

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 30

Occupational Pension Schemes, Retirement Annuities, Purchased Life Annuities and Certain Pensions

December 2021



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PART 30
OCCUPATIONAL PENSION SCHEMES, RETIREMENT ANNUITIES,
PURCHASED LIFE ANNUITIES AND CERTAIN PENSIONS

CHAPTER 1
Occupational pension schemes

Overview

This Chapter, together with *Schedules 23, 23B & 23C* contain the taxation provisions relating to the provision for employees of retirement and other benefits. It sets out the main rules under which occupational pension schemes may be approved by the Revenue Commissioners for the purposes of those provisions. The approval conditions include an option for employees to use approved retirement funds (*section 784A*) to provide income in their retirement. While the availability of the option regarding approved retirement funds is mandatory in regard to schemes approved on or after 6 April 1999 in relation to proprietary directors, on or after 6 April 2000 in the case of other employees with AVCs and on or after 6 February 2011 in the case of employees' main scheme benefits in respect of defined contribution occupational pension schemes approved before those dates may be amended by agreement to incorporate the various options as appropriate. For defined benefit occupational pension schemes, the use of approved retirement funds extends only to AVC contracts.

The Chapter also deals with the taxation treatment of contributions by employers and employees to, and of the benefits arising from, such schemes.

The information given in the following notes is intended as a general outline only. A detailed booklet (known as the “Revenue Pensions Manual”) containing the practice notes on the application of the legislation is available from the Revenue website www.revenue.ie or from the Financial Services (Pension Schemes) section of Large Cases Division.

770 Interpretation and supplemental (*Chapter 1*)

Summary

This section is concerned with the interpretation of terms used in the Chapter. It also gives effect to *Schedules 23* and *23C*, which contains administrative provisions.

Details

Definitions and construction

The definitions are generally self-explanatory but the following call for comment — (1)

“additional voluntary contributions” are voluntary contributions made under the rules of a retirement benefits scheme which provides specifically for the payment of voluntary contributions other than contributions made at rates specified for members' contributions in the rules of the scheme and includes contributions made under a separately arranged scheme for members' voluntary contributions which is associated with the main scheme.

“approved retirement fund” is defined in *section 784A*.

“approved minimum retirement fund” is as defined by *section 784C*.

“approved scheme” means a retirement benefits scheme which is approved by the Revenue Commissioners. Approval signifies no more than that the person or persons for whom the scheme caters will be exempt from the tax charge under *section 777* on an employee in respect of the value of retirement benefit provision made for him/her by his/her employer. An “approved scheme” might, for example, consist of a service agreement with an employee in which the employer remains in control of the funding arrangements (if any).

“exempt approved scheme”, which has the meaning given in *section 774*, is an approved scheme established under irrevocable trusts, usually, but not necessarily, by way of formal trust deeds, or an approved scheme which is an overseas pension scheme. The mark of an “exempt approved scheme” established under irrevocable trusts is that the assets or policies of the scheme are held in an established trust arrangement, not under the control of the employer or the employees, and the disposal of the assets or policies of the scheme is governed independently by the constitution of the scheme itself.

“director” means a person, or one of a group of persons, by whom the affairs of a company are managed and includes a person “who is to be or has been” a director. This brings within the scope of the Chapter financial provision for retirement benefits made before the director has commenced, or after the director has ceased, to hold office.

“proprietary director” means a director who, alone or with his or her spouse and minor children, or as the case may be, his or her civil partner, his or her minor children and the minor children of his or her civil partner, is or was (at any time within 3 years of the date of (i) normal retirement date, (ii) an earlier retirement date, where applicable, (iii) leaving service, or (iv) in the case of a pension (or part of) payable in accordance with a pension adjustment order, the relevant date in relation to that order) the beneficial owner of shares which, when added to any shares held by relevant trustees, carry more than 5 per cent of the voting rights in the company providing the benefits or in a company which controls that company.

“personal retirement savings account” or “PRSA” is as defined in *Chapter 2A* of this Part.

“employee” is defined as including, in addition to an employee in the ordinary sense, any person taking part in the management of the affairs of a company, specifying in particular, a director of a company. The term also includes a person who is to be or has been an employee.

“final remuneration” means the average annual remuneration of a person’s last 3 years’ service in his/her employment. Under *section 772*, however, the Revenue Commissioners have discretion in the approval of schemes, and schemes may be permitted to adopt other bases of final remuneration where the circumstances so warrant.

“overseas pension scheme” means a retirement benefits scheme, other than a state social security scheme, which is operated or managed by an institution for occupational pension provision as defined by Article 6(1) of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016¹ and which is established in an EU Member State which has implemented the Directive in its national law. The Directive sets out a framework for the operation and supervision of occupational pension schemes in all Member States and ensures that any schemes being marketed here by providers in other EU Member States are regulated under the

¹ This Directive repeals Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 with effect from 13 January 2019.

Directive.

“relevant date” means, in relation to a pension adjustment order, the date on which the decree of separation, the decree of divorce, or the decree of dissolution, as the case may be, was granted, by reference to which the pension adjustment order in question was made.

“state social security scheme” means a system of mandatory protection put in place by the Government of a country or territory, other than the State, to provide a minimum level of retirement income or other benefits, the level of which is determined by that Government. **Section 771(1)** of **Chapter 1** specifically excludes retirement benefits provided in the State under the Social Welfare legislation from the scope of the Chapter and similar type benefits provided by other States are, therefore, being excluded from the definition of “overseas pension scheme”.

References to the provision of retirement benefits for employees of an employer (2) include references to such provision by means of a contract with a third party. This covers schemes provided by means of a contract with an insurance company.

Application of Schedules 23 and 23C

The provisions of **Schedules 23 and 23C** apply for the purposes of supplementing this Chapter. (3)

771 Meaning of “retirement benefits scheme”

The term “retirement benefits scheme” means a scheme for the provision of relevant benefits but expressly excludes any scheme under the Social Welfare Consolidation Act 2005. [The term “relevant benefits” is defined in detail in **section 770** and includes any pension, lump sum or gratuity on retirement or death.] (1)

References to a “scheme” include references to a contract, deed, agreement, series of agreements or any other arrangements. In other words, any retirement benefit arrangements, whether formal or informal, is within the scope of the legislation. The word “contract” is included to put beyond doubt that a contract based scheme, which is the structure most likely to be used in other EU Member States, comes within the provisions of **Chapter 1**. A “scheme” exists even though it caters for only a small number of employees or even a single employee. In addition, where a pension is given to an employee to start immediately on the making of the arrangements, the arrangements will constitute a “scheme”. (2)

The Revenue Commissioners may treat a retirement benefits scheme which caters for 2 or more different categories of employees as separate schemes catering for the respective categories of employees. (3)

772 Conditions for approval of schemes and discretionary approval

Summary

This section sets out the circumstances in which retirement benefit schemes are to be approved by the Revenue Commissioners for tax purposes. It requires the Commissioners to approve a retirement benefits scheme which satisfies the “prescribed conditions” and enables them at their discretion to approve a scheme even though it might not comply with one or more of those conditions.

Details

Approval conditions

The Revenue Commissioners must approve a retirement benefits scheme if it satisfies all the “prescribed conditions”, that is, the conditions in relation to both the scheme itself and the benefits provided. (1)

The scheme

The following conditions must be satisfied — (2)

- the scheme must be a bona fide retirement benefits scheme for employees;
- the scheme must be recognised by both the employer and the employees concerned, and each employee who has a right to participate in the scheme must be given written particulars of all details of the scheme which concern him/her;
- where the scheme is an overseas pension scheme, the administrator of the scheme must either enter into a contract with the Revenue Commissioners, enforceable in a Member State, in relation to the discharge of all duties and obligations imposed on the administrator under *Chapters 1* and *2C* of this Part and section 125B of the Stamp Duties Consolidation Act 1999, or appoint an administrator resident in the State to carry out those duties. Any contract between the Revenue Commissioners and an administrator is to be governed by the laws of the State and the courts of Ireland are to have exclusive jurisdiction in determining any dispute arising under such contracts. Where an administrator opts to appoint a person resident in the State to discharge the duties and obligations, the person’s identity and the fact that they have been appointed must be notified to the Revenue Commissioners;
- the employer must be a contributor to the scheme;
- the scheme must be in connection with a trade or undertaking carried on in the State by an Irish resident;
- an employee’s contributions are not to be returned to him/her.

The benefits

The following conditions must be satisfied — (3)

- the basic benefit must be a pension for the employee at a specified age not earlier than 60 and not later than 70 (or on earlier retirement through incapacity) which does not exceed 1/60th of the employee’s final remuneration for each year of service up to a maximum of 40 years, that is, a maximum of 2/3rds of final remuneration;
- the limit on the maximum pension or benefit for a widow, widower, surviving civil partner, children or dependants, or children of the surviving civil partner of an employee who dies in service, is a pension, pensions payable, or provided as benefits transferred to an ARF that does not exceed any pension or pensions which could have been provided for the employee assuming the deceased had continued in service up to retirement age;
- any lump sums payable to a widow, widower, surviving civil partner, children, dependants, or children of the surviving civil partner, or personal representative of an employee who dies in service are not to exceed, in the aggregate, 4 times the employee’s final remuneration;
- any benefit payable to a widow, widower, surviving civil partner, children or dependants, or children of the surviving civil partner of an employee on the employee’s death after retirement can be in the form of a pension not exceeding the employee’s pension;

- subject to **subsection (3A)**, except in the case of an individual opting for an approved retirement fund (**section 784A**), the amount which a member of an approved scheme may, on retirement, be permitted to receive as a cash payment, in commutation of part of his/her pension, is not to exceed 3/80ths of his/her final remuneration for each year of service, up to a maximum of 40 years – where an individual opts under **section 784A**, the maximum tax-free lump sum which may be paid is 25 per cent of the value of the pension fund – see **subsection (3B)**;
- apart from the above no other benefits are to be payable.

Flexible options on retirement

As on and from 6 February 2011, and subject to the exception set out in the following paragraph, the Revenue Commissioners are not to approve a scheme unless it provides to an individual entitled to a pension under the scheme or, where a pension is payable under a pension adjustment order to the spouse, civil partner or former spouse, former civil partner of such an individual, an option (the ARF option) to have the value of their pension rights in respect of both main scheme benefits and AVCs, or in respect of their defined contribution AVCs only, – after the deduction of any lump sum under the scheme (in part commutation of pension) – paid to him or her or to an approved retirement fund (**section 784A**). A payment under such options cannot be made before the date on which the pension would otherwise have become payable. However, the option can be exercised up to that date. (3A)

The exception referred to in the preceding paragraph relates to members of defined benefit schemes, other than members who are proprietary directors. The ARF option referred to in the preceding paragraph is available to such members only in relation to that part of their pension fund that is attributable to AVCs.

(Prior to 6 February 2011 the ARF option in respect of both main scheme benefits and AVCs was available only to an individual who was a proprietary director or to the spouse civil partner or former spouse, former civil partner of a proprietary director where a pension was payable under a pension adjustment order. Otherwise, the ARF option was only available in respect of AVC benefits.) In the case of defined benefit occupational pension schemes the ARF option extends only to AVCs and not to the main scheme benefits.

The Minister for Finance introduced a measure on 4 December 2008 which allowed a member of a defined contribution scheme who retired on or after that date, and who would otherwise have been compelled to purchase an annuity, to defer the annuity purchase to 31 December 2010. In order to allow individuals who deferred the purchase of an annuity avail of the ARF option, the deadline for purchase was further extended to one month after the date Finance Act 2011 was signed into law i.e. up to 6 March 2011. This was to allow for any administrative arrangements that scheme administrators might have had to put in place. This deadline also applied where an individual decided to purchase an annuity rather than go the ARF route.

Where an individual exercises the ARF option, then the provisions of **sections 784(2B)**, **784A**, **784B**, and **784E** will apply with any necessary modifications. In addition, where an individual opts for the ARF option (other than a member of a defined benefit scheme who is not a proprietary director or a member of a defined contribution scheme who opts to ARF only his or her AVCs the value of the normal lump sum, that he or she can take in part commutation of pension can not exceed 25 per cent of the value of the pension fund. Where the individual opts to ARF only the AVC fund the maximum lump sum he or she can avail of at retirement is one and a half times their final salary. (3B)

For schemes which allow deferral of purchase of an annuity, the date by which an option must be exercised (in **subsection (3A)**) is to be taken as the latest date on which (3C)

an annuity must be purchased from an annuity provider in accordance with the rules of the scheme.

Transfers to PRSAs

A retirement benefits scheme will not cease to be approved because of any rule permitting the transfer to a personal retirement savings account (PRSA) of either or both of — (3D)

- a member’s entitlements where the member changes employment or the scheme is being wound up, where benefits have not been paid to the member under the scheme, and
- an amount equal to the accumulated value of a member’s AVC contributions.

Borrowing

A retirement benefits scheme will not have its approval revoked, or will not be denied approval, merely because of the inclusion in its rules of a provision which authorises the scheme to borrow. (3E)

Commutation to meet tax charge on Chargeable Excess

Approval of a scheme will not be prejudiced by any scheme rule that allows administrators of private sector occupational pension schemes to commute part of a member’s entitlement under the scheme sufficient to discharge any tax charge on a chargeable excess, which arises in connection with that entitlement, under the provisions of **Chapter 2C** (relating to the maximum tax-relieved pension fund). (3F)

A retirement benefits scheme does not cease to be an approved scheme where, notwithstanding the rules of the scheme, the trustees discharge liabilities of the scheme under section 59(3) of the Pensions Act 1990 (inserted by section 43 of the Social Welfare and Pensions Act 2010). (3G)

The inclusion of a provision for the encashment option (see **section 787TA**) in the rules of an occupational pension scheme will not affect Revenue approval of the scheme. (3H)

Where benefits are provided as an ARF following the death in service of an employee, sections 784A and 784B will apply as if the transfer of the benefits were the exercise of an option in accordance with section 784(2A), and with any necessary modifications. (3J)

Discretionary approval

The Revenue Commissioners may, at their discretion, approve schemes even though one or more of the prescribed conditions is not complied with. However, the Revenue Commissioners cannot approve a scheme unless it appears to them to comply with the provisions of **subsection (3A)**. (4)(a)

In particular, the Commissioners may approve schemes where — (4)(b)

- the maximum pension and lump sum benefits are payable by reference to a lesser number of years’ service than 40,
- employees may retire up to 10 years earlier than normal retirement age,
- the rules permit a return of members’ contributions in certain circumstances, or
- the scheme relates to a trade or undertaking carried on only partly in the State, or by a person not resident in the State.

Withdrawal of approval

The Revenue Commissioners may withdraw approval of a scheme, already given, if they consider that the facts no longer warrant the continuance of approval. (5)

Alterations of schemes

Where an alteration has been made to a scheme, any approval already given is not to apply unless the alteration has been approved by the Revenue Commissioners. However, section 19(2)(d) of the Finance Act, 1999 provides that a scheme approved before the 6th day of April, 1999 will not cease to be an approved scheme where the rules are altered to provide the options on retirement allowed by **section 784A**. (6)

Aggregation of schemes

When a scheme is being considered in relation to compliance with the prescribed conditions, account is to be taken of any other retirement benefits scheme which applies to the same class or description of employees. If the conditions are satisfied when all the schemes concerned are taken together, they are regarded as satisfied by each scheme; if not, they are regarded as not being satisfied by any of the schemes. (7)

772A Approval of retirement benefits products

Summary

The Revenue Commissioners may, in certain circumstances and subject to conditions, approve a “generic” retirement benefits product and retirement benefit schemes established under such a product may be treated as approved schemes for tax purposes without the requirement for each individual scheme to be approved by the Commissioners. The type of retirement benefits product envisaged is one under which single member retirement benefits schemes are marketed by Life Offices and established using standard documentation secured by way of an insurance contract. A condition of approval is that the combined employer and employee contributions to such schemes in any year may not exceed the maximum age-related tax-relievable contributions that may be made by an employee to a retirement benefits scheme.

Details

The following terms are used in the section: (1)

“promoter” means, in effect, a Life Office and includes insurance undertakings who, while not resident in the State, are authorised to transact insurance business in the State under the relevant EU Directive.

“retirement benefits product” means, in effect, a product in respect of which approval has been sought by a Life Office and under which, if and when approved, single member retirement benefit schemes may be set up and marketed by Life Offices, using standard documentation and secured by an insurance contract. Even though such schemes will be secured by way of contracts of insurance they are, nonetheless, occupational pension schemes established by way of irrevocable trust - the trust document in such cases consists of a “Letter of Exchange” with rules attached.

“single member retirement benefits scheme” means a scheme that relates to a single employee.

“terms and rules” mean the provisions of the retirement benefits product in respect of which approval is sought which will, in effect, form the rules of the single member schemes when set up.

The Revenue Commissioners may approve a retirement benefits product as they see fit and subject to whatever conditions they think appropriate to attach to the approval. (2)

A retirement benefits scheme (in effect a single member scheme) set up under an approved retirement benefits product will be deemed to be a retirement benefits scheme (3)

approved for the purposes of **Chapter 1** and all of the provisions of **Chapter 1** will apply, except where the section provides otherwise.

Deeming the retirement benefits scheme to be an approved scheme (and given that the schemes are established under irrevocable trusts) means that they are considered “exempt approved schemes” for the purposes of the tax reliefs on contributions and fund growth provided by **Chapter 1**.

An application for approval of a retirement benefits product must be made by the promoter in writing and be in such form and contain such information and particulars as the Revenue Commissioners may determine from time to time. However, the Revenue Commissioners shall not approve a product if the terms and rules to apply to a retirement benefits scheme established under it do not (i) limit the contributions that can be paid by both an employer and employee when added together to an amount not exceeding the maximum amount of annual contributions that can be made by an employee to a retirement benefits scheme in the normal course and (ii) provide for the option to invest the pension fund in an Approved Retirement Fund, as appropriate. [Section 772(3A) provides this option to proprietary directors and individuals with AVCs].

(4) &
(5)(a) &
(b)

The maximum amount of employee annual contributions are as follows (subject to a current earnings cap of €115,000 – **section 790A** refers):

Age	% of Remuneration
Under 30	15
30 to 39	20
40 to 49	25
50 to 54	30
55 to 59	35
60 or over	40

Where the terms and rules of a specific retirement benefits scheme established under an approved retirement benefits product are subsequently changed, the deemed approval of the scheme provided for in **subsection (3)** shall not apply to the scheme after the change unless the change is specifically approved by the Revenue Commissioners.

(6)

The Revenue Commissioners may withdraw approval for a retirement benefits product, by way of a notice in writing, if in their opinion the facts concerning any such product cease to warrant the continuance of their approval. The grounds for withdrawal and the date from which the withdrawal is to apply, must be stated in the notice.

(7)

Where the approval of a retirement benefits product is withdrawn, the revenue Commissioners may raise assessments on individuals who established retirement benefits schemes under the product or the Life Offices who administer the “pension fund”, as appropriate, for the purposes of withdrawing any tax relief given under **Chapter 1**. Withdrawal of approval from the product does not necessarily imply that retirement schemes established under the product prior to approval being withdrawn will necessarily lose their approved status – it will depend on the circumstances.

(8)

Where a retirement benefits product has been altered after it has been approved by the Revenue Commissioners, the approval will not apply after the date of the alteration unless the alteration has been approved by the Commissioners.

(9)

773 General Medical Services: scheme of superannuation

Summary

This section provides that superannuation arrangements for doctors under the General Medical Services (GMS) scheme may be approved by the Revenue Commissioners for the purposes of this Chapter as if they were a retirement benefits scheme for employees.

Details

The Revenue Commissioners may, at their discretion and subject to such conditions and undertakings as they consider appropriate, approve a “GMS” pension scheme under the Health Act, 1970 for the purposes of this Chapter as if it were a retirement benefits scheme within the meaning of this Chapter, although the prescribed conditions set out in *section 772* are not satisfied. (1)

The provisions of this Chapter and *Schedule 23* are, with any necessary modifications, to apply to a “GMS” scheme approved under this section. In particular, the following modifications are to apply — (2)

- “employee” includes a registered medical practitioner in the GMS,
- “service” (of an employee) includes the provision of services by a registered medical practitioner under the GMS and an “office or employment” includes the provision of such services, and
- references to Schedule E is to include a reference to Schedule D except in *section 779*.

A medical practitioner’s income from the GMS is excluded from the calculation of net relevant earnings for the purposes of any claim which the practitioner may wish to make under *Chapter 2* of this Part in respect of premiums paid to secure a retirement annuity. (3)

774 Certain approved schemes: exemptions and reliefs

Summary

This section sets out the various tax reliefs and exemptions to be granted in relation to schemes which are fully approved for tax purposes under *section 772*. Such fully approved schemes are classified as “exempt approved schemes”, that is, an approved scheme set up under irrevocable trusts (so that the disposal of the assets of the scheme is governed by the approved terms of the scheme) or an approved scheme which is an overseas pension scheme. An exempt approved scheme has the following tax advantages-

- the income from the scheme’s investments and deposits is exempt from income tax and, if the scheme’s income includes casual underwriting commissions, these are also exempt;
- an ordinary annual contribution to the scheme by an employer and by an employee is allowable as an expense in computing chargeable income in each case;
- 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.
- any contribution by an employer, which is not an ordinary annual contribution, may, at the discretion of the Revenue Commissioners, be spread over a period of years and treated as an expense incurred in those years.

- contributions on retirement by employees which are in respect of dependants' benefits or are the repayment of contributions previously refunded or benefits received may, at the discretion of the Revenue Commissioners, be spread over a period of years and treated as an expense incurred in those years.
- other contributions by an employee which are not ordinary annual contributions and which are paid after the end of a tax year but on or before the return filing date for the tax year may be set against the remuneration for that tax year.
- employee contributions that cannot be allowed either in the preceding year or in the year of payment may be carried forward to following years and allowed, subject to age-based limits, for those years.

Under **section 790A**, an earnings cap of €115,000 applies to the total of an individual's contribution to all pension products but it does not apply to contributions to an approved scheme made before 4 December 2003.

Details

Application

The section applies to approved schemes established under irrevocable trusts, to any approved scheme which is an overseas pension scheme and to any other approved scheme where the Revenue Commissioners so direct. All of these types of schemes are designated "exempt approved schemes". [The "irrevocable trust" condition can be satisfied by the execution of a deed, by a resolution of a board of directors or by a resolution of partners, by a separate declaration of trust, or by the inclusion of a trust condition in the policy conditions in insured schemes.]

The exemptions and reliefs given by the section only apply to the period during which a scheme is an exempt approved scheme.

Income of scheme

Income from an exempt approved scheme's investments (including dealings in financial futures and traded options) or deposits and from certain underwriting commissions are exempt from income tax. The exemption for underwriting commissions applies only to those that are applied for the purposes of the scheme and would, but for the exemption, be chargeable to tax under Case IV of Schedule D, that is, casual transactions. Accordingly, it does not apply to the profits of an organised trade of underwriting which would be chargeable under Case I of Schedule D. While the investments and deposits of overseas pensions schemes may be located elsewhere, this exemption applies if, for any reason, such funds are held in the State either permanently or temporarily.

Employer's contributions

Any sum paid by an employer or relevant contributor as a contribution to an exempt approved scheme is allowable as an expense in computing the profits of the employer's or relevant contributor's trade or profession or as an expense of management in the case of assurance companies and investment companies. In respect of payments made in chargeable periods commencing after 21 April 1997, relief is only available in respect of sums actually paid and not for provisions for or accruals in respect of such payments. Relief also only applies to that part of an employer's or relevant contributor's contribution which relates to employees of a business the profits of which are charged to income tax or corporation tax. Where the employer's or relevant contributor's contribution is not an ordinary annual contribution, the amount may be spread over such period of years, as the Revenue Commissioners consider appropriate. (**Section 775** contains provisions supplementary to **subsection (6)**).

Employee’s contribution

An ordinary annual contribution by an employee to an exempt approved scheme is allowed to be deducted from his/her earnings assessable under Schedule E as an expense incurred in the year of payment. Note also the earnings limit for relief purposes in **section 790A**. (7)(a)

An employee’s contributions which are not ordinary annual contributions, and which are — (7)(b) & (ba) & (7A)

- contributions deducted from a lump sum payable on retirement to provide for dependants’ benefits, or
- contributions made on retirement to pay back a previous refund of contributions or to pay back benefits previously provided to the member of a pension scheme [such as a marriage gratuity], where the contributor had previously left the employment related to the pension scheme, or
- contributions made on retirement to acquire additional benefits under a scheme where an option is available under the scheme which involves the purchase of additional years service in respect of actual employment before joining the scheme, and the employee has, before 6 February 2003, responded in writing to an offer from the scheme to take up the option,

may be taken into account and allowed for the year in which they are paid or apportioned over such period of years as the Revenue Commissioners may consider proper. The lump sum may be spread over past years or future years, as appropriate. Any excess tax paid as a consequence of spreading the lump sum over past years may be repaid by the Revenue Commissioners notwithstanding the general time limit for making a claim for a repayment of tax set out in **section 865**, where the employee makes a claim for the relief within 4 years from the end of the year of assessment in which the contribution is paid and such a claim is a valid claim within the meaning of **section 865(1)(b)**. (The meaning of a valid claim is dealt with in **section 865**).

The maximum aggregate deduction to be allowed in any year in respect of the ordinary annual contribution and the portion of any other contribution allocated to that year shall not exceed an age-related percentage of the employee’s remuneration in respect of the office or employment for the year in which the contributions are paid. (7)(c)

The age-related percentages are as follows:

<i>Age</i>	<i>Limits</i>
Under 30 years old	15% of remuneration
Up to and including 39 years	20% of remuneration
Up to and including 49 years	25% of remuneration
Up to and including 54 years	30% of remuneration
Up to and including 59 years	35% of remuneration
60 years or older	40% of remuneration

Contributions that cannot be allowed due to an insufficiency of earnings will be carried forward to later years. (7)(d) & (e)

Non-ordinary annual contributions paid for a tax year between the end of the tax year and the return filing date for that year will, subject to the annual limits, be allowed to be set against the income for the tax year where a claim is made by that date. (8)

For the year of assessment 2010, the earnings limit is, by virtue of **section 790A(5)**, deemed to be €115,000 for the purpose of determining the extent to which

contributions paid by an individual in the year of assessment 2011, are to be treated as paid in the year of assessment 2010.

775 Certain approved schemes: provisions supplementary to section 774(6)

Summary

This section secures that, in respect of any payments made after 21 April 1997, no deduction is to be allowed for sums actually paid into an approved pension scheme by an employer to the extent that provisions in excess of contributions actually paid have already been allowed for tax purposes to the employer. The reason for this section is that, as respects chargeable periods ending on or before 21 April 1997, *section 774(6)* did not contain the prohibition on relief for provisions made by employers for contributions to be made by them in the future and, accordingly, it may have been argued that there was a doubt as to whether relief was available at the time of the making of the provision or at the time of the actual payment. The view of the Revenue Commissioners was that there was no substance to the doubt. However, any potential doubt was removed in relation to chargeable periods beginning after 21 April 1997. Accordingly, this section provides for a correcting mechanism where there may have been an over allowance of relief before 21 April 1997 on the basis of provision for payments.

Details

Where — (1)

- an actual payment of contributions is made into an exempt approved scheme after 21 April 1997, and
- but for this section, that payment would be allowed for tax purposes (under *section 774(6)*), and
- the total of previously allowed deductions exceeds the “relevant maximum” (see below),

the amount to be allowed in respect of the payment and any other payment made after 21 April 1997 (which would also be allowable but for this section) is to be reduced to the lesser of —

- the excess of the previously allowed deductions over the “relevant maximum”, and
- the amount which reduces the deduction (that is, the amount of the payment itself) to nil.

The term “previously allowed deductions” is the total of deductions in respect of pension contributions allowed in all previous chargeable periods, while “the relevant maximum” is the amount that would have been allowed for those chargeable periods if the restriction to amounts actually paid had been applied for those chargeable periods. (2)

Any payment (that is, a payment other than an ordinary annual payment) which is treated under *section 774(6)(d)* as paid over a period of years is to be treated as actually paid at the time when it is treated as paid under that provision. (3)

Examples

Payment of €10,000 made by an employer on 1 May 2002.

Example (1) Deductions allowed for previous tax years (including provisions) total €120,000, while amounts actually paid in those years amount to €105,000 (the relevant maximum). The excess is therefore €15,000. The €10,000 is reduced by the lesser of €15,000 or the amount required to reduce it to nil (i.e. €10,000). Therefore, no deduction is allowed.

