

CHAPTER 1

INTRODUCTION

General

1.1

The legislation governing the tax treatment of pensions is contained in Part 30, Taxes Consolidation Act 1997:

| | |
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| Chapter 1 | Occupational Pension Schemes |
| Chapter 2 | Retirement Annuities and Approved Retirement Funds |
| Chapter 2A | Personal Retirement Savings Accounts. |
| Chapter 2B | Overseas Pensions Plans: Migrant Member Relief. |
| Chapter 2C | Limit on Tax Relieved Pension Funds |
| Chapter 4 | Miscellaneous |

The Act grants discretionary powers to Revenue in relation to the approval of occupational pension schemes. The Revenue Pensions Manual gives general guidance on how these powers are exercised. While the Manual reflects the current tax position at the time of writing, it is not binding in law. In any particular case, Revenue reserve the right to apply different treatment.

The Manual also contains Guidance Notes on Retirement Annuity Contracts, Approved Retirement Funds, and Personal Retirement Savings Accounts.

All enquiries in relation to matters covered by the Manual should be addressed to Revenue's Financial Services (Pensions) Business Unit.

How to use the Manual

1.2

The list of Contents details the various topics covered. The Glossary, (Appendix 1), defines all words which are printed in italics.

Outline of Part 30 Taxes Consolidation Act 1997

The principal provisions of Part 30 are as follows:

1.3

| | |
|---------------------|--|
| Chapter 1 | Occupational Pension Schemes |
| Section 770 | Interpretation and supplemental. |
| Section 771 | Definition of retirement benefits scheme. |
| Section 772 | Conditions for approval of schemes and discretionary approval. |
| Section 772A | Approval of Retirement Benefits Product. |
| Section 773 | General Medical Services superannuation scheme |

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|---------------------|---|
| Section 774 | Certain approved schemes: exemptions and reliefs. |
| Section 775 | Certain approved schemes: employer contributions |
| Section 776 | Certain statutory schemes: exemptions and reliefs. |
| Section 777 | Charge to tax in respect of certain relevant benefits provided for employees. |
| Section 778 | Exceptions from charge to tax under Section 777. |
| Section 779 | Charge to tax of pensions under Schedule E. |
| Section 779A | Transactions deemed to be pensions in Payment |
| Section 780 | Charge to tax on repayment of employee's contributions. |
| Section 781 | Charge to tax commutation of entire pension in special circumstances. |
| Section 782 | Charge to tax: repayments to employer. |

Chapter 2 Retirement Annuities & Approved Retirement Funds

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|---------------------|---|
| Section 783 | Interpretation and General |
| Section 784 | Retirement Annuities: relief for premiums |
| Section 784A | Approved retirement funds |
| Section 784B | Conditions relating to approved retirement funds |
| Section 784C | Approved Minimum Retirement Fund |
| Section 784D | Conditions relating to an approved minimum retirement fund |
| Section 785 | Approval of contracts for dependants or for life assurance. |
| Section 786 | Approval of certain other contracts |
| Section 787 | Nature and amount of relief for qualifying premiums |

Chapter 2A Personal Retirement Savings Accounts

| | |
|---------------------|---|
| Section 787A | Interpretation and supplemental |
| Section 787B | Relevant earnings and net relevant earnings |
| Section 787C | Granting relief for PRSA contributions |
| Section 787D | Claims to relief |
| Section 787E | Extent of relief |
| Section 787F | Transfers to PRSAs |
| Section 787G | Taxation of payments from a PRSA |
| Section 787H | Approved Retirement Fund option |
| Section 787I | Exemption of PRSA |
| Section 787J | Allowance to employer |
| Section 787K | Revenue approval of PRSA products |

Section 787L Transfers to and from a PRSA

Chapter 2B Overseas Pension Plans: Migrant Member Relief

Section 787M Interpretation and General

Section 787N Qualifying overseas pension plans: relief for contributions

Chapter 2C Limit on Tax-Relieved Pension Funds

Section 787O Interpretation and General

Section 787P Maximum tax-relieved pension fund

Section 787Q Chargeable excess

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

Section 787S Payment of tax due on chargeable excess

Section 787T Discharge of administrator from tax

Section 787U Regulations (Chapter 2C)

Chapter 4 Miscellaneous

Section 790 Liability of certain pensions, etc. to tax

Section 790A Limit on earnings

Section 790AA Taxation of lump sum payments in excess of the lump sum limit.

Section 790B Exemption of cross-border scheme

Schedule 23 Occupational Pension Schemes

1. Application for approval of a scheme.
2. Information about payments under approved schemes
3. Information about schemes other than approved schemes or statutory schemes.
4. Responsibility of administrator of a scheme
5. Regulations
- 6-9 Charge to tax in respect of unauthorised and certain other payments
- 6-10

Schedule 23A Specified Occupations and Professions

Schedule 23B Limit on Tax-Relieved Pension Funds

1. Calculation of the uncrystallised pension rights of an individual on the specified date.
2. Occurrence of benefit crystallisation event.

3. Calculation of amount crystallised by benefit crystallisation event.
4. Amount of standard fund threshold or personal fund threshold that is available at the date of the current event.
5. Meaning of previously used amount.

CHAPTER 2

MEMBERSHIP OF SCHEMES

General

2.1

Membership of an approved scheme must be confined to remunerated employees of the employers participating in the scheme. Employees include former employees of the employer concerned and where the employer is a company, any officer, director or manager of the company. Special conditions apply to *20% directors*.

