

Pension schemes - withdrawal of approval

Statutory Position

In order for an individual to claim tax relief for contributions to an occupational scheme, a retirement annuity scheme or a retirement annuity trust scheme (“pension schemes”), the scheme requires approval by the Director in accordance with sections 150 and 157A of the Law.

The Director may at any time withdraw approval of a pension scheme (or part of a scheme if a multi-member RATS or defined contribution occupational scheme) if it appears to the Director that the facts concerning the approved scheme, contract or trust, or its administration, do not warrant the continuance of approval. This is in accordance with sections 155(3) and 157A(7) of the Law.

A withdrawal of approval will only be considered where there are serious breaches of the conditions of approval, such as unauthorised payments.

Guidance to the trustee / relevant person(s) in the event that the Director withdraws approval of a pension scheme

1. The Director shall give written notice of the withdrawal, the grounds for withdrawal and the date on which the withdrawal will take effect to the scheme trustee.

A withdrawal of approval may take effect on a day that is earlier than the day the notice is given, but shall not be earlier than the day on which the grounds for withdrawal appear to the Director to have arisen.

2. The notice of withdrawal will provide the trustee / relevant person with their rights of appeal.

Under sections 155(5) and 157A(7B), where a person is aggrieved by a decision described in paragraph 1 above, they may appeal, by giving notice to the (Director) in writing, stating the grounds of the appeal, within 30 days of the date of the notice. If the dispute cannot be resolved, the appeal will be heard by the Guernsey Revenue Service Tribunal.

3. Tax consequences for withdrawal of approval:

- a) As the funds are no longer held in what would be considered to be an approved pension scheme, the member will not be entitled to claim a retirement annuity allowance for any contributions paid, in respect of further contributions to the pension scheme.
- b) If the member settles funds into the pension scheme from which they can later benefit, the income arising in the trust will be taxable in accordance with section 65 of the Law, as a revocable trust.
- c) The market value of the assets held within the pension scheme at the date of withdrawal of approval, will be treated as income of the member and will be chargeable to income tax on the person by or through whom payments to members are made in accordance with section 2(1)(d) of the Law, as income from other sources, without the entitlement of a 30% tax free lump sum.

Surcharges

If additional assessment(s) have been issued in accordance with section 75 of the Law, surcharges and additional surcharges (including arrears thereof) will also be payable in respect of the tax arising in the same manner, and in the same amount, and with effect from the same dates, as if the tax had been charged in an assessment made in respect of that year of charge in sufficient time to enable the tax to have been paid on 30 June and 31 December in the relevant year. This is detailed in section 199(6) of the Law.

Surcharges payable under section 199(6) of the Law are payable in addition to surcharges payable under section 199(1) of the Law.