Example (2) as in (1), deductions previously allowed amount to €120,000 but amounts previously paid amount to €118,000. The excess is €2,000. As this is less than the amount required to reduce

the deduction to nil (i.e. €10,000) the actual reduction is €2,000 and relief is granted for €8,000.

776 Certain statutory schemes: exemptions and reliefs

This section provides for tax relief for employees' contributions to a retirement benefits scheme established under a public statute.

Ordinary annual contributions are to be allowed as a deduction under Schedule E for the year in which they are paid.

An employee's contributions which are not ordinary, annual contributions and which are -

- contributions deducted from a lump sum payable on retirement to provide for dependants' benefits, or
- contributions in respect of 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 under the terms of that scheme, or
- contributions made on retirement to pay back a previous refund of contributions or to pay back benefits previously provided to the member of a pension scheme [such as a marriage gratuity], where the contributor had previously left the employment related to the pension scheme, or
- contributions made on retirement to acquire additional benefits under a scheme where an option is available under the scheme which involves the purchase of additional years service in respect of actual employment before joining the scheme, and the employee has, before 6 February 2003, responded in writing to an offer from the scheme to take up the option,

may be taken into account and allowed for the year in which they are paid or apportioned over such period of years as the Revenue Commissioners may consider proper.

In addition, contributions, which are not ordinary annual contributions, and which are paid or borne in the period 1 July 2008 to 31 December 2018 (the 'qualifying period') by an individual who was 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 (the 'relevant period') in respect of a tax year (or part of a tax year) falling within that period, other than contributions which are treated as ordinary annual contributions—

- in accordance with *subsection (2)(b)(i) or (ii)(II)*, or
- following an election under *subsection (3)*,

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.

Any excess tax paid as a consequence of spreading contributions over past years may be repaid by the Revenue Commissioners notwithstanding the general time limit for making a claim for a repayment set out in *section 865*, where the employee makes a claim for the relief within 4 years from the end of the year of assessment in which the contribution is paid or, in the case of certain contributions made by NUIG fixed-term employees referred to above, treated as having been paid, and such a claim is a valid claim within the meaning of *section 865(1)(b)*. (The meaning of a valid claim is dealt with in *section 865*).

Other contributions by an employee which are not ordinary annual contributions and which are paid after the end of a tax year but on or before the return filing date for the tax year may be set against the remuneration for that tax year. Employee contributions

that cannot be allowed either in the preceding year or in the year of payment may be carried forward to following years and allowed, subject to age based limits, for those years.

For the year of assessment 2010, the earnings limit is, by virtue of *section 790A(5)*, deemed to be €115,000 for the purpose of determining the extent to which contributions paid by an individual in the year of assessment 2011, are to be treated as paid in the year of assessment 2010.

The aggregate amount of contributions allowable in any one year - whether actual ordinary annual contributions or contributions treated as such - shall not exceed an age-related percentage of the employee’s remuneration in respect of the office or employment for the year in which the contributions are paid. The age-related limits are as follows:

<i>Age</i>	<i>Limits</i>
Under 30 years old	15% of remuneration
Up to and including 39 years	20% of remuneration
Up to and including 49 years	25% of remuneration
Up to and including 54 years	30% of remuneration
Up to and including 59 years	35% of remuneration
60 years or older	40% of remuneration

Under *section 790A*, an earnings limit of €115,000 applies to the total of an individual’s contribution to all pension products.

777 Charge to income tax in respect of certain relevant benefits provided for employees

Summary

This section imposes a general charge to tax on an employee in respect of the payment by the employer, pursuant to any retirement benefit scheme, to the benefit of the employee. Exceptions from this general charge are provided for in *section 778*.

Details

Where an employer pays a sum to provide retirement benefits for an employee (including a director), or the spouse, widow, widower, surviving civil partner, children, dependants or personal representative, or children of the surviving civil partner of an employee, that sum is to be treated as income of the employee assessable under Schedule E, if it is not otherwise chargeable to income tax. **(1) & (5)**

Where arrangements for the provision of retirement benefits are in force for the benefit of an employee, but the employer does not, or does not fully, secure the provision of the benefits by actual expenditure on premiums, a sum, equal to the amount which it would cost a third party to provide the benefits, is deemed to be income of the employee and is assessable on the employee under Schedule E. **(2)**

The cost of providing the benefits as referred to above may be estimated either as an annual sum for each year in which the arrangements for the provision of retirement benefits are in force or as a single sum payable in the year in which the right to the benefits arises. **(3)**

A sum payable by an employer in respect of a number of employees is to be duly **(4)**

apportioned among the employees.

778 Exceptions to charge to tax under section 777

This section provides for certain exclusions from the charge to tax under *section 777*. That section is not to apply where the retirement benefits provision made for the employee is under —

- an approved scheme,
- a statutory scheme, or
- a scheme set up by a foreign Government for the benefit of its employees.

Section 777 is also not to apply where the emoluments of the employee concerned are not chargeable to tax at all, or are chargeable only on the amount of the employee's earnings actually remitted to this country.

779 Charge to income tax of pensions under Schedule E

This section applies PAYE (that is, the provision of *Chapter 4* of *Part 42*) to all pensions paid under schemes which are approved, or under consideration for approval, under the Chapter including overseas pension schemes (notwithstanding that pension payments to Irish residents from a foreign source would normally be taxable under Case III of Schedule D). This in effect means that to provide services into the State an overseas pension scheme has to operate deduction of PAYE at source and remit it to the Revenue Commissioners in the same way as domestic providers.

The Revenue Commissioners may, however, direct that, until such date as they specify (for example, the start of the income tax year after a pension starts to be paid), pensions under a scheme are to be charged to tax as annual payments under Case III of Schedule D.

779A Transactions deemed to be pensions in payment

This section ensures that investment transactions of small self-administered pensions schemes (SSAS's – generally one member occupational pension schemes) are carried out on an "arm's length basis". It does this by effectively rendering transactions which are not arms length, tax inefficient by deeming the amount or value of the scheme assets used in the transaction to be a pension payment and, therefore, subject to tax.

Where the assets of a retirement benefits scheme 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 the legislation governing ARF's, then the use of those assets will be treated as a pension paid under the scheme and therefore subject to tax. The amount to be regarded as a pension payment is to be calculated in accordance with the ARF provisions (*section 784A(1B)*). (1)

Examples of the type of transactions concerned are where scheme assets are —

- used to make or secure a loan to the scheme member or a connected person.
- used in the acquisition of property from the scheme member or a connected person.
- used in the acquisition of holiday property or of property to be used as a private residence by the scheme member or a connected person.

Insofar as assets of the scheme are treated as being a pension paid under the scheme, they are no longer regarded as scheme assets. (2)

Where the acquisition of assets by the scheme is treated as being a pension paid, the assets so acquired will not be regarded as assets of the scheme. (3)

780 Charge to income tax on repayment of employee's contributions

This section imposes a general charge to tax, at the standard rate in force at the time of payment, on the repayment of any contributions to an employee during his/her lifetime under —

- a scheme which is, or at any time was, an exempt approved scheme,
or
- a statutory scheme.

The tax is to be charged under Case IV of Schedule D on the administrator of the scheme concerned. The administrator of a statutory scheme or, if the rules of the scheme permit, of an exempt approved scheme may deduct the tax charge from the repayment being made to the employee. The charge does not apply in respect of an employee whose employment is carried on outside of the State. Neither does the section apply to the extent that any repayment is transferred by the administrator of the scheme to the administrator of a Personal Retirement Savings Account by way of a contribution to such an account to which the employee is the contributor. The refunded contribution is not to be regarded as income for any other purpose of the Income Tax Acts.

781 Charge to income tax: commutation of entire pension

This section provides for a charge to tax at the rate of 10 per cent on that part of a lump sum paid in commutation of a pension (whether under an approved scheme or a statutory scheme) which exceeds the maximum lump sum which could in normal circumstances be payable. As in *section 780* the charge under the section is to be made on the administrator of the scheme in question. The charge to tax is based on the amount of the commutation payment reduced by the higher of —

- the maximum commutation payment the employee would have received if the scheme had contained a rule limiting that maximum to 3/80ths of the employee's final remuneration for each year of service up to a maximum of 40 years, and
- the maximum amount that would have been payable under the rules of the scheme in respect of that part of the pension which was commuted.

The charge does not apply where the employee's employment was carried on outside of the State.

782 Charge to tax: repayments to employer

This section provides for a charge to tax on refunds made to an employer from funds which are, or at any time were, held for the purposes of an exempt approved scheme. The charge is made either by treating the payment as a receipt of the employer's trade or profession or, if no trade or profession is involved, by assessment under Case IV of Schedule D. In the latter case, the charge is limited to the extent to which the employer could have obtained relief originally.

782A Pre-retirement access to AVCs

Summary

This section provides members of occupational pension schemes with a three-year window of opportunity from 27 March 2013 (i.e. the date of passing of the Finance Act 2013) during which they can opt to draw down, on a once-off basis, up to 30% of the accumulated value of certain additional voluntary contributions.

For the purpose of this section, AVCs include additional voluntary PRSA contributions made to AVC PRSAs.

Where AVCs are subject to a pension adjustment order (PAO), both parties to the order may exercise the option independently in respect of their respective “share” of the AVCs.

Amounts transferred to scheme members in accordance with this section are taxed at source by the administrator as Schedule E emoluments under PAYE.

Details

Subsection (1)(a) defines the terms used in the section. These are largely self-explanatory but the following should be noted: **(1)(a)**

“accumulated value” in relation to relevant AVC contributions (as defined) essentially means, in the case of AVC contributions made under a trust based occupational pension scheme, the realisable value of the contributions as determined by the scheme administrator under the rules of the scheme less any scheme expenses due to be discharged from the realisable value of those contributions. In the case of AVCs made to an AVC PRSA, the definition is modified to reflect the contract based nature of PRSAs, but again essentially means the current realisable value of the contributions under the terms of the contract less any dischargeable expenses.

“AVC fund” is defined as the accumulated value of relevant AVC contributions (as defined) made by a member, but specifically excludes the accumulated value of PRSA AVCs where benefits under the main pension scheme have become payable to the member. This could occur where the member chooses to retain the AVCs in the PRSA after retirement, rather than using them to enhance retirement benefits under the main scheme at the time of retirement.

“member” is defined in a manner that allows both active members of a scheme and members with preserved benefits under the scheme to qualify for the early access option. For example, an individual who is unemployed but has preserved benefits in the form of AVCs can still avail of the option.

“relevant AVC contributions” means AVCs as currently provided for in the legislation i.e. AVC contributions made by a member of a scheme under a rule of the main scheme permitting such contributions, or contributions made by a member under a separately arranged AVC scheme linked to the main scheme; and AVC PRSA contributions made by a member of a scheme under a rule of the main scheme permitting the payment of voluntary contributions to a PRSA, or such contributions made under a separately arranged scheme linked to the main scheme and which allows voluntary contributions to a PRSA. The definition allows for AVCs that may have been made by an individual to a previous employer’s scheme or to a previous AVC PRSA and that have been transferred into the individual’s current scheme to qualify as relevant AVC contributions.

The definition makes it clear that it is only AVCs made for the purposes of providing benefits at retirement that are included – AVCs made to enhance death-in-service benefits are excluded. Also excluded are AVCs made for the purpose of purchasing notional service. This is on the basis that such AVCs were made for the purpose of enhancing benefits at retirement due to the member having insufficient service - allowing access to such AVCs would, in effect, be allowing access to “core” pension benefits.

“relevant individual” means a member of a pension scheme who has an AVC fund and, where the AVC fund is subject to a PAO, the spouse or former spouse or civil partner

or former civil partner of the member.

Where an AVC fund is subject to a PAO, each relevant individual i.e. the member and the spouse or former spouse or civil partner or former civil partner is deemed to have a separate AVC fund. The value of these separate AVC funds is to be determined on the basis that the designated benefit under the PAO was payable at the time the AVC access option is exercised. **(1)(b)**

This subsection puts beyond doubt that the following contributions, regardless of how they may be characterised, or described, are not AVC contributions for the purposes of this section — **(1)(c)**

- employer contributions,
- employee main scheme contributions, or
- PRSA contributions.

In circumstances, where, for example, an employer “matches” employee voluntary contribution, the employer “matching contributions” are outside the scope of this section.

Notwithstanding — **(2)**

- section 32 of the Pensions Act 1990, which precludes a member of a scheme from getting a refund of contributions made to the scheme,
- the rules of the retirement benefits scheme or the terms of the PRSA contract concerned, (which may otherwise prohibit early withdrawals of contributions etc.), or
- the provisions of a PAO made in relation to a relevant individual, which would normally require the trustees of the scheme to pay the designated benefit in accordance with the scheme rules in force at the date of the PAO (which rules would not permit early access to AVCs),

a relevant individual may during the specified period (defined as the 3 year period commencing on 27 March 2013, i.e. the date of passing of the Finance Act 2013) irrevocably instruct the administrator of the AVC fund to exercise, on a once-off basis, the pre-retirement access option provided for in **subsection (3)**. The legislation effectively overrides, therefore, any restriction or limitation on early access to pension savings contained in the rules of a retirement benefits scheme or a PRSA contract and allows the option to be exercised, and the trustees or administrator to execute the option without the need for scheme rules on contract terms to be changed.

The pre-retirement access option is the transfer by the administrator to the relevant individual (before retirement) of up to 30% of the value of the AVC fund at the time of the transfer. **(3)**

This subsection contains the charging provision and essentially provides that — **(4)**

- the amount transferred to the relevant individual is to be taxed at source by the administrator as Schedule E emoluments under PAYE. This is notwithstanding that **section 780** (which deals with situations where an employee is entitled to a return of contributions if they leave a scheme within 2 years), provides for tax to be charged on the administrator at the rate of 20% under Case IV of Schedule D on any repayment of employee contributions, and **(4)(a)**
- such tax is to be charged at the higher rate unless the administrator has received from Revenue a tax credit certificate or a tax deduction card in respect of the individual. Individuals availing of the early access option will have to contact Revenue for a tax credit certificate. **(4)(b)**

An administrator must retain irrevocable instructions provided under **subsection (2)** for 6 years and must make them available to an officer of the Revenue Commissioners if **(5)**

requested by notice in writing.

The amount transferred under the AVC access option is not to be treated as a benefit (6) crystallisation event (within the meaning of *section 787O(1)*) at the point of retirement for the purposes of *Chapter 2C* and *Schedule 23B* which deal with the limit on tax-relieved pension funds.

CHAPTER 2 *Retirement annuities*

Overview

This Chapter provides for relief from tax on payments made by an individual, engaged in a trade or profession or holding a non-pensionable employment, to secure a life annuity for himself or herself on retirement or an annuity for his/ her dependants on his/her death. Alternatively, the individual may, subject to certain conditions, opt to have the accumulated fund placed in an approved retirement fund (“ARF”) or have it paid over direct to him or her. While the availability of this option is mandatory only in respect of annuity contracts approved on or after 6 April 1999, it may be incorporated by agreement into contracts approved before that date.

Where the ARF was established prior to 6 April 2000, the individual would be chargeable annually to income tax or capital gains tax on income or gains from assets held in the ARF. No further tax will be payable on the transfer out of such an ARF of income or gains accumulated within that ARF. Where the ARF was established on or after 6 April 2000, no tax liability arises on the individual until distributions are made from the ARF. Where part of the value of the pension fund is paid direct to the individual, rather than being transferred to an ARF, the amount paid is treated as part of the income of the individual for the year in which the payment is made. All payments from a post 6 April 2000 ARF are subject to tax under the PAYE system. The taxation treatment of ARFs is dealt with more comprehensively in the note on *section 784A* below.

To qualify for relief on contributions, they must be made by way of premium under an annuity contract approved by the Revenue Commissioners or by way of contribution under a trust scheme approved by the Revenue Commissioners. Relief is available on contributions made in a year of assessment up to a specified percentage of the individual’s net relevant earnings, subject to an “earnings limit” of €115,000 (as provided for in *section 790A*), for that year) as follows -

<i>Age</i>	<i>Percentage</i>
under 30	15%
30 to 39	20%
40 to 49	25%
50 to 54	30%
55 to 59	35%
60 and over	40%

The 30% rate also applies to any individual, below age 55, whose income is derived wholly or mainly from certain sporting activities.

The income and gains arising from the investment of qualifying premiums or contributions are exempt from tax.

An annuity contract which does not vest (i.e. mature or come into payment) by the date of an individual’s 75th birthday is deemed to vest (i.e. it becomes a “vested RAC”) on that date. However, no benefits may be taken from the RAC contract where it is deemed to vest in this manner. Where the individual is 75 before 25 December 2016 (i.e. the date on which Finance Act 2016 was passed),

the annuity is deemed to vest on 25 December 2016, and transitional arrangements in *section 784(2F)* as regards the taking of benefits apply.

The vesting of an RAC in this manner is a Benefit Crystallisation Event for the purposes of *Chapter 2C of Part 30*. In addition, the amount of cash and other assets in a vested RAC representing the individual's rights under the contract at the time he or she dies is treated as if it was cash and other assets of an ARF and the taxation provisions in *section 784A(4)* apply accordingly.

Similar provisions apply to Personal Retirement Savings Accounts (see *Chapter 2A of Part 30*).

783 Interpretation and general (Chapter 2)

“approved retirement fund” and “approved minimum retirement fund” have the meanings assigned to them by *sections 784A* and *784C* respectively. (1)(a)

“close company” has the same meaning as in *section 430*.

“connected person” has the same meaning as in *section 10*.

“director” is a member of the board of directors of a company, a sole director of a company, or where the affairs of a company are managed by the members, such a member.

“employee” includes, in addition to an employee in the ordinary sense, any person taking part in the management of the affairs of the company other than a director.

“participator” has the same meaning as in *section 433*.

“proprietary director” and “proprietary employee” mean, respectively, a director or employee of a company who beneficially owns, or is able, directly or indirectly, to control, more than 15 per cent of the ordinary share capital of the company. For the purposes of these definitions, ordinary share capital owned by a spouse, civil partner, child, child of the civil partner or dependant of a director or employee, or by a trust for the benefit of the director or employee or the spouse, civil partner, child, child of the civil partner or dependant of the director or employee, is treated as owned by the director or employee. (1)(a) & (b)

“sponsored superannuation scheme” is any arrangement made to provide benefits on retirement, death or disability for persons serving in an office or employment under which any part of the cost of the benefits is borne otherwise than by such persons themselves. An employee is regarded as bearing the cost of any payment borne by another person if that payment is chargeable as income in his/her hands (for example, if the cost of retirement benefits borne by the employer is treated as income of the employee under *section 777*). (1)(a) & (c)

“pensionable office or employment” is one to which a “sponsored superannuation scheme” relates. Where, however, the only benefit provided by such a scheme is a right to benefits referred to in *section 772(3)(b)* and (c) or a similar benefit under a statutory scheme, a member of the scheme is not to be regarded as being in a pensionable office or employment. A pensionable office or employment is to be regarded as such even though the duties are performed wholly or partly outside the State or the holder is not chargeable to tax in respect of it. Where an employee elects not to join a sponsored superannuation scheme membership of which is open to that employee, he/she is not to be regarded as having a pensionable office or employment. (2)(a) & (b)

Employee contributions to a pension scheme providing only for the benefits referred to in *section 772(3)(b)* and (c) will be treated as qualifying an RAC for the purpose of applying the age-based limits to contributions generally. (2)(c)

“relevant earnings” means either — (3)

- income from employment other than pensionable employment,
- income from any property attached to or part of the emoluments of any such employment, or
- income from a trade or profession,

but does not include income from an employment with an investment company of which the recipient is a proprietary director or proprietary employee.

The relevant earnings of a person are not to be regarded as that of his/her spouse or civil partner even if they are jointly assessed for tax purposes (under *section 1017* or *1019*). This allows the person to claim relief in his/her own right in respect of premiums paid so as to secure an annuity for himself or herself. (4)

The Revenue Commissioners have general powers to make regulations as regards matters of procedure if it should be found necessary to do so. Specific power is given to provide for — (5)

- the manner and form of claims to relief by self-employed, etc persons, assurance companies and the trustees of approved schemes;
- the time limit for such claims;
- the production of accounts, etc by the trustees of approved trust schemes;
- the application of other provisions of the Income Tax Acts.

No such regulations have been made to date.

There is a penalty of €3000 for making a false claim or for aiding or abetting a false claim. (6)

784 Retirement annuities: relief for premiums

Summary

This section defines the type of individual who may claim relief in respect of retirement annuity premiums and the kind of payments which may qualify for that relief. It also exempts the investment income of a fund maintained for the purpose of a scheme approved under the section.

This section also includes provisions relating to “vested RACs” (as defined in *section 787O(1)*). An annuity contract which does not vest (i.e. mature or come into payment) by the date of an individual’s 75th birthday is deemed to vest (i.e. become a “vested RAC”) on that date. Where the individual is 75 before 25 December 2016 (i.e. the date on which Finance Act 2016 was passed), the annuity is deemed to vest on that date and the transitional arrangements in *subsection (2F)* apply. The vesting of an RAC in this manner is a Benefit Crystallisation Event for the purposes of *Chapter 2C of Part 30*. In addition, the amount of cash and other assets in a vested RAC representing the individual’s rights under the contract at the time he or she dies is treated as if it was cash and other assets of an ARF and the taxation provisions in *section 784A(4)* apply accordingly.

Details

Relief, to the extent authorised by *section 787*, may be given to an individual — (1)

- who pays a “qualifying premium” (that is, a premium under an annuity contract approved by the Revenue Commissioners the main benefit secured by which is, or, but for the fact that the individual elects under *subsection (2A)* to have the proceeds of the contract transferred to himself or herself or to an approved

retirement fund (ARF), would be, a life annuity for the individual in his/her old age or a contract under **section 785** (contracts for dependants), and

- who is or was chargeable to tax for any year of assessment in respect of “relevant earnings” from any trade, profession, office or employment (or would be so chargeable but for the fact that his/her profits or gains are or were insufficient) and paid a qualifying premium for that year.

Subject to **subsections (2A)** and **(3)** and to **section 786**, the basic conditions for approval of an annuity contract are that it must be made with a person lawfully carrying on in the State the business of granting annuities on human life and where the provider is not established in the State, it must be an insurance undertaking authorised to transact insurance business in the State under the relevant EU Directive (Directive 2002/83/EC of 5 November 2002) – thus applying the regulatory environment imposed by that Directive on such undertakings; and the only benefits it may provide are — **(2)**

- except where the individual opts under **subsection (2A)**, a non-commutable and non-assignable life annuity for the individual, commencing at such age between 60 and 75 as he/she may choose;
- a non-commutable and non-assignable life annuity for the widow (or widower) or surviving civil partner of the individual, commencing on the individual’s death and not greater in amount than the individual’s own annuity;
- a refund of premiums plus interest and bonuses if, on the death of the individual before commencement of his/her annuity, no annuity is then payable to the individual’s widow (or widower) or surviving civil partner.

The contract may, however, include provisions which will allow a part of an individual’s retirement annuity (but not a spouse’s, civil partner’s or dependant’s annuity) to be commuted for a cash sum not exceeding 25 per cent of the value of the annuity. This facility will be available to the individual even where he or she opts under **subsection (2A)** to have the balance of the value of the annuity transferred either to an ARF or direct to himself or herself.

As the contract, to be eligible for approval, must secure a life annuity for the individual himself or herself, a contract, for example, which secured only an annuity for the individual’s widow would not be capable of approval. Also, except in the circumstances mentioned above, the provision of benefits in the form of non-taxable lump sums is precluded, including those which might arise from the surrender, commutation or assignment of an annuity.

The Revenue Commissioners are not to approve an annuity contract on or after 6 April, 1999 unless it provides an option for the individual to have the value of the annuity, after deduction of any lump sum in part commutation of the annuity paid to him or her or to an ARF (**section 784A**). **(2A)**

Where an individual opts, as above, to have the value of the retirement contract paid to himself or herself, the amount of the payment is to be regarded as income of the individual chargeable to income tax under Schedule E and PAYE applies to it. This also applies to payments under an annuity contract from a foreign source – thus placing domestic and foreign providers on an equal footing as regards their obligations. Unless a revenue payroll notification in respect of the individual has been received from Revenue, the person making the payment must deduct tax from the payment at the higher rate of income tax. **(2B)**

However, a retirement annuity contract will not cease to be an approved contract because of any provision in law (whether or not in the contract) whereby the parties to the contract may cancel it and transfer assets into one or more Personal Retirement Savings Account(s) of which the individual, who is a party to that contract, is the **(2C)**

contributor.

Revenue approval of a retirement annuity contract will not be prejudiced by any rule in the contract that allows the annuity secured by the contract to be commuted sufficient to discharge any tax charge on a chargeable excess, which arises in connection with that annuity, under the provisions of **Chapter 2C** (relating to the maximum tax-relieved pension fund). (2D)

The provision of the encashment option (as provided for in **section 787TA**) in a retirement annuity contract will not affect Revenue approval of the contract. (2E)

A retirement annuity contract, which becomes a “vested RAC” (within the meaning of **section 787O(1)**) when an individual attains the age of 75 years, without having drawn down benefits, shall not cease to be an approved contract where the insurance undertaking with which the contract is made – (2F)

- in the case of a contributor who was 75 years of age prior to 25 December 2016 (i.e. the date on which Finance Act 2016 was passed)–
 - pays an annuity or a retirement lump sum to the contributor, or
 - transfers an amount to the contributor or to an ARFon or before 31 March 2017, or
- regardless of whether the RAC becomes vested on the date the contributor attains the age of 75 years or on 25 December 2016, uses the annuity assets, to discharge any liability to chargeable excess tax under **Chapter 2C of Part 30** arising as a result of the deemed vesting of the annuity contract.

In the case of an individual who attains age 75 before 25 December 2016, the use of the annuity assets to discharge chargeable excess tax is to be in priority to any payments to the individual or transfer to the individual or to an ARF. (3)

The Revenue Commissioners have discretion to modify, within certain limits, the conditions for approval of an annuity contract set out above even though the contract may cover one or more of the following matters —

- an annuity after the individual’s death to a dependant other than a widow, widower or surviving civil partner;
- retirement before the age of 60 on grounds of ill-health;
- retirement before the age of 60 (but not before the age of 50) in occupations where the customary retirement age is before 60;
- an annuity guaranteed for a minimum period not exceeding 10 years notwithstanding the death of the annuitant;
- the assignment to the beneficiary of an annuitant’s estate of the part of a guaranteed annuity payable after the annuitant’s death.

Contributions under trust schemes, or part of trust schemes, approved under the section are eligible for relief in the same way as “qualifying premiums”. To qualify for approval, a scheme must be established under irrevocable trusts; and its rules must impose the same limitation on the annuities to be provided as are applicable in the case of annuity contracts with assurance companies. The income arising from the investments and deposits of a fund maintained for the purposes of an approved trust scheme are exempt from income tax. (4)

At any time when an annuity provider is not established in the State, the provider must enter into an enforceable contract with the Revenue Commissioners to meet all of the duties and obligations imposed by **section 784** and **Chapter 2C** of this Part and section 125B of the Stamp Duties Consolidation Act 1999, or appoint an administrator resident in the State to carry out those duties. These requirements also extend to an annuity (4A)

provider under **section 785**. Any contract between the Revenue Commissioners and an administrator is to be governed by the laws of the State and the courts of Ireland are to have exclusive jurisdiction in determining any dispute arising under such contracts. Where an administrator opts to appoint a person resident in the State to discharge the duties and obligations, the person's identity and the fact that they have been appointed must be notified to the Revenue Commissioners.

The Revenue Commissioners may by way of notice seek information from an annuity provider about annuity contracts and the payments made under them. The information sought can include the name, address and PPS number of the annuity holder and individuals who receive payments under the annuity contract, and the amount of any payments. The provision can apply to both domestic and foreign providers and gives the Revenue Commissioners discretionary power to get access to relevant information about payments should they deem it necessary. **(4B)**

The Revenue Commissioners have power to withdraw their approval of an annuity contract or a trust scheme where appropriate. **(5)**

Approved annuity contracts are excluded from certain legal requirements regarding notices of assignment, since it is a condition of approval that the annuities must be non-assignable. **(6)**

Annuities payable in respect of annuity contracts approved under this section or **section 785** are regarded as a pension chargeable to tax under Schedule E and the PAYE system accordingly applies to it. **(7)**

Where an annuity contract becomes a vested RAC, within the meaning of **section 787O(1)**, the amount of cash and other assets in the vested RAC which represent the individual's rights under the contract at the time he or she dies is treated as if it was cash and other assets of an ARF and the taxation provisions in **section 784A(4)** apply accordingly. **(8)**

784A Approved retirement fund

Summary

This section sets out the taxation treatment which applies in relation to an approved retirement fund (ARF). In particular, it provides that where the assets of an ARF are made available for the use or benefit of the ARF holder, the ARF holder will be liable to tax on the value of the asset so made available. For years to 2011 inclusive, the section provided for the imputation of distributions from the value of assets held in an ARF in December of each year. For 2012 onwards, imputed distributions from ARFs (and vested PRSAs) are dealt with under **section 790D**.

