Revenue pensions manual

1 September 2022

About this manual

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If there's a Table of Contents at the beginning of a chapter, the table's rows hyperlink to the pages within that chapter.

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Chapter 1

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

This chapter outlines the legislation governing the tax treatment of pensions and pension contributions. This legislation is contained in Part 30 (and Schedules 23 to 23C) of the Taxes Consolidation Act 1997 (TCA).

Part 30 is divided into seven chapters:

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Chapter 2 Retirement annuities and approved retirement funds

Chapter 2A Personal retirement savings accounts

Chapter 2B Overseas pensions plans: migrant member relief

Chapter 2C Limit on tax relieved pension funds

Chapter 3 Purchased life annuities

Chapter 4 Miscellaneous

The TCA grants discretionary powers to Revenue in relation to the approval for tax purposes of occupational pension schemes, personal pension contracts and personal retirement savings account (PRSA) products. The Revenue Pensions Manual gives general guidance on how these powers are exercised. While the Manual reflects the current tax position at the time of writing, it is not binding in law. Revenue reserves the right to apply different treatment where appropriate.

Please refer to Part 9.7 of Revenue's Stamp Duty Manual for information about the levy on pension schemes under section 125B of the Stamp Duties Consolidation Act 1999, which was in place from 2011 to 2015.

The Glossary (Appendix 1) defines many of the terms used in the Manual.

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Membership of Occupational Pension Schemes

Chapter 2

This document should be read in conjunction with Chapter 1, Part 30 of the Taxes Consolidation Act 1997 (TCA)

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Introduction

Membership of an approved occupational pension scheme must be confined to remunerated employees of the employers participating in the scheme. Employees include former employees of the employer concerned and where the employer is a company, any officer, director or manager of the company. Special conditions apply to 20% directors (see paragraph 4 below). The tax provisions applicable to occupational pension schemes are governed by Chapter 1, Part 30 of the Taxes Consolidation Act 1997 (TCA).

Membership need not be open to all the employees in an employer's service or to any particular category of employees; a scheme may relate to a single employee or to individuals selected on a discretionary basis (see section 771(2)(a) TCA) subject to the principle of equal pension treatment provided for in Part VII of the Pensions Act 1990 and the EU Equality Directive (86/378/EEC). However, every member of a scheme and every employee who has a right to be a member must be notified of her or his rights under the scheme (see Tax and Duty Manual (TDM) Chapter 18).

Part-time and temporary employees may be included as members of schemes. Please refer to TDM Chapter 20 for calculation of benefits for part-time employees.

1 Persons assessed under Schedule D

Agents, consultants, proprietors, sole traders and others who are assessed to income tax on their earnings under Schedule D rather than Schedule E cannot be provided with benefits under an approved scheme in respect of those earnings.

2 Investment and property rental companies

A 20% director of a company that is treated for tax purposes as an investment company cannot be accepted into membership of an approved scheme in relation to that employment. However, Revenue does not object to schemes for such directors of an investment company where the investment company is a holding company of a group of trading companies, in which the holding company acts as the coordinator of the group. Any amount for directors' remuneration that is allowed as a deduction for tax purposes in the employing company's accounts may be pensioned.

3 Spouses or civil partners of directors, proprietors and partners

The spouse or civil partner of a 20% director, of the proprietor or of one of the partners, may be admitted to membership of the pension scheme provided that s/he is a genuine employee actively working in the business on a regular basis.

4 Temporary absence and secondment

The approval requirements for temporary absence differ depending on whether the temporary absence is within Ireland or overseas. The following paragraphs deal only with temporary absence in Ireland. For temporary absence or secondment overseas, please refer to TDM Chapter 17.

An employee who is temporarily absent or is seconded to another employer and remains resident in Ireland may remain in full membership of an approved scheme even though no remuneration is paid during her/his absence if:

(a) there is a definite expectation that the employee will return to service, and

(b) s/he does not become a member of another approved retirement benefits scheme, other than where membership of such other scheme is in respect of a concurrent employment.

These requirements do not apply where:

(i) no retirement benefits accrue during the employee's absence,

(ii) the benefit of remaining a member flows from aggregation of two periods of service for benefit calculation purposes, and

(iii) the sole benefit is the provision of life cover during the employee's absence.

A period of full membership while temporarily absent may, subject to the above, continue for up to five years. Where the period exceeds five years the matter should be reported to Revenue through MyEnquiries. Where the pension administrator is a Transport Layer Security (TLS) enabled customer, an e-mail may be sent to lcdretirebens@revenue.ie.

5 Absence due to incapacity

An employee who is absent because of incapacity may be retained in full membership of a pension scheme for more than five years, irrespective of whether the employee is receiving pay under a sick pay or permanent health insurance scheme or directly from the employer, and irrespective of whether it is definitely expected the employee will return to service.

Contributions by Employees

Chapter 3

This document should be read in conjunction with Chapter 1, Part 30 of the Taxes Consolidation Act 1997 (TCA)

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3.1 Ordinary contributions: relief from Income Tax

Contributions to an exempt approved scheme (as defined in section 774 Taxes Consolidation Act 1997 (TCA)) are allowable as an expense in assessing the member's liability to income tax under Schedule E. As with other pension products, tax relief for contributions to an exempt approved scheme is subject to two main limitations.

The first, set out in sections 774 and 776 Taxes Consolidation Act 1997 (TCA), is an age-related percentage limit of an individual's earnings in respect of the office or employment for the year for which the contributions are paid. The maximum amount of pension contributions in respect of which an individual may claim tax relief may not exceed the relevant age-related percentage of the individual's earnings in any year of assessment.

The age-related percentage limits are:

Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 or over	40%

A 30% limit applies below the age of 50 years to certain categories of professional sportspersons.[1]

Secondly, section 790A TCA places an overall upper limit on the amount of earnings that may be taken into account for tax relief purposes. The earnings limit is set at €115,000 for 2011 and subsequent years. This limit applies whether an individual is contributing to one or more than one pension product.

Where an individual is contributing solely to an exempt approved scheme, the maximum amount of tax relievable contributions is the relevant age-related percentage of the lower of:

- the individual's earnings in respect of the office or employment, and
- the earnings limit.

[1] Athletes, badminton players, boxers, cricketers, cyclists, footballers, golfers, jockeys, motor racing drivers, rugby players, squash players, swimmers and tennis players – see section 787(8A)-(8C) and schedule 23A TCA.

Where an individual has two or more sources of income (for example, earnings from employment and profits from self-employment) and is making pension contributions to an occupational pension scheme and to an RAC and/or a PRSA, the single aggregate earnings limit of €115,000 applies in determining the amount of tax relievable contributions.[2]

For years of assessment prior to 2011, the earnings limits were:

2003 to 2006:	€254,000
2007:	€262,382
2008:	€275,239
2009 and 2010:	€150,000[3]

Contributions are allowable in the year of assessment in which they are paid (but see **paragraph 3.4**).

3.2 Ordinary contributions: no relief from PRSI or USC

There is no relief from Pay Related Social Insurance (PRSI) or the Universal Social Charge (USC) for contributions made to occupational pension schemes.

3.3 Net pay arrangement

Tax relief for ordinary annual contributions, including regular additional voluntary contributions, is granted by operation of the net pay arrangement. The relief is provided through payroll deductions, which may reduce the amount of income tax a member will pay. The amount of income tax relief a member will receive will depend on their gross pay, the rate of tax paid, the amount contributed by the member to the scheme, personal tax

[2] Please refer to Chapter 26 for detailed information and examples on how the age-related and earnings limits are applied in respect of contributions to one or more pension products.

[3] For the year of assessment 2010, the earnings limit is deemed to be €115,000 for determining how much of a qualifying contribution paid by an individual in the year of assessment 2011 is to be treated as paid in the year of assessment 2010. For example:

A, who is aged 27 had net relevant earnings of €160,000 for 2010. He paid pension contributions of €20,000 in 2010 and €2,000 in 2011 and wanted to claim relief in respect of both for 2010.

Full relief was due for the contributions paid in 2010 as they were less than the maximum allowable tax relievable amount of €22,500 for payments made in that year (i15% of €150,000). However as regards the €2,000 paid in 2011, the maximum tax relievable amount allowable for 2010 for the purposes of determining how much relief could be claimed for the amount paid in 2011 was €17,250 (15% of €115,000).

As the amount of the contributions actually paid in 2010 already exceeded €17,250, no additional relief could be claimed for 2010 in respect of the amount paid in 2011. The relief due for 2010 was €20,000.

credits available and the limits on tax relief on contributions outlined in paragraph 3.1 above.

The net pay arrangement can only be operated by an employer following application to Large Cases – High Wealth Individuals Division, Financial Services (Pensions) Branch for scheme approval. Employers should advise Revenue when operation of the arrangement commences.

Scheme members may also get relief through the net pay arrangement for additional voluntary contributions to the scheme.

Example

John is a member of his occupational pension scheme and is aged 42 in 2022. He earns €50,000 per year.

The maximum annual contribution available to John for tax relief purposes is:

€50,000 x 25% = €12,500

[25% is the maximum percentage relief available for individuals aged between 40 and 49 years.]

John’s contribution to the scheme in 2022 through net pay arrangement is 5% of his basic salary:

5% x basic salary = €2,500

John has not exceeded his maximum allowable contributions for tax relief purposes.

Therefore, John could contribute up to a further €10,000 (maximum relief of €12,500 minus ordinary contributions of €2,500) in Additional Voluntary Contributions (AVCs) and receive this additional tax relief against his renumeration through payroll in 2022.

3.4 Relief for special contributions

Relief for special contributions (or for a contribution not made under the net pay arrangement as in **paragraph 3.3**) is given by way of adjustment to the employee's tax credit certificate. If aggregate contributions exceed the annual relief limit, relief will be given on a spread forward basis.

If a contribution is paid after the end of the year, but before 31 October of the following year, relief may be claimed for the previous year provided an election to do so is made by the individual on or before 31 October of the following year. As the payment of a qualifying contribution is a pre-condition to the availability of relief, an election cannot be made in advance of such a payment.

Taxpayers who file and pay online via the Revenue Online Service (ROS) or myAccount may avail of the extended return filing and payment date to make an election and pay a contribution.

The date for making an election in respect of contributions paid in the year of retirement may be extended to 31 December of that year in certain circumstances (see Appendix III of the Pensions Manual).

Tax relief is not transferable between spouses or civil partners.

Sections 774 and 776 TCA provide that relief may be allocated to earlier years in certain circumstances. The circumstances are:

(a) A scheme that requires benefits for widows, widowers, surviving civil partners, children or dependants to be paid for by deduction from the employee's lump sum benefit.

(b) A repayment by the employee to the scheme of contributions which were previously refunded to the employee.

(c) Where the employee opted prior to 6 February 2003 to purchase additional years of service.

Section 776 also provides that:

- arrears of spouses' and children's contributions paid by retirees under the Incentivised Scheme of Early Retirement (Department of Finance Circular 12/09) from the 90% balance of their retirement lump sum payable at their preserved pension age may be allocated to earlier years for tax relief purposes (section 776(2)(ba) TCA), and

- contributions, which are not ordinary annual contributions, and which are paid or borne in the period 1 July 2008 to 31 December 2018 by individuals who were employed by the National University of Ireland, Galway (NUIG) under a contract governed by the Protection of Employees (Fixed-Term Work) Act 2003 at any time during the period beginning on 14 July 2003 and ending on 30 June 2008, in respect of a tax year, or part of a tax year, falling within the second mentioned period, other than contributions which are treated as ordinary annual contributions –

  1. in accordance with section 776(2)(b)(i) or (ii)(II) TCA, or

  2. following an election under section 776(3) TCA,

  are, to the extent that they have not otherwise been relieved from tax for any year, treated as having been paid in the year, or years, in respect of which they are paid.

In applying the time limits in respect of repayment claims in section 865(4) TCA, non-ordinary contributions, which were made before 1 January 2015 by the fixed-term NUIG employees referred to above, are treated as having been made in 2014.

A claim for tax relief must be made within four years of the end of the year of assessment in which a contribution is made or is treated as having been made.

3.5 Repayment of scheme benefits

An employee may be re-admitted to a scheme and required to repay a benefit, including a refund of contributions, previously made. Normally relief is due only on the interest element of the amount repayable to the scheme's administrator. Relief will be given by either of the methods described in **paragraphs 3.3** ***(***the net pay arrangement) or **3.4** (relief for special contributions) depending on how the interest is repaid, either by single payment or deduction from salary.

3.6 Periods of temporary absence

During a period of temporary absence, a member's contributions may be either suspended or continued.

In certain situations, a non-Irish resident employee may be permitted to remain in an Irish occupational pension scheme while working overseas (see paragraphs 17.7 and 17.8 of Chapter 17).

An employee who is seconded or transferred by their employer to work overseas and who returns to live and work in Ireland for the same employer may claim tax relief in respect of contributions he or she makes to the employer's pension scheme in respect of the year in which he or she returns and any subsequent years in the normal manner.

Where an employee is not assessable to tax in Ireland in respect of their salary for the period of overseas employment, tax relief is not due under the TCA for contributions he or she made to the scheme in respect of that period. While a practice of taking credit for such contributions was operated in certain cases, there is no legislative basis for this. With effect from 6 June 2017, Revenue will not allow any such unrelieved pension contributions to be carried forward to the year in which an employee returns to Ireland. As such, they cannot be claimed in that year or in any subsequent year.

3.7 Limits on contributions

Employee contributions must be restricted, if necessary, to ensure that the member's aggregate benefits are within approvable limits and that the employer makes a meaningful contribution to the scheme (see Chapter 4.1). A funding review and maximum benefits test must take place before any Additional Voluntary Contribution (AVC - see definition in Chapter 23.2) is paid. It is the responsibility of the scheme trustees to ensure that excessive employee contributions are not made. The purpose of any AVC should be made clear to the

employee. Please see Chapter 5.7 for the standard methodology for funding and benefit calculations.

3.8 Salary sacrifice

Any arrangement under which an employee waives an entitlement to remuneration or accepts a reduction in remuneration, in return for a corresponding payment by the employer into a pension scheme, is considered to be an application of the income earned by the employee rather than an expense incurred by the employer. Such arrangements are subject to the provisions of section 118B TCA, which deals with Revenue approved salary sacrifice arrangements.

3.9 Contributions after normal retirement age

A member of a pension scheme who remains in service after normal retirement age (usually between 60 and 70 years) may start or continue paying contributions to fund any shortfall of maximum benefits (See Chapter 8.8).

3.10 Approval of pension schemes not dependent on employee contributions

There is no requirement in either section 772 or section 774 TCA that members of an occupational pension scheme must contribute to the scheme in order for the scheme to obtain approval for tax purposes.

Contributions by Employers

Chapter 4

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4.1 General

One of the conditions for approval of a pension scheme is that the employer must contribute to it (section 772(2)(d) Taxes Consolidation Act 1997 (TCA)). Subject to the considerations mentioned in Chapter 5 and any funding requirements imposed by the Pensions Acts (as regulated by the Pensions Authority) the timing of the contributions is a matter for the employer.

While Revenue will not insist that there be a stated minimum level of employer contributions, such contributions must be "meaningful" in the context of the establishment of, operation of, and the provision of benefits under, a scheme. For instance, where an employer bears the cost of establishment and ongoing operation of the scheme, in addition to meeting the costs of the provision of death in service benefits under the scheme, such overall contributions would generally be considered to be meaningful.

Employer contributions which amount to not less than 10% of the total ordinary annual contributions to a scheme (exclusive of employee voluntary contributions) would always be considered to be meaningful.

It will always be open for employers and their advisers to approach Revenue to discuss individual schemes. Such queries can be addressed using the secure "MyEnquiries" service available in myAccount or ROS.

4.2 Ordinary annual contributions

Ordinary annual contributions paid by an employer to an exempt approved scheme are allowed as a deduction for tax purposes. Section 774(6) TCA provides that the amount of the contributions shall be allowed to be deducted as an expense incurred in the year in which the sum is paid. No deduction can be given for any provision for an amount due but not paid. The amount deductible must not exceed the amount contributed by the employer to the scheme in respect of employees engaged in a trade or undertaking, the profits of which are assessable to Irish tax on the employer. Where the employer carries on two or more separate businesses, each with its own employees, the employer's contributions in respect of each group of employees can be allowed only against the profits of the business in which the group is employed. Please, however, refer to paragraph 4.9 which considers the position where an employer makes pension contributions in respect of the employees of another employer in corporate reorganisation cases.

Please see Chapter 5.7 for the standard methodology for funding and benefit calculations.

4.3 Special Contributions

Where a contribution is not an ordinary annual contribution but a special contribution (for example, to provide benefits for “back service”, to augment benefits already secured or to make up an actuarial deficiency in the fund) Revenue may require that the allowance be spread forward over a period of years.

This will not normally be required where the aggregate of all special contributions made by an employer to exempt approved schemes in the same chargeable period does not exceed the greater of the employer's corresponding aggregate ordinary annual contributions or €6,350.

The period of the spread is usually determined by dividing the aggregate special contribution by the aggregate ordinary annual contribution, subject to a maximum of five years and to a minimum divisor of €6,350.

In the following examples**,** OAC stands for “ordinary annual contribution” and SC stands for “special contribution”.

	(A)	(B)	(C)	(D)
	OAC	SC	(B)/(A)	Allowance
Max. spread	€2,000	€40,000	20 *	1st year €8,000
				2nd year €8,000
				3rd year €8,000
				4th year €8,000
				5th year €8,000

* The minimum divisor is €6,350, which would give a spread of 6.3 years (€40,000 / €6,350). However, the maximum spread is five years.

The divisor to determine the spread period for a special contribution paid during a short chargeable period will normally be equal to

- the greater of the actual ordinary annual contribution paid during the short period in question or
- €6,350.

If the quotient exceeds 1 but does not exceed 1.5, the special contribution will be allowed over two years.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded up	€8,000	€10,000	1.25	1st year	€8,000
				2nd year	€2,000

In all other cases a fraction of a year will be rounded up or down to the nearest full year.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded down	€8,000	€18,000	2.25	1st year	€9,000
				2nd year	€9,000

If a fraction is rounded up, the allowance in each of the relevant years except the last will be equal to the greater of

- the employer's aggregate ordinary annual contribution at the time the special contribution is made or
- €6,350,

the balance being allowed in the final year.

	(A)	(B)	(C)	(D)	
	OAC	SC	(B)/(A)	Allowance	
Rounded up	€8,000	€22,000	2.75	1st year	€8,000
				2nd year	€8,000
				3rd year	€6,000

Once determined, the period of spread will not be varied because of subsequent fluctuations in the ordinary annual contribution. Re-computation will be necessary if a further special contribution is paid before the first one has been wholly allowed or if the employer should cease to trade.

4.4 Contributions under one-person arrangements

Where contributions under one-person arrangements and insured schemes using earmarked policies are paid over a short period to secure the benefits of an individual member, Revenue will accept that no spreading is required even if the benefits are primarily for past service, provided that:

a) payments are uniformly spread over at least three policy years, and

b) payments extend up to normal retirement date, meaning that the final payment is made on the policy anniversary immediately preceding normal retirement date or, depending on the terms of the policy, on some other appropriate date not more than two years before normal retirement date.

4.5 Expenditure allowed in the year of payment

The following types of expenditure will normally be allowed as an expense in the year in which they are paid, without any necessity to consider spreading:

a) legal and other expenses on establishment of the scheme.

b) special contributions payable by instalments over a period of five or more years, or paid annually on a specified basis where, although the amounts may be liable to fluctuate, substantial variations in successive years are not expected to occur.

c) special contributions that are certified as made solely to finance cost of living pension increases for existing pensioners, or any part which is so certified.

4.6 Certain schemes deemed to be "exempt approved"

The outright purchase of an annuity ("Hancock Annuity") for an employee at the time of, or after, his or her retirement, or a scheme set up not long before retirement by the payment of a single premium will constitute an exempt approved scheme, if it is approved and if the annuity is the subject of a trust. If there is no trust, a direction that the scheme is exempt approved may be made but, save in exceptional circumstances, the direction will not be made against the wishes of the employer. If the transaction is exempt approved (whether because it is the subject of a trust or by virtue of direction) the purchase price or single premium will then be an allowable contribution, but not an ordinary annual contribution, and will be treated in the same way as a special contribution (see paragraph 4.3).

4.7 Contribution to an approved scheme which is not “exempt approved”

Any relief in respect of contributions to an approved scheme which is not "exempt approved" will generally be under the ordinary rules of Schedule D and governed entirely by the provisions of section 81(2) TCA. If the members are related to the employer or, where the employer is a company, to persons having any substantial beneficial interest in its share capital, the position will be examined closely, because to qualify for relief, the payment must be made wholly and exclusively for the purposes of the employer's trade. A contribution of a capital nature – that is, one "bringing into existence an asset or an advantage for the enduring benefit of a trade" – is not an allowable deduction.

Contributions must be paid separately or clearly separated from the employer's other assets. There will then normally be no difficulty about the allowance of ordinary annual contributions paid on a regular basis. Other contributions – for example, lump sum payments securing benefits for back service – may not qualify for relief and the matter will be one for consideration by the Revenue officer dealing with the employer's accounts.

A Hancock type annuity qualifying for simple approval may provide for the purchase of a commutable annuity up to the normal limits on the same terms as an exempt approved scheme. The sole consideration in opting for simple or exempt approval is the matter of claiming relief in the year of payment under the ordinary rules of Schedule D or claiming relief under section 774 TCA and thereby perhaps involving spread forward relief. Lump sums may be provided only by way of commutable annuity.

Any arrangement, “Hancock” or “exempt approved”, set up after the point of retirement may only provide non-commutable benefits with any lump sum element of the package being treated as a payment on termination of service subject to tax under section 123 TCA.

The point of retirement covers the period from the time that definite intention to retire is expressed up to the point of retirement, during which time the employer makes provision for the payment of benefits and provision for the cost of providing such benefit.

4.8 Refund of employer contributions

A refund of premiums or contributions paid in error may be made without approval by Revenue, provided that:

a) The premiums were paid in error because, for example, a direct debit mandate was not altered or cancelled immediately after a member left pensionable service or retired, or after a scheme was discontinued, and

b) The period over which the overpayment occurred was less than one year, and

c) The amount involved is less than €5,000.

4.9 Contributions in corporate groups and following corporate reorganisations, etc.

As noted in paragraph 4.2, section 774(6) TCA provides tax relief for contributions made by an employer under an occupational pension scheme which is established in respect of employees of that employer.

There may, however, be cases where a company makes contributions to an employee pension scheme:

- in respect of individuals who are not employees of the company when the contributions are made, or
- which is operated by another company, where the scheme members are employees of the contributor company.

Finance Act 2019 amended section 774(6) TCA to allow tax relief for relief for pension contributions made by a "relevant contributor", which means a company which contributes to occupational pension schemes set up for employees of another company in certain defined circumstances, including in corporate group structures, a merger, an amalgamation, a reconstruction, a merger, a division and a joint venture.

Finance Act 2021 further amended section 774(6) TCA to allow a deduction for such contributions where scheme members are current or former employees not just of a company which is party to the agreement but also current and former employees of a company for the benefit of whose employees the contributions are paid under the terms of that agreement.

To qualify for relief:

- the contributions must be made on foot of a legally binding agreement between two or more companies (one of which is the "relevant contributor") in a group or under a scheme of reconstruction, a merger, a division or a joint venture;
- the scheme members must be current or former employees of one of the parties to the agreement or of a company for the benefit of whose employees the contributions are paid under the terms of that agreement; and
- the contributions would be deductible under section 774(6) TCA if the company making the contribution was the employer of the scheme members for whom the contributions are paid.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

Funding and investments

Chapter 5

Document last reviewed July 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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5.1. General

The tax advantages of exempt approved schemes are controlled by imposing limits on benefits. The other important control is to ensure that excessive funding does not take place. The basic requirement is that scheme assets should not amount to more than what is required to provide the benefits which the scheme has a commitment to pay.

5.2. Actuarial reports

It is the duty of scheme trustees and administrators to monitor the scheme's funding. In the case of self-administered schemes, appropriate actuarial advice should be obtained at commencement and at regular intervals thereafter. Actuarial reports are not required for insured schemes where contributions are invested exclusively in a policy or policies that provide benefits according to a predetermined scale of premium rates. Particular attention should be paid to employee's additional voluntary contributions (AVCs).

5.3. Surpluses

There is no objection to a scheme holding a reasonable reserve. In any case, where a valuation discloses a surplus in excess of 10% of the value of the fund assets, the matter should be brought to the attention of Pensions Branch, Large Cases – High Wealth Individuals Division. Cases will be reviewed on an individual basis. It is important to prohibit the build-up of monies in a tax-exempt fund that could not be used for the purposes of providing relevant benefits.

Normally, a scheme surplus should be disposed of by augmenting benefits within approvable limits or by reducing or suspending contributions to the scheme. In exceptional cases, part of the surplus might have to be refunded to the employer and taxed as a trading receipt.

5.4. Investments

Revenue's interest in scheme investments is to ensure that schemes are "bona fide established for the sole purpose of providing relevant benefits" (section 772(2)(a) Taxes Consolidation Act 1997 [TCA]). Certain investments may prevent approval or prejudice ongoing Revenue approval. These could include investments used for tax avoidance purposes and assets not used to provide "relevant benefits".

Specific investment rules for small self-administered schemes are detailed in Chapter 19.

Transactions deemed to be pensions in payment

Where scheme assets are used in connection with a transaction which would, if the assets in question were those of an approved retirement fund (ARF), be regarded as giving rise to a distribution under ARF legislation (see **Chapter 23.8**) then the use of those assets is treated as a pension paid under the scheme and is subject to tax. The amount to be regarded as a pension payment is calculated in accordance with ARF provisions. Any amount treated as a

pension payment is no longer regarded as a scheme asset. The transactions detailed in **Chapter 23.8** include the following:

- Loan made to the beneficial owner or connected person.
- Acquisition of property from the beneficial owner or connected person.
- Sale of ARF asset to the beneficial owner or connected person.
- Acquisition of residential or holiday property for use by the beneficial owner or connected person.
- Acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person.[1]
- Acquisition of shares in a close company in which the beneficial owner, or connected person, is a participator.

A close company means a company under the control of five or fewer participators, or of participators who are directors. Please refer to section 430 TCA for a complete definition.

A participator in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to section 433 TCA for a complete definition.

“Connected persons” and “relative” are defined in section 10 TCA.

5.5. Borrowing

Section 772 (3E) TCA provides that:

> A retirement benefits scheme shall neither cease to be an approved scheme nor shall the Revenue Commissioners be prevented from approving a retirement benefits scheme for the purposes of this Chapter because of any provision in the rules of the scheme which makes provision for borrowing by the scheme.

The following rules apply to scheme borrowing:

1. Only assets purchased by the borrowing may be used to provide security to the lender.
2. Assignment of rental income to the lender is not permitted.
3. Life cover on the amount of the debt may only be provided outside the scheme.

[1] Where property is acquired for residential or holiday purposes, or for use in connection with any business, the distribution arises on the date such use commences. The amount of the distribution is the aggregate of the value of the ARF assets used in connection with the acquisition and any expenditure on improvement or repair of the property.

4. Cross-collaterisation is not permitted (that is, an asset being used as security for a loan cannot also be used as collateral for another loan).

5. Interest only loans and loans for a period of more than 15 years are not permissible. The loan should be repaid in full prior to normal retirement age.

6. Use of other scheme assets to clear residual debt is not permissible.

5.6. Geared property investment vehicles

In relation to investments made via geared investment funds and unit trusts, it is possible to link a scheme investment to a particular property, within a collective investment fund, provided that all acquisitions, disposals and lettings are on an arms' length basis.

5.7. Calculation of maximum contributions

To standardise benefit and funding calculations, the following methodology and capitalisation factors should be used. Current annuity rates form the basis for the calculation. Both the factors and the methodology were determined following consultation with the Society of Actuaries in Ireland. The capitalisation factors will be reviewed on a regular basis.

The methodology to obtain the maximum ordinary annual contribution to be paid by or on behalf of an individual employee (combined employer and employee) is as follows:

$$\text{Contribution} = \frac{\text{B X CF – (value of assets plus retained benefits)}}{\text{Term in years to normal retirement date, minimum 1 year}}$$

$$\text{Or} = \frac{\text{N/60ths pension X CF- value of assets}}{\text{Term in years to normal retirement date, minimum 1 year}}$$

whichever is the greater.

B is the revenue maximum pension based on current remuneration but with service to normal retirement date.

CF is the maximum benefit capitalisation factor as detailed in the table below**.**

N/60ths pension is the pension that can always be provided from a scheme regardless of retained benefits.

This maximum ordinary annual contribution includes administration costs but not the cost of death-in-service benefits. The cost of death-in-service benefits may be added to the amount calculated using the above formula.

The maximum ordinary annual contribution for a group scheme would be the sum of the individual maximum allowed contributions

Tax relief in respect of contributions in any one tax year is subject to the limits for employee contributions, as detailed in Chapter 3. Relief for employer contributions under section 774 TCA is discussed in Chapter 4 . The limits on tax relieved pension funds also apply, as discussed in Chapter 25. Care must be taken to ensure that overfunding does not occur, as surplus funds may have to be refunded to the employer and taxed as a trading receipt. Details of maximum retirement benefits are contained in Chapter 6.

Additional voluntary contributions (AVCs) can be made if the total of employer contributions and employee normal contributions do not exceed the above limits and the total employee contribution limits as outlined in Chapter 3.

In the case of defined benefit plans where the value of pension assets are not readily available or earmarked at an individual level the following formula applies:

$$\text{Contribution} = \frac{\text{B X CF – (SchB X SchCF plus retained benefits)}}{\text{Term in years to normal retirement date, minimum 1 year}}$$

SchB is the scheme pension based on current remuneration but with service to normal retirement.

SchCF is the Scheme benefit capitalisation factor.

Example 1

A male employee with a dependant spouse has a salary of €100,000 and has 15 years until his intended retirement at age 60. He has accumulated assets of €1,000,000 in his pension plan. The maximum normal annual contribution the employer and employee can pay in total is

$$\frac{\text{2/3 X €100,000 X 32.4*-(€1,000,000)}}{15} = \frac{\text{€1,160,000}}{15} = \text{€77,333 or 77.3\% of salary.}$$

*This factor is taken from Table 1, line 1.

Example 2

A male employee has 20 years until retirement at age 65. His gross salary is €60,000, his pensionable salary is €50,000 and he has an AVC fund of €120,000. His scheme provides a 50% spouse’s pension and fixed increases of 3% per annum.

	Salary / pensionable salary	Benefit	Pension	Capital-isation factor	Value of benefits	
Revenue maximum benefits	60,000	66.66%	40,000	28.4*	1,136,000	A
Scheme benefits	50,000	66.66%	33,333	22.6**	753,326	B
Current AVC fund plus value of retained benefits					120,000	D
Maximum benefit to be funded by AVCs					262,674	E=A-B-D
Maximum AVC rate as % of salary					21.9%	(E/20) / 60,000

* This factor is taken from Table 1, line 6.
** This factor is taken from the Table 5, allowing for a 50% spouse's pension and 3% pension increases.

Example 3

A married male civil servant has 20 years until retirement with 40 years' service at age 60. He has accumulated AVCs worth €100,000. The public sector scheme provides a spouse's pension of 50% and parity increases.

	Salary / pensionable salary	Benefit	Pension	Capital-isation factor	Value of benefits	
Revenue maximum benefits	60,000	66.66%	40,000	32.4*	1,296,000	A
Scheme benefits	60,000	50%	30,000	28. 3**	849,000	B
Gratuity					90,000	C
Current AVC fund plus retained benefits					100,000	D
Maximum benefit to be funded by AVCs					257,000	E=A-B-C-D
Maximum AVC rate as % of salary					21.4%	(E/20) / 60,000

*The factor 32.4 is from Table 1, line 1.

**The factor 28.3 is from Table 5 for a scheme providing 50% spouse's or civil partner's pension and the earnings indexed figures are used as the public sector scheme provides parity increases.

Table 1: Capitalisation Factors

The capitalisation factors to be used are as follows:

NRA	Female no spouse or civil partner	Female with spouse or civil partner	Male no Spouse or civil partner	Male with spouse or civil partner
60	27.5	30.0	24.4	32.4
61	26.8	29.2	23.6	31.6
62	26.0	28.4	22.8	30.8
63	25.3	27.5	22.0	30.0
64	24.6	26.7	21.2	29.2
65	23.8	25.9	20.4	28.4
66	23.1	25.1	19.6	27.6
67	22.4	24.3	18.9	26.8
68	21.6	23.5	18.1	26.0
69	20.9	22.6	17.4	25.2
70	20.2	21.8	16.7	24.4
71	19.5	21.0	16.0	23.6
72	18.9	20.2	15.4	22.8
73	18.2	19.4	14.8	22.0
74	17.5	18.6	14.2	21.2
75	16.9	17.8	13.7	20.5

Table 2: Sample Maximum Contribution Rates

Applying the above factors produces the following table for maximum annual contribution rates, assuming no pre-existing retirement benefits and an NRA of 60.

Current age	Female no spouse or civil partner	Female with spouse or civil partner	Male no spouse or civil partner	Male with spouse or civil partner
30	61%	67%	54%	72%
35	73%	80%	65%	86%
40	92%	100%	81%	108%
45	122%	133%	108%	144%
50	183%	200%	163%	216%

Table 3: Pension Increases linked to Consumer Price Index (CPI) and/or subject to a cap

The formulae in the tables above are easy to apply when there is a fixed rate of pension increase. If increases are in line with an earnings index the figures can also be taken from the table. In other cases, increases are related to the CPI but with such increases being capped at a fixed amount or uncapped. The table below shows the fixed increase to be used where the scheme provides increases linked to CPI.

Increases **CPI subject to annual cap of**	**Fixed increase**
Under 1.5%	The actual cap
2%	1.50%
3%	1.50%
4%	1.75%
5% or over	2.00%

Table 4: Scheme Factors for females

Intermediate factors can be derived by interpolation:

Female – 0% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	17.0	19.3	22.1	25.5	27.5
61	16.8	19.0	21.6	24.9	26.8
62	16.5	18.6	21.1	24.2	26.0
63	16.2	18.2	20.6	23.6	25.3
64	15.9	17.9	20.2	23.0	24.6
65	15.7	17.5	19.7	22.3	23.8

Female – 50% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	17.5	19.9	22.9	26.5	28.7
61	17.2	19.5	22.4	25.8	27.9
62	17.0	19.2	21.9	25.2	27.1
63	16.7	18.8	21.4	24.5	26.3
64	16.4	18.4	20.8	23.8	25.5
65	16.1	18.0	20.3	23.1	24.8

Female – 100% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	18.1	20.6	23.8	27.7	30.0
61	17.8	20.3	23.3	27.0	29.2
62	17.5	19.9	22.8	26.3	28.4
63	17.3	19.5	22.2	25.6	27.5
64	17.0	19.1	21.7	24.9	26.7
65	16.7	18.7	21.2	24.2	25.9

Table 5: Scheme Factors for males

Male – 0% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	15.9	17.7	20.0	22.8	24.4
61	15.5	17.3	19.5	22.1	23.6
62	15.2	16.9	18.9	21.4	22.8
63	14.9	16.5	18.4	20.7	22.0
64	14.5	16.0	17.8	20.0	21.2
65	14.2	15.6	17.3	19.3	20.4

Male – 50% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	17.3	19.6	22.5	26.1	28.3
61	17.0	19.2	22.0	25.4	27.5
62	16.7	18.8	21.5	24.7	26.7
63	16.4	18.4	21.0	24.0	25.8
64	16.1	18.0	20.4	23.3	25.0
65	15.7	17.6	19.9	22.6	24.2

Male – 100% spouse or civil partner

NRA	0%	1%	2%	3%	Earnings index
60	18.8	21.7	25.2	29.7	32.4
61	18.6	21.3	24.7	29.0	31.6
62	18.4	21.0	24.3	28.4	30.8
63	18.1	20.7	23.8	27.7	30.0
64	17.9	20.3	23.3	27.0	29.2
65	17.6	20.0	22.8	26.4	28.4

Total Benefits on Retirement at Normal Retirement Age

Chapter 6

Document last updated June 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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6.1. General

This chapter sets out the maximum total benefits that may be provided under approved schemes for members who remain in an employment until retirement. Please refer to Chapter 25: Limits on Tax Relieved Pension Funds as additional tax charges occur when individual benefits exceed specified amounts.

6.2. Other schemes of same employer

In determining whether the benefits to be provided under a scheme for an employee or class of employees are within approvable limits, they should be aggregated with benefits for those employees from all schemes relating to the same employment.

6.3. Benefits on retirement – other conditions

A pension shall not be assignable or capable of being surrendered, except (as outlined in Chapter 11.3) to provide pensions for spouses, civil partners or dependants. These conditions apply to all pensions payable under approved schemes. Chapter 11.2 covers pensions for persons other than employees – that is, pensions paid to surviving spouses, civil partners and dependents in their own right.

6.4. Maximum total benefits on retirement

The aggregate benefits payable on retirement to an employee who retires at normal retirement age after 40 or more years' service with the same employer, when expressed as an annual amount payable for life (or for life subject to a guaranteed minimum period not exceeding ten years) and taking into account any benefits paid as lump sums, should not exceed two-thirds of final remuneration on retirement (section 772(3)(a) Taxes Consolidation Act 1997 (TCA). A basic maximum accrual rate of one-sixtieth of final remuneration for each year's service is approvable for any period of service of 40 years or less (a pension on this basis is commonly described as a pension of N/60ths).
Please see Chapter 5.7 for the standard methodology for funding and benefit calculations**.**

An employer may wish to establish an occupational pension scheme that does not express the benefits on retirement as a pension of which part may be commuted, but which gives all members a lump sum of a specified amount plus a separate non-commutable pension. Such schemes are common in the public sector and, in practice, for the purpose of determining whether the total benefits under a scheme of this kind are within the approvable maximum, the ratio between pension and lump sum commonly found in public sector schemes will be used; that is, the accrual rate of the lump sum benefit will normally be divided by 9 to arrive at its pension equivalent. For example, a lump sum of 3/80ths of final pay for each year of

service will represent a pension annual accrual rate of 1/240 [3/80 divided by 9 = 1/240], and the approvable maximum rate at which the non-commutable pension may accrue for an employee with 40 years' service will be 1/80th of final pay for each year [1/60 minus 1/240 = 1/80].

6.5. Other benefit formulae

Schemes such as defined contribution schemes may calculate benefits by reference to other formulae, provided that such benefits are within maximum limits.

6.6. Late entrants

Benefits in excess of those which would be produced by a basic rate of 1/60th of final remuneration for each year of service can normally be approved for employees who cannot, by reason of the date of their entry to employment, complete 40 years' service before normal retirement age. A pension of two-thirds of final remuneration cannot be approved for very short periods of service but, subject to any deduction required for retained benefits from previous employment, approved schemes may provide a pension of two-thirds of final remuneration for service of not less than ten years to normal retirement age. An improvement on an accrual rate of 60ths is usually also permissible for employees with less than ten years' service to normal retirement age as in the following scale known as "uplifted 60ths".