2.2

Membership need not be open to all the employees in an employer's *service* or to any particular category of them; a scheme may in fact relate to a single employee or to individuals selected on a discretionary basis, subject to the principle of equal access. But every member of a scheme and every employee who has a right to be a member must be notified of his or her rights under it (see paragraph 18.5).

2.3

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

Persons Assessed under Schedule D

2.4

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

Investment & Property Rental Companies

2.5

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

Spouses of Directors, Proprietors and Partners

2.6

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

Temporary Absence and Secondment

2.7

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

2.8

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

- (a) There is a definite expectation of return to *service*, **and**
- (b) He or she does not become a member of another approved retirement benefits scheme, other than where membership of such other scheme is in respect of a concurrent employment.

These requirements do not apply where:

- (i) No retirement benefits accrue during the absence.
- (ii) The benefit of remaining a member flows from aggregation of two periods of *service* for benefit calculation purposes.
- (iii) The sole benefit is the provision of life cover during the absence.

2.9

A period of full membership while temporarily absent may, subject to paragraph 2.8 above, continue for up to 5 years. Where the period exceeds 5 years the matter should be reported to Revenue.

2.10

An employee who is absent because of incapacity, whether or not receiving pay under a sick pay or permanent health insurance scheme or directly from the employer, may be retained in full membership for more than 5 years regardless of whether there is a clear expectation of return to work.

CHAPTER 3

CONTRIBUTIONS BY EMPLOYEES

General

3.1

It makes no difference to the approval of a scheme whether or not its members are required to contribute.

Tax Relief

3.2

Contributions to an *exempt approved scheme* are allowable as an expense in assessing the member's liability to tax under Schedule E. Tax relief is restricted in any year of assessment to a percentage of the member's remuneration from the employment being pensioned. Contributions are allowable in the year of assessment in which they are paid.

The percentage relief limits are age related:

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

For the purposes of calculating relief, there is an overall aggregate earnings limit on an individual's tax relieved contributions in a tax year. A limit of €254,000 applies for the tax years 2006 and prior. The limit for 2007 is €262,382.

3.3

Relief for ordinary annual contributions, including regular additional voluntary contributions, is granted by operation of the net pay arrangement. Contributions are deducted from gross pay before the member's PAYE and PRSI deductions are calculated. The net pay arrangement can only be operated following application to RBD for scheme approval and employers should also advise the local PAYE Inspector when operation of the arrangement commences.

3.4

Relief for special contributions (or for a contribution not made under the net pay arrangement as in paragraph 3.3) is given by way of adjustment to the employee's tax credit certificate. If aggregate contributions exceed the annual relief limit, relief will be given on a spread forward basis. If this is not practical (e.g. payment made shortly before, or at, termination of employment), payments may be allocated to the previous year.

Section 774, Taxes Consolidation Act, 1997, provides that relief may be allocated to earlier years, subject to the statutory time limit of 10 years, in certain circumstances. The circumstances are:

- (a) A provision which requires benefits for widows, widowers, children or dependants to be paid for by deduction from the employee's lump sum benefit.
- (b) A repayment by the employee to the scheme of contributions which were previously refunded to the employee
- (c) Where the employee opted prior to 6 February 2003 to purchase additional years service.

3.5

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

3.6

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

Limit on Contributions

3.7

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

Salary Sacrifice

3.8

Any arrangement under which an employee waives an entitlement to remuneration or accepts a reduction in remuneration, in return for a corresponding payment by the employer into a pension scheme, is an application of the employee's income and is not acceptable for approval purposes.

Contributions After Normal Retirement Age

3.9

A member who remains in *service* after *normal retirement age* may start or continue paying contributions to fund any shortfall of maximum benefits (See paragraph 8.8).

CHAPTER 4

CONTRIBUTIONS BY EMPLOYERS

General

4.1

It is a condition of approval of a scheme that the employer must contribute to it but, subject to the considerations mentioned in Chapter 5 and any funding requirements imposed by the Pensions Acts (as regulated by the Pensions Board), the timing of the contributions is a matter for the employer.

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

In other circumstances, an employer’s contributions, which would not be less than 10% of the total ordinary annual contributions to a scheme (exclusive of employee voluntary contributions), would always be considered to be meaningful.

It will always be open for employers and their advisers to approach the Pensions Business Unit to discuss the circumstances of particular schemes.

Ordinary Annual Contributions

4.2

Any ordinary annual contribution paid by an employer to an *exempt approved scheme* is allowed as a deduction for tax purposes. Section 774(6), Taxes Consolidation Act 1997, provides that the amount of the contributions shall be allowed to be deducted as an expense incurred in the year in which the sum is paid. No deduction can be given in respect of any provision for an amount due but not actually paid. The amount deductible must not exceed the amount contributed by the employer to the scheme in respect of employees engaged in a trade or undertaking, the profits of which are assessable to Irish tax on the employer. Thus, an allowance cannot be given in respect of a person who is not in his employment, or in respect of an employee whose duties are not related to the business. Where the employer carries on two or more separate businesses each with its own employees, the employer's contributions in respect of each group of employees can be allowed only against the profits of the business in which the group is employed.

Special Contributions

4.3

If a contribution is not an ordinary annual contribution but a special contribution (made e.g. to provide benefits for back service, or augment benefits already secured or make up an actuarial deficiency in the fund), the Pensions Business Unit may require that the allowance be spread forward over a period of years.