The section also imposes obligations on a qualifying fund manager (QFM) to notify Revenue of the QFM's existence and to keep appropriate accounts in relation to the fund, copies of which are to be available to the individual on whose behalf the fund is managed.

Details

Definitions and construction

“an approved retirement fund” (ARF) is a fund which is managed by a QFM and which complies with the conditions in **section 784B**. **(1)(a)**

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement.

“EEA state” means a state which is a contracting party to the EEA Agreement.

“qualifying fund managers” (QFMs) are banks in the State (including the Post Office Savings Bank) and banks in other EEA states, building societies, credit unions, life assurance companies, collective investment undertakings, stock brokers and certain investment intermediaries.

“tax reference number” has the same meaning as in *section 885*.

References in the Chapter to an ARF are to be taken as references to assets in such a fund which is managed by a QFM for the individual who is beneficially entitled to the assets. (1)(b)

Designation of a person as a QFM for the purposes of the section does not permit that person to provide services which that person would not otherwise be authorised or permitted to provide in the State. (1)(c)

The term “distribution” (in relation to an ARF) 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. (1)(d)

Any distribution in relation to an ARF is deemed, for the purposes of this section, to have been made by the QFM. (1)(e)

Use of ARF assets by ARF holder

ARF assets will be treated as distributed (with a consequent tax charge on the ARF holder) in so far as they are used for the following purposes: (1A) &
(1B)

- used to make or secure a loan to the ARF holder or a connected person;
- used in the acquisition of property from the ARF holder or a connected person;
- used in the sale of ARF assets to the ARF holder or to a connected person;
- used in the acquisition of property from the ARF holder or a connected person;
- used in the acquisition of holiday property or of property to be used as a private residence by the ARF holder or a connected person; where the property is acquired on or after 6 February 2003 for some other purpose [e.g. letting] and is subsequently used as holiday property or as a residence by the ARF holder or a connected person the distribution will arise at the time the property comes to be used for this purpose and will include any ARF assets used in the repair or improvement of the property;
- used in the acquisition of shares or other interests in a closely held company in which the ARF holder or a connected person is a participator;
- used in the acquisition of tangible moveable property;
- used in the acquisition of commercial property where used in connection with any business of the ARF holder or of any business of a connected person; where the property is acquired on or after 2 February 2006, at “arm’s length” and is subsequently used in connection with a business of the ARF holder or a connected person, the distribution will be treated as arising on the date that use commences and will include the value any ARF assets used for the purposes of

expenditure on repair or improvement of the property.

- used to invest in any fund, sub fund or scheme where the following circumstances arise—
 - (i) a relevant pension arrangement (within the meaning of **section 787O(1)**), a member or holder of which is connected (within the meaning of **section 10**, as that section applies for capital gains tax purposes) with the ARF holder, invests in the same, or any other fund, sub fund or scheme, and
 - (ii) there is an arrangement whereby the investment return to the relevant pension arrangement in respect of its investment is attributable in any way to the ARF holder’s investment in a fund or sub fund or scheme.

The use of ARF assets by an ARF holder in this fashion is treated as a distribution from the ARF (of an amount equal to the market value of the assets so used) at the time the above circumstances arise.

Where the foregoing scenario arises, **section 790E** disapplies certain exemptions and reliefs in respect of the related income and gains arising to the “pension investor”.

Subsection (IBA) was deleted by section 18(3)(a) of the Finance Act 2012 with effect from 1 January 2012. Imputed distributions from ARFs are dealt with in **section 790D** from 2012 onwards. Details of the operation of the imputed distribution regime for ARFs prior to 2012 can be found in earlier editions of these Notes for Guidance. (IBA)

Subsection (IC) treats an amount that has been regarded as a distribution from an ARF under this section as not being an asset in the ARF for any other purpose while **subsection (ID)** provides that where the acquisition of assets is treated as giving rise to a distribution, the assets acquired will not be regarded as assets in the ARF. Such assets therefore lose the benefits of the tax-exempt status of the ARF. The exception to the above applies in relation to the notional distribution calculated under **section 790D(4)** which will continue to be regarded as an asset of the ARF. It is, therefore, specifically excluded from the effects of **subsection (IC)**. (IC) & (D)

Subsection (IE) provides that the distribution treated as having been made in respect of an ARF asset used for the purposes set out in **subsection (IB)** will, except in the case of cash, be equal to the market value (within the meaning of **section 548**) of the asset. (IE)

Income/gains of an ARF

Income and gains from assets in an ARF (set up on or after 6 April 2000) are exempt from income tax and capital gains tax while retained in the ARF. (2)

The “gross roll up” provisions which apply to funds held for pension business of insurance companies applies to money held in an ARF by an insurance company. (5)

Taxation of distributions

Subject to exceptions (and see below re pre-April 2000 ARFs) — (3)

- any distribution from an ARF is treated as a payment, to the person beneficially entitled to the assets in the fund, of emoluments within Schedule E. **Chapter 4** of

Part 42 (PAYE) applies to the distribution;

- if the QFM has not received a revenue payroll notification in respect of that person from Revenue, tax is to be deducted from the full payment at the higher rate of income tax for the year in which it is made.

A distribution from an ARF which is used to reimburse a pension scheme administrator for tax paid by that administrator on a chargeable excess relating to the ARF holder shall not be treated as a payment to the ARF holder for the purposes of **subsection (3)**. (3A)(a)

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 appropriate share of the chargeable excess tax arising on the BCE, or a part of it (for which the QFM is made jointly liable with the non-member) is not to be treated as a taxable distribution. **Chapter 2C of Part 30** deals with the taxation treatment of PAOs in the context of the standard fund threshold regime. (3A)(b)

A distribution made following the death of the individual beneficially entitled to the assets in an ARF is treated as the income of that individual for the year of death and is taxable under Schedule E at his or her marginal rate, other than in the circumstances described in **subsections (4)(b) or (4)(c)**. (4)(a)

A distribution which is made to an ARF in the name of the deceased's spouse or civil partner (referred to as the "second-mentioned ARF" below) or is made to, or for the sole benefit of, any child of the deceased or of the deceased's civil partner who is under 21 at the time of death is not taxable under Schedule E. (4)(b)

A distribution— (4)(c)

- from the deceased's ARF to a child of the individual or of his or her civil partner who is 21 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 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 a rate of 30%.

The charge under Case IV at the 30% rate applies **only** in respect of distributions to children who are 21 or over when the ARF owner in question dies. All other distributions (e.g. to strangers) are, as provided for in **subsection (4)(a)**, taxable under Schedule E at the deceased's marginal rate for the year of death.

The QFM should deduct this tax from the distribution. In relation to the amount so charged:

- It does not form part of the individual's total income,
- It is to be computed without regard to any deductions allowed in computing income for the purposes of the Tax Acts,
- No reliefs, deductions or tax credits may be set against the amount so charged or against the tax payable on that amount,
- The income tax exemption limits and marginal relief will not apply as regards income tax so charged.

The reporting and collection provisions that apply to excess lump sums under the (4)(d)

provisions of *subsections (8) to (15) of section 790AA* also apply, with necessary modifications, to distributions chargeable to income tax under Case IV in accordance with *subsection (c)*.

Non-application of DIRT

Money deposited with a relevant deposit taker by a QFM in that capacity is not a relevant deposit for the purposes of Deposit Interest Retention Tax (DIRT) – i.e. DIRT does not apply to any interest generated. (6)

Non-resident QFM

A QFM which is not resident in the State or is not trading in the State from a fixed place of business must enter into an enforceable contract with the Revenue Commissioners to meet all of the duties and obligations imposed by virtue of the Chapter or appoint a person resident in the State to carry out those duties. Any contract between the Revenue Commissioners and a QFM is to be governed by the laws of the State and the courts of Ireland are to have exclusive jurisdiction in determining any dispute arising under such contracts. Where a QFM opts to appoint a person resident in the State to discharge the duties and obligations, the person’s identity and the fact that they have been appointed must be notified to the Revenue Commissioners. (The reference to “by virtue of this Chapter” extends the ambit of the subsection to obligations under PAYE.) (7)(a)

Tax liabilities of QFM

A QFM is liable to pay to the Collector-General any tax which the QFM is required to deduct from payments out of an ARF. Where there are insufficient funds in the ARF to meet the liability, the shortfall will be a debt due to the QFM by the person beneficially entitled to the assets in the ARF or his or her personal representative, as the case may be. (7)(b)

Notification by QFM

A QFM is obliged to notify the Revenue Commissioners within one month of commencing to so act and the date of commencement. (8)

The Revenue Commissioners can, by way of notice, seek information from a QFM about any distributions by them from an ARF. The information can include the name, address and tax reference number of the ARF holder and individuals who receive distributions and the amount of any distributions. The provision can apply to both domestic and foreign QFMs and gives the Revenue Commissioners discretionary power to get access to relevant information about distributions should they deem it necessary. (9)

Taxation provisions re pre-6 April 2000 ARFs

The taxation provisions for ARFs where funds were first accepted prior to 6 April 2000 differ materially from that set out above. In brief —

- the beneficial owner of the assets in an ARF is chargeable to income tax and capital gains as if the income/gains relating to the assets arose directly to the owner,
- distributions (other than out of income and gains) from an ARF are chargeable to income tax under Case IV of Schedule D on the individual on whose behalf the ARF is managed,

- distributions from an ARF following the individual's death are chargeable as income of the individual in the year of death and the QFM must account for tax at the higher rate on the distributions,
- the QFM must maintain an income and gains account in relation to the ARF,
- the QFM must provide the individual with an annual statement containing details of the income/gains, assets and taxation relating to the ARF.

A more detailed description of this regime is contained in the 1999 version of this publication. See also the note on *section 784E* regarding obligations of QFMs re returns, etc. under the regime.

784B Conditions relating to an approved retirement fund

Summary

This section sets out the conditions relating to approved retirement funds.

Details

Conditions

The qualifying conditions for an approved retirement fund (ARF) are as follows — (1)

- the ARF is to be held by a qualifying fund manager in the name of the individual beneficially entitled to the assets;
- the assets which may be held in an ARF are —
 - assets transferred from a retirement annuity contract following the exercise of an option under *section 784(2A)*,
 - assets transferred from another ARF, or
 - assets derived from such assets, e.g. investment gains, etc of the ARF;
- the individual beneficially entitled to the assets in an ARF must make a declaration to the qualifying fund manager which —
 - contains the individual's full name, address and tax reference number;
 - declares that the assets in the fund are those which may properly be held in an ARF and are beneficially owned by the individual;
 - contains any other information the Revenue Commissioners may reasonably request for the purposes.

Certification of assets

A qualifying fund manager may not accept assets into an ARF unless he or she receives a certificate from an annuity provider or from another qualifying fund manager stating — (2) & (3)

- that the assets are ones to which the individual concerned is beneficially entitled following the exercise of an option under *section 784(2A)*, or that they are being transferred from another ARF,
- that they do not form part of an Approved Minimum Retirement Fund (AMRF), and
- the balance on the income and gains account and the residue in relation to the assets, i.e. the value of the assets which represent funds originally transferred from an approved pension fund.

Retention and inspection of declarations and certificates

The provisions of **section 263(2)** apply to declarations and certificates under the section. This means that qualifying fund managers must retain the declarations and certificates for the longer of a period of 6 years or a period of 3 years after the fund ceases. The inspector is entitled to inspect the declarations and certificates and to take extracts or copies as he/she thinks fit. (4)

The Minister for Finance may, by order, specify requirements regarding the operation of ARFs. (5)

784C Approved minimum retirement fund

784C Approved minimum retirement fund

Summary

This section previously set out the consequences of an option (the ARF option) made by an individual under **section 784(2A)** to have the value of his or her annuity fund, net after any sum taken in part commutation, transferred to himself/herself or to an approved retirement fund (ARF).

Previously, unless the individual had a guaranteed annual pension income of at least €12,700 from an existing pension payable for life (specified income) at the time the ARF option was exercised a maximum “set aside” amount of €63,500 of the net fund (or the whole of the net fund where less than this amount) had to be transferred to an approved minimum retirement fund (AMRF) or used to buy an annuity.

An AMRF automatically became an ARF when an individual became entitled to the required level of specified income at any time after exercising the ARF option, reached the age of 75 years, or died.

The same exemption of income and gains, as well as the taxation treatment of distributions, as apply in the case of ARFs (see **section 784A**) also applied in the case of AMRFs.

However, section 14 of the Finance Act 2021 removed the AMRF conditions from the ARF option. The section also repealed subsections 2 to 7 of section 784C, with effect from 1 January 2022. It also inserted a new subsection 7A which legislates that on 1 January 2022 any AMRFs automatically become an ARF and the legislative rules applying to ARFs will apply to those funds accordingly.

Details

An “approved minimum retirement fund” (AMRF) is a fund which is held and managed by a qualifying fund manager (within the meaning of **section 784A**) and which complies with the conditions in **section 784D**. (1)

On 1 January 2022 an AMRF on that date will become an ARF and section 784A, (7A) which sets out the taxation treatment which applies to ARFs, and subsections (1) and (5) of section 784B, which sets out the conditions relating to ARFs, shall apply accordingly.

784D Conditions relating to an approved minimum retirement fund

Summary

This section sets out the conditions relating to an approved minimum retirement fund (AMRF). Section 14 of the Finance Act 2021 removed the AMRF conditions from the ARF option. The section also repealed subsections 1 to 3 of section 784D, with effect from 1 January 2022. It also inserted a new subsection 6 which legislates that on or after 1 January 2022 a qualifying fund manager shall not accept any assets into an AMRF.

Details

Retention and inspection of declarations and certificates

The provisions of *section 263(2)* apply to declarations and certificates under the section. (4)
This means that the qualifying fund manager must hold the declarations and certificates for the longer of a period of 6 years or 3 years after the fund ceases. The inspector is entitled to inspect the declarations and certificates and to take extracts and copies as he/she thinks fit.

The Minister for Finance may, by order, specify requirements regarding the operation of AMRFs. (5)

On or after 1 January 2022, a qualifying fund manager shall not accept any assets into an AMRF. (6)

784E Returns, and payment of tax, by qualifying fund managers

Summary

[**Note:** *Section 784E* was deleted by the Finance Act, 2000 as respects an approved retirement fund or an approved minimum retirement fund, as the case may be, where the assets in the fund were first accepted into the fund by the qualifying fund manager (QFM) on or after 6 April 2000.]

This section deals with the return by a QFM of payments out of the residue of an approved retirement fund (ARF) and, where appropriate, the payment of the tax deductible from that payment. Tax will be due only where a distribution is made following the death of the individual beneficially entitled to the assets in the ARF. In the case of distributions out of the residue of an ARF while the individual beneficially entitled to the ARF is alive, the individual will have to include the distribution in his or her tax return and pay the tax on it.

The return and any payment is to be made to the Collector-General within 14 days of the end of the month in which the payment is made. Payment is to be made without the need for raising an assessment although the inspector has the power to make an assessment if he/she considers it necessary to do so because he/she is dissatisfied with particulars contained in a particular return. The normal provisions relating to the assessment and collection of income tax and the charging of interest apply, with suitable modifications, to the tax payable by QFMs.

Details

Returns

A QFM is to make a return to the Collector-General within 14 days of the end of the month in which a distribution is made out of the residue of an ARF. The return is to (1)

contain the following information —

- the name and address of the individual in whose name the ARF is or was held;
- the individual's tax reference number;
- the name and address of the person to whom the distribution was made;
- the amount of the distribution;
- the amount of the tax for which the QFM is required to account.

Payment

A QFM is required to account for any tax due by him or her in respect of a distribution at the same time as a return in respect of the payment is due under **subsection (1)**, i.e. within 14 days after the end of the month in which the payment is made. The tax is payable without the making of an assessment but an assessment may be made if all or part of the tax is not paid on time, whether or not it has been paid when the assessment is raised. (2)

Assessments

An inspector may make an assessment in respect of tax which should have been but was not included in a return or where the inspector is dissatisfied with any return. The tax assessed will, for the purposes of interest on unpaid tax, be due on the date it would have been due if included in a correct return under **subsection (1)**. (3)

In order to secure that the correct tax, including interest, is paid, the inspector may make any necessary assessments, adjustments or set-offs where an amount was incorrectly included in a return. (4)

Tax assessed on a QFM is due within one month of the date of the assessment unless the tax would be due earlier under **subsection (1)**. On determination of an appeal against an assessment, any tax overpaid will be repaid. (5)

Collection, etc

The provisions of the Income Tax Acts relating to assessments, appeals, collection and recovery of income tax apply to tax payable by QFMs. (6)(a)

Interest is payable at the rate of 0.0322 per cent for each day or part of a day on the late payment of tax payable under this Chapter without the making of an assessment. The payment and procedural provisions of **subsections (2) to (4) of section 1080** – which apply to interest on assessed taxes – apply to that interest. (6)(b) & (c)

Where an assessment is raised on a QFM so that the normal interest charge would arise under **section 1080**, that section is to apply with the omission of **subsection (1)(b)** which deals with the date as from which interest is payable in a case where there is an appeal against an assessment to income tax. This provision is not required in the case of an assessment on a QFM because the due date for payment of interest in such a case is set out in **subsection (5)** which applies whether or not there is an appeal against such assessments. (6)(d)

Prescribed form for returns

A return by a QFM is to be on a form which is prescribed or authorised by the Revenue Commissioners and must include a declaration that it is correct and complete. (7)

Returns in relation to ARFs and AMRFs

A QFM must, on or before the specified return date for the chargeable period, i.e. the date by which the QFM is required to make his or her tax return, make a return in relation to each ARF and AMRF which he or she managed at any time during the tax (8)

year. The return is to contain the following details —

- the name, address and tax reference number of the individual beneficially entitled to the assets in the fund,
- details of any income, profits and gains and any chargeable gains derived from assets held in the fund and of any tax deducted from such income, profits or gains,
- details of any distributions made out of the assets held in the fund, and
- such further details as the Revenue Commissioners may require for the purposes of this section.

785 Approval of contracts for dependants or for life assurance

Summary

This section permits the Revenue Commissioners to approve under *section 784* contracts made by individuals providing an annuity for the widow, widower, surviving civil partner or dependants of the individual whether or not the individual is providing benefits for himself or herself. It also provides for approval of contracts assuring lump sums to the personal representatives of the individual on his/her death before the agreed retirement age.

Details

The Revenue Commissioners may approve a contract made by an individual with an annuity provider for the purposes of the Chapter if — (1)

- the main benefit is an annuity for the wife, husband, civil partner or dependants of the individual, or
- the sole benefit is a lump sum payable to the individual's personal representatives on death before the individual reaches the age of 75.

Where the annuity provider is not established in the State then it must be an insurance undertaking authorised to transact insurance business in the State under the relevant EU Directive (Directive 2002/83/EC of 5 November 2002) – thus applying the regulatory environment imposed by that Directive on such undertakings. (1A)

The conditions for approval of a contract are — (2)

- any annuity payable to a wife, husband, civil partner or dependant must commence on the death of the individual,
- any annuity payable to the individual under the contract must start after the individual reaches age 60, and before he/she reaches age 75, except where the annuity is, under the contract, to commence on the death of a person to whom an annuity would be payable if that person survived the individual (e.g. a husband may take out a contract to give his widow an annuity on his death, with an annuity benefit to himself if she should die before him – in such a case the restriction on the commencement of annuities after age 75 does not apply),
- in the event of no annuities being paid to the individual, his or her spouse or civil partner or the individual's dependant, the only other benefit permitted is a refund of premiums (plus interest or bonuses) to the individual's personal representatives,
- any annuity provided must be payable for the life of the annuitant,
- no annuity may be capable of surrender, commutation or assignment in whole or in part.

The Revenue Commissioners may approve a contract under the section even though it may not, in one or more respects, satisfy the conditions set out above. (3)

Subsections (2) and (3) of section 784 do not apply to the approval of a contract under this section. (4)

Trust schemes (or part of trust schemes) for groups of individuals under which benefits (5) as set out above are provided may be approved in the same way as annuity contracts. The exemption from income tax which applies to the income from investments or deposits of the fund of a trust scheme approved under *section 784* also applies to the income from investments and deposits of a trust scheme approved under this section.

Premiums and contributions paid under contracts and schemes approved under this (6) section qualify for the same treatment as payments to which *section 784* applies.

786 Approval of certain other contracts

This section provides that the Revenue Commissioners may not approve a retirement annuity contract under *section 784* unless the contract gives the individual the right to require the transfer of the value of his/her accrued rights under that contract to another person to be applied by that other person in payment of premiums under an annuity contract made between the individual and that other person.

787 Nature and amount of relief for qualifying premiums

Summary

This section sets out the manner in which relief under the Chapter in respect of qualifying premiums is to be given and how the amount of the relief is to be computed. The relief is given as a deduction from or set-off against relevant earnings for the year of assessment for which the premiums are paid. Depending on the age of the individual, relief is allowable up to the following percentages of the individual’s net relevant earnings for that year —

Individual who, at any time during the tax year, is aged 30 or over and less than 40	20%
Individual who, at any time during the tax year, is aged 40 or over and less than 50	25%
Individual who, at any time during the tax year is aged 50 or over and less than 55 (or who is less than 55 but whose relevant earnings for the year were derived wholly or mainly from a sporting occupation specified in <i>Schedule 23A</i>)	30%
Individual who, at any time during the tax year is aged 55 or over and less than 60	35%
Individual who, at any time during the tax year is aged 60 or over	40%
All other cases	15%

There is an upper “earnings limit” of €115,000 (see *section 790A*) by reference to which allowable retirement annuity contributions will be calculated. Any excess of contributions over the allowable contributions may be carried forward to subsequent years.

Details

Definition of relevant earnings and net relevant earnings

The amount of the “relevant earnings” or “income” of an individual from a particular (1) source is to be taken to be the amount of the profits or gains arising in the relevant basis year. In other words, deductions for losses and capital allowances are not to be taken into account in arriving at the amount of an individual’s “relevant earnings”.

The “net relevant earnings” of the individual are to be arrived at by taking the amount of the individual’s relevant earnings for the year of assessment and then deducting from that amount the deductions which, in computing the individual’s total income for tax purposes, would be made from those relevant earnings in respect of - (2)

- payments made by the individual (that is, payments which the individual is entitled to deduct in computing his/her total income (for example, payments such as annuities paid under deduction of tax or maintenance payments to a separated or former spouse), and
- losses and capital allowances relating to a source of relevant earnings of the individual or the spouse or civil partner of the individual.

For the purposes of the relief, an individual’s net relevant earnings are not to exceed the “earnings limit” currently €115,000 (see *section 790A*). (2A) & (2B)

Relief given under this section in respect of a qualifying premium does not reduce the net relevant earnings. (5)

Treatment of losses, etc

Where the whole or a part of a loss or allowance relating to a source of relevant earnings is, for the purpose of computing liability to income tax for a particular year, set off against income which does not rank as relevant earnings, the amount so set off is to be treated as reducing the individual’s net relevant earnings of subsequent years, being deducted as far as possible from the relevant earnings of the immediately following year, whether or not relief under the section is claimed or allowed for that year, and so on for the following years. The full loss or allowance, taking one year with the next, will reduce the amount of relief available under this section. (3)

Where an individual has relevant earnings and other income, deductions (that is, in respect of losses or payments) which could otherwise be treated as reducing the relevant earnings or the other income are, so far as possible, to be treated as reducing the relevant earnings in so far as they are deductions in respect of losses sustained in a source of relevant earnings of the individual (or of his/her spouse or civil partner), and that otherwise they are to be treated as reducing the other income. (4)

Method of giving relief

In general, relief is to be given for qualifying premiums by deducting them from the individual’s relevant earnings for the year of assessment in which they are paid. (6)

Where a qualifying premium is paid after the end of a year of assessment but on or before the return filing date for that year, an election may be made to have the premium treated as if it was paid in that year. (7)

For the year of assessment 2010, the earnings limit is, by virtue of *section 790A(5)*, 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.

Where the “net relevant earnings” as determined for a year are subsequently adjusted, any relief granted on the basis of the unadjusted earnings is also adjusted as necessary. (13)

Where relief is granted under the section in respect of a qualifying premium, relief is not available under any other provision of the Income Tax Acts in respect of any other premium or consideration for an annuity under the same contract. (14)

Amount of relief

The amount of premiums (including premiums on a contract approved under *section* (8)

785) which may be deducted or set off in any year of assessment is as follows —

Individual who, at any time during the tax year, is aged 30 or over and less than 40	20%
Individual who, at any time during the tax year, is aged 40 or over and less than 50	25%
Individual who, at any time during the tax year is aged 50 or over and less than 55 (or who is less than 55 but whose relevant earnings for the year were derived wholly or mainly from a sporting occupation specified in <i>Schedule 23A</i>)	30%
Individual who, at any time during the tax year is aged 55 or over and less than 60	35%
Individual who, at any time during the tax year is aged 60 or over	40%
All other cases	15%

Specified individuals

A “specified individual” is an individual whose relevant earnings for a year of assessment are derived wholly or mainly from one of the occupations or professions listed in *Schedule 23A* viz. various sporting activities. The Minister for Finance may, in consultation with the Minister for Tourism, Sport and Recreation, extend or restrict, by regulation, the meaning of specified individual by adding or deleting one or more occupations or professions to the list of specified occupations or professions in that Schedule. Any such regulations will not be effective until approved by resolution of Dáil Éireann. **(8A), (8B) & (8C)**

Carry-forward of relief

Where, because of an insufficiency of net relevant earnings, 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 that or those years. **(10) & (11)**

Claims and appeals

The amount of relief due is, on due claim, to be determined by the inspector. The inspector’s determination may be appealed by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the determination. The appeal is heard and determined in the manner provided for in *Part 40A*. **(15) & (16)**

CHAPTER 2A

Personal retirement savings accounts

Overview

This Chapter provides for relief from tax on contributions made by an individual, engaged in a trade or profession or holding an employment, under a Personal Retirement Savings Account (PRSA) contract.

To qualify for relief, payments must be made under a PRSA contract, which complies with the conditions of Part X (inserted by the Pensions (Amendment) Act, 2002) of the Pensions Act, 1990, and is approved by the Revenue Commissioners. Relief is available

for contributions made in a year of assessment up to, the greater of -

- (a) €1,525, or
- (b) a specified percentage of the individual’s “net relevant earnings”, subject to an “earnings limit” of €115,000 as provided for in *section 790A*, for that year as follows -

<i>Age</i>	<i>Percentage</i>
under 30	15
30 to 39	20
40 to 49	25
50 to 54	30
55 to 59	35
60 and over	40

The 30% rate also applies to any individual, below age 55, whose income is derived wholly or mainly from certain sporting activities.

Contributions to a PRSA and a Retirement Annuity Contract (RAC) and, with effect from 4 December 2002, contributions to an approved or statutory scheme will be aggregated when calculating the maximum tax relief.

Employees who are members of an occupational pension scheme may only use a PRSA as a vehicle for making additional voluntary contributions (AVCs). The minimum allowable limit of €1,525 for PRSA contributions does not apply in respect of PRSA AVCs.

Transfers of funds from an RAC to a PRSA are allowed. Transfers of funds from an occupational pension scheme to a PRSA are also allowed. . The value of AVC contributions to an occupational pension scheme may be transferred without this restriction.

Where the PRSA contributor dies pre-retirement, the PRSA fund may pass in its entirety to the estate of the deceased person, free of income tax. Where the contributor dies after benefits have commenced, the assets in the PRSA are treated in the same manner as assets in an Approved Retirement Fund (ARF).

The income arising from the investment of PRSA contributions is exempt from tax.

Please refer to the guidance notes for *section 782A* which provided members of occupational pension schemes with a three-year window of opportunity from 27 March 2013 (i.e. the date on which the Finance Act 2013 was signed) during which they could opt to draw down, on a once-off basis, up to 30% of the accumulated value of certain AVCs, including additional voluntary PRSA contributions made to AVC PRSAs.