Maximum Pension

Years of service to normal retirement age	Expressed as a fraction of maximum approvable pension for a full career	Expressed as a fraction of final remuneration
1	1/10th	4/60ths
2	2/10ths	8/60ths
3	3/10ths	12/6oths
4	4/10ths	16/60ths
5	5/10ths	20/60ths
6	6/10ths	24/60ths
7	7/10ths	28/60ths
8	8/10ths	32/60ths
9	9/10ths	36/60ths
10 or more		40/60ths

Maximum pension means pension before any commutation and including -

(i) the annuity value of any separate lump sum entitlement, and

(ii) any pension derived from voluntary contributions paid by the member.

This scale can be incorporated in the rules of a scheme if provision is made for any necessary restriction – for example, for retained benefits or service which does not qualify for benefits. Alternatively, the rules may provide for pensions to accrue at a rate of 1/60th of final remuneration for each year of service (N/60ths) "or such higher fraction as will not prejudice approval by the Revenue Commissioners for the purposes of Chapter 1, Part 30, Taxes Consolidation Act 1997" (or similar wording). A higher rate may be permitted in suitable cases where it is necessary to adopt an unusually early age for normal retirement.

6.7. Normal retirement age (NRA)

The rules of a scheme should specify the age, between 60 and 70 years, at which members will normally retire (section 772(3)(a) TCA). The "normal retirement age" (NRA) may differ for categories of member and may also be agreed on an individual basis. Section 772(4)(b)(ii) allows benefits to be payable on retirement within ten years of the specified age or on earlier incapacity.

Revenue may be prepared to accept a normal retirement age outside the above range for exceptional occupations. Submissions should be made on an individual basis, but 20% directors must be within the 60-70 years age range. All schemes/arrangements in respect of the same employment that provide benefits for an individual must have the same NRA.

6.8. Increases of pensions in payment

Section 772(3)(g) TCA provides that no benefits other than those mentioned in that subsection are payable under the scheme. However, subsection (4) of section 772 provides that Revenue may approve a scheme notwithstanding that it does not meet one or more of the conditions for approval in subsections (2) and (3) of that section. Revenue will use its discretion to approve a scheme, notwithstanding that a pension may over time increase above the level specified in section 772(3)(a) TCA (that is, two-thirds of final salary). Increases in benefit after retirement must be in the form of non-commutable pension. Please refer to Chapter 25.4 for cases where increases in excess of the "permitted margin" trigger a charge to chargeable excess tax.

6.9. Life assurance cover after retirement

Life assurance cover that continues after retirement or leaving service may be provided as a retirement benefit. Where such cover is provided, the annuity equivalent of the single premium cost required to secure the cover (other than cover extending up to normal retirement date only, where early retirement takes place on grounds of incapacity) must be taken into account for the purposes of determining aggregate maximum benefits.

Lump sum benefits and commutation

Chapter 7

Document last updated July 2022

Revenue
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Irish Tax and Customs

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7.1 General

This chapter sets out the maximum lump sum benefits that may be provided under an approved scheme. The level of lump sum benefits that is approvable is calculated by reference to an employee's length of service and final remuneration with the relevant employer.

Lump sum benefits must only be paid once, normally at the time of retirement (that is, the date on which the pension becomes payable).

Please refer to Pensions Manual Chapter 25: Limit on Tax Relieved Pension Funds, as the payment of a lump sum benefit in excess of a specified monetary amount may trigger a tax charge.

7.2 Maximum Lump Sum Benefits

Lump sum benefits greater than 3/80ths of final remuneration for each year of service may be given on retirement at normal retirement age (NRA) in accordance with the table set out below, provided that the aggregate of the value of non-pension retirement benefits in respect of service with the current employer and any retained benefits does not exceed 1.5 times final remuneration**.**

Years of Service	Eightieths (80ths) of final remuneration
9	30
10	36
11	42
12	48
13	54
14	63
15	72
16	81
17	90

18	99
19	108
20 or more	120

Please refer to Pensions Manual Chapter 23.8 for details of the calculation of lump sum benefits for retiring employees taking "ARF options".

7.3 Commutation Factors

If an approved scheme permits a retiring employee to commute their pension up to the amount required to provide a lump sum within the permitted maximum, the reduction in pension must be commensurate with the amount of the lump sum. The relationship between lump sum and pension may be calculated using one of the bases explained below:

(a) If the scheme trustees do not wish to provide that the relationship between lump sum and pension should vary with age, gender or any other considerations, the scheme rules may provide for the same fixed relationship prescribed in Pensions Manual Chapter 6.4 for schemes with an independent lump sum – that is €1 of annual pension payment may be commuted for a lump sum of €9.

(b) A scheme may use a specifically designed table subject to actuarial review at intervals. Continued approval of the scheme will be dependent on the table being changed if any of the assumptions on which it is based are varied.

(c) A scheme may provide for individual calculations by a qualified actuary for every commutation. These must be consistent with other calculations made for the same individual and for other purposes of the scheme having regard to changing financial conditions.

A uniform basis should apply to all members (subject to variations of age) of one scheme and to all schemes that have a substantial common membership.

Commutation factors fall within two broad categories depending on whether they take account of the value of any entitlement to cost of living post-retirement increases of the pension. Factors that do take account of such increases are commonly referred to as "enhanced factors" and are not appropriate to a scheme giving no entitlement to cost of living increases. [However, please see comment below on schemes which provide for regular reviews and an expectation of resultant increases.]

For schemes not using enhanced factors, commutation factors in the range 10.2 to 11.0 at age 60 and 9.0 to 9.8 at age 65 may be used for members. Values for other ages within the acceptable range for normal retirement may be calculated by adding or subtracting 0.02 per month of age difference. The factors are acceptable whether pensions are guaranteed for 5 or 10 years or not guaranteed at all, irrespective of whether payments are in advance or in arrears and regardless of the frequency of payments.

If the rules of the scheme provide for pensions to be reviewed regularly and increased (within the limit of the rise in the cost of living) at the discretion of the employer or trustees if funds permit, enhanced commutation factors may be used, provided that a certificate by an actuary is furnished which states the anticipated percentage rate of future increases on the basis of the current annual contributions without taking into account any future special contributions which the employer might make.

The pension equivalent of a lump sum taken from a defined contribution scheme is determined by application of the annuity rate used to determine the balance of the pension.

Where scheme rules permit the application of enhanced commutation factors and where post-retirement increases are not applicable on commuted pensions, the commutation factor may be calculated by reference to current open market annuity rates despite the amount of pension prior to commutation not being dependent on open market annuity rates.

7.4 Trivial Pensions

An approved scheme may permit full commutation of a pension if the aggregate benefits payable to an employee under that scheme and any other scheme relating to the same employment do not exceed the value of a pension of €330 per annum. Pensions for spouses, civil partners and dependants may also be commuted at the same time as commutation of the member's pension if they are independently trivial. If commutation of part of a greater pension than €330 per annum leaves a residual pension within the “trivial” limits, this residual pension may not be commuted on triviality grounds.

In a defined contribution context, for the purposes of establishing whether benefits come within the “trivial” limit, the calculation should be based on the cost of a single life annuity with no escalation.

The 10% tax rate under section 781(3) Taxes Consolidation Act 1997 (TCA) also applies where members' pensions are fully commuted on the grounds of triviality. The chargeable part of the payment may be calculated in the same manner as indicated for lump sum payments under the section dealing with serious ill-health (see paragraph 7.5). However, when calculating the maximum commutation (in the context of triviality), potential service should not be taken into account.

Where a trivial pension is a deferred pension, it may not be commuted until it begins to be payable. Furthermore, if such a pension is secured by an annuity contract or a policy which has been bought in the name of the employee, or assigned to the employee, because the scheme has been wound up or the employee has left service, commutation will be possible only if satisfactory arrangements have been made with the life office or pension provider concerned for payment of any tax due out of the policy proceeds. For the purposes of the €330 limit, a deferred pension will be that pension as increased by virtue of the preservation requirements of the Pensions Act 1990.

The treatment described above in relation to the commutation of trivial pensions may also be offered in the same circumstances to holders of RACs and PRSAs.

As an alternative to the above, and with the agreement of the scheme beneficiary and trustees, there is no objection to the payment of once-off pensions. This may take place where the total of all funds available for pension benefits, following payment of any lump sum benefit, is less than €30,000. The quantum of retirement benefits from all sources must be taken into account for the purpose of calculating the €30,000 limit. In a defined benefit context, the pension benefit needs to be converted to a fund value to determine if the benefits are within the €30,000 limit. This should be done by reference to the scheme commutation factors. The rates of tax, USC and PRSI to be applied are those that apply to any other pension payment. Prior Revenue approval is not required.

The above option may be offered to all scheme members, including buy out bond holders, and RAC and PRSA holders, and may also be applied to residual funds available to secure spouses', civil partners' and dependants' pensions.

7.4.1 Pension adjustment orders

Where benefits are payable under a pension arrangement in respect of which a pension adjustment order (PAO) has been made in favour of a non-member spouse or civil partner, the requirements described above may be applied to the separate entitlements of each party under the arrangement (having regard to the PAO) to determine if they independently satisfy the trivial "once-off pension" options.

7.5 Serious ill-health

An approved scheme may include a rule that permits for commutation of a pension if at the time it becomes payable the recipient is in "exceptional circumstances of ill-health". This phrase is to be interpreted strictly and narrowly. It is not intended to refer to the kind of ill-health which prevents somebody from working but to cases where the expectation of life is unquestionably very short. Commutation on these grounds should not take place unless the administrator has been satisfied by receipt of adequate medical evidence that terminal illness is in point and that the expectation of life is measured in months rather than years. Whether an individual is in this position is a matter for decision by the administrator (with the exception of cases involving “20% directors” and members of small self-administered schemes, which should be reported to Pensions Branch, Large Cases High Wealth Individuals’ Division) but the inclusion of a rule on these lines in an approved scheme is accepted on condition that it will be interpreted invariably in this sense.

To arrive at the taxable part of the payment, there may normally be deducted an amount (inclusive of the aggregate of any lump sums already permitted) not exceeding 3/80ths of the employee's final remuneration multiplied by the number of years of service with the relevant employer. In this context final remuneration will, irrespective of any definition in the rules, be taken as the average annual remuneration of the last three years' service. (This deduction will frequently eliminate any tax liability where a trivial pension is commuted.) The tax rate to be applied is 10%, by virtue of section 781(3) TCA.

An alternative deduction in arriving at the taxable part of the payment is the largest amount which could have been received apart from the special circumstances – that is, the triviality of the pension or the employee's exceptionally serious ill-health. In calculating the largest amount, one must look at the rules of the scheme; if the scheme does not permit commutation except on serious ill-health grounds for the category of employee concerned, or ordinarily restricts the lump sum to 3/80th of salary per year of service or some lower amount, then no alternative deduction can be made. Where the rules leave the trustees or the employer discretion to determine (within approvable limits) to what extent an employee may normally commute his pension, or to increase the lump sum part of the benefits, it may be assumed for the purpose of calculating the tax charge that they would have exercised their discretion to permit the maximum lump sum.

Example

An employee with 40 years’ potential service retires 10 years early because of serious illness as a result of which his life expectancy is extremely short. His final salary is €12,000, and the average salary for the last 3 years’ service is €10,800. The actuarial value of the amount of his pension is €54,000, and payment of this sum is, in the circumstances, permitted under the rules of the scheme. The general rule of the scheme permitting commutation specifies that every employee may have a lump sum of 3/80ths of final remuneration (defined in the scheme rules to include remuneration for the final 12 months' service) for each year of service.

Section 781(1)(i) permits an automatic deduction of

30 x 3/80 x €10,800 = €12,150

but Section 781(1)(ii) which applies in this case increases the permitted deduction to

30 x 3/80 x €12,000 = €13,500

Tax at 10% will therefore be charged on €54,000 less €13,500 = €40,500; tax due at 10% is €4,050.

If the general rule of the scheme had given the scheme trustees discretion to approve, in normal circumstances, commutation of a greater amount, (see paragraph 7.2) the deduction under Section 781(1)(ii) could have been increased to

120/80 x €12,000 = €18,000

This leaves tax to be charged on €36,000 of the commutation payment (actuarial value of €54,000 minus €18,000 lump sum). It is proper to take account of the fact that the employee is retiring on grounds of incapacity, and that the maximum lump sum would have been based on his 40 years potential service (see paragraph 9.4) rather than his 30 years actual service.

7.6 Normal lump sum plus lump sum from commutation of pension

Where the scheme provides for a lump sum 3/80ths of final remuneration per year of service separately from the pension and not in commutation of the pension, and the pension itself is commuted – for example, because the employee is seriously ill - the whole of the commutation payment will be chargeable to tax.

Lump sums receivable by way of commutation in special circumstances of pensions under two or more separate schemes relating to the same employment are to be aggregated for the purposes of determining the taxable part.

Service after Normal Retirement Age

Chapter 8

Document last reviewed June 2021

Revenue
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8.1 Accrual of extra benefits

The aggregate benefits that may be provided at normal retirement age (NRA) are set out in Chapter 6. An employee who remains in service after normal retirement age may be provided with aggregate benefits up to the maximum approvable on the basis that the actual date of retirement was the normal date of retirement; that is, two-thirds of final remuneration at the date of retirement or the appropriate fraction for less than ten years' service under the table in Chapter 6.

Payment of benefits in excess of a specified monetary amount may trigger a tax charge. Please refer to Chapter 25 for further information.

8.2 Service exceeding 40 years –pension benefits

If total service exceeds 40 years, each year of service up to a maximum of five years may earn a further 60th of final remuneration; the maximum pension then becomes 45/60ths of final remuneration at the date of retirement.

Example A

An employee who has served for 42 years up to NRA and five years thereafter, a total of 47 years, may receive a pension of 45/60ths of their final remuneration at the date of retirement.

Example B

An employee who has served for 38 years up to NRA and five years thereafter may receive a pension of 43/60ths of their final remuneration at the date of retirement.

8.3 Service exceeding 40 years – alternative pension benefits

As an alternative, but not in addition, to the extra benefits referred to in the paragraphs 8.1 and 8.2, the aggregate benefits which would have been payable at NRA may be increased actuarially to reflect their later commencement and the yield on the scheme's investments or the policy monies. Actuarial increases will require special consideration where the NRA is exceptionally early or the service after NRA is exceptionally long.

8.4 Additional Lump Sums

The part of the aggregate benefits which an employee who remains in service after NRA may take in lump sum form may be increased up to the maximum approvable on the basis that the actual date of retirement was NRA; that is, 120/80ths of final remuneration at the date of retirement, or, where service is less than 40 years, any lesser amount as outlined under Chapter 7.2.

8.5 Service exceeding 40 years – lump sum benefit

If total service exceeds 40 years, the lump sum element of the aggregate benefits may be increased by 3/80ths of final remuneration at the date of retirement per each additional year of service, up to a maximum of five years.

Example

In example A in paragraph 8.2, where the individual had 47 years' service (42 years to NRA and five years thereafter) the maximum lump sum is 45 x 3/80ths of final remuneration at the actual date of retirement.

In example B, where the individual had 43 years' service (38 to NRA and five years thereafter) the maximum lump sum multiplier is 43 x 3/80ths.

8.6 Service exceeding 40 years – alternative lump sum benefit

As an alternative to, but not in addition to, the appropriate increase mentioned in paragraphs 8.4 and 8.5, the lump sum of aggregate benefits earned by service up to NRA may be increased in respect of further service after that date, by an amount representing interest at a rate commensurate with the yield of the scheme's investments, or, in a scheme operated by an insurance policy, at a reasonable rate of increase. Increases under this paragraph will require special consideration if the NRA is exceptionally early or the service after NRA is exceptionally long.

8.7 20% Directors

If service continues after NRA, the rules of the scheme should not permit an actuarially increased pension, exceeding the maximum fraction of final remuneration applicable, on the basis that for ages up to 70 the age attained at retirement is deemed to be the NRA.

(i) Final remuneration may be calculated at age 70 (or the relevant lower age of retirement) as if that age had been the NRA and the relevant dynamisation provisions may apply as set out under final remuneration.

(ii) There is no Revenue objection to an actuarial increase over and above the 2/3rds limit or to an increase under paragraph 8.3 in respect of years of service after age 70.

Example

A 20% director with an NRA specified as age 65 retires at age 73 having completed 48 years of service. As 3 years additional service has been completed after age 70, the maximum pension under paragraph 8.2 is increased to 43/60ths of final remuneration at the actual date of retirement.

(iii) The same principles should be applied for calculating maximum lump sum retirement benefits, and increases under paragraphs 8.5 and 8.6 should be limited accordingly.

(iv) Restrictions for 20% directors on these lines should be explicitly included in the rules of all schemes.

8.8 Benefits paid at normal retirement age

An employee continuing to serve after NRA may elect to take at that date or before s/he retires either the lump sum, or the pension and lump sum, benefits which would have been due if they had retired rather than defer all benefits until retirement. In this event no further benefits should be provided for except to the extent that they would fall within the maximum approvable in respect of service up to the date they take the lump sum; although if only the lump sum is taken at this time the deferred pension may be increased actuarially on the basis mentioned in paragraph 8.3.

Any additional benefits for 20% directors must be taken in pension form.

Retirement before “normal retirement age”

Chapter 9

This Chapter should be read in consultation with section 772 Taxes Consolidation Act 1997.

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9.1. Early retirement benefits

Early retirement benefits may be provided on, or after, the employee reaches 50 years of age. This is on the basis of section 772(3)(a) in conjunction with 772 (4)(b)(i) Taxes Consolidation Act 1997 (TCA).

Section 772 (3)(a) provides that a "benefit for an employee is a pension on retirement at a specified age not earlier than 60 years". This is qualified by section 772 (4)(b)(i) TCA, which allows Revenue to approve a scheme which "allows benefits to be payable on retirement within 10 years of the specified age", and age 50 is within ten years of age 60.

9.2. Ill-health

If retirement is caused by ill-health, benefits may be paid immediately, regardless of the employee's age. The benefit may be the same fraction of final remuneration the employee could have received had he or she remained in service until "normal retirement age" (NRA). For the purposes of this paragraph, benefits include pensions and/or lump sum.

9.3. Pension benefits

In cases other than paragraph 9.2 above, the maximum immediate pension is the greater of:

a) 1/60th of final remuneration for each year of service, regardless of retained benefits

or

b) $\frac{N \times P}{NS}$

Where:

N = number of actual years of service
P = maximum pension approvable had the employee served to NRA
NS = number of years of total potential service to normal retirement age had service continued until then.

Any restriction for retained benefits should be made in arriving at P and before applying the N/NS fraction.

The formula is subject to the qualification that if the employee's actual service is less than 10 years, the pension should not exceed the lesser of:

(i) the maximum approvable at normal retirement age for the same service in accordance with the table in Chapter 6.6,

(ii) two thirds of final remuneration less any retained benefits.

Example:

X retires after nine years' service, one year before her normal retirement age. Her salary at retirement is €21,000 and her retained benefit is €3,000.

N = 9 (years of service)
NS = 10 (years of potential service to Normal Retirement Age)
FR = €21,000 (Final Remuneration)
RB = €3,000 (Retained Benefit)

If the pension was computed on the basis of (a) above, it would be:

Final salary (€21,000) multiplied by years of service (9), divided by 60 = €3,150

If the pension was computed on the basis of (b) above:

$$\frac{N \times P}{NS} = \frac{9 \times [(2/3 \times 21{,}000) - 3{,}000]}{10} = €9{,}900$$

The pension calculated using (b) is higher than using (a). Since X had less than ten years' service, her pension cannot exceed the lesser of

(i) 36/60 x 21,000 = €12,600 (Maximum uplifted scale for actual service as per Chapter 6.6) or

(ii) (2/3 x 21,000) – 3,000 = €11,000 (2/3rds final remuneration less retained benefits).

The figure at (ii) is lower than (i), but the pension as calculated under (b) does not exceed (ii), so the maximum early retirement pension is €9,900 per annum.

9.4. Lump sum benefits

In cases other than paragraph 9.2 above, the maximum immediate benefit is the greater of

(a) 3/80ths of final remuneration for each year of actual service

or

(b) $\frac{N \times LS}{NS}$

where

N = number of actual years of service (as in paragraph 9.3 above)
LS = the maximum lump sum receivable had the employee served until NRA less retained benefits and may take into account the increased benefits detailed in Chapter 7.2
NS = number of years of total potential service to NRA had service continued until then (also as in paragraph 9.3).

If the employee's service is less than 20 years, the benefit should not exceed the lesser of:

(i) the maximum approvable at NRA for the same service in accordance with the table in Chapter 7.2,

or

(ii) one and a half times final remuneration less retained lump sum benefits.

9.5. Deferred benefits

If an employee retires early and defers benefits until NRA the relevant limits are set out in Chapter 12.15.

9.6. 20% directors

Generally, where a director with at least 20% interest in a company takes early retirement benefits, the director must sever all links with the business, including the disposal of all shares in the company.

9.7. Encashment option

Section 787TA TCA provides for “the encashment option”, which allows a one–off opportunity for individuals with dual private and public sector pension arrangements, who meet certain conditions, to encash their private pension rights, in whole or in part, from age 60 (or earlier, where retirement is due to ill health) with a view to eliminating or reducing the chargeable excess that would otherwise arise when their public service pension crystallises.

Benefits on death-in-service

Chapter 10

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1 Lump sum benefits

Where an employee dies in service before normal retirement age (NRA) a lump sum not exceeding the greater of €6,350 or four times the deceased employee's final remuneration may be provided. The definition of final remuneration for this purpose need not be the same as for the calculation of other benefits and may in this case be the rate payable at the date of death.

The lump sum may be paid to the employee's legal personal representatives or a nominated beneficiary, or distributed at the discretion of the employer, trustee or administrator**.** It is not necessary to limit distribution to dependants. The money may continue to be held under the rules of the pension scheme for a period not exceeding two years, if this is necessary for the administrator to determine who is to benefit. Once the recipients have been selected, the money should be paid over to them promptly or transferred to a separate account outside the scheme. A refund of the employee's own contributions (with or without interest) may be paid in addition to any other lump sum.

2 Pensions or benefits for spouses, civil partners and dependants

In addition to the lump sum, an approved scheme may provide a pension or transfer of benefits into an Approved Retirement Fund (ARF) for a spouse, or civil partner, or where the employee does not have a spouse or civil partner, for a dependant, of an amount not exceeding the maximum aggregate pension that could have been approved for the employee if s/he had retired on ill-health grounds on the date of her/his death (see Chapter 9.2 - such a pension, or benefits transferred to an ARF, can take account of the whole potential service up to NRA).

Section 772(3)(b) Taxes Consolidation Act 1997 (TCA), as amended by section 12 Finance Act 2021, states that occupational pension scheme rules can provide that the aggregate pension that can be provided for a spouse or civil partner, or where there is no spouse or civil partner, for dependants of a deceased member of a scheme who dies in service, can be taken as either a pension or a sum of equivalent pension value transferred to an ARF. This option has effect from 21 December 2021, the date of the passing of Finance Act 2021. Where benefits are transferred to an ARF, the rules relating to ARFs shall apply (see Chapter 23 - ARFs for details).

Where an employee has died in service before 21 December 2021, and a pension for a spouse, or civil partner, or where there is no spouse or civil partner, for a dependant, has not yet been paid, Revenue discretion will be exercised in such cases to allow the benefits transfer to an ARF after 21 December 2021.

Where benefits for the employees themselves take the form of a pension, or benefits transferred to an ARF, plus a separate lump sum, rather than a partly commutable pension, the maximum pension or benefits, includes the pension equivalent of the lump sum. A spouse's or civil partner’s (but not a dependant's) pension may be deferred instead of being taken immediately. In cases of benefits transferable to an ARF, this cannot be deferred.

Where there are both a spouse or civil partner and dependants, or no spouse or civil partner but more than one dependant, separate pensions or pension equivalent of the benefits transferred to an ARF, may be provided for each individual. However, no single pension, or pension equivalent of the benefits transferred to an ARF, nor the aggregate of all pensions payable under this paragraph may exceed the amount specified in the preceding paragraph. Subject to these limits, the benefits may be shared in any manner desired.

Payment of death-in service-benefits, including benefits transferred to an ARF under s772(3)(b)(ii), or a dependant's pension is not a benefit crystallisation event (BCE) (see Chapter 25.4).

An approved scheme may permit full commutation of a pension if the aggregate benefits payable to a spouse, or civil partner, or where there is no spouse or civil partner, for a dependant under that scheme and any other scheme relating to the same employment, do not exceed the value of a pension of €330 per annum (see Chapter 7.4 for details of trivial pensions).

3 Benefits from earlier employment

For the purpose of the limits set out in the preceding paragraphs, preserved death benefits derived from earlier employments must be taken into account and benefits of the same type from the current employment correspondingly restricted, but the following may be ignored:

(a) refunds of contributions to the employee by a scheme of an earlier employer;

(b) small preserved benefits, that is, lump sums not exceeding €1,270 in aggregate or spouse's or dependants' pensions not exceeding €330 per annum in aggregate;

(c) preserved lump sums from earlier employments, so long as the lump sum from the current employment does not exceed twice final remuneration (excluding any refund of the employee's contributions); and

(d) preserved lump sum death benefits arising from retirement annuity contracts.

Revenue will exercise discretion flexibly on the provision of pension benefits on death-in-service, especially for lower-paid employees.

Where it is proposed to provide spouse's or civil partner's and dependants' pensions, or pension equivalent of the benefits transferred to an ARF, on a scale based on the employee's pre-death salaries rather than as a proportion of the pensions which s/he might have received, the scheme will probably be approved in that form if the spouse's or civil partner's and dependants' pensions, or pension equivalent of the benefits transferred to an ARF, are unlikely, by and large, to exceed the limit set out in paragraph 2 above or to be large in monetary terms.

4. Death-in-service after normal retirement age

Where an employee dies in service after her/his NRA, benefits may be given either on the basis appropriate to death-in-service generally, or on the basis that would have applied if s/he had in fact retired on the day before his/her death. If, however, the employee took her/his pension and/or lump sum at NRA, the only lump sum death-in-service benefit which may be provided is any payment due under a guarantee attaching to this pension (see Chapter 11.9 and 11.10).

Benefits on Death After Retirement

Chapter 11

This chapter should be read in conjunction with section 772 Taxes Consolidation Act 1997.

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1 Lump sum benefits

No lump sum benefits may be paid if death occurs after retirement except:

(a) any payment due under a guarantee attaching to the pension (paragraphs 4 to 4.4), or

(b) any sum falling due under a life policy or scheme rule that gave continued cover on death after retirement (see Chapter 6.9).

2 Pensions paid to surviving spouses, civil partners and dependants in their own right

A spouse's or civil partner's pension may be provided up to a limit which is equal to the maximum aggregate pension that could be approved for the employee, whether or not the employee was given that maximum. Alternatively, a similar pension may be provided for a dependant.

If the employee leaves both a spouse or civil partner and a dependant, or if there is no spouse or civil partner but more than one dependant, no single pension nor the aggregate of all pensions payable under this paragraph may exceed the above limit.

In this paragraph, "maximum aggregate pension" means the maximum in the particular circumstances in which the employee himself or herself retired, that is, at normal retirement age (NRA) or earlier or later than NRA, increased proportionately to any rise in the Consumer Price Index (CPI) from the date from which the employee's own pension became payable.

2.1 Commencement of benefits to surviving spouse/civil partner or dependant

Pensions for surviving spouses, civil partners and dependants may commence on the employee's death except where the member's pension is guaranteed for more than five years, in which case the spouse's or civil partner's pension must not commence until the end of the guaranteed period.

2.2 Cessation

A spouse's or civil partner's pension may continue for life, or it may cease on re-marriage or on entry into a new civil partnership (N.B. – no new civil partnerships may be entered into since the enactment of the Marriage Act 2015). A pension for a child must cease when the child ceases to be a dependant. Pensions payable to other dependants may continue for life irrespective of any later change in the dependant's circumstances.

3 Employee pensions part-allocated or surrendered to spouses or civil partners

Part of an employee's pension may be allocated or surrendered to provide a spouse's or civil partner's pension. The spouse's or civil partner's pension may not exceed the amount retained by the employee. This option is also available where a spouse or civil partner has an entitlement to a separate pension under another scheme or under another rule of the same scheme. For the purposes of calculation, the reduced pension retained can include any part of the employee's pension that has been commuted and the pension equivalent of any separate lump sum benefit.

3.1 Employee pension part-surrendered for dependant pension payable on death of employee

Alternatively, a pension for a dependant coming into payment on the employee's death after retirement may also be provided by means of the surrender of part of the employee's pension, subject to the same conditions as for a spouse or civil partner. A retiring employee who is likely to be survived by a spouse or civil partner and by one or more dependants may similarly provide reversionary pensions for them, provided that those pensions do not exceed in aggregate what is left for himself or herself.

3.2 Payment of an allocated or surrendered pension

Unlike an own-right pension (see paragraph 2.1), payment of an allocated or surrendered pension may commence on the member's death even if payment of her or his pension continues under a guarantee for more than five years.

4 Guaranteed minimum benefits

If benefits paid under an approved scheme are less than the member's own contributions plus reasonable interest, the rules may provide for payment of a lump sum equal to the difference.

4.1 Identifiable contributions towards a pension for spouses, civil partners or dependants

If the employee made separately identifiable contributions to provide an independent spouse's or civil partner's pension or a pension for dependants, provision may similarly be made for payment of a lump sum equal to the excess of those contributions plus interest over the amount actually received by the beneficiaries.

4.2 No guaranteed minimum period except for allocated or surrendered pensions

Pensions for surviving spouses, civil partners and dependants may not be guaranteed for a minimum number of years except that, where an allocated pension for a spouse, civil partner or dependant has been provided by allocation or surrender of part of the member's pension, the allocated pension may be guaranteed for a period not exceeding five years after the commencement of the member's pension.

4.3 Alternative guarantees

As an alternative to the guarantees in this paragraph, an approved scheme may provide that a pension payable to a retired employee may continue for a period of up to ten years even if the pensioner dies within that period. If the guarantee period does not exceed five years and the normal retirement age for the scheme is not more than 70, an immediate lump sum may be paid equal to the instalments falling due after the pensioner's death. This may reflect quantified cost of living increases that would have been paid if the pension had continued.

4.4 Who may receive the pension?

Payments discussed in this paragraph may be made to a member's spouse, civil partner or dependant, or to the legal personal representatives, or to a nominated beneficiary, at the discretion of the employer, trustee or administrator.

Withdrawal from service (leaving a pension scheme)

Chapter 12

This chapter should be read in conjunction with Part 30, Chapter 2 of the Taxes Consolidation Act 1997 (TCA).

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1. General

In this chapter, the term “withdrawal from service” covers all circumstances of leaving service, except on death or by retirement in accordance with the rules of the scheme. The benefits that may be provided in these circumstances are:

(a) A refund of the member's own contributions (with or without interest thereon);

(b) The provision of a deferred, or frozen, pension and/or a deferred lump sum in the scheme;

(c) The purchase of a deferred annuity and/or deferred lump sum or a buy-out bond*;*

(d) The payment of a transfer value to the scheme of a subsequent employer. (Transfer payments are dealt with separately in Chapter 13).

2. Refunds of contributions

The rules of a contributory scheme may normally permit a withdrawing member with less than two years’ qualifying service for Pensions Act purposes to take a refund of member contributions. In this event no further benefits can be received.

2.1 Mixed benefits

Taking a refund of contributions while retaining rights in a scheme is allowed in the following circumstances.

(a) If an employee with two or more years’ qualifying service takes a refund of her or his pre-January 1991 contributions, she or he is still entitled to a preserved benefit in accordance with Part III of the Pensions Act 1990. In this case, the maximum deferred benefits must be calculated by reference only to actual years of service in respect of which no refund of members’ contributions is payable.

(b) Where a transfer payment has been made from one approved scheme to another on change of employment, any election to take a refund of contributions (where there is no preserved benefit) usually covers contributions included in the transfer payment, as well as those made to the new scheme. In certain circumstances, even though the employee elects to take a refund of contributions to the second scheme, she or he may also take a deferred pension based on the transfer payment:

(i) If the first scheme was non-contributory, or

(ii) If the conditions of the transfer prohibited a refund of the employee's transferred contributions during his lifetime, or

(iii) If a refund of the member's own contribution element would leave a substantial balance to accrue to the benefit of the second scheme.

(c) Where a contributory scheme becomes non-contributory, an employee subsequently withdrawing may take a refund of contributions and a deferred pension in respect of the employer's contributions during the non-contributory period only.

Mixed benefits are not allowed where a non-contributory scheme becomes a contributory scheme.

A refund of contributions made to an employee leaving service may include interest at a reasonable rate or it may be the surrender value of a policy appropriate to the contributions. Such interest is regarded as an element in the calculation of a benefit from the scheme and is not treated as interest for tax purposes (which means it is taxable under Schedule E rather than Schedule D Case III).

If an employee who withdraws from service takes a refund of her/his contributions from one scheme but becomes entitled to an immediate or deferred pension from another scheme of the same employer, the refund (the net amount if tax has been deducted) is a lump sum benefit counting towards the maximum lump sum approvable under all schemes relating to that employment.

3. Tax on refunds of contributions

When a member's contributions to an exempt approved scheme are refunded in her/his lifetime or where her/his withdrawal benefit is a policy surrender value appropriate to her/his contributions, section 780 Taxes Consolidation Act 1997 (TCA) provides that the administrator becomes liable to tax on the gross refund under Case IV of Schedule D at the standard rate of income tax in force at the time of payment (currently 20%). The tax is chargeable on the amount paid (inclusive of any interest element) or, if the rules permit the administrator to deduct this tax before payment, on the amount before such deduction.

The refund may be transferred to a PRSA without a tax charge.

All payments of tax due in respect of refunds should be paid to the Collector General via the myAccount service on revenue.ie. Details can be found under “Pension Tax” in Table A at paragraph 4.8 of “Using online methods to make a payment to Revenue”, available at www.revenue.ie/en/tax-professionals/tdm/collection/on-line-payments/on-line-payments-of-tax.pdf.

Alternatively, payment can be sent to:

Revenue Commissioners
Collector General's Division
Sarsfield House
Francis Street
Limerick
V94 R972

The tax charge applies to any refund made during the employee's lifetime. It does not, however, apply where the employee's employment was carried on outside the State; this condition will be regarded as satisfied if the employee worked abroad throughout at least 75% of the period during which she or he was a member of the scheme.

If an employee who has received a refund of contributions re-joins the scheme in the same year of assessment and pays back all the contributions refunded, no tax will be payable by the administrator. If an employee who has received a refund of contributions re-joins and pays back the contributions in a later year, the gross amount repayable will be set against other refunds of contributions for any year and the administrator's liability reduced accordingly.

The tax is the liability of the administrator and the amount charged is not income of the employee for any purpose of the Income Tax Acts. The tax is not related to the amount of tax relief given to the member on her or his contributions. It is open to the scheme to give the administrator discretion on whether to pass the burden of the tax charge onto the employee.

4. Deferred pensions

If a withdrawing employee's benefits are to be maintained by providing a deferred pension, the maximum amount is normally computed on the same basis as for early retirement otherwise than on grounds of incapacity; that is, one-sixtieth of final remuneration for each year of actual service, or by using the formula N/NS x P. This is legislated for in the Pensions Act 1990. (Please see Chapter 9 for further details.) The terms in the formula are:

N = number of actual years of service;

NS = number of potential years of service to normal retirement age, had service continued until then;

P = maximum pension approvable had the employee served to normal retirement age.

The restrictions for employees with less than ten years' service set out in Chapter 9 apply only if the deferred benefit is taken before normal retirement age.

While the purchasing power of the pension may be maintained throughout the period of deferment, once the deferred pension becomes payable, the amount of benefit received at that point must not exceed that which would have been received had service continued until normal retirement age.

If, while the employee was a member of the scheme, the pension was being secured by means of a policy funded on a level annual premium basis, the amount of deferred pension secured by premiums paid up to the date of withdrawal may be given even if it exceeds the amount calculated under the N/NS x P formula.

Except in the case of certain employments for which an unusually early "normal retirement age" has been accepted, payment of a deferred pension may begin at any of the following times:

(i) At the normal retirement age under the scheme in which the benefits were secured;

(ii) An earlier date in case of ill-health;

(iii) At the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme (see paragraph 9.1);

(iv) At normal retirement age under the last employer's scheme;

(v) At a later date still if the employee is still in employment but not later than the date the employee reaches age 70 years.

Where the deferred pension becomes payable after normal retirement age, an actuarial increase may be given subject to the restrictions explained in Chapter 8.

5. Deferred benefits - lump sums

A deferred pension which becomes payable under one of the options outlined above may be commuted at that date to provide a lump sum benefit of 3/80ths of final remuneration for each year of service or, if this is more favourable, an amount calculated by the formula

$$\frac{N \times LS}{NS}$$

These terms have the same meaning as set out in **Chapter 9:**

N = number of actual years of service (as in paragraph 4 above);

LS = the maximum lump sum receivable had the employee served until normal retirement age, less any retained benefits, and may take into account the increased benefits detailed in Chapter 7.2; and

NS = number of potential years of service to normal retirement age, had service continued until then (as in paragraph 4 above).

If the scheme rules provide for an independent lump sum, this lump sum may be provided on the same formula with the corresponding reduction in the permissible pension. The restrictions for employees with less than 20 years of service set out in **Chapter 9** only apply if the deferred benefit is taken before normal retirement age.

If the deferred lump sum becomes payable after normal retirement age in the scheme providing it, an actuarial increase may be given in accordance with the practice explained in **Chapter 8.**

Such lump sums are subject to the maximum benefits provided for in s790AA TCA.

6. Deferred benefits - death before payable date

A withdrawing employee who is granted deferred benefits under the scheme may also be given a right to benefits if she or he dies before the deferred benefits become payable. In these circumstances, any lump sum benefit will be governed by the practice in relation to death-in-service benefits explained in Chapter 10 and will be based on the employee's final remuneration at the date of withdrawal. Pensions or pension equivalent of the benefits transferred to an Approved Retirement Fund (ARF) for a spouse, civil partner and/or dependants may also be provided on the basis explained in **Chapter 10,** except that they are to be calculated by reference to the employee's deferred pension.

7. Deferred benefits under annuity (buy-out bonds)

As an alternative to providing deferred benefits from the scheme itself for an employee who has left service, a scheme may prescribe that the benefits be provided by an assignment to the employee of a paid-up insurance or annuity policy already held for the purposes of the scheme, or by purchase of an annuity bond in the employee's name.

Transfer Payments

Chapter 13

This Manual should be read in conjunction with Part 30, Chapter 1, Taxes Consolidation Act 1997

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Revenue
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Irish Tax and Customs

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1 Introduction

This chapter of the Pensions Manual deals with the process of transferring a deferred pension where the scheme permits, and the employee has left service. This right is reinforced by the Pensions Act 1990 which provides the employee with a statutory right to a transfer for a period of up to two years after leaving service.

