Retirement Annuity Contracts

Chapter 21

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Table of Contents

21.1 Introduction

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

21.2 Eligibility

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

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

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

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

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

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

21.3 Tax relief

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

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

The age-related percentage limits are:

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

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

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

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

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

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

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

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

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

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

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

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

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

Tax relief is not transferable between spouses or civil partners.

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

- the chargeable annual payments to “descendants” in accordance with section 792 TCA may be computed as 5% of the provisional total income before deducting retirement annuity relief, and

- the retirement annuity relief in accordance with section 787 TCA may be computed as the appropriate age-related percentage limit of net relevant earnings after deducting the amount in respect of chargeable annual payments to “descendants” as computed.

21.4 PRSI and Universal Social Charge

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

21.5 Benefits on retirement

Benefits may be taken at any time after age 60, even if the individual is still working, but must be taken on or before the individual’s 75th birthday (see Paragraph 21.8 in relation to RAC benefits which are not taken on or before an individual’s 75th birthday). In certain occupations, benefits may be taken before age 60 but not before age 50, with the prior approval of Revenue. In cases of serious ill-health, benefits may be taken at any age provided the life office has received medical evidence to show that the individual is "permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted" (Section 784(3)(b) TCA).

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

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

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

21.6 Death benefits

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

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

21.7 Group schemes

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

21.8 Retirement benefits not taken on or before age 75

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

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

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

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