A PRSA which does not vest (i.e. mature or come into payment) by the date of an individual’s 75th birthday is deemed to vest (i.e. it becomes a “vested PRSA”) on that date. However, benefits may not be taken from a PRSA that vests in this manner. Where the individual is 75 before 25 December 2016 (i.e. the date on which Finance Act 2016 was passed), the PRSA is deemed to vest on 25 December 2016, and the transitional measures in *section 787K(2D)* as regards the taking of benefits apply.

The vesting of a PRSA in the manner described above, is a Benefit Crystallisation Event for the purposes of *Chapter 2C of Part 30* and the PRSA comes within the imputed distribution provisions of *section 790D*. In addition, any assets in the PRSA when the contributor dies are treated as if they were assets of an ARF.

Similar vesting provisions apply to RACs (see *Chapter 2 of Part 30*).

787A Interpretation and supplemental

“additional voluntary PRSA contributions” means contributions made by a member of a retirement benefits scheme which are made under a rule of the scheme which allows members to make voluntary contributions to a PRSA or are made under a separately arranged scheme approved by Revenue which is associated with the retirements benefits scheme and which allows members of the retirement benefits scheme to make voluntary contributions to a PRSA. (1)

“approved scheme” has the same meaning as in *Chapter 1* (see *section 770*) of *Part 30*.

“approved retirement fund” and “approved minimum retirement fund” have the same meanings as in *sections 784A* and *784C*, respectively.

“contract of employment” means contract of service or apprenticeship or a contract with an employment agency to do work for a third party.

“contributor” means an individual who enters into a PRSA contract with a PRSA provider including where all contributions are made by the individual’s employer.

“director” is a member of the board of directors of a company, a sole director of a company, or where the affairs of a company are managed by the members, such a member.

“distribution” has the same meaning as in the Corporation Tax Acts (see *section 4*).

“earnings limit” shall be construed in accordance with *section 790A*.

“employee” means a person of any age employed under a contract of employment and references to an employee in relation to an employer are references to an employee employed by that employer. Persons holding office under or in the service of the State (including civil servants) are deemed to be employed by the State or Government as the case may be. Similarly, officers and servants of local authorities, harbour authorities, the Health Service Executive and education and training boards are deemed to be employees of those bodies as the case may be. In the case of a company, the term includes a director or other officer of the company and any other person taking part in the company’s management.

“employer” means the person with whom an employee has entered into, or for whom he or she works under, a contract of employment but where the employee is employed through an employment agency the employer is the person who is liable to pay the employee’s wages.

“market value” is to be construed in accordance with *section 548*.

“PPS Number” means a person’s personal public service number.

“Personal Retirement Savings Account” means a personal retirement savings account established by a contributor with a PRSA provider under a PRSA contract.

“PRSA administrator” means the PRSA provider or a person to whom the administration of the PRSA has been delegated under Part X of the Pensions Act, 1990 or a person appointed under *section 787G(5)*.

“PRSA assets” are the assets held in a PRSA including the value of contributions made by the contributor’s employer.

“PRSA contract” is a contract entered into between a PRSA provider and a contributor in respect of a PRSA product.

“PRSA contribution” means a contribution within Part X of the Pensions Act, 1990.

“PRSA product” is a PRSA product within the meaning of Part X of the Pensions Act, 1990 that stands approved under section 94 of that Act.

“PRSA provider” has the same meaning as in Part X of the Pensions Act, 1990.

“relevant payment” means any payment, including a distribution, made by reason of rights arising as a result of a PRSA contract and includes any annuity payable by reason of those rights.

“retirement annuity contract” means a contract approved under *Chapter 2* of *Part 30*.

“retirement benefits scheme” has the same meaning as in *Chapter 1* (see *section 771*) of *Part 30*.

“specified individual” means an individual whose relevant earnings are derived wholly or mainly from an occupation or profession specified in *Schedule 23A*.

“statutory scheme” has the same meaning as in *Chapter 1* (see *section 770*) of *Part 30*.

Where any other word or expression used in *Chapter 2A* is also used in Part X of the Pensions Act, 1990, it will, except where the context otherwise requires, have the same meaning in the Chapter as it has in that Part. (2)

787B Relevant earnings and net relevant earnings

Summary

This section defines the expressions “relevant earnings” and “net relevant earnings”, sets out the treatment of losses etc. in the calculation of relevant earnings and imposes an “earnings limit” (currently €115,000 – see *section 790A*) on the amount of relevant earnings that qualify for relief in any one year.

Details

Relevant Earnings

“relevant earnings” means either — (1)

- income from employment,
- income from property attached to or forming part of the emoluments of that employment, or
- income from a trade or profession.

but does not include income from an employment with an investment company of which the recipient is a proprietary director or proprietary employee.

The relevant earnings of a person are not to be regarded as that of his/her spouse or civil partner, even if they are jointly assessed for tax purposes (under *section 1017* or *1019*). This allows the person to claim relief in his/her own right in respect of contributions paid to a PRSA which he/she has established. (2)

Deductions for losses and capital allowances are not to be taken into account in arriving at the amount of an individual’s “relevant earnings”. In other words, the amount of the “relevant earnings” or “income” from a particular source is to be taken to be the amount of the profits or gains arising in the relevant basis year. (3)

Net relevant earnings

The “net relevant earnings” of an individual are to be arrived at by taking the amount of the individual’s relevant earnings for the year of assessment and then deducting from that amount the deductions which, in computing the individual’s total income for tax purposes, would be made from those relevant earnings in respect of - (4)

- payments made by the individual (that is, payments which the individual is entitled to deduct in computing his/her total income (for example, payments such as

annuities paid under deduction of tax or maintenance payments to a separated or former spouse or former civil partner)), and

- losses and capital allowances relating to a source of relevant earnings of the individual or the spouse or civil partner of the individual.

Treatment of losses, etc.

Where the whole or a part of a loss or allowance relating to a source of relevant earnings is, for the purpose of computing liability to income tax for a particular year, set off against income which does not rank as relevant earnings, the amount so set off is to be treated as reducing the individual's net relevant earnings of subsequent years, being deducted as far as possible from the relevant earnings of the immediately following year, whether or not relief under the section is claimed or allowed for that year, and so on for the following years. (5)

Where an individual has relevant earnings and other income, deductions (that is, in respect of losses or payments) which could otherwise be treated as reducing the relevant earnings or the other income are, so far as possible, to be treated as reducing the relevant earnings in so far as they are deductions in respect of losses sustained in a source of relevant earnings of the individual (or of his/her spouse or civil partner), and that otherwise they are to be treated as reducing the other income. (6)

Allowances given in respect of contributions do not reduce the net relevant earnings. (7)

Limit on relief

For the purposes of the relief, an individual's net relevant earnings are not to exceed the "earnings limit" (currently set at €115,000 – see **section 790A**) but this limit is not to apply in relation to additional voluntary PRSA contributions. AVC PRSA contributions will be added to any relief granted under the main scheme via the net pay arrangement for the purposes of calculating whether the amounts exceed the age percentage limit and the earnings limit. (8)

787C PRSAs – method of granting relief for PRSA contributions

Summary

This section sets out the manner in which relief under the Chapter in respect of PRSA contributions is to be given. The relief is given as a deduction from or set-off against relevant earnings (from a trade, profession or employment) for the year of assessment for which the premiums are paid. Any excess of contributions over the allowable contributions may be carried forward to subsequent years.

Details

Method of giving relief

Relief from income tax in respect of PRSA contributions is to be given only to an individual with a source of relevant earnings from a trade, profession, office or employment. (1)

Relief is to be given by deduction from, or set-off against, the assessment on relevant earnings for the year of assessment in which the contribution is paid. (2)

Where a contribution is paid after the end of a year of assessment but on or before the return filing date for the year, an election may be made to have the contribution treated as if it was paid in the earlier year. (3)

For the year of assessment 2010, the earnings limit is deemed, by virtue of **section 790A**, 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.

Where the “net relevant earnings” as determined for a year are subsequently adjusted, (6) any relief granted on the basis of the unadjusted earnings is also adjusted as necessary.

Where relief is granted under the section in respect of a contribution, relief is not (7) available under any other provision of the Income Tax Acts in respect of that contribution.

Carry-forward of relief

Where, because of an insufficiency of net relevant earnings, full relief cannot be given (4) & (5) for a year of assessment in respect contributions paid in that year, the unrelieved amount may be carried forward to the next or succeeding years and treated as a contribution paid in that or those years. Where relief cannot be allowed because of the earnings cap, this disallowance will be treated as arising because of an insufficiency of net relevant earnings.

787D Claims to relief

The amount of relief due is, on due claim, to be determined by the inspector. The inspector’s determination may be appealed by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the determination. The appeal is heard and determined in the manner provided for in **Part 40A**.

787E Extent of relief

Summary

This section sets out the extent of the relief which an individual may obtain in any year in respect of contributions to one or more PRSAs. Subject to the other provisions of the section, the relief is expressed as a percentage of net relevant earnings, is age-related and varies as between members and non-members of occupational schemes.

This section should be read in conjunction with **section 790A** which provides that, for the purposes of giving relief to an individual under **Chapters 1, 2, 2A and 2B**, the aggregate of the amounts, if any, of income - taken into account separately for each of the relevant reliefs - is not to exceed an earnings limit of €115,000.

Details

Non occupational scheme member

The amount of contributions which may be deducted or set off in any year of assessment, (1) expressed as a percentage of the individual’s net relevant earnings, is as follows -

Individual who at any time during the tax year is aged 30 or over and less than 40	20%
Individual who at any time during the tax year is aged 40 or over and less than 50	25%
Individual who at any time during the tax year is aged 50 or over and less than 55, or who is less than 55 and whose relevant earnings for the year were derived wholly or mainly from a sporting occupation specified in Schedule 23A	30%
Individual who at any time during the tax year is aged 55 or over and less than 60	35%

Individual who at any time during the tax year is aged 60 or over	40%
All other cases	15%

Employer contributions

PRSA contributions made by an employer which are regarded, by virtue of **section 118(5)**, as a benefit-in-kind in the hands of the employee are treated for the purposes of the relief as if they had been made by the employee. (2)

Members of occupational pension schemes

An individual who is a member of an approved scheme or a statutory scheme (other than a scheme which is limited to the benefits referred to in **section 772(3)(b)** and (c)) may, in relation to his or her income from the office or employment, only claim AVC PRSA contributions. (3)(a)

Relief in respect of any such contributions is confined to the following proportion of the remuneration from the office or employment - (3)(b)

Individual who at any time during the tax year is aged 30 or over and less than 40	20%
Individual who at any time during the tax year is aged 40 or over and less than 50	25%
Individual who at any time during the tax year is aged 50 or over and less than 55	30%
Individual who at any time during the tax year is aged 55 or over and less than 60	35%
Individual who at any time during the tax year is aged 60 or over,	40%
All other cases	15%

These amounts are reduced by any contributions by the employee to the pension scheme related to the office or employment, including Additional Voluntary Contributions to the scheme.

The amount of net relevant earnings against which any other PRSA contributions may be set is reduced by the remuneration from the pensionable office or employment. (3)(c)

Also, the aggregate benefits to be provided by any PRSA, to which AVC PRSA contributions are made, and by the pension scheme cannot exceed the maximum benefits that could be provided by the pension scheme. (3)(d)

Minimum relief

Except in the case of contributions to an AVC PRSA, an individual can be granted tax relief for PRSA contributions up to €1,525 irrespective of the level of the individual’s income. (4)

Aggregation of PRSA and RAC reliefs

Where an individual is entitled to relief in respect of both a payment to a retirement annuity contract and a PRSA contribution, the maximum relief for the PRSA contributions, other than AVC PRSA contributions, is reduced by the amount of any RAC relief. (5)

787F Transfers to PRSAs

No relief for transfers from other pension products

This section provides that transfers of funds to a PRSA from other pension products [i.e. from an RAC, an occupational pension scheme or repayments of contributions to an occupational pension scheme] are not treated for tax purposes as contributions to the PRSA. Tax relief would already have been given for such contributions.

787G Taxation of payments from a PRSA

Summary

Subject to certain exceptions, payments from a PRSA are taxed under PAYE.

Details

Any PRSA assets that a PRSA administrator (whether established in the State or not) makes available to a PRSA member, including an annuity purchased wholly or partly out of PRSA assets, are regarded as emoluments paid that are subject to PAYE. Where the PRSA administrator has not received a revenue payroll notification from Revenue, tax is required to be deducted at the higher rate of income tax. (1)

A PRSA administrator is liable to account to the Collector-General for any PAYE which the administrator is required to deduct and the individual beneficially entitled to the assets in the PRSA must allow such deduction. Where the assets of the PRSA are insufficient to discharge the tax, the excess will be an amount due to the PRSA administrator from the beneficial owner of the PRSA assets. (2)

Non application of PAYE

PAYE is not to apply to — (3)

- an amount by way of lump sum, made available when assets of the PRSA are first made available to the contributor, 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)*,
- assets transferred to an ARF or AMRF (see *section 787H* below),
- assets transferred to a personal representative of a PRSA contributor in accordance with *section 787K(1)(c)(iii)*,
- where a tax-free lump sum has not been paid from the PRSA and the assets are transferred to another PRSA in the individual's name or to an approved scheme or to a statutory scheme of which the PRSA contributor is a member,
- an amount referred to in *section 787K(2A)*, that is an amount of a PRSA benefit that is commuted by a PRSA administrator to meet a tax charge arising on a chargeable excess in connection with that PRSA benefit under the provisions of *Chapter 2C* (relating to the maximum tax-relieved pension fund).
- an amount made available from a vested PRSA (within the meaning of *section 790D(1)*) for the purpose of—
 - (i) the reimbursement, in whole or in part, of an administrator (within the meaning of *section 787O(1)*) for tax paid by that administrator on a chargeable excess relating to the PRSA owner, or

- (ii) the payment by the 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 (BCE) giving rise to chargeable excess tax occurs in respect of retirements benefits which are the subject of a pension adjustment order (PAO). **Chapter 2C** of **Part 30** deals with the taxation treatment of PAOs in the context of the standard fund threshold regime.

The circumstances in which a PRSA administrator is treated as making assets available to an individual include the making of a relevant payment [defined in **section 787A**], circumstances in which assets cease to be PRSA assets, or circumstances whereby assets cease to be beneficially owned by the PRSA contributor. (4)

Where assets in a PRSA (including a vested PRSA within the meaning of **section 790D(1)**) are used in connection with any transaction that would, if the assets were assets of an ARF, be regarded as giving rise to a distribution, the assets will be treated as having been made available to the PRSA contributor. This means that any such transactions will be contrary to the rules of the PRSA until such time as the PRSA contributor is entitled to take benefits from the PRSA (generally at age 60 or over). Any such transaction will give rise to a tax charge under PAYE on the PRSA contributor in the same way as a tax charge would arise where such transactions occur in relation to funds in an ARF (see **section 784A(1A)** to **(1E)**). (4A)

For the purposes of **subsection (6)**, the administrator of a PRSA in respect of which benefits have not commenced on or before the date of the contributor's 75th birthday is treated as making the PRSA assets available to the contributor on that date or where the contributor was 75 before 25 December 2016 (i.e. the date Finance Act 2016 was passed), on 25 December 2016. In other words, the PRSA becomes a "vested PRSA" within the meaning of **section 790D(1)** on the applicable date. Accordingly, any assets in such a PRSA when the contributor dies are, as provided for in **subsection (6)**, subject to the taxation regime applying to ARFs. (4B)

Where a PRSA administrator is not established in the State at any time, the administrator must enter into an enforceable contract with the Revenue Commissioners to meet all of the duties and obligations imposed by **Chapter 2A** and **Chapter 2C** of this Part and section 125B of the Stamp Duties Consolidation Act 1999, or appoint a person resident in the State to carry out those duties. Any contract between the Revenue Commissioners and a PRSA administrator is to be governed by the laws of the State and the courts of Ireland are to have exclusive jurisdiction in determining any dispute arising under such contracts. Where an administrator opts to appoint a resident agent to discharge the duties and obligations, the agent's identity and the fact that they have been appointed must be notified to the Revenue Commissioners. (5)

The Revenue Commissioners can, by way of notice, seek information from a PRSA administrator or a PRSA provider about the value of any assets made available to, or paid to, a PRSA contributor or any other person. The information can include the name, address and PPS number of the PRSA contributor and any person who receive assets or payments and the amount or value of any assets or payments. The provision can apply to both domestic and foreign PRSA administrators or PRSA providers and gives the Revenue Commissioners discretionary power to get access to relevant information about the value of assets or payments made from PRSAs should they deem it necessary. (5A)

Where an individual dies after PRSA assets have been or, on reaching age 75, are deemed to have been, made available to him or her, the assets in the PRSA at the time of death are treated, under **section 784A(4)**, in the same way as assets in an ARF i.e. (6)

transfers to an ARF in the name of the individual's spouse or civil partner or to a child of the deceased or his/her civil partner who is under 21 when the contributor dies are not chargeable to income tax. However, transfers to a child who is 21 or over from the deceased's PRSA or from the surviving spouse or civil partner's ARF, following the death of the spouse or civil partner, are taxed under Case IV of Schedule D at the rate of 30%. All other transfers from the deceased's PRSA are taxed at his or her marginal rate in the year of death.

787H Approved Retirement Fund option

This section provides that at the time the assets of a PRSA may be made available to a beneficiary in accordance with *section 787K* (see below) the beneficiary may opt to have the assets transferred to an approved retirement fund. In that event the option will be treated as an option under *section 784(2A)* and *sections 784A* and *784B* will apply accordingly. The assets that may be transferred to an ARF are the PRSA assets less any tax free lump sum payable.

787I Exemption of PRSA

Income arising to a PRSA from investments (including dealings in financial futures and traded options) or deposits and from certain underwriting commissions are exempt from income tax. The exemption for underwriting commissions applies only to those chargeable to tax under Case IV of Schedule D, that is, casual transactions. Accordingly, it does not apply to the profits of an organised trade of underwriting which would be chargeable under Case I of Schedule D.

787J Allowance to employer

Any sum paid by an employer as a contribution to a PRSA is allowable as an expense in computing the profits of the employer's trade or profession or as an expense of management in the case of assurance companies (taxed on the I – E basis) and investment companies. Relief is only available in respect of sums actually paid and not for provisions for or accruals in respect of such payments. Reliefs also only applies to that part of an employer's contribution which relates to employees of a business the profits of which are charged to income tax or corporation tax.

787K Revenue approval of PRSA products

Summary

PRSA products must be approved by the Revenue for the purposes of the tax relief. This section sets out the approval conditions, including discretion for Revenue where those conditions are not fully met.

Details

Mandatory approval requirements

Subject to the ARF option (*section 787H*) and the conditions regarding transferability, (I) the mandatory requirements for approval of a PRSA product are —

- The arrangements in relation to the product must be with a person lawfully carrying on in the State the business of PRSA provider.
- Any annuity payable must not be capable of surrender, commutation or assignment.
- During the life of the PRSA contributor, assets are not made available otherwise than by way of-

- an annuity to the PRSA contributor,
 - a tax-free lump sum, or
 - a transfer to an ARF.
 - An annuity cannot commence to be payable, or other assets made available, to the PRSA contributor before age 60 or after age 75.
 - Following the death of the PRSA contributor, no sums are payable other than:
 - an annuity payable to the surviving spouse or surviving civil partner of the PRSA contributor – which cannot be greater than an annuity which would have been payable to the PRSA contributor, or
 - where no annuity or other benefits have become payable either to the PRSA contributor or to the contributor’s surviving spouse or surviving civil partner, a transfer of the PRSA assets to the estate of the PRSA contributor – such a transfer is exempt from income tax by **section 787G(3)(c)**.
- Apart from the foregoing no other sums may be payable.
- Any annuity must be a life annuity.

Discretionary approval

The Revenue Commissioners have discretion to approve a PRSA product which (2) otherwise satisfies the above conditions even though the product provides for one or more of the following —

- Early payment of an annuity where the individual becomes permanently incapable of carrying on his or her occupation.
- Payment of an annuity or the making available to an employed contributor of PRSA assets on retirement at age 50 or over.
- Early payment of an annuity or the making available of assets, but not before age 50, where the individual’s occupation is one from which persons customarily retire before 60.
- For the payment of annuities for a term certain and the assignment of that annuity in the event of the death of the PRSA holder.

Revenue approval of a PRSA product will not be prejudiced by any rule in the product (2A) that allows a PRSA administrator to make available from the assets of a PRSA, to such extent as may be necessary, an amount for the purposes of discharging any tax charge on a chargeable excess, which arises in connection with a relevant payment made to a PRSA contributor by the PRSA administrator, under the provisions of **Chapter 2C** (relating to the maximum tax-relieved pension fund).

The inclusion of a provision for the encashment option (see **section 787TA**) in a PRSA (2B) product will not affect Revenue approval or approval of the product under section 94 of the Pensions Act 1990.

An approved PRSA product shall not cease to be an approved product where a PRSA (2C) administrator pays an amount from the PRSA assets to a PRSA contributor on foot of the contributor availing of the AVC access option in **section 782A**, notwithstanding that the terms of the PRSA product as approved by Revenue would not allow for such a facility.

An approved PRSA product which becomes a “vested PRSA” (within the meaning of (2D) **section 790D(1)**) when the contributor attains the age of 75 years without having drawn down benefits, shall not cease to be an approved product where a PRSA administrator—

- in the case of a contributor who was 75 years of age prior to 25 December 2016 (i.e. the date on which Finance Act 2016 was passed)—
 - pays an annuity or a retirement lump sum to the contributor, or

- transfers the PRSA assets to the contributor or to an ARF on or before 31 March 2017, or
- regardless of whether the PRSA becomes vested on the date the contributor attains the age of 75 years or on 25 December 2016, uses the PRSA assets to discharge any liability to chargeable excess tax under **Chapter 2C of Part 30** arising as a result of the deemed vesting of the PRSA.

In the case of an individual who attains age 75 before 25 December 2016, the use of the PRSA assets to discharge chargeable excess tax is to be in priority to any payments to the individual or transfer to the individual or to an ARF. Where the Revenue Commissioners are of the opinion that approval of a product should be withdrawn they are to notify the Pension Authority in writing, specifying the grounds on which they formed the opinion. (3)

Tax assessments may be made or amended as appropriate to take account of the withdrawal of approval of a PRSA product. (4)

787L Transfers to and from PRSA

Revenue may not approve a PRSA product unless it provides for —

- the assets within it to be transferred to another PRSA product of the contributor or an approved (occupational pension) scheme of which the contributor is a member, or
- the receipt of contributions from —
 - another PRSA of the contributor,
 - an approved or statutory scheme of which the contributor is a member, or
 - an RAC taken out by the contributor.

The above rights must also apply to a widow, widower, surviving civil partner or dependant of the contributor having accrued rights under the PRSA.

CHAPTER 2B

Overseas pensions plans: migrant member relief

Overview

This Chapter provides for a statutory scheme of relief for contributions paid by a migrant worker (i.e. an employee or self-employed individual) who comes to (or returns to) the State and who wishes to continue to contribute to a pre-existing “overseas pension plan” concluded with a pension provider in another EU Member State. Heretofore, such relief was available in very restricted circumstances and for a limited period (maximum 10 years) under Ireland’s bilateral treaties with the UK and US or administratively on a case-by-case basis. To qualify for the relief, certain conditions and information requirements must be met.

Once the conditions etc. are met, relief can be claimed in relation to any contributions paid under the plan, subject to the same limits etc., that would apply if the plan was an occupational pension scheme, an annuity contract or a PRSA approved by Revenue under **Part 30**. The scheme of relief applies to contributions to overseas pension plans made on or after 1 January 2005.

787M Interpretation and General (Chapter 2B)

Summary

This section is concerned with the interpretation of terms used in the Chapter.

Details

The definitions are generally self-explanatory but the following call for comment — (1)

“Certificate of Contributions”, is a certificate that the relevant migrant member of an overseas pension plan is required to obtain from the administrator of the plan and provide to the Revenue Commissioners for each calendar year (i.e. for each year of assessment) setting out the following particulars:

- the relevant migrant member’s name, address, PPS number and policy reference number.
- the contributions paid by the relevant migrant member under the plan in that year.
- where relevant, the contributions if any paid by the relevant migrant member’s employer.

The purpose of the certificate is to verify that contributions have been made in the context of any claim for relief in respect of those contributions.

“Overseas pension plan”, means a contract, an agreement, a series of agreements, a trust deed or other arrangements, other than a state social security scheme, which is established in, or entered into under the law of, a Member State of the European Communities, other than the State. The definition is designed to cover both occupational pension type schemes and personal pension type plans e.g. insurance based annuity type products, irrespective of structure, that a migrant worker might bring to the State whether he or she was an employee or self-employed in the other EU Member State.

“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 tax relieved in the State,
- qualifies for tax relief on contributions under the law of the EU Member State in which it is established, and
- in relation to which the migrant member of the plan provides certain supporting evidence and information.

This definition narrows the type of overseas plan that will be acceptable for the purposes of the relief. While the Revenue Commissioners have no direct role in approving the overseas plan which will have been set up on the basis of the social, labour and tax laws of the EU Member State in which it is established, overseas plans for the purpose of saving or investment, other than for retirement, may be rejected by the Revenue Commissioners and the inclusion of the “sole purpose” test preserves that option. At the end of the day, the primary purpose of an overseas pension plan is a question of fact that may have to be established on a case-by-case basis.

“Relevant migrant member” of an overseas pension plan means an individual who:

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

The three year absence requirement is designed to demonstrate the bona fides of Irish nationals who go abroad and return with a foreign pension plan. **Section 787N(2)** gives discretion to the Revenue Commissioners to accept, in genuine cases, an individual as a relevant migrant member notwithstanding that the three year test is not met.

Reflecting the definition of “qualifying overseas pension plan” in **subsection (1)** certain supporting evidence and information must be obtained by a relevant migrant member from the plan administrator and provided to the Revenue Commissioners, as follows: (2)

- such evidence as the Revenue Commissioners may reasonably require to verify that the plan is bona fide established for the sole purpose of providing retirement benefits of a kind similar to those referred to in the other Chapters of **Part 30**, and that contributions to the plan are eligible for tax relief in the Member State in which it is established.
- the name, address and tax reference number of the institution operating or managing the plan.
- the relevant migrant member’s policy number in relation to the plan.
- the date on which the relevant migrant member became a member of the plan.
- the date on which contributions first became payable under the plan.
- the date on which benefits under the plan first become payable.

In addition, the relevant migrant member must give an irrevocable instruction to the plan administrator to provide the Revenue Commissioners with any information they may reasonably require in relation to payments under the plan. In this case, unlike the position for foreign pension providers who may be actively targeting the Irish market and who will have to deduct tax at source under PAYE etc, the administrator of an overseas pension plan could not reasonably be expected to incur the administrative costs of setting up that system. Nonetheless, as payments under the plan will be taxable in Ireland if the relevant migrant member is resident here at the time such payments are made, it is important that the Revenue Commissioners can obtain information on payments from the plan administrator. **Subsection (3)** of **section 787N** provides that such information may be obtained by way of a notice.

787N Qualifying overseas pensions plans; relief for contributions

Summary

This section is the main operative provision and sets out how relief for contributions by migrant workers to overseas pension plans is to be given. The section also gives the Revenue Commissioners power to obtain, by notice in writing, information from the plan administrator about payments under the plan.

Details

Where in any year of assessment, a relevant migrant member makes contributions to a qualifying overseas pension plan or where contributions are made on the member’s behalf by his or her employer, then, where the relevant migrant member has provided a certificate of contributions to the Revenue Commissioners, relief can be claimed in respect of those contributions. The relief is subject to the same limits etc., that would apply if the plan was an occupational pension scheme, an annuity contract or a PRSA approved by Revenue under **Part 30**. (1)

The Revenue Commissioners have discretion to treat an individual as meeting the requirements of a relevant migrant member notwithstanding that the three-year test is not met. The purpose of the provision is to ensure that relief is not denied in genuine cases. (2)

The Revenue Commissioners may obtain, by way of notice in writing, information from (3)(a)

the administrator of an overseas pension plan about payments under the plan on foot of the irrevocable instruction given to the administrator by the relevant migrant member (as provided for in *section 787M(2)(b)*).