2 Transfer payments

A transfer payment may be made by an exempt approved scheme (as defined in section 774 Taxes Consolidation Act 1997 (TCA)) to another exempt approved scheme, to an approved buy-out bond or to a Personal Retirement Savings Account (PRSA).[1] Transfers are not permitted once benefits come into payment. A transfer payment should relate to the whole of an employee's benefits; split transfers are not permitted.

The scheme receiving the transfer (the "receiving scheme") may treat the transfer payment as representing the employee's contributions only to the extent certified by the administrator of the scheme making the payment. Any amounts representing employee Additional Voluntary Contributions (AVCs) must be clearly identified as such.

The administrator of the scheme making the transfer must be satisfied that the receiving scheme is an exempt approved scheme and must advise the receiving scheme of the benefits attaching to the payment. Details should be given of service, salary, lump sum benefit entitlement or if an employee has irrevocably given up the right to receive a lump sum from such a scheme.

3 Overseas schemes

3.1 Transfers to overseas arrangements

It is the responsibility of all trustees and PRSA providers to ensure full compliance with the requirements of the Occupational Pension Schemes and Personal Retirement Savings Accounts (Overseas Transfer Payments) Regulations 2003. These Regulations were made by the Minister for Social and Family Affairs (the title of the office at that time) in exercise of powers conferred by the Pensions Act 1990. In essence, prior to making any overseas transfer payments, the trustees or PRSA provider must be satisfied that:

[1] Section 772(3D)(a)(ii) TCA previously provided that a transfer to a PRSA may only take place if the individual has been a member of the scheme or of any other scheme related to that individual's employment with, or with any person connected with, the employer for less than 15 years. This was repealed by section 13 Finance Act 2021.

(a) the member or PRSA contributor has requested a transfer,

(b) the overseas arrangement provides relevant benefits as defined by section 770 TCA, and

(c) the overseas arrangement has been approved by the appropriate regulatory authority in the country concerned.

In order to comply with (b) and (c) above, the trustees or PRSA provider should obtain written confirmation from the administrator of the overseas arrangement to which the transfer is to be made.

If the transfer is to another EU Member State, the overseas scheme must be operated or managed by an Institution for Occupational Retirement Provision (IORPS), within the meaning of the EU Pensions Directive[2], and must be established in a Member State of the EU which has implemented the Directive in its national law. The scheme administrator must be resident in an EU Member State.

If the transfer is to a country outside the EU, a transfer may not be made to a country other than the one in which the member is currently employed.

Transfers that comply with the above may be made without prior Revenue approval. When making a transfer payment, the amount that could be taken in lump sum form should be notified to the receiving scheme. Please refer to Chapter 25: Limit on Tax Relieved Pension Funds, as a transfer in excess of a specified monetary amount may trigger a tax charge.

Only bona fide transfers are acceptable. The use of certain transfer arrangements relating to occupational schemes, to circumvent Revenue rules on the tax treatment of retirement benefits (for example, transfer payments to the UK and back again to Ireland) are not permissible.

3.2 Transfers to and from United Kingdom schemes

Transfers to the UK should be dealt with on the same basis as transfers to EU member states.

For information on transfers from the UK to Ireland, please refer to the guidance on "Overseas pensions: pension transfers" which is available on the UK Government website. (NB – Revenue is not responsible for the content of external websites.)

[2] DIRECTIVE (EU)2016/2341 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs).

4 Buy-out bonds

A buy-out bond (BOB) is an insurance policy or bond purchased in the name of a beneficiary by the trustees of a scheme, in lieu of the beneficiary's entitlement to claim benefits under the scheme. Transfers to and from a buy-out bond are dealt with in the same manner as transfers to an exempt approved scheme. It is possible to take benefits at a later date than that specified under the original scheme in circumstances similar to that which applies to a transfer payment.

Please refer to Pensions Manual - Appendix I for further information on the rules which apply to buy-out bonds.

5 New employer

A new employer may assume a former employer's responsibilities regarding the transferred pension.

6 Company re-organisations

Where there is a change of employer following a merger, liquidation, management buy-out, etc., the employment of “arms-length” employees (that is, employees who are not 20% directors – please see paragraph 6.1 below) will normally be regarded as continuous for the purposes of calculating maximum permissible benefits.

6.1 Restrictions for 20% directors

If an employee is a 20% director of a company both before and after a re-organisation, etc., continuation of service for pension purposes will only be accepted where a claim has been admitted under section 400 TCA. This section provides that relief for unused losses and capital allowances may be passed to a successor company provided all the assets, liabilities and business of the first company are also taken over.

7 Additional benefits

The receipt of a transfer payment into a new scheme will not affect the amount of lump sum benefit that an employee may receive. The normal maximum limits will continue to apply.

8 Maximum pension payable by a new scheme

When an employee joins the scheme of a new employer and brings a transfer payment, the receiving scheme may provide -

(a) the maximum benefits normally appropriate to their service with the new employer, **plus**

(b) the additional benefits which the transfer payment is sufficient to buy if invested by the receiving scheme.

If the benefits at (a) exceed 1/60th of final remuneration for each year of service with the new employer, the total of (a) plus (b) must not exceed 2/3rds of the employee's final remuneration less any retained benefits (section 772(3)(a) TCA).

9 Lump sum benefits

If the transfer payment is to provide a pre-determined amount of pension specified in money terms, the additional pension may be commuted using the formula 3N/80 x R where

N = number of years of service in earlier employment and

R = employee's final remuneration in the same employment.

Final remuneration should be calculated in accordance with the rules of the transferring schemes. If the rules do not contain such a definition, it should be taken as the average final remuneration of the last three years of service.

9.1 Added years

If the transfer payment is to provide benefits on the basis of added years of service, benefits in lump sum form are limited to the formula 3A/80 x F, where

A = number of added years certified by the actuary and

F = the employee's final remuneration in the receiving scheme.

9.2 Total lump sum benefits

Whichever of the two options above is adopted, the total lump sum benefits given under the scheme, including those produced by the transfer payment, should not exceed 120/80ths of the employee’s final remuneration (inclusive of retained benefits) (section 772(3)(f) TCA) where the lump sum benefits from service with the new employer exceed 3/80ths of final remuneration for each year of service. Where the receiving scheme provides strict 3/80ths of final remuneration per year of service in commutation of pension, the lump sum benefits arising from the transfer payment may be no greater than if they had remained in the original scheme.

Discontinuance of Schemes

Chapter 14

This chapter should be read in conjunction with Part 30, Chapter 1 of the Taxes Consolidation Act 1997.

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1 General

An employer is free to cease contributing to an approved pension scheme at any time. Other circumstances may lead to the discontinuance of the scheme, such as the bankruptcy or liquidation of the employer. The existence of discretionary powers to discontinue a scheme will not be regarded as a breach of the requirements that an exempt approved scheme must be established under irrevocable trusts. Revenue should be notified of a scheme's discontinuance in routine cases within three months after the event[1]. However, it is necessary to inform Revenue at an earlier stage in any of the following circumstances:

- If the scheme (to be discontinued) is not yet approved,
- If it is proposed to refund monies to the employer(s),
- If a block transfer is to be made.

Discontinuance of a scheme may be achieved in one of two ways:

- By making it frozen or paid up, or
- By winding-up.

Scheme rules must specify the action to be taken on discontinuance.

2 Frozen or paid up schemes

A scheme is paid up when all contributions cease, but the assets of the scheme continue to be held by an administrator to be applied in accordance with the rules of the scheme. It is possible for the scheme to continue to exist in a paid-up form despite the employer ceasing to exist, but this must be done with prior approval of Revenue. This agreement is unlikely if the scheme is in surplus, or there is a strong possibility that a surplus will arise in the future. A paid-up scheme must eventually wind up when no assets or beneficiaries remain.

[1] Schedule 23, Part 1, Paragraph 3(2)(a) Taxes Consolidation Act 1997 (TCA).

3 Winding-up

A scheme may be wound up as soon as it is decided to discontinue it. Where assets and liabilities match, the winding-up may be done by:

- transfer to another approved scheme or to a PRSA
- securing the benefits under individual buy-out bonds, or
- assigning individual scheme policies to the members.

Where the scheme is wound up, the benefits provided should not exceed the maximum approvable if the employee concerned had withdrawn from service on the date when the benefits were determined - see Chapter 12 for further details on withdrawal from service.

The winding-up rule should not provide for payment of a lump sum in lieu of the purchase of a deferred pension, or for an optional refund of the employee's contributions to any employee who is in service when the scheme begins to be wound up.

The rules should also ensure that deferred benefits whether in pension or lump sum form, should not be received earlier than the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme.

4 Tax

There should not be any provision in a pension scheme permitting full commutation on grounds of triviality or the pensioner’s subsequent ill-health, unless the life office or pension provider concerned has first made satisfactory arrangements for any payment of tax due.

5 Surplus on winding-up

If the assets available are clearly more than sufficient to provide all prospective benefits in accordance with the rules, the rules may provide additional benefits within approvable limits. There must be express provision for the return of any remaining surplus to the employer as soon as the liabilities of the scheme are determined and satisfied. The returned amount is liable to tax.

In the case of a group fund, the surplus should be divided among the existing employers on the contribution basis or such other arrangement that has been agreed with Revenue.

6 Partial winding-up

A scheme which provides for the participation of more than one employer should provide for that part of the scheme relating to any participating employer to be wound up if that employer goes out of business or leaves the scheme for other reasons. The same considerations apply to a partial winding-up as to a total winding-up.

7 Discontinuance at interim stage

Revenue must be informed of the discontinuance of a scheme where a definitive trust deed is not in place and which is operating on an interim trust deed.

Tax Treatment of Approved Occupational Schemes

Chapter 15

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15.1 Taxation of occupational pensions

All pensions and annuities paid under any scheme which is approved, or being considered for approval, are chargeable to tax under Schedule E and PAYE should be operated on payment. This applies whether the pension or annuity is paid by the employer, by the administrator or by the life office (life assurance company) from which an annuity under the scheme has been purchased. The person paying the pension or annuity is responsible for operating PAYE and accounting for the tax.

Please refer to Chapter 25**:** Limit on Tax Relieved Pension Funds, as payment of benefits in excess of a specified monetary amount may trigger a tax charge.

15.2 Pensioners resident abroad

No general exemption from income tax is given by the Taxes Consolidation Act 1997 (TCA) to pensioners resident abroad. Exemption is granted where:

(a) the last ten years' service in respect of which the pension is paid was abroad,

or

(b) half the total service in respect of which the pension is paid and at least 10 of the last 20 years' service were both abroad.

Exemption may also be available under a double taxation agreement between Ireland and the country of residence. Where there is no exemption, relief may be due to Irish citizens and certain others resident abroad by virtue of section 1032 TCA.

15.3 Scheme investments

Income derived by an exempt approved scheme from investments or deposits held for the purposes of the scheme is exempt from income tax (section 774(3) TCA). Exemption from income tax is also granted in respect of underwriting commissions chargeable to tax under Case IV of Schedule D and applied for the purposes of the scheme.

Section 608 TCA exempts from capital gains tax gains accruing from disposals of investments held by exempt approved schemes.

Exempt approved schemes are also exempted from Deposit Interest Retention Tax (DIRT) by section 256 TCA.

Dealings in financial futures and traded options by exempt approved schemes are deemed investments and therefore exempt from tax (sections 774(4) and 608 TCA).

15.4 Life office pension business

Sections 706 and 717 TCA enable part of the business of a life office to be treated as "pension business". When an exempt approved scheme applies funds as premiums on an insurance policy which qualifies for "pension business" treatment, income from the scheme investments qualifies for the tax exemptions detailed in paragraph 15.3 above.

15.5 Correspondence between policy and scheme liabilities

To qualify for pension business treatment, policies taken out by an exempt approved scheme must be so framed that the liabilities undertaken by the insurance company correspond with the liabilities against which the contract is intended to secure for the scheme (section 706 TCA). The policy need not secure the scheme against all liabilities, but the benefits it does provide must correspond with those payable under the rules of the scheme.

15.6 Refund of scheme surplus to employer

Section 782 TCA provides that a refund of a pension scheme surplus to an employer is taxable.

Group Schemes

Chapter 16

This chapter should be read in conjunction with Part 30, Chapter 1 of the Taxes Consolidation Act (TCA) 1997

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1. Group pension schemes for employees of associated employers

Revenue is prepared to exercise its discretion under section 772(4) Taxes Consolidation Act 1997 (TCA) to approve a group scheme in which two or more employers participate, provided that the following conditions are satisfied:

(a) The employers must be sufficiently closely associated to be treated as carrying on a single trade or undertaking. This condition is met if the employers all belong to a group of companies forming a single financial unit - for example, if they are parent and subsidiary, or fellow subsidiaries of the same parent. For this purpose, a company may be regarded as a subsidiary if at least 50% of its equity share capital is owned by the other company, directly or indirectly. However, a company or partnership formed as a joint enterprise by two or more parent companies may participate in a scheme established by any one of those parents, even though that parent has less than a 50% interest in it. Alternatively, even though no parent/ subsidiary relationship exists, there may be enough links between the employers to warrant a group scheme based on close association through permanent community of interest. Such links could be common management or shareholders, inter-changeable or jointly employed staff, or inter-dependent operations (such as one company selling the bulk of the other's products).

(b) Each employer participating in the scheme must be under an obligation to observe the rules of the scheme.

(c) Each employer should normally contribute in respect of their own employees. Until the passage of Finance Act 2019, relief was confined to contributions paid in respect of individuals employed in the employer's trading activities (by virtue of section 774(6)(c) TCA). On a concessional basis Revenue had allowed relief for contributions made by an employer in respect of contributions for employees of another employer in certain circumstances – for example, on foot of a legally binding agreement where one party agreed to make up pension deficits for the other party. This was put on a legislative footing in section 17 Finance Act 2019, which amended section 774(6) TCA to allow relief for contributions by one employer for contributions made for the benefit of scheme members who are not its employees where the contributions are made under the terms of a legally binding agreement between the two employers in the following circumstances:

- in a group of companies;
- under a scheme of reconstruction or amalgamation;
- under a merger;
- under a division; or
- under a joint venture.

A further amendment was made in section 15 Finance Act 2021 to allow tax relief for contributions by a company on behalf of scheme members who are current or former employees of a company which is subject to the agreement, rather than a party to the agreement.

Further details on this provision can be found in Chapter 4 of the Revenue Pensions Manual.

(d) The rules must provide for the withdrawal of an employer who ceases to be sufficiently closely associated with, or related to, the other, or who goes out of business. This usually involves the segregation of an appropriate proportion of the scheme assets and the application of the winding-up rule. If, however, the seceding employer is continuing in business, the segregated assets may form the nucleus of a new scheme or be transferred to another scheme in which the employer has become eligible to participate.

(e) An employer who is not resident in the State may participate in a group scheme if there is a sufficiently close association with the principal employer.

2. Approval

Any proposal to establish a group scheme to admit an employer to participate, or to retain in the scheme an employer who has ceased to satisfy the conditions for participation, should be submitted to Revenue for consideration. This can be done via Revenue’s secure online mail service MyEnquiries which can be accessed through both MyAccount and ROS.

3. Basis for providing benefits

A group scheme may provide benefits based on the employee's final remuneration where all the participating employers are closely associated. In such a case, the employee's total service within the group, irrespective of moves from one participating employer to another, is regarded as constituting a single unbroken employment, except where part of his or her service was abroad with a non-resident employer.

4. Employers not related or associated

Even where there is no close relationship or association between the employers, it may be possible to approve a group scheme provided the following conditions are satisfied:

(a) The employees are employees working in a particular industry, in an area or on a nation-wide basis, or are employees of employers who are members of a professional or trade association or similar body and wish to participate in a scheme sponsored by the association or body. In such cases, Revenue must be satisfied not only that the sponsoring body is truly representative of the employers desiring to

participate and actively concerned with such matters as the code of conduct of its members and conditions of employment in the trade or profession, but also that the participating employers together have enough pensionable employees to ensure reasonable continuity in the scheme.

(b) Each employer participating in the scheme must be under an obligation to observe the rules of the scheme.

(c) Each employer must normally contribute in respect of its own employees but can contribute in respect of employees of another employer under a legally binding agreement as provided in section 774(6) TCA as amended by section 17 Finance Act 2019 (discussed in Paragraph 1 above).

(d) The rules must provide for the withdrawal of an employer who ceases to satisfy the conditions of approval or goes out of business.

(e) If any of the participating employers have other schemes in which members of the group scheme also participate, Revenue will require that the group scheme be treated in all such cases as the employer's basic scheme. It will follow that if any restrictions in members' benefits are necessary, they will be affected primarily in the other schemes.

5. Basis for providing benefits

An employee who moves from one participating employer to another should not receive greater total benefits than he would if each employer had its own scheme. Accordingly, although each employer may provide benefits by reference to the employee's final remuneration while in its service, when an employee moves, the benefits attributable to service up to that date must be "frozen" within the maximum approvable for an employee who withdraws from service on a given level of remuneration, and cannot be increased solely because under a subsequent employer the employee is paid more.

6. Refunds to employers

Surplus money in a scheme could arise, for example, when an employee withdraws from service. If surplus monies are payable to an employer, any refund should be made either to the employer with whom the employee was serving at the time, or apportioned between all the employers who had previously contributed in respect of the employee concerned, whichever method is most convenient. Where no refund arises - for example, because there is a trust fund or a controlled funding policy - the excess contributions may be applied to the general purposes of the scheme in any manner desired, except that if the participating employers include one or more non-Irish resident employers, excess contributions derived from non-Irish resident and Irish resident employers respectively should be kept separate.

7. Irish employers associated with overseas employers

An Irish subsidiary or associate company of an overseas company may participate in a scheme established in the State by that overseas company or by another Irish subsidiary or associate of the overseas company. Alternatively, an Irish subsidiary of an overseas company may participate in the parent company's overseas scheme, provided the part of that scheme applicable to the Irish company is approved here.

8. Change of residence of employer in a group scheme

Where an overseas branch of an Irish employer becomes a separate company resident abroad for tax purposes, or there is any change in the tax residence status of any employer participating in a scheme, the approval of the scheme will need to be reconsidered by Large Cases High Wealth Individuals Division (LCHWID), contact details for which are available at www.revenue.ie/en/contact-us/non-resident-customer-service-contacts/large-cases-high-wealth-individuals-non-resident.aspx.

Overseas Employers, Overseas Employees and Employees Seconded from Overseas

Chapter 17

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17.1 Overseas employer

In this Chapter, the term "overseas employer" means an employer who is not resident for tax purposes in the State and whose trading profits are, subject to any exemption due on residence grounds, liable to Irish tax only to the extent that they arise from a branch or agency in this country.

17.2 Overseas employer with an Irish pension scheme

A pension scheme established in the State by an overseas employer - for example, a scheme operating through a trust fund held by trustees resident in this country - can be approved if it relates wholly to persons employed in the State. If it does not relate exclusively to employees in the State, it will be regarded as being two separate schemes relating respectively to employees in the State and employees abroad. The scheme for employees in the State can be approved. If both schemes operate through a single trust fund and investments are not segregated, the proportion relating to the approved scheme and unapproved scheme will need to be calculated actuarially for the purpose of granting tax relief.

17.3 Employees seconded from outside Ireland

Many individuals seconded from overseas parents or subsidiaries of an Irish business to work in the State ("seconded individuals") continue to:

- be paid from abroad;
- benefit from employer contributions to their foreign pension fund; and
- continue to make personal contributions to a foreign pension scheme.

The contribution by an employer into a pension scheme for the benefit of an employee is a taxable emolument (see section 777 Taxes Consolidation Act 1997 (TCA)), except where –

(a) such charge is relieved under the terms of a double taxation agreement, or

(b) where the provisions of section 778 TCA apply; that is, where –

(i) the emoluments of the office or employment are not chargeable to tax here; or

(ii) the remittance basis of taxation applies to the emoluments of the office or employment (section 18(2) and section 71(3) TCA); or

(iii) the employer pension contributions are made to:

- an approved scheme;
- a statutory scheme; or
- a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

In **bona fide** cases, where:

(a) the employee -

(i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;

(ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);

(iii) is either not Irish domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;

(iv) had, prior to coming to work in the State, been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and

(v) is not resident in the State for a period of more than five years (but see Note below); and

(b) the foreign employer -

(i) is resident for tax purposes in an EU member state, the United Kingdom or in a country with which the State has a Double Taxation Agreement (DTA);

(ii) has, prior to the individual coming to work in the State, been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;

(iii) has a foreign pension scheme which is a statutory scheme in a state or country mentioned in (b)(i) above, other than a state social security scheme, or is a scheme in respect of which tax relief is available in such a state or country; and

(iv) both the employer and employee contributions comply with the rules of that foreign pension scheme,

then Revenue will -

- treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable; and
- allow relief for the pension contributions made directly by the employee (subject to the normal income percentage limits).

Note – Where an individual is resident in the State for more than five years, ignoring any periods prior to 1 January 2003, written permission of the local Revenue office will be required for the continuation of the above treatment of pension contributions beyond a period of five years.

17.4 Other relief for seconded individuals

Where contributions made by seconded individuals to foreign pension schemes do not qualify for relief as detailed above, relief may still be available if the contributions come within the scope of migrant member relief (see paragraph 17. 10 below). Migrant member relief only applies to individuals coming to Ireland with pre-existing pension plans established in another EU Member State or the United Kingdom.

Prior to the introduction of migrant member relief secondees from the UK could avail of relief under the terms of the Protocol to the Ireland/UK DTA. The Protocol may still be of relevance to migrant workers of a UK employer coming to the State from a third (non-EU member) country.

17.5 Other seconded employees

An employee who was a member of an overseas occupation pension scheme before being transferred to Ireland to work for an associated employer may remain in that scheme and get relief on her/his contributions against her/his Irish income tax liability provided that:

(i) the secondment is for a period of less than ten years;

(ii) the scheme is a trust scheme;

(iii) the benefits to be provided by the overseas scheme are within Irish approvable limits.

17.6 Overseas employer whose Irish employee is transferred abroad

If an employee working in the State for an overseas employer, who is a member of a separate approved scheme of the type referred to in paragraph 17.2, is transferred to duties abroad, in circumstances such that her/his earnings cease to be chargeable in Ireland under Schedule E, no further benefits should accrue in the approved scheme. The accrued benefits should remain in the approved scheme unless a special arrangement for the transfer of benefits is in operation.

17.7 Overseas employees of an Irish employer

If an employee of an Irish employer is not assessable to Irish tax on her/his remuneration or is assessable to Irish tax only on the "remittance" basis – that is, only on the amount of the remuneration brought into or "remitted" to the State - no liability arises under section 777 TCA for payments by an employer to provide "relevant benefits" to that employee. It is, therefore, not necessary for a retirement benefits scheme for such employees to conform to the conditions for approval if the employer is prepared to forego the tax reliefs available to an exempt approved scheme. However, a pension scheme exclusively for employees working abroad, or which includes employees working abroad, may be approved and enjoy the reliefs if the employer is resident in the State.

17.8 Employees working abroad for a non-resident employer

In general, an approved pension scheme, or a part of an approved scheme, cannot cater for employees working abroad for a non-resident employer. There are two exceptions:

(a) where employees are on secondment from an Irish employer for a limited period, they can be deemed to remain on the payroll of the Irish employer;

(b) where employees are sent abroad, in circumstances which cannot be regarded as secondment, to serve with non-resident companies in a group, of which the parent company is resident in the State but the parent company retains control over the movements of the employees within the group; that is, the Irish resident parent company remains in a position to recall the employees or to move them elsewhere.

Where either (a) or (b) applies, the employees concerned may remain, or become, members of the Irish employer's approved scheme, but all cases under (b) must first be referred to Revenue for consideration. The overseas company should, in either type of case, reimburse the Irish company for the employer's contributions under the scheme except where Revenue agree otherwise.

In certain situations, a non-resident employee may be permitted to remain in an Irish occupational pension scheme while working overseas (see paragraphs 17.7 and 17.8).

An employee who is seconded or transferred by their employer to work overseas and who returns to live and work in Ireland for the same employer may claim tax relief in respect of contributions they make to the employer's pension scheme in respect of the year in which they return and any subsequent years in the normal manner.

Where an employee is not assessable to tax in Ireland in respect of their salary for the period of overseas employment, then tax relief is not due under the TCA for contributions they made to the scheme for that period. While a practice of taking credit for such contributions was operated in certain cases, there is no legislative basis for this. Consequently, with effect from 6 June 2017, Revenue no longer allows any such unrelieved pension contributions to be carried forward to the year in which an employee returns to Ireland and they cannot be claimed in that year or in any subsequent year.

17.9 Relief for contributions to EU and UK pension schemes

Revenue will approve occupational pension schemes provided to Irish employers and employees by pension providers based in other EU Member States or the United Kingdom provided the standard approval conditions are met. These are defined as "overseas pension schemes"[1] for the purposes of the occupational pension scheme provisions in Part 30 Chapter 1 TCA. To qualify for approval and associated tax reliefs, the overseas pension scheme must be operated or managed by an Institution for "Occupational Retirement Provision", within the meaning of the EU Directive 2016/2341, and must be established in a Member State of the European Communities which has implemented the Directive in its national law. It also includes an overseas pension plan which is established in the United Kingdom and is subject to the supervisory and regulatory arrangements at least equivalent to those applied under EU Directive 2016/2341.[2]

It is now optional for the administrator of a scheme to appoint a person resident in the State to discharge all duties imposed under the Taxes Acts. Where the option is not exercised, the administrator must enter into a contract (governed solely by the laws of Ireland) with Revenue in relation to discharge of those duties.

17.10 Relief for migrant workers

There is a statutory scheme of relief for contributions paid by an individual who comes to the State and who wishes to continue to contribute to a pre-existing "overseas pensions plan" in another EU Member State or the United Kingdom. The legislation is in Chapter 2B of Part 30 (sections 787M – 787N) TCA.

Relief is available for contributions paid on or after 1 January 2005 by a "relevant migrant member" who comes to the State and who wishes to continue to contribute to a pre-existing "qualifying overseas pension plan" concluded with a pension provider in another EU Member State or under the law of the United Kingdom where the plan is established in the United Kingdom.

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[1] As defined in section 770(1) TCA.

[2] Inserted by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions Act 2020 and came into operation on 31 December 2020 by S.I. No. 723 of 2020.

An "overseas pension plan" means a contract, an agreement, a series of agreements, a trust deed or other arrangement which is established in, or entered into under the law of, a Member State of the European Communities or the United Kingdom, other than the State. It covers occupational pension schemes and personal pension schemes that a migrant worker might bring to the State whether he or she was employed or self-employed in the other EU Member State or the United Kingdom. It excludes any state social security scheme i.e. a system of mandatory protection put in place to provide a minimum level of retirement income or other benefits.

A "qualifying overseas pension plan" means an overseas pension plan that:

- is established in good faith for the sole purpose of providing retirement benefits similar to those approved in the State,
- qualifies for tax relief on contributions under the law of the EU Member State in which it is established, or under the law of the United Kingdom where the plan is established in the United Kingdom, and
- in relation to which the migrant member of the plan has irrevocably instructed the administrator of the plan to provide the Revenue Commissioners with any information that they may require in relation to the plan.

A "relevant migrant member[3]" is an individual who:

- is a resident of the State,
- was a member of the plan on taking up residence in the State,
- was a resident of another EU Member State or the United Kingdom at the time s/he first became a member of the plan and was entitled to tax relief on contributions under the law of that Member State or the United Kingdom,
- was resident outside of the State for a continuous period of three years immediately before becoming a resident of the State,
- is a national of an EU Member State or citizen of the United Kingdom, or
- if not, was resident in an EU Member State (other than the State) or a resident of the United Kingdom immediately before becoming a resident of the State.

[3] As defined by section 787M(1) TCA.

If an individual moves to Ireland from any other EU Member State or the United Kingdom with a pre-existing qualifying overseas pension plan, the Revenue Commissioners are not aware of anything that will prevent that individual from meeting the ‘relevant migrant member’ condition that s/he was entitled to tax relief on contributions to the plan under the law of that Member State or the United Kingdom.

Where an individual does not satisfy the three-year test but all other conditions are met, section 787N(2) TCA gives discretion to the Revenue Commissioners to treat an individual as a “relevant migrant member”. Such cases should be referred to the local Revenue office dealing with the individual’s tax affairs.

Under the provisions of section 819 TCA, an individual is resident in the State where s/he is present in the State:

- for 183 days or more in the year of assessment, or
- for 280 days or more in total in the year of assessment and the preceding year, or
- where the individual elects to be resident and must intend to be resident in the following year.

For the purposes of the “280 day” test, an individual shall not be resident in a year of assessment if s/he is not present in the State for fewer than 30 days in that year

For the purposes of these tests ‘a day’ is one on which the individual is present in the State at any time during the day.

The term “resident” in the context of another EU Member State or the United Kingdom means:

- in the case of the United Kingdom or an EU Member State with which Ireland has a DTA, that the individual is regarded as being a resident of that State under the relevant agreement,
- in any other case, that the individual is by virtue of the law of that State a resident of that State for the purposes of tax.

Ireland has a DTA with all EU Member States and the United Kingdom. In other cases, where the individual is not regarded as being resident of that State under the relevant DTA of another EU Member State or the United Kingdom, they may be deemed a resident of that State for the purposes of tax under relevant national law. Where the conditions in relation to a “qualifying overseas pension plan” and “relevant migrant member” are met, relief may be granted in respect of any contributions paid. In order to claim relief the individual should complete part 1 of the Overseas Pension form.

The plan administrator should complete part 2 of the form and provide a “certificate of contribution” setting out contributions made by the individual to the plan and, where relevant, any contributions made by their employer in the State. The completed form should be submitted to the individual’s local Revenue office.

Tax relief is due at the individual's marginal rate of tax. In the case of an individual who is taxed under the PAYE system the relief will be shown on the "Notice of Determination of Tax Credits and Standard Rate Cut-off Point" in the year of claim.[4]

An individual who is taxed under the self-assessment system may claim the relief on their return of income and relief will appear on the notice of assessment for the year.

An employer is authorised to operate the "net pay arrangement" where contributions to a "qualifying overseas pension plan" are deducted from an individual's salary. Where tax relief is obtained under the net pay arrangement, individuals cannot make a further claim for tax relief on these contributions. Relief is subject to the same age percentage limits and earnings limit as apply to contributions to approved pension plans in the State.

[4] An individual may view their tax credits for the current tax year as well as for the four previous tax years on PAYE Services in myAccount. See www.revenue.ie for further information.

Pension scheme approval - administrative matters

Chapter 18

This Chapter should be read in conjunction with Part 30, Chapter 1 and Schedule 23 Taxes Consolidation Act 1997

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18.1. Approval applications

Applications for tax approval of a pension scheme should be made electronically to Revenue through MyEnquiries by, or on behalf of, the administrator before the end of the first period of assessment for which approval is required. Where the administrator is a Transport Layer Security (TLS) enabled customer, applications may be sent to lcdretirebens@revenue.ie.

The statutory requirements relating to applications for approval are set out in Schedule 23, Part 1, Taxes Consolidation Act 1997 (TCA). In practice, Revenue may agree detailed approval procedures with “life offices” (life insurance companies) and pensions practitioners. The Act empowers Revenue to request any information regarding a scheme that "the Commissioners may consider relevant".

An application will normally include copies of:

- the deed or other instrument establishing the scheme;
- the scheme rules;
- the members' booklet or announcement letter; and
- any actuarial advice received or details of scheme funding.

18.2. Documentation procedure

Definitive documentation should be completed at scheme commencement. In exceptional circumstances when this is not possible, Revenue may accept that the scheme is effectively established by an interim deed creating an irrevocable trust and setting out the main purposes of the scheme. When interim approval is granted, immediate relief on a provisional basis will be allowed for employee contributions. If the scheme is to be operated by insurance policies, the life insurance company may treat the premiums received as "pension business". In certain circumstances, exempt approved status may be given to individual arrangements retrospectively to the date of commencement.

18.3. Information to employees

If a scheme is to be approved, every member and every employee who has a right to be a member must be given written particulars of all essential features of the scheme that concern her/him.

18.4. Alterations to schemes

Copies of all scheme amendments must be forwarded to Revenue.

18.5. Reporting requirements

Schedule 23, Part 1, TCA obliges the scheme administrator to furnish to the Inspector of Taxes any information and particulars as the Inspector considers relevant. The reporting requirements for small self-administered schemes are set out in the Pensions Tax and Duty Manual Chapter 19.

All schemes must maintain detailed and up-to-date records in order that information regarding contributions and benefits is available for compliance and audit purposes. All self-administered schemes should prepare annual accounts and complete actuarial reviews on a regular basis.

18.6. Unapproved schemes

Every employer is required to deliver to Revenue particulars of any scheme that has not been approved.

Section 777 TCA provides that a payment made by any employer to an unapproved scheme is assessable under Schedule E on the employee (and is therefore subject to PAYE).

An employee who has rights under an unapproved scheme which are not fully secured in advance by payments by the employer is assessable under Schedule E on the estimated amount required to secure the benefit.

18.7. Withdrawal of approval

Section 772 (5) TCA empowers Revenue to withdraw approval from a scheme. Withdrawal is effected by notice in writing to the administrator, specifying the grounds for, and the operative date of, the withdrawal.

An unacceptable amendment to a scheme will cause approval to lapse automatically. Approval may also be withdrawn for

- payment of excessive or unauthorised benefits,
- failure to furnish information
- failure to meet the scheme's tax liabilities,
- unacceptable investments, or
- any serious breaches of the scheme rules.

Following withdrawal of approval, the employees are chargeable to tax under section 777 TCA on any contributions from the employer.

Small self-administered pension schemes

Chapter 19

This chapter should be read in conjunction with Part 30, Chapter 1 and Schedule 23 of the Taxes Consolidation Act (TCA) 1997

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Introduction

This chapter explains the special requirements that small, self-administered pension schemes (abbreviated as SSAP or SSAPS) must comply with to achieve and maintain exempt approved status. These special requirements are additional to the normal approval requirements. Their purpose is to ensure that the scheme is in fact "*bona fide* established for the sole purpose of providing relevant benefits" under section 772 (2)(a) Taxes Consolidation Act 1997 (TCA) and not a scheme designed for tax avoidance.

Usually, the sole members of “small” schemes are “20% directors”. Revenue defines a 20% director as someone who directly or indirectly at any time in the last three years owned or controlled more than 20% of the voting rights in the employer company, or in the parent company of the employer company.[1] Revenue concerns relate to the potential for conflicts of interest, as the individuals involved are at the same time the owners of the business, scheme trustees and scheme members.

1. Definition of "small" scheme

A scheme with fewer than 12 members will generally be regarded as "small".[2] Some schemes with more than 12 members may be regarded as a small scheme – for example, a scheme designed primarily for a few family directors, to whom are added some relatively low paid employees with entitlement to only insignificant benefits, included to bring membership to 12 or more, and a scheme with more than 12 members where most or all of the members are or are connected to 20% directors.

Conversely, it might not be necessary to regard a scheme with fewer than 12 members as small if all the members are at arm's length from each other, from the employer and the trustees. A small insured scheme which becomes self-administered after approval must, from the changeover date, comply with the special requirements.

Irrespective of the number of members involved, a scheme will be regarded as small at any time when 65% or more of the value of the investments of the scheme relate to the provision of benefits for 20% directors of the sponsoring employer(s) and their spouses, civil partners and dependants.

[1] Pensions Manual - Appendix I Glossary

[2] Pensions Manual - Appendix I Glossary

2. Pensioneer trustee

The trustees must include a Revenue approved "pensioneer trustee".[3] Onerous obligations are placed on the pensioneer trustee, in addition to the normal obligations that apply under trust law.

The duties of the pensioneer trustee are set out in the following undertaking that the trustee must sign:

> "I undertake that in relation to any pension scheme, approved under the Taxes Consolidation Act 1997, of which I am a Trustee that I will:
>
> a) Not consent to any action which is contrary to any Revenue regulations. I will report immediately to Revenue full particulars of any action to which I am requested to consent which I consider may be contrary to Revenue regulations.
>
> b) Supply annual accounts, periodic actuarial reports, or any other information required by Revenue.
>
> c) Not agree to the termination of any scheme of which I am Pensioneer Trustee otherwise than in accordance with the terms of the approved winding up provisions.
>
> Nor will I delegate powers to any other Trustee of such a scheme or to any outside person or body on behalf of any other Trustees so as to circumvent the foregoing undertaking.
>
> I further undertake to advise Revenue immediately should I cease to be a Trustee of any such approved Scheme."

It is a precondition of Revenue approval under section 774 TCA that at all times the "small" scheme must have a Revenue approved pensioneer trustee. The Trust Deed must provide that the pensioneer trustee cannot be removed without prior Revenue approval and that the pensioneer trustee must be a co-signatory on all financial transactions.

Prior to a resignation by a pensioneer trustee, it is the responsibility of the other trustees to arrange for the appointment of a replacement. In cases where this does not occur within 30 days of a resignation, Revenue will withdraw approval from the scheme.

If the trust instrument establishing a scheme provides for the trustees to act on majority rather than unanimous decisions, this provision must be qualified so that it does not apply where the question for decision relates to the termination of the scheme.

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[3] Section 2(1) Pensions Act 1990 states that a "pensioneer trustee" means a person who is for the time being approved by the Revenue Commissioners to act as such in accordance with requirements imposed under Part 30 of the Taxes Consolidation Act 1997.

To qualify for pensioneer trustee status, an applicant must be closely involved with occupational pension schemes and their approval. They must have experience in processing approval of schemes, administration of small self-administered schemes and a good working knowledge of Revenue practice. Pensioneer trustees should be able to provide a complete range of services: actuarial, legal, investment and administration.

Where a corporate body wishes to act as a pensioneer trustee, it is essential that the directors, or a majority of them, should be acceptable as pensioneer trustees in their own right. The directors regarded as acceptable should have the power to determine how the corporate body will vote in any proceedings of the pension scheme trustees.

Applications for approval to act as a pensioneer trustee should be submitted via the secure ‘MyEnquiries’ service available on ROS, selecting the “Retirement Benefits” category and “General Query” sub-category.

The application should include a full “pensions C.V.” together with details of any self-administered schemes established and administered by the applicant.

A list of Revenue approved pensioneer trustees is available on request.

3. Scheme approval and compliance requirements

Practitioners are encouraged to agree a “standard” trust document and announcement letter with Revenue. The covering letter with each approval application should include:

1. Confirmation that the scheme is documented by the standard deed.
2. Confirmation that the announcement letter has issued.
3. An outline of the scheme’s investment policy.
4. The member’s PPSN.
5. Confirmation that the scheme member is an employee of the employer sponsoring the scheme.

The supporting documentation required is:

1. A funding report with full details of retained benefits
2. Copy of the relevant pages of the trust deed showing employer name, trustee details, scheme title and commencement date.

Incomplete submissions will be returned.

As a condition of approval, Revenue will expect actuarial reports to be made at intervals not greater than three years and will examine the assumptions that have been used as a basis for funding the scheme. A further condition of continuing approval is a requirement to submit annual accounts within nine months of the end of the year, in line with the statutory requirements of Schedule 23 TCA.

