

# Pensions

## Anti-forestalling

### Changes to tax relief on pension contributions

In 2009 a new set of rules were announced for pension contributions to clawback higher rate tax relief from those with 'relevant income' of £130,000 or more.

This Update summarises the regulations as they affect defined contribution schemes, including self-invested personal pensions (SIPPs) and small self-administered schemes (SSAs).

Until 2011, £20,000 of personal pension contributions (as well as loss reliefs and gift aid donations) are deductible in testing against the £130,000 limit.

The 2011 regulations are still subject to consultation and are yet to be announced in detail. It is proposed that they will restrict tax relief on pension contributions such that tax relief will be tapered for income between £150,000 and £180,000 so that at £180,000 it is restricted to basic rate tax relief (currently 20%). For those with income over £130,000 "salary sacrifice" contributions will be taken into account to test against the £150,000 limit.

A further change to the anti-forestalling rules from 19<sup>th</sup> March 2010 allows those caught by the limits to transfer their pension once and retain the protected regular payments over £20,000 p.a.

**Table 1: personal contributions (also refer to the notes)**

income (see below for definition of £150k plus)	maximum pension contributions (gross)	tax relief
<b>Earned income</b> £0-£3,600	£3,600	20%
<b>Earned income</b> £3,601 – higher rate income tax threshold (£37,400 for 2010/11)	100% of earned income up to 40% threshold	20%
<b>Earned income</b> from higher rate income tax threshold - £129,999	100% of earned income up to £129,999	40%
<b>Total income</b> £130,000 + (including earnings of more than £130,000 for the previous two years)	Up to £20,000	40%
	£20,001- 100% of earnings	20% subject to annual allowance £255,000 2010/11
	<b>However, where</b> "regular" pension savings already exceed £20,000 per annum and do not increase	40%/50% subject to annual allowance £255,000 2010/11
	<b>Where</b> "irregular" average pension contributions over the past 3 years exceed £20,000	40%/50% up to £30,000 max, 20% thereafter up to annual allowance of £255,000 2010/11

**Table 2: employer contributions (also refer to the notes)**

income (see below for definition of £150k plus)	maximum pension contributions (gross)	tax relief
<b>Earned income</b> £0-£129,999	Any amount up to the annual allowance (£255,000 2010/11) <b>provided</b> this is deemed as wholly and exclusively for the purposes of the trade of the business	<ul style="list-style-type: none"> <li>- full corporation tax relief for the company</li> <li>- no personal tax charge on the member</li> </ul>
<b>Total income</b> £130,000 + (including earnings of more than £130,000 for the previous two years)	Up to £20,000	<ul style="list-style-type: none"> <li>- full corporation tax relief for the company</li> <li>- no personal tax charge on the member</li> </ul>
	£20,001 – annual allowance (£255,000 2010/11) <b>provided</b> this is deemed as wholly and exclusively for the purposes of the trade of the business	<ul style="list-style-type: none"> <li>- full corporation tax relief for the company</li> <li>- 20%/30% personal tax charge on the member</li> </ul>
	<b>However, where</b> "regular" pension savings already exceed £20,000 per annum and do not increase (subject to the annual allowance)	<ul style="list-style-type: none"> <li>- full corporation tax relief for the company</li> <li>- no personal tax charge on the member</li> </ul>
	<b>Where</b> "irregular" average pension contributions over the past 3 years exceed £20,000	<ul style="list-style-type: none"> <li>- full corporation tax relief</li> <li>- no personal tax charge on contributions up to £30,000</li> <li>- 20%/30% personal tax charge on the member for contributions above £30,000</li> </ul>

## Notes:

### Definition of income

The definition of income is very important. In most cases the maximum contribution rate is based upon "earned income", but the test to establish whether income is at or above the £130,000 level includes savings and investment income and dividends. The calculation of "relevant income" is as follows:

#### Total:

- earnings from employment
- earnings from self-employment/ partnerships
- income from pensions in payment
- interest on savings
- dividend income
- rental income
- income received from a trust
- pension contributions paid under a net pay arrangement or salary sacrifice (not applicable if arranged before the 22<sup>nd</sup> April 2009 and not increased)
- pension contributions paid under a salary sacrifice arrangement, arranged between 22<sup>nd</sup> April 2009 and 8<sup>th</sup> December 2009, that when added to relevant income result in a total of more than £150,000

#### Deduct:

- trade & property loss relief
- gift aid
- personal pension contributions up to £20,000

The implication here is that someone's income can total £149,999 and, provided they pay a pension contribution of £20,000 their income is reduced to £129,999, thereby allowing them to pay a further £129,999 pension contribution and receive 40% tax relief on the total. It is however, possible that this is an error in the drafting of the regulations and will be removed in the final legislation.

### Definition of contributions

All pension savings that receive UK tax relief paid to all pension arrangements for an individual. This includes contributions paid by individuals, on their behalf, or by their employer and accrual under defined benefit schemes (also called final salary schemes).

### Definition of "regular" pension savings

For a money purchase scheme, including a SIPP or SSAS, these are **regular** payments made **at least quarterly** which were already in payment before the 22<sup>nd</sup> April 2009.

- these payments are known as "protected pension inputs"
- the payments must not increase after the 22<sup>nd</sup> April 2009
- if they increase and the total annual amount exceeds £20,000 the excess will become taxable
- final salary scheme accrual and employer's pension scheme payments will not be included provided the contractual rate of payment does not increase (eg. if contributions are a fixed percentage of salary and salary increases take pension contributions over £20,000 pa)

### Definition of "irregular" pension savings

Those who do not have a regular pattern of saving (contributions not made at least quarterly) may receive pension contribution tax relief for the higher of:

- the average of their irregular pension savings for 2007/2008, 2008/2009 and 2009/2010 up to £30,000
- £20,000

### Transfers

Any pension schemes to which a client is paying a "protected pension input" can be transferred from 19<sup>th</sup> March 2010 once and the protected contributions can continue as long as the new arrangement is started

within 3 months, payments are made quarterly and the payments are not greater than the old arrangement.

### How it works

The new regulations will have no effect on the operation of pension schemes.

- the scheme administrators will continue to claim basic rate tax relief
- tax relief on employer contributions is claimed via their year end accounts
- if an individual with income in excess of £130,000 pays personal contributions over £20,000, they will not be able to claim an additional 20%/30% higher rate tax relief on the excess via their self-assessment
- if an individual with income in excess of £130,000 receives employer contributions of more than £20,000, they must disclose this on their self-assessment return and pay a 20%/30% tax charge on the excess.

### Refunds of excess contributions

Where a high earner pays pension contributions that will result in restricted tax relief, they can have these refunded less a 40%/50% tax charge:

- this can only be done after the end of the tax year of payment
- this can only be done for personal contributions
- scheme providers may make an additional charge for arranging refunds of pension contributions

### Anti Avoidance legislation

HM Revenue & Customs have stated that arrangements made to avoid these new regulations will be caught by the anti-avoidance legislation

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