The information and particulars required will be set out in the notice and the notice will specify the form and manner in which the information is to be provided. (3)(b)

CHAPTER 2C

Limit on tax-relieved pension funds

Overview

Chapter 2C and associated *Schedule 23B* provide for a maximum allowable pension fund on retirement for tax purposes. The Chapter imposes a limit or ceiling on the total capital value of pension benefits that an individual can draw in their lifetime from tax-relieved pension products (including all Public Sector pension schemes), where those benefits come into payment for the first time on or after 7 December 2005. This is called the “standard fund threshold” or SFT and, from 1 January 2014, is set at €2m. In certain circumstances, a higher threshold (called the “personal fund threshold” or PFT) may apply. This arises if, on 1 January 2014 the capital value of an individual’s “uncrystallised” pension rights on that date (i.e. pension rights which the individual had not become entitled to on that date) when aggregated with the capital value of the individual’s “crystallised” pension benefits, if any, since 7 December 2005 (i.e. pension benefits which the individual has already become entitled to since 7 December 2005) exceeds the SFT and certain notification requirements are met.

It should be noted that for the purposes of the SFT limit, where the owner of an RAC or a PRSA does not take benefits from the RAC or PRSA by age 75, such benefits are treated as commencing on the date of the owner’s 75th birthday or on 25 December 2016 (i.e. the date Finance Act 2016 was passed), if he or she is 75 years of age before 25 December 2016, notwithstanding that benefits have not actually commenced by the appropriate date.

Where the Revenue Commissioners have issued a PFT certificate under the legislation as it applied prior to the passing of the Finance (No.2) Act 2013, the amount stated in that certificate is the individual’s PFT adjusted, as appropriate, by the relevant earnings factors). The Minister for Finance has discretion to increase both the SFT and PFTs in line with an earnings factor.

On or after 7 December 2005, on each occasion an individual becomes or, as outlined above, in the case of an RAC or a PRSA is deemed to become, entitled to receive a benefit under a pension arrangement for the first time (a “benefit crystallisation event” or BCE), they use up part of their standard or personal fund threshold. At each BCE a capital value must be attributed to the benefits that crystallise and the value is then tested by the pension scheme administrator against the individual’s appropriate fund threshold. In respect of defined benefit (DB) type arrangements, for the purposes of placing a capital value on the uncrystallised pension rights of an individual and for establishing the capital value of benefits taken in respect of those rights, a valuation factor must be used for the purposes of *Chapter 2C* of this Part and *Schedule 23B* to this Act.

For the purposes of calculating the capital value of DB scheme uncrystallised pension rights on the “specified date” (i.e. 1 January 2014) for PFT notifications, the valuation factor is 20. However, an administrator in determining the capital value of DB pension rights at a BCE arising after 1 January 2014, must use a factor of 20 in respect of that part of the pension rights, if any, accrued at 1 January 2014 and a relevant age-related factor for the part of the pension rights accrued after that date. The appropriate age-

related factor to use depends on the age the individual has reached at the time he or she becomes entitled to the pension rights. The table in **Schedule 23B** specifies the relevant age-related factor in column 2 opposite the age attained as shown in column 1.

The exception to the foregoing is where the administrator of a relevant pension arrangement had (for the purposes of a PFT application) before 1 January 2014 (under provisions that applied up to 7 December 2010), and with prior Revenue approval, used a factor other than 20, having demonstrated that the alternative (higher) factor was more appropriate in a particular case. Where such an alternative factor has been used in determining a PFT, the factor to be used in respect of that arrangement for all purposes of **Chapter 2C** and **Schedule 23B** is –

- on the specified date (i.e. 1 January 2014) the alternative factor, and
- after 1 January 2014, the higher of the alternative factor and the relevant age-related factor.

When the capital value of a BCE either on its own or when aggregated with BCEs that have been taken earlier, exceeds the individual's appropriate fund threshold, a "chargeable excess" arises equal to the amount by which the fund threshold is exceeded. The whole of the amount of the chargeable excess is then subject to an up-front income tax charge of 40% payable by the pension scheme administrator in the first instance (although both the administrator and the individual are made jointly and severally liable to the charge). This charge is without prejudice to any other income tax charge that might arise on the balance of the chargeable excess, as and when benefits are taken under the scheme, whether by way of pension, annuity, taxable cash lump sum or distribution from an ARF, AMRF etc.

Where a BCE gives rise to a chargeable excess, the pension scheme administrator must make a return on Form 787S and remit the necessary payment to the Collector-General within 3 months of the end of the month in which the BCE giving rise to a chargeable excess occurs.

This Chapter also sets out how matters relating to Pension Adjustment Orders (PAO) are dealt with under the SFT regime. In summary, where a pension arrangement is subject to a PAO any chargeable excess tax arising must be apportioned between the member and the non-member former spouse or partner in accordance with the terms of the PAO.

Schedule 23B sets out the operational aspects of the arrangements, including:

- how the value of an individual's uncrystallised pension rights on the specified date (i.e. 1 January 2014) are to be calculated for both defined contribution and defined benefit 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,
- how the amount of the standard fund or personal fund threshold that is available at the time of a BCE is to be determined.

It also includes a table setting out the relevant age-related valuation factors.

787O Interpretation and General (Chapter 2C)

Summary

This is the interpretation and general section for **Chapter 2C**. It defines terms used in this **Chapter** and in the associated **Schedule 23B**, sets out what the relevant valuation factors

are and provides that where more than one benefit crystallisation event (BCE) occurs on the same day, the individual concerned must decide the order in which they are deemed to occur for the purposes of the *Chapter*. It also provides that where a pension arrangement is subject to a pension adjustment order (PAO), the PAO must be ignored for the purposes of applying for a Personal Fund Threshold (PFT) or calculating the value of a BCE.

Details

The terms used in the Chapter are largely self-explanatory but the following should be noted. (I)

“accrued pension amount”, which is defined in relation to a BCE that is a defined benefit (DB) pension, means the part (if any) of the annual amount of pension payable at the BCE, which is “P” in the relevant formula in *Schedule 23B*, that had accrued under the arrangement on the specified date (i.e. 1 January 2014). The purpose of this definition is to facilitate a “split BCE” calculation where an individual has a DB pension at the point of retirement, part of which has been accrued by the specified date and part after that date. The manner in which the accrued pension amount is to be determined is set out in *subsection (2A)*.

“administrator” is given a broad definition given the range of relevant pension arrangements (as defined) that it is intended to cover. It is defined to include, in particular, administrators of private sector occupational pension schemes (*paragraph (a)*), retirement annuity contracts (*paragraph (b)*) – normally Life Assurance Companies) and PRSA administrators (*paragraph (c)*). *Paragraph (d)* makes particular reference to the definition of administrator in the case of Public Sector schemes and provides that, for such schemes, the person who is to be the administrator is to be specified by regulations to be made under *section 787U*. The reason for this is to take account of the variety of administrative arrangements that exist for Public Sector pensions – the regulations will deal with the minutiae of what legal person is responsible for ensuring that the tax payment arising on a chargeable excess is made.

“applied” means the application of a transfer amount in accordance with specified provisions of the Family Law Acts or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Under a PAO the court designates a portion of an individual’s pension as belonging to his or her spouse, civil partner, former spouse, former civil partner or dependent members of the individual’s family. The spouse or civil partner becoming entitled to the benefit under the PAO (but not dependents) may request the trustees of the pension scheme to transfer the benefit to provide an independent benefit for the spouse under the same or another pension scheme. The trustees can also, in certain circumstances, effect a transfer on their own initiative.

“designated benefit”, “retirement benefit” and “transfer amount” have the meaning assigned to them, respectively, in the Family Law Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

“designated benefit”, in relation to a PAO, means “*an amount determined by the trustees of the scheme concerned, in accordance with relevant guidelines, and by reference to the period and percentage of the retirement benefit specified in the order*”.

The period referred to is the period of reckonable service of the member spouse or civil partner, prior to the granting of the decree or dissolution, which is to be taken into account. This could be, for example in the case of a married couple, the period of reckonable service prior to the decree during which the couple were married to each other. The percentage refers to the percentage of the retirement benefit accrued during that period which is to be paid to the non-member spouse or civil partner.

“excepted circumstances” – **Schedule 23B** sets out the situations in which a benefit is deemed payable to an individual from a pension arrangement. It is at this point, known as a benefit crystallisation event or “BCE”, that the capital value of the pension fund is determined and tax becomes payable on any excess over the allowable limit. One of the BCEs provided for is essentially anti-avoidance in nature and is designed to prevent commencement of a pension at a low level so that the capital value of the fund at retirement is low for tax purposes, with the value of the pension increasing substantially thereafter. The definition of “excepted circumstances” provides for special rules for dealing with general pay-related pension increases where there is no issue of avoidance. Essentially, where the pension increase is linked to pay increases in the sector in which the individual was employed, then increases in excess of the permitted margin will not give rise to separate BCEs.

“fund administrator” is defined to mean the QFM of an ARF or AMRF or the PRSA administrator of a vested PRSA, the beneficial owner of which is the non-member spouse or partner and the assets of which originated, in whole or in part, from the non-member’s exercise of a relevant option (i.e. an “ARF option”) in relation to the non-member’s transfer arrangement (i.e. the independent arrangement to which a transfer amount was paid from the relevant member’s pension arrangement in respect of the non-member’s designated benefit under the PAO). It also includes the QFM/PRSA administrator of an ARF/AMRF or vested PRSA the assets of which were previously held in another ARF/AMRF or vested PRSAs whose assets originated from the transfer arrangement. In essence, the QFM or PRSA administrator of any ARF/AMRF or vested PRSA beneficially owned by the non-member spouse or partner which contains any assets that originated from the transfer arrangement (regardless of the number of funds the assets may have passed through in the meantime) is considered to be a fund administrator for the purposes of these provisions.

“maximum tax relieved pension fund” is defined in terms, not of an amount that can be built up with tax relieved contributions, but rather as 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.

“non-member” is defined to exclude PAOs made in relation to a “dependent member of the family” within the meaning of specific provisions of the Family Law Acts. In essence, this excludes PAOs for dependent children up to 18, or 23 if in full time education, and dependent children with physical or mental disabilities. This means that chargeable excess tax arising in a situation where a PAO has been made in favour of a dependent child will continue to be recovered by the administrator solely from the portion of the retirement benefit payable to the pension scheme member under the scheme, having regard to the terms of the PAO.

“pension adjustment order” means an order made in accordance with specified provisions of the Family Law Acts or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. It also includes any variation of such an order. The court can in the light of new evidence or changed circumstances vary, or further vary, a PAO by way of an order under specified provisions of the aforementioned Acts. The PAO, or any variation, must not have been suspended (or if so, has been revived) or discharged – in other words the PAO must be operational at the time the individual’s (i.e. the member spouse’s or civil partner’s) retirement benefits come on stream. Only PAOs relating to retirement benefits are covered. PAOs can also be made in relation to contingent benefits i.e. death-in-service benefits but, as death-in-service does not trigger a “benefit crystallisation event” under **Chapter 2C**, these are not relevant.

“personal fund threshold” (PFT) is the personal maximum tax relieved pension fund for an individual which may apply instead of the standard fund threshold (SFT) where the capital value of an individual’s pension rights on 1 January 2014 exceeds €2m (similar provisions applied when the scheme was introduced in 2005 and subsequently amended in 2010). The Minister for Finance may allow for an increase in a PFT from 2015 in line with an earnings factor.

Individuals with pension rights whose capital value exceeds €2m on 1 January 2014 can protect that higher capital value (up to an amount not exceeding the previous SFT of €2.3m) by claiming a PFT from the Revenue Commissioners.

Where the Revenue Commissioners have issued a PFT certificate under the legislation as it applied before the passing of Finance (No.2) Act 2013, the amount stated in that certificate (increased, as appropriate, in accordance with the relevant earnings adjustment factors) is the individual’s PFT.

In any other case, the amount of the PFT is the lesser of €2.3m and the aggregate of the capital value of all pension benefits which the individual has already become entitled to since 7 December 2005, if any, (i.e. “crystallised” pension rights) plus the capital value of any “uncrystallised” pension rights which the individual had on 1 January 2014 (i.e. pension rights which the individual was building up but had not become entitled to on that date). All PFTs claimed on or after 1 January 2014 will, therefore, fall somewhere between €2m and €2.3m.

“relevant member” is defined as being a member of a relevant pension arrangement in respect of whose retirement benefit under the arrangement a PAO has been made in favour of a non-member spouse or partner. Where a member transfers his or her rights under the pension arrangement in respect of which the PAO was made to another pension arrangement he or she is still considered to be a relevant member for the purposes of the legislation.

“relevant pension arrangement” is defined to include:

- All Revenue approved occupational pension schemes, including AVC arrangements.
- All Revenue approved retirement annuity contracts and trust schemes for professionals such as solicitors, accountants and dentists.
- All PRSA contracts.
- Qualifying overseas pension plans.
- All public service pension schemes as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004.
- All statutory schemes – that is schemes established by or under any enactment – all statutory schemes that fall outside of the definition of public service pension scheme are captured here.

“standard fund threshold” is the generally applicable “maximum tax relieved pension fund”, for an individual and is set at €2m for 2014. The Minister for Finance may increase the SFT from 2015 in line with an earnings factor.

“subsequent administrator” is defined for the purposes of pin-pointing the correct

administrator of a non-member spouse or partner’s independent pension arrangement to which the provisions of the legislation will apply. Conceivably, the non-member spouse after taking a transfer value in respect of his or her designated benefit under the PAO to a separate scheme to provide an independent retirement benefit, could make further transfers to different pension schemes (e.g. from one PRSA to another and so on). The administrator of each of these schemes could be said to be a “subsequent administrator”. However, the “subsequent administrator” that the legislation wishes to target and identify is the administrator of the most recent scheme to which the non-member’s pension rights have been transferred (i.e. the scheme under which the non-member currently has rights at the time any chargeable excess tax arises) or the administrator of the scheme that has actually paid out the retirement benefits to the non-member where this has occurred at the time the chargeable excess tax arises.

“transfer amount” under the Family Law Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 means, in effect, the actuarial value in money terms of the designated benefit payable under the PAO. The need to value the designated benefit may arise where the non-member spouse or civil partner exercises his/her entitlement to have the value of the designated benefit applied to provide the non-member spouse or civil partner with an independent and separate benefit i.e. by seeking the splitting of the pension. A pension split may be applied for at any time prior to the commencement of benefits under the PAO.

“transfer arrangement” is defined as a relevant pension arrangement to which a transfer amount has been applied to provide the non-member with an independent benefit. In that regard, however, note in particular that transfer arrangement also includes the member’s pension scheme where the “transfer amount” is used to provide an independent benefit for the non-member within that scheme. This in turn means that the definition of “*subsequent administrator*” also encompasses the administrator of the member’s scheme where those circumstances apply i.e. the administrator and the “subsequent administrator may be the same person. In addition, to ensure that it captures not just the initial independent scheme to which the non-member spouse may have transferred his or her rights under the PAO, the definition also includes any other pension arrangement to which the non-member spouse or partner’s accrued rights under the initial transfer arrangement has been transferred or subsequently transferred.

“vested RAC” is a retirement annuity contract (RAC) from which the owner has not taken retirement benefits, either by way of an annuity, a retirement lump sum or a transfer under the ARF options, on or before the date of his or her 75th birthday. Under *subsection (6)*, where an RAC owner attains the age of 75 before 25 December 2016 (i.e. the date of passing of Finance Act 2016), without having taken benefits, the RAC is deemed to become a vested RAC on 25 December 2016. There are similar provisions in *section 790D(1)* in relation to “vested PRSAs”.

The relevant valuation factor to be used for the purposes of calculating the capital value of a DB scheme benefits is 20 on the “specified date” (i.e. 1 January 2014) and a variable age-related factor after the specified date. In effect, this means that an individual applying for a PFT must use a relevant valuation factor of 20 in determining the capital value of his or her uncrystallised DB pension rights on 1 January 2014, whereas an administrator in determining the capital value of DB benefits at a BCE arising after 1 January 2014, will use a factor of 20 in respect of that part of the DB pension accrued at 1 January 2014 and the relevant age related factor for the part of the (2)

pension accrued after that date. The appropriate age related factor to use depends on the age the individual has reached at the time he or she becomes entitled to the pension. The table in **Schedule 23B** specifies the relevant age-related factor in column 2 opposite the age attained as shown in column 1.

The exception to the foregoing is where the administrator of a relevant pension arrangement had (for the purposes of a PFT application) before 1 January 2014 (under provisions that applied up to 7 December 2010), and with prior Revenue approval, used a factor other than 20, having demonstrated that the alternative (higher) factor was more appropriate in a particular case. Where such an alternative factor has been used in determining a PFT, the factor to be used in respect of that arrangement for all purposes of **Chapter 2C** and **Schedule 23B** is –

- on the specified date (i.e. 1 January 2014) the alternative factor, and
- after 1 January 2014, the higher of the alternative factor and the relevant age-related factor.

Where an individual makes a PFT notification under the revised SFT arrangements the accrued pension amount is the annual amount of pension included in the statement which the administrator of each DB arrangement must give to the individual as part of the underlying documentation required to make the notification (this is, in effect, “AP” in the formula in **paragraph 1(2)(b)** of **Schedule 23B** for calculating an individual’s uncrystallised pension rights for a DB arrangement on 1 January 2014). (2A)(a)

In any other case, i.e. individuals who hold 2005 or 2010 PFTs and individuals who do not qualify for a PFT, the accrued pension amount is the annual amount of pension that would be represented by “AP” in the formula (referred to above) for calculating an individual’s uncrystallised pension rights on 1 January 2014, if those rights were being calculated. The accrued pension amount will be determined by the administrator at the point of the individual’s retirement. (2A)(b)

Where two benefit crystallisation events occur on the same day, the individual must determine the order in which they are to be deemed to occur. This could happen, for example, where a lump sum and pension entitlement arise on the same day. It becomes important where an individual may have a number of different pension arrangements with different administrators. If entitlements from different arrangements fell on the same day and were placing the individual into a chargeable excess position, the individual might wish to choose which benefit entitlement should give rise to the chargeable excess and which administrator should deal with it. (3)

Schedule 23B supplements **Chapter 2C** and shall be construed as one with that Chapter. (4)

Where, on or after 7 December 2005, an individual is a relevant member of a relevant pension arrangement (which implies that the pension arrangement is subject to a PAO) then, in calculating the capital value of the relevant member’s pension rights for the purposes of-

- a PFT notification under **section 787P**, and
- determining the amount of a BCE occurring on or after 7 December 2005 arising under the pension arrangement (e.g. a pension, annuity, lump sum etc.) in

respect of that member,

the benefits designated to a spouse or civil partner pursuant to the PAO or, where a transfer amount has been applied to provide an independent benefit for the non-member spouse or partner, the designated benefit that would otherwise have been payable if no transfer had taken place, are to be included in the calculations, as if the PAO had not been made. Basically, the administrator in both situations has to ignore the PAO and calculate the capital value of the pension rights or pension benefit as if the PAO had never been made.

In addition, where the relevant member takes a transfer value (or subsequent transfer values) to another scheme(s), the administrator of the new scheme, in calculating the capital value of a BCE and in providing information for PFT notification purposes in relation to the relevant member, must equally make those calculations as if the PAO had not been made. In such situations, the administrator must include in those calculations the sum that would have been transferred if there had been no PAO. The wording of the legislation implies that this requirement applies regardless of the number of transfers that take place and regardless of whether the transfer represents all or a part of the relevant member's accrued rights under the original scheme to which the PAO applied. In other words, if the transfer was, say, split over two PRSAs or BOBs, each of the administrators would have to have regard to the legislation for PFT or BCE purposes.

In summary, any benefit arising under the PAO or pension rights designated under the PAO are deemed to be benefits or rights arising to the relevant member for the purposes of determining whether the relevant member is entitled to a PFT or whether his or her standard fund threshold or personal fund threshold has been exceeded at a BCE. This applies regardless of whether the benefit under the PAO is paid as a designated benefit from the member spouse's or civil partner's scheme or whether a transfer amount has been applied to provide the non-member spouse or civil partner with an independent benefit in accordance with the Family Law Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The corollary of the PAO benefit being included in the calculation of the relevant member's PFT and in the capital value of the relevant member's pension at a BCE is that it is excluded from any such calculations in relation to the non-member spouse or civil partner, if he/she were to have independent pension provision in his/her own right.

Where the owner of a Retirement Annuity Contract (RAC) attains the age of 75 before 25 December 2016 (i.e. the date of passing of Finance Act 2016), without having taken benefits, the RAC is deemed to become a vested RAC on 25 December 2016. (6)

787P Maximum tax-relieved pension fund

Summary

This section provides for the “maximum tax relieved pension fund” which will be either the standard fund threshold (SFT) of €2m or, where applicable, the personal fund threshold (PFT). Certain notification requirements must be met for a PFT to apply. Revenue will issue a certificate to the individual generally within 30 days of notification, stating the amount of the PFT. Revenue may withdraw a PFT certificate and issue a revised one (if appropriate) if it transpires that the information contained in the

notification is incorrect or that the individual is not entitled to a certificate.

Details

An individual's maximum tax relieved pension fund shall not exceed the SFT (defined (1) as an amount of €2m) or a higher amount known as the PFT.

A PFT can only apply where:

- (i) the conditions in **subsection (2)** are met and Revenue has issued a certificate in accordance with **subsection (7)** or a revised certificate in accordance with **subsection (8)**, or
- (ii) Revenue has issued an earlier PFT certificate – i.e. a certificate issued in accordance with the legislation as it applied prior to the passing of Finance (No.2) Act 2013 (generally known as 2005 or 2010 PFTs).

An individual applying for a PFT is specifically required to request and get, from the administrator of each pension arrangement of which he or she is a member, a statement– (2)(a)

- (i) certifying the individual's pension rights (i.e. his/her crystallised or uncrystallised pension rights in respect of the arrangement) on the specified date calculated in accordance with the requirements of **Chapter 2C** and **Schedule 23B**,
- (ii) in the case of defined benefit arrangements, certifying the annual amount of pension accrued up to the specified date, calculated in accordance with the requirements of **Chapter 2C** and **Schedule 23B**.
- (iii) in the case of occupational pension schemes generally, specifying the Revenue Approval Reference Number of the scheme.

A PFT notification has to be made on a new electronic application system being developed by Revenue. The time frame for notification is within 12 months of the electronic system being made available. However, regardless of this 12 month period for notification, where an individual becomes entitled to a pension benefit after 1 January 2014 (e.g. through retirement) and before the electronic system becomes available in circumstances where he or she would be claiming a PFT, the notification must be submitted to Revenue prior to the benefit arising. In such circumstances, a paper application form (Personal Fund Threshold Notification) which is available on the Revenue website www.revenue.ie should be completed (see **subsection (4)**). The following particulars are required on a PFT notification – (2)(b)

- (i) the individual's name, address, telephone number and PPSN, and
- (ii) for each pension arrangement in respect of which the PFT arises,
 - the administrator's name, address and telephone number,
 - the name and reference number of the arrangement,
 - whether the arrangement is a defined benefit or a defined contribution arrangement,
 - the amount of the individual's pension rights under the arrangement on 1 January 2014 as certified by the administrator in accordance with **subsection (2)(a)**,
 - in the case of a defined benefit arrangement, the annual amount of pension accrued up to 1 January 2014 as certified by the administrator in accordance with **subsection (2)(a)**, and
 - any other information and particulars that Revenue may require for the purposes of **Chapter 2C** and **Schedule 23B**.

There is an obligation on both the administrator and the individual to retain the certifying statements referred to in **subsection (2)(a)** for 6 years and make them available to an officer of the Revenue Commissioners on being required by a notice to do so. In the case of the administrator it is for 6 years after the date of the (latest) BCE arising under the (3)

arrangement. In the case of the individual it is for 6 years after the date of the final BCE relating to all of his/her pension arrangements.

Where a PFT notification has to be made before the electronic facility mentioned in **subsection (2)(b)** is available, it must be made in a manner approved by Revenue (i.e. by way of a paper application as referred to earlier). (4)

A PFT notification made by electronic means is deemed to include a declaration that the notification is correct and complete. (5)

The administrator of each pension arrangement of which an individual is a member must comply with a request from the individual to provide a statement referred to in **subsection (2)(a)**. (6)

Revenue will issue a certificate to the individual following receipt of a notification stating the amount of the PFT. This will generally be provided within 30 days of receipt of the notification (but may take longer depending on the circumstances). (7)

Revenue can withdraw a certificate and, where appropriate, issue a revised one where it transpires that the information included in the notification is incorrect or the individual is not entitled to a PFT. (8)

787Q Chargeable excess

Summary

This section deals with the concept of the chargeable excess and when such an excess arises. It also provides that, where the tax on a chargeable excess, or any part of it, is paid by an administrator of a pension arrangement, then so much of the tax so paid shall itself form part of the chargeable excess unless the individual's pension rights are actuarially reduced to reflect the amount of tax so paid or the administrator is otherwise reimbursed for the tax so paid.

In situations involving pension adjustment orders (PAOs), the section provides that where a non-member spouse or partner's share of chargeable excess tax is recovered from a pension already in payment, from a transfer amount being made to another scheme or from an ARF, AMRF or vested PRSA beneficially owned by the non-member spouse or partner, the administrator (including the QFM) is entitled to dispose of or appropriate such assets of the pension arrangement, ARF, vested PRSA etc. as are required to meet the amount of the tax due and that no legal action can be taken by the non-member against such persons for doing so.

Public sector pension administrators may recover tax paid by them on a chargeable excess and any tax so paid is a debt owing to the administrator from the individual. Recovery may be by way of reimbursement from the individual's pension entitlements, by direct payment from the individual or a combination of the foregoing. Where a public sector scheme is subject to a PAO and no transfer amount has been applied to provide an independent benefit for the non-member spouse or partner, or a transfer amount has been applied to provide an independent benefit within the same public sector scheme, the non-member can equally avail of the public service reimbursement options.

Specifically in the case of public sector schemes, from 1 January 2014 the amount of any reimbursement from a lump sum is essentially limited to a maximum of 20% of the net lump sum payable to the individual, after any lump sum tax paid under **section 790AA(3)(a)(i)** or **(3)(b)(i)(I)** has been deducted, with any balance recoverable from the gross public sector pension payable, over a maximum period of 20 years. However, amounts that would otherwise be appropriated by the administrator from the individual's lump sum and amounts that would otherwise be recovered from the individual's gross

pension, may be discharged by way of direct payment by the individual to the administrator or by way of a mixture of direct payment and appropriation of pension benefits. As an alternative to the forgoing, an individual may opt to have the chargeable excess tax deducted entirely from the gross pension over 20 years.

Details

Income tax will be charged in accordance with **section 787R** where a benefit crystallisation event (BCE) occurs in relation to an individual who is a member of a relevant pension arrangement (as defined) on or after 7 December 2005 and either of two conditions set out in **subsection (2)** are met. A BCE is, in effect, any occasion where an individual becomes entitled to a pension benefit (e.g. lump sum, pension, annuity, ARF option). (1)

The conditions are — (2)

- that the amount of the BCE arising exceeds the amount of the individual’s standard fund threshold (SFT) or personal fund threshold (PFT) that is available at the date of that BCE. For example, if the capital value of the BCE arising is, say, €3.3m, no prior BCE’s have occurred and the individual has an SFT of €2m, then the amount of the BCE exceeds the amount of the SFT by €1.3m.
- that none of the individual’s SFT or PFT is available at the date of the BCE. This would arise, for example, if there has been previous BCE’s the value of which equal or exceed the individual’s SFT or PFT.

The amount of an individual’s SFT or PFT that is available at the date of a BCE is to be determined in accordance with **paragraph 4 of Schedule 23B**. (3)

Where the conditions in **subsection (2)** are met, the amount by which the current BCE exceeds the amount of the SFT or PFT available at that time, or the whole of the amount of the BCE where none of the SFT or PFT is available at that time, is to be called the “chargeable excess”. (4)

Where the tax arising on a chargeable excess is paid by the pension scheme administrator and is not recovered from the individual either by way of an actuarial reduction in the pension, from the pension fund itself (in the case of a defined contribution type arrangement) or perhaps from the tax free lump sum, then the amount of the tax paid will itself be considered a benefit to the individual and be subject to tax in its own right. (5)

For example, if the capital value of the pension benefit coming into payment is €3.3m which gives rise to a chargeable excess of €1.3m (i.e. €3.3m – standard fund threshold of €2m) then the tax due would be €1.3m x 41% = €533,000. If, however, the administrator intends to pay the €533,000 without recovering it from the individual so that the pension is still based on a capital fund of €3.3m, then the following grossing up calculation must be carried out to arrive at the correct tax liability due:

- chargeable excess of €1.3m is taken to equate to a post-tax figure of 59% (i.e. assume that the €1.3m is the after-tax balance of a chargeable excess which has been subject to tax at 41%).
- therefore the pre-tax equivalent chargeable excess figure is €1.3m divided by $59 \div 100 = €2,203,389$.
- a chargeable excess of €2,203,389 taxed at 41% would equate to a tax charge of €903,393 and this is the tax the administrator would have to pay to satisfy the requirements of **Chapter 2C**.