In view of the significance attaching to the investment policy of the trustees, Revenue will need to know, when the application for approval is first considered, and in conjunction with the examination of annual accounts and later actuarial reports, how the funds are to be or have been invested.

4. Investment of funds in small self-administered schemes

All investments by small self-administered pension schemes must be on an arm's length basis. The investment powers of trustees of small self-administered pension schemes are circumscribed in a number of areas which are detailed below. The list is intended as a guide and is not exhaustive. A ruling on any specific proposal can be requested from Pensions Branch in Revenue's Large Cases – High Wealth Individuals Division.

(i) Loans

Loans to members of schemes or to any other individual having a contingent interest in the scheme or to the employer are prohibited.

(ii) Property investments

A proposal to acquire property as an investment can be approved subject to the following conditions:

(a) The vendor is at arm's length from the scheme and the employer, including its directors and associated companies.

(b) The purpose of the acquisition is not for disposal or letting to the employer, including its directors and associated companies.

(c) Disposal of the property is on an arm's length basis.

(d) The scheme has sufficient liquid investments to ensure that the requirement to provide benefits, including ill-health and early retirement benefits, can be met. Where the main or only asset is property, the concentration of investments in an asset not readily realisable does not satisfy the overriding need to match investment of the assets with a scheme's liabilities, in particular the requirement to provide benefits; when the first or subsequent retirements take place, a scheme could be compelled to realise its only or main asset in order to pay benefits.

(e) Purchase of overseas property will only be permitted where there are appropriate arrangements in place to enable the pensioneer trustee to maintain control of the asset to ensure that Revenue rules are complied with.

(f) A transaction which involves the scheme trustees directly in the acquisition and development of property with a view to its disposal will not constitute an investment to which the exemption in section 774 (3) TCA will apply.

(g) Any proposal that involves the diversion of the sponsoring employer's taxable activity into the scheme is not acceptable.

(iii) Self-investment

The following types of self-investment are not acceptable:

(a) Acquisition of property or other fixed assets from the employer, and

(b) Acquisition of shares, debentures, etc., in the employing company whether by subscription, bonus issue, purchase from existing shareholders or any other means.

(iv) "Pride in possession" articles

Schemes are not permitted to invest in personal chattels such as works of art, jewellery, vintage cars, yachts, etc. Schemes can invest in *choses in action* (a personal property right to an intangible object) which are not tangible, moveable or visible. Examples are company shares, copyrights, and financial futures.

(v) Private companies

Investments must be limited to 5% of scheme assets and to 10% of the private company's share capital.

(vi) Transactions deemed to be pensions in payment (section 779A TCA)

Certain transactions made by an Approved Retirement Fund (ARF) as detailed in section 784A(1B) TCA are deemed to be a distribution from the ARF (please see chapter 23 of the Pensions Manual for more information). A similar provision applies to pension schemes. When these transactions occur, the use of scheme assets is treated as a pension payment from the scheme. Any amount treated as a pension payment is no longer regarded as a scheme asset. The transactions are:

- A loan made to the beneficial owner or connected person.
- An acquisition of property from the beneficial owner or connected person.
- A sale of ARF asset to the beneficial owner or connected person.
- An acquisition of residential or holiday property for use by the beneficial owner or connected person.
- An acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person. The distribution arises on the date such use commences. The distribution is the amount of the value of the ARF assets used in connection with the acquisition and any expenditure on improvement or repair of the property.

- An acquisition of shares in a close company in which the beneficial owner or connected person is a participator.

A “close company” means a company under the control of five or fewer participators, or of participators who are directors. Please refer to section 430 TCA for a complete definition.

A “participator”, in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to section 433 TCA for a complete definition.

Definitions of “connected persons” and “relative” are contained in section 10 TCA.

5. .Benefits

A final funding review must take place before any benefits are paid. The scheme rules should provide that benefits be secured by either the purchase of an annuity from a life office or in accordance with section 772 (3)(a) TCA.

6. Death-in-service benefit

All death-in-service benefits should be insured from the outset insofar as they exceed the value year to year of the member's interest in the fund, based on their accrued pension and other retirement benefits.

7. Full commutation of pension in cases of serious ill-health

Where the rules of the pension scheme include a provision for the full commutation of pension where the member is "in exceptional circumstances of serious ill-health” it has always been the practice to leave the application of the rule in particular cases to the trustees. In large schemes, the arm's length relationship, and in insured schemes, the interest of the life office, each provide a reasonable assurance that the facility will not be abused. Neither factor is present in small self-administered schemes and the rules of such schemes should, therefore, provide for full commutation on serious ill-health grounds to be subject to the agreement of Revenue. In such cases Revenue would seek to establish that proper medical evidence has been obtained and that its terms appeared to warrant a conclusion that the member's expectation of life was very short.

8. General enquiries

Enquiries must disclose the title of the scheme to which they relate and all other relevant facts and figures. Each case is dependent on its facts and it is not possible to deal with purely hypothetical situations.

Employees with Part- Time Service

Chapter 20

Document last reviewed June 2021

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20.1 General

This Chapter deals with the methods of calculating maximum benefits where an employee has a combination of full-time and part-time service, including periods of job-sharing. The contents should assist in scheme design where part-time employees are included as scheme members. The Chapter should be used as a guide in calculating funding rates where employees have changed status while remaining with the same employer. The normal method of calculating maximum benefits where jobsharers are concerned is by conversion of part-time service to the full-time equivalent.

20.2 Converted service

Where an employee moves from part-time to full-time service or *vice versa*, benefits may be based on final remuneration in the full-time employment. The proviso applying is that part-time employment is converted into its full-time equivalent using the formula:

$$\text{Years of part-time service} \times \frac{\text{Part-time working hours}}{\text{Full-time working hours}}$$

In Examples 1 and 2 below, part-time service is followed by full-time service.

In Examples 3 and 4, full-time service is followed by part-time service.

NB – The examples below show the maximum pension benefit and tax-free lump sum. The amounts paid in practice may be lower.

Example 1:

An employee has:

8 years part-time service (20 hrs) to age 58, final salary €10,000
7 years full-time service (40 hrs) to age 65, final salary €20,000

Convert part-time to full-time: 8 x 20/40 = 4 years
Total full-time service = 4 + 7 = 11

The maximum pension benefit, using the uplifted scale in Chapter 6-6, is 2/3 x €20,000 = €13,333

The maximum tax-free lump sum, using the uplifted scale in Chapter 7-2, where the pension is appropriately commuted, is 42/80 x €20,000 = €10,500

Example 2:

An employee has:

5 years part-time service (20 hrs) to age 61, final salary €8,000
4 years full-time (40 hrs) to age 65, final salary €20,000

Convert part-time to full-time: 5 x 20/40 = 2½ years

Total full-time service = 2½ + 4 = 6½ years

The maximum pension benefit, using the uplifted scale, is 26/60 x 20,000 = 8,667

Maximum tax-free lump sum, using the uplifted scale, where pension is appropriately commuted, is 6½ x 3/80 x 20,000 = 4,875

Example 3:

An employee has:

8 years full-time service (40 hrs) to age 56, final salary €16,000
9 years part-time service (20 hrs) to age 65, final salary €10,000

Convert part-time to full-time: 9 x 20/40 = 4½ years

Total full-time service = 8 + 4½ = 12½

The maximum pension benefit is the greater of:

(i) $\frac{12½}{60}$ x 16,000 = 3,333

or

(ii) Using the uplifted scale: 2/3 x 16,000 = 10,667

Assuming dynamization/indexation @ 1.25, the maximum pension benefit is €10,667 x 1.25 = €13,333.

The maximum tax-free lump sum, using the uplifted scale, when pension is appropriately commuted, is 51/80 x 16,000 = €10,200.

Assuming dynamization/indexation @ 1.25, the maximum lump sum benefit is €12,750

Example 4:

An employee has:

3 years full-time service (40 hrs) to age 59, final salary €20,000
6 years part-time service (20 hrs) to age 65, final salary €10,000

Convert part-time to full-time: 6 x 20/40 = 3 years

Total full-time service = 3 + 3 = 6 years

The maximum pension benefit is the greater of:

(i) 6/60 x 20,000 = 2,000

or

(ii) Using the uplifted scale: 24/60 x 20,000 = 8,000.

Assuming dynamization/indexation @ 1.15, the maximum benefit is 8,000 x 1.15 = €9,200.

The maximum tax-free lump sum, when pension is appropriately commuted, is 6 x 3/80 x €20,000 = €4,500.

Because the converted service totals less than nine years, the uplifted scale is not applicable.

Assuming dynamization/indexation @ 1.15, the maximum lump sum benefit is €4,500 x 1.15 = €5,175.

20.3 Early retirement benefits on change to part-time employment

Revenue does not accept that early retirement benefits are payable to an employee who remains in the service of an employer in a part-time capacity following a change from full-time employment. For the purposes of obtaining early retirement benefits, "retirement" means retirement from service with the employer, with no employee expectation of return with the same or associated employer.

20.4 Employee contributions

Tax relief for employee contributions (ordinary annual contributions and additional voluntary contributions - AVCs) is always restricted to the age-related percentage limit of remuneration in the year of payment and subject to the upper income limit (currently €115,000).

20.5 Death-in-service

Spouses, civil partners and/or dependents' pensions should be calculated on the basis that the terms of employment, full-time or part-time, at the time of death would have remained unchanged until normal retirement date.

For the purposes of maximum lump sum death-in-service benefits, the normal definitions of final remuneration apply. However, in a change from full-time to part-time service, for the purposes of calculating lump sum death-in-service benefits, final remuneration may be calculated by reference to a year ended not earlier than 36 months prior to the date of change.

20.6 Final remuneration

As an alternative to calculating final remuneration by reference to full-time remuneration prior to the changeover with appropriate dynamization/indexation, either of the following options may apply:

(a) Final remuneration in relation to previous full-time service or converted service may be calculated by reference to current remuneration of a full-time jobholder provided it can be clearly established that an equivalent full-time position continues to exist.

(b) In relation to converted service only, final part-time remuneration may also be converted into its full-time equivalent. In Example 3 in paragraph 20.2 above conversion of part-time final remuneration is as follows:

€10,000 x 40 hours/20 hours = €20,000

The maximum pension benefit is then the greater of –

12½/60 x 20,000 = €4,167

or

2/3 x 20,000= €13,333

(Dynamization/indexation does not apply in this instance.)

20.7 Calculating retirement benefits – alternative methods

Benefits can still be calculated based on the traditional method of final remuneration and actual service where the final service is part-time.

In Example 4, final remuneration (which was part-time) is €10,000; the service is 9 years (three years full-time and six years part-time). The pension benefit is 36/60 x 10,000 = €6,000.

If, in Example 4, full-time service followed part-time service, it would not be acceptable to apply the uplifted scale to a full-time salary of €20,000. Benefits should be calculated based on the converted service, as shown in the Example.

NB – As noted at paragraph 20.2 above, the amounts shown are maximum benefits and the amounts paid in practice may be lower.

20.8 Employees with part-time service only

If all service is given on a part-time basis, two options are available:

(i) convert the service to its full-time equivalent and calculate benefits using the uplifted scale based on the final remuneration applicable to the full-time equivalent, or

(ii) calculate benefits based on the unconverted service and final remuneration using the uplifted scale.

Retirement Annuity Contracts

Chapter 21

Document last reviewed May 2021

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21.1 Introduction

The legislation governing retirement annuity contracts (RACs), often referred to as personal pensions, is contained in sections 783, 784 and 785 to 787 of the Taxes Consolidation Act 1997 (TCA). The contract must be between an individual and an insurance company, sometimes referred to as a "life office". The life office will agree the terms of a standard contract with Revenue and can then offer the contract. Following receipt of a contribution or premium, the insurance company issues an RAC certificate to the individual, who can then claim tax relief.

21.2 Eligibility

To obtain tax relief on contributions to a contract, an individual paying into the contract must have a source of "relevant earnings", which means income arising in a tax year from a trade or profession or from a non-pensionable employment.

A "non-pensionable employment" is one where either the individual is not included for retirement benefits under an approved occupational pension scheme relating to the employment or where the sole benefit arising is a lump sum payable upon death.

The fact that an individual may have a separate source of pensionable employment does not prevent them claiming tax relief if they have a source of relevant earnings. However, tax relief can only be claimed against the source of relevant earnings.

Only earned income qualifies for tax relief on contributions. Income from an investment company does not qualify.

An individual working abroad on a temporary basis may continue to make contributions provided that the secondment abroad is directly related to their source of earnings prior to the move and is for a period of less than five years with a clear expectation of return following the absence.

In the case of married couples or civil partnerships, each spouse or civil partner must have their own source of relevant earnings to obtain or contribute to a contract. Tax relief is allowable against the individual spouse's or civil partner's relevant earnings only.

21.3 Tax relief

As with other pension products, tax relief for premiums paid in respect of RACs is subject to two main limitations.

The first, set out in sections 774 and 776 TCA, is an age-related percentage limit of an individual's earnings in respect of the office or employment for the year for which the contributions are paid. The maximum amount of pension contributions in respect of which an individual may claim tax relief may not exceed the relevant age-related percentage of the individual's earnings in any year of assessment.

The age-related percentage limits are:

Age	Limit
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-60	35%
60 or over	40%

A 30% limit applies below the age of 50 years to certain categories of professional sportspersons.[1]

The second, set out in section 790A TCA, is an overall upper limit on the amount of earnings that may be taken into account for tax relief purposes. The earnings limit is set at €115,000 for 2011 and subsequent years.[2] This limit applies whether an individual is contributing to one or more than one pension product.

Where an individual is contributing solely to one or more RACs the maximum amount of tax relievable premiums is the relevant age-related percentage of the lower of:

- the individual's net relevant earnings, and
- the earnings limit.

Where an individual has two sources or more of income (for example, earnings from employment and profits from self-employment) and is making pension contributions to an occupational pension scheme and to an RAC. the single aggregate earnings limit of €115,000 applies in determining the amount of tax relievable contributions.[3]

[1] The categories are athletes, badminton players, boxers, cricketers, cyclists, footballers, golfers, jockeys, motor racing drivers, rugby players, squash players, swimmers and tennis players – section 787(8A)-(8C) and schedule 23A TCA.

[2] For years of assessment prior to 2011, the earnings limits were as follows: 2003 to 2006 - €254,000; 2007 - €262,382; 2008 - €275,239; 2009 and 2010 - €150,000. For the year of assessment 2010, the earnings limit is deemed to be €115,000 for the purpose of determining how much of a premium paid by an individual in the year of assessment 2011, is to be treated as paid in the year of assessment 2010.

[3] Please refer to Chapter 26 for detailed information and examples on tax relief for pension contributions, including contributions to more than one pension product.

Where full relief cannot be given for a year of assessment in respect of premiums paid in that year, the unrelieved amount may be carried forward to the next or succeeding years and treated as a qualifying premium paid in subsequent years.

If a premium is paid after the end of the year, but on or before 31 October of the following year, relief may be claimed for the previous year provided an election to do so is made by the individual on or before the 31 October of the following year. Taxpayers who file and pay online via the Revenue Online Service (ROS) or myAccount may avail of the extended return filing and payment date to make an election and pay a premium. As the payment of a qualifying premium is a pre-condition to the availability of relief, an election cannot be made in advance of such a payment.

The date for making an election in respect of premiums paid in the year of retirement may be extended to 31 December of that year in certain circumstances (see Appendix III of the Manual).

Full details of RAC premiums should be included on the annual Return of Income. Employees contributing to an RAC may be given tax relief via the net pay arrangement, as is the case for additional voluntary contributions (AVCs).

Tax relief is not transferable between spouses or civil partners.

The calculation of the respective amounts of net relevant earnings for retirement annuity relief under section 787(8) TCA and of total income for chargeable annual payments to "descendants" under section 792(2) TCA, in circumstances where those provisions interact, gives rise to complex computations. To overcome difficulties in this regard, the calculation of the limits to the reliefs may be made as follows:

- the chargeable annual payments to "descendants" in accordance with section 792 TCA may be computed as 5% of the provisional total income before deducting retirement annuity relief, and
- the retirement annuity relief in accordance with section 787 TCA may be computed as the appropriate age-related percentage limit of net relevant earnings after deducting the amount in respect of chargeable annual payments to "descendants" as computed.

21.4 PRSI and Universal Social Charge

There is no relief from PRSI or the Universal Social Charge (USC) for premiums paid into RACs.

21.5 Benefits on retirement

Benefits may be taken at any time after age 60, even if the individual is still working, but must be taken on or before the individual's 75th birthday (see Paragraph 21.8 in relation to RAC benefits which are not taken on or before an individual's 75th birthday). In certain

occupations, benefits may be taken before age 60 but not before age 50, with the prior approval of Revenue. In cases of serious ill-health, benefits may be taken at any age provided the life office has received medical evidence to show that the individual is “permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted” (Section 784(3)(b) TCA).

Up to 25% of the fund may be taken as a tax-free lump sum (see Chapter 27) and the balance used to either purchase an annuity from a life office or to exercise one of the retirement options detailed in Chapter 23 , Approved Retirement Funds (ARFs). All annuity payments are chargeable to tax under Schedule E.

Section 787TA TCA provides a one–off opportunity (the “encashment option”) for individuals with dual private and public sector pension arrangements who meet certain conditions to encash their private pension rights, in whole or in part, from age 60 (or earlier, where retirement is due to ill health) with a view to eliminating or reducing the chargeable excess that would otherwise arise when their public service pension crystallises. The exercise of this option attracts income tax (which is ring-fenced) at the point of encashment on the full value of the rights at the higher rate of tax in force at that time plus 4% USC. No benefits can be taken from a scheme in respect of which the encashment option has been exercised. Chapter 25 gives information on the circumstances in which a chargeable excess can occur.

Chapter 7.4 outlines the circumstances in which the practice relating to the commutation of trivial pensions may be extended to holders of RACs.

21.6 Death benefits

Where an individual dies before retirement, the value of their pension fund may be used to purchase a spouse’s, civil partner’s or dependant’s pension or, if no pension is purchased, the fund may be paid to the individual’s personal representatives. A contract approved under section 785 provides death benefits only. Total relief for both section 784 and 785 contracts are limited to the age based percentage limits and earnings ceiling detailed above.

Paragraph 21.8 outlines the treatment of cash and other assets in an RAC from which benefits had not been taken on or before the individual’s 75th birthday.

21.7 Group schemes

A representative body may establish, under an irrevocable trust, a group scheme to provide benefits under sections 784 and 785 TCA. The same conditions apply to a group scheme as apply to an individual RAC. A group scheme must be established by a body of persons comprising or representing the majority of the individuals so engaged in the State.

21.8 Retirement benefits not taken on or before age 75

An RAC from which retirement benefits have not commenced on or before the date of an individual's 75th birthday is treated as becoming a vested RAC (within the meaning of section 787O TCA) on that date. Where the individual was 75 before 25 December 2016 (the date on which Finance Act 2016 was passed), the RAC is deemed to vest on 25 December 2016. A consequence of an RAC vesting in these circumstances is that the individual cannot access the RAC assets in any form from the date of their 75th birthday. As a transitional measure, the owner of an RAC which is deemed to vest on 25 December 2016 (i.e., where the owner was aged 75 years before that date) may, on or before 31 March 2017, take retirement benefits from the RAC in the form of an annuity, a retirement lump sum or under the ARF options.

The vesting of an RAC is a "benefit crystallisation event" (BCE) for the purposes of Part 30, Chapter 2C TCA (see Chapter 25).

Cash and other assets in a vested RAC representing an individual's rights under the RAC when they die are treated as if they were cash and other assets of an ARF and section 784A(4) TCA applies accordingly (see Chapter 23.10).

Similar vesting provisions apply to PRSAs (see Chapter 24).

Pension Adjustment Orders

Chapter 22

This document should be read in conjunction with section 787O of the Taxes Consolidation Act 1997 (TCA)

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Introduction

The provisions of the Family Law (Divorce) Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 can have significant implications for pensions. Practitioners are advised to consult the Pensions Authority Guidance Notes (note – Revenue is not responsible for the content of external websites). The courts have powers to make a pensions adjustment order (PAO) which entitles a former spouse, civil or cohabiting partner and/or dependants to a specific proportion of an individual's benefits under various pension arrangements. A PAO can apply to benefits held by an occupational pension scheme, buy-out bond (BOB), retirement annuity contract (RAC), RAC trust or personal retirement savings account (PRSA). A PAO may include death in service benefits and dependants' benefits. The purpose of this chapter is to set out how a PAO affects the calculation of benefits.

1 Options for beneficiaries in respect of designated benefits

A beneficiary under a PAO (that is, a former spouse or former civil or cohabiting partner) has, in respect of their designated benefits from the retirement arrangement in question, the option of retaining the benefits in the member's arrangement until the member retires or draws them down.

Where benefits have not commenced the PAO beneficiary has further options depending on the type of pension arrangement involved.

1.1 Occupational pension scheme

The PAO beneficiary may create, at the discretion of the trustees, an independent benefit in the same scheme or take a transfer value to an occupational pension scheme (of which the PAO beneficiary is a member), a buy-out bond or a PRSA.

1.2 Buy-out bond

The PAO beneficiary may transfer the benefits to an occupational pension scheme (of which the PAO beneficiary is a member) or to a buy-out bond.

1.3 Personal Retirement Savings Account (PRSA)

The PAO beneficiary may transfer the benefits to an occupational pension scheme (of which the beneficiary is a member) or to a PRSA.

1.4 Retirement Annuity Contract (RAC)

The PAO beneficiary may transfer the benefits to a PRSA or to an RAC. In this scenario, the PAO beneficiary may opt to take a transfer value of the designated benefits to an RAC notwithstanding that he or she may not have a source of relevant earnings and, as

such, may not, strictly speaking have that option under Part 30 of the Taxes Consolidation Act 1997 (TCA).

Examples of calculations are in paragraph 5.

2 Impact on member

In the case of occupational pension schemes, the maximum benefit which a member may take from a scheme is exactly the same whether or not part of the benefit is the subject of a PAO. The existence of a PAO does not affect maximum contribution limits for either employers or employees.

Any benefit which is the subject of a PAO is regarded as part of the member's benefit for the purposes of calculating maximum benefits for the member. It follows that the maximum benefit payable to the member is the amount calculated using the normal rules, **less** any amount which is the subject of a PAO. This applies whether the PAO results in the benefits being retained in the member's scheme or transferred to another scheme. This principle applies equally to pension and lump sum benefits. If a transfer payment is made, the value at the date the member spouse or civil partner (that is, the PAO beneficiary) takes benefits is the amount which is treated as a retained benefit. If the exact value is not known, the original transfer payment should be revalued in line with Pensions Act revaluation requirements.

3 Impact on beneficiary

In the case of occupational pension schemes, the benefit arising from a PAO is not regarded as a retained benefit for the purposes of calculating maximum benefits for the PAO beneficiary. Any pension is, however, liable to taxation in the hands of the recipient.

4 Examples of benefit calculation

Example 1: Designated benefit retained in pension scheme
An occupational pension scheme provides a pension at normal retirement age (NRA) of 1/60th per year of service. John joined the scheme on 1 January 1991 at age 35. He married on 1 January 1988 and divorced on 1 January 2006. He retired on 1 January 2021 at age 65.

The PAO specified that 50% of the pension relating to the period John was married **and** a scheme member be allocated to his non-member spouse, which is a total of 15 years (1/1/91 to 1/1/06). His final remuneration was €90,000 at NRA (age 65).

How are John's benefits at NRA calculated?

John was a scheme member for 30 years and married for 15 of those years.

John's pension is €90,000 x 30/60 = €45,000

His non-member spouse's pension is €45,000 x 15/30 x 50% = €11,250

The pension of €11,250 paid to the non-member spouse reduces John's pension.

The pension paid to John is €33,750 (€45,000 - €11,250).

Example 2: Benefit transferred to another product
June joined an occupational pension scheme on 1 January 2005. She married on 1 January 2010 and divorced on 1 January 2020. The PAO specified that 50% of the pension relating to the period June was married **and** a scheme member be allocated to her non-member spouse.

June was a scheme member for 15 years (2005 to 2020) and married for ten of those years (2010 to 2020).

June's pension scheme is a defined contribution scheme and the value of June's fund at the date of divorce was €40,000. Her non-member spouse opts for a transfer to a PRSA.

The transfer payment to June's former spouse is: €40,000 x 50% x 10/15 = €13,333.

5 Approved Retirement Fund and Approved Minimum Retirement Fund

A transfer from an Approved Retirement Fund (ARF) into another ARF in the name of a spouse or civil partner in exercise of rights under a PAO will not be regarded by Revenue as a distribution from the transferring ARF.

Similar treatment will also apply where a transfer occurs in exercise of rights under a Property Adjustment Order.

In both scenarios the recipient spouse or civil partner may open an ARF to facilitate the transfer notwithstanding that he or she may not, strictly speaking, have that option under Part 30 of the Taxes Consolidation Act 1997.

Previously, individuals could also transfer to an Approved Minimum Retirement Fund (AMRF). However, AMRFs were abolished by Finance Bill Act 2021. All monies in AMRF products were automatically transferred to ARFs from 1 January 2022. Previous

transfers from an ARF/AMRF into another AMRF in the name of a spouse or civil partner in exercise of rights under a pension or property adjustment order were not regarded by Revenue as a distribution from the transferring AMRF.

6 Interaction with limit on tax relieved pension funds

Please refer to Pensions Manual Chapter 25.

7 Trivial pensions

Please refer to Pensions Manual Chapter 7.

8 Taxation of retirement lump sums

Please refer to Pensions Manual Chapter 27.

Approved Retirement Funds

Pensions Manual – Chapter 23

This chapter should be read in conjunction with Part 30, Chapter 2 of the Taxes Consolidations Act 2007

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1 Introduction

This Chapter sets out the options on retirement for pension arrangements introduced in Finance Act 1999. Rather than purchase an annuity or pension, an individual can take the balance of their pension fund in cash (subject to income tax under Schedule E) or invest it in an Approved Retirement Fund (ARF) as appropriate. These options, which apply to that part of a pension fund remaining after the drawdown by the individual of the appropriate retirement lump sum, are collectively referred to as the 'retirement options' in this Chapter.

Previously, individuals were required to invest a portion of their pension fund in an Approved Minimum Retirement Fund (AMRF). However, the AMRF requirement was abolished in Finance Act 2021. Details of AMRFs are retained in this Chapter for informational purposes only.

This Chapter should be read in conjunction with Pensions Tax and Duty Manuals (TDM) Chapters 6 and 7 dealing with maximum benefits for employees (including directors), and Chapters 21 and 24 dealing with Retirement Annuity Contracts (RACs) and Personal Retirement Savings Accounts (PRSAs).

The topics covered are:

- Eligibility
- Specified Income Requirement
- Approved Minimum Retirement Funds
- Withdrawals from an AMRF/Conversion of an AMRF to an ARF
- Full withdrawal of balance in retirement fund
- Approved Retirement Funds
- Qualifying Fund Managers
- Death
- Proprietary Directors
- Additional Voluntary Contributions
- Buy Out Bonds
- Imputed Distributions

- PAYE Exclusion Orders.

2 Eligibility

The retirement options are available only to certain individuals who started to take retirement benefits after 2 December 1998. They apply at retirement only, with the exception of benefits transferred to an ARF on the death-in-service of an employee of an occupational pension scheme (see Chapter 10). In such cases, the retirement options are not available to such beneficiaries, benefits are transferred to an ARF and subject to the rules on ARFs (see paragraph **Error! Reference source not found.**).

The retirement options are available to:

- All holders of retirement annuity contracts (RACs) set up after 6 April 1999 and, in certain circumstances, holders of contracts established prior to that date.

- Members of retirement annuity trust schemes approved under section 784(4) Taxes Consolidation Act 1997 (TCA).

- Holders of personal retirement savings accounts (PRSAs).

- All members of defined contribution (DC) schemes and members of defined benefit (DB) schemes who are proprietary directors, in respect of their accrued benefits from:

    - the scheme, including benefits from additional voluntary contributions (AVCs), or

    - AVCs only.

- Members of DB schemes who are not proprietary directors in relation **only** to pension benefits arising from their AVCs.

- The spouse or former spouse, or (with effect from 27 July 2011) civil partner or former civil partner of all members of DC or DB schemes where there is a pension adjustment order. (Where the member of a DB scheme is not a proprietary director, the ARF option applies **only** to benefits arising from AVCs).

(Please refer to paragraph 12 for additional information on AVCs)

Notes

- Prior to 6 February 2011 only proprietary director members of retirement benefits schemes (and their spouse or former spouse) could avail of the retirement options in respect of all their benefits (whether from a DB or DC scheme). Other members of such schemes (again whether DB or DC schemes) could avail of the options in respect of benefits arising from AVCs only.
- In relation to DC schemes, the retirement options apply to the main benefits from schemes approved on or after 6 February 2011 and from schemes in existence prior to that date where the scheme rules are amended to allow the exercise of the option.
- Where an individual opts for the retirement options (other than an individual who opts only in respect of his or her AVCs) the value of the lump sum that he or she can take in part commutation of pension cannot exceed 25% of the value of the pension fund.
- The previous specified minimum income requirement for all individuals wishing to avail of the retirement options no longer apply from 21 December 2021, the date of the passing of Finance Act 2021.
- Benefits being transferred to an ARF on the death-in-service of a member of an occupational pension scheme can be provided for a spouse, or civil partner, or where there is no spouse or civil partner, for dependants of the deceased member, in accordance with section 772(3)(b) TCA.

The option to purchase an annuity at retirement remains.

Holders of more than one RAC may exercise a different option in respect of each contract. Similarly, holders of more than one PRSA may also exercise a different option in respect of each contract.

Members of multiple occupational pension schemes relating to the same employment must exercise the same option in respect of each scheme. However, as noted above, an individual may exercise a different option in relation to AVC funds than that made in respect of his or her main occupational pension scheme benefits.

A ”proprietary director” means a director who, either alone or together with his or her spouse, civil partner and minor children or the minor children of the civil partner, is or was the beneficial owner of shares which, when added to any shares held by the trustees of any settlement to which the director or his or her spouse or civil partner has transferred assets, carry more than 5 per cent of the voting rights in the company providing the benefits or in a company which controls that company, at any time within three years of the date of –

- The specified normal retirement date,
- An earlier retirement date, where applicable,

- Leaving service, or
- In the case of a pension or part of a pension payable in accordance with a pension adjustment order, the relevant date in relation to that order.

"AVCs" mean voluntary contributions made to a scheme by an employee which are -

- contributions made under a rule or part of a rule, as the case may be, of a retirement benefits scheme (in this definition referred to as the "main scheme") which provides specifically for the payment of members' voluntary contributions, other than contributions made at the rate or rates specified for members' contributions in the Rules of the main scheme, or

- contributions made under a separately arranged scheme for members' voluntary contributions that is associated with the main scheme.

3 Benefits from DC scheme replacing wound-up DB scheme

An exception to the requirement that members of multiple occupational pension schemes and 5% directors must exercise the same retirement option in respect of each scheme in respect of the same employment applies from 1 April 2014. From that date the ARF/taxable lump sum options will be permitted in respect of a DC scheme that is set up by an employer to replace a wound-up DB scheme for the purpose of future service pension accrual in respect of the same employment. The details of how this will apply in practice are as follows:

- ❖ The aggregated total of benefits payable under all schemes relating to the single employment cannot exceed the Revenue permitted maximum benefits on the uplifted scale, that is, 2/3rds of final remuneration where service with the employer is ten or more years. Administrators must ensure that the combined value of the benefits taken from both schemes (and having regard to any other schemes) is within Revenue limits. This includes the aggregate of any tax-free lump sums payable from both schemes, any pension payable under the DB scheme and any amount of the DC fund that may be placed in an ARF, used to purchase an annuity, or taken as a taxable lump sum.

- ❖ If no retirement lump sum is taken from the DB scheme, a retirement lump sum of up to 25% of the DC scheme fund may be taken (tax-free to €200,000) provided the pension payable under the DB scheme does not exceed the maximum permitted on application of the 9:1 commutation ratio to the lump sum amount. (That is, every €1 of the pension in payment is commuted to a €9 in the lump sum.)

- ❖ If a retirement lump sum of 1½ times final remuneration (or the maximum allowed on the uplifted scale for the total service with the employer) is taken

from the DB scheme, then no retirement lump sum may be taken from the DC scheme.

- If a retirement lump sum of less than 1½ times final remuneration is taken from the DB scheme, then the retirement lump sum (up to 25% of the fund value) that may be taken from the DC scheme must be such as will not bring the total retirement lump sum amount above the maximum allowed on the uplifted scale for the total service, and the pension payable under the DB scheme must not exceed the maximum permitted on application of the 9:1 ratio to the total lump sum amount.

Example:

Z has 32 years' service in a DB scheme which pays a lump sum of €96,000 (96/80 of her final remuneration of €80,000) and a pension of €32,000 ((€80,000 x 32/60) – (€96,000/9)).

She has been a member of a DC scheme for five years with a fund value of €105,000. She takes a lump sum from her DC fund of €24,000, or 22.857% of the fund value, to bring her lump sum to €120,000 (1½ times final remuneration of €80,000).

Applying the 9:1 ratio to the lump sum of €120,000 means it is equivalent to €13,333 of pension in payment (€120,000/9).

The maximum pension that she can receive on application of the 9:1 ratio to the aggregate lump sums of €120,0€00 from the DB and DC schemes is €40,000 ((€80,000 x 2/3) – (€120,000/9)), so the additional lump sum does not impact on her DB pension.

The remainder of the DC fund (€105,000 - €24,000 = €81,000) could provide an additional annuity which, taking into account what is already payable from the DB scheme, will be within the maximum (i.e., €40,000) permitted under the uplifted scales. Therefore, the balance of the DC fund may be used to purchase an annuity, placed in an ARF, or taken as a taxable lump sum.

4 Specified income requirement

Up to 31 December 2021, an individual aged under 75 years who wished to have the balance of her or his pension fund, after taking any retirement lump sum, paid to her or him or transferred to an ARF, had to have a minimum guaranteed annual pension income ("specified income") of €12,700 for life in payment at the time an ARF option was exercised to avoid having to put money into an Approved Minimum Retirement Fund (AMRF) or purchase an annuity.

Finance Act 2021 abolished the specified income requirement when an ARF option is exercised.

5 Approved Minimum Retirement Fund (AMRF)

Previously, where an individual aged under 75 years did not satisfy the specified income requirement, she or he had to, after taking a retirement lump sum, transfer €63,5000 or the balance of the pension fund, if lower than €63,500, to an AMRF or use it to purchase an annuity (or a combination of both).

As noted above, Finance Act 2021 removed the specified income requirement for individuals exercising an ARF option and made a number of changes to AMRF legislation, effectively abolishing them. Any AMRFs immediately became ARFs on 1 January 2022. AMRF holders should have been notified of this change by Qualifying Fund Managers (QFMs) and any queries in this regard should, in the first instance, be directed to the relevant QFMs.

The changes made were -

- The AMRF requirement no longer applies to individuals availing of the ARF option from occupational pension schemes, retirement annuities and personal retirement savings accounts,
- On 1 January 2022 all current AMRFs automatically become an ARF, and the operating and administrative provisions rules applying to ARFs now apply to those funds (see paragraph 9), and
- QFMs shall not accept any assets into an AMRF on or after 1 January 2022.

6 Withdrawals from an AMRF/Conversion of an AMRF to an ARF

Finance Act 2014 introduced a measure, effective from 1 January 2015, which allowed for the payment or transfer on one occasion only in any tax year of up to 4% of the value (at the time of the payment or transfer) of the assets in an AMRF to the AMRF owner. Any amount paid or transferred to the owner is taxable in the same manner as a distribution from an ARF (see paragraph 8). This still applied to withdrawals from an AMRF prior to them automatically becoming an ARF on 1 January 2022. From 1 January 2022, distributions will be from an ARF and taxable as such.

Please refer to paragraph 15 regarding the issue of PAYE Exclusion Orders.

6.1 Pension and Property Adjustment Orders

A transfer from an ARF into another ARF in the name of a spouse or civil partner in exercise of rights under a pension or property adjustment order will not be regarded by Revenue as a distribution from the transferring ARF.

In both scenarios the recipient spouse or civil partner may open an ARF to facilitate the transfer notwithstanding that he or she may not, strictly speaking, have that option under Part 30 of the TCA 1997.

Previous transfers from an ARF/AMRF into another AMRF in the name of a spouse or civil partner in exercise of rights under a pension or property adjustment order were not regarded by Revenue as a distribution from the transferring AMRF.

For further information on Pension Adjustment Orders please refer to TDM Chapter 22.

7 Full withdrawal of balance in retirement fund

The balance of the retirement fund, after any amount taken as a retirement lump sum, may be paid to the individual. This amount is treated as emoluments of the individual and is taxable under Schedule E. The person making the payment (Life Office or Scheme administrator) is deemed to be an employer for all obligations under the TCA.

"Life offices" (that is, insurance companies) and scheme trustees should record the following details of individuals availing of this option: name, address, PPS number, amount withdrawn.

Please refer to paragraph 15 regarding the issue of PAYE Exclusion Orders.

8 Approved Retirement Fund

As an alternative to full fund withdrawal, an individual may transfer the balance of the retirement fund, excluding any amounts taken as a retirement lump sum or used to purchase an annuity, into an ARF. The "life office" or scheme administrator should pay any retirement lump sum to the individual and/or purchase an annuity for the individual prior to transferring the balance of the fund to an ARF. The funds in the ARF remain the property of the individual who is the beneficial owner and may be withdrawn at any time.

Income and gains of ARF funds are exempt from tax while retained in the ARF.

An amount withdrawn from an ARF, including an imputed amount (see paragraph 14 and TDM Chapter 28), is referred to as a "distribution". A distribution has a very wide meaning and encompasses any payment or transfer of assets out of an ARF, or the

assignment of the ARF, or assets in the ARF, by any person, including a payment, transfer or assignment to the person beneficially entitled to the assets. It does not, however, include the transfer of assets to another ARF owned by the individual or the transfers described in paragraph 6.1.

Without prejudice to the generality of the definition of the term "distribution", the following are specifically regarded as distributions in section 784A(1B) TCA:

- loans made to the beneficial owner or connected person, or the use of the assets of an ARF as security for such a loan,
- acquisition of property from the beneficial owner or connected person,
- sale of an ARF asset to the beneficial owner or connected person,
- acquisition of residential or holiday property for use by the beneficial owner or connected person,
- acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person,
- acquisition of shares in a close company in which the beneficial owner, or connected person, is a participator,
- the use of ARF assets by an ARF owner to invest in any fund, trust or scheme, etc., where a pension arrangement of a person connected with the ARF owner (for example, an adult child, spouse, etc.) invests in the same, or any other, fund, trust or scheme etc., and there is an arrangement whereby the investment return to the pension arrangement is attributable in any way to the investment by the ARF owner (for example, any remaining income or capital in the fund reverts to the pension arrangement on the death of the ARF investor or otherwise on the winding up of the fund). (Where a distribution arises in these circumstances, section 790E TCA provides that the connected person's pension arrangement is chargeable to income tax under Case IV of Schedule D on any income or capital gains arising to the arrangement from the investment in the fund etc.).

