OCCUPATIONAL PENSIONS

In general, large employers in Ireland have occupational pension schemes, but many smaller employers throughout the country do not.

Each pension scheme has its own set of rules. Pension schemes nationally are generally regulated by the Pensions Authority. Members of schemes have certain rights in respect of such matters as information. Contributions to approved occupational pension schemes may attract tax relief. Regulation for tax purposes is supervised by the Retirement Benefits District of the Revenue Commissioners.

From 27 March 2013 employees can withdraw up to 30% of the value of Additional Voluntary Contributions (AVCs) made to occupational pension schemes and PRSAs. This applies for 3 years only (until 27 March 2016). The Pensions Authority has published FAQs on withdrawal of AVCs (pdf).

Rules

There is no legal obligation on employers to provide occupational pension schemes for employees. However, more and more employers are putting schemes in place and there is positive government encouragement to do so.

Occupational pensions and personal pensions

Occupational pensions are organised by employers to provide pensions to one or more employees on retirement or to surviving dependants on the death of an employee.

A personal pension scheme (properly known as a Retirement Annuity Contract- RAC) is an arrangement by a self-employed person or an employee, generally a person who is not a member of an occupational pension scheme, to provide a pension on retirement or to surviving dependants on death. RACs are governed by tax legislation and financial services legislation. They are not regulated by the Pensions Authority.

An employee may be a member of an occupational pension scheme and also arrange a personal pension. However, it may not be possible to avail of the tax benefits in respect of both. Employees may not contribute to an occupational pension scheme and a personal pension arrangement at the same time in relation to the same employment. However, employees may make a personal pension arrangement in respect of earnings from another employment or from self-employment.

A person becoming an employee and joining an occupational pension scheme can now continue to contribute to the RAC schemes where they join an occupational pension scheme. However, tax relief will not be given to continued contributions.

From 2003 onwards, Personal Retirement Savings Accounts (PRSAs) became available. These are designed to be used instead of occupational pension schemes by employers who do not wish to sponsor such schemes. They may also be used to supplement occupational scheme benefits, as Additional Voluntary Contributions (AVCs) and as a substitute for personal pension schemes. Employers must offer access to at least one standard PRSA to any employee who is not eligible to join an occupational pension scheme within 6 months of joining employment and must offer a PRSA for AVC purposes if there is no facility for AVCs within the scheme. Further information on PRSAs is available from the Pension Authority's website.

Kinds of occupational pensions

Occupational pension schemes may be contributory or non-contributory, funded or unfunded, defined benefit or defined contribution.

In contributory schemes, both employee and employer pay contributions towards the scheme.
In non-contributory schemes, the employee does not contribute but the employer does.

- **Funded schemes**
  Virtually all occupational schemes are funded - the contributions are put into a designated fund and the benefits are paid from that fund. The most notable exception is the public service pension arrangement where there is no fund and benefits are paid out of current government funds.

  A National Pensions Reserve Fund (NPRF) has been established to provide a fund that can be drawn upon for future payments of public service and social welfare pensions. This is different from funded pension schemes. In a funded scheme, you are a member of the scheme and you have a direct interest in the fund. You have no direct claim on the NPRF.

- **Defined benefit schemes**
  A defined benefit scheme is one where the benefit entitlement is defined in some way by reference to earnings, length of service, an index or a fixed amount. So, an employee will know in advance that the pension will be, for example, half of a final salary if worked for 40 years service or that it will be a certain amount each week. In defined benefit schemes, the contributions may have to be varied from time to time in order to make sure that the fund can meet the level of benefits. Some schemes have provisions for the employer to top up the fund if necessary.

Limit on overall value of fund

The Finance Act 2006 introduced a limit on the value of an individual's pension fund which may attract tax relief and this may vary from year to year. This is called the Standard Fund Threshold. From 7 December 2010 to 31 December 2013 the maximum allowable pension fund on retirement for tax purposes was €2.3 million. If the fund is greater than the limit then tax at 41% will be charged on the excess when it is drawn down from the fund. From 1 January 2014 the absolute value of the Standard Fund Threshold reduced to €2 million. From the same date the value of a defined benefit differs depending on the age at which the pension is drawn down. You can read more about the new formula used to value pension rights on Revenue's website.

New rules on wind-up of defined benefit schemes

From 25 December 2013 the rules about the distribution of assets in defined benefit pension schemes which are being wound up changed. When a defined benefit pension scheme is being wound up, its assets are distributed in a specific order of priority. If the scheme is fully funded then all liabilities are met. If the pension scheme is underfunded or insolvent, then people with a lower order of priority do not get what they expected from the scheme.

