with insurance companies typically designed for management.

In the case of personal and stakeholder pension schemes (equivalent to the retirement annuity contract and PRSA found in Ireland) the pension is a policy between a third party such as an insurance company and the employee. There are not necessarily any employer's contribution, although this is possible. Employers who offer their own personal pension plan and add at least 3% contributions do not have to offer access to a stakeholder pension.

Stakeholder pensions can be offered by employers but can also be accessed directly. Firms with more than five employees and without existing qualifying pension arrangements are required by law to ensure employees have access to a stakeholder pension. This includes selecting a suitable provider from the Pension Regulator's list of providers; providing access to the workforce to the provider to promote the scheme; setting up a system under which deductions are made and forwarding contributions. Employees are not obliged to join the schemes.

As with PRSAs there are limitations on the charges under stakeholder pensions. There is a limit of 1.5% per year reducing to 1% after 10 years.

Tax Advantages

Pension schemes have significant tax advantages. Within limits, employee contributions are deducted from income before tax is applied. The pension contribution deductions are effectively taken at the marginal rate so that employees paying tax at higher rates save tax at this rate.

On 6th April 2006, so called "A" Day, tax rules on pension savings were simplified. There is no limit on the amount that can be contributed to a registered pension scheme in any year. The limits are on the amount of the fund. There is a lifetime limit of £1.65 million (increasing to £1.8 million) in 2009 which limits the total amount that anyone may invest in a pension.

There is an annual allowance set at 2008/2009 at £235,000. This is the limit on which tax relief is allowed. Contributions above this amount do not qualify for relief. Up to £3,600 per year can always be contributed from unearned income.

Pension investments are not subject to tax. Therefore the pension funds "rolls up" tax free. For example, income from investments is subject to tax. Tax deducted at source may be reclaimed. Profits on the sale of investments are also tax free.

As in Ireland, retirement pensions are subject to income tax when they are paid. At retirement 25% of the fund can be taken tax free, provided it does not exceed the lifetime allowance.

Regulators

The Pensions Regulator and the Financial Services Authority share responsibility for regulating pension schemes. The Pensions Regulator's function is to protect those who have work based pension schemes and to promote good administration. The Pensions Regulator undertakes registration, employer designation and charge capping compliance for stakeholder pensions.

The Financial Services Authority regulates the sale and marketing of stakeholder pension schemes and all personal pensions including group personal pensions and self investment pension schemes (SIPPS). It also regulates giving advice about pension schemes.

New employer schemes must be registered with the Register of Pension Schemes at Pensions Regulator. Administrators of all but the smallest schemes must send an annual scheme return that covers: basic details of the scheme; registration and approval; type and sales; breakdown of active deferred and pensioner members; trustees advisers and providers; participating employers; current financial information. The Pensions Regulator has powers to investigate discrepancies in returns.

A qualified auditor must verify the existence and value of pension scheme assets. In the case of a final salary scheme, the actuary must determine that the funds future liabilities can be met from current assets. Auditors and actuaries have obligations to alert the Regulator to potential problems. Trustees, employers, administrators and professional advisers are also expected to "whistle blow", if misconduct is suspected or uncovered.

The Pensions Regulator has significant powers to: collect data; require information; demand documents; issue an improvement notice; recover unpaid contributions; freeze

schemes; fine for breaches; issue a contribution notice of financial support direction or restoration order; suspend or prohibit trustees; and to remove trustees.

Trustees

Trustees of occupational pension schemes have duties under the pension trust deed the scheme rules trust law and pensions legislation. They must run the scheme for the benefit of the members and not be swayed by the interest of the employer's business. Trustees are obliged to notify the Pensions Regulator where there is failure to make contributions.

Trustees must be adequately trained. Their duties include; ensuring the scheme is registered; paying levies to the Pensions Regulator; holding meetings and keeping records; keeping financial and member records; appointing pension professional advisers; establishing an investment policy and appointing investment advisers; providing information to members and beneficiaries; sorting out member disputes.

Employers

Employers have responsibilities in relation to the company pension scheme. They must ensure contributions are paid in time and that the pension money is dealt with as required. It must be paid within 19 days at the end of the month. The trustees have to report failure to the Pensions Regulator.

There must be systems to differentiate between the assets of the business and the pension fund and ensure that they can never be used for the business.

There must be adequate information and consultation with employees. Employees must be consulted in relation to key issues such as increasing pension age, closing the scheme, stopping employer's contribution. Employers must assist the trustees in the performance of their duties. The trustees must be given adequate time off to undertake

their role and for training purposes. One third of the trustees must be nominated by the members. The others are normally appointed either by the employer or existing trustees.

Employee's pension rights under contracts of employment are protected to a certain extent under the Transfer of Undertakings (Protection of Employment) Legislation (known as "TUPE") when one business is sold to the other. The new employer does not have to provide the same pension benefits into the future. It is possible on the sale of a business that an employer could be liable for constructive dismissal arising from loss or reduction in the employee's pension rights as a result of the sale.

Upon purchase of a business without an occupational pension scheme, there is an obligation to afford employees access to an occupational or stakeholder pension scheme with certain minimum conditions.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.