In the case of property acquisition, the distribution is the amount of the value of the ARF assets used in connection with the acquisition, improvement and/or repair of the property.

A close company means a company under the control of five or fewer participators, or of participators who are directors. Please refer to section 430 TCA for a complete definition.

A participator in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to section 433 TCA for a complete definition.

Definitions of "connected persons" and "relative" are contained in section 10 TCA.

Any distribution from an ARF is deemed, for the purposes of section 784A TCA, to have been made by the QFM.

A distribution is treated as a payment of emoluments to which Schedule E applies. However, the following are not taxable distributions.

- A distribution from an ARF which is used to reimburse a pension scheme administrator for chargeable excess tax paid by that administrator (see Chapter 25) relating to the ARF holder.

- Where a benefit crystallisation event (BCE) giving rise to chargeable excess tax occurs in respect of retirements benefits which are the subject of a pension adjustment order (PAO), a distribution from an ARF of the non-member spouse or partner for the purposes of paying his or her share of the chargeable excess tax arising on the BCE, or a part of it.

- Certain distributions arising following the death of the ARF owner (see 10).

Please refer to paragraph 15 regarding the issue of PAYE Exclusion Orders.

An individual may have more than one ARF. Transfers may be made from one ARF to another ARF but may not be made from a post-April 2000 ARF to a pre-April 2000 ARF.

ARF funds may be used at any time to purchase an annuity payable to the beneficial owner. The annuity purchase is not a distribution. However, the purchase of an annuity for any other person is treated as a distribution.

9 Qualifying Fund Manager (QFM)

An ARF, and previously an AMRF, must be managed by a Qualifying Fund Manager. A QFM is defined in section 784A TCA as one of the following:

- Bank
- Building society
- Trustee savings bank
- Post office savings bank

- Credit union
- Collective investment undertaking (e.g. unit trust)
- Life assurance company
- Stockbroker
- Certain authorised investment intermediaries.

The QFM has complete responsibility for the discharge of all obligations in relation to tax due on all distributions from the ARF in question and, previously, the AMRF in question.

A QFM who is not resident in the State, or who is not trading in the State through a fixed place of business, may appoint a resident administrator to take responsibility for the obligations imposed by the Tax Acts. If a resident administrator is not appointed, a QFM, resident in another EU Member State, must enter into a contract with Revenue agreeing to discharge all legislative obligations imposed on the QFM.

A QFM must advise Revenue of the intention to act as a QFM within one month of commencing to act in that capacity.

Prior to the establishment of an ARF, the QFM must receive a **declaration** from the beneficial owner and a **certificate** from the Life Office, Scheme Administrator or PRSA Provider. This information is also required where there is a transfer from one ARF to another.

The **declaration** should contain the following:

- the name, address and tax reference number of the beneficial owner;
- confirmation that the assets which are to be transferred consist only of assets to which the individual is beneficially entitled;
- confirmation that the assets which are to be transferred are currently held in an RAC, PRSA, or an exempt approved occupational pension scheme; and
- the policy number and name of the Life Office/Provider or the name and Revenue reference number of the scheme.

10 Death

Any payment, or imputed payment, from an ARF following the death of the ARF owner is a distribution and is taxable as such. The amount of the distribution is treated as

income of the ARF owner for the year of assessment in which he or she dies. There are some exceptions:

- a transfer to an ARF in the name of the deceased's spouse or civil partner (referred to below as the second-mentioned ARF) is not a distribution;
- a transfer to, or for the sole benefit of, any child of the deceased or of the deceased's civil partner who is aged under 21 years at the time of ARF owner's death is not a distribution.

However, a distribution:

- from the deceased's ARF to a child of the deceased or of the deceased's civil partner who is 21 years or over at the time of death, or
- from the second-mentioned ARF, following the death of the surviving spouse or civil partner, to a child of the spouse or civil partner who is 21 years or over at the time of that death (but not to a child who is under 21 at that time),

is subject to an income tax charge under Case IV of Schedule D at the rate of 30% (which is a ring-fenced final liability tax).

Case IV tax deducted by a QFM from this type of distribution is subject to the reporting and collection provisions applying to the excess lump sum tax regime (see TDM Chapter 27).

Prior to 31 March 2012, the rate of charge was the standard rate of income tax and the tax was collected under the PAYE system.

The position regarding Income Tax and Capital Acquisitions Tax on the death of the ARF holder and on the subsequent death of the spouse/civil partner into whose ARF the original ARF was transferred is summarised below. The usual CAT tax-free thresholds apply:

Beneficiary	Death of Holder		Death of Spouse/Civil Partner	
	Income Tax	CAT	Income Tax	CAT
Spouse/civil partner	No	No	N/a	N/a
Child under 21	No	Yes	No	Yes
Child 21 or over	Yes	No	Yes	No
Others	Yes	Yes	Yes	Yes

11 Proprietary directors

The options outlined in this Chapter are available to proprietary directors (also referred to as '5% directors') regardless of whether the scheme is a DC or DB scheme. A 5% director wishing to exercise one of the retirement options is still subject to the usual funding and contribution rules. A maximum benefits test should take place at retirement and retirement options are based on the fund determined by the maximum benefits test.

A 5% director taking one of the options may take a retirement lump sum of up to 25% of the value of the retirement fund. This replaces the amount that is calculated by reference to final remuneration and years of service (see TDM Chapter 7). All schemes for proprietary directors approved since 6 April 1999 must offer the retirement options.

Where a 5% director exercises a retirement option, he or she must exercise the same option in relation to all schemes from the same employment.

A retirement option may be exercised on early retirement.

An option may only be exercised when benefits are taken. Where a 5% director reaches normal retirement age (NRA) and continues working but takes benefits at NRA and is eligible to take further benefits on actual retirement at a subsequent date, the benefits must be of the same type as those taken at NRA.

12 Additional voluntary contributions

Paragraph 2 clarifies what contributions qualify for the retirement options. The definition of an AVC excludes employee contributions if such employee contributions are matched by employer contributions. This means that members of DC or DB schemes **cannot** choose to transfer **only their AVC benefits** to an ARF where their AVC contributions are matched by employer contributions. However, in the case of a DC scheme, the transfer to an ARF of pension rights accruing to an individual from AVCs where there are matching employer contributions is permitted where the individual transfers all of his or her accrued rights from both the main scheme and AVCs into an ARF at the same time.

The retirement lump sum calculation used where a retirement option is exercised in respect of AVCs only continues to be on the 3/80th of final remuneration per year of service basis as outlined in TDM Chapter 7.

13 Buy-out bonds

In the case of buy-out bonds (BOBs), access to the ARF option in respect of main scheme benefits under the occupational pension scheme arrangement from which the transfer value to the BOB originated can be summarised as follows:

Defined Benefit (DB) Schemes:

With effect from 22 June 2016, the ARF option is available in respect of transfer values from all DB occupational schemes to BOBs where benefits are taken on or after that date and regardless of when the transfer occurs, i.e., whether the transfer to the BOB took place before that date or from that date.

Prior to 22 June 2016, the ARF option applied only where the scheme member had the right to exercise the option under the scheme rules prior to the date of transfer to the BOB, i.e., where s/he met the proprietary director test before the date of transfer.

Defined Contribution (DC) Schemes:

With effect from 26 May 2014, the ARF option is available in respect of transfer values from all DC occupational schemes to BOBs regardless of when the transfer occurs.

Prior to 26 May 2014, the ARF option was not available in respect of transfers to BOBs which occurred before 6 February 2011 (the date of passing of Finance Act 2011 which extended the ARF option to the main scheme benefit from DC schemes) - other than in the case of proprietary directors.

14 Imputed distributions – up to 31 December 2011

Section 790D TCA, which applies for the year 2012 onwards, provides for a scheme of imputed distributions for both ARFs and vested PRSAs on a composite basis**.** Please refer to Pensions Manual Chapter 28 for further details.

Prior to 2012, the imputed distribution regime applied only to ARFs created on or after 6 April 2000 (the date the existing gross roll-up regime for ARFs was introduced) and applied for all years to 31 December 2011 in respect of assets held in an ARF. An imputed distribution on the market value of assets held in an ARF on the specified date (31 December each year) applied from 2006 to 2011.[1]

[1] The previous scheme, as introduced, provided for a 3% distribution on the market value of such assets, phased in over a three-year period, with a rate of 1% applying in 2007, 2% in 2008 and 3% in 2009. The rate applicable in 2010 and 2011 was 5%. QFMs were required to review all ARFs under their management each year to ascertain if an imputed distribution arose.

More than one ARF

The calculation of the imputed distribution for a year of assessment is based on the aggregate value of the assets in all ARFs, and the aggregate amount of distributions from all ARFs and AMRFs beneficially owned by the individual.

Where the ARF owner has more than one ARF, not all of which are managed by the same QFM, the ARF owner may nominate one of the QFMs for the purposes of operating these provisions and for accounting for any tax due on any overall imputed distribution. This arrangement is optional and there is no obligation on a QFM to accept such a nomination. Where a QFM agrees to act as the "nominee QFM", the ARF owner must advise all the other QFMs involved of the name and address of the nominee, and the "other QFMs" must provide the "nominee QFM" with a certificate detailing the ARF asset values and actual distributions made by them. The "nominee QFM" must then calculate the imputed distribution as if the nominee had managed all of the ARFs and had made all of the actual distributions.

Further information on imputed distributions is provided in Chapter 28.

Procedure for payment of tax

The imputed distribution is to be regarded as a distribution made not later than February in the year of assessment following the year of assessment to which the imputed distribution relates. The specified amount is regarded as having been distributed or made available not later than the second month of the year of assessment following the year of assessment for which the specified amount is determined, in accordance with section 790D(4) TCA. The QFM must deduct tax from the imputed distribution in accordance with the provisions of section 784A(3) TCA. Tax deducted must be included in the QFMs payroll submission to Revenue and the tax paid not later than 14 March of that year. For example, in respect of an imputed distribution calculated for 2019, the tax must be paid by 14 March 2020.

All payments of tax should be forwarded to:

Office of the Revenue Commissioners

Collector-General's Division

PO Box 354

Limerick

The remittance should be accompanied by the following statement completed by the QFM.

Approved Retirement Funds

Name of QFM:

Address:

I confirm that all Approved Retirement Funds under management have been reviewed for the purposes of establishing if liability arises under Section 784A(3) TCA 1997.

Arising from this review, a sum of € ___ is reflected in the payroll submission submitted for (**month**) in respect of tax deducted from (insert number) Approved Retirement Funds and is included in the remittance to the Collector General in respect of that month.

Authorised Signatory: Date:

A payment and return can be sent electronically using Revenue-On-Line (ROS). For details phone 01 738 36 99 or see the Revenue website.

15 Non-Irish residents and ARFs, AMRFs and retirement fund balances

PAYE exclusion orders

Income and assets retained in an ARF (see paragraph 8) are beneficially owned by the ARF owner. Distributions (including deemed distributions) from ARFs are generally[2] treated and taxed as emoluments under Schedule E, regardless of the residence status of the individual recipient.

As distributions from ARFs are not payments of pension, PAYE Exclusion Orders are not issued in respect of such distributions.

PAYE Exclusion Orders are not issued where an individual takes the balance of his or her pension fund as a taxable lump sum (see paragraph 7).

[2] See paragraph 8 for exceptions to the general rule.

Interaction with Double Taxation Agreements (DTAs)

Some of Ireland's Double Taxation Agreements (DTAs) with other countries have a provision dealing specifically with the taxation of distributions from ARFs[3].

For those DTAs which do not have such a provision, while a distribution of income or gains arising from the underlying investments, or of the original capital, is the taxable event in Ireland under domestic legislation, it is not regarded as the taxable event for DTA purposes. As the ARF owner is the beneficial owner of the ARF capital and any income and gains arising, he or she should be treated as such for the purposes of applying the various articles of the DTA between Ireland and the country of residence.

Therefore, to determine where the taxing rights lie in relation to a distribution from an ARF, the distribution should be broken down between the underlying income, gains or capital which it represents. The appropriate articles in the DTA should then be applied accordingly as at the dates on which the income or gains arose to the ARF. If the individual was a resident of Ireland at those dates, the DTA does not apply. Where a distribution involves the return of all or part of the original capital invested in an ARF, then, unless there is a capital article in the DTA, any Irish tax charge under Part 30 TCA that relates to a capital disbursement is not limited by the DTA.

Notwithstanding the foregoing, Revenue had previously allowed on an administrative basis that the tax deducted by a QFM from an ARF distribution could be refunded where the taxpayer could demonstrate that the distribution had been taxed in the DTA country in which they were resident. However, as there is no legislative basis for this approach, it was discontinued.

With effect from 22 December 2017, Revenue only allows for the correct legislative basis for taxing a distribution from an ARF. To determine where the taxing rights lie in relation to the income and gains, the amount of any distribution should be traced to the underlying income, gains or capital which it represents.

The DTA treatment of ARF distributions as described above also applies from 22 December 2017 to distributions and withdrawals from AMRFs (held before they automatically became ARFs on 1 January 2022) and vested PRSAs (see Chapter 24.10) and where an individual takes the balance of his or her pension fund[4] as a taxable lump sum (see paragraph 7).

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[3] The DTAs with Germany and Pakistan are Ireland's only current DTAs to specifically provide for the taxation of distributions from ARFs. The new DTA with the Netherlands, which was signed in 2019 but is not yet in effect, also contains a provision on ARFs.

Application of DTAs to non-Irish resident owners of ARFs, vested PRSAs and AMRFs.

Owners of ARFs, vested PRSAs and AMRFs (held before 1 January 2022) who are not resident in Ireland may be subject to taxation on this income both in Ireland and their country of residence and subsequently tax relief may be available under the terms of a DTA. Ireland's DTAs provide for relief from double taxation and dispute resolution under the "Elimination of double taxation" and "Mutual agreement procedure" articles in a typical DTA. If a source of income, gains or capital is taxable in both countries which are party to a DTA, generally the country of residence gives credit for any tax payable in the other country.

An ARF distribution might not be fully taxed in the country of residence, depending on how that country classifies the withdrawn amount. For example, some countries tax ARF distributions only to the extent that the income and capital gains arising (but not capital) are remitted to the country of residence.

To ascertain the amount of relief due, information must be provided by the taxpayer indicating how the income arose within the ARF, including the date when the income arose. Once the distribution is broken down into its constituent parts (for example, interest income, dividend income, return of capital, etc.) each part should then be examined to see if DTA relief is available under the different articles of the treaty with the country of residence. Accordingly, full or partial refunds of Irish tax deducted under PAYE may be due to these taxpayers. Case law has established that, where a payment is made from a mixed fund, income and gains of the year are treated as being paid out first, and any amount paid out in excess of that year's income and gains is treated as a return of capital.

Some ARF products sold by life assurance companies are structured as unit linked funds, where the individual invests their pension pot into a pooled fund and owns units in that fund. The ARF owner, in these cases, simply owns a share of that fund, the units; they are not the beneficial owner of the underlying assets in the fund. Revenue accepts that it is not appropriate for the underlying accumulation of income within the unit linked fund to be broken down and provided in support of the refund claim. Accordingly, it is the income and/or gains which arise from the units or disposal of the units that constitute the distribution that arises, much as it does to an individual holder of units.

Taxpayers should, in all cases, consult the relevant treaty and check the relevant provisions to satisfy themselves in terms of its application.

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[4] That is, the balance of the fund after any retirement lump sum and used to purchase an annuity.

Claims for relief must be made through a [Refund of Taxes paid on ARF Distributions Claim] form and returned via MyEnquiries.

Ireland's DTAs which contain a capital article

There are articles dealing with the taxation of capital in a number of Ireland's DTAs. Generally, where the DTA contains a capital article, a distribution from an ARF consisting of capital will be taxable in the country of residence. However, the text of DTAs are not standard and the capital article of a relevant DTA must be examined carefully to ascertain the taxing right to capital.

Ireland's DTAs which deal specifically with ARFs

There is an article dealing with ARFs in Ireland's DTAs with the following countries:

- Germany,
- Netherlands (NB: treaty not yet in effect) and
- Pakistan.

Examples showing the treatment of ARF distributions to an individual resident in a treaty country

Example 1 – ARF holder resident in a country where the DTA does not have a capital article

Elaine, treaty resident for DTA purposes in Country X, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Elaine of €20,000 from her ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

Under the appropriate Articles of the Ireland-Country X DTA, treaty relief is allowed in relation to the income arising from the Dividend Income and the Interest Income.

However, there is no basis for claiming treaty relief under the Ireland-Country X DTA in respect of the capital element of the ARF distribution of €17,350. As a result, an assessment to tax under Schedule E applies, in respect of the capital element of the ARF distribution.

Example 2 – ARF holder resident in a country where the DTA has a capital article

Emma, treaty resident for DTA purposes in Country Y, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Emma of €20,000 from her ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

Under the appropriate Articles of the Ireland-Country Y DTA treaty relief is allowed in relation to the income arising for the full sums of Dividends of €1,750 and Interest of €900.

There is also a basis for claiming treaty relief under the Ireland-Country Y DTA in respect of the capital element of the ARF distribution of €17,350.

Example 3: ARF holder resident in a country where the DTA has an article on ARFs

Sophie, treaty resident for DTA purposes in Country Z, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Sophie of €20,000 from her ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

The Ireland-Country Z DTA states that **"distributions (for the purposes of section 784A of the Taxes Consolidation Act 1997) from an approved retirement fund (within the meaning of that section) that was created by the transfer of accrued rights or assets from a pension fund shall only be taxable by reference to the provisions of that section, notwithstanding any provision of this Agreement."**

Therefore, Ireland retains the taxing right on this ARF distribution. As a result, an assessment to tax under Schedule E applies, in respect of the full ARF distribution.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

Personal Retirement Savings Accounts

Pensions Manual - Chapter 24

This document should be read in conjunction with Part 30 Chapter 2A of the Taxes Consolidation Act 1997

Document last updated July 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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24.1 Introduction

A Personal Retirement Savings Account (PRSA) is a long-term savings account designed to assist people to save for their retirement. PRSA products are approved jointly by Revenue and the Pensions Authority. Anyone may contribute to a PRSA but there is not an automatic entitlement to tax relief. The topics covered in this Chapter are:

- Tax relief
- PRSI and Universal Social Charge
- Benefits on retirement
- Death benefits
- Interaction with other pension arrangements
- Vested PRSAs, AMRFs and "ring-fenced" amounts
- Transfers
- Imputed distributions
- PAYE Exclusion Orders in respect of vested PRSAs
- Anti-Avoidance
- Pension Adjustment Orders
- Retirement benefits not taken on or before age 75

24.2 Tax relief

Tax relief is allowed against "relevant earnings'', which means earnings from a trade, profession, office or employment (section 787B Taxes Consolidation Act 1997 (TCA)). However, an individual who is a member of an approved scheme or a statutory scheme (other than a scheme which is limited to the following benefits – death in service gratuity, pension to surviving spouse, civil partner, children or dependants) may, in relation to her/his income from the office or employment, only claim relief in respect of additional voluntary contributions (AVCs) to a PRSA.

As with other pension products, tax relief for contributions paid in respect of PRSAs is subject to two main limitations.

The first, set out in section 787E Taxes Consolidation Act 1997 (TCA) for PRSAs, is an age-related percentage limit of an individual's earnings in respect of the office or employment for the year for which the contributions are paid. The maximum amount of pension contributions in respect of which an individual may claim tax relief may not exceed the relevant age-related percentage of the individual's earnings in any year of assessment.

The age-related percentage limits are:

Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-60	35%
60 or over	40%

A 30% limit applies below the age of 50 years to certain categories of professional sportspersons.[1]

[1] Athletes, badminton players, boxers, cricketers, cyclists, footballers, golfers, jockeys, motor racing drivers, rugby players, squash players, swimmers and tennis players – section 787(8A)-(8C) and schedule 23A TCA.

Example 1

Mary earns a basic salary of €35,000 per annum. She will be aged 50 in 2022.

The maximum amount of pension contributions Mary may claim tax relief on based on her age-related percentage limit is calculated as follows:

€35,000 x 30% = €9,000 per annum.

Secondly, section 790A TCA places an overall upper limit on the amount of earnings that may be taken into account for tax relief purposes. The earnings limit is set at €115,000 for 2011 and subsequent years. This limit applies whether an individual is contributing to one or more than one pension product.

Where an individual is contributing solely to one or more PRSAs the maximum amount of tax relievable contributions is the relevant age-related percentage of the lower of:

- the individual's net relevant earnings and
- the earnings limit.

Where an individual has two or more sources of income (e.g. earnings from employment and profits from self-employment) and is making pension contributions to an occupational pension scheme and to a PRSA, the single aggregate earnings limit of €115,000 applies in determining the amount of tax relievable contributions.[2]

Example 2

Joe is a member of his occupational pension scheme with his employer, Company X. He is aged 52 in 2022 and earns a basic salary €50,000 per year with Company X. He is also eligible to contribute to a AVC into his employer's pension scheme.

Joe's maximum annual contribution available for tax relief is:

€50,000 x 30% = 15,000

Joe's contribution to his occupational pension scheme in 2022 was 10% x €50,000 = €5,000. This was offset for Joe through the net pay arrangement with his employer.

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[2] Please refer to Chapter 26 for detailed information and examples on how the age-related and earnings limits are applied in respect of contributions to one or more pension products.

Therefore, Joe can contribute up to a further €10,000 (€15,000 tax relief limit minus his normal contributions of €5,000) in AVCs and receive tax relief against his renumeration through payroll in 2022.

Where contributions are paid to a PRSA for AVC purposes, an individual must take account of any relief already granted under the net pay arrangement in respect of her/his main scheme contributions when calculating relief due.

Contributions made by an employer are aggregated with employee contributions for the purposes of calculating the maximum tax relieved contribution (section 787E(2) TCA). **Paragraph 24.6** outlines the position where PRSA contributions are made at the same time as contributions to other pension arrangements.

An individual who is not in pensionable employment is entitled to relief on contributions up to €1,525 even if the contribution exceeds the relevant age-related percentage limit (section 787E(4) TCA). This does not apply in the case of contributions to a PRSA for AVC purposes.

Where full relief cannot be given for a year of assessment for contributions paid in that year, the unrelieved amount may be carried forward to the next or succeeding years and treated as a qualifying contribution paid in subsequent years.

If a contribution is paid after the end of the year, but on or before 31 October of the following year, relief may be claimed for the previous year provided an election to do so is made by the individual on or before 31 October of the following year. Taxpayers who file and pay online via ROS or myAccount may avail of the extended return filing and payment date to make an election and pay a contribution. As the payment of a qualifying contribution is a pre-condition to the availability of relief, an election cannot be made in advance of such a payment.

The date for making an election in respect of contributions paid in the year of retirement may be extended to 31 December of that year in certain circumstances (see Appendix III of the Revenue Pensions Manual).

Full details of PRSA contributions should be included on the annual Return of Income. Employees contributing to an AVC PRSA may be given tax relief via the net pay arrangement, as is the case for AVCs to the main scheme.

Tax relief for PRSA contributions is not transferable between spouses or civil partners.

The method of calculating the respective amounts of net relevant earnings for the purposes of relief for retirement annuities under section 787 TCA and of total income for chargeable annual payments to “descendants” under section 792(2) TCA, as described in Chapter 21.3, may also be applied to PRSAs in the same circumstances.

24.3 PRSI and Universal Social Charge

There is no relief from PRSI or the Universal Social Charge (USC) for contributions made to PRSAs.

24.4 Benefits on retirement

On the first occasion that benefits are taken from a PRSA, up to 25% of the fund may be taken as a tax-free retirement lump sum[3] (section 787G(3)(a) TCA). The balance of the fund may be:

- used to purchase an annuity, or
- taken in cash (subject to income tax under Schedule E), or
- invested in an Approved Retirement Fund (ARF)[4], or
- retained in the PRSA (a PRSA from which retirement benefits have commenced is referred to as a vested PRSA).

Benefits may be taken when the individual reaches age 60[5]. There is a facility to take benefits in stages, but a retirement lump sum may only be taken on the first occasion that benefits are taken.

Benefits from a PRSA must be taken on or before age 75. Please refer to **paragraph 24.13** for the treatment which applies where PRSA benefits do not commence on or before age 75.

An individual who retains the balance of a PRSA (after payment of the tax-free retirement lump sum) in the PRSA, rather than using it to purchase an annuity or transfer it into an ARF, may then draw down from that balance as and when she or he chooses.

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[3] See Chapter 27 for details of the extent to which retirement lump sums may be taken tax free.

[4] Section 14 Finance Act 2021 removed the previous AMRF investment requirement on PRSA benefits being taken on retirement.

[5] Benefits may be taken at any age, if an individual is permanently incapacitated through infirmity from carrying on her/his occupation (see Chapter 9). In addition, retirement from age 50 may be allowed in the case of employed contributors and of individuals whose occupation is one from which people customarily retire before age 60.

Subject to certain exceptions (see below), amounts drawn down from a vested PRSA are treated as emoluments and are subject to tax under Schedule E at the individual's marginal rate. Imputed withdrawals under section 790D TCA (see **paragraph 24.9** and Chapter 28) are subject to tax in the same manner as actual withdrawals.

In addition, withdrawals from a PRSA are deemed to occur when assets in a PRSA –

- cease to be PRSA assets,
- cease to be beneficially owned by the PRSA owner, or
- are used in connection with any transaction that would, if they were assets of an ARF, be regarded as giving rise to a distribution from the ARF (see **paragraph 23.8**).

Amounts withdrawn from a PRSA in the following circumstances are not treated as taxable emoluments of the individual under section 787G TCA:

- a tax-free retirement lump sum paid when PRSA assets are first made available to the individual, which does not exceed 25% of the fund or, in the case of an AVC PRSA, the amount that may be paid by way of lump sum under section 772(3)(f) TCA;
- the transfer of PRSA assets to an ARF;
- the transfer of PRSA assets to the individual's personal representative in accordance with section 787K(1)(c)(iii) TCA;
- where a tax-free lump sum has not been paid from a PRSA, the transfer of assets to another PRSA in the individual's name or to an approved scheme or to a statutory scheme of which he or she is a member;
- an amount made available by a PRSA administrator to meet a tax charge arising on a chargeable excess arising in connection with the related PRSA (see Chapter 25);
- an amount made available from a vested PRSA (within the meaning of section 790D(1) TCA) for the purpose of:

- the reimbursement, in whole or in part, of a PRSA administrator for tax paid by that administrator on a chargeable excess relating to the PRSA owner, or
- the payment by a PRSA administrator of a non-member spouse or civil partner's appropriate share of the tax charged on a chargeable excess, or part of it (for which the administrator is made jointly liable with the non-member) in circumstances where a benefit crystallisation event giving rise to tax occurs in respect of retirements benefits which are the subject of a pension adjustment order.

Chapter 25 covers the "limit of tax relieved pension funds" as payment of benefits in excess of the Standard Fund Threshold or Personal Fund Threshold will trigger a tax charge.

Chapter 7.4 outlines the circumstances in which the practice relating to the commutation of trivial pensions may be extended to holders of PRSAs.

24.5 Death benefits

Where an individual dies before benefits are taken, the fund passes to the estate of the deceased. There is no Income Tax charge but the normal Inheritance Tax (Capital Acquisitions Tax) provisions apply.

If death occurs after the drawdown of benefits has commenced, or is deemed to have commenced (see paragraph 24.13), the taxation treatment of the fund is similar to that which applies to an ARF (see Chapter 23.11) .

24.6 Interaction with other pension arrangements

As noted in paragraph 24.2, the tax relief limits apply to the aggregate of all personal contributions made by an individual to a PRSA, Retirement Annuity Contract (RAC) or an occupational pension scheme. Chapter 26 provides detailed information and examples on how the age-related and earnings limits are applied to contributions to one or more pension products.

An individual who is a member of a pension scheme may only get tax relief in respect of a PRSA which is linked to that scheme. A PRSA which is used as an AVC is treated in the same manner as any other AVC. The total pension and PRSA contributions must be limited to the amount required to provide maximum benefits, as set out in Chapter 6.

24.7 Vested PRSAs, AMRFs and "ring-fenced" amounts

As stated in **paragraph 24.4**, a PRSA owner may choose on retirement, rather than purchase an annuity or pension, the option to take the balance of their pension fund in cash (subject to income tax under Schedule E) or invest it in an ARF, detailed in Chapter 23 (the ARF options) or retain the balance of the PRSA fund in the PRSA.

AMRF requirement up to Finance Act 2021

Prior to 21 December 2021, where an individual had guaranteed annual pension income of at least €12,700 any Approved Minimum Retirement Fund (AMRF) immediately becomes an ARF and any ring-fenced amounts[6] retained in vested PRSAs[7] immediately become non-ring-fenced[8] amounts.

Where an individual did not have guaranteed annual pension income of €12,700 but had originally transferred more than €63,500 to an AMRF, or had retained ring-fenced amounts in vested PRSAs of more than €63,500, the excess above €63,500 immediately becomes an ARF, or as the case may be, a non-ring-fenced amount or amounts.

Finance Act 2021 removed the specified income requirement for individuals exercising an ARF option and made a number of changes to AMRF and PRSA legislation.[9] Any AMRFs immediately became ARFs on 1 January 2022.

[6] A ring-fenced amount, "in relation to a vested PRSA, means an amount retained within the vested PRSA by the PRSA administrator equivalent to the amount which the PRSA administrator would, if an option had been exercised in accordance with section 787H(1) of the Principal Act [the TCA], have had to transfer to an approved minimum retirement fund in accordance with section 784C and by virtue of section 787H(3) of that Act" (section 17(6) Finance Act 2013). This requirement was removed by section 14 Finance Act 2021.

[7] A vested PRSA "means a Personal Retirement Savings Account in respect of which assets have first been made available to, or paid to, the contributor by the PRSA administrator on or after 6 February 2011, and the term "vesting of a PRSA" shall be construed accordingly" (Ibid).

[8] A non-ring-fenced amount, "in relation to a vested PRSA, means the amount or value of assets in the vested PRSA that the PRSA administrator can make available to, or pay to, the PRSA contributor or to any other person" (Ibid).

[9] The legislative changes to PRSAs came into effect on 21 December 2021 by section 14 Finance Act 2021.

The changes made in relation to PRSAs were -

- the removal of ring-fenced amounts in relation to a vested PRSA,
- all funds in a vested PRSA became non-ring-fenced amounts, and
- the PRSA administrator can make the amount or value of the assets in the vested PRSA available to, or pay to, the PRSA contributor or to any other person.

24.8 Transfers

Transfers may be made from one PRSA to another PRSA and from a PRSA to an occupational pension scheme.

Transfers may be made from an RAC to a PRSA. However, transfers from a PRSA to an RAC are prohibited.

Transfers may be made from an occupational pension scheme to a PRSA in cases were the scheme is being wound up or the individual is changing employment.[10][11] See Chapter 13.2 for further details on transfer payments from an occupational pension scheme.

The value of AVCs may be transferred to a PRSA at any time.

Where an individual is entitled to a refund of contributions from an occupational scheme, the refund is taxed at the standard rate. However, the refund may be transferred to a PRSA without this tax charge.

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[10] Section 772(3D) TCA.

[11] Previously, an individual could only transfer from an occupational pension scheme to a PRSA in cases were the scheme was being wound up or the individual was changing employment if they had been a member of the scheme for 15 years or less. The requirement for the individual to have been a member of the scheme for 15 years or less was removed by Section 13 Finance Act 2021.

Transfers to or from a "buy-out bond" are prohibited.

Only bona fide transfers are acceptable. The use of certain transfer arrangements relating to PRSAs to circumvent Revenue rules on the tax treatment of retirement benefits – for example, by transferring payments to the UK and back to Ireland - are not permissible. A PRSA contributor who directs the PRSA provider to make a payment to, or transfer assets to, an arrangement for the provision of retirement benefits outside the State (an "overseas arrangement") under the provisions of the Occupational Pensions Schemes and Personal Retirement Savings Accounts (Overseas Transfer Payments) Regulations 2003 (S.I. No. 716 of 2003) must, prior to any transfer, sign a declaration to the effect that the transfer conforms to the requirements of the regulations and Revenue pension rules, is for bona fide reasons and is not primarily for the purpose of circumventing pension tax legislation and Revenue rules.

24.9 Imputed distributions

For the year of assessment 2012 and subsequent years, section 790D TCA provides for imputed distributions for both ARFs and vested PRSAs on a composite basis. Chapter 28 provides details of this regime.[12]

24.10 Non-residents and vested PRSAs

PAYE Exclusion Orders

Income and assets retained in a vested PRSA are beneficially owned by the PRSA owner. Withdrawals (including deemed withdrawals) from vested PRSAs are treated and taxed as emoluments under Schedule E regardless of the residence status of the individual.

As with payments from an ARF or previously from an AMRF (see Chapter 23), withdrawals from vested PRSAs are not payments of pension and Revenue does not issue PAYE exclusion orders to PRSA owners in respect of such withdrawals where the PRSA owner is not resident in the State.

PAYE Exclusion Orders are also not issued where an individual takes the balance of his or her PRSA as a taxable lump sum, having met the specified income requirements (see paragraph 24.7).

[12] Vested PRSAs were not subject to imputed distributions for the year of assessment 2011 and prior years.

Interaction with Double Taxation Agreements

The treatment of ARF distributions (see Chapter 23.16) also applies from 22 December 2017 to withdrawals from vested PRSAs.

24.11 Anti-avoidance

Section 787G (4A) TCA states:

> Without prejudice to the generality of subsection (4), the circumstances in which a PRSA administrator shall, for the purposes of this Chapter, be treated as making the assets of a PRSA (including a vested PRSA within the meaning of section 790D(1)) available to an individual shall include the use of those assets in connection with any transaction which would, if the assets were assets of an approved retirement fund, be regarded under section 784A as giving rise to a distribution for the purposes of that section and the amount to be regarded as made available shall be calculated in accordance with that section.

This means that linking a PRSA (including a vested PRSA) to certain transactions, including the type of arrangement which is the subject of section 784A(1B)(h) TCA, will trigger a tax charge. The transactions are the same as those which are deemed to be a distribution from an ARF which are detailed in Chapter 23.9.

24.12 Pension adjustment orders

In situations involving pension adjustment orders (PAOs), where a former spouse's or partner's share of chargeable excess tax arising on a benefit crystallisation event is to be recovered from a vested PRSA which is beneficially owned by that former spouse or partner, section 787Q(5A) TCA provides that the PRSA administrator is entitled to dispose of or appropriate such assets of the vested PRSA as are required to meet the amount of the tax due.

A disposal or appropriation of assets in a vested PRSA in these circumstances does not give rise to a charge to income tax under section 787G(1) TCA.

Chapter 25 provides additional information on PAOs and their interaction with the Standard Fund Threshold and Chargeable Excess Tax regime.

24.13 Retirement benefits not taken on or before age 75

A PRSA from which retirement benefits have not commenced on or before the date of the owner's 75th birthday is treated as becoming a vested PRSA (within the meaning of section 790D TCA) on that date. Where the individual was aged 75 years before 25 December 2016 (the date on which Finance Act 2016 was passed), the PRSA is deemed to vest on 25 December 2016. A consequence of a PRSA vesting in these circumstances is that the individual cannot access the PRSA assets in any form from the date of her or his 75th birthday. As a transitional measure, the owner of a PRSA which was deemed to vest on 25 December 2016 (i.e. where the owner was aged 75 years before that date) could, on or before 31 March 2017, take retirement benefits from the PRSA in the form of an annuity, a retirement lump sum or under the ARF options.

The vesting of a PRSA in these circumstances is a "benefit crystallisation event" for the purposes of Part 30, Chapter 2C, TCA (see Chapter 25). In addition, such vested PRSAs are subject to the imputed distribution regime (see **paragraph 24.9**) and the death-related provisions which apply to vested PRSAs (see **paragraph 24.5**).

Similar vesting provisions apply to retirement annuity contracts (RACs) - see Chapter 21.

Limit on Tax Relieved Pension Funds

Pensions Manual - Chapter 25

Document last reviewed March 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1. Introduction

Chapter 2C[1] of Part 30 of, and Schedule 23B to, the Taxes Consolidation Act 1997 (TCA) deal with the limits on tax-relieved pension funds. These provisions impose a maximum allowable retirement pension fund for tax purposes by setting a lifetime limit on the total capital value of pension benefits that an individual can draw in her /his lifetime from tax relieved pension products where those benefits are taken, or come into payment, for the first time on or after 7 December 2005 (benefits which came into payment prior to this date are ignored). This limit is called the standard fund threshold (SFT) which is currently €2m (see paragraph 2). In certain circumstances, a higher threshold called the personal fund threshold (PFT) may apply (see paragraph 3). In many cases individual pension funds will be restricted to lower limits reflecting Revenue maximum benefit rules.

On each occasion on or after 7 December 2005 that an affected individual becomes entitled to receive or, in the case of vested RACs or vested PRSAs (see Pensions Manual Chapters 21 and 24 respectively) is treated as having received, a benefit (for example, a pension or a retirement lump sum) under a pension arrangement (referred to in the legislation as a “benefit crystallisation event” or BCE – see paragraph 4), s/he uses up part of her/his SFT or PFT to the extent of the capital value of that benefit.

When the capital value of a BCE (either on its own or when added to BCEs that have been taken since 7 December 2005) exceeds an individual’s SFT or PFT, a “chargeable excess” arises equal to the amount by which the fund threshold is exceeded (see paragraph 6). The whole of the chargeable excess is subject to an upfront income tax charge[2], at the higher rate of income tax for the year in which the BCE occurs. The pension scheme administrator is required to deduct and pay this tax to the Collector-General.

This Chapter summarises how the provisions operate and how any tax charge is calculated. The topics covered in this Chapter are:

- Standard fund threshold (SFT)
- Personal fund threshold (PFT)
- Benefit crystallisation events (BCEs)
- BCE certificate
- Chargeable excess
- Pension adjustment orders
- Credit for lump sum tax against chargeable excess tax
- Schedule 23B TCA – Age related valuation factors

A suggested format for a BCE declaration is provided in the Appendix to this Chapter.

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[1] Part 30 Chapter 2C TCA contains sections 787O to 787U.

[2] For the years of assessment 2015 to 2021 the higher rate of income tax is 40%. For earlier years when the SFT and PFT applied, the higher rate was 41% from 2007 to 2014 and 42% in 2005 and 2006, depending on when the BCE occurred.

2. Standard fund threshold (SFT)

The SFT is the generally applicable maximum tax-relieved pension fund[3] for an individual and is set at €2m[4] from 1 January 2014 (the "specified date"[5]). The Minister for Finance may amend the SFT in line with an earnings adjustment factor (as provided for in the definition of "standard fund threshold" in section 787O).

From 7 December 2010 to 31 December 2013 the SFT was €2.3m.