The new rules which apply to the winding up of schemes after 25 December 2013 reduce the rights of current pensioners and improve the priority given to future pensioners. These new rules differ depending on whether or not the employer is solvent.

Single insolvency order - If the employer is solvent

This order applies to cases where the pension scheme is insolvent but the employer is solvent. The first priority is additional voluntary contributions and defined contribution benefits.

The second priority is the pensions payable to current pensioners but there are now limits on the amounts to which priority is attached as follows:

- The first €12,000 annually of pension
- 90% of pensions between €12,000 and €60,000 with a minimum of €12,000
- 80% of pensions over €60,000 with a minimum of €54,000
- The next priority is 50% of the pensions of future pensioners. After that, the priority is:
- The remaining pension of current pensioners
- Remaining pensions of future pensioners
- Any other remaining benefits

This means that existing pensioners could have their current pensions reduced. Pensions under €12,000 may not be reduced. The maximum reduction is then 10% of pensions under €60,000 (but they cannot be reduced to less than €12,000) and 20% of pensions over €60,000.

Double insolvency order - Employer insolvent
The priority in the winding up of a defined benefit pension scheme in cases where the employer is insolvent is as follows:

- Additional Voluntary Contributions (AVCs) and defined contribution benefits
- 50% of current pensioner and future pensioner benefits
- Pensioner benefits up to €12,000 a year
- Remaining benefits for current pensioners
- Remaining benefits for future pensioners

Where the scheme does not have enough funds to pay 50% of pensioner and future pensioner benefits and pensioner benefits up to €12,000 a year, the Minister for Finance must provide the necessary funding.

Defined contribution scheme

A defined contribution scheme is one where the contribution is fixed by agreement but the benefits are decided by reference to the value of the contributions paid under the scheme and are not fixed in advance. So, the level of pension is unknown.

Occupational pensions and social welfare pensions

Occupational and personal pensions operate independently of the social welfare pension system (Social welfare pensions include contributory and non-contributory pensions) and there is no statutory link between the two. However, it is common for occupational pensions to take into account the level of social welfare pension received in calculating the level of benefit. For example, some schemes provide for a benefit, which, together with the social welfare pension, will give half or two-thirds of the final salary. This may be done when an employee starts to receive their pension but the occupational pension may not be subsequently reduced because the social welfare pension is increased. Such schemes are sometimes called integrated or co-ordinated schemes.

Tax relief on pension contributions

Employees who are members of an approved pension scheme, can get tax relief at the highest rate on contributions to the scheme. There are various rules that pension schemes must meet in order to get the tax relief and there is a limit to the amount of the relief. Since 1 January 2011 employees will pay PRSI and the Universal Social Charge on your pension contributions.

The maximum pension contributions, in any one year, for which employees are entitled to tax relief, is related to age and is expressed as a percentage of gross income. The maximum gross income figure for relief purposes is €115,000. The percentage relief limits are:

Age	Limited to
under 30 years	15% of *net relevant earnings
30-39 years	20% of *net relevant earnings
40-49 years	25% of *net relevant earnings
50-54 years	30% of *net relevant earnings
55-59 years	35% of *net relevant earnings
60 years plus	40% of *net relevant earnings

*For employers, *earnings* means gross pay for tax purposes. For the self-employed, *earnings* means net relevant earnings, that is, earnings less allowable expenses. Tax is paid on the pension when received.

Taxation of retirement lump sum

Since 1 January 2011 there is a limit of €200,000 on the amount of the tax-free retirement lump sum. Lump sum payments above that limit will be taxed as follows:

Amount of lump sum	Income tax rate
Up to €200,000	0%
€200,001 - €575,000	20%
Over €575,000	Taxpayer's marginal rate

Income tax rate on the refund of contributions

The income tax charge on the refund to a taxpayer of contributions to an occupational pension scheme was reduced from the 25% rate to the standard rate of income tax - currently 20%. This change applied to refunds made on or after 5 December 2001.

Levy on private pension funds

There is a levy of 0.6% on the market value of assets which are managed in pension funds and pension plans approved under Irish tax legislation. (These include occupational pension schemes, Retirement Annuity Contracts and Personal Retirement Savings Accounts). This levy applies until the end of 2014. In 2014 an extra levy of 0.15% was introduced. This will continue to apply. This means that the total pension levy in 2014 is 0.75% and the levy from 2015 on will be 0.15%. You can find out more about the pension levy from the Pensions Authority.