This will not normally be required if the aggregate of all special contributions made by an employer to *exempt approved schemes* in the same chargeable period does not exceed the greater of the employer's corresponding aggregate ordinary annual contributions or €6350.

The period of the spread is usually determined by dividing the aggregate special contribution by the aggregate ordinary annual contribution, subject to a maximum of 5 years and to a minimum divisor of €6350.

In the following examples, **OAC** (Ordinary Annual Contribution), **SC** (Special Contribution)

| | (A) OAC | (B) SC | (C) (B)/(A) | (D) Allowance |
|-------------|--------------------------|-------------------------|------------------------------|---|
| Max. spread | €2000 | €40,000 | 20 * | 1st year €8,000 2nd year €8,000 3rd year €8,000 4th year €8,000 5th year €8,000 |

* The minimum divisor is €6350, which would give a spread of 6.3 years (i.e. 40,000 / 6350). However, the maximum spread is 5 years.

The divisor for the purposes of determining the spread period in relation to a special contribution paid during a short chargeable period will normally be equal to the greater of the actual ordinary annual contribution paid during the short period in question or €6350.

If the quotient exceeds 1 but does not exceed 1.5, the special contribution will be allowed over 2 years.

| | (A) OAC | (B) SC | (C) (B)/(A) | (D) Allowance |
|------------|--------------------------|-------------------------|------------------------------|----------------------------------|
| Rounded up | €8000 | €10000 | 1.25 | 1st year €8000 2nd year €2000 |

In all other cases a fraction of a year will be rounded down if it equals or is less than ½, and rounded up if it exceeds ½.

| | (A) OAC | (B) SC | (C) (B)/(A) | (D) Allowance |
|--------------|--------------------------|-------------------------|------------------------------|----------------------------------|
| Rounded down | €8000 | €18000 | 2.25 | 1st year €9000 2nd year €9000 |

If a fraction is rounded up, the allowance in each of the relevant years except the last will be an amount equal to the greater of the employer's aggregate ordinary annual contribution at the time the special contribution is made and €6350, the balance being allowed in the final year.

| | | | |
|------------|------------|------------|------------|
| (A) | (B) | (C) | (D) |
|------------|------------|------------|------------|

| | OAC | SC | (B)/(A) | Allowance |
|------------|-------|--------|---------|--|
| Rounded up | €8000 | €22000 | 2.75 | 1st year €8000 2nd year €8000 3rd year €6000 |

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

4.4

In relation to contributions under one-man arrangements and insured schemes using earmarked policies where contributions are paid over a short period to secure the benefits of an individual member, the Pensions Business Unit will accept that no spreading is required even if the benefits are primarily for past service, provided that -

- (a) Payments are uniformly spread over at least 3 policy years, **and**
- (b) Payments extend up to normal retirement date in the sense that the final one is made on the policy anniversary immediately preceding normal retirement date, or, depending on the terms of the policy, on some other appropriate date not more than 2 years before normal retirement date.

4.5

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

- (a) Legal and other expenses on establishment of the scheme:
- (b) Special contributions payable by installments over a period of 5 or more years, or paid annually on a specified basis where, although the amounts may be liable to fluctuate, substantial variations in successive years are not expected to occur:
- (c) Special contributions that are certified as made solely to finance cost of living pension increases for existing pensioners, or any part which is so certified.

4.6

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

Contribution to an Approved Scheme which is not "Exempt Approved"

4.7

Any relief in respect of contributions to an approved scheme which is not "exempt approved" will generally be under the ordinary rules of Schedule D and governed entirely by the provisions of Section 81(2), Taxes Consolidation Act 1997. If the members are related to the employer or, where the employer is a company, to persons having any substantial beneficial interest in its share capital, the position will be examined closely for the reason that to qualify for relief, the payment must be made wholly and exclusively for the purposes of the employer's trade. A contribution of a capital nature i.e. one "bringing into existence an asset or an advantage for the enduring benefit of a trade" would not be an allowable deduction. Contributions must be paid away or clearly alienated from the employer's other assets. There will then normally be no difficulty about the allowance of ordinary annual contributions paid on a regular basis. Other contributions, e.g. lump sum payments securing benefits for back *service*, may not qualify for relief and the matter will be one for consideration by the Inspector dealing with the employer's accounts.

A Hancock type annuity qualifying for simple approval may provide for the purchase of a commutable annuity up to the normal limits on the same terms as an *exempt approved scheme*. The sole consideration in opting for simple or exempt approval is the matter of claiming relief in the year of payment under the ordinary rules of Schedule D or claiming relief under Section 774, Taxes Consolidation Act 1997 and thereby perhaps involving spread forward relief. Lump sums may be provided only by way of commutable annuity.

Any arrangement, "Hancock" or "exempt approved", set up after the point of retirement may only provide non-commutable benefits with any lump sum element of the package being treated as a payment on termination of service subject to tax under Section 123, Taxes Consolidation Act 1997.

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

Refund of Employer Contributions

4.8

A refund of premiums or contributions paid in error may be made without contacting the Pensions Business Unit, provided that:-

- (a) The premiums were paid in error because, for example, a direct debit mandate was not altered or cancelled immediately after a member left pensionable service or retired, or after a scheme was discontinued, and
- (b) The period over which the overpayment occurred was less than one year, and
- (c) The amount involved is less than €5000.

