



Essex County
Fire & Rescue Service

Tax Consequences of Retrospective Action

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Disclaimer

- These slides have been produced to provide a short overview of the tax rules governing payment of arrears of pension and lump sum and do not intend to replace the legislation.
- The legislation and pension tax manual references are referred to and should always be checked when calculating any benefit payable.
- If in doubt, please seek tax advice!



Background

- Retained element of day-crewing became pensionable within the FPS 1992 (retaining fee and turnouts & attendances).
- Change applied to current & former employees.
- Backdated contributions were collected going back 6 years from the date of the decision to make it pensionable, in accordance with the Limitation Act.
- Payments were made to those pensioners who retired within the last 6 years from the date of decision to make retained element of day-crewing pensionable.



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Background

Tax Considerations:-

- Tax Relief on Contributions due.
- Tax implications on making payments to pensioners.



Tax Relief on contributions

Active members:-

Backdated employee contributions paid through payroll will attract tax relief.

But if employment ends prior to the end of the repayment period?

If member is not retiring:-

- the outstanding amount to be recovered from final salary, or
- Invoiced for remaining amount – member can set up a repayment plan with Finance

If member is retiring – additional option to deduct remaining amount from the lump sum.



Tax Relief on contributions

Deferred, Pensioner members and those leaving before repaid amount due

- If the contributions payment is made outside of the payroll, member cannot receive the tax relief, unless they make a claim.
- Once contributions paid or deducted from lump sum, member was sent a letter so they can claim the tax relief on the contributions they have paid.
- Letter is written from the members' point of view and for them to sign and send to HMRC.
- Attached to this is a schedule confirming what contributions were paid when.



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Tax Relief on contributions

Tax Relief letter example:-

Pay As You Earn and Self Assessment

HM Revenue and Customs

BX9 1AS

Dear Sir/Madam,

My final pensionable pay, applicable as at my date of retirement, has been retrospectively uplifted following a review by my former employer Essex Fire Authority. This is due to certain elements of pay related to my 'on call' (retained) duties now being regarded as pensionable under the Firefighters' Pension Scheme 1992.

I have been required to pay pension contributions and I wish to formally make a direct claim for the 'lost' tax relief on those pension contributions. I have enclosed a Statement of Historical Pension Contributions for your information.

Please confirm if I need to complete a Self-Assessment tax return in relation to the above; or if this letter and enclosures is sufficient information for you to proceed with my claim.

Yours faithfully,



Tax Relief on contributions

- But.....A member very recently contacted us, stating HMRC replied that Fire tax relief claims are being halted.
- Uncertain whether this relates to all tax relief claims or HMRC have confused this with the Modified scheme tax relief claims.
- Advised member to send us the letter from HMRC and we may need to send more clarification directly to HMRC.



Tax Due on pension/lump sum

Paying a lump sum

- There are tax implications if an additional lump sum payment is being paid to the individual more than 12 months after the original Benefit Crystallisation Event date (established at retirement).
- If so, the whole of the additional lump sum payment will be classified as an 'unauthorised payment' – a 40% tax charge.
- If within 12 months, this is an authorised payment, meaning no tax charge due – but you will need to do the 'permitted maximum' check again i.e. 25% of the capital value.



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Tax Due on pension/lump sum

Paying a pension

- Additional scheme pension arrears also regarded as an 'unauthorised payment', unless:-
- If it constitutes an 'error' the tax rules allows the additional pension arrears payment to be regarded as an authorised payment.



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Tax Due on pension/lump sum

Scheme sanction charge

Exemption if:-

- Payment is made to comply with a court order or an order by a person or body with the power to order the making of the payment. E.g. Milne V GAD, the Ombudsman made a determination which directly affected all FRA's, so clear that s241 could be relied on.
- Payment made on the grounds that a court or any such person or body is likely to order (or would be were it asked to do so) the making of the payment. This should be the only, or significant, reason for making the payment).



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Tax Due on pension/lump sum

Letter to HMRC said:-

Proposed treatment #1: To treat retrospective lump sum payments as unauthorised payments.

Proposed treatment #2: To treat the retrospective pension arrears as authorised payments as they are an error, as the Norman judgment means the payments should have been included as pensionable pay when the person retired.

Proposed treatment #3: A scheme sanction charge is not payable as it is likely that a court would order Essex Fire & Rescue Authority to make the payments.



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Tax Due on pension/lump sum

Reply from HMRC:-

Dear Mr Durrant

Retrospective Pensions & Lump Sum Payments

Thank you for your letter.

Your proposed treatment of the three scenarios on page 4 of your letter appear to be in accordance with our published guidance.



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Tax Due on pension/lump sum

Reply from HMRC:-

Point 1 - PTM063210 advises that a pension commencement lump sum can only be paid within a 12 month period after becoming entitled to it. A lump sum paid after this period would not be a pension commencement lump sum but would be an unauthorised payment. PTM146400 advises that it would remain as an unauthorised payment even though a genuine error had occurred.



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Tax Due on pension/lump sum

Reply from HMRC:-

Point 2 – This appears to be an authorised payment in accordance with guidance at PTM062800. The member is entitled to this pension payment and it is simply being paid as an arrear of pension due to a calculation error.

Point 3 – The re-calculation is only being done because of a court ruling. This re-calculation has resulted in a further payment of pension/lump sum. In accordance with PTM135200 it appears that the additional payment may in effect be a payment ordered by a court and would not therefore be scheme chargeable.



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Tax Due on pension/lump sum

- ‘Appears’ gives an element of doubt, but we decided to proceed.
- You may wish to take your own advice from HMRC as it may depend on the circumstances of each individual case!



Payments of Pension & Lump sum

- Letter to pensioners confirmed amount due to be paid to them according to their original commutation election, minus the contributions due.
- Form enclosed with the letter giving permission for us to deduct any unauthorised lump sum tax charge from their payment, or they can report to HMRC themselves.
- Gave pensioner option to receive it all as additional pension only and no additional lump sum and therefore with no tax charge (other than PAYE).



- Required to report the Unauthorised payments under Event Reporting.
- The information that must be provided is:
 - the name of the person to whom the payment was made,
 - their National Insurance number,
 - the nature of the payment,
 - the amount of the payment and
 - the date of the payment.



Event Reporting

- HMRC must receive the Event Report by 31 January after the end of the tax year to which the Event Report relates.
- E.g. If the Event Report is for the tax year ended 5 April 2020 the Event Report can be filed in the period 6 April 2020 to 31 January 2021.
- Where an Event Report is submitted late, penalties may apply.



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Questions