The amount of the SFT prior to 7 December 2010 was:

Tax Year	Factor	SFT
2005	n/a	€5,000,000 (from 7 December 2005)
2006	n/a	€5,000,000
2007	1.033	€5,165,000
2008	1.049	€5,418,085
2009	1	€5,418,085
2010	1	€5,418,085 (to 6 December 2010)

3. Personal fund Threshold (PFT)

A PFT is an increased maximum tax-relieved pension fund which may apply instead of the SFT where the capital value of an individual's pension rights on the "specified date"[6] exceeds the amount of the SFT which applies on that date. As noted, the SFT has been €2m[7] since 1 January 2014. Individuals with pension rights whose capital value as at 1 January 2014 exceeds €2m can claim a PFT, up to an amount not exceeding the previous SFT of €2.3m, from Revenue.

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[3] The maximum tax-relieved pension fund is the limit on the capital value of pension benefits (benefit crystallisation events) that may be drawn down by an individual on or after 7 December 2005, without the application of excess fund tax.

[4] Provided for in section 18 Finance (No. 2) Act 2013 which amended section 787O TCA

[5] The previous 'specified date' had been 7 December 2010.

[6] Within the meaning of section 787O TCA

[7] From the previous value of €2.3m

Calculation of a PFT

A PFT is calculated by taking the sum of the capital values on 1 January 2014 of all of an individual's

- "uncrystallised" pension rights[8] , that is, pension rights that the individual is building up on that date but has not yet become entitled to, and
- "crystallised" pension rights[9], that is, pension benefits that an individual has already become entitled to from any pension arrangements since 7 December 2005.

Where, on 1 January 2014, the overall capital value of an individual's crystallised and uncrystallised pension rights exceeds the SFT of €2 million, that higher amount will be the individual's PFT, subject to a maximum of €2.3m (the previous SFT limit). The only exception to this is where an individual holds a PFT issued in accordance with the legislation as it applied before 18 December 2013[10]. Such an individual retains that earlier PFT and there is no need to make a new application to Revenue.

Where a pension arrangement is (or was) subject to a Pension Adjustment Order (PAO), the PAO must be ignored in determining the capital value of the pension arrangement for PFT purposes. In other words, the capital value must be calculated as if the PAO had never been made. This requirement applies regardless of whether the PAO beneficiary takes a transfer value to another pension arrangement. The effect of this is that the designated benefit under the PAO in favour of the former spouse or civil partner does not form part of the former spouse/civil partner's PFT calculation.

Determination of pension rights for PFT purposes

In the case of uncrystallised rights, the capital value of defined contribution (DC) arrangements for PFT purposes is the value of the assets in the arrangement that represent the member's accumulated rights on 1 January 2014; that is, the value of the DC fund on that date.

The position is different for members of defined benefit (DB) arrangements because such arrangements do not have an individual "earmarked" fund for each member.

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[8] For example, rights under defined benefit (DB) and defined contribution (DC) occupational pension schemes, AVCs, retirement annuity contracts and PRSAs.

[9] For example, the commencement of a pension or annuity, the receipt of a retirement lump sum or the proceeds of a pension fund being placed in an Approved Retirement Fund (ARF), an Approved Minimum Retirement Fund (AMRF) or retained in a vested PRSA. These are known as "benefit crystallisation events" (BCEs).

[10] The date Finance (No.2) Act 2013 was enacted.

Where a DB arrangement provides a lump sum commutation option, the amount of a member's pension rights is the annual amount of the gross pension (that is, before any commutation for a lump sum) that would have been payable under the rules of the arrangement if the member had retired on 1 January 2014 ("the specified date") at her/his salary and service on that date and on the assumption that s/he had attained normal retirement age on that date, multiplied by 20 – which is the "relevant valuation factor" on the "specified date" (section 787O(2)(a)(i) TCA).

Where a DB arrangement provides a separately accrued lump sum entitlement (otherwise than by way of commutation of part of the pension) – for example, in public service schemes - the value of the lump sum entitlement (calculated on the same assumptions as in the preceding paragraph) is added to the capital value of the DB pension to arrive at the overall capital value of the member's pension rights on 1 January 2014.

In the case of crystallised rights, the capital value of the pension benefits from DC arrangements is the value of the cash/assets that were used, for example, to purchase an annuity or that were transferred to an ARF. The value of a retirement lump sum is the amount of the lump sum paid.

For a DB arrangement with a lump sum commutation option, the capital value of the crystallised pension benefits is the gross amount of pension that would have been payable (before any commutation for a lump sum) in the first 12 months (ignoring any adjustments over that period) from the date the individual became entitled to it, multiplied by 20 (the standard capitalisation factor).

Where a DB arrangement provides for a separately accrued lump sum (other than by way of commutation of part of the pension), the capital value of the crystallised pension benefits is the annual amount of pension paid in the first 12 months (ignoring any adjustments over that period) from the date the individual became entitled to the pension multiplied by 20, plus the cash value of the separate pension lump sum paid at that time. Disbursements from the lump sum, for example, for arrears of spouse's and children's pension, do not reduce its cash value for PFT purposes.

Notes:

(i) In the case of a crystallised DB pension with a commutation option, the gross amount of the DB pension for PFT purposes is the amount that would have been payable in the first 12 months before any commutation. It is not the initial annual rate of pension paid to the individual in the first 12 months (which would probably reflect the fact that part of the pension was commuted for a lump sum) nor the annual rate of the pension being paid at the specified date or later (which could reflect increases in the pension since it was first awarded). Rather, it is the amount of pension that would have been payable in the first 12 months from the date the individual became entitled to it on the assumption that there had been no commutation of part of the pension for a lump sum. Any lump sum actually paid is, therefore, ignored in computing the capital value of the crystallised pension rights in such cases as it is already reflected in the calculation of the pension capital value.

(ii) The higher age–related valuation factors which apply for determining the capital value of DB pension benefits at the point of retirement, where an individual retires after 1 January 2014 (see the table to Schedule 23B TCA) must **not** be used for PFT purposes. The factor for PFT purposes is always 20.

(iii) The value of a lump sum is the amount before excess lump sum tax, if any.

Procedures for making a PFT notification after 1 January 2014 up to 31 July 2015

Where an individual becomes entitled to a pension benefit (that is, a benefit crystallisation event occurs) after 1 January 2014 (for example, through retirement) in circumstances where they would be claiming a PFT, the notification must be submitted to Revenue prior to the BCE arising. The final date for making PFT applications for the 1 January 2014 "specified date" was 31 July 2015.

For the purposes of the application an individual had to

- provide basic identifying information about herself/himself and the various pension arrangements of which s/he was a member of,
- obtain from the administrator of each pension arrangement of which s/he is a member, a statement –
  - certifying the capital value of her/his pension rights (both crystallised and uncrystallised) on 1 January 2014 in relation to each arrangement, calculated in accordance with the provisions of Schedule 23B TCA, and
  - in the case of a DB arrangement, certifying the annual amount of pension accrued at 1 January 2014 underpinning that calculation (see above for details of how this amount is computed).

Miscellaneous

PFT certificates issued by Revenue stating the amount of an individual's PFT should be retained as they will be required by pension scheme(s) administrator(s) when retirement benefits eventually come into payment or are drawn down to determine if a chargeable excess arises.

Revenue may withdraw a certificate issued in respect of a PFT and, where appropriate, issue a revised certificate if it subsequently transpires that the information included in the PFT notification is incorrect or it comes to light that the individual is not entitled to a PFT.

As with the SFT, there is provision for amending the PFT from 2015 in line with an earnings adjustment factor.

An individual who received a PFT certificate from Revenue following the introduction of the limit on tax-relieved pension funds on 7 December 2005 or following the reduction of the SFT from €5,418,085 to €2.3m on 7 December 2010 continues to be entitled to the amount on that certificate, amended, as appropriate, in line with the earnings adjustment factors applicable since the PFT was granted, and there is no need to apply to Revenue for a new certificate.

Examples

The following examples illustrate how the PFT provisions operate in practice.

Example 1

The capital value of Paul's pension fund on 1 January 2014 (that is, his uncrystallised pension rights) was €1.5m. He had not become entitled to any pension rights since 7 December 2005. As the capital value of Paul's uncrystallised rights on 1 January was below the SFT of €2m, he cannot claim a PFT and the maximum allowable pension fund for tax purposes that he can build up is €2m.

Example 2

The capital value of John's uncrystallised pension rights on 1 January 2014 was €2.2m. He had not become entitled to any pension rights since 7 December 2005. As the capital value of John's uncrystallised pension rights exceeded the SFT of €2m, he is entitled to claim a PFT of €2.2m.

Example 3

Mary had uncrystallised pension rights valued at €2m on 1 January 2014. She became entitled to pension benefits under another scheme on 1 January 2011, with a capital value of €0.5m. The combined value of Mary's crystallised and uncrystallised pension rights is €2.5m. As this amount exceeds the old SFT of €2.3m, the maximum PFT she can claim is €2.3m.

Example 4

Jean had uncrystallised pension rights on 7 December 2010 valued at €4m and had crystallised pension benefits under another scheme on 1 July 2006 with a capital value of €2m. As the combined value of Jean's crystallised and uncrystallised pension rights on 7 December 2010 exceeded the (then) SFT of €2.3m, she applied for, and received, a PFT of €5,418,085, that is, the amount of the SFT which applied from 7 December 2005 to 6 December 2010 (as adjusted by the earnings adjustment factors designated by the Minister for Finance). She continues to be entitled to the amount on that certificate and she is not required to apply for a new PFT.

Example 5

Ben is a member of a DB scheme on a salary of €200,000 and had 39 years of service on 1 January 2014. The scheme provides for a separately accrued lump sum entitlement. His accrued pension rights on that date were an annual pension of €97,500 (€200,000 x 1/80 x 39) and a gratuity of €292,500 (€200,000 x 3/80 x 39). He may claim a PFT of €2,242,500, calculated as follows: (Annual pension €97,500 x 20 = €1,950,000 + gratuity of €292,500).

If the scheme had provided for a lump sum commutation option instead of a separately accrued lump sum entitlement, the amount of Ben's pension rights would be the annual amount of the gross pension (that is, **before** any commutation for a lump sum) multiplied by 20.

4. Benefit crystallisation events (BCEs)

A BCE occurs in a "relevant pension arrangement" of which the individual is a member when any of the following events takes place:

1. The individual takes a pension, annuity or retirement lump sum.
2. The individual exercises an ARF option.
3. The individual does not elect under section 787H(1) TCA to transfer PRSA assets to an ARF and instead retains the assets in a PRSA.
4. A payment or transfer is made to an overseas pension arrangement.
5. There is an increase in a pension which an individual becomes entitled to on or after 7 December 2005 in excess of the "permitted margin" (the greater of 5% p.a. or the Consumer Price Index (CPI) plus 2%). This is an anti-avoidance measure to prevent commencement of a pension at a low rate in order to bring the capital value of the pension benefit below the SFT, with the pension subsequently increased at an accelerated rate after the benefit has been valued for BCE purposes.
6. A retirement annuity contract (RAC) or PRSA becomes vested on the date the owner attains age 75, or on 25 December 2016 (the date Finance Act 2016 was passed) if the owner was 75 before that date, where retirement benefits from the RAC or PRSA have not commenced by age 75. For additional information on vested RACs and PRSAs, see Chapters 21 and 24 respectively.

Note: Payment of death in service benefits or a dependant's pension is not a BCE.

A "relevant pension arrangement" means any one or more of the following –

- a retirement benefits scheme within the meaning of section 772 TCA, approved by Revenue for the purposes of Chapter 1 of Part 30 TCA,
- an annuity contract or a trust scheme or part of a trust scheme approved by Revenue under section 784 TCA,
- a PRSA contract, within the meaning of section 787A TCA, in respect of a PRSA product within the meaning of that section,
- a qualifying overseas pension plan within the meaning of Chapter 2B of Part 30 TCA,
- a public service pension scheme within the meaning of section 1 Public Service Superannuation (Miscellaneous Provisions) Act 2004,
- a statutory scheme, within the meaning of section 770(1) TCA, other than a public service pension scheme referred to above.

When a BCE arises, a capital value must be attributed to the benefit and this is tested against the individual's SFT or PFT by the scheme administrator.

Where two or more BCEs occur on the same day, the individual must determine the order in which they are to be deemed to occur. If entitlements from different arrangements occur on the same day, and a chargeable excess arises, the individual may choose which entitlement gives rise to the excess and which administrator should deal with it.

How is the capital value of a BCE calculated?

In the case of DB pension arrangements, the capital value of pension rights drawn down after 1 January 2014 is determined by multiplying the gross annual pension that would be payable to the individual (before commutation of part of the pension for a lump sum) by the appropriate age-related valuation factor as provided for in the Table to Schedule 23B TCA.

If the DB arrangement provides for a separate lump sum entitlement (otherwise than by way of commutation of part of the pension) e.g. most public service schemes, the value of the lump sum is added to the capital value of the DB pension to arrive at the overall capital value.

However, where part of a DB pension has been accrued at 1 January 2014 and part after that date, transitional arrangements allow the capital value of the pension at retirement to be calculated by way of a "split" calculation, so that the part accrued up to 1 January 2014 (called the "accrued pension amount") is valued at a factor of 20 and the part accrued after that date is valued at the appropriate higher age-related factor as set out in the Table to Schedule 23B TCA. A condition of applying the "split" calculation is that the administrator concerned is satisfied from information and records available to the administrator that an accrued pension amount arises in relation to the DB pension in question.

For DC pension arrangements, the capital value of pension rights when they are drawn down after 1 January 2014 is the value of the assets in the arrangement that represent the member's accumulated rights on that date. For example, in the case of an annuity, it is the value of the assets used to purchase the annuity.

The value of a retirement lump sum is the amount of the lump sum (before excess lump sum tax, if any).

In the case of the exercise of an ARF option, or an overseas transfer, the capital value is the actual amount transferred to the ARF or to the overseas arrangement.

In the case of an increase in a pension in payment in excess of the "permitted margin", the value is calculated by applying the appropriate age-related factor as set out in the Table to Schedule 23B TCA (see paragraph 10) to the amount of annual pension which exceeds the "permitted margin".

In a case involving the retention of assets in a PRSA, the amount crystallised is the aggregate of the retirement lump sum (before excess lump sum tax, if any) and the market value of any assets retained in the PRSA.

In the case of an RAC or a PRSA vesting due to the owner not taking benefits on or before age 75, the amount crystallised is the aggregate of the cash sums and the market value of any assets which represent the owner's rights under the RAC at the date the owner attains the age of 75 years or, in the case of a PRSA, the aggregate of the cash sums and the market value of the assets in the PRSA at that date. Where the owner attained the age of 75 years prior to 25 December 2016, the relevant date for establishing the aggregate of the cash sums and the market value of the assets is 25 December 2016.

As with the position in determining pension benefit capital values for PFT purposes, where a pension arrangement is subject to a PAO, the PAO must be ignored in determining the capital value of a BCE arising under the pension arrangement. In other words, the capital value of the BCE must be calculated as if the PAO had never been made. This requirement applies regardless of whether the PAO beneficiary had taken a transfer value to another pension arrangement. (See paragraph 7). The effect of this is that the former spouse or civil partner's designated benefit under the PAO when drawn down is not treated as a BCE for SFT/PFT purposes in respect of the former spouse/civil partner.

Examples

The following examples illustrate how BCE capital values are determined.

Example 6

Michael is a member of a DC pension scheme. He has no PFT. Michael retires on 1 July 2021. The value of his DC fund on that date is €1.5m. The capital value of the BCE is therefore €1.5m. As this is below the SFT of €2m no chargeable excess arises.

Example 7

Jim is a member of a private sector DB scheme. He retires on 1 February 2021 aged 65. The relevant age-related valuation factor applying to Jim is 26 (as provided for in the Table to Schedule 23B TCA). The annual amount of pension that his scheme would pay him on retirement (before any commutation of part of the pension for a lump sum) is €75,000. Jim's pension fund administrator is aware that €50,000 of this pension had already been accrued at 1 January 2014 (the "accrued pension amount"). The administrator calculates the capital value of Jim's pension rights at retirement for BCE purposes as follows:

€50,000 x 20 = €1m (accrued pension amount x the standard valuation factor)

€25,000 x 26 = €0.650m (pension accrued after 1 January 2014 x age-related factor)

Capital Value = €1.65m.

As the capital value of Jim's retirement benefits based on the "split" BCE calculation is less than the SFT, no chargeable excess arises.

Example 8

Lucy retires at age 60. She does not have a PFT. Her annual DB pension at retirement is €90,000 (before commutation for a lump sum). The relevant age-related valuation factor applying to Lucy is 30, as per the table to Schedule 23B TCA). Lucy's pension fund administrator is aware that €45,000 of her pension had already been accrued at 1 January 2014 (the "accrued pension amount"). The administrator calculates the capital value of Lucy's pension rights at retirement for BCE purposes as follows:

€45,000 x 20 = €0.900m (accrued pension amount x the standard valuation factor)

€45,000 x 30 = €1.350m (pension accrued after 1 January 2014 x age-related factor)

Capital Value =	€2.25m
Less SFT =	(€2.00m)
Chargeable excess =	€0.25m

As Lucy has a chargeable excess of €250,000, she is liable to chargeable excess tax at the higher rate of income tax. If this rate is 40% in the year she retires, the chargeable excess tax due will be €250,000 @40% = €100,000. The pension fund administrator must pay this tax to Revenue upfront and recover it from Lucy.

5. BCE certificate

To determine if a chargeable excess arises on a BCE, an administrator may request information on any previous BCEs from an individual for that purpose. There is provision for an administrator to withhold payment of benefits until a completed declaration is provided. The administrator must retain the declarations for a period of six years and make them available to Revenue on request.[11] The suggested format of the declaration is set out at paragraph 8.

However, an individual whose RAC or PRSA is treated as vesting at age 75, or on 25 December 2016 (the date Finance Act 2016 was passed) must provide a declaration to the administrator within 30 days from the date of the deemed vesting, regardless of whether the administrator requests a declaration. Where such an individual fails to provide a declaration, the administrator must assume that the individual's SFT or PFT is fully used up and treat the entire value of the BCE as a chargeable excess taxable at the higher rate of income tax in force for the year in which the BCE arises.

Where a chargeable excess has been incorrectly included in a return or the full amount of a BCE has been charged to tax (in the circumstances of the preceding paragraph) Revenue may, when its attention is drawn to the matter, make the necessary adjustments to ensure that the tax chargeable on the BCE in question does not exceed the charge that would have arisen if all details had been provided.

6. Chargeable Excess

When the capital value of a BCE, either on its own or when aggregated with a previous BCE which occurred since 7 December 2005, exceeds the SFT or a PFT, a chargeable excess arises. The following examples illustrate how this applies in practice:

Example 9

The capital value arising exceeds the amount of the SFT available at the date of the BCE.

Value of current BCE	€4.0m
SFT	(€2.0m)
Chargeable excess	€2.0m

[11] Section 787P(3)(a)(i) TCA

Example 10

Not all of the individual's PFT is available as part of the amount was utilised in earlier BCEs.

PFT	€5m
Value of earlier BCE	(€4m)
Remaining PFT	€1m
Value of current BCE	€2m
Chargeable excess	€1m

Example 11

None of the SFT is available as it was fully used by a previous BCE.

SFT	€2m
Value of earlier BCEs	€3m
Chargeable excess	€1m
Remaining SFT	Nil
Value of current BCE	€0.2m
Chargeable excess	€0.2m

The full amount of a chargeable excess is subject to an upfront income tax charge (see footnote 2 for the appropriate rate of tax) under Case IV of Schedule D in the year of assessment in which the BCE giving rise to the chargeable excess occurs. No reliefs, allowances or deductions may be set against the chargeable excess when computing the amount of tax due. In certain circumstances, however, standard rate lump sum tax may be offset against tax due on a chargeable excess (see paragraph 9).

The administrator of a pension arrangement who deducts tax from a chargeable excess in accordance with section 787R TCA, must submit a Form 787S to the Collector-General and pay the tax, via ROS / myAccount, within three months of the end of the month in which the BCE giving rise to the chargeable excess occurs.

The chargeable excess should not be included on the employer's monthly return to Revenue.

Tax on a chargeable excess is payable by the administrator of the relevant pension arrangement in the first instance although both the administrator of the relevant pension arrangement and the individual are jointly and severally liable for the tax due. This means that both the administrator and the individual are equally and separately liable for the whole charge to tax and that payment by one will discharge the liability of the other to the extent of the payment made. The liability arises irrespective of whether either of them is resident in the State. Please refer to paragraph 7 where a chargeable excess arises under a pension arrangement in respect of which a PAO has been made.

Recovery of chargeable excess tax paid by an administrator

In the case of private sector DC arrangements, the administrator pays the chargeable excess tax due from the assets held in the individual's fund.

In the case of private sector DB pension arrangements, section 787Q TCA provides for an administrator to recover any chargeable excess tax paid either by way of an actuarial reduction in the individual's pension rights or by arranging to be directly reimbursed by the individual.

In the case of public sector DB pension arrangements, a range of reimbursement options were introduced in Finance Act 2012 and these were amended and extended in Finance (No.2) Act 2013. As a result, the following options are now available from 1 January 2014.

1. Where the excess fund tax amounts to 20% or less of the tax-free lump sum net of any standard rate tax (referred to as the 'net lump sum'), the reimbursement of the chargeable excess tax is by way of:
   (i) appropriation from the net lump sum,
   (ii) payment by the individual to the administrator,
   (iii) a combination of (i) and (ii), or
   (iv) solely by way of a reduction in the gross pension payable to the individual over a period not exceeding 20 years.
2. Where the excess fund tax is greater than 20% of the net lump sum, the reimbursement of the chargeable excess tax is to be by way of:
   (i) appropriation of not less than 20% of the net lump sum,
   (ii) payment by the individual to the administrator of an amount that equates to at least 20% of the net lump sum, or
   (iii) a combination of (i) and (ii), such that the aggregate is not less than 20% of the net lump sum,

   with any balance to be reimbursed by:

   a) reducing the gross pension for an agreed period of up to 20 years,
   b) a payment by the individual to the administrator within 3 months of the relevant BCE, or
   c) a combination of both (a) and (b).

   or

   (iv) solely by way of a reduction in the gross pension payable to the individual over a period not exceeding 20 years.

Where an individual agrees to pay an amount to a public sector pension administrator to reimburse the administrator for tax paid "up-front" on a chargeable excess, rather than the administrator appropriating part of the net lump sum for that purpose, that payment must be made before the administrator pays over the lump sum, or the appropriate part of the lump sum, to the individual.

With effect from 1 January 2015, where a PAO (see paragraph 7) applies to a public sector scheme in situations where no transfer amount has been applied to provide an independent benefit for the non-member spouse/civil partner, or where a transfer amount has been applied to provide an independent benefit for the non-member within the member's scheme, the reimbursement options described above also apply to the non-member spouse/civil partner.

Chargeable excess tax paid by administrator

Where the tax arising on a chargeable excess is paid by the administrator and is not recovered from the individual by restricting benefits, the amount of tax paid will be considered a benefit and subject to tax in its own right.

For example, on 1 March 2021, the capital value of benefits for an individual without a PFT is €2.1m, which gives a chargeable excess of €100,000 (€2.1m minus the SFT of €2m). The tax due at the higher rate of income tax for 2021 is €100,000 @ 40% = €40,000.

If the administrator pays the tax without recovering it from the individual, a grossing up calculation is required to arrive at the correct tax liability due.

The chargeable excess of €100,000 is taken to be the after-tax balance of a chargeable excess which has been taxed @ 40%. The €100,000 is therefore grossed up to €166,666 and the correct tax charge is €166,666 @ 40% = €66,666, which the administrator is required to pay.

The administrator must, within three months of the end of the month in which the BCE giving rise to the chargeable excess occurs, make a return to the Collector-General on Form 787S and pay the tax due via ROS / myAccount.

In situations involving PAOs, special arrangements apply in relation to the liability for, payment and recovery of chargeable excess tax. Please refer to the Notes for Guidance to Chapter 2C of Part 30 TCA for further details.

The chargeable excess should not be included on the employer's monthly return to Revenue.

The standard assessment, collection, late payment and appeal provisions apply.

7. Pension adjustment orders (PAOs)

Chapter 22 explains the impact of a PAO when calculating maximum retirement benefits for a pension scheme member, etc. Paragraphs 3 and 4 note, respectively, that, when determining capital values for PFT and BCE purposes, PAOs must be ignored, with the calculations carried out as if no PAO had been made.

As described in paragraph 6**,** where the SFT or an individual's PFT is exceeded, a chargeable excess arises which is subject to an immediate tax charge at the higher rate of income tax for the year in question.

With effect from 1 January 2015[12], chargeable excess tax arising on pension scheme or pension plan benefits that are subject to a PAO must be apportioned by the scheme administrator, having regard to the terms of the PAO, so that both the member and non-member spouse/partner share the tax charge with the charge being recovered from their respective retirement funds.

Section 787R(2A) TCA sets out how the apportionment is to be made between the parties and who is liable for the respective shares of the tax in such situations. It also provides, in cases where a non-member spouse/civil partner has availed of a transfer amount to provide an independent benefit in a separate scheme, for a process of certification by the administrator of the member's scheme, of the amount of the non-member's share of the tax, to the administrator of the non-member spouse/civil partner's scheme etc. In addition, the section provides for notification of the amount of the non-member's share of the tax to the non-member.

It should be noted that the requirement to apportion chargeable excess tax applies equally to the administrator of a pension arrangement to which a member may have taken a transfer value after the PAO was made. In other words, the chargeable excess tax liability to be shared may arise on foot of a BCE in an entirely different scheme to the one where the PAO was originally made.

Section 787R(b) and (c) TCA set out how the sharing of a chargeable excess tax liability is to be determined. The approach depends on whether the former spouse/civil partner in whose favour the PAO was made leaves the designated benefit in the member's scheme or takes a transfer value (within the same scheme) or to an independent scheme.

No transfer value paid out

Where no transfer value has been paid out and hence the member and the former spouse/civil partner remain in the same scheme in respect of which the PAO was made, the apportionment is straightforward. In such cases, the chargeable excess tax shares are calculated **pro rata** to their relative shares (having regard to the PAO) of the value of the retirement benefit giving rise to the BCE.

[12] As a result of Section 19 Finance Act 2014

The following examples illustrate how the calculation is performed:

Example A – Defined Contribution Arrangement

Peter has a PRSA valued at €2.6m at the point it is crystallised. He does not have a PFT. A PAO had previously been made in respect of the PRSA in favour of Peter's former spouse, Mary. The designated benefit to Mary under the PAO represents 40% of the total value of the PRSA at the point of crystallisation. Notwithstanding that a PAO applies to the PRSA, Peter is deemed to mature at full value – in other words, the PAO is ignored so the capital value of the BCE is €2.6m. This means that a chargeable excess of €0.6m arises with chargeable excess tax of €0.240m (i.e. €2.6m - €2m (SFT) x 40%).

The chargeable excess tax must be shared pro rata to the share of the retirement benefit each gets as follows:

In Peter's case it is: 60% x €0.24m = €0.144m

In Mary's case it is: 40% x €0.24m = €0.096m

Example B – Defined Benefit Arrangement

Vivion is a member of a defined benefit arrangement in respect of which a PAO has been made in favour of his former civil partner Michael. Vivion has no PFT. On Vivion's retirement at age 65 (and ignoring the PAO) his scheme will pay him an annual pension of €100,000 (before any commutation for a lump sum). Of this amount, the administrator determines that €60,000 of the pension had been accrued at 1 January 2014. The capital value of Vivion's BCE is therefore:

€60,000 x 20 = €1.200m

\+ €40,000 x 26 = €1.040m

Total capital value = €2.240m.

This results in a chargeable excess of €0.240m (€2.240m – SFT of €2m) and chargeable excess tax of €0.096m

Under the terms of the PAO, Michael's designated benefit provides him with a pension equivalent of €20,000.

Vivion's pension under the pension scheme is therefore the residual benefit of €80,000 (i.e. €100,000 - €20,000).

The chargeable excess tax must be shared pro rata to the share of the retirement benefit each gets as follows:

In Vivion's case it is: €96k x (€80k/100k) = €76,800

In Michael's case it is: €96k x (20k/100k) = € 19,200.

Where no transfer value has been paid out, the administrator of the pension arrangement must recover the chargeable excess tax from the member's and former spouse/civil partner's respective shares of the fund (in the case of DC arrangements) or by way of an actuarial reduction in the pension payable to each (in the case of DB arrangements) and make the necessary return section and pay the tax due to the Collector General in accordance with section 787S TCA.

Transfer value paid out

Where a transfer value has already been paid at the time the member crystallises her/his benefits under the pension arrangement the apportionment of the chargeable excess tax is more complicated. In such situations the member and her/his former spouse or civil partner will be in independent pension arrangements at the time the member's benefits crystallise. In these cases, the chargeable excess tax shares are calculated **pro rata** to their relative shares (having regard to the PAO) of the value of the retirement benefit giving rise to the BCE. However, the respective shares are as follows.

The former spouse/civil partner's share is:

- in the case of a defined contribution arrangement, the actual PAO transfer value originally paid out from the arrangement under the PAO, or
- in the case of a defined benefit arrangement, the designated benefit on which the actual PAO transfer value was calculated.

(NB: the former spouse/civil partner's share is not the current accumulated value of the PAO transfer amount wherever it is held but rather the actual nominal PAO transfer value paid out originally.)

The member's share is:

- in the case of a defined contribution arrangement, the total capital value of the BCE giving rise to the chargeable excess tax, less the actual PAO transfer value originally paid out under the PAO, or
- in the case of a defined benefit arrangement, the residual pension at the point of crystallisation after deducting the designated benefit on which the transfer value was calculated from the pension that would have been payable to the member if no PAO had been made.

The following examples illustrate how the calculation is performed.

Example C - Defined Contribution Arrangement

Eamonn has a PRSA with a value of €1.5m at the point of crystallisation. He does not have a PFT. A PAO had been made in respect of the PRSA in favour of Eamonn's former spouse, Joan. At that time, a transfer value of €1m was paid out of the PRSA in respect of Joan's designated benefit to a separate PRSA with a different PRSA provider.

The capital value of the BCE arising on the crystallisation of Eamonn's PRSA is determined as if no PAO had been made. The PRSA administrator must therefore calculate the investment return earned by the PRSA from the date the transfer value was paid out to Joan's PRSA, to the date of crystallisation of Eamonn's PRSA.

For the purposes of this example we assume a return of 20%, and that the higher rate of income tax at the time of crystallisation is 40%.

The capital value of Eamonn's BCE is therefore deemed to be €1.5m + (€1m x 120%) = €2.7m.

This gives rise to a chargeable excess of €0.7m and chargeable excess tax of €0.28m (€2.7m - €2m (SFT) = €0.7m; tax @ 40% = €0.28m).

The chargeable excess tax must be divided as follows:

In Joan's case it is: €0.28m x €1m (the actual transfer amount)/€2.7m (the deemed capital value of the BCE) = €103,704

In Eamonn's case it is: €0.28m x €1.7m (Eamonn's deemed share of the BCE)/€2.7m (the deemed capital value of the BCE) = €176,296.

Example D - Defined Benefit Arrangement:

Jean is a member of a defined benefit arrangement in respect of which a PAO has been made in favour of her former spouse, Gerry. Jean has no PFT. At the time the PAO was made Gerry took a transfer amount in respect of his designated benefit to a PRSA. The designated benefit payable to Gerry on which the transfer value was calculated (i.e. the portion of the "leaving service" benefits that would have been payable to Jean at the time of the transfer under the rules of the pension arrangement) was a pension of €25,000.

At the point of her retirement at age 60 (and ignoring the PAO) Jean's scheme would have paid her an annual pension of €90,000 (before any commutation for a lump sum). Of this amount, the administrator determines that €40,000 of the pension had been accrued at 1 January 2014. The capital value of Jean's BCE is therefore:

	€40,000 x 20	= €0.8m
+	€50,000 x 30	= €1.5m
Total capital value		= €2.3m

This results in a chargeable excess of €0.3m (€2.3m – the SFT of €2m) and chargeable excess tax of €0.12m (€0.3m x 40%, assuming that was the higher rate of tax at the time).

The chargeable excess tax must be divided as follows:

In Gerry's case it is: €0.120m x €25,000 (the designated benefit on which the transfer value was based)/€90,000 (the pension that would have been payable to Jean if no PAO had been made) = €33,333.

In Jean's case it is: €0.120m x €65,000 (i.e. €90,000 - €25,000)/€90,000 = €86,667.

Please also refer to the Notes for Guidance to Chapter 2C, Part 30 TCA for further information on the interaction of tax-relieved pension funds and PAOs.

8. Credit for lump sum tax against chargeable excess tax

Section 787RA TCA, which applies to BCEs occurring on or after 1 January 2011, provides that where

- tax at the standard rate (i.e., under section 790AA (3)(a)(i) or (3)(b)(i)(I) TCA – please refer to Chapter 27) is deducted from a retirement lump sum paid to an individual under a pension arrangement on or after that date and
- tax also arises on a chargeable excess in relation to that individual (the amount of which will have been influenced by the retirement lump sum)

the pension scheme administrator is required to reduce the tax on the chargeable excess by the amount of standard rate tax deducted from the retirement lump sum under section 790AA (3)(a)(i) or (3)(b)(i)(I) TCA and pay the net amount of chargeable excess tax, if any, to the Collector-General with Form 787S.

Only tax paid on that part of a retirement lump sum up to 25% of the SFT when the lump sum is paid and not previously offset against tax on an earlier chargeable excess, can be offset against chargeable excess tax. (25% of the SFT is €500k for lump sums paid on or after 1 January 2014, periods for which the SFT was €2 m; and 25% of the SFT was €575k for lump sums paid between 1 January 2011 and 31 December 2013, when the SFT was €2.3 m.) The retirement lump sum tax regime is cumulative: individuals have a lifetime tax-free limit of €200k after which tax applies at the standard rate under Schedule D Case IV on amounts between the tax-free limit and 25% of the applicable SFT (the SFT cut-off point) and at the individual's marginal rate under Schedule E on amounts above the SFT cut-off point.

Lump sum tax deducted from the portion of a retirement lump sum over the SFT cut-off point (the portion which is charged to tax under Schedule E at the individual's marginal rate) may not be offset against chargeable excess tax.

This section provides that:

- lump sum tax includes standard rate tax paid on an earlier retirement lump sum from another pension scheme administered by the same administrator or by another administrator (to the extent, in all cases, that the lump sum tax has not been previously offset against chargeable excess tax);
- an administrator (administrator A) can only offset earlier lump sum tax paid by another administrator (administrator B) where administrator A receives a certificate, as required in section 787RA TCA, from B;
- unused standard rate lump sum tax (where the amount of the lump sum tax to be offset exceeds the chargeable excess tax) can be carried forward and used against chargeable excess tax arising on future BCEs occurring in relation to the individual.

9. Schedule 23B TCA – Age related valuation factors

Schedule 23B TCA is linked to Chapter 2C of Part 30 - relating to the limit on tax relieved pension funds. The Schedule deals with the following operational aspects of the arrangements:

- how the value of an individual's uncrystallised pension rights on 1 January 2014 are to be calculated for both DC and DB type arrangements,
- the various types of BCE and when they are deemed to occur e.g. entitlement to a pension, annuity, lump sum etc. under a pension arrangement,
- how the capital value of a BCE is to be calculated for the various types of BCE identified, and
- how the amount of the SFT or PFT that is available at the time of a BCE is to be determined.

Schedule 23B also includes the following table which sets out the relevant age-related valuation factors.

TABLE

Age (1)	Relevant age-related factor (2)
Up to and including 50	37
51	36
52	36
53	35
54	34
55	33
56	33
57	32
58	31
59	30
60	30
61	29
62	28
63	27
64	27
65	26
66	25
67	24
68	24
69	23
70 and over	22

Appendix: BCE declaration – suggested format

BCE DECLARATION

AS PROVIDED FOR UNDER SECTION 787R (4) OF THE TAXES CONSOLIDATION ACT 1997

FOR THE PURPOSES OF DISCLOSING PENSION BENEFIT CRYSTALLISATION EVENTS OCCURRING PRIOR TO THE PENSION ENTITLEMENT CURRENTLY BEING CLAIMED

This Declaration should be completed and given to the Administrator of your pension arrangement prior to the payment of any benefits from that arrangement.

Information in relation to payment of the State pension from the Department of Social Protection is not required.

This Declaration should be completed in respect of benefits arising on or after 7 December 2005.

****

PART A

1. On or after 7 December 2005 and up to and including the date you make this declaration:

   (a) Did you become entitled to any pension benefits[13] (ignoring the pension entitlements currently being claimed under this pension arrangement)?

   YES NO

   (b) If the answer to (a) is YES, did you direct that a payment or transfer be made to an overseas pension arrangement?

   YES NO

2. From the date you make this declaration up to the date of receiving benefits under this pension arrangement:

   (a) Do you expect to become entitled to any other pension benefits[14] in addition to the pension entitlements currently being claimed?

   YES NO

   (b) If the answer to (a) is YES, do you intend to direct that a payment or transfer be made to an overseas pension arrangement in respect of those benefits?

   YES NO

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[13] This includes any pension, annuity, retirement lump sum or any other pension related benefit (e.g. transfer to an Approved Retirement Fund) which you became entitled to under a pension arrangement but does not include i) social welfare benefits, such as the State Pension or ii) pension benefits which came into payment before 7 December 2005. Please note the key point is an entitlement to a pension on or after 7 December 2005 in respect of which benefits actually came into payment e.g. if you retired or otherwise became entitled to an immediate payment of a pension benefit from a pension arrangement on or after 7 December 2005).

[14] This includes any pension, annuity, retirement lump sum or any other pension related benefit (e.g. transfer to an Approved Retirement Fund) which you expect to become entitled to <u>for the first time</u> under a pension arrangement belonging to you after the date of this declaration, but does not include social welfare benefits such as the State Pension.

3. IF YOU HAVE ANSWERED **NO** TO **ALL** OF THE ABOVE QUESTIONS THEN:

(i) COMPLETE PART C, and
(ii) SIGN THE DECLARATION.

IF YOU HAVE ANSWERED YES TO ANY OF THE ABOVE QUESTIONS THEN:

(i) PROVIDE THE INFORMATION REQUESTED IN PART B, AS APPROPRIATE,

(ii) COMPLETE PART C, and

(iii) SIGN THE DECLARATION.