CHAPTER 5

FUNDING & INVESTMENTS

General

5.1

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

Actuarial Reports

5.2

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

Surpluses

5.3

There is no objection to a scheme holding a reasonable reserve. In any case, where a valuation discloses a surplus in excess of 10% of the value of the fund assets, the matter should be brought to the attention of the Pensions Business Unit. Cases will be reviewed on an individual basis. It is important to protect the Revenue interest by prohibiting the build-up of monies in a tax-exempt fund that could not be used for the purposes of providing relevant benefits.

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

Investments

5.4

The sole Revenue interest in scheme investments is to ensure that schemes are “bona fide established for the sole purpose of providing relevant benefits”, Section 772(2)(a). Certain investments may prevent approval or prejudice ongoing Revenue approval. These could include investments used for tax avoidance purposes and assets not used to provide “relevant benefits”.

Specific investment rules for Small Self-Administered schemes are detailed in **Chapter 19**.

Transactions deemed to be pensions in payment

Certain transactions made by an Approved Retirement Fund, as detailed in 23.5, are deemed to be a distribution from the ARF. A similar provision now applies to pension schemes. When certain transactions occur, the use of scheme assets are treated as a pension payment from the scheme. Any amount treated as a pension payment is no longer regarded as a scheme asset. The transactions are:

Loan made to the beneficial owner or connected person.

Acquisition of property from the beneficial owner or connected person

Sale of ARF asset to the beneficial owner or connected person

Acquisition of residential or holiday property for use by the beneficial owner or connected person

Acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person. The distribution arises on the date such use commences. The distribution is the amount of the value of the ARF assets used in connection with the acquisition and any expenditure on improvement or repair of the property

Acquisition of shares in a close company in which the beneficial owner, or connected person, is a participator.

A close company means a company under the control of 5 or fewer participators, or of participators who are directors. Please refer to Sec.430, Taxes Consolidation Act, 1997, for a complete definition.

A participator in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to Sec.433, Taxes Consolidation Act, 1997 for a complete definition.

Definitions of “connected persons” and “relative” are contained in Sec.10, Taxes Consolidation Act, 1997.

Borrowing

5.5

Section 16 Finance Act 2004 inserted Section 772 (3E) into the Taxes Consolidation Act,1997, and provides that:

“A retirement benefits scheme shall neither cease to be an approved scheme nor shall the Revenue Commissioners be prevented from approving a retirement benefits scheme for the purposes of this

Chapter because of any provision in the rules of the scheme which makes provision for borrowing by the scheme”.

The following rules apply to scheme borrowing:

1. Only assets purchased by borrowing may be used to provide security to the lender.
2. Assignment of rental income to the lender is not permitted
3. Life cover on the amount of the debt may only be provided outside the scheme.
4. No cross collateralisation.
5. Interest only loans and loans for a period of more than 15 years are not permissible. The loan should be repaid in full prior to normal retirement age.
6. Use of other scheme assets to clear residual debt is not permissible.

Geared Property Investment Vehicles.

5.6

In relation to investments made via geared investment funds and unit trusts, it is possible to link a scheme investment to a particular property, within a collective investment fund, provided the arms length rules apply. In other words, all acquisitions, disposals and lettings must be on a totally arms length basis.

CHAPTER 6

TOTAL BENEFITS ON RETIREMENT AT NORMAL RETIREMENT AGE

General

6.1

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

Other Schemes of Same Employer

6.2

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

Benefits on Retirement - Other Conditions

6.3

No pension shall be assignable and no pension shall be capable of being surrendered, except to the limited extent explained in paragraph 11.5 in order to provide pensions for spouses or *dependants*. These conditions apply to all pensions payable under approved schemes. See paragraph 11.2 as regards pensions for persons other than employees.

Maximum Total Benefits

6.4

The aggregate benefits payable to an employee who retires at *normal retirement age* after 40 or more years' *service* with the same employer, when expressed as an annual amount payable for life (or for life subject to a guaranteed minimum period not exceeding 10 years) and taking into account any benefits paid as lump sums, should not exceed 2/3rds of his *final remuneration*. A basic maximum accrual rate of 1/60th of *final remuneration* for each year's *service* is approvable for any period of *service* of 40 years or less (a pension on this basis is commonly described as a pension of N/60ths).

It may be desired to set up a scheme that does not express the benefits on retirement as a pension of which part may be commuted, but which gives all members a lump sum of a specified amount plus a separate non-commutable pension. Such schemes are common in the public sector and, in practice for the purpose of determining whether the total benefits under a scheme of this kind are within the approvable maximum, the ratio between pension and lump sum commonly found in public sector

schemes will be used, i.e. the accrual rate of the lump sum benefit will normally be divided by the figure 9 to arrive at its pension equivalent. Thus a lump sum of 3/80ths of final pay for each year of *service* will represent a pension annual accrual rate of 1/240, and the approvable maximum rate at which the non-commutable pension may accrue for an employee with 40 years' *service* will be 1/80th of final pay for each year, i.e. $1/60\text{th} \text{ less } 1/240 = 1/80\text{th}$.

Other Benefit Formulae

6.5

Schemes may calculate benefits by reference to other formulae provided that such benefits are within maximum limits (e.g. defined contribution schemes).

Late Entrants

6.6

Benefits in excess of those which would be produced by a basic rate of 1/60th of *final remuneration* for each year of *service* can normally be approved under Pensions Business Unit discretion for employees who cannot, by reason of the date of their entry to employment, complete 40 years' *service* before *normal retirement age*. A pension of two-thirds of *final remuneration* cannot be approved for very short periods of *service* but, subject to any deduction required for *retained benefits* from previous employment, approved schemes may provide a pension of two-thirds of *final remuneration* for *service* of not less than 10 years to *normal retirement age*. An improvement on an accrual rate of 60ths is usually also permissible for employees with less than 10 years *service* to *normal retirement age* as in the following scale known as "uplifted 60ths":

Maximum Pension

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

Maximum pension means pension before any commutation and including -

- (i) The annuity value of any separate lump sum entitlement, and
- (ii) Any pension derived from voluntary contributions paid by the member.

