CHAPTER 28

IMPUTED DISTRIBUTIONS FROM APPROVED RETIREMENT FUNDS AND VESTED PRSAS

Revised September, 2015

Introduction

28.1

Section 790D TCA 1997, which applies for the year 2012 onwards, provides for a scheme of imputed distributions for both Approved Retirement Funds (ARFs) and vested PRSAs on a composite basis.

Prior to 2012, the imputed distribution regime applied only to ARFs created on or after 6 April 2000 (the date the existing gross roll-up regime for ARFs was introduced. Please refer to **Chapter 23** for further details).

This regime has now been extended to certain PRSAs vested on or after 7 November 2002 (the date PRSAs were introduced) and applies to a year of assessment where the ARF and/or vested PRSA holder is aged 60 years or over for that entire year.

Vested PRSAs

28.2

A 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 tax-free lump sum or taxed distribution) on or after 7 November 2002.

In certain instances the making available of PRSA assets does not constitute the vesting of the PRSA, i.e.

(i) an amount transferred to an ARF/AMRF,

(ii) an amount made available to a personal representative of the PRSA holder,

(iii) the transfer, before a tax-free lump sum is taken, from one PRSA to another PRSA or pension scheme of the owner.

The definition of a vested PRSA ensures that where assets are in a PRSA AVC, vesting is deemed to take place at the time benefits are taken from the main occupational pension scheme (i.e. at the point of retirement) as that is when AVC benefits are required to be taken.

Value of Assets

28.3

The value of an asset in a relevant fund (other than cash) is the market value of the asset in question within the meaning of *section 548 TCA 1997*. A 'relevant fund' means the assets in all of the ARFs and vested PRSAs beneficially owned by an individual on 30 November in a tax year.

Specified Amount

28.4

The imputed distribution for a tax year is referred to in *section 790D TCA 1997* as the specified amount and is computed by way of a formula:

$\frac{(A \times B)}{100}$ – C (where the amount so computed is greater than zero) and where –

A is the value of the assets in a relevant fund on 30 November for the year 2012 onwards, excluding the value of assets retained by a PRSA administrator as would be required to be transferred into an AMRF in accordance with an option to transfer PRSA assets to an ARF.

B is[1]–

- where the relevant value is not greater than €2m,
    a. 4, where the individual is not aged 70 years or over for the whole of the relevant tax year, or
    b. 5, where the individual is aged 70 years or over for the whole of the relevant tax year.

- 6, where the relevant value is greater than €2m.

C is the amount or value of any relevant distributions made in the tax year.

The reference to "the value of the assets retained by the PRSA administrator as would be required to be transferred to an AMRF" in the meaning of "A" excludes from the asset base the assets that a PRSA administrator is obliged to retain in the PRSA because the owner has not satisfied the specified income requirement or has not established an AMRF of the required amount. As the

[1] These rates were introduced in Finance Act 2014 and are effective from 1 January 2015. Prior to that date, where the relevant value was not greater than €2m, "B" was 5 irrespective of the age of the individual. Where the relevant value is greater than €2m, there is no change.

assets in the AMRF are specifically excluded from the specified amount calculation, this ensures that the retained PRSA assets are also excluded from the calculation.

This formula basically provides that where–

- the value of a relevant fund on the specified date is €2m or less, the specified amount is equivalent to–

  - where the individual involved is not aged 70 years or over for the whole of the relevant tax year, 4%, or
  - where the individual involved is aged 70 years or over for the whole of the relevant tax year, 5%

  of that value less the value of any relevant distributions (i.e. actual distributions from the ARF, any associated AMRF and PRSA assets made available to the PRSA owner after deducting excluded distributions in that year from the relevant fund),

- the value of the assets is greater than €2m, the specified amount is equivalent to 6% of the full value (i.e. not just on that part of the fund that exceeds €2m), less any relevant distributions.