Subsection (5) adequately deals with situations arising under a PAO where an administrator or a subsequent administrator of a transfer arrangement is required to pay the share of the chargeable excess tax arising for a member or a non-member from their

pension benefits before the benefits actually come into payment. This subsection sets out the position where the non-member's benefits have crystallised before the member's BCE giving rise to the chargeable excess tax has occurred, and the non-member is receiving a pension directly from the pension scheme or has opted for an ARF, AMRF or vested PRSA.

Subsection (5A) deals with situations where the non-member's retirement benefits arising from the PAO have crystallised before the member's BCE giving rise to the chargeable excess tax has occurred and the non-member is receiving a pension directly from his or her pension scheme, or the non-member has opted for an ARF, AMRF or vested PRSA, or the non-member's benefits while not yet crystallised are transferred to another pension arrangement. The subsection provides that, notwithstanding the existing restrictions on the reduction of a pension actually in payment contained in **section 59B of the Pensions Act 1990**, where a non-member's benefits have crystallised before the occurrence of the relevant member's BCE giving rise to a liability to chargeable excess tax, and the non-member is receiving a pension payable under the transfer arrangement, any tax paid by the subsequent administrator in respect of the non-member's share of the chargeable excess tax is itself treated as part of the tax, unless the non-member's benefit is reduced to fully reflect the tax paid, or the non-member reimburses the administrator for the tax so paid. (5A)(a)

A pension scheme administrator, QFM or PRSA administrator who is liable to pay a non-member's share of chargeable excess tax is entitled to dispose or appropriate such assets of the scheme, ARF and/or AMRF, or vested PRSA as are required to meet the liability, and the non-member must allow such disposal or appropriation. (5A)(b)

Where— (5A)(c)

- pension benefits are reduced by a subsequent administrator, or
- the assets of a scheme, ARF, AMRF or vested PRSA are disposed of or appropriated by a scheme administrator, OFM or PRSA administrator

in accordance with this subsection, a court action may not be taken against such persons on account of such sale or appropriation.

In the case of public sector administrators, any tax paid on a chargeable excess will be a debt owing to the administrator from the individual pensioner and the administrator will be reimbursed by the individual for the tax paid in accordance with **subsection (7)**. (6)

Where a PAO applies to a public sector scheme in situations where— (6A)

- no transfer amount has been applied to provide an independent benefit for the non-member spouse or civil partner, or
- a transfer amount has been applied to provide an independent benefit for the non-member spouse or civil partner within the same scheme (i.e. the member's scheme),

the provisions of **subsection (6), (7), (8) and (9)** apply to the member and the non-member, i.e. both parties can avail of the public service reimbursement options in relation to chargeable excess tax paid by the scheme administrator.

An administrator referred to in **subsection (6)** will be reimbursed for the payment of tax on a chargeable excess as follows. (7)

Where the amount of tax paid is 20% or less of the value of the individual's lump sum (net of any lump sum tax paid at the standard rate under **section 790AA(3)(a)(i) or (3)(b)(i)(I)** – the “net lump sum”)— (7)(a)

- (i) by appropriating that percentage of the net lump sum,
- (ii) by direct payment by the individual of the tax paid to the administrator,

- (iii) by a combination of (i) and (ii) such that the aggregate equals the amount of tax paid by the administrator, or
- (iv) by the individual exercising the option set out in *subsection (8)*.

Where the amount of tax paid is greater than 20% of the net lump sum by the individual exercising the option set out in *subsection (8)*, or **(7)(b)**

- by appropriating not less than 20% of the net lump sum, or a higher percentage as may be agreed,
- by payment by the individual to the administrator of at least 20% of the net lump sum, or a higher percentage as may be agreed, or
- by a combination of (I) and (II) such that the aggregate is not less than 20% of the net lump sum, and
- by allowing the balance, if any, of the tax to be recovered:
 - from the gross annual pension over a period to be agreed between the individual and the administrator up to a maximum of 20 years,
 - by the payment of the balance by the individual from his or her own resources, or
 - by the combination of a reduction in pension and payment of a sum by the individual.

The option referred to in *subsection (7)(a)(iv)* and *(b)* is the option to reimburse the administrator by reducing the gross annual amount of pension payable under the rules of the relevant pension arrangement for a period not exceeding 20 years such that the reduction equals the chargeable excess tax paid. **(8)**

Where an individual agrees to pay an amount to an administrator to reimburse the administrator for tax paid on a chargeable excess, that payment must be made before the administrator pays over the net lump sum, or the appropriate part of the net lump sum, to the individual. **(9)**

787R Liability to tax and rate of tax on chargeable excess

Summary

This section is the charging provision and sets out who is liable for the tax on a chargeable excess and the rate of the tax charge. In general, the person liable to pay the tax charge in the first instance is the pension scheme administrator but both the administrator and the individual in respect of whom the benefit crystallisation event (BCE) occurs are jointly and severally liable for the charge.

However, where a BCE occurs in respect of a member's benefits 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 section provides that any chargeable excess tax arising on the BCE must be apportioned between the relevant member and the non—member. It also sets out who is liable for the relevant member's and non-member's share of the chargeable excess tax in such situations.

To ensure payment of a non-member spouse or civil partner's share of chargeable excess tax in circumstances where the non-member spouse or civil partner has availed of a transfer amount to provide an independent benefit in a separate scheme, the section provides for a process of certification of the amount of the non-member's share of the tax by the administrator of the relevant member's scheme giving rise to the chargeable excess tax, to the administrator of the non-member spouse or civil partner's scheme etc. and notification of the amount of the non-member's share of

the tax to the non-member.

The section also provides for an administrator to seek information from an individual by way of a declaration about prior BCEs so that the administrator can determine if a current BCE gives rise to a chargeable excess and therefore a tax charge. An administrator may withhold payment of a pension benefit where an individual, having been requested to provide a declaration, fails to do so.

Finally, the section provides for the keeping of all relevant records by the administrator, subsequent administrator or fund administrator, as the case may be, and the provision of those records when requested to do by a notice in writing from a Revenue officer.

Details

The whole of a chargeable excess will be charged to income tax under Case IV of Schedule D at the higher rate of tax for the tax year in which the BCE giving rise to the chargeable excess occurs and nothing may be deducted or set off to reduce the tax due. It effectively ring fences the charge to tax. The chargeable excess, or the tax thereon, should not be included on forms P30, P35, P60 etc. as those forms relate to amounts charged, and tax paid, under Schedule E. (1)

Subject to **subsection (2A)(d)**, the pension scheme administrator and the individual in relation to whom the BCE occurs are jointly and severally liable for payment of the tax. (2)

This means that payment by one will discharge the liability of the other to the extent of the payment made. Joint and several liability ensures that there are alternative means of enforcing collection of any tax due on a chargeable excess.

Where an individual is a relevant member of a pension arrangement (i.e. a member in respect of whose benefits a PAO has been made) chargeable excess tax arising on a BCE under the arrangement in respect of that member must be apportioned by the administrator between the member and the non-member (i.e. an individual in whose favour a PAO has been made in respect of the relevant member's retirement benefit). The apportionment must be made in accordance with **paragraph (b) and the requirement to apportion applies equally to the administrator of a pension scheme to which the member may have taken a transfer after the PAO was made**. The persons liable for the tax so apportioned, and the extent of their respective liabilities, are set out in **paragraph (d)**. (2A)(a)

Subject to the assumption in **paragraph (c)**, each party's share of the tax referred to in **paragraph (a)**, referred to as the "appropriate share", is in the same proportion as each party's share of the retirement benefit arising under the BCE that gives rise to the chargeable excess tax, having regard to the designated benefit payable to the non-member under the PAO. (2A)(b)

The assumption in this paragraph is that where a transfer amount has been applied to provide a separate independent benefit for the non-member, the apportionment of the retirement benefit giving rise to the chargeable excess tax between the non-member and the member is determined as follows: (2A)(c)

- the non-member’s share of the retirement benefit is–
 - (i) where the arrangement is a defined benefit arrangement and it is the arrangement in respect of which the PAO was made, the designated benefit on which the transfer amount was calculated, and
 - (ii) the transfer amount, in all other cases.
- the member’s share of the retirement benefit is the residual benefit after deducting the non-member’s share and is determined by the formula $A - B$, where–

A is the retirement benefit arising under the BCE in question, and

B is the non-member’s share of the benefit.

This paragraph sets out the persons who are liable for the tax apportioned in accordance with *paragraph (b)* and the extent of their liability. It ensures that the correct liability attaches to the correct persons and reflects the range of possibilities that can arise. It also makes it clear that the liability of the various persons listed is joint and several. (2A)(d)

The administrator of the relevant member’s scheme and the relevant member are liable for that member’s share of the tax. (2A)(d)(i)

Where the designated benefit is retained within the member’s pension (i.e. no transfer amount has been applied), the administrator (again of the relevant member’s scheme) and the non-member (i.e. the spouse or civil partner in whose favour the PAO has been made) are liable for the non-member’s share of the tax. This is notwithstanding any provisions of a PAO that might provide for pension benefits to be made available to the non-member spouse or civil partner without regard to taxation issues. (2A)(d)(ii)(I)

Where a transfer amount has been applied to provide an independent benefit in respect of the non-member and the non-member’s benefit under that scheme has not yet crystallised at– (2A)(d)(ii)(II)
(A)

- the date the subsequent administrator (i.e. the administrator of the transfer arrangement providing the independent benefit) receives a certificate from the administrator of the member’s scheme notifying the subsequent administrator that the non-member is liable for part of a chargeable excess tax (*subsection (3B)* refers), or
- the date of the BCE giving rise to the chargeable excess, where the administrator and the subsequent administrator are the same person,

the subsequent administrator and the non-member are liable for the non-member’s share.

Where a transfer amount has been applied to provide an independent benefit in respect of the non-member and the non-member’s benefit under that scheme has crystallised at the date the subsequent administrator receives a certificate under *subsection(3B)* (or, where the administrator and subsequent administrator are the same person, at the date of the BCE giving rise to the chargeable excess) and the non-member is in receipt of a pension payable from the scheme, the subsequent administrator and the non-member are liable for the non-member’s share. (2A)(d)(ii)(II)
(B)

Where a transfer amount has been applied to provide an independent benefit in respect of the non-member and the non-member's benefit under that scheme has crystallised at the date the subsequent administrator receives a certificate (or, where the administrator and subsequent administrator are the same person, at the date of the BCE giving rise to the chargeable excess), and the non-member has exercised a relevant option under the transfer arrangement (i.e. the non-member has opted to place his or her benefits (after taking a tax free lump sum) into an ARF/AMRF or retained the benefits within a vested PRSA), the fund administrator (i.e. the QFM or the PRSA administrator) and the non-member are liable for the non-member's share. (2A)(d)(ii)(II) (C)

This paragraph provides that in any case, other than those set out in this subsection, the liability is solely that of the non-member in respect of his or her share of the chargeable excess tax. This caters for situations where the non-member spouse has taken an annuity, or has drawn down all of his or her benefits as a taxable amount (under the various ARF options) such that there is no pension scheme administrator, QFM or PRSA administrator that has control of the pension fund or proceeds of the pension fund to which liability can be attached. (2A)(d)(ii)(III))

The liability of a subsequent administrator or a fund administrator (i.e. QFM/PRSA administrator) shall not exceed the lesser of the non-member spouse's appropriate share of the chargeable excess tax and – (2A)(e)

- in the case of a subsequent administrator, the amount or value of the assets in the transfer arrangement (at the point at which the non-member's rights under that arrangement are being transferred to another arrangement (this recognises that a non-member spouse or civil partner may request a transfer to another scheme after the date the subsequent administrator of the scheme from which the transfer is to be made, has received a certificate stating the non-member's share of the chargeable excess tax) or at the point the non-member spouse or civil partner's retirement benefits under the transfer arrangement mature and are drawn down.
- in the case of a fund administrator, the value of the assets in the fund at the date the fund administrator is advised (by way of a certificate or copy certificate) that the non-member (i.e. the beneficial owner of the ARF or PRSA) has a chargeable excess tax liability.

Any person liable for tax on a chargeable excess (whether in accordance with **subsection (2)** or **subsection (2A)d)**) is liable for the tax irrespective of whether or not they are resident in the State. This is to avoid any doubt about the liability to the charge of, for example, the administrator of an overseas pension arrangement who may be providing pension services to Irish individuals. (3)

The tax on a chargeable excess that any person referred to in **subsection (2)** or **subsection (2A)d)** is liable for, is the amount of that tax less any credit due for tax paid on an excess lump sum, as provided for in **section 787RA**. (3A)

Where chargeable excess tax is apportioned by an administrator in a situation where a transfer amount has been applied to provide the non-member with an independent (3B)

retirement benefit, the administrator must, within 21 days from the end of the month in which the BCE giving rise to the chargeable excess tax arises, establish who the subsequent administrator is and provide that administrator with a certificate containing the information set out in the subsection.

An administrator is not required, however, to provide a certificate if the alternative circumstance arises, i.e. where the administrator is also the subsequent administrator, (*subsection (2A)(D)(ii)(II)* refers). This situation occurs where the independent benefit provided for a non-member is in the same scheme as the member's scheme – as the administrator will be the administrator of the independent scheme as well.

Where chargeable excess tax is apportioned by an administrator in a situation where a transfer amount has been applied to provide the non-member with an independent retirement benefit and, at the time the subsequent administrator receives a certificate referred to in *subsection (3B)*, (3C)(a)

- the non-member's benefits under the transfer arrangement have crystallised, and
- the non-member has exercised a relevant option under the transfer arrangement (i.e. has an ARF or vested PRSA),

then, if the subsequent administrator and the fund administrator are not the same person (e.g. the pension administrator and the QFM are not the same Life Company), the subsequent administrator must establish who the fund administrator is and forward a copy of the certificate to that administrator within 21 days from the date the subsequent administrator received the certificate.

Where the administrator and the “subsequent administrator” are the same person, but the administrator and the fund administrator are not the same person, the administrator must within 21 days from the end of the month in which the BCE giving rise to the chargeable excess tax arises, establish who the fund administrator is and provide the fund administrator with the certificate referred to in *subsection (3B)*. (3C)(b)

This subsection allows the fund administrator of the ARF/vested PRSA deal with the tax liability arising in respect of the non-member's appropriate share of the chargeable excess tax.

An administrator, subsequent administrator or a fund administrator must within 21 days from – (3D)

(a) the end of the month in which the BCE giving to the chargeable excess occurs (in the case of an administrator, including an administrator who is either or both the subsequent administrator and the fund administrator), or

(b) the date of receipt of a certificate or copy certificate (in the case of a subsequent administrator or fund administrator)

notify the non-member in writing that he or she is liable for chargeable excess tax and the amount of the liability.

In addition, if at that point the administrator or the subsequent administrator is aware that the non-member is the sole person liable for the tax in question, they must advise the non-member of that fact and that the tax is due and payable by the non-member to the Collector-General within 3 months of the date of the written notification. This

could arise, for example where the non-member's benefits had crystallised and he or she had taken them in the form of an annuity such that there is no pension scheme administrator, QFM or PRSA administrator that has control of the pension fund or proceeds of the pension fund to which liability can be attached.

Where a notification is sent to a non-member in accordance with **subsection (3D)**, **(3E)** and the non-member is the sole person liable for payment of the tax in question, a copy of the notice must be sent to Revenue at the same time as the original is sent to the non-member.

Where a BCE is due to occur, the pension scheme administrator may request the individual concerned to provide a written declaration in advance on a form to be prescribed or authorised by Revenue which contains certain information as follows: **(4)**

- (a) the individual's full name, address and PPS No.,
- (b) details of the amount and date of each BCE that has occurred in respect of the individual on or after 7 December 2005,
- (c) details of the expected amount and date of BCE's likely to occur between the date of the declaration and the date of the BCE which is the subject of the request for a declaration,
- (d) the amount of the individual's personal fund threshold (PFT) – if he/she has claimed one– issued under **section 787P(7)** in respect of the capital value of his/her pension rights on 1 January 2014, and a copy of the PFT certificate or a copy of a revised certificate issued under **section 787P(8)**, or where relevant, a copy of a certificate issued by Revenue under the legislation as it applied before the passing of Finance (No.2) Act 2013,
- (e) details of any unpaid tax that the administrator of a public sector scheme has to pay as a result of the provisions of **section 787TA**, and
- (f) such other information as Revenue may reasonably require for the purposes of **Chapter 30**.

The reason for this facility is that, in order for a pension scheme administrator to determine if a BCE is going to give rise to a chargeable excess, the administrator needs to know if there have been, or are likely to be, any prior BCE's that must be aggregated with the current BCE for the purposes of seeing if the standard fund threshold or personal fund threshold has been exceeded. The date on which these prior BCE's have taken place is important as their value must be grossed-up in line with any movement in the standard fund threshold or personal fund threshold arising from the annual indexation of these amounts from 2007 in line with an earnings factor.

Where a declaration requested under **subsection (4)** is not provided, the administrator may withhold the payment of benefits or refuse to transfer sums until such time as the declaration is provided. **(5)**

Where the owner of a Retirement Annuity Contract (RAC) or a PRSA does not take **(5A)**

benefits from the RAC or PRSA by age 75, such benefits are treated as commencing on the date of the owner’s 75th birthday or on 25 December 2016 (i.e. the date Finance Act 2016 was passed), if he or she is 75 years of age before 25 December 2016, notwithstanding that benefits have not actually commenced by the date in question.

An individual whose RAC or PRSA vests in these circumstances must provide a declaration containing the details referred to in *subsection (4)* to his or her administrator within 30 days from the date of the deemed vesting, regardless of whether or not the declaration is requested by the administrator.

Where an individual fails to provide a declaration, the administrator must assume that the individual’s Standard Fund Threshold or Personal Fund Threshold, if applicable, is fully “used up” and, accordingly, the entire value of the BCE is treated as a “chargeable excess” and taxed at the higher rate of income tax in force for the year in which the BCE arises. (6)

An administrator must retain declarations provided under *subsections (4), (5) and (5A)* for a period of six years and must make them available to an officer of the Revenue Commissioners if requested to do so by notice in writing.

An administrator, subsequent administrator or a fund administrator, as appropriate, is required to retain for a period of six years (6A)

- certificates or copy certificates referred to in *subsections (3C) and (3C)* respectively, and
- copies of any notifications given to a non-member in accordance with *subsection (3D)*.

An administrator, subsequent administrator or fund administrator must provide the relevant certificates to a Revenue officer if requested by a notice in writing.

787RA Credit for tax paid on an excess lump sum

Summary

This section provides that where tax at the standard rate arises on a lump sum paid to an individual under a pension arrangement (lump sum tax) and tax also arises on a chargeable excess in relation to that individual (chargeable excess tax) the pension scheme administrator is required to offset the lump sum tax against the chargeable excess tax.

Details

Where, on or after 1 January 2011, a benefit crystallisation event (BCE) occurs in respect of an individual, including an individual in respect of whose retirement benefits a PAO has been made, which gives rise to tax on a chargeable excess (i.e. where the BCE on its own or when aggregated with prior BCEs exceeds the standard fund threshold or the individual’s personal fund threshold) and where income tax under Case IV of Schedule D has been charged at the standard rate on a lump sum paid to the individual on or after that date in accordance with *section 790AA(3)(a)(i)* or *(3)(b)(i)(I)*, the amount of chargeable excess tax (or the appropriate share of that tax in the case of an individual in respect of whose retirement benefits a PAO has been made) which the administrator must account for is reduced by the amount of the lump sum tax to the extent that the lump sum tax hasn’t been repaid or previously credited against (I)

chargeable excess tax.

The lump sum tax to be credited may have been charged by the administrator of the pension arrangement giving rise to the BCE in respect of a lump sum paid under that pension arrangement or in respect of a lump sum paid under another pension arrangement of the individual administered by that administrator or, where the conditions set out in **subsection (2)** are met, have been charged in respect of a lump sum paid under a pension arrangement of the individual administered by a different administrator. Where lump sum tax arises in relation to lumps sums paid under a number of pension arrangements the tax can be aggregated for the purposes of crediting it against the chargeable excess tax. (1)(a) & (b)

The administrator of a pension arrangement can only allow a credit against chargeable excess tax for lump sum tax deducted by another administrator if that administrator obtains a certificate from the other administrator stating – (2)

- (a) the name and address of the administrator,
- (b) the individual's name, address and PPS Number,
- (c) the relevant pension arrangement in respect of which the BCE giving rise to the excess lump sum arose,
- (d) the amount and date of payment of the lump sum
- (e) the amount of tax deducted from the lump sum in accordance with **subsection (3)(a)(i)** or **(3)(b)(i)(I)** of **section 790AA** (i.e. at the standard rate under Case IV of Schedule D) and remitted to the Collector-General.

Where the amount of the lump sum tax to be credited exceeds the chargeable excess tax or, where relevant, the appropriate share of that tax, the balance can be carried forward and used against chargeable excess tax arising on future BCEs occurring in relation to the individual. This balance is added to any lump sum tax arising on the future BCE (if a lump sum were to be paid under that BCE). This process can continue until the lump sum tax balance is fully used. (3)

Where a future BCE involves a different administrator then that administrator must obtain a certificate from the previous administrator stating what lump sum balance remains. The balance can be added to lump sum tax arising on that BCE, if any, and used to reduce chargeable excess tax arising on the BCE, and so on. (4), (5) & (6)

Certificates obtained under **subsection (2)** or **subsection (4)** must be retained by the administrator for a period of 6 years and be produced to Revenue if requested. (7)

Any lump sum tax (or balance) may only be used once to reduce tax (or the appropriate share of tax) on a chargeable excess and for no other purpose. (8)

The provisions of this section, with any necessary modifications, also apply to a non-member spouse or civil partner, which means that a non-member who pays excess lump sum tax can have it set off against his or her appropriate share of the chargeable excess tax. (9)

787S Payment of tax due on chargeable excess

Summary

This section provides for the payment to Revenue of tax due on a chargeable excess and places notification requirements on administrators. Form 787S should be used for this

purpose. The section also applies the standard assessment, collection, late payment and appeal provisions to tax due on a chargeable excess.

Details

Where a BCE gives rise to a chargeable excess, the pension scheme administrator must (I) make a return to the Collector General within 3 months from the end of the month in which a BCE giving rise to a chargeable excess occurs containing the following information:

- (a) The name and address of the administrator.
- (b) The name, address and PPS number of the individual to whom the BCE event has occurred.
- (c) Details of the pension arrangement under which the BCE event giving rise to the chargeable excess has occurred.
- (d) The amount of, and basis of calculation of, the chargeable excess arising in respect of the BCE, and
- (e) Details of the amount of tax that the administrator has to account for in relation to the chargeable excess.

Where the administrator of a scheme for which a pension adjustment order (PAO) exists has apportioned chargeable excess tax between a scheme member and a non-member spouse or civil partner in accordance with *section 787R(2A)*, additional information must be included in a return made to the Collector-General under this section. The additional information required differs depending on whether or not a transfer amount has been applied to provide the non-member with an independent retirement benefit and, among other things, requires the administrator to provide information on the amount, and the basis of calculation, of the relevant member's and non-member's share of the chargeable excess tax.

Where a transfer amount has been applied to provide an independent benefit for a non-member, the subsequent administrator or fund administrator must make a return to the Collector General within 3 months from certain specified dates. The date from which the 3 month period commences depends on whether the transfer arrangement into which the non-member spouse or civil partner's designated benefit has been transferred is the same or a different pension arrangement to that of the member spouse or civil partner and on whether the non-member's retirement benefits under the transfer arrangement have crystallised or not and, if they have, in what form. (IA)

The information to be included in such a return is as follows:

- (I) the name, address and telephone number of the subsequent or the fund administrator,
- (II) the name, address and PPS Number of the non-member,
- (III) the name, address and telephone number of the administrator of the relevant pension arrangement from which the transfer amount arose,
- (IV) the amount of, and the basis of calculation of, the non-member's appropriate

share of the tax, and

- (V) the amount of the non-member's appropriate share of the tax which the subsequent or fund administrator is required to account for.

Where the amount at (IV) exceeds the amount at (V) (i.e. where the subsequent or fund administrator is not accounting for all of the non-member's share of the chargeable excess tax) the subsequent or fund administrator must, at the same time as the return under this subsection is made, notify the non-member in writing that the amount of the excess is payable by the non-member directly to the Collector-General within 3 months from the date of the notification.

A subsequent or fund administrator who sends a notification to a non-member in accordance with **subsection (IA)** must send a copy of the notification to Revenue at the same time. **(1B)**

A non-member who receives a notification referred to in **subsection (IA)(ii)** or in a notification referred to in **section 787R(3D)** (in the circumstances referred to in **section 787R(3E)**) must make a return to the Collector-General and pay any tax that he or she is solely, or partially, liable for (as specified in the notification) within 3 months of the date of the notice. The information to be included in the return is as follows: **(1C)**

- (a) the name, address and telephone number of the subsequent or fund administrator,
- (b) the name, address and PPS Number of the non-member,
- (c) the amount of the non-member's appropriate share of the tax,
- (d) the amount of the non-member's appropriate share of the tax paid by the subsequent or fund administrator, and
- (e) the amount of the non-member's appropriate share of the tax which the non-member is required to pay.

This subsection was deleted with effect from 7 December 2010. **(2)**

The standard assessment, collection, late payment and appeal provisions apply in relation to tax due on a chargeable excess. **Subsection (3)** in particular makes it clear that tax on a chargeable excess, including tax due in respect of retirement benefits for which a PAO exists, is due at the time a return, in respect of that tax, is due to be made. **Subsection (5)**, inter alia, allows Revenue, on a case being made to them, to make the necessary adjustments to ensure that the tax chargeable on a benefit crystallisation event (BCE) computed in accordance with **section 787R(5A)(c)** (i.e. on the full amount of the BCE) does not exceed the charge that would have arisen if a correct declaration had been made in accordance with **section 787R(5)(b)**. **(3) – (7A)**

Every return is to be in a form prescribed or authorised by Revenue and shall include a declaration to the effect that the return is correct and complete. **(8)**

787T Discharge of administrator from tax

Summary

This section provides for the discharge of a pension scheme administrator from the charge to tax in certain circumstances. As the scheme administrator may in certain cases be reliant on information being supplied by the individual, in order to determine if a

chargeable excess arises, it could arise that incorrect tax is accounted for to Revenue because the administrator, though acting bona fides, was operating on incomplete or incorrect information provided. Where the administrator acted in good faith, their liability to the tax may be waived by Revenue.

Details

Where an administrator reasonably believed that a BCE did not give rise to a chargeable excess or that the amount of a chargeable excess (and therefore the tax arising on it) was less than it should have been, the administrator may apply to Revenue to be discharged from any liability arising from the error. (1)

Where Revenue, having received an application under *subsection (1)*, and having had regard to all of the circumstances, are of the opinion that it would not be just and reasonable for the administrator to be made liable for the liability, they may discharge the administrator and notify him of that decision in writing. Where an administrator is discharged in accordance with *subsection (2)* the liability falls on the individual involved. (2) & (3)

787TA Encashment Option

Summary

This section provides 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. 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 Universal Social Charge (USC) as provided for in section 530AN(3A)(a). This broadly neutralises the tax relief that such individuals would have availed of when building up their private pension funds. In general, no “tax-free” lump sum can be taken from a scheme in respect of which the encashment option has been exercised. The administrator of the scheme will be primarily responsible for deducting and remitting the “encashment tax” to Revenue.

This section applies from 8 February 2012, with transitional arrangements for affected individuals who may have drawn down their private sector pensions before that date but who remain members of a public sector scheme on or after that date.

Details

Subsection (1) sets out the definitions and other assumptions underpinning the section. (1)
For the most part these are self-explanatory but the following points should be noted.

“Active member” of a public sector scheme means, essentially, a member who remains in the relevant public sector employment accruing normal pension benefits. It would exclude an individual with preserved benefits under a public sector scheme.

“Private sector scheme” means an occupational pension scheme, an RAC, a PRSA and a qualifying overseas pension plan, as defined in *section 7870*.

“Public sector scheme” means all public service pension schemes as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004 and all statutory schemes i.e. schemes established by or under any enactment not included in the foregoing, as defined in *section 7870*.