There is no objection to incorporation of this scale in the rules of a scheme if provision is made for any necessary restriction e.g. for *retained benefits* or *service* which does not qualify for benefits. Alternatively, the rules may provide for pensions to accrue at a rate of 1/60th of *final remuneration* for each year of *service* (N/60ths) "or such higher fraction as will not prejudice approval by the Revenue Commissioners for the purposes of Chapter I, Part 30, Taxes Consolidation Act 1997" (or some similar wording). A higher rate may be permitted in suitable cases where it is necessary to adopt an unusually early age for normal retirement.

Normal Retirement Age (NRA)

6.7

- (a) It is a condition of approval that the rules of a scheme should specify the age at which members will normally retire.
- (b) Any age within the range of 60 - 70 is acceptable. The *NRA* may differ for categories of member and may also be agreed on an individual basis.
- (c) Revenue may be prepared to accept an *NRA* outside the above range for exceptional occupations. Submissions should be made on an individual basis but 20% *directors* must be within the 60-70 range.
- (d) All schemes/arrangements in respect of the same employment that provide benefits for an individual must have the same *NRA*.

Increases of Pensions in Payment

6.8

- (a) A pension in course of payment may be increased up to the level of the maximum approvable at retirement (after deducting the annuity value of any pension exchanged for lump sum benefit or allocated to a spouse or *dependant*).
- (b) Increases in benefit after retirement must be in the form of non-commutable pension.
- (c) Scheme rules may provide for increases in pensions to counteract the effects of inflation.
- (d) Discretionary increases may be made to maximum pensions up to the level of increases in CPI or other similar agreed index.
- (e) Guaranteed increases may be made by using either of the following formulae -

- (i) Fixed increases of not more than 3% p.a. compound (regardless of CPI levels), **or**
- (ii) Increases linked to CPI or other similar agreed index.

A combination of (i) and (ii) is not acceptable.

- (f) Augmentation of existing pensions to put the recipients on a par with current holders of the same employment will normally be approved.
- (g) Please refer to **25.4** as increases in excess of the "permitted margin" may trigger a tax charge.

Life Cover After Retirement

6.9

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

CHAPTER 7

LUMP SUM BENEFITS AND COMMUTATION

General

7.1

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

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

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

Maximum Lump Sum Benefits

7.2

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

| Years of <i>Service</i> | Eightieths of <i>final remuneration</i> |
|-------------------------|---|
| 9 | 30 |
| 10 | 36 |
| 11 | 42 |
| 12 | 48 |
| 13 | 54 |
| 14 | 63 |
| 15 | 72 |
| 16 | 81 |

| | |
|------------|-----|
| 17 | 90 |
| 18 | 99 |
| 19 | 108 |
| 20 or more | 120 |

Please refer to **23.8** for details of the calculation of lump sum benefits for retiring employees taking “ARF options”.

Commutation Factors

7.3

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

- (a) If it is desired that the relationship between lump sum and pension should not vary with age or sex or take into account any other considerations, the rules may provide for the same fixed relationship prescribed in paragraph 6.4 for schemes with an independent lump sum, e.g. €1 of pension may be commuted for a lump sum of €9.
- (b) A scheme may use a specifically designed table that will be subject to actuarial review at intervals. Continued approval of the scheme will be dependent on the table being changed if any of the assumptions on which it is based have to be varied.
- (c) A scheme may provide for individual calculations by a qualified actuary for every commutation. These must be consistent with other calculations made for the same individual and for other purposes of the scheme having regard to changing financial conditions.

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

Commutation factors fall within two broad categories depending on whether or not they take account of the value of any entitlement to cost of living post-retirement increases on the pension. Factors that do take account of such increases are commonly referred to as 'enhanced' and are not appropriate to a scheme giving no such entitlement (but see below in relation to schemes which provide for regular reviews and an expectation of resultant increases).

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

If the rules of the scheme provide for pensions to be reviewed regularly and increased (within the limit of the rise in the cost of living) at the discretion of the employer or trustees if funds permit, enhanced commutation factors may be used provided that a certificate by an actuary is furnished stating the anticipated percentage rate of future increases on the basis of the current annual

contributions without taking into account any future special contributions which the employer might make.

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

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

Trivial Pensions

7.4

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

In a defined contribution context, for the purposes of establishing whether or not benefits come within the triviality limit, the calculation should be based on the cost of a single life annuity with no escalation.

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

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

As an alternative to the above, and with the agreement of the scheme beneficiary and trustees, there is no objection to the payment of once-off pensions. This may take place where the total of all funds available for pension benefits, following payment of any lump sum benefit, is less than €20,000. The quantum of retirement benefits from all sources must be taken into account for the purpose of calculating the €20,000 limit. In a defined benefit context, the pension benefit needs to be converted to a fund value to determine if the benefits are within the €20,000 limit. This should be done by reference to the scheme commutation factors. The rates of tax and PRSI to be applied are those which apply to any other pension payment. Prior Revenue approval is not required.