PART B

4. If you have an entitlement to any pension benefits under a pension arrangement on or after 7 December 2005 and up to the date of receiving benefits under this pension arrangement, please provide the following details, as appropriate, in a separate document for each such pension arrangement:

a) The type of pension arrangement (for example, defined benefit/defined contribution occupational pension scheme, retirement annuity contract, PRSA, Buy-Out-Bond, Additional Voluntary Contributions (AVC) for the purpose of supplementing retirement benefits, etc.).

b) The date you became (or expect to become) entitled to the benefit(s) under the arrangement.

c) The name of the scheme/arrangement.

d) The contact details for the scheme administrator.

e) Your policy or reference number under the scheme/arrangement.

f) In the case of a transfer made (or to be made) to an overseas pension arrangement, provide the name of the scheme to which the transfer was (or is to be) made,

g) Where the pension arrangement is a defined benefit scheme (whether a private sector or a Civil/Public Service scheme) please provide the following details, as appropriate. (You should obtain this information from the pension fund administrator):
   (i) where the scheme provided (or provides) you with the option to commute part of the pension for a lump sum (i.e. most private sector schemes), the capital value of the pension benefits based on the annual amount of pension that would have been payable (or is expected to be payable) to you when the pension commenced (or commences), before any commutation for a lump sum (see footnote for fuller explanation[15])
   (ii) where the arrangement provides for a separately accrued lump sum benefit (i.e. most Civil/Public Service schemes):

[15] Note the capital value to be included here is not to be based on the actual annual rate of pension paid to the individual at the time he/she became entitled to it, which could reflect the fact that the individual commuted part of the pension entitlement for a lump sum. Neither is it to be based on the current annual rate of pension being paid if this reflects adjustments in the pension rate since it was first awarded. Rather, it is to reflect the annual rate of pension that would have been (or would be) payable to the individual on the assumption that there was (or will be) no commutation of part of the pension for a lump sum or no adjustments made in relevant pension payable. The corollary of this is that the capital value of any actual lump sum taken (or to be taken) is ignored as it is already "captured" as part of the pension capital value.

(a) the capital value of the pension benefit based on the actual annual amount of pension paid (or to be paid) to you in the first 12 months from the date you became (or become) entitled to it, and

(b) the actual cash value of the separately accrued lump sum paid (or expected to be paid) to you.

h) Where the pension arrangement is a defined contribution arrangement (e.g. a defined contribution occupational pension scheme, a retirement annuity contract, a PRSA, a Buy-Out-Bond, an AVC etc.) please indicate in the following table the nature of, and capital value (or the expected capital value) of, the benefits taken (or to be taken) - i.e. the Benefit Crystallisation Events - on the date you became (or expect to become) entitled to them.[16]

[16] You should obtain this information from the pension fund administrator.

Nature of Benefit (BCE)	Capital Value of Benefit (€)
Lump Sum[17]	
Annuity[18]	
Transfer to an ARF[19]	
Transfer to an AMRF[20]	
Transfer to Self[21]	
Amount retained in a vested PRSA[22]	
Transfer to an Overseas Arrangement[23]	
Other	

Note: Section 787O(3) Taxes Consolidation Act 1997 provides that where more than one pension benefit (BCE) arises on the same day in relation to an individual, the individual must decide which is deemed to arise first and inform the relevant pension administrators accordingly.

[17] The capital value is the cash value of the lump sum paid to you.

[18] The capital value is the amount or market value of the cash or other assets of the pension fund used to purchase your annuity.

[19] Where you have exercised (or intend to exercise) an “ARF Option” in accordance with section 772(3A), 784(2A) or 787H (1) of the Taxes Consolidation Act 1997, the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to an ARF following the exercise of the option.

[20] Where you have exercised (or intend to exercise) an “ARF Option” (see footnote 5), the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to an AMRF following the exercise of the option.

[21] Where you have exercised (or intend to exercise) an “ARF Option” (see footnote 5), the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to you as a taxable lump sum following the exercise of the option.

[22] Where you have not exercised an ARF Option (or do not intend to do so) (see footnote 5) and instead have retained (or intend to retain) the assets of the PRSA in that or any other PRSA (as a vested PRSA), the capital value is the amount or market value of the cash or other assets as were (or are to be) retained in the vested PRSA(s).

[23] Where you have (or intend to) make a transfer to an overseas pension arrangement, the capital value is the amount or value (or expected amount or value) of the payment or transfer to the overseas arrangement.

PART C

5. Do you have a certificate from Revenue stating the amount of your Personal Fund Threshold in accordance with section 787P of the Taxes Consolidation Act 1997?

YES NO

6. If the answer to question 5 is YES –

(a) please enclose a copy of the certificate, and

(b) where the PFT includes a defined benefit arrangement(s) please state the valuation factor used.

7. May we contact the scheme administrator(s) directly on your behalf for the purposes of clarifying if necessary, any aspect of the information provided by you under this declaration?

YES NO

I DECLARE THAT THE INFORMATION PROVIDED BY ME IN THIS FORM IS COMPLETE AND CORRECT

FULL NAME___________________________

ADDRESS_____________________________

____

____

____

PPS NUMBER __________________________

SIGNATURE: ___________________________

DATE: ________________________________

Pension Declaration Forms may be audited by Revenue.

Tax Relief for Pension Contributions: Application of Earnings Limit

Chapter 26

Document last reviewed June 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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26.1 Introduction

Section 790A Taxes Consolidation Act 1997 (TCA) provides that an aggregate earnings limit applies for the purposes of giving income tax relief to an individual on contributions made to certain pension products[1]. This limit is currently €115,000.

This chapter illustrates the operation of the earnings limit where an individual has both earnings from employment and income from self-employment and makes contributions to both an occupational pension scheme/statutory scheme and a personal pension plan[2]. It also illustrates the operation of the earnings limit for doctors with GMS[3] income and income from private practice where they make contributions to both the GMS Superannuation Plan/Additional Voluntary Contributions (AVCs) and to personal pension plans. The topics covered in this chapter are:

- Tax relief for pension contributions
- Contributions to a single pension product
- Contributions to more than one pension product
- Application of the earnings limits in the case of doctors with GMS and private practice income.

26.2 Tax relief for pension contributions

Tax relief for pension contributions by an individual is subject to two main limits.

The first is an age-related percentage limit of an individual's remuneration/net relevant earnings (section 774(7)(c) TCA for occupational pension schemes with similar provisions in section 787 for RACs and section 787E for PRSAs). The maximum pension contribution in respect of which an individual may claim tax relief may not exceed the relevant age-related percentage of the individual's remuneration/net relevant earnings in any year.

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[1] Occupational and statutory pension schemes, Retirement Annuity Contracts, PRSAs and qualifying overseas pension plans

[2] The reference to "personal pension plan" in this chapter can apply to a Retirement Annuity Contract (RAC) and/or a Personal Retirement Savings Account (PRSA).

[3] Now called Primary Care Re-imbursement Service (For ease of reference GMS is used in this chapter. For further information please refer to Appendix IV.)

The age-related percentage limits are:

Age	Limits
Up to 30 years	15% of remuneration/net relevant earnings
30 – 39 years	20%
40 – 49 years	25%
50 – 54 years	30%
55 – 59 years	35%
60 years and over	40%

In addition, section 790A TCA places an overall upper limit on the amount of remuneration/net relevant earnings that may be taken into account for tax relief purposes. The earnings limit is €115,000 since 2011[4]. This limit applies whether an individual is contributing to a single pension product or to more than one pension product.

In addition, section 790A provides that, for the purposes of giving tax relief to an individual on contributions made to a retirement benefits scheme and to a personal pension plan, etc., the aggregate of the individual's remuneration, within the meaning of Chapter 1, and net relevant earnings within the meaning of Chapter 2 (RACs) and Chapter 2A (PRSAs) of Part 30 TCA shall not exceed the earnings limit. Therefore, where an individual has both remuneration from employment and net relevant earnings in respect of self-employment, the aggregate of the remuneration and net relevant earnings that can be "pensioned" for tax relief purposes cannot exceed the earnings limit.

Section 790A requires pensionable remuneration to be considered first in determining the overall amount of tax relievable contributions that can be made in any year as between occupational pensions (including AVCs) and personal pension plans.

If the pensionable remuneration from an office or employment in a year equals or exceeds the limit, there is no scope for further tax relief on contributions to a personal pension plan for that year.

[4] The earnings limit was €254,000 in 2006, €262,382 in 2007, €275,239 in 2008 and €150,000 in 2009 and 2010. However, for 2010 the limit was deemed to be €115,000 for the purposes of determining how much of a pension contribution paid by an individual in 2011 could be treated as paid in 2010, where the individual elected under existing rules to have it so treated.

26.3 Contributions to a single pension product

Where an individual is contributing to a single pension product, the maximum tax relievable pension contribution is the relevant age-related percentage of the lower of:

- the individual's remuneration/net relevant earnings and
- the earnings limit.

Example 1

An individual aged 50 with earnings of €200,000 in 2021 and making contributions to an occupational pension scheme may claim tax relief on the lower of the actual contributions paid and 30% of the earnings limit of €115,000 (€34,500).

If the individual is making contributions of 25% of salary (in this case, €50,000) tax relief would be limited to contributions of €34,500 (the lower of €50,000 - the actual contribution made - and €34,500 - 30% of €115,000). If the individual is making contributions of 17% of salary (€34,000) s/he could claim tax relief on the full amount, as this is lower than 30% of €115,000.

Example 2

An individual aged 40 with self-employed income (net relevant earnings) of €100,000 in 2021 and paying premiums to a personal pension plan may claim tax relief on the lower of:

- the actual premiums/contributions paid and
- 25% of €100,000 (= €25,000)

If the individual is paying premiums/contributions of €30,000, the amount on which tax relief could be claimed would be limited to €25,000. If the premiums/ contributions paid were €25,000 or less, relief could be claimed on the full amount.

26.4 Contributions to more than one pension product

Where an individual has two sources of income (for example, earnings from employment and profits from self-employment) and is making pension contributions to an occupational pension scheme and to a personal pension plan, a single aggregate earnings limit of €115,000 applies in determining the amount of tax relievable contributions.

The following examples illustrate the operation of the earnings limit in such situations.

Example 3

Mary has earnings from employment of €100,000 in 2021. She also has self-employed income of €100,000. She is aged 28 and is required to make a contribution of 10% of salary (that is, €10,000) to an occupational pension scheme established by her employer.

As Mary's is aged under 30 years, the maximum allowable tax relievable contribution she can make in respect of her employment earnings is 15% of her salary, which is €15,000.

What is Mary's scope for making further tax relievable pension contributions?

For her employment income, Mary could check with her scheme administrator or pension advisor to see if she has scope to secure extra benefits through additional voluntary contributions (AVCs). If such scope exists, she could make tax relievable AVCs of up to an additional 5% of her employment earnings (up to €5,000).

The pension contributions Mary is making in respect of her employment earnings of €100,000 counts towards the aggregate earnings limit of €115,000, which leaves a balance of €15,000 of the limit.

Mary's capacity to make tax relievable contributions to a personal pension plan in respect of her self-employed earnings is restricted to a maximum of 15% of €15,000 (i.e. €2,250).

This is the position irrespective of whether Mary decides to make an AVC.

Example 4

Michael, aged 51, has earnings from an employment of €180,000 in 2021. He also has self-employed income of €100,000.

Michael makes the following pension contributions:

- 10% of salary (€18,000) which he is required to make to an occupational pension scheme established by his employer, and
- 15% of self-employed earnings (€15,000) to a PRSA.

Because Michael is aged between 50 and 55 years, the maximum pension contributions to the occupational pension scheme on which he is entitled to claim tax relief for 2019 is the lower of

- his actual contributions (i.e. €18,000) and
- 30% of the earnings limit of €115,000 (i.e. €34,500).

As Michael's contributions are €18,000 he can claim relief on that amount.

However, no tax relief is due in 2019 for Michael's contributions to the PRSA as he has used up his aggregate earnings limit in contributing to his occupational pension scheme.

As in Example 3, if Michael has scope to make AVCs, he could increase the amount of tax relievable contributions on his earnings from employment by up to €16,500:

Maximum tax relievable contribution permissible (€115,000 x 30%)	
	€34,500
Less contribution made to the occupational pension scheme	(€18,000)
Maximum potential additional tax relievable contributions	€16,500

26.5 Contributions to the General Medical Services (GMS) plan

Under section 773 TCA the superannuation arrangements for doctors under the GMS[5] Scheme are approved by Revenue, for the purposes of Chapter 1 of Part 30 TCA, as if the GMS Plan were a retirement benefits scheme for employees. Tax relief for contributions made by doctors to the plan is given, therefore, under the provisions of Chapter 1**.**

Section 773(3) TCA deems GMS income to be "remuneration from … an office or employment" and specifically excludes that income from being taken into account in the calculation of net relevant earnings for the purposes of any claim to relief in respect of premiums paid towards a personal pension plan.

Since 2001, AVCs may be made up to the relevant age-related percentage of a doctor's net GMS remuneration,[6] subject to the earnings limit, less the sum paid by way of the 5% contribution to the main GMS plan.

Since section 773 treats a doctor's GMS income as "remuneration from an office or employment", the operation of the aggregate earnings limit in section 790A TCA (see paragraph 26.2 above) also applies to doctors with GMS and private practice income in the same way. That is, the GMS income and GMS superannuation plan contributions must be considered first in determining the overall amount of tax relievable contributions that can be made by a doctor in any year as between occupational pensions (including AVCs) and personal pension plans.

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[5] See footnote 3 above.

[6] "Net GMS remuneration" is defined as income derived from the GMS Scheme contract less any expenses set against that income for the purposes of assessing the doctor's liability to tax. It was introduced in 2001 in the context of the extension of AVCs to the GMS Plan. It is determined by deducting net relevant earnings in respect of private practice income from the doctor's overall net income (that is, gross income less expenses and capital allowances).

Therefore, pensionable GMS income (net GMS remuneration) makes up the first part of the aggregate earnings limit of €115,000 and net relevant earnings in respect of private practice income will be zero where the GMS pensionable income is €115,000 or more.

The following examples illustrate the operation of the aggregate earnings limit in such circumstances.

Example 5

John is a GP aged 56. He received net GMS remuneration in 2020 of €75,000, of which capitation income is €60,000, and he has net relevant earnings of €100,000 from his private practice.

John is contractually required to pay contributions equalling 5% of his GMS capitation income, which equals €3,000 (€60,000 x 5%).

John paid a further €4,500 in AVCs from his GMS earnings, so he has made pension contributions of €7,500 in respect of that income.

He has also paid premiums of €4,800 to a personal pension plan in respect of his private practice earnings.

John's pensionable remuneration (the GMS income) must be considered first. John's age-related percentage limit is 35% (for individuals aged 55 to 59 years). Since his net GMS remuneration is €75,000, his maximum tax relievable contributions for his GMS income is €26,250 (€75,000 x 35%).

John's current total contribution from his GMS remuneration is €7,500, leaving a balance of €18,750 (€26,250 minus €7,500) of tax relievable contributions from his this income.

He therefore has scope to make a "last minute" AVC of up to €18,750 under the provisions of section 774(8) TCA, before the 2020 return filing date (31 October 2021, or later if filed through ROS) and elect to claim the relief on the contribution in 2020.

The net GMS remuneration of €75,000 counts towards the €115,000 earnings limit, so he can make tax relievable contributions in respect of a personal pension plan to 35% of €40,000 (€115,000 - €75,000), which equals €14,000. As noted, he has already made regular RAC premiums totalling €4,800 in 2020. On that basis, under section 787(7) TCA, he can make a further tax relievable contribution of up to €9,200 towards a personal pension plan before the return filing date and elect to claim the relief in respect of the contribution in 2020.

Example 6

Jean is a GP aged 43. She is in receipt of net GMS remuneration in 2020 of €160,000 of which capitation income is €130,000 and she has net relevant earnings of €100,000 from her private practice.

As a member of the GMS Superannuation Plan, Jean made a contribution of €6,500 (5% of the capitation income) to the plan in 2020. In addition, during 2020 Jean paid €6,000 to a PRSA in respect of her private practice income. Before completing her 2020 tax return, Jean wants to establish what relief she can claim on the contributions already made and whether she can make additional tax relieved contributions.

The potential maximum contributions in respect of which Jean can claim tax relief in 2020 is €28,750 - the earnings limit of €115,000 multiplied by the relevant age-related percentage limit of 25% for individuals aged 40 to 49 years.

As in Example 5, Jean's pensionable GMS income must be considered first. In this case, as her net GMS remuneration exceeds the earnings limit of €115,000, she has no scope to claim relief for her PRSA contributions in 2020.

Jean has already made a contribution of €6,500 to the GMS Plan. Assuming she has capacity to do so (having regard to overall benefit restrictions), Jean has scope to make a special "last minute" AVC of up to €22,250 under the provisions of section 774(8) TCA, before the 2020 return filing date and elect to claim the relief on the contribution in 2020 so as to maximise her relief.

Jean's PRSA contributions cannot be relieved in 2020 and must be carried forward for relief in future years. This is the position irrespective of whether Jean decides to make an AVC or not.

Taxation of retirement lump sums

Chapter 27

This document should be read in conjunction with section 790AA of the Taxes Consolidation Act 1997 (TCA)

Document last reviewed September 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

Section 790AA Taxes Consolidation Act 1997 (TCA) provides a regime for the taxation of the excess portion of retirement lump sums paid on or after 7 December 2005 under various pension arrangements.

Section 790AA was originally inserted into the TCA by section 14(1)(f) Finance Act 2006. The regime under the 2006 measure (the “original regime”), which applied to retirement lump sums paid from 7 December 2005 to 31 December 2010, provided that the amount by which such a lump sum exceeded 25% of the prevailing standard fund threshold (SFT) was to be treated as emoluments in the hands of the individual in the year of assessment in which it was paid and was subject to tax, under Schedule E, at the individual’s marginal rate of tax in that year.

Section 19(5)(b) Finance Act 2011 replaced section 790AA in respect of retirement lump sums paid on or after 1 January 2011. This provides a revised regime (the “current regime”) for the taxation of the portion of retirement lump sums above a tax-free amount of €200,000 paid under various pension arrangements.

The topics covered in this chapter are:

- Overview of the current regime
- Definitions
- Meaning of excess lump sum
- Excess lump sum between €200,000 and 25% of the SFT
- Submission of return and payment of tax
- Further administrative provisions
- Excess lump sum in excess of 25% of the SFT
- Lump sums paid under PRSA arrangements
- Lump sums paid under qualifying overseas pension plans
- Lump sums not subject to tax under the new regime
- Credit for lump sum tax against chargeable excess tax
- Pension Adjustment Orders
- Appendix 1 – worked examples
- Appendix 2 – the original regime

In this Chapter, a reference to a lump sum should be regarded as a reference to a retirement lump sum.

2. The current regime - overview

As and from 1 January 2011, the maximum tax-free amount of a retirement lump sums is €200,000. This tax-free amount is a lifetime limit and encompasses all retirement lump sums paid to an individual on or after 7 December 2005.

Where a retirement lump sum or lump sums is/are paid to an individual on or after 1 January 2011 the amount in excess of this tax-free limit (the "excess lump sum") is, subject to the exceptions in paragraph 11, taxed in two stages (see paragraphs 5 and 8).

For the purposes of this regime:

- A lump sum means a retirement lump sum that is paid to an individual under the rules of a relevant pension arrangement. The lump sum can be made by way of commutation of part of a pension or part of an annuity or otherwise. Where an individual exercises an ARF option, the reference to the "commutation of part of a pension or of part of an annuity" is to be taken as a reference to the commutation of part of the pension or, as the case may be, part of the annuity which would, but for the exercise of that option be payable to the individual.

- Where two retirement lump sums are paid on the same day, the one that is paid earlier will be treated as having been paid before the later one for the purpose of applying the limit. Also, an individual who is paid more than one retirement lump sum at the same time on the same day must decide the order in which the lump sums are to be treated as having been paid for the purposes of this regime.

3. Definitions

The following definitions apply for the purposes of the current regime.

The 'tax-free amount' is €200,000. All retirement lump sums taken on or after 7 December 2005 must be taken into account in determining the tax-free amount appropriate to a retirement lump sum taken on or after 1 January 2011. For example, if an individual has already taken retirement lump sums of €200,000 or more since 7 December 2005, any further retirement lump sums paid to the individual will be taxable.

An 'excess lump sum' is the taxable portion of a retirement lump sum, that is, the amount by which such a lump sum exceeds the tax-free amount of €200,000 and is calculated by reference to all retirement lump sums received on or after 7 December 2005.

An excess lump sum is subject to tax in two stages. The portion between the tax-free amount of €200,000 and an amount equivalent to 25% of the SFT[1] when the lump sum is paid (the SFT cut-off point) is chargeable to tax under Case IV of Schedule D at the standard rate of income tax in force when the retirement lump sum is paid,

[1] The SFT is the generally applicable maximum tax-relieved pension fund for an individual. It was set at €2 million for 2014 and that amount continues to apply. The SFT for 2010 (from 7 December 2010) to 2013 was €2.3 million (see Tax and Duty Manual (TDM) Chapter 25).

currently 20%. This is called the “standard chargeable amount” (further details below).

The balance, if any, of an excess lump sum, if any (the portion over the SFT cut-off point) is treated as profits or gains arising from an office or employment and is charged to tax under Schedule E at the individual’s marginal rate.

A ‘standard chargeable amount’ is the difference between 25% of the SFT (currently €2m; 25% of which is €500,000) and the tax-free amount of €200,000. This gives a current standard chargeable amount of €300,000. This is the portion of a lump sum(s) that is taxed under Case IV at the standard rate of income tax, currently 20%. For lump sums paid from 1 January 2011 to 31 December 2013, the standard chargeable amount was €375,000, the difference between 25% of the then SFT of €2.3m (€575,000) and €200,000.

As stated in paragraph 2, a lump sum to which this chapter applies is a retirement lump sum paid to an individual under the rules of a relevant pension arrangement including, for example, a lump sum paid under any of the following arrangements:

- Revenue approved occupational pension schemes (including AVC arrangements),
- Revenue approved retirement annuity contracts (RACs),
- Personal Retirement Savings Accounts (PRSAs),
- Qualifying overseas pension plans (within the meaning of Chapter 2B, Part 30 TCA),
- Public service pension schemes as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004, and
- Statutory schemes – that is schemes established by or under any enactment (which includes all statutory schemes that fall outside of the definition of public service pension schemes mentioned above).

4. Excess lump sum

As noted in paragraph 3, an excess lump sum is the taxable portion of a retirement lump sum, that is, the amount by which such a lump sum exceeds the tax-free amount of €200,000 and is calculated by reference to all retirement lump sums received on or after 7 December 2005.

Where a lump sum is the first lump sum to be paid to an individual on or after 7 December 2005 (the date the taxation of retirement lump sums was introduced), the excess lump sum is the amount by which the retirement lump sum exceeds the tax-free amount of €200,000.

For example, if a retirement lump sum of €500,000 was paid in January 2012 (being the first such lump sum), then the excess lump sum is €500,000 minus €200,000 (the tax-free amount), which equals €300,000.

However, where an individual was paid a retirement lump sum on or after 7 December 2005, which was less than the tax-free amount, then the excess lump sum is the amount by which the earlier lump sum and the current lump sum added together exceeds the tax-free amount.

Example 1

An individual received the following lump sum payments:

- €50,000 January 2010;
- €100,000 in June 2012;
- and the "current lump sum" of €150,000 in January 2014.

The excess lump sum is €100,000, calculated as follows -

- the total of the earlier lump sums (€50,000 + €100,000) = €150,000
- plus the current lump sum (€150,000 + €150,000) = €300,000
- minus the tax-free amount (€300,000 - €200,000) = €100,000

Where an earlier lump sum is equal to or greater than the tax-free amount then the excess lump sum is the amount of the current lump sum.

Example 2

An individual received the following lump sum payments:

- €180,000 in January 2010,
- €100,000 in June 2012,
- and the "current lump sum" of €200,000 in January 2014.

The total of the earlier lump sums, which is €280,000 (€180,000 + €100,000) exceeds the tax-free amount of €200,000, so the entire current lump sum is subject to tax, as was the amount by which the total of the first two lump sums exceeded the tax free amount - €80,000 in this example (€280,000 minus €200,000).

As stated in paragraph 2, the excess lump sum is subject to tax in two stages:

- The portion between the tax-free amount and 25% of the SFT when the payment is made is taxed at the standard rate of 20%; and
- the portion above 25% of the SFT is taxed at the individual's marginal rate of income tax.

5. Excess lump sum between €200,000 and 25% of the SFT (“standard chargeable amount”)

As noted in paragraph 3, the “standard chargeable amount”, the portion of the excess lump sum between the tax-free amount of €200,000 and 25% of the applicable SFT is taxed under Case IV of Schedule D at the standard rate of income tax in force when the lump sum is paid (currently 20%).

The portion of the lump sum charged under Case IV is ring-fenced so that it does not form part of an individual’s total income. This means that –

- No reliefs, deductions or tax credits may be set against the amount so charged or against the tax payable on that amount.

- The portion of the lump sum charged under Case IV should not be included as income on an individual’s annual return of income.

It should not be included in any payroll notifications sent to Revenue. It should be included on Form 790AA (see paragraph 6).

The tax paid under Case IV is not available for repayment or for set-off against the individual’s income tax liability.
However, standard rate lump sum tax paid on or after 1 January 2011 may be credited against the tax payable on a chargeable excess occurring on or after that date (see paragraph 12).

Where all or part of the tax charged under Case IV on an excess lump sum is paid by the administrator and is not recovered from, or reimbursed by, the individual, then the amount of the tax paid by the administrator is treated as forming part of the excess lump sum and is taxed accordingly.

6. Submission of return and payment of tax

A pension administrator who deducts tax from that part of an excess lump sum that is charged under Schedule D Case IV must make a return on Form 790AA to the Collector-General within 3 months of the end of the month in which the lump sum is paid to the individual in question.

The tax in question must be paid by the administrator to the Collector-General and is due at the same time as Form 790AA. The amount of an excess lump sum taxed at the standard rate and the associated income tax should not be included in any payroll notifications sent to Revenue.

7. Further administrative provisions

The pension administrator and the individual to whom the retirement lump sum is paid are jointly and severally liable for the payment of the tax on the portion of the lump sum charged under Case IV.

Where an administrator (having relied on incomplete or incorrect information supplied by the individual) reasonably believed that an excess lump sum was less than it should be or that no excess lump sum arose, then s/he may apply in writing to the Revenue Commissioners to be discharged from any liability that arises. Where the administrator is so discharged, the liability falls on the individual in question. (section 790AA (14) TCA).

The standard assessment, late payment and appeal provisions apply in relation to tax due on that part of an excess lump sum that is charged to tax under Case IV.

8. Balance of lump sum over "standard chargeable amount"

The balance, if any, of a retirement lump sum in excess of 25% of the SFT in force when the lump sum is paid is regarded as profits or gains arising from an office or employment and is taxed under Schedule E as emoluments to which the PAYE system applies. USC is payable as appropriate.

The pension administrator should deduct tax at the higher rate (40% since the tax year 2015, or 41% for earlier years), from this portion of the lump sum, unless the administrator has received a revenue payroll notification (within the meaning of section 983), indicating the standard rate would be appropriate to some or all of the excess amount.

As this portion of a lump sum forms part of the individual's total income, all relevant reliefs and deductions are available in the normal manner.

The amount of the lump sum charged under Schedule E should appear on the individual's return of income and should be included in any payroll notifications sent to Revenue. It should **not** be included on Form 790AA.

9. Lump sums paid under a PRSA

The provisions of section 787G(2) TCA apply where income tax is deducted from an excess lump sum in respect of a lump sum paid by a PRSA administrator. Where a PRSA administrator makes PRSA assets available to a PRSA member, section 787G(2) TCA requires the administrator to deduct income tax computed on the amount or value of the assets. Where the assets are insufficient to discharge the tax as computed, the shortfall is an amount due to the administrator from the beneficial owner of the PRSA assets.

10. Lump sums paid under qualifying overseas pension plans

An individual who receives a lump sum from a qualifying overseas pension plan (QOPP)[2] must pay tax on the excess lump sum under Case IV of Schedule D at the rate, or rates, of income tax which would apply if the lump sum was received from a pension plan other than a QOPP.

11. Lump sums not subject to tax under this regime

Lump sums payable in the following circumstances are not subject to tax under this regime:

- a lump sum paid to the widow, widower, surviving civil partner, children, dependants, personal representatives, or children of the civil partner of a deceased individual (section 790A(18)(a) TCA);

- a lump sum payable following a full commutation of pension where the scheme provides for full commutation in the case of serious ill-health (see TDM Chapter 7 for further details);

- the balance of a lump sum paid at normal preserved pension age to an individual under the Incentivised Scheme of Early Retirement (Department of Finance Circular 12/09) (section 790A(18)(b) TCA). (See TDM Chapter 3 for further details.)

12. Credit for lump sum tax against chargeable excess tax

Section 787RA TCA, which applies to benefit crystallisation events (BCEs) occurring on or after 1 January 2011, provides that where

- tax at the standard rate - under section 790AA (3)(a)(i) or (3)(b)(i)(I) TCA (see paragraph 27) - is deducted from a retirement lump sum paid to an individual under a pension arrangement on or after that date and
- tax also arises on a chargeable excess (see TDM Chapter 25) in relation to that individual,

the pension scheme administrator is required to reduce the tax on the chargeable excess by the tax deducted from the retirement lump sum under section 790AA (3)(a)(i) or (3)(b)(i)(I) and pay the net amount of chargeable excess tax, if any, to the Collector-General.

[2] This is a scheme for tax relief on contributions made by migrant workers to pre-existing overseas pension plans (i.e. employees or self-employed individuals coming to or returning to Ireland with a pre-existing pension plan concluded with a pension provider in another EU State which they want to retain).

Only tax paid on that part of a lump sum up to 25% of the SFT in force when the lump sum is paid (and not previously offset against tax on an earlier chargeable excess) can be offset against chargeable excess tax.

Lump sum tax deducted from the portion of a lump sum over 25% of the SFT (the portion which is charged to tax under Schedule E at the individual's marginal rate) may not be offset against chargeable excess tax.

Section 787RA TCA provides that:

- lump sum tax includes tax paid since 1 January 2011 on an earlier retirement lump sum from another pension scheme administered by either the same administrator or by another administrator (to the extent in all cases that the lump sum tax has not been previously offset against chargeable excess tax),
- an administrator (A) can only offset earlier lump sum tax paid by another administrator (B) where A receives a certificate, as required in section 787RA TCA, from B, and
- unused lump sum tax (that is, where the amount of the lump sum tax available to be offset exceeds the chargeable excess tax) can be carried forward and used against chargeable excess tax arising on future BCEs occurring in relation to the individual.

13. Pension adjustment orders

Where section 790AA TCA applies to a retirement lump sum which is the subject of a pension adjustment order (PAO) the portion of the lump sum which is paid to each party in accordance with the terms of the PAO is treated as a separate lump sum for the purposes of the section.

This means, for example, that for the part of a retirement lump sum paid to each party under the terms of the PAO, the tax-free limit of €200,000 applies individually and the extent to which a party is charged to income tax under Case IV of Schedule D or Schedule E is based on the amount of the lump sum paid to the individual.

Appendix 1 – worked examples

The following examples illustrate how the current regime for the taxation of retirement lump sums works in practice. The SFT has been set at €2 million since 1 January 2014.

Example 1
A retired on 10 January 2021 and is paid a retirement lump sum of €180,000. This is the first such lump sum he has received. A's retirement lump sum is exempt from tax as it is less than the tax-free limit of €200,000. The lump sum of €180,000 is counted towards his lifetime tax-free limit.

Example 2
A is paid a further retirement lump sum of €150,000 on 30 June 2021. As the tax-free limit applies to the aggregate of all retirement lump sums received on or after 7 December 2005, both lump sums are added together to determine how much of the second lump sum is subject to tax. The aggregate of the lump sums received since 7 December 2005 is €330,000 (€180,000 + €150,000). This exceeds his lifetime tax-free limit of €200,000 by €130,000. It is within the "standard chargeable amount" (between €200,000 and €500,000). The "excess lump sum" of €130,000 is therefore subject to tax under Case IV of Schedule D at the standard rate of income tax in force in 2021 i.e. 20%. The tax due is €130,000 @ 20% = €26,000.

Example 3
A is paid a further retirement lump sum of €450,000 on 30 September 2021.

As illustrated in Example 2, his lifetime tax-free limit of €200,000 has already been fully "used up" and he has also "used up" €130,000 of the "standard chargeable amount" (which is €300,000, the difference between the tax-free limit of €200,000 and €500,000). The lump sum paid on 30 September 2021 is subject to tax as follows:

- €170,000 under Case IV of Schedule D at the standard rate in force in 2021; tax due @ 20% = €34,000. (€170,000 is the balance of the "standard chargeable amount available after the second lump sum: €300,000 – €130,000 = €170,000)

- the remaining €280,000 under Schedule E at his marginal rate of tax in 2021; if his marginal rate was the higher rate of income tax in 2021, the tax due @40% is €112,000 (€280,000 is the balance of the lump sum after deducting the amount taxable at 20% under Case IV).

- The total tax due on the lump sum is €34,000 + €112,000 = €146,000.

Example 4

B retired on 31 January 2021 and is paid a retirement lump sum of €800,000. This is the first such lump sum she has received. She is charged to tax as follows:

- the first €200,000 is exempt,
- the next €300,000 is taxed under Case IV of Schedule D at the standard rate in force in 2016 (20% - tax due on this portion of the lump sum = €60,000), and
- the balance, i.e. €300,000, is taxed under Schedule E at her marginal rate in 2016 – assuming her marginal rate was the higher rate of 40%, the tax due on this portion of the lump sum is €120,000.
- Total tax due on the lump sum: €60,000 + €120,000 = €180,000.

If B receives any future retirement lump sum, it will be subject to tax under Schedule E at her marginal rate in the year it is paid.

Example 5
C retired on 10 January 2021 and is paid a retirement lump sum of €120,000. She had previously received a lump sum on 30 June 2014 of €150,000. Even though the earlier lump sum was not taxable, it counts towards her €200,000 lifetime tax-free limit. This means that the "unused" balance of the tax-free limit is €50,000 (€200,000 – €150,000) and this amount is offset against the lump sum paid on 10 January 2016. Therefore, €70,000 of the later lump sum is taxable under Case IV of Schedule D at the standard rate in force for 2021 of 20% (tax due @ 20% = €14,000).

Example 6
D retired on 10 January 2021 and is paid a retirement lump sum of €100,000. She had previously received a lump sum on 30 June 2014 of €300,000. As D's earlier lump sum already exceeds the tax-free limit, the 2021 lump sum is taxable in full under Case IV of Schedule D at the standard rate for 2021 of 20% (tax due = €20,000).

Example 7
F retired on 1 July 2021 and is paid a retirement lump sum of €400,000. He had previously received a retirement lump sum of €450,000 on 1 January 2011. The earlier lump sum used up the €200,000 lifetime tax free limit, and €250,000 of the €300,000 that is taxable under Case IV of Schedule D at the standard rate. Therefore:

- €50,000 of the later lump sum is taxed under Case IV at the standard rate for 2021 (20% - tax due = €10,000), and
- the remaining €350,000 of the later lump sum is taxed under Schedule E at his marginal rate in 2021 (assuming the higher rate of 40%, tax due = €140,000).
- Total tax due on the lump sum = €10,000 + €140,000 = €150,000

Example 8

G retired on 12 April 2021 and is paid a retirement lump sum of €100,000. He had previously received a retirement lump sum of €520,000 on 30 June 2014.

- The earlier lump sum used up G’s lifetime tax-free limit of €200,000 and also used up the €300,000 was subject to tax under Case IV of Schedule D at the standard rate in force in 2014. (The remaining €20,000 was subject to tax under Schedule E at G’s marginal rate in that year.)

- The later lump sum of €100,000 is therefore fully taxed under Schedule E at G’s marginal rate. Assuming the marginal rate was 40%, the tax due is €40,000.

Appendix 2 – The original regime

Main features

The main features of the original regime, which operated in respect of retirement lump sums paid in the period 7 December 2005 (the specified date for the purposes of the original scheme) to 31 December 2010, may be summarised as follows:

The maximum amount of retirement lump sums that could be made tax-free under the various pension funds[3] was capped at 25% of the SFT (the lump sum limit[4]).

The lump sum limit applied to a single lump sum or, where more than one lump sum was paid to an individual over time, to the aggregate of those lump sums.

The full amount of the retirement lump sum in excess of the lump sum limit (the excess lump sum) was regarded as emoluments of the individual chargeable to tax under Schedule E[5]. Therefore, the entire excess lump sum was -

- chargeable at the individual's marginal rate in the year of assessment in which the lump sum was paid,
- included on forms P30, P35, P45, P60, etc. for the relevant year of assessment, and

The provisions of section 787G(2) TCA applied to the original regime in the same manner as they apply to the current regime (see paragraph 9).

The original regime did not apply to lump sums payable in the following circumstances –

- A death in service lump sum paid by an occupational or statutory pension scheme to the personal representatives (for example, widow, widower, dependants) of a deceased individual.
- A lump sum paid following a full commutation of pension where the scheme provides for full commutation in the case of serious ill health (see TDM Chapter 7 for further details).

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[3] Referred to in section 790AA as a "relevant pension arrangement".
[4] The lump sum limit for the years of assessment 2005 and 2006 was €1,250,000 and due to indexation provisions was increased to €1,291,250 for 2007 and €1,354,521 for the years 2008 to 2010.
[5] An excess lump sum from a qualifying overseas pension plan was chargeable to tax under Schedule D Case IV rather than Schedule E.

Excess lump sum
The excess lump sum for the purpose of the original regime was the amount by which a lump sum exceeded the lump sum limit. The calculation process for lump sums paid in the period 7 December 2005 to 31 December 2010 is similar to the calculation required under the current regime (although the current regime employs a tax free amount rather than a lump sum limit).

Where a lump sum was paid in any of the years of assessment 2007 to 2010 and an earlier lump sum had been paid prior to 2007 (but on or after 7 December 2005), the original regime employs the following formula to adjust the earlier lump sum in line with the increase in the lump sum limit (see footnote 4) –

$$A \times \frac{B}{C}$$

where –

A = the amount of the earlier lump sum.
B = the lump sum limit for the year in which the later lump sum was paid, and
C = the lump sum limit for the year in which the earlier lump sum was paid.

Example
A received a retirement lump sum of €500,000 in 2006 when the lump sum limit was €1,250,000.

He received a further lump sum of €1,000,000 in 2007 when the lump sum limit was €1,291,250. The amount of the earlier lump sum is adjusted using the above formula -

$$€500,000 \times \frac{€1,291,250}{€1,250,000} = €516,500$$

By the time the second lump sum (€1,000,000) was paid he had already used up €516,500 of his lump sum limit (i.e. the indexed amount of the earlier lump sum) leaving an amount of €225,250 (€1,000,000 + €516,500 less €1,219,250) subject to tax at his marginal rate.

Imputed Distributions from Approved Retirement Funds and Vested Personal Retirement Savings Accounts

Pensions Manual - Chapter 28

Document last updated June 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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28.1 Introduction

Section 790D Taxes Consolidation Act 1997 (TCA), which applies for the year 2012 onwards, provides for a scheme of imputed distributions for both Approved Retirement Funds (ARFs) and vested Personal Retirement Savings Accounts (PRSAs) on a composite basis.[1]

28.2 Vested PRSAs

A vested PRSA is defined in section 790D(1) as a PRSA -

(a) from which assets of the PRSA have been made available to the PRSA owner or any other person - in general this will be in the form of benefits taken from age 60 (for example a retirement lump sum or taxed distribution) on or after 7 November 2002 (the date of introduction of PRSAs);
(b) which is a PRSA AVC, at the time benefits are taken from the main occupational pension scheme (i.e. at the point of retirement); or
(c) in respect of which the owner reaches the age of 75 years, where, up to and including the date of his or her 75th birthday, the PRSA assets have not been made available to or paid to the owner or any other person, other than in circumstances where part of the assets were transferred to another PRSA in the owner's name.