“Relevant individual” - to qualify for the encashment option an individual must be a

“relevant individual” on 8 February 2012 (the date of publication of the Finance Bill 2012). This means he or she must -

- be a member of a private sector pension scheme and a member of a public service pension scheme on that date, or
- be a member of a public service pension scheme on that date and have drawn down some or all of his or her private sector scheme benefits within the “relevant period” (defined as the period from 7 December 2005 to 7 February 2012). This caters for individuals who may have drawn pension benefits within the relevant period from say an RAC or PRSA but remain in public service employment and a member of the public service scheme on 8 February 2012, or
- be a member of a private sector scheme on or after that date and subsequently become a member of a public service scheme (this caters for individuals moving from the private sector into a public service career in the future).

In each case the individual must remain an active member of his or her public service scheme until his or her retirement date (i.e. 60 or later), i.e. he/she must continue in the public service employment and accrue pension benefits up to retirement.

“Retirement date” is defined as the earlier of the date on which the member retires where that is on or after the date the member reaches 60 and the date he or she retires on ill-health grounds under the rules of the scheme.

This subsection provides for the application of the section to a relevant individual where the individual has not drawn down any pension benefits from his or her private sector schemes before 8 February 2012. It is subject to **subsection (11)** reflecting the fact that **subsection (11)** specifically and separately deals with situations where private sector scheme benefits have been drawn down before that date. (2)

It allows the encashment option to be availed of in situations where the combined capital value of the pension scheme savings, both public and private, are likely to exceed the Standard Fund Threshold (SFT) of €2m or the individual’s Personal Fund Threshold (PFT), if he or she has one, and where the intention is that the public sector pension benefits will be crystallised last (i.e. after all private pension savings have been crystallised).

Where **subsection (2)** may apply to an individual, he or she may **irrevocably instruct** (in writing) the administrator of the private sector scheme or schemes to exercise the encashment option provided for in **subsection (6)**. The individual must also meet the Revenue notification conditions set out in **subsection (4)**. (3)(a)

The encashment option can be exercised on behalf of a relevant individual **on one occasion only and** on the same date in respect of each of his or her private sector schemes. (3)(b)

Where an administrator or a relevant manager (i.e. a qualifying fund manager (QFM) of an Approved Retirement Fund (ARF) or Approved Minimum Retirement Fund (AMRF) or a PRSA administrator) receives an irrevocable instruction in writing from an individual, the document must be retained for 6 years and be made available to Revenue on request. (3)(c)

Before the encashment option is exercised, the individual must notify Revenue of his or her intention in that regard at least 3 months before his or her date of retirement from the public sector scheme. The notification must be in such form as may be prescribed or authorised by Revenue, and provide the following information: (4)(a)

- (i) The individual's full name, address and PPS Number.
- (ii) An estimate of the value of the individual's accrued pension rights to be encashed or the specified amount* (i.e. the amount by which the capital value of the private and public service schemes exceeds the SFT or PFT).
- (iii) Particulars of the private sector scheme(s) in respect of which the encashment option is to be exercised.
- (iv) The name, address and phone number of the administrator of each such scheme.
- (v) Such other information as Revenue may require for the purposes of this section.

*Also see **subsection (12)** in relation to the "other specified amount".

It will not always be possible through the encashment option to fully eliminate the "specified amount" i.e. the difference between the combined capital value of the individual's pension scheme savings, both public and private, and the SFT of €2m or the individual's PFT. This would be the case where the capital value of the individual's public sector scheme on its own exceeds the SFT of €2m or the individual's PFT. Where this is the case, then the encashment option can never fully mitigate the chargeable excess (i.e. the specified amount) as the option does not extend to public sector schemes. In such a situation, in order to keep the chargeable excess on the public sector scheme to a minimum, the individual would have to encash all of his or her private sector schemes, as not do so would push up the overall chargeable excess arising on the public sector scheme when it crystallises. Therefore, it will be an estimate of the value of the individual's accrued pension rights to be encashed rather than the specified amount that will have to be included in the notification to Revenue in such situations.

Once the option is exercised, the individual must notify Revenue in writing within 7 days and provide in a schedule details of the scheme or schemes involved and the amounts encashed under each scheme. **(4)(b)**

The notifications referred to in **subsections (4)(a)** and **(b)** shall be in such form as prescribed or authorised by Revenue and shall include a declaration that the notification is correct and complete. **(5)**

The failure of an individual to provide the notification referred to in **subsections (4)(a)** & **(b)** within the set time limits may be disregarded if Revenue consider that the circumstances warrant it. **(5A)**

The exercise of the encashment option is the transfer to the relevant individual by the administrator of the individual's private sector scheme or schemes (having already been irrevocably instructed to do so) of the value of the individual's accrued rights under those schemes. The administrator can make the transfer in the case of an individual retiring on ill-health grounds before the age of 60, on the date of ill-health retirement, and in any other case, on or before the individual's retirement date but in no case before the individual attains the age of 60. The amount transferred will be: **(6)(a)**

- (i) the individual's accrued rights under the private sector scheme (including any which relate to Additional Voluntary Contributions) where the condition referred to in **paragraph 6(b)** applies, or
- (ii) in any other case, the specified amount (i.e. the amount by which the combined capital value of the pension scheme savings, both public and private, exceed the

SFT of €2m or the individual's PFT if he or she has one).

The condition needed for the encashment amount to equal the individual's accrued rights under his or her private sector scheme(s) is that the capital value of the individual's public sector scheme on its own will exceed the SFT of €2m or the individual's PFT. (6)(b)

Where the encashment option is exercised in respect of the whole of a private sector scheme, no lump sum is payable and where the option is exercised in respect of a part of a private sector scheme, the lump sum is reduced in proportion. A formula is provided to work out how much of a lump sum can be taken (i.e. the restricted lump sum) where partial encashment of a scheme takes place. (6)(c)(i) & (ii)

An encashment amount is to be regarded as income of the individual for the tax year in which the amount is paid and is chargeable to income tax under Case IV of Schedule D. (7)

Where the encashment option is exercised the administrator of the private sector scheme must deduct income tax from the encashment amount at the higher rate for the tax year in which the payment is made and remit it to the Collector-General in accordance with **subsection (10)**. In addition, the administrator must apply the USC at the rate set out in section 530AN(3A)(a) to the payment. (8)

An encashment amount regarded as an individual's income will not form part of his or her total income for the purpose of the Tax Acts and the higher rate of income tax that is to be deducted is a "ring-fenced" rate and no deductions or reliefs can be set against that encashment amount to reduce the amount of income tax payable. (9)

The deduction and collection arrangements that apply to chargeable excess tax under the provisions of **section 787S** apply to encashment tax deducted by an administrator or a relevant manager (i.e. a QFM in the case of an ARF/AMRF and a PRSA administrator in the case of a PRSA). The administrator must deduct tax from the encashment amount and pay it to the Collector-General within 3 months of the date of encashment with the following information: (10)

- (a) The name and address of the administrator or relevant manager,
- (b) The name, address and PPS number of the individual who has availed of the encashment option,
- (c) Details of the pension arrangement giving rise to the encashment option,
- (d) The amount of, and basis of calculation of, the encashment option or deemed encashment option,
- (e) Details of the amount of tax that the administrator or relevant manager has to account for in relation to the encashment option.

The normal provisions as regards assessments and appeals apply.

Transitional arrangements apply in the case of individuals who would otherwise meet the various conditions except that they have already crystallised some or all of their private pension funds before 8 February 2012. (11)

An individual who has cashed in some or all of his or her private pension funds before 8 February 2012 may, where he or she considers that the circumstances set out in **paragraph (b)** may apply, **irrevocably instruct** the administrator of his or her private pension schemes (or the relevant manager in the case of a crystallised pension scheme) to exercised the encashment option provided for in **subsection (6)** as if the benefit crystallisation event (BCE) had not occurred. In effect, the individual can exercise the (11)(a)(i)

encashment option in respect of private sector schemes that are still “intact” and/or in respect of private sector schemes already drawn down. The individual must also meet the Revenue notification conditions set out in **subsection (4)** (as modified by **subsection (12)**).

Where the encashment option is exercised in respect of a private pension scheme that has already crystallised, **subsection (6)** is to apply as if the reference in that subsection to an administrator were a reference to a relevant manager - in the case of crystallised schemes it will be the relevant manager (i.e. the QFM of an ARF or AMRF or the PRSA administrator of a PRSA) that will be transferring the encashment amount to the individual. (11)(a)(ii)

The circumstances that the individual referred to in **paragraph (a)(i)** considers may apply such that he or she can **irrevocably instruct** the administrator as per **paragraph (a)(i)** are that the combined capital value of the individual’s private sector and public sector pension schemes (whether already crystallised or still intact) are likely to exceed the SFT or the individual’s PFT, if he or she has one, and the individual’s public service pension will be crystallised last after all private sector benefits have been crystallised. (11)(b)

The modified notification conditions that the individual must meet are effectively the same as the notification requirement specified in **subsection (4)** modified to take account of the particular circumstances of individuals who may already have cashed in their private sector schemes. The individual must comply with **subsection (4)** as if the following were substituted for **subparagraphs (ii), (iii) and (iv)** of **paragraph (a)** of that subsection, as follows: (12)

- (ii) an estimate of the value of the accrued rights in respect of which the encashment option is to be exercised or, as the case may be, the other specified amount*,
- (iii) although one or more of the schemes may have already been drawn down within the relevant period, particulars of the private sector scheme or schemes in respect of which the encashment option is to be exercised,
- (iv) the name, address and telephone number of the administrator or relevant manager of each such scheme.

*Note - “other specified amount” is the term used in the situation provided for by subsection (11) to distinguish it from the term “specified amount” used in relation to situations provided for by subsection (2) – but both terms have the same meaning i.e. the amount by which the capital value of the individual’s private and public service schemes exceeds the SFT or the individual’s PFT.

Where an encashment option is exercised in relation to an individual referred to in **subsection (11)(a)**, in respect of private sector schemes that had not been drawn down before 8 February 2012, the provisions of **subsections (7) to (10)** will apply, that is, tax will be charged under Case IV of Schedule D and deducted by the pension scheme administrator at the higher rate. USC will be charged at the rate set out in section 530AN(3A)(a). Tax and USC should be remitted to the Collector General within 3 months of the exercise of the encashment option. (13)(a)

In cases where the encashment option is being exercised in relation to such an individual in respect of private sector schemes that have been drawn down in whole or in part, before 8 February 2012, the provisions of **subsections (14) or (15)** apply. These set out special rules for the purposes of determining the encashment tax (i.e. the deemed amount) depending on what type of benefits were taken from the scheme. (13)(b)

For the purposes of exercising the encashment option, the value of the individual’s “accrued rights” under a private sector scheme that has already been drawn down in full (14)(a)

is the amount crystallised by the BCEs occurring at that time. These could comprise a lump sum paid, assets transferred to an ARF and/or AMRF or retained in a PRSA, assets used to pay a pension or buy an annuity or assets taxed and paid directly to the individual. **Schedule 23B** sets out how various types of BCE are to be valued. In such cases, the part of the encashment amount from which encashment tax is to be deducted (i.e. the deemed encashment amount) depends on the type of BCE occurring. These are provided for in **section (14)(b)**.

Where the BCE is -

(14)(b)

- (i) a lump sum paid under the rules of a scheme that would have been paid tax-free if **section 790AA** had never been enacted, the deemed encashment amount is the amount of that tax-free lump sum,
- (ii) the transfer of assets to an ARF, the deemed encashment amount is the lesser of the amount transferred to the ARF at the time the BCE event occurred and the value of the assets in the ARF at the date the encashment option is exercised,
- (iii) the transfer of assets to an AMRF, the deemed encashment amount is the lesser of the amount transferred to the AMRF at the time the BCE event occurred and the value of the assets in the AMRF at the date the encashment option is exercised,
- (iv) the retention of assets in a PRSA (known as a vested PRSA), the deemed encashment amount is the lesser of the value of the assets retained in the vested PRSA at the time the BCE event occurred and the value of the assets in the vested PRSA at the date the encashment option is exercised,
- (v) in any other case, the deemed encashment amount is nil. This covers a pension or annuity already in payment and situations where an individual took a transfer of the pension benefits as a taxable lump sum.

The deemed encashment amount is to be regarded as income of the individual for the tax year in which the encashment option is exercised and is to be charged to income tax in accordance with **subsection (16)**, i.e. under Case IV of Schedule D. **(14)(c)**

Where the encashment option is to be exercised in respect of part of a private sector scheme that has already been drawn down, a formula ($A \times B/C$) is used to determine the deemed encashment amount for taxation purposes. **(15)(a) & (b)**

The formula basically multiplies the value of the relevant BCE (i.e. “A”) by the “fraction” of the individual’s accrued rights under the scheme that are being encashed.

The deemed encashment amount is to be regarded as income of the individual for the tax year in which the encashment option is exercised and is to be charged to income tax in accordance with **subsection (16)** i.e. under Case IV of Schedule D. **(15)(c)**

Any deemed encashment amount is to be charged to income tax under Case IV of Schedule D. **(16)(a)**

The relevant manager (i.e. the QFM of the ARF and AMRF and the PRSA administrator of the vested PRSA) is responsible for deducting income tax at the higher rate for the tax year in which the encashment option is exercised and for remitting the tax to the Collector General. **(16)(b) & (c)**

The relevant fund manager, in deducting tax from a deemed encashment amount relating to an ARF, AMRF or vested PRSA, must include the amount of tax relating to a lump sum paid under the rules of the scheme from which the ARF or AMRF assets were **(16)(d)(i)**

transferred or under the rules of the PRSA within which the PRSA assets were retained.

A “tax credit” will apply in respect of standard rate income tax paid on the lump sum against encashment tax on the lump sum where the whole of the lump sum paid is subject to the encashment option and encashment tax. The tax credit will be given where the relevant manager meets the condition set out in **subparagraph (d)(iii)**. (16)(d)(ii) (I)

A “tax credit” will apply in respect of a portion of the standard rate income tax paid on the lump sum against encashment tax on the lump sum where only part of the lump sum paid is subject to the encashment option and encashment tax. The formula in **subsection (15)** is used to determine the correct portion of the standard rate income tax paid on the lump sum that may be credited against the encashment tax. The tax credit will be given where the relevant manager meets the condition set out in **subparagraph (d)(iii)**. (16)(d)(ii) (II)

The condition referred to in **subparagraphs (d)(ii)(I) & (II)** is that the relevant manager must obtain a certificate from the administrator of the private sector scheme (who originally paid the lump sum and deducted income tax at the standard rate) giving the information set out in **paragraphs (a) to (e)** of **section 787RA(2)**. The information required in the certificate is – (16)(d)(iii)

- (a) The name and address of the administrator,
- (b) The individual’s full name and address and PPS number,
- (c) Details of the pension arrangement under which the lump sum giving rise to the excess lump sum was paid,
- (d) Date of payment of the lump sum,
- (e) Details of the amount of tax that the administrator has to account for in relation to the lump sum.

Where credit is given for standard rate income tax paid on a lump sum against encashment tax, the tax on the lump sum is not available for credit against any chargeable excess tax that may arise in respect of that individual (as provided for by **section 787RA**). (16)(d)(iv)

The certificates referred to in **subparagraph (d)(ii)** must be retained for a period of 6 years and produced to Revenue if required. (16)(d)(v)

The relevant manager must satisfy the payment of the encashment tax from the assets of the ARF/AMRF or PRSA and to the extent that the amount cannot be met, or met in full in that way, the balance is to be discharged in accordance with **subsection (18)**. (17)

To the extent that the encashment tax cannot be met in full from the assets in the ARF, AMRF or PRSA, the unpaid tax is deemed to be tax on a chargeable excess and passes on to the public sector pension scheme administrator to be paid at the time the first BCE in respect of the individual arises under his or her public sector scheme (i.e. at the point of retirement) and will be a debt due to the administrator from the individual, or where the individual is deceased, from his or her estate. (18)(a)

The public sector pension scheme administrator will be reimbursed by the individual for the payment of the unpaid tax in the manner provided for in **section 787(7)**. (18)(b)

An amount of encashment tax deemed to be chargeable excess tax in this way will not be treated as chargeable excess tax for any other purpose i.e. it will not be possible to credit tax that might arise on the public sector lump sum against it under the provisions of **section 787RA**. (18)(c)

Where the encashment option is exercised in relation to a private sector scheme that has already been drawn down, in circumstances where a lump sum was taken and the remaining benefits were taken as a pension, annuity or transferred to the individual as a taxable lump sum (i.e. there is no QFM or PRSA administrator to deduct and pay over the tax to the Collector General), the deemed encashment amount (which is charged to tax under Case IV of Schedule D by virtue of **subsection (16)**) is to be taxed at the higher rate for the year in which the encashment option is exercised. In such cases the encashment tax is to be treated as “unpaid tax” and passed on to the public sector pension scheme administrator to be discharged as “tax on a chargeable excess”. However, recovery of such tax by the public sector scheme administrator may only be made from the gross public sector pension payable to the individual and not from the individual’s lump sum from the public sector scheme. **(19)(a)**

The provisions of **subsection (16)(d)(ii)&(iv)** will apply, with any necessary modifications, to encashment tax referred to in **subsection (19)(a)**. This means that a credit can be taken by the individual for standard rate income tax paid on the lump sum in respect of which the encashment option is exercised (or a credit for the appropriate amount of the lump sum tax where a partial encashment is involved) against encashment tax on the deemed encashment amount relating to the lump sum. To qualify for this credit, the individual must obtain a certificate from the administrator of the private sector scheme who originally paid the lump sum to the individual and deducted lump sum tax at the standard rate from it, giving the information set out in **paragraphs (a) to (e) of section 787RA(2)**. **(19)(b)**

The provisions of **section 787R(6)** apply to a certificate referred to in **paragraph (b)** - this means that the individual must retain the certificate for a period of 6 years and produce it to Revenue if requested. **(19)(c)**

Where the encashment option is exercised in relation to all, or part, of the assets in an ARF, AMRF or vested PRSA the assets, or the relevant part of the assets, will no longer be considered as assets in the ARF, AMRF or vested PRSA from the date of the exercise of the option and, therefore, can no longer benefit from the “gross roll-up” regime that applies to such funds. **(20)**

Where the encashment option is exercised, the encashment amount, or the deemed encashment amount, will not be considered as a BCE for SFT or PFT purposes and, in the context of the transitional arrangements, where a private scheme has already been crystallised the BCE events concerned will be disregarded (in whole or in part) for SFT/PFT purposes in the future. **(21)(a)**

The encashment amount, or the deemed encashment amount, transferred to the individual following the exercise of the encashment option cannot be used as a contribution to, or premium in respect of, a tax relieved pension arrangement. **(21)(b)**

The encashment amount, or the deemed encashment amount, is not to be considered as a distribution of the assets of an ARF, AMRF or PRSA and, therefore, cannot be taxed by the QFM or PRSA administrator, as if they were a distribution. **(21)(c)**

Where an encashment option is exercised in relation to a private sector scheme that has already been crystallised and the deemed encashment amount is the amount, or part of the amount, of the tax free lump sum paid, the lump sum (or the relevant part of it) will be disregarded for the purpose of determining excess lump sum tax (within the meaning of **section 790AA**) on a lump sum that is paid to that individual on or after 8 February 2012. **(22)**

The individual and the pension scheme administrator (including the administrator of the public sector scheme where appropriate) or the QFM/PRSA administrator are jointly and **(23)(a)& (b)**

severally liable for the tax due on the encashment amount and this applies whether or not any one of them is non-resident.

787TB Penalties

This section provides for a penalty where any person fails to comply with any of the obligations imposed by *Chapter 2C*, any regulations made under it, and any obligations imposed by *Schedule 23B*. The penalty will apply for each separate failure.

787U Regulations

This section provides for the making of regulations by Revenue in relation to *Chapter 2C* (1) & (2) prescribing the procedure to be adopted in giving effect to the Chapter and providing generally as to the administration of the Chapter. The regulations may include provisions for specifying for the purpose of the Chapter the person who shall be treated as the administrator of a Public Sector pension scheme. Regulations made must be laid before the Dáil with the usual provisions for annulment of the regulations by way of resolution passed within 21 sitting days.

CHAPTER 3

Purchased life annuities

Overview

This Chapter provides that certain purchased life annuities are to be treated for tax purposes as containing both a capital and an income element with only the income element being chargeable to income tax. The capital element of an annuity is to be determined by way of a specified formula.

788 Capital element in certain purchased annuities

Summary

This section provides that, in the taxation of certain purchased life annuities, the part of each annual payment representing an estimated capital content is to be relieved from income tax and that only the balance is to be regarded as constituting income chargeable to income tax. The capital element of a payment is to be determined by the use of a specified formula.

Details

“life annuity” includes not only an annuity payable to a person for his/her life, but also (1) an annuity that may in certain contingencies end before or continue after his/her death. The term for which the annuity is payable must be ascertainable only “by reference to” the end of a human life. Broadly, therefore, the expression embraces annuities payable for life (including joint lives and survivorship annuities), guaranteed annuities payable for life or for a specified term (whichever is the longer) and annuities payable for life or until some specified event (for example, marriage or attainment of certain age), whichever is the shorter period.

“purchased life annuity” is a life annuity granted, in consideration of money or money’s worth, in the ordinary course of a business of granting annuities on human life.

The section does not apply to — (2)

- an annuity which, apart from the section, would be regarded as consisting partly of the repayment of a capital sum,

- an annuity purchased in connection with a “sponsored superannuation scheme” as defined in *section 783*,
- an annuity payable under substituted contracts within *section 786*,
- an annuity purchased, wholly or partly, by premiums or payments eligible for relief under *section 787* (relief for retirement annuity contracts),
- an annuity purchased (for example, from an assurance company) in pursuance of a direction in a will, or purchased to provide for an annuity payable by virtue of a will or settlement out of income of property disposed by the will or settlement, whether or not there is power under the will or settlement to resort to capital, and
- an annuity purchased, wholly or partly, out of assets which, at the time of purchase of the annuity, were assets in an approved retirement fund within the meaning of *section 784A* or in an approved minimum retirement fund within the meaning of *section 784C*.

Purchased life annuities, to which the section applies, are treated as containing a capital element which is not to be treated as an annual payment or in the nature of an annual payment. However, the capital element is to be taken into account in computing trading profit or losses where a lump sum payment would be taken into account (for example, in the computation of the trading profit or loss of a dealer in annuities). (3)

The capital element in each payment of an annuity is taken to be a fixed proportion of the payment equal to the proportion that the purchase price of the annuity bears to its actuarial value. In the straightforward type of case the capital element is arrived at by the following formula — (4)

$$\frac{\text{Capital element in annuity}}{\text{Total amount of annuity}} \quad \text{—} \quad \frac{\text{Amount of capital laid out in purchasing the annuity}}{\text{Actual value of the total annuity payments when the first of them begins to accrue}}$$

Where a payment is given both for the grant of a life annuity and for some other benefit, the consideration for the annuity is to be taken to be a part of the total arrived at by a just apportionment. However, a right to a return of part of the consideration for an annuity is not regarded as being for some other benefit. If, for example, a contract provided for an immediate annuity and the return, on the death of an annuitant within a specified period, of a sum not exceeding the balance of the consideration after deducting the annuity payments made, the entire consideration would be regarded as consideration for the grant of the annuity. If, on the other hand, the contract provided for an immediate annuity and the payment of a definite fixed sum on the death of the annuitant at any time, apportionment of the consideration would be necessary. (5)(a)

Where the amount of the consideration purporting to have been given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the considerations given for the annuity and the other matter must be aggregated and treated as one entire consideration given for both. The entire consideration is then apportioned as above. For example, the amount of the premium, or series of premiums, payable by a person under an annuity contract might affect, or be affected by, the rate of premium payable by him under a life assurance policy with the same assurance company. (5)(b)

The actuarial value of annuity payments is to be taken to be their value as at the date on which the first of the payments begins to accrue. If, for instance, an annuity is payable half-yearly in arrears, the date on which the calculation is to be made is 6 months before the first half-yearly payment. The actuarial value at that date is to be determined — (5)(c)

- in accordance with the prescribed tables of mortality (that is, prescribed by the Revenue Commissioners by Regulation under *section 789*), and
- without discounting any payment for the time which will elapse between the date

on which the valuation is being made and the date on which the payment falls due.

In other words, the rate of interest is 0% and the actuarial value for the purposes of the calculation is the total amount of the payments expected to be made.

Where a person, making a payment in respect of an annuity, is notified in the prescribed manner (that is, in accordance with the provisions of the Income Tax (Purchased Life Annuities Regulations, 1959)) as to whether the annuity is a purchased life annuity to which the section applies and as to the amount, if any, of the capital element, that notice governs the rights and obligations of the person as to the deduction of tax from the payment. If no such notice is issued the person must regard the annuity as not being a purchased life annuity to which the section applies and must deduct tax from the full amount of the payment. (If it is subsequently established that the annuity contains a non-taxable capital element, the annuitant can claim an appropriate repayment of tax from Revenue). (6) & (7)

A person, other than a company within the charge to corporation tax, paying annuities, is to be reimbursed any tax which, but for the section, he/she could have deducted and retained (from the capital element) when making payments. (8)

The section applies to life annuities whenever purchased or commencing. (9)

789 Supplementary provisions (Chapter 3)

This section contains a number of “machinery” provisions in relation to purchased life annuities. The amount, if any, of the capital element of an annuity is to be determined by the inspector; but with a right of appeal to the Appeal Commissioners anywhere a person is aggrieved by decision of the inspector. The Revenue Commissioners have general power to make regulations for determining procedure and prescribing anything that has to be prescribed under the Chapter. The regulations made under this provision are the Income Tax (Purchased Life Annuities Regulations, 1959 (S.I. No. 152 of 1959)). There is a penalty of €3,000 for making a false claim, or for aiding and abetting a false claim.

CHAPTER 4 *Miscellaneous*

790 Liability of certain pensions, etc to tax

This section provides that any pension, annuity or other annual payment which is paid to an individual who has ceased to hold an office or employment, or which is paid to the individual's widow, widower, surviving civil partner, children, relatives or dependants, or to the children of the individual's surviving civil partner, is chargeable to income tax notwithstanding that it is paid voluntarily or may be discontinued.

790A Limit on Earnings

This section provides that, for the purposes of giving relief to an individual under *Chapters 1, 2, 2A and 2B*, the aggregate of the amounts, if any, of income – taken into account separately for each of the relevant reliefs – is not to exceed an earnings limit as determined by the formula in *subsection (2)*. (1)

The earnings limit is determined by the formula – (2)

$$A \times B$$

where –

A is the earnings limit for the year of assessment immediately preceding the relevant year, and

B is the earnings adjustment factor designated by the Minister for Finance.

Where the Minister for Finance does not designate an earnings adjustment factor then B will be 1.

Notwithstanding *subsection (2)*, the earnings limit for 2009 is €150,000. (3)

Notwithstanding *subsection (2)*, the earnings limit for 2011 is €115,000². (4)

Notwithstanding *subsection (2)* the earnings limit for 2010 is deemed to be €115,000 for the purpose of determining how much of a contribution or qualifying premium, as the case may be, paid by an employee or an individual in the year of assessment 2011, is to be treated by virtue of *section 774(8), 776(3), 787(7) or 787C(3)*, as paid in the year of assessment 2010. (5)

Those sections allow an individual who pays a contribution or a qualifying premium in respect of a retirement benefit scheme or an RAC/PRSA after the end of a tax year but on or before the return filing date for that tax year to elect to have the contribution or premium treated as if paid in the earlier year.

790AA Taxation of lump sums in excess of the tax free amount

Summary

This section provides for the imposition of a limit on lump sum payments that can be made tax-free on or after 7 December 2005 under various pension arrangements. It replaces an earlier version of the same section.

As and from 1 January 2011, the lifetime tax-free limit on all retirement lump sums paid to an individual on or after 7 December 2005 is €200,000. This limit applies to a single lump sum or, where more than one lump sum is paid to an individual over time, to the aggregate value of those lump sums.

Amounts in excess of this tax-free limit (the “excess lump sum”) are subject to tax in two stages. The portion between €200,000 and €500,000 is taxed under Case IV at the standard rate of tax* while any portion above that is treated as emoluments and taxed under Schedule E at the individual’s marginal rate of tax.

*For lump sums paid between 7 December 2010 and 31 December 2013, the upper limit of the portion taxed under Case IV was €575,000.