The above option may be offered to all scheme members, including buy out bond holders, as an alternative to annuity purchase. Holders of RACs and PRSAs are obliged by legislation to comply with the AMRF requirements. However, if due to the size of the fund, it is not possible to establish an

AMRF, the above option may be used. The above treatment may also be applied to residual funds available to secure spouses' and dependants' pensions.

Serious Ill-Health

7.5

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

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

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

Example

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

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

$$30 \times 3/80 \times €10,800 = €12,150$$

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

$$30 \times 3/80 \times €12,000 = €13,500$$

Tax at 10% will therefore be charged on €54,000 less €13,500 = €40,500.

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

$$120/80 \times €12,000 = €18,000$$

(leaving tax to be charged on €36,000 of the commutation payment) since it is proper to take account of the fact that the employee is retiring on grounds of incapacity, and that the maximum lump sum would have been based on his 40 years potential *service* (see paragraph 9.4) rather than his 30 years actual *service*.

7.6

Where the scheme provides for a lump sum 3N/80ths of *final remuneration* separately from the pension (and not in commutation of it), and the pension itself is commuted, e.g. because the employee is seriously ill, the whole of the commutation payment will be chargeable to tax.

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

CHAPTER 8

SERVICE AFTER NORMAL RETIREMENT AGE

Accrual of Extra Benefits

8.1

The aggregate benefits that may be provided at *NRA* are set out in paragraph 6.4. An employee who remains in *service* after *normal retirement age* may be provided with aggregate benefits up to the maximum allowable on the basis that his actual date of retirement was his normal date of retirement, i.e. two-thirds or the appropriate fraction for less than ten years' *service* under the table in paragraph 6.6 of his *final remuneration* at the actual date of retirement.

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

8.2

If his total *service* exceeds 40 years, each year in excess of 40 falling after *NRA* with a limit of 5 may earn a further 60th of *final remuneration* and the maximum then becomes 45/60ths of *final remuneration* at the actual date of retirement.

Example A

An employee who has served for 42 years up to *NRA* and 5 years thereafter may receive a pension of 45/60ths of his *final remuneration* at the actual date of retirement.

Example B

An employee who has served for 38 years up to *NRA* and 5 years thereafter may receive a pension of 43/60ths of his *final remuneration* at the actual date of retirement.

8.3

As an alternative to, but not in addition to, the extra benefits referred to in the paragraphs 8.1 and 8.2, the aggregate benefits which would have been payable at *NRA* may be increased actuarially to reflect their later commencement and the yield on the scheme's investments or the policy monies. Actuarial

increases will require special consideration where the *NRA* is exceptionally early or the *service* after *NRA* is exceptionally long.

Additional Lump Sums

8.4

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

8.5

If his total *service* exceeds 40 years, the lump sum element of the aggregate benefits may be increased in respect of each year in excess of 40 falling after *NRA*, with a limit of 5, by 3/80ths of *final remuneration* at the actual date of retirement.

Example

In example A in paragraph 8.2, the maximum lump sum is $45 \times 3/80$ ths of *final remuneration* at the actual date of retirement.

In example B, the maximum lump sum multiplier is $43 \times 3/80$ ths.

8.6

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

20% Directors

8.7

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

- (i) *Final remuneration* may of course be calculated at age 70 (or the relevant lower age of actual retirement) as if that age had been the *NRA* and if desired the relevant *dynamisation* provisions may apply as set out under *final remuneration*.
- (ii) There is no Revenue objection to an actuarial increase over and above the 2/3rds limit or to an increase under paragraph 8.3 in respect of years of *service* after age 70.

Example

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

- (iii) Precisely the same principles should be applied for calculating maximum lump sum retirement benefits, and increases under paragraphs 8.5 and 8.6 should be limited accordingly.
- (iv) Restrictions for *20% directors* on these lines should be explicitly included in the rules of all schemes.

Benefits Paid at Normal Retirement Age

8.8

An employee continuing to serve after *NRA* may elect to take at that date or before he actually retires, either the lump sum, or the pension and lump sum, benefits which would have been due if he had retired rather than defer all benefits until actual retirement. In this event no further benefits should be provided for him except to the extent that they would fall within the maximum approvable in respect of his *service* up to the date he takes the lump sum; although if only the lump sum is taken at this time the deferred pension may be increased actuarially on the basis mentioned in paragraph 8.3. Any additional benefits for *20% directors* must be taken in pension form.

CHAPTER 9

RETIREMENT BEFORE NORMAL RETIREMENT AGE

9.1

Early retirement benefits may be provided on, or after, the employee's 50th birthday.

Ill-Health

9.2

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

Pension Benefits

9.3

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

- (a) 1/60th of *final remuneration* for each year of *service*

or

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

N = number of actual years of *service*

NS = number of years of potential *service* to *NRA*

P = maximum pension approvable had the employee served to *NRA*.

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

or

(ii) 1½ times *final remuneration* less retained lump sum benefits.

Deferred Benefits

9.5

If an employee retires early and defers benefits until *NRA* the relevant limits are set out in paragraph 12.16.

20% Directors

9.6

Generally, where early retirement benefits are taken, all links with the business must be severed, including the disposal of all shares in the company.

CHAPTER 10

BENEFITS ON DEATH-IN-SERVICE

Lump Sum Benefits

10.1

On death-in-*service* before *NRA* a lump sum not exceeding the greater of €6350 or four times the deceased employee's *final remuneration* may be provided. The definition of *final remuneration* for this purpose need not be the same as for the calculation of other benefits and may in this case be the rate payable at the date of death.

