

Pension tax rectification (Paying and coming tax)

What to expect from HMRC (SDES)

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Clair Alcock

LGA Head of Pensions

Pension Tax Rectification

Compensation is due when someone overpays pension tax

- How the compensation is paid will depend on
 - Whether the person paid by scheme pays or direct to HMRC
 - Whether the overpayment is due for an in-scope year or out of scope year
- Interest paid on the compensation will depend on
 - Where the overpayment is due to remedy, interest at HMRC rates will be due [[Direction 14, paragraph 1](#)]
 - Where the overpayment is due to incorrect first submission, no interest is due

More tax is due when someone has underpaid pension tax

- Most commonly 1992 members

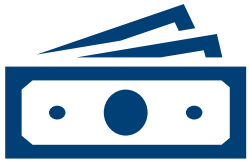
Compensation – How will depend on...

Indirect vs Direct

In and out of scope years

Part 4 tax loss and application of interest

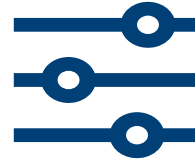
Types of compensation



Direct compensation

Paid the tax direct to HMRC

- Out of scope years
 - Paid by compensation scheme
 - Interest paid on Part 4 tax loss
- In scope years
 - Paid by HMRC
 - Interest paid by HMRC



Indirect compensation

Paid tax through scheme pays

No interest paid

In and out of scope years

In scope (Tax
Administration
Framework) [**TAF**] years
2019/2020 to 2022/2023

- HMRC will make the payment directly to the member.

Out of Scope
(2015/2016 to
2018/2019)

- The scheme needs to compensate the member (either directly or indirectly)

The Act - PSPJOA 2022

Section 23 of the PSPJOA 2022

- Provides a permissive power for scheme managers to pay compensation in respect of compensatable losses incurred by members because of the discrimination, or as a result of putting members in the same pension position they would have been in but for the discrimination.

Losses are compensatable if they meet the description set out in the directions and **one** of the following applies:

- i. The loss is attributable to the breach of the non-discrimination rule that arose from the application of an exception to Section 18(1) of the Public Service Pensions Act 2014 (i.e. the transitional protections which were found to be unlawfully discriminatory through the [McCloud judgment](#)) [(23(4))]
- ii. The loss is attributable to the application of any provision of, or made under, Chapter 1 of the PSPJOA 2022 (i.e. the application of the remedy as required by the Act) or [Scheme Regulations](#) which implement the remedy set out by the act. [(23(5))]
- iii. A Part 4 tax loss (a specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid). [(23(6))]

Part 4 Tax Loss

Paragraph 9 of [section 23](#) sets out that a part 4 tax loss is a reference to pension tax charges such as annual & lifetime allowance and unauthorised payments.

HMRC interest payable under [Direction 14, paragraph 1](#) for Part 4 tax loss

Part 4 Tax Loss Interest

HMRC interest payable under Direction 14, paragraph 1 for Part 4 tax loss ONLY applies to compensation due to remedy.

Interest ONLY applies where the tax has been paid directly to HMRC

Compensation reasons

- Remedy rollback
 - The mechanism of remedy means that a person's pension input amount has **decreased** due to rollback to the legacy scheme.
 - For fire schemes this is mostly 2006 members
- Historic errors
 - This is where the new remedy amount input by the member has shown that there was an historic error in the amount originally paid.
 - For most 1992 claims this is likely to be an historic error

The HMRC Compensation SDES file cannot distinguish between remedy compensation and historic errors.

The scheme manager will need to determine eligibility for interest and calculate using HMRC rates.

SDES – 4 files

Overpayments (Compensation)

- Compensation file
 - Overpaid direct to HMRC
 - 1.Submitted through HMRC digital service
 - 2.Submitted through representatives
- Credit file
 - 3.Overpaid through scheme pays

Underpayments (Paying tax)

- Election file (4)
 - Overpaid through scheme pays
 - Submitted through HMRC digital service

Compensation

Tax paid direct to HMRC

In-scope year

- No SDES file
- HMRC will pay direct to member

Out of scope year

- HMRC will use the compensation SDES file (1 or 2) to inform the scheme they have compensation to pay
- The scheme should consider whether the compensation claim is for remedy and pay the compensation AND part 4 tax loss interest

Tax Paid by Scheme Pays

In-scope year

- HMRC will use the credit SDES file (3)
- Scheme must adjust scheme pays debit
- Scheme can apply for repayment of overpaid charge during a TAF year

Out of scope year

- HMRC will use the compensation SDES file (1 or 2)
- Scheme cannot apply for repayment of overpaid charge
- Scheme must adjust the members benefits; they can choose to do this via a scheme pays adjustment

Scheme Pays adjustments



Where benefits are in payment and a scheme pays reduction to benefits has occurred due to indirect compensation.



Adjusting the scheme pays debit will adjust historical pension and lump sum



These arrears should be paid with 8% interest.

Receipt of an SDES compensation file

Compensation is sent to the relevant fire service for the compensation year identified

- HMRC will send any relevant SDES file to the originating scheme manager, rather than to the current scheme manager.

The FPS 1992, FPS 2006 and FPS 2015 at each FRA has its own unique Pension Scheme Tax Reference (PSTR) – meaning there are 132 PSTRs for FRAs in England

- HMRC need to ensure that:
 - Associated overpaid tax charges are credited back to the correct PSTR,
 - Annual allowance tax charge payments match with the members original Self-Assessment return,
 - Revised annual allowance tax charges match with the members entry to the HMRC digital service.

HMRC have amended the relevant SDES files to ensure that a note is added to indicate the most current PSTR / employer of the member.

- When you receive any SDES file, you will need to ensure that it is for one of your members.
- If it is for a member that has transferred to another fire service, then you will need to provide a copy of the SDES information to the most current scheme manager.

Tax Due

HMRC will send SDES elections files (4) when

- More tax is now due to remedy
- Member has used the HMRC digital service
- Member has elected to pay by scheme pays

Cases where the elections file will not be sent

- A member has chosen not to use the HMRC digital service to make their election for scheme pays.
- A member whose IFA/accountant/other 3rd party completes the submission using a form.
- A member is digitally excluded (they cannot access the digital service) and uses a manual process to use the HMRC digital service
- In these cases members will need to follow the normal manual process of providing the scheme pays election to the scheme where:

Receipt of an election file

The scheme must pay and report new or increased charges via their usual Accounting for Tax (AFT) return in the quarter following SDES file receipt.

It is possible that the member may also provide a paper election form to the scheme. The scheme will need to ensure that they do not pay the tax charge twice, or adjust the members benefits twice.

- Under [S270 of the finance act 2004](#) the term ‘**scheme administrator**’ used in HMRCs guidance means ‘**scheme manager**’ under [regulation 4](#) of the Firefighters Pension Regulations 2014 who is the Fire and Rescue authority. It is this body who is responsible for reporting the charges to HMRC.

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Thank you for listening!

Clair.Alcock@local.gov.uk

bluelightpensions@local.gov.uk