Details

Subsection (1) sets out the definitions and other assumptions underpinning the section. (1)
For the most part these are self-explanatory but the following points should be noted.

For the purposes of the section the term “administrator” is given a broad definition given the range of relevant pension arrangements (as defined) that it is intended to cover. It is defined to include, in particular, administrators of private sector occupational pension schemes, retirement annuity contracts – normally Life Assurance Companies – and PRSA administrators. (1)(a)

“relevant pension arrangement” is defined to include:

- All Revenue approved occupational pension schemes. This includes AVC arrangements.
- All Revenue approved retirement annuity contracts and trust schemes for professionals such as Solicitors, Accountants and Dentists. It is possible for a

² Tax Briefing issues 74 & 79 contained articles on the application of the earnings limit.

representative body to establish under trust a group scheme to provide **section 784** insurance contract type benefits – the body must comprise or represent the majority of individuals so engaged in the State.

- All PRSA contracts.
- Qualifying overseas pension plans.
- All public service pension schemes as defined in the Public Service Superannuation (Miscellaneous Provisions) Act 2004.
- All statutory schemes – that is schemes established by or under any enactment. This includes all statutory schemes that fall outside of the definition of public service pension scheme as mentioned above.

The “standard chargeable amount” is determined by the formula-

$$\frac{(\text{SFT}) - \text{TFA}}{4}$$

where SFT is the standard fund threshold for the year of assessment in which the lump sum is paid and TFA is the tax free amount. For 2014 the standard chargeable amount is €300,000, i.e. the difference between 25% of the standard fund threshold of €2 million (€500,000) and the tax-free amount (€200,000).

The “specified date” is 1 January 2011.

The “tax free amount” is €200,000.

A lump sum means a lump sum that is paid to an individual under the rules of a relevant pension arrangement as defined. The lump sum can be made by way of commutation of part of a pension or part of an annuity or otherwise (e.g. in the public sector by way of the payment of a specified amount in addition to a pension). (1)(b)(i)

Commutation of part of a pension or annuity includes a situation under the ARF options whereby the lump sum is calculated by way of commutation of part of the pension or part of the annuity that would otherwise be payable if the ARF option had not been taken. (1)(b)(ii)

References in the section to a lump sum that is paid to an individual include references to a lump sum that is obtained by, or given or made available to, an individual. By extension words used to describe lump sums previously paid etc. will be construed accordingly (1)(c)

Where two lump sums are paid on the same day, the one that is paid earlier is treated as having been paid before the later one for the purposes of **subsection (1)(e)**. Each lump sum, therefore, has to be tested against the tax-free amount in its own right in accordance with the requirements of **subparagraphs (i) and (ii) of paragraph (e)**, to determine if there is an excess lump sum. (1)(d)(i)

A lump sum will not be treated as being paid at the same time as one or more other lump sums and if such is the case then the individual to whom the lump sums are paid must decide which of the lump sums is to be treated as being paid first etc. for the purposes of the section. (1)(d)(ii)

The rules for determining when an excess lump sum, if any, arises in relation to a lump sum payment (current lump sum) made on or after the specified date (i.e. 1 January 2011) and which is treated as income under **subsection (2)** and taxed under **subsection (3)**, are as follows: (1)(e)

- Where the lump sum payment is the first lump sum to be paid to the individual on or after 7 December 2005 (the date the taxation of retirement lump sums was (1)(e)(i)

originally introduced), the excess lump sum is the amount by which the lump sum exceeds the lump sum limit of €200,000.

For example, if a retirement lump sum of €600,000 was paid in January 2014 (being the first such lump sum) then the excess lump sum is €400,000, i.e. €600,000 - €200,000 (the tax-free amount).

- Where one or more lump sums have been paid on or after 7 December 2005 but before the current lump sum, then where the sum of the earlier lump sum payments is less than the lump sum limit, the excess lump sum is the earlier lump sums and the current lump sum added together minus the lump sum limit. (I)(e)(ii) (I)

For example, a lump sum is paid in January 2011 of €50,000, a second one paid in June 2012 of €100,000 and the current one paid in February 2014 of €180,000. The excess lump sum is therefore -

- The sum of the earlier lump sums (€50,000 + €100,000) = €150,000
- Plus the current lump sum = (€150,000 + €180,000) = €330,000
- Minus the lump sum limit = (€330,000 - €200,000) = €130,000.

- Where the sum of the earlier lump sums is equal to or greater than the lump sum limit then the excess lump sum is the amount of the current lump sum. (I)(e)(ii) (II)

For example, a lump sum was paid in February 2008 of €150,000, a second in July 2009 of €170,000 and a third (the current lump sum) in January 2011 of €200,000. As the sum of the earlier lump sums – €320,000 (€150,000 + €170,000) – exceeds the tax-free amount of €200,000 the entire current lump sum is an excess lump sum.

Where a lump sum is paid to an individual on or after 1 January 2011, the excess lump sum is regarded as the income of the individual for the year in which it is paid and is subject to tax in accordance with **subsection (3)**. (2)

The first portion of the excess lump sum (i.e. the portion between €200,000 and €500,000) is charged to tax under Case IV of Schedule D at the standard rate of income tax in force (currently 20%) when the lump sum is paid. The portion, if any, of the excess lump sum above the standard chargeable amount (i.e. above €500,000) is regarded as profits or gains arising from an office or employment and is charged to tax under Schedule E at the marginal rate of tax. (3)

Paragraph (a) of subsection (3) sets out the rules for taxing a retirement lump sum which is received on or after 1 January 2011 where- (3)(a)

- no other lump sum has been paid to the individual since 7 December 2005, or
- where one or more lump sums has been paid since 7 December 2005 which, in aggregate, are less than, or equal to, the tax-free amount.

The part of the excess lump sum that doesn't exceed the standard chargeable amount is taxed under Case IV of Schedule D at the standard rate.

The part of the excess lump sum that exceeds the standard chargeable amount is regarded as profits or gains arising from an office or employment and is taxed in accordance under Schedule E (relevant emoluments).

For example, a lump sum is paid in June 2012 of €200,000 and the current lump

sum is paid in January 2014 of €600,000.

In accordance with **subsection (1)(e)(i)(II)**, the excess lump sum is €600,000.

The earlier lump sum, €200,000 plus the current lump sum = (€200,000 + €600,000) = €800,000 minus the tax-free amount = (€800,000 - €200,000) = €600,000.

As the excess lump sum exceeds the standard chargeable amount of €300,000 (€500,000 - €200,000 = €300,000), the excess lump sum is taxed as to €300,000 under Case IV at the standard rate and the remaining €300,000 is taxed as emoluments under Schedule E.

Paragraph (b) of subsection (3) sets out the rules for taxing a retirement lump sum which is received on or after 1 January 2011 where one or more lump sums has been paid since 7 December 2005 which, in aggregate, exceed the tax-free amount. **(3)(b)**

Where “the first mentioned amount” (i.e. the amount by which a lump sum or lump sums paid prior to the current lump sum exceed the tax free amount) is less than the standard chargeable amount, then – **(i)**

- The part of the excess lump sum that doesn’t exceed the difference between the standard chargeable amount and the first mentioned amount is taxed under Case IV of Schedule D at the standard rate.
- The part of the excess lump sum that exceeds the difference between the standard chargeable amount and the first mentioned amount is regarded as “relevant emoluments” and is charged to tax under Schedule E.

For example, a lump sum is paid in June 2012 of €100,000, a second lump sum is paid on 5 January 2013 of €300,000 and a further lump sum (the current lump sum) is paid on 25 January 2014 of €600,000.

The excess lump sum in this case is €600,000, as the sum of the earlier lump sums exceeds the tax free amount.

The “first mentioned amount” is €200,000 (i.e. €100,000 + €300,000 = €400,000 - €200,000 = €200,000).

The first mentioned amount is €100,000 lower than the standard chargeable amount of €300,000.

€100,000 of the excess lump sum of €600,000 is charged to income tax under Case IV of Schedule D at the standard rate.

The remaining €500,000 is “relevant emoluments” of the individual and is taxed under Schedule E.

In all other situations, the excess lump is regarded as “relevant emoluments” of the recipient. **(ii)**

For example, A lump sum is paid on 5 January 2014 of €800,000, and a further lump sum (the current lump sum) is paid on 25 January 2014 of €700,000.

The excess lump sum in this case is €700,000 (the whole of the current lump sum), as the earlier lump sum exceeds the tax-free amount.

As the “first mentioned amount”, €600,000 (€800,000 minus €200,000), exceeds the standard chargeable amount, the entire excess lump sum of €700,000 is “relevant emoluments” and taxed under Schedule E.

The pension administrator and the individual to whom the lump sum is payable are jointly and severally liable for the payment of the tax on the portion of the lump sum charged under Case IV of Schedule D. This means that payment by one will discharge the liability of the other to the extent of the payment made. **(4)**

The administrator and the individual to whom the lump sum is paid are liable for the charge referred to in **subsection (4)** irrespective of whether either or any of them is or are **(5)**

resident or ordinarily resident in the State.

Where all or part of the tax charged under Case IV of Schedule D 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)(a)

In the case of public sector administrators, any tax paid will be a debt owing to the administrator from the individual pensioner or his or her estate. (6)(b)(i)

The public sector administrator may appropriate so much of the lump sum arising under the particular pension scheme as may be necessary for the reimbursement of the tax paid. The individual must allow such an appropriation. (6)(b)(ii)

The scheme administrator must deduct tax from an excess lump sum in accordance with *section 790AA* and remit the tax to the Collector-General. (7)(a)

In relation to the portion of the lump sum that is regarded as income of an individual and chargeable under Case IV (the portion between the tax-free amount of €200,000 and €500,000) - (7)(b)(i)

- It does not form part of the individual's total income,
- It is to be computed without regard to any deductions allowed in computing income for the purposes of the Tax Acts,
- No reliefs, deductions or tax credits may be set against the amount so charged or against the tax payable on that amount, and
- The income tax exemption limits and marginal relief will not apply as regards income tax so charged.

In effect the charge under Case IV applies to the whole of that part of the excess lump sum that does not exceed the standard chargeable amount and nothing may be deducted or set off to reduce the tax due. It effectively ring fences the charge to tax.

The portion of a retirement lump sum in excess of the standard chargeable amount is regarded as profits or gains arising from an office or employment and is taxed under Schedule E as emoluments to which PAYE applies. The administrator must deduct tax at the higher rate of tax on the full amount treated as emoluments unless the administrator has received a revenue payroll notification from Revenue in respect of the individual. (7)(b)(ii)

A pension administrator who deducts tax from that part of an excess lump sum that is charged under Case IV of Schedule D must make a return in respect of that part of the excess lump sum 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 return must contain the following information – (8)

- (a) The name and address of the administrator,
- (b) The individual's full name and address and PPS number,
- (c) Details of the pension arrangement under which the lump sum giving rise to the excess lump sum was paid,
- (d) Details of the amount and the basis of calculation of the excess lump sum, and
- (e) Details of the amount of tax that the administrator has to account for in relation to

the lump sum.

Form 790AA should be used for this purpose.

The tax which an administrator deducts under Case IV of Schedule D in accordance with this section (referred to as ‘relevant tax’) and which must be included on a return in accordance with **subsection (8)** must be paid by the administrator to the Collector-General, (without the issue of a notice of assessment) and is due at the same time as the return form is due. Provision is made, however, for assessing the person who is liable for the relevant tax where it is not fully paid by the due date. (9)

Where the amount of tax has not been included in a return or where an officer of the Revenue Commissioners is dissatisfied with the return then he or she may make an assessment on the individual for the relevant tax in question and the due date for the purpose of interest on the unpaid tax is the date by which the return was due. (10)

Where an amount is incorrectly included in a return as an excess lump sum, an officer of the Revenue Commissioners may make assessments, adjustments or set offs to secure, as far as possible, that the liability to tax including any interest on unpaid tax would be the same as if the amount had not been included. (11)

Any relevant tax assessed will be due within one month of the issue of a notice of assessment (unless the tax is due earlier under **subsection (9)**) subject to an appeal against the assessment or an application by the scheme administrator under **subsection (14)**. However, no appeal or application will affect the date when any amount is due under **subsection (9)**. (12)

The standard late payment provisions apply in relation to any part of an excess lump sum that is charged to tax under Case IV of Schedule D. Where interest is payable on any tax charged the provisions of **section 1080(2)(b)** will not apply. (13)

A person aggrieved by an assessment made under this section may appeal by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of assessment. The appeal is heard and determined in the manner provided for in **Part 40A**. (13A)

A person may not appeal if he or she has not filed a self assessed return and paid the amount of appropriate tax due in accordance with their own self assessment (where the person was required to file a return).

An administrator who reasonably believed that a lump sum did not give rise to an excess lump sum (and therefore no income tax liability) or that the amount of the liability was less than it should have been may apply in writing to the Revenue Commissioner to be discharged from any liability arising from the error. (14)(a)

Where, having received an application referred to in **paragraph (a)**, the Revenue Commissioners are of the opinion that it would not be just and reasonable for the administrator to be made liable for the tax they may discharge the administrator and issue notification of that discharge in writing. (14)(b)

Where the administrator is so discharged, the liability falls on the individual in question. (14)(c)

Every return required under this section is to be in a form specified or authorised by the Revenue Commissioners and must include a declaration that the form is correct and complete. (15)

The provisions of **section 787G(2)** apply to any income tax being deducted from an excess lump sum payable by a PRSA administrator. **Section 787G(2)** applies to any tax that a PRSA administrator is required to deduct from assets made available to the beneficial owner of the PRSA. It provides that the beneficial owner must allow such (16)

deduction of tax and where the assets of the PRSA are insufficient to discharge the tax the excess will be an amount due to the PRSA administrator from the beneficial owner or his or her personal representatives where the beneficial owner is deceased.

An individual who receives a lump sum from a qualifying overseas pension plan must pay tax on the excess lump sum under Case IV of Schedule D at the rate, or rates of income tax that would apply if the lump sum was received from a pension plan other than a qualifying overseas pension plan. (17)

The provisions of the section do not apply to –

(18)(a) &
(b)

- A death in service lump sum payable by an occupational or statutory pension scheme to the widow/widower, surviving civil partner, children, children of the civil partner or personal representatives of a deceased individual, or
- the balance of a lump sum paid at normal preserved pension age to an individual under the Incentivised Scheme of Early Retirement in accordance with the Department of Finance Circular 12/09 entitled Incentivised Scheme of Early Retirement.

Section 781 shall have effect notwithstanding the provisions of this section. **Section 781** provides, inter alia, that where a scheme rule provides for full commutation of a pension under what is known as a “death’s door” concession (a concession for individuals who are in exceptional circumstances of ill health) the commuted pension is taxed at a rate of 10% to the extent that it exceeds any lump sum payable. This subsection simply ensures that the lump sum paid in these circumstances, will not be subject to tax on any “excess lump sum” amount. (19)

790B Exemption of cross-border scheme

Summary

The EU Directive (2003/41/EC of 3 June 2003³) sets out a framework for the operation and supervision of occupational pension schemes in all EU Member States. It also allows occupational pension scheme providers located in one EU Member State to provide, subject to certain requirements, retirement benefits cross-border to undertakings located in another EU Member State. This section provides that where an institution for occupational retirement provision established in the State is authorised and approved by the “competent authority” in the State under the Directive, i.e. the Pensions Authority, to accept contributions from an undertaking located in another EU Member State in respect of a retirement benefits scheme established under irrevocable trusts, then certain tax exemptions will apply in relation to the scheme.

Details

Subsection (1) is concerned with the interpretation of terms used in the section. The definitions are generally self-explanatory but the following call for comment — (1)

“Competent authority” is the national authority designated to carry out the duties provided for in the EU Pensions Directive – in Ireland’s case, the Pensions Authority acts in that capacity.

“Scheme” means an occupational pension scheme established in the State under

³ This Directive is repealed with effect from 13 January 2019 by EU Directive (2016/2341 of 14 December 2016) and the necessary amendments to this section are subject to a Ministerial Order.

irrevocable trusts, for the purposes of providing retirement benefits. The only pension structure that can be offered “cross-border” is, therefore, a trust based one.

“Undertaking” is defined broadly in the EU Pensions Directive and, consequently, in the section, and includes any undertaking or other body, which acts as an employer, or as an association of, or representative body for, members of a particular trade or profession. It can, therefore, constitute a company or collection of companies, a trade association or collection of trade associations (i.e. an industry-wide scheme for self-employed persons) or another body or bodies. The definition in the Directive and the section is intended to include not only employer/employee occupational pension schemes but also occupational schemes which provide for benefits to self-employed persons where the home state (i.e. the other EU Member State) permits this. Thus, industry wide schemes set up, for example, for electricians or doctors would be covered.

Subsection (2) provides that the tax exemptions in **subsections (3) and (4)** will apply to any scheme (as defined) where the trustees of the scheme have received from the “competent authority” (i.e. the Pensions Authority) an authorisation and an approval to operate cross-border, so long as the authorisation has not been revoked. (2)

Income from a cross-border scheme’s investments (including dealings in financial futures and traded options) or deposits and from certain underwriting commissions are exempt from income tax so long as Revenue is satisfied that the investments or deposits are being held for and the underwriting commissions are applied for, the purposes of the scheme. The exemption for underwriting commissions applies only to those that would, but for the exemption, be chargeable to tax under Case IV of Schedule D, i.e. casual transactions. Accordingly, it does not apply to the profits of an organised trade of underwriting which would be chargeable under Case I of Schedule D. (3) & (4)

Further exemptions for cross-border schemes apply (as is the case for pension schemes generally) in respect of Dividend Withholding Tax (**section 172A(1)**), DIRT (**section 256(1)**), and exit tax in relation to an investment undertaking (**section 739B(1)**). (An exemption from CGT is provided for separately in **section 608**). (4)

790C Relief for the pension deduction under the Financial Emergency Measures in the Public Interest Act 2009

The pension related deduction (PRD) payable by public servants under the Financial Emergency Measures in the Public Interest Act 2009 may be deducted from earnings assessable under Schedule E as an expense in the year of payment. PRD is not payable from 1 January 2019 and is replaced by the additional superannuation contribution (see section 790CA) from that date.

790CA Relief for additional superannuation contribution under Public Service Pay and Pensions Act 2017

The Additional Superannuation Contribution (ASC) which is payable by public servants under the Public Service Pay and Pensions Act 2017 may be deducted as an expense in computing the amount of income assessable under Schedule E in the year in which the contribution is paid. The ASC is payable by public servants from their pensionable pay from 1 January 2019.

790D Imputed distributions from certain funds

Summary

This section, which applies for the year 2012 onwards, provides for imputed distributions for both Approved Retirement Funds (ARFs) and vested Personal Retirement Savings Accounts (vested PRSAs) on a composite basis. Vested PRSAs comprise PRSAs where benefits have commenced, normally by way of a retirement lump sum being taken by the PRSA contributor and, from 25 December 2016 (the date Finance Act 2016 was passed), PRSAs in respect of which benefits have not commenced by the contributor's 75th birthday. Under this provision, where the aggregate value of the assets held in an ARF(s) and/or a vested PRSA(s) on 30 November each year is €2 million or less, the rate of the imputed distribution is 4% (where the individual is not aged 70 or over for the whole of the tax year), 5% (where the individual is aged 70 or over for the whole of the tax year) of the value of the assets, and where the aggregate value is in excess of €2 million the rate is 6%, regardless of age, of the entire aggregate value – not just the portion that exceeds €2 million.

The section applies to ARFs created on or after 6 April 2000 – the date that the existing gross roll-up regime for ARFs was introduced - and to PRSAs vested on or after 7 November 2002 - the date that PRSA products were introduced.

It only applies where the ARF or PRSA holder is 60 years of age or over for the whole of a tax year.

Prior to 2012, the imputed distribution regime related only to ARFs and was dealt with under *section 784A(1BA)*. Details of the legislation governing the earlier regime can be found in previous editions of the Notes for Guidance.

Details

Definitions

Subsection (1) sets out the definitions and other assumptions underpinning the section. (1) For the most part, these are self-explanatory but the following points should be noted.

“excluded distributions” - in determining the amount of an imputed distribution i.e. the specified amount, certain actual distributions made from an ARF/AMRF or PRSA can be deducted. These are referred to as “relevant distributions” and defined separately. The definition of “excluded distributions” sets out the type of actual distributions that are not to be treated as relevant distributions and, therefore, that cannot be deducted in determining the specified amount. These are essentially distributions that do not attract a tax liability in their own right - for example, transferring assets from one ARF to another beneficially owned by the same individual or a tax-free lump sum taken from a PRSA on vesting. The definition of “relevant distributions” specifically excludes the value of “excluded distributions”.

“other manager” relates to situations where an individual has more than one ARF and/or PRSA and they are managed by different qualifying fund managers (QFMs) and/or PRSA administrators. *Subsection (5)* allows the individual in such circumstances to appoint one of the QFMs or PRSA administrators as a “nominee” to undertake the requirements of the section and *subsections (7) and (8)* require the other manager or the

other managers to provide the nominee with certain information to allow the nominee to meet its obligations or failing that, for the other manager/managers to operate in a certain way.

“relevant distributions” means the aggregate value of the actual distributions from an ARF (and AMRF (Approved Minimum Retirement Fund)) and the value of PRSA assets made available to the PRSA owner (less the aggregate value of excluded distributions) which can be deducted in the formula for calculating the specified amount (i.e. the amount of the imputed distribution). In the case of distributions from ARFs/AMRFs, only such distributions made from ARFs/AMRFs set up since 6 April 2000 are relevant. This is the date from which the gross roll-up regime was applied to ARFs and AMRFs.

“specified amount” is the imputed distribution for a tax year and is computed by way of a formula.

Basically where the value of the assets in a relevant fund (i.e. all of the ARFs and vested PRSAs beneficially owned by an individual) on the specified date (30 November of a tax year) is €2m or less, the specified amount is equivalent to 4% where the individual is not aged 70 or over for the whole of the tax year, or 5% where the individual is aged 70 years or over for the whole of the tax year, of that value less any relevant distributions (i.e. actual distributions made in that year) from the relevant fund and where the value of the assets is greater than €2m the specified amount is equivalent to 6%, regardless of age, of the full value, not just on that part of the fund that exceeds €2m, less any relevant distributions.

The reference to “the value of assets retained by the PRSA administrator as would be required to be transferred to an AMRF” in the meaning of “A” in the formula is necessary so as to exclude from the base the assets that a PRSA administrator is obliged to “ring-fence” as if they were AMRF assets where the PRSA owner decides not to opt to transfer the PRSA assets to an ARF but to retain them in the PRSA. As the assets in an AMRF are specifically excluded from the specified amount calculation, this ensures that the “ring-fenced” PRSA assets are also excluded.

“vested PRSA” is

- a PRSA 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 (e.g. a retirement lump sum or taxed distribution) on or after 7 November 2002 (the date of introduction of PRSAs). In certain instances, the making available of PRSA assets will not constitute the vesting of the PRSA, e.g. where an amount is transferred to an ARF/AMRF or from one PRSA to another, or is made available to the personal representative of a deceased PRSA holder who dies before attaining age 75 and before any benefits have become payable),
- a PRSA 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
- a PRSA in respect of which the holder 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 holder or any other person, other than in

circumstances where part of the assets were transferred to another PRSA in the holder's name. The reference to a transfer to another PRSA ensures that individuals cannot avoid the deemed vesting of their PRSA by transferring some of their PRSA assets to another PRSA and claiming that the PRSA assets have been made available to another person, i.e. the administrator of the other PRSA.

A PRSA held by an individual who was 75 years of age before 25 December 2016 (the date Finance Act 2016 was passed), and from which benefits had not been taken on or before he or she attained that age, is deemed to become a vested PRSA on 25 December 2016. (1A)

Any reference in the section to the value of an asset in a relevant fund (other than cash) means the market value of the asset in question within the meaning of *section 548*. (2)

This section applies to any year of assessment in which the individual with the relevant fund is 60 or over for the whole of that year. (3)

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. This is in order that the appropriate separate taxing provisions applying to ARF distributions (*section 784A(3) & (7)(b)*) and to the making available of PRSA assets (*section 787G(1) & (2)*) will apply as appropriate. (4)

Several different scenarios are provided for – i.e. where the relevant fund consists solely of one or more ARFs, where it consists solely of one or more vested PRSAs and where there is a mixture of ARFs and vested PRSAs. In the latter scenario, the particular taxing regime will depend 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 they are not the same person and the individual appoints a “nominee” under *subsection (5)*, the taxing regime will depend 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.

The specified amount will be 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. This is to give sufficient time to QFMs and PRSA administrators to administer the regime.

An individual may appoint a “nominee” where his or her relevant fund comprises ARFs and/or PRSAs that are not managed or administered by the same QFM or PRSA administrator. The following scenarios may arise – the relevant fund can comprise of more than one ARF managed by different QFMs, more than one PRSA administered by different PRSA administrators, or one or more ARFs and one or more PRSAs managed and administered by different QFMs and PRSA administrators. (5)

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 either the 4% or 5% notional distribution to the relevant ARF(s) or PRSA(s) they manage/administer as provided for in *subsection (10)*.

The appointment of a nominee is compulsory where the relevant fund has a value greater than €2m as in such situations the QFM or PRSA administrator will not have sufficient

information to operate in isolation as, unless the ARF/PRSA that they manage is itself greater than €2m they won't know the appropriate rate to apply (i.e. 4%, 5% or 6%).

Where an individual appoints a nominee, he or she must advise the other QFMs and/or PRSA administrators of that fact and provide the name, address and telephone number of the nominee. Where the appointment of a nominee is compulsory (i.e. where the relevant fund has a value greater than €2m) 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. (6)

The other manager/managers 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 (i.e. by 14 December of a tax year). In the case of a PRSA fund, the certificates should exclude any amount retained by the PRSA administrator for AMRF purposes, as these do not form part of the asset base for the specified amount. The nominee must retain the records for 6 years for production to Revenue if required. (7)

Where the nominee receives a certificate or certificates from the other manager/managers, the nominee must determine the specified amount 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 will apply even if the nominee only gets some but not all of the required certificates. (8)

Where the relevant fund value is €2m or less and a nominee is appointed the following applies - (9)

- Where the nominee receives no certificates at all from the other fund manager or fund managers then the nominee and the other manager (or each of the other managers as the case may be) must determine the specified amount in respect of the ARFs/PRSAs that they manage in isolation, as if the individual's relevant fund comprised solely of the ARFs/PRSAs that each manages.
- Where the nominee has received some certificates but not all of them, the managers that failed to provide certificates must determine the specified amount in isolation as above. As the nominee will have received at least one or more certificates from the compliant manager or managers, the nominee must calculate the specified amount in accordance with **subsection (8)** in respect of the nominee and the other managers that provided certificates.

For situations where the relevant value of the assets in the individual's relevant fund is greater than €2m, the provisions of **subsection (9)** apply but any specified amount calculated in isolation is to be based on 6% of the value of the fund (as the relevant fund is greater than €2m). (10)

In situations where the individual's relevant fund comprises ARFs and/or PRSAs that are not managed or administered by the same QFM and/or PRSA administrator and because the value of the assets in the relevant fund does not exceed €2m, the individual opts not to appoint a nominee, each QFM and/or PRSA administrator must determine the (11)

specified amount in respect of the ARFs/PRSAs that they manage in isolation as if the individual's relevant fund comprised solely of the ARFs/PRSAs that each manage.

790E Taxation of certain investment returns to relevant pension arrangements

This section, which applies for the year 2015 onwards, provides that where ARF assets are used in the manner set out in section 784A(1B)(h) and the amount to be regarded as a distribution from the ARF for the purposes of *section 784A* is determined in accordance with *subsection (1B)(h) of that section*, the various provisions of *Part 30 of the TCA* that provide tax relief on income arising from pension scheme investments and *section 608(2) and (3) of the TCA* that provide relief on capital gains arising on pension scheme investments, do not apply to a pension investor (as defined in *section 784A(1B)(h)*), i.e. a pension scheme of a person connected to the ARF investor, where the circumstances described in that provision arise. These are that the pension scheme of the person connected with the ARF investor (e.g. an adult child, spouse etc. of the ARF investor) invests in the same fund, trust or scheme or sub-fund, sub-trust or sub-scheme as the ARF investor (or any other fund, trust or scheme etc.) and there is any arrangement whereby the return on the investment by the pension scheme investor is attributable in some fashion to the investment by the ARF investor.

Where this section applies, the trustees or the administrator of the pension investor, i.e. the connected person's pension scheme, are chargeable to income tax under Case IV of Schedule D on any income or capital gains arising on their investment.