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

Spouse's and Dependants' Pensions

10.2

In addition to the lump sum, an approved scheme may provide a pension for a spouse, or where there is no spouse, for a *dependant*, of an amount not exceeding the maximum aggregate pension that could have been approved for the employee if he had retired on *ill-health* grounds on the date of his death (see paragraph 9.2 - such a pension can take account of the whole potential *service* up to *NRA*). Where benefits for the employees themselves take the form of a pension plus a separate lump sum, rather than a partly commutable pension, maximum pension includes the pension equivalent of the lump sum. Spouse's (but not a *dependant's*) pension may be deferred instead of being taken immediately.

Where there are both a spouse and *dependants*, or no spouse but more than one *dependant*, separate pensions may be provided for each. However, no one pension nor the aggregate of all pensions payable under 10.2 may exceed the amount specified in the preceding paragraph. Subject to these limits, the benefits may be shared in any manner desired.

Benefits from Earlier Employment

10.3

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

- (a) refunds of contributions to the employee by a scheme of an earlier employer may be ignored,
- (b) small preserved benefits, i.e. lump sums not exceeding €1270 in aggregate or spouse's or *dependants'* pensions not exceeding €330 per annum in aggregate may be ignored,
- (c) if the lump sum from the current employment does not exceed twice *final remuneration* (excluding any refund of the employee's contributions) preserved lump sums from earlier employments may be ignored,
- (d) preserved lump sum death benefits arising from retirement annuity contracts may be ignored.

The provision of pension benefits on death-in-*service* is an area in which Revenue discretion will be exercised flexibly, especially in the case of lower-paid employees.

Where it is proposed to provide spouse's and *dependants'* pensions on a scale based on the employee's pre-death salaries rather than as a proportion of the pensions which he might have received, the scheme will probably be approved in that form if the spouse's and *dependants'* pensions are unlikely, by and large, to exceed the limit set out in paragraph 10.2 above or to be large in monetary terms.

Death-in-Service After Normal Retirement Age

10.4

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

CHAPTER 11

BENEFITS ON DEATH AFTER RETIREMENT

Lump Sum Benefits

11.1

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

- (a) any payment due under a guarantee attaching to the pension (paragraphs 11.8 to 11.12), or
- (b) any sum falling due under a life policy or scheme rule that gave continued cover on death after retirement (see paragraph 6.9).

Spouse's and Dependants' Own Right Pensions

11.2

A spouse's pension may be provided equal to the maximum aggregate pension that could be approved for the employee (whether or not the employee was actually given that maximum). Alternatively, a similar pension may be provided for a *dependant*. If the employee leaves both a spouse and a *dependant*, or if there is no spouse but more than one *dependant*, no single pension nor the aggregate of all pensions payable under this paragraph may exceed the limit in the first sentence of this paragraph. In this paragraph, "maximum aggregate pension" means the maximum in the particular circumstances in which the employee himself retired i.e. at *NRA* or earlier or later than *NRA*, increased proportionately to any rise in the Consumer Price Index from the date from which the employee's own pension became payable.

11.3

Spouses and *dependants'* pensions may commence on the employee's death except where the member's pension is guaranteed for more than five years, in which case the spouse's pension must not commence until the end of the guaranteed period.

11.4

A spouse's pension may continue for life, or it may cease on re-marriage. A pension for a child must cease when the child ceases to be a *dependant*. Pensions payable to other *dependants* may continue for life irrespective of any later change in the *dependant's* circumstances.

Allocated Spouse's and Dependants' Pensions

11.5

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

11.6

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

11.7

Payment of an allocated pension unlike an own-right pension, (see paragraph 11.3) may commence on the member's death even if payment of his pension continues under a guarantee for more than five years.

Guaranteed Minimum Benefits

11.8

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

11.9

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

11.10

As an alternative to the guarantees in paragraph 11.8, an approved scheme may provide that a pension payable to a retired employee may continue for a period of up to ten years despite the pensioner's death within that period. If the guarantee period does not exceed five years and the *normal retirement age* is not more than 70, an immediate lump sum may be paid equal to the installments falling due after the pensioner's death. This may reflect quantified cost of living increases that would have been paid if the pension had continued.

11.11

Spouse's and *dependants'* pensions may not be guaranteed for a minimum number of years except that, where an allocated pension for a spouse or *dependant* has been provided by surrender of part of the member's pension, the allocated pension may be guaranteed for a period not exceeding five years after the commencement of the member's pension.

11.12

Payments under paragraphs 11.8 - 11.11 may be made to a member's spouse or *dependant*, or to the legal personal representatives, or to a nominated beneficiary, at the discretion of the employer, trustee or *administrator*.

CHAPTER 12

WITHDRAWAL FROM SERVICE

General

12.1

In this chapter withdrawal from *service* is regarded as covering all circumstances of leaving *service*, otherwise than by death, or by retirement in accordance with the rules of the scheme. The benefits that may be provided in these circumstances are:

- (a) A refund of the member's own contributions (with or without interest thereon);
- (b) The provision of a deferred, or frozen, pension and/or a deferred lump sum in the scheme;
- (c) The purchase of a deferred annuity and/or deferred lump sum or a *buy-out bond*;
- (d) The payment of a transfer value to the scheme of a subsequent employer. (Transfer payments are dealt with separately in Chapter 13).

Refunds of Contributions

12.2

The rules of a contributory scheme may normally permit a withdrawing member with less than 2 years' qualifying *service* for Pensions Act purposes to take a refund of member contributions. In this event no further benefits can be received.