The Pensions Authority

The Pensions Authority is the regulatory body for occupational pensions. The Authority consists of representatives nominated by trade unions, employers, the Government, the pensions industry and professional groups involved with occupational pension schemes. The main functions of the Authority are:

- To monitor and supervise the operation of the Pensions Act and pension developments generally;
- To issue guidelines on the duties and responsibilities of pension scheme trustees and Codes of Practice on specific aspects of their responsibility;
- To encourage the provision of appropriate training for trustees
- To advise the Minister on standards for trustees;
- To investigate complaints concerning possible non-compliance with the pensions legislation and to resolve disputes that may arise in relation to some aspects of the legislation and
- To advise the Minister for Social Protection on pensions matters generally.

Occupational pension schemes are obliged to register with the Authority.

Ombudsman for Pensions

The Ombudsman for Pensions has the power to investigate and determine your complaints concerning disputes of fact or law and errors in relation to occupational pension schemes and PRSAs. The Ombudsman has the power to give any directions necessary to resolve the complaint or dispute and can give financial compensation (redress) but this cannot exceed the actual loss of benefit under the occupational pension scheme or PRSA. The Ombudsman does not have the power to award legal costs. All decisions made by the Ombudsman are binding between the parties subject to a right of appeal by either party to the High Court

Employee rights as a pension scheme member

The Pensions Authority has produced a number of leaflets on the operation of the Pensions Act. It provides information to members of pension schemes about their rights under the legislation. If necessary, the Authority has extensive powers to inspect the scheme's books and records, to enter premises and to require people to give explanations. It may apply to the High Court to have pension scheme trustees replaced in order to protect the interests of the members.

Among the more important rights you have as a member of a pension scheme are:

- **The right to information**
  The trustees of the scheme must provide information to members, prospective members, their spouses, people entitled or prospectively entitled to benefits under the scheme and to representatives of trade unions.

  Members are entitled to get information about the scheme, about how it is administered, what rights and obligations they have. The trustees are obliged to tell members if more than 5% of the scheme's assets are invested in the employer's business or in any one investment.

- **The right to be involved in the scheme**
  In certain cases, you are entitled to be involved in the selection of trustees. This is the case if your scheme has 50 or more qualified members or 12 or more qualified members of a directly invested scheme. A qualified member is a member of the scheme currently in employment or a pensioner, but does not include a member who is covered only for death in service or a non-member (e.g. a dependant) who is receiving benefits from the scheme.

  Members can elect half the total number of trustees (excluding the chairperson), subject to a minimum of two.

Rules about pension schemes

Pension schemes can, to a considerable extent, set their own rules about contributions and benefits. There are some rules set out in legislation to which they must adhere.

- **Preservation and Transfer of Benefits**
  There are specific rules about what happens if someone leaves the pension scheme for whatever reason, for example, if they change jobs or become self-employed or retire early without a pension. The benefits from the pension scheme may be preserved within the scheme or transferred to another scheme. If an employee has at least 2 years service, they are entitled to a preserved benefit if they leave before the normal retirement age. A preserved benefit means that an employee gets a pension when they reach the scheme's normal retirement age. (Prior to 2 June 2002, 5 years service was needed to qualify for preservation). Alternatively, they can ask the trustees to transfer their pension rights to a new pension scheme.

- **Funding standards**
  The trustees are obliged to meet the minimum standards of funding for funded occupational schemes.

- **Providing for dependants**
  Pension schemes usually have benefits for employees when they retire and for their widowed spouse and dependent children after death. Not all schemes have arrangements for dependants.

  Under an occupational pension scheme, the maximum benefit that can be provided for a spouse or dependent has been increased from 2/3 of the full pension to 100% of the provision.

  Some schemes may allow employees to designate the person who should benefit under the scheme so it is possible, in some cases, to nominate a person other than a spouse.

- **Occupational pensions and marriage breakdown**
  In judicial separation and divorce proceedings, the court may make various types of financial settlements. Among these is a Pension Adjustment Order.

  The Pension Adjustment Order designates a part of the pension for payment to a spouse (usually the wife) and dependant children. The judge decides how much of the pension should be designated. The effect of such an order is that the designated part of the pension remains in the pension scheme but is payable to your spouse and children when you reach pension age or die.