For the most part, excluded distributions are essentially distributions that do not attract a tax liability in their own right, e.g. the transfer of assets from one ARF to another beneficially owned by the same individual, or a tax-free lump sum taken from a PRSA on vesting. As noted above, the value of excluded distributions is deducted in computing the value of relevant distributions. Excluded distributions are the following:

- imputed distributions themselves,
- transfers between ARFs of the owner and transfer from the owner's AMRF to a replacement AMRF,
- transactions by an ARF or PRSA that are regarded as distributions or the making available of PRSA assets,
- taking of a tax-free lump sum from a PRSA, transfers from a PRSA to an ARF or AMRF or to the deceased owner's estate and pre-vesting transfers to another PRSA or pension scheme of the owner, and
- use of ARF or PRSA assets to discharge an excess fund tax liability or to pay the chargeable excess tax share of a former spouse or civil partner of a member of a retirement scheme, the benefits from which are the subject of a pension adjustment order.

Depending on the nature of the relevant fund, the specified amount is regarded either as a distribution of that amount from an ARF or as the making available of PRSA assets of that amount to a PRSA contributor and separate taxing provisions apply as appropriate to ARF distributions (*section 784A(3) & (7)(b)*) and to the making available of PRSA assets (*section 787G(1) & (2)*).

For example, the specified amount of a relevant fund which consists solely of one or more ARFs or one or more vested PRSAs is regarded as a distribution from an ARF or the making available of PRSA assets respectively. Where there is a mixture of ARFs and vested PRSAs the particular taxing regime depends on whether the QFM and the PRSA administrator are the same person, in which case the specified amount is regarded as a distribution from an ARF.

Where the QFM and the PRSA administrator are not the same person and the individual appoints a nominee (see **paragraph 28.5**), the taxing regime depends on whether the nominee is a QFM, a PRSA administrator, or both, in which case the specified amount will be considered to be a distribution from an ARF, a PRSA and an ARF, respectively.

The specified amount is regarded as having been distributed or made available not later than the second month of the year of assessment following the year of assessment for which the specified amount is determined.

Please refer to **paragraph 28.9** in relation to the computation of the specified amount where *section 17(6) of the Finance Act 2013* applies and funds are held in fixed-term deposits.

Appointment of a nominee

28.5

An individual may appoint a nominee where his or her relevant fund comprises ARFs and/or PRSAs that are not all managed or administered by the same QFM or PRSA administrator.

The appointment of a nominee is <u>optional</u> where the relevant fund has a value of €2m or less. If no nominee is appointed, each QFM and PRSA administrator must operate in isolation and apply the 5% notional distribution to the relevant ARF(s) or PRSA(s) they manage/administer. Please refer to **paragraph 28.8** where an individual opts not to appoint a nominee.

The appointment of a nominee is <u>compulsory</u> 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 whether to apply the 4%, 5% or 6% rate.

An individual who appoints a nominee must advise the other QFMs and/or PRSA administrators of that fact and provide them with the name, 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.

Provision of certificate(s) to nominee

28.6

Where a nominee is appointed for any year, the other manager(s) must provide the nominee with a certificate for that year stating the aggregate value of the assets in, and relevant distributions from, the ARFs/PRSAs they manage within 14 days of the specified date (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 (see **paragraph 28.4**), as these do not form part of the asset base for the specified amount.

The nominee must retain these certificates for 6 years for production to Revenue, if required.

A nominee who receives a certificate or certificates from the other manager(s) must determine the specified amount (see **paragraph 28.4**) as if the value of the assets and the relevant distributions stated in each certificate so received were the value of assets in, and relevant distributions from, an ARF or a vested PRSA managed or administered by the nominee. This applies even if the nominee only gets some but not all of the required certificates (see **paragraph 28.7**).

Nominee receives some or no certificates

28.7

Where the relevant fund value is €2m or less –

- Where the nominee receives no certificates at all from the other fund manager(s) then the nominee and the other manager(s) must determine in isolation the specified amount in respect of the ARFs/PRSAs that they manage, i.e. 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 in isolation the specified amount as described in the preceding paragraph. As the nominee will have received at least one or more certificates from the compliant manager(s) the nominee must calculate the specified amount in accordance with *section 790D (8)* in respect of the nominee and the other managers that provided certificates (see end of **paragraph 28.6**).