In certain instances, the making available of PRSA assets does not constitute the vesting of the PRSA, such as:

(i) an amount transferred to an ARF[2]
(ii) an amount made available to a personal representative of the PRSA holder, or
(iii) the transfer, before a tax-free lump sum is taken, from one PRSA to another PRSA or pension scheme of the owner.

Where assets are in a PRSA AVC, vesting is deemed to take place at the time benefits are taken from the main occupational pension scheme (that is, at the point of retirement) because that is when AVC benefits are required to be taken.

A PRSA held by an individual who was aged 75 years before 25 December 2016 (the date on which Finance Act 2016 was passed) from which benefits had not been taken on or before the individual attained that age is deemed to become a vested PRSA on 25 December 2016.

[1] Prior to 2012, the imputed distribution regime applied only to ARFs created on or after 6 April 2000 (the date the existing gross roll-up regime for ARFs was introduced). With effect from 1 January 2012, this regime was extended to certain PRSAs vested on or after 7 November 2002 (the date PRSAs were introduced) and applies to a year of assessment where the ARF and/or vested PRSA holder is aged 60 years or over for that entire year
[2] This also included transfers to an Approved Retirement Fund (AMRF) prior to 1 January 2022.

28.3 Value of Assets

The value of an asset (other than cash) in a relevant fund is the market value of the asset in question within the meaning of section 548 TCA. A 'relevant fund' means the assets in all the ARFs and vested PRSAs beneficially owned by an individual on 30 November in a tax year.

28.4 Specified Amount

The imputed distribution for a tax year is referred to in section 790D TCA as the "specified amount" and is computed using a formula:

$$\frac{(A \times B)}{100} - C$$

(where the amount so computed is greater than zero) and where:

A is the value of the assets in a relevant fund on 30 November for the year 2012 onwards, excluding the value of assets retained by a PRSA administrator as would be required to be transferred into an AMRF[3] in accordance with an option to transfer PRSA assets to an ARF.

B is[4]–

- where the relevant value is not greater than €2m,
    a. 4, where the individual is not aged 70 years or over for the whole of the relevant tax year, or
    b. 5, where the individual is aged 70 years or over for the whole of the relevant tax year.

- 6, where the relevant value is greater than €2m.

C is the amount or value of any relevant distributions made in the tax year.

Prior to the passing of Finance Act 2021, the reference to "the value of the assets retained by the PRSA administrator as would be required to be transferred to an AMRF" in the meaning of "A" excluded from the asset base the assets that a PRSA administrator was obliged to retain in the PRSA because the owner had not satisfied the specified income requirement or had not established an AMRF of the required amount. As the assets in the AMRF were specifically excluded from the specified amount calculation, this ensured that the retained PRSA assets were also excluded from the calculation.

The formula has the following effect:

[3] Transfers to AMRFs were abolished from the passing of Finance Act 2021.

[4] These rates were introduced in Finance Act 2014 and are effective from 1 January 2015. Prior to that date, where the relevant value was not greater than €2m, "B" was 5 irrespective of the age of the individual. Where the relevant value is greater than €2m, there is no change.

Fund below €2m in value; Individual aged under 70 or turning 70 in the year

Where the value of a relevant fund on the specified date is €2m or less, and the individual involved is not aged 70 years or over for the whole of the relevant tax year, the specified amount (the amount of the deemed distribution) is 4% of the value of the ARF or vested PRSA, less the value of any "relevant distribution" (that is, actual distributions from the ARF, and any associated PRSA assets made available to the PRSA owner after deducting excluded distributions in that year from the relevant fund)

Fund below €2m in value; Individual aged over 70

Where the value of a relevant fund on the specified date is €2m or less, and the individual is aged 70 years or over for the whole of the relevant tax year, the specified amount (the amount of the deemed distribution) is 5% of the value of the ARF or vested PRSA, less the value of any "relevant distribution".

Fund over €2m in value, irrespective of the age of the individual

Where the value of the assets is greater than €2m, the specified amount is equivalent to 6% of the full value (i.e. not just on that part of the fund that exceeds €2m) less the value of any "relevant distribution".

Excluded distributions

As noted above, the value of excluded distributions is deducted in computing the value of relevant distributions. "Excluded distributions" are distributions that do not attract a tax liability in themselves; for example, the transfer of assets from one ARF to another beneficially owned by the same individual, or a tax-free lump sum taken from a PRSA on vesting. Excluded distributions are[5]:

- imputed distributions themselves;
- transfers between ARFs of the owner;
- transactions by an ARF or PRSA that are regarded as distributions or the making available of PRSA assets;
- taking a tax-free lump sum from a PRSA, transfers from a PRSA to an ARF or to the deceased owner's estate and pre-vesting transfers to another PRSA or pension scheme of the owner; and
- use of ARF or PRSA assets to discharge an excess fund tax liability or to pay the chargeable excess tax share of a former spouse or civil partner of a member of a retirement scheme, the benefits from which are the subject of a pension adjustment order. (See Pensions Manual Chapter 25, "Limit on Tax Relieved Pension Funds", for more details)

[5] Excluded distributions prior to 1 January 2022 included:

- transfers from the owner's AMRF to a replacement AMRF; and
- transfers from a PRSA to an AMRF.

Depending on the nature of the relevant fund, the specified amount is regarded either as a distribution of that amount from an ARF or as the making available of PRSA assets of that amount to a PRSA contributor and separate taxing provisions apply as appropriate to ARF distributions (section 784A(3) and (7)(b) TCA) and to the making available of PRSA assets (section 787G(1) and (2) TCA).

For example, the specified amount of a relevant fund which consists solely of one or more ARFs or one or more vested PRSAs is regarded as a distribution from an ARF or the making available of PRSA assets respectively. Where there is a mixture of ARFs and vested PRSAs, the taxing regime depends on whether the QFM and the PRSA administrator are the same person, in which case the specified amount is regarded as a distribution from an ARF.

Where the QFM and the PRSA administrator are not the same person and the individual appoints a nominee (see paragraph 28.5), the taxing regime depends on whether the nominee is a QFM, a PRSA administrator, or both, in which case the specified amount will be considered to be a distribution from an ARF, a PRSA and an ARF, respectively.

Procedure for payment of tax on ARF distributions

The specified amount is regarded as having been distributed or made available not later than the second month of the year of assessment following the year of assessment for which the specified amount is determined, in accordance with section 790D(4) TCA.

The imputed distribution is to be regarded as a distribution made not later than February in the year of assessment following the year of assessment to which the imputed distribution relates. The QFM must deduct tax from the imputed distribution in accordance with the provisions of section 784A(3) TCA. Tax deducted must be included in the QFMs payroll submission to Revenue and the tax paid not later than 14 March of that year. For example, in respect of an imputed distribution calculated for 2019, the tax must be paid by 14 March 2020.

All payments of tax should be paid electronically through ROS or forwarded to:

Office of the Revenue Commissioners

Collector-General’s Division

PO Box 354

Limerick

The remittance should be accompanied by the following statement completed by the QFM.

Approved Retirement Funds

Name of QFM:

Address:

I confirm that all Approved Retirement Funds under management have been reviewed for the purposes of establishing if liability arises under Section 784A(3) TCA 1997.

Arising from this review, a sum of € ___ is reflected in the payroll submission submitted for (**month**) in respect of tax deducted from (insert number) Approved Retirement Funds and is included in the remittance to the Collector General in respect of that month.

Authorised Signatory: Date:

A payment and return can be sent electronically using Revenue-On-Line (ROS). For details phone 01 738 36 99 or see the Revenue website.

28.5 Appointment of a nominee

An individual may appoint a nominee where his or her relevant fund comprises ARFs and/or PRSAs that are not all managed or administered by the same QFM or PRSA administrator.

The appointment of a nominee is optional where the relevant fund has a value of €2m or less. If no nominee is appointed, each QFM and PRSA administrator must operate in isolation and apply the 5% notional distribution to the relevant ARF(s) or PRSA(s) they manage/administer. Please refer to paragraph 28.8 where an individual opts not to appoint a nominee.

The appointment of a nominee is compulsory where the relevant fund has a value greater than €2m. This is because in such cases the QFM or PRSA administrator will not have sufficient information to operate in isolation; unless the ARF/PRSA that they manage is itself greater than €2m the QFM or PRSA administrator won't know whether to apply the 4%, 5% or 6% rate.

An individual who appoints a nominee must advise the other QFMs and/or PRSA administrators of that fact and provide them with the name and contact details of the nominee.

Where the appointment of a nominee is compulsory the individual must advise the other manager/managers that the appointment of the nominee is a compulsory appointment and that the reason for the appointment is that the aggregate value of the assets in the ARFs/PRSAs is greater than €2m and therefore attracts the 6% rate of tax.

28.6 Provision of certificate(s) to nominee

Where a nominee is appointed for any year, the other manager(s)/administrator(s) must provide the nominee with a certificate for that year stating the aggregate value of the assets in, and relevant distributions from, the ARFs/PRSAs they manage within 14 days of the specified date (that is, by 14 December of a tax year).

In the case of a PRSA fund, the certificates should exclude any amount that had been retained by the PRSA administrator for AMRF purposes prior to 1 January 2022 (see paragraph 28.4), as these do not form part of the asset base for the specified amount.

The nominee must retain these certificates for six years for production to Revenue, if required.

A nominee who receives a certificate or certificates from the other manager(s) must determine the specified amount (see paragraph 28.4) as if the value of the assets and the relevant distributions stated in each certificate so received were the value of assets in, and relevant distributions from, an ARF or a vested PRSA managed or administered by the nominee. This applies even if the nominee only gets some but not all the required certificates (see paragraph 28.7).

28.7 Nominee receives some or no certificates

Where the relevant fund value is €2m or less and the nominee receives no certificates from the other fund manager(s), the nominee and the other manager(s) must determine in isolation the specified amount in respect of the ARFs/PRSAs that they manage, that is, as if the individual's relevant fund comprised solely of the ARFs/PRSAs that each manages.

Where the relevant fund value is €2m or less and the nominee has received certificates from some but not all of the other fund manager(s), the managers that failed to provide certificates must determine in isolation the specified amount as described in the preceding paragraph. As the nominee will have received at least one or more certificates from the compliant manager(s) the nominee must calculate the specified amount in accordance with section 790D (8) TCA in respect of the nominee and the other managers that provided certificates (see paragraph 28.6).

These provisions also apply where the relevant fund value is greater than €2m except that any specified amount calculated in isolation is to be based on 6% of the value of the fund.

28.8 Nominee not appointed

Where an individual whose relevant fund comprises ARFs and/or PRSAs that are not managed or administered by the same QFM and/or PRSA administrator, opts not to appoint a nominee because the value of the assets in the relevant fund does not exceed €2m, each QFM and/or PRSA administrator must determine in isolation the

specified amount in respect of the ARFs/PRSAs that they each manage as if the individual's relevant fund comprised solely of those ARFs/PRSAs that each manage.

28.9 PAYE Exclusion Orders in respect of ARFs and PRSAs

Revenue does not issue PAYE Exclusion Orders in respect of distributions or withdrawals from ARFs and PRSAs (whether actual or imputed). Please refer to Pensions Manual paragraphs 23.15 and 24.10**,** respectively.

Dual Private/Public Pension Scheme

Encashment Option

Chapter 29

This document should be read in conjunction with section 787TA of the Taxes Consolidation Act 1997 (TCA)

Document last reviewed September 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

Section 787TA Taxes Consolidation Act 1997 (TCA) provides for an encashment option, with effect from 8 February 2012, for certain individuals with significant dual private sector and public sector pension savings.

Where the aggregated capital value of an individual's pension benefits at retirement from private-sector and public-sector pension arrangements exceeds the standard fund threshold (SFT) of €2 million[1] or the individual's personal fund threshold (PFT), if applicable, the amount over the threshold is called a "chargeable excess". This attracts an immediate tax charge at the higher rate of income tax in force for the tax year in which the "benefit crystallisation event" which gives rise to the chargeable excess occurs (40% from the tax year 2015 onwards and 41% for earlier years). There are further tax implications when the remaining excess is drawn down as a pension. The provisions in section 787TA TCA allow an affected individual a once-off opportunity to encash their private pension rights, in whole or in part, from age 60 (or earlier, where retirement is due to ill health) with a view to eliminating or minimising the chargeable excess that would otherwise arise when the public sector pension crystallises.

2. Who qualifies for the encashment option?

To qualify for the encashment option an individual must be a "relevant individual", as defined in section 787TA(1) TCA, on 8 February 2012. That means she or he must:

- be a member of a private sector pension scheme and a member of a public sector pension scheme or
- be a member of a public sector pension scheme and have drawn down heror his private sector scheme benefits in the period 7 December 2005 to 7 February 2012 (this includes individuals who may have drawn pension benefits already from, for example, an RAC or PRSA but remain in public sector employment and a member of the public sector scheme) or
- be a member of a private sector scheme on or after that date and subsequently have become a member of a public sector scheme (this includes individuals moving from the private sector into the public sector) or
- remain an active member of her or his public sector scheme until retirement date (that is, on reaching age 60 years or later). This means she or he continues in public sector employment and accrues pension benefits up to retirement.

[1] An SFT of €2 million has applied since 2014. The SFT from 7 December 2010 to 31 December 2013 was €2.3 million.

In addition, the individual must have entitlements under her or his private sector and public sector pension schemes, the overall capital value of which exceeds the SFT or her or his PFT, at the expected date of retirement from the public sector. The individual's public sector pension entitlements must also be crystallised last, after all private sector benefits have been crystallised.

The encashment option can be exercised on one occasion only, which must be on or before the individual's retirement date from the public sector and on or after the individual has reached age 60 years. Once it is exercised it cannot be reversed. If the individual has a number of private pension schemes she or he wishes to encash, the option must be exercised on the same date in respect of each of the private sector schemes.

3. Retirement on grounds of ill-health

An individual retiring on grounds of ill-health before age 60 can also avail of the encashment option on her or his retirement date.

4. Notifying Revenue

An individual must notify Revenue of her or his intention to exercise the encashment option at least three months before the proposed date of retirement from the public sector scheme (section 787TA(4) TCA) and provide the following information:

- her or his full name, address and PPS number;
- an estimate of the value of the accrued pension rights to be encashed;
- particulars of the private sector scheme(s) in respect of which the encashment option is to be exercised;
- the name, address and telephone number of the administrator of each such scheme; and
- such other information as Revenue may require for the purposes of section 787TA TCA.

The notification must include a declaration to the effect that the notification is correct and complete (section 787TA(5) TCA).

5. Late notifications

A notification received by Revenue less than three months before retirement can still be valid if Revenue accepts that, in the circumstances, the failure to meet the deadline should be disregarded (section 787(5A) TCA).

6. Exercising the option

Once an individual meets the eligibility conditions, she or he can, at age 60 years or over and on or before the date of retirement from the public sector, exercise the encashment option by notifying the private scheme(s) administrator(s) by way of an irrevocable instruction to that effect. The exercise of the option is the transfer to the individual by the administrator(s) of the individual's private sector scheme(s) of the value of the individual's accrued rights under the scheme. There are provisions for full or partial encashment and for situations where all or some of an individual's accrued rights from a private sector scheme have already been cashed in. Where the encashment option is exercised in full, no lump sum can be taken from the scheme. A partial encashment will result in a restriction of the lump sum otherwise payable under the scheme.

7. Deduction and remittance of tax

The encashment amount is charged to income tax under Case IV of Schedule D at higher income tax rate for the tax year in which the payment is made to the individual (section 787TA(7) and (8) TCA). No reliefs or deductions may be set off against the encashment amount (section 787(9) TCA).

The individual and the administrator of the private sector pension scheme are jointly and severally liable for the tax due on an encashment amount and this applies regardless of whether either of them is resident or ordinarily resident in the State (section 787TA(23) TCA).

The encashment amount is liable to Universal Social Charge (USC) at the rate of 2%[2] (section 531AN(3A) TCA). The amount chargeable is not be regarded as "relevant income" for the purposes of section 531AN(2) TCA, which means that it is not taken into account in determining whether the individual is liable to the additional USC charge where an individual has "relevant income" in excess of €100,000.

The administrator of the private sector pension scheme must remit the tax and USC to the Collector General within three months of the date of the option being exercised.

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[2] The rate of USC charged on the encashment amount was 2.5% for 2017, 3.5% for 2015 and 2016, and 4% for 2014 and prior years.

8. Miscellaneous

Where the encashment option is exercised in respect of a private pension scheme, the encashment amount does not constitute a "benefit crystallisation event" (BCE) in the hands of the individual for SFT or PFT purposes. In addition, where a private pension scheme has already been drawn down and is the subject of an encashment option, BCEs that occurred at the time of draw down are, depending on the circumstances, disregarded.

An encashment amount cannot be used as a contribution to, or the payment of a premium in respect of, a relevant pension arrangement.

An encashment amount or deemed encashment amount is not regarded as a taxable distribution from an ARF or AMRF or as a withdrawal from a PRSA.

9. Further Information

Further information on the encashment option can be found in the Notes for Guidance to the TCA.

Pre-retirement access to Additional Voluntary Contributions (AVCs)

Chapter 30

This document should be read in conjunction with section 782A of the Taxes Consolidation Act 1997.

Document last reviewed October 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. General

Section 782A Taxes Consolidation Act 1997 (TCA) provided for a three year period, from 27 March 2013 until 26 March 2016, during which members of occupational pension schemes (including members with deferred benefits) could opt to draw down, on a once-off basis, up to 30% of the accumulated value of certain additional voluntary contributions (AVCs). Members exercised the option by making an irrevocable written instruction to their pension fund administrator.

During this period, individuals could avail of the AVC early access option notwithstanding:

- section 32 Pensions Act 1990, which precludes a member of a scheme from getting a refund of contributions made to the scheme,
- the rules of a retirement benefits scheme or the terms of a Personal Retirement Savings Account (PRSA) contract which may otherwise prohibit early withdrawals of contributions, etc., and
- the provisions of a pension adjustment order (PAO), which would normally require the trustees of a scheme to pay the designated benefit in accordance with the scheme rules in force at the date of the PAO, which would not permit early access to AVCs (section 782A(2) TCA).

2. Qualifying AVCs

The AVC early access option was only available for AVCs made for the purposes of benefits in retirement. Section 782A(1)(c) TCA excludes the following contributions for the purposes of pre-retirement access to AVCs:

- employer contributions (howsoever described) to a scheme or PRSA
- employee contributions to a main pension scheme,
- PRSA contributions made by an individual (other than to an AVC PRSA), or
- AVCs made for the purposes of purchasing notional service.

3. AVCs subject to a Pension Adjustment Order

In the case of an AVC fund which was subject to a Pension Adjustment Order (PAO), both parties to the order were entitled to exercise the option independently in respect of their respective “share” of the AVCs (section 782A(1)(b) TCA). In effect, there was deemed to be two separate AVC funds, and the value was determined on the basis that the designated benefit under the PAO was payable at the time the AVC access option was exercised. For information in relation to PAOs, please refer to Chapter 22 Pension Adjustment Orders.

4. Taxation

Where the early access option was exercised, the amount transferred to a scheme member was taxed under the PAYE system at source by the administrator as Schedule E emoluments. The administrator was required to deduct tax at the higher rate, unless a certificate of tax credits and standard rate cut-off point had been received by Revenue in respect of the individual (section 782A(4) TCA).

Payments made under the early access option are not liable to USC (section 531AM TCA) or PRSI.

Amounts transferred under the AVC access option were not treated as benefit crystallisation events at the point of retirement in the context of the Standard Fund Threshold and chargeable excess regime in Part 30 Chapter 2C TCA.

5. Further information

Please refer to the TCA Notes for Guidance for section 782A on the Revenue website for further information.

Pensions Manual - Appendix I

Glossary

Document last reviewed June 2022

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Administrator means the person or persons managing the scheme.

Buy-out bond means an insurance policy or bond purchased in the name of a beneficiary by the trustees of a scheme, in lieu of the beneficiary's entitlement to claim benefits under the scheme.

The following rules apply to buy-out bonds:

1. If there should be a surplus amount after providing the maximum approvable pension benefits for the beneficiary under the buy-out bond, it should be used to provide or augment other approvable benefits within maximum limits. Post-retirement increases for pensions payable may also be provided for.

2. Benefits may be deferred until after normal retirement age.

3. Transfers may be paid from one buy-out bond to another and from a bond to a new employer's scheme.

4. Transfers between buy out-bonds and UK Statutory Schemes (for example, the NHS pension scheme) UK exempt approved occupational pension schemes and UK personal pension arrangements and vice versa are permissible if such bonds/schemes/arrangements permit such transfers.

5. Where two or more buy-out bonds are purchased for a beneficiary in lieu of her/his entitlements under a scheme, those bonds must require that like benefits under all such bonds are to come into payment simultaneously.

6. Transfers may be split into more than one policy provided only one such policy shall be capable of providing lump sum benefits. The policy providing non-commutable benefits must be endorsed to this effect and must also provide that further transfers may only be made to a policy endorsed in a similar manner.

7. Where the transfer payment applied to the commutable policy does not exceed the maximum deferred lump sum benefit calculated by reference to maximum limits at the date of leaving service, then the benefits arising upon vesting of the policy may be payable wholly in lump sum form. In all other cases, benefits must be calculated in accordance with the normal provisions for revaluation of deferred lump sums.

8. Transfers to or from a PRSA are not permitted.

Dependant means a person who is financially dependent on an employee who is a beneficiary of a pension scheme or a person who was so dependent at the time of the employee's death or retirement. A relative who is not, or was not, supported by the employee is not his dependant. A child of the employee is regarded as a dependant until he reaches the age of 18 years or ceases to receive full-time educational or vocational training, if later.

Dynamisation is another term for escalation or indexation. It is also used to describe index linking of earnings, either for calculating scheme benefits, or for determining final remuneration for the purpose of Revenue limitations.

Exempt approved scheme means a retirement benefit scheme approved by the Revenue Commissioners under section 774 Taxes Consolidation Act 1997 (TCA) which is exempt from income tax by virtue of section 774(3) TCA and exempt from capital gains tax by virtue of section 608(2) TCA.

Final remuneration may be computed on one of the following bases:

(i) (a) Basic remuneration over any 12-month period of the five years preceding the relevant date (that is, the date of retirement, leaving service or death, as the case may be),

plus

(b) the average of any fluctuating emoluments over three or more consecutive years ending on the last day used in (a) above.

(ii) The average of the total emoluments for any three or more consecutive years ending not earlier than ten years before the relevant date.

(iii) The rate of basic pay at the relevant date or at any date within the year ending on that date plus the average of any fluctuating emoluments calculated as in (i) above.

Provided that-

(1) Basis (iii) cannot be used where, within three years before the relevant date, an employee:

a) was promoted or received a special increase in basic pay, and

b) the total increase over the relevant three-year period is greater than it would have been if the remuneration on the day of commencement of the period had been increased proportionately to the increase in the Consumer Price Index, or to increase applicable to the employment under a national wage agreement, during the same three-year period.

However, it is possible to agree beforehand with Revenue that such increases, if given on a recognised scale applicable to defined groups of arm's-length employees, will not prevent the availability of basis (iii).

(2) Whenever final remuneration is calculated by reference to a year or years other than the 12 months ending with the relevant date, each such year's remuneration may be increased in proportion to the increase in the cost of living from the last day of that year up to the relevant date referred to as "dynamised" final remuneration. This also applies to fluctuating emoluments so that fluctuating emoluments of a year other than the twelve months ending with the relevant date may be increased as detailed above.

(3) In the case of a 20% director -

(a) the scheme may not adopt either base (i) or (iii), and

(b) Proviso (2) above may not be applied unless it can be shown to the satisfaction of Revenue that the amount of the non-commutable pension payable or remaining payable or payable before the application of rules permitting commutation of the whole of the benefits to the director is not less than two-thirds of the annuity equivalent of all retirement benefits payable to the director (or to which he is entitled) under all schemes of the employer at the time any lump sum benefits are to be paid to him under the rules.

(4) Where sick pay is drawn for ten or more years (under, for example, a sick pay or permanent health insurance scheme) and the member is regarded as continuing in service, "final remuneration" may be calculated by reference to the employee's pay for a selected period as detailed above before the date on which he dropped from full pay to sick pay. This figure may be increased proportionately to increases in the Consumer Price Index between the relevant dates.

A **Hancock annuity** means an annuity purchased by the employer at the time of the employee's retirement, the capital cost of which is normally allowed for tax relief in the year of purchase. (The type of transaction is considered in *Hancock* v *General Reversionary Trust Limited* 7 T.C.)

Ill-health means physical or mental deterioration which is serious enough to prevent the individual from following her/his normal employment or which seriously impairs her/his earning capacity. It does not mean simply a decline in energy or ability.

It should be pointed out that commutation of pension benefit in excess of the normal rules may only be considered where the recipient is in "exceptional circumstances of ill-health" (see Chapter 7.5).

Normal retirement age (NRA) usually means between age 60 and 70 years. See Chapter 6.7 for further details.

Relevant benefits is defined in section 770 TCA as:

any pension, lump sum, gratuity or other like benefit –

(a) given or to be given on retirement or on death or in anticipation of retirement, or, in connection with past service, after retirement of death, or
(b) to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question [.]

This includes any pension or lump sum given on retirement or death.

Retained benefits means relevant benefits (pension and lump sum) provided for the member under other schemes whether deferred or already in payment. This includes:

(i) Approved or statutory schemes relating to previous employments;

(ii) Buy-out bond policies held in respect of entitlements relating to previous employments;

(iii) Retirement annuity contracts;

(iv) Personal retirement savings accounts;

(v) Schemes relating to overseas employment.

The following benefits may be ignored when calculating retained benefits:

(a) Small deferred pension not exceeding €330 p.a.

(b) Small lump sums not exceeding €1,270 in aggregate.

(c) Refunds of contributions.

(d) Benefits under statutory or approved schemes or under retirement annuity contracts relating to concurrent employments.

The concept of retained benefits also applies to maximum death-in-service benefits. The benefits that must be taken into account in this situation are dealt with at Chapter 10.3.

Service means remunerated service as an employee of the relevant employer(s) which is taxable under Schedule E. Service as a director of an investment company is excluded (see Chapter 2.5).

Small self-administered schemes (or small self-administered pension schemes – SSAPSs) generally means schemes with 12 or fewer members. The special conditions attached to approval of these schemes are set out in Chapter 19.

A **20% director** means someone who directly or indirectly at any time in the last three years owned or controlled more than 20% of the voting rights in the employer company, or in the parent company of the employer company.

The following restrictions apply to 20% directors

Continuity of service in company re-organisations: Where an individual is a 20% director prior to and subsequent to a company re-organisation, continuation of service for pension purposes will only be accepted where a claim has been admitted under section 400 TCA, which deals with company reconstructions without change of ownership. See Chapter 13.11 for further details.

Early retirement: Generally, where early retirement benefits are taken, all links with the business must be severed, including the disposal of shares in the company (see Chapter 9.6).

Final remuneration: Although 20% directors may be paid dividends from their companies, only income taxed under Schedule E is eligible for inclusion as “final remuneration” for pension calculation purposes. The calculation of final remuneration is the average of the total emoluments for any three or more consecutive years ending not earlier than ten years before the relevant date. Revenue will permit dynamised final remuneration provided that the amount of the non-commutable pension payable or remaining payable or payable before the application of rules permitting commutation of the whole of the benefits to the director is not less than two-thirds of the annuity equivalent of all retirement benefits payable to the director (or to which he is entitled) under all schemes of the employer at the time any lump sum benefits are to be paid to him under the rules.

Ill-health: (see Chapter 7.5) Where full commutation of a pension is sought, the prior approval of Revenue should be obtained.

Investment company: A 20% director cannot be accepted into membership of an approved scheme for that employment. See Chapter 2.5 for further details

Lump sum benefits on death: If a 20% director dies in service before normal retirement age, the remuneration may be taken as the rate payable at the time of death, provided it can be verified. (See Chapter 10.1 for further details.)

Normal retirement age (NRA): The NRA for 20% directors must be between ages 60 and 70 years. (See Chapter 6.7 for further details.)

Refund of contributions: The option to take a refund of contributions in lieu of other benefits on leaving service is not available to 20% directors.

Service after normal retirement age: If a 20% director's service continues after normal retirement age the rules of the scheme should not permit an actuarially increased pension, exceeding the maximum fraction of final remuneration applicable, on the basis that for ages up to 70 the age attained at actual retirement was deemed to be the normal retirement age**.**

APPENDIX II

Protocol to Ireland/UK Double Taxation Agreement relating to the treatment of pension scheme contributions

Article 17A of the Ireland/UK DTA, which is reproduced below, is concerned with the treatment of pension scheme contributions.

Document last reviewed May 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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ARTICLE 17A

Pension Scheme Contributions

(1) Subject to the conditions specified in paragraph (2) of this Article, where an employee ("the employee"), who is a member of a pension scheme which has been approved or is being considered for approval under the legislation of one of the Contracting States, exercises his employment in the other Contracting State:

(a) contributions paid by the employee to that scheme during the period that he exercises his employment in that other State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension scheme which has been approved under the legislation of that State; and

(b) payments made to the scheme by, or on behalf of, his employer during that period:

(i) shall not be treated as part of the employee's taxable income, and

(ii) shall be allowed as a deduction in computing the profits of his employer,

in that other State.

(2) The conditions specified in this paragraph are that:

(a) the employee is employed in the other Contracting State by the person who was his employer immediately before he began to exercise his employment in that State or by an associated employer of that employer;

(b) the employee was not a resident of that State immediately before he began to exercise his employment there;

(c) at the time that the contributions referred to in paragraph (1)(a) of this Article are paid, or the payments referred to in paragraph (1)(b) of this Article are made, to the scheme the employee has exercised his employment in that State for:

(i) less than ten years where he was resident of the first-mentioned Contracting State immediately before he began to exercise his employment in the other Contracting State, or

(ii) less than five years in other cases.

(3) For the purposes of this Article:

(a) the term "a pension scheme" means a scheme established in relation to an employment in which the employee participates in order to secure retirement benefits:

(b) employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person; and the term "control", in relation to a body corporate, means the power of a person to secure:

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

ARTICLE II

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax, for any year of assessment beginning on or after 6 April 1994;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1994;

(b) in Ireland:

(i) in respect of income tax, for any year of assessment beginning on or after 6 April 1994;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1994.

Tax relief for pension contributions made in the year of retirement – late elections

Appendix III

This document was last reviewed June 2021

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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Income tax relief for pension contributions is provided for in Part 30 Taxes Consolidation Act 1997 (TCA). In general, relief is given for the year of assessment in which the contributions are paid, with provisions in place for the carry forward of unrelieved amounts. In addition, sections 774(8), 776(3), 787(7) and 787C(3) TCA provide that contributions paid after the end of a year of assessment but on or before the return filing date for that year (31 October of the year following the year of assessment) may be treated as paid in the earlier year of assessment, where the individual so elects on or before that date. The 31 October deadline is extended where an individual both files and pays online via ROS or myAccount.

The final date for making an election is occasionally overlooked by individuals who are not chargeable persons within the meaning of Part 41A TCA. Contributions which are the subject of an election made after this date cannot be relieved in the earlier year. This does not normally give rise to difficulties as relief can be obtained in the year of payment and following years if necessary. However, where an individual is close to retirement she or he may have insufficient income in the year in which the contributions are paid to absorb the full amount of the contribution. Also, the carry forward of unrelieved contributions to later years is not an option where the individual retires in the year in which the contribution is paid as pensions are not taken into account in computing income for relief purposes.

Revenue will therefore treat elections made under sections 774(8), 776(3), 787(7) and 787C(3) TCA by individuals who are not chargeable persons within the meaning of Part 41A TCA as timely if the following conditions are met:

- the election is received on or before 31 December in the year following the year for which relief is claimed,
- the contributions have been paid by the appropriate return filing date for the year in question, and
- the claimant is retiring in the year in which the contributions are paid.

GMS Superannuation Plan – Retirement Annuity Relief

Pensions Manual - Appendix IV

This Manual should be read in conjunction with section 773 Taxes Consolidation Act 1997.

Document last reviewed July 2021

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1 Introduction

Under section 773 Taxes Consolidation Act 1997 (TCA) the superannuation arrangements for doctors under the General Medical Services (GMS) Superannuation Plan are approved by Revenue for the purposes of Chapter 1 of Part 30 TCA as if the plan was a retirement benefits scheme for employees. Tax relief for contributions made by doctors to the GMS Superannuation Plan is given under those provisions.

Contributions to the Plan are set at 15% of capitation fee income, of which the GP pays 5% and the Health Service Executive (HSE) pays 10%. The HSE contribution does not form part of the GP's income.

2 Tax treatment

Section 773(3) TCA deems GMS income to be "remuneration from an office or employment" and specifically excludes that income from being taken into account in the calculation of net relevant earnings (NRE) for the purposes of any claim to relief in respect of premiums paid towards a personal pension plan.

All GMS income received under the GMS Scheme contract (for example, capitation fees, practice support fees, fees towards documents, etc.) is treated as income from a pensionable office or employment for superannuation purposes, but not for general taxation purposes. Accordingly, in determining NRE for any practice income arising outside the GMS contract, no part of GMS income paid under the contract may be taken into account.

Where a doctor with GMS income creates a personal pension plan for her/his private practice income, the overall practice expenses must be apportioned between the GMS and private practice incomes to arrive at the amount of NRE.

The original method used to calculate allowable deductions for NRE purposes did not differentiate between GMS capitation and non-capitation income. However, as contributions under the GMS Superannuation Plan are made only in respect of capitation income, the original method (Example 1 below) impacts on the calculation of NRE in cases where GMS income includes a relatively high proportion of non-capitation income. Accordingly, an alternative method (Example 2 below) of calculating NRE in respect of the private practice income of members of the GMS Superannuation Plan was agreed for the year of assessment 1996/97 onwards.

Example: Doctor in GMS Superannuation Scheme aged 29 years

Earnings in 20XX (all figures in €)

GMS Receipts	75,254
[comprising capitation income 49,960; non-capitation 25,294]	
Private Practice Fees	39,227
Total	114,481
Less: Expenses	(42,391)
Net profit	72,090
Capital Allowances	(2,413)
Profit net of Capital Allowances	69,677

Example 1 – Original Method

Under the original method, the expenses of €42,391 and capital allowances of €2,413 are apportioned between private practice fees of €39,227 and GMS income of €75,254 (which comprises capitation and non-capitation income) by applying the formula A x B / C, where:

A is private practice fees (€39,227)

B is profit net of capital allowances of (€69,677)

C is gross receipts (€114,481)

Applying the formula gives NRE of €23,875 (i.e. 39,227 x 69,677 / 114,481).

Since the individual is aged 29, her/his age-related percentage limit on contributions is 15%. The maximum relief allowable in respect of premiums paid towards a personal pension is therefore 15% of the NRE of **€**23,875, which equals €3,851.

Example 2 – Alternative Method

The alternative approach is to first set the expenses of €42,391 against the non-capitation element of the GMS income of €25,294, with the balance of €17,097 being apportioned between capitation income and private practice fees.

Non-Capitation	25,294
Less Expenses	(42,391)
Balance of Expenses	(17,097)
Add Capital Allowances	(2,413)
"Adjusted Expenses"	(19,510)

As in the first example, the capitation income was €49,960 and private practice fees were €39,227.

The amount of adjusted expenses attributable to private practice fees is A x (D / A + E) where

A = Private practice fees (as before)

D = Adjusted expenses (as above) and

E = Capitation Income (49,960)

That formula gives us adjusted expenses attributable to private practice fees in this case of:

39,227 x (19,510/39,227 + 49,960) = €8,581

The net relevant earnings are therefore the private practice fees minus the adjusted expenses attributable to those fees:

39,227 – 8,581 = €30,646.

As in the first calculation, the individual is aged 29, so her/his age-related percentage limit on contributions is 15%. This means the maximum relief allowable in respect of premiums paid towards a personal pension is €4,597 (i.e. €30,646 x 15%), as compared to €3,581 in Example 1.

Alternative method - other formula

The same result can be arrived at without calculating "adjusted expenses" by using the formula B x A / (E + A), where:

A is private practice fees (39,227), as before

B is adjusted profit after capital allowances (69,677), as before

E is capitation fees (49,960) as before

The NRE are €30,646 (=69,677 x 39,227 / (39,227 + 49,960)*) and the maximum relief allowable in respect of premiums paid towards a personal pension is €4,597 (€30,646 x 15%).

*[39,227 + 49,960 = 89,187]

3 Tax relief for pension contributions – application of earnings limit

Chapter 26 of the Pensions Manual outlines the operation of the aggregate earnings limit in section 790A TCA to doctors with GMS and private practice income.

Useful contacts

Document last reviewed April 2022

Revenue
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Irish Tax and Customs

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1 Enquiries about approval of pension schemes

All enquiries relating to approval of pension schemes should be directed to:

Office of the Revenue Commissioners
Large Cases – High Wealth Individuals Division
Pensions Branch
Ballaugh House
73-79 Lower Mount Street
Dublin 2
DO2 PX37

email: Please use the secure "MyEnquiries" service available in myAccount or Revenue Online Service (ROS).

2 Enquiries about the provision of State pensions, PRSI contributions and pension benefits

All enquiries relating to the provision of State pensions, PRSI contributions and pension benefits under the Social Welfare Acts should be directed to:

Department of Social Protection
College Road
Sligo
F91 T384

www.gov.ie/en/category/social-welfare

3 Enquiries about the operation of the Pensions Act 1990

All enquiries relating to the operation of the Pensions Act 1990 and the administration of occupational pension schemes should be directed to:

The Pensions Authority
Enquiry Service
Verschoyle House
28-30 Lower Mount Street
Dublin 2
D02 KX27

Email: info@pensionsauthority.ie

www.pensionsauthority.ie/en

4 Consumer complaints on Pension Matters

Consumer complaints on pension matters should be directed to:

Financial Services and Pensions Ombudsman
Lincoln House
Lincoln Place
Dublin 2
D02 VH29
01 567 7000

email: info@fspo.ie

www.fspo.ie

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Your Technical Solutions team

technicalsolutions@standardlife.ie

www.brokerzone.ie/technicalsolutions

Sinead McEvoy

Technical Solutions Manager
(01) 639 7386, +353 87 105 6888
sinead_mcevoy@standardlife.ie

Janice Nevin

Technical Consultant
(01) 639 7620, +353 87 449 1791
janice_nevin@standardlife.ie

Patrick Manley

Pensions Development Manager
+353 87 687 5178
pat_manley@standardlife.ie

Calls may be monitored and/or recorded to protect both you and us and help with our training.

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