These provisions also apply where the relevant fund value is greater than €2m except that any specified amount calculated in isolation is to be based on 6% of the value of the fund.

Nominee not appointed

28.8

Where an individual, whose relevant fund comprises ARFs and/or PRSAs that are not managed or administered by the same QFM and/or PRSA administrator, opts not to appoint a nominee because the value of the assets in the relevant fund does not exceed €2m, each QFM and/or PRSA administrator must determine in isolation the specified amount in respect of the ARFs/PRSAs that they each manage as if the individual's relevant fund comprised solely of those ARFs/PRSAs that each manage.

Computation of imputed distribution where funds are held in fixed-term deposits – alternative approach

28.9

As advised in **Chapters 23 and 24**, the specified income amount and the amount to be transferred to an AMRF were increased in Finance Act 2011 to €18,000 and €119,800 respectively and subsequently reduced to the previous lower limits by *section 17 Finance Act 2013*.

Section 17(6) Finance Act 2013 introduced measures to ensure that individuals who were subject to the higher specified income and AMRF limits which applied during the period 6 February 2011 to 26 March 2013 were not disadvantaged.

Firstly, where such individuals have specified income of at least €12,700 on or after 27 March 2013 (the date of passing of Finance Act 2013) any AMRF immediately becomes an ARF and any ring-fenced amounts retained in vested PRSAs immediately become non ring-fenced amounts.

Secondly, where they do not have specified income of €12,700 per annum on 27 March 2013 but had originally transferred more than €63,500 to an AMRF or retained that amount in a vested PRSA, the excess amount transferred or retained above €63,500 immediately becomes an ARF or a non ring-fenced amount.

Funds that become ARFs or non ring-fenced amounts retained in vested PRSAs in these circumstances are subject to the imputed distribution arrangement (see **paragraph 28.4**). However, it is accepted that difficulties may arise in paying the resultant tax where the funds which were originally transferred into an AMRF or retained as ring-fenced amounts in a vested PRSA (the amount of which was computed on the basis of the higher limits which applied in the period 6 February 2011 to 26 March 2013), were invested in fixed-term deposits which do not permit early withdrawals or where penalties apply to early withdrawals, such that no funds are available during the term of the deposit to pay the tax on the imputed distribution.

In recognition of these difficulties, Revenue will accept that the provisions of *section 790D* need not be applied until 30 November following the date on which the fixed-term account matures where the following circumstances apply:

- Funds in excess of the lower specified amount of €63,500 were transferred into an AMRF or retained as a set-aside amount in a vested PRSA during the period 6 February 2011 to 26 March 2013,
- During that period, the funds were invested in a fixed-term deposit account or accounts for a term not exceeding 5 ½ years,
- Due to contract conditions funds cannot be withdrawn from the account during the term of the account, or early withdrawals are subject to penalties, and
- The provisions of *section 17(6) Finance Act 2013* apply so that some or all of those funds become an ARF or a non ring-fenced amount in a vested PRSA on or after 27 March 2013.

Where these circumstances apply, the amount of the imputed distribution may be computed on the basis of the value of the funds on 30 November immediately following the date the fixed term account matures multiplied by the number of years in question, i.e. the years for which an imputed distribution was not computed and the year in which the 30 November following the maturity date of the account falls, and tax paid and accounted for accordingly.

It should be noted that the alternative approach outlined above is <u>not</u> compulsory and insurers are free to account for and pay tax on the imputed distribution annually in the normal way.

PAYE Exclusion Orders in respect of ARFs and PRSAs

28.10

Revenue does not issue PAYE Exclusion Orders in respect of distributions or withdrawals from ARFs and PRSAs (whether actual or imputed). Please refer to **Chapters 23.15** and **24.10,** respectively.