Mixed Benefits

12.3

Taking a refund of contributions and retaining rights in a scheme is allowed in the following circumstances:

- (a) If an employee with 2 or more years' qualifying *service* takes a refund of his pre-January 1991 contributions he is still entitled to a preserved benefit in accordance with Part III of the Pensions Act, 1990. In this case the maximum deferred benefits must be calculated by reference *only* to actual years of *service* in respect of which no refund of members' contributions is payable.
- (b) Where a transfer payment has been made from one approved scheme to another on change of employment, any election to take a refund of contributions (if no preserved benefit) usually covers contributions included in the transfer payment, as well as those made to the new scheme, but exceptionally, even though the employee elects to take a refund of contributions to the second scheme, he may also take a deferred pension based on the transfer payment:
 - (i) If the first scheme was non-contributory, or
 - (ii) If the conditions of the transfer prohibited a refund of the employee's transferred contributions during his lifetime, or
 - (iii) If a refund of the member's own contribution element would leave a substantial balance to accrue to the benefit of the second scheme.
- (c) Where a contributory scheme becomes non-contributory, an employee subsequently withdrawing may take a refund of contributions and a deferred pension in respect of the employer's contributions during the non-contributory period only.

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

12.4

A refund of contributions made to an employee leaving *service* may include interest at a reasonable rate or it may be the surrender value of a policy appropriate to the contributions. Such interest is regarded as an element in the calculation of a benefit from the scheme and is not treated as true interest for tax purposes.

12.5

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

Tax on Refunds of Contributions

12.6

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

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

All payments of tax due in respect of refunds should be sent directly to:

Office of the Collector General
Revenue
Sarsfield House
Limerick

12.7

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

12.8

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

12.9

The tax is the liability of the *administrator* and the amount charged is not income of the employee for any purpose of the Income Tax Acts. Being charged at a compound rate, the tax is not related to the amount of tax relief given to the particular member on his contributions. It is, of course, open to the scheme to give the *administrator* discretion whether or not to pass on the burden of the tax to the employee.

CHAPTER 13

TRANSFER PAYMENTS

13.1

A transfer payment may be made by an *exempt approved scheme* to another *exempt approved scheme*, to an approved *buy-out bond* or to a *PRSA*. A transfer to a *PRSA* may only take place if the individual has been a member of the scheme or of any other scheme related to that individual's employment with, or with any person connected with, the employer for less than 15 years. Transfers are not permitted once benefits come into payment. A transfer payment should relate to the whole of an employee's benefits; split transfers are not permitted.

13.2

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

13.3

The *administrator* of the scheme making the transfer must be satisfied that the receiving scheme is exempt approved and must advise the receiving scheme of the benefits attaching to the payment. Details should be given of *service*, salary, and lump sum benefit entitlement.

Overseas Schemes

13.4

Transfers to the U.K. should be dealt with on exactly the same basis as transfers to E.U. Member States. Please refer to 13.6 below. For information on transfers from the UK to Ireland, please refer to Part 14, Registered Pensions Schemes Manual which is available on HMRC website.

13.5

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

- (a) the member has requested a transfer
- (b) the overseas arrangement provides relevant benefits as defined by Sec.770, TCA 1997.
- (c) the overseas arrangement has been approved by the appropriate regulatory authority in the country concerned.

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

13.6

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

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

13.7

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

Buy-Out Bonds

13.8

Transfers to and from a *buy-out bond* are dealt with in the same manner as transfers to an *exempt approved scheme*. Please see Glossary for further guidance.

New Employer

13.9

It is possible for the new employer to assume the former employer's responsibilities.

Company Re-organisations

13.10

Where there is a change of employer following on from mergers, liquidations, management buy-outs etc., it is normally the case in relation to arms-length employees that employments may be regarded as continuous for the purposes of calculating maximum permissible benefits.

13.11

If an employee is a 20% director prior to and subsequent to a re-organisation etc., continuation of *service* for pension purposes will only be accepted where a claim has been admitted under Section 400, Taxes Consolidation Act, 1997. This section provides that relief for unused losses and capital allowances may be passed to a successor company provided all the assets, liabilities and business of the first company are also taken over.

Additional Benefits

13.12

The receipt of a transfer payment will not enable the lump sum benefit that the receiving scheme may give on the employee's death-in-*service* to be increased beyond the normal maximum.

13.13

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

- (a) the maximum benefits normally appropriate to his *service* with the new employer, plus
- (b) the additional benefits which the transfer payment is sufficient to buy if invested by the receiving scheme. If the benefits at (a) exceed 1/60th of *final remuneration* for each year of *service* with the new employer, the total of (a) plus (b) must not exceed 2/3rds of the employee's *final remuneration* less any *retained benefits*.

Lump Sum Benefits

13.14

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

N = number of years *service* in earlier employment.

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

Final remuneration should be calculated in accordance with the rules of the transferring schemes. If the rules do not contain such a definition, it should be taken as the average *final remuneration* of the last 3 years of *service*.

13.15

If the transfer payment is to provide benefits on the basis of added years, benefits in lump sum form are limited to the formula $3A/80 \times F$, where A = number of added years certified by the actuary and F is the employee's *final remuneration* in the receiving scheme.

13.16

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

CHAPTER 14

DISCONTINUANCE OF SCHEMES

General

14.1

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

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

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

1. By making it frozen or paid up, or

2. By winding-up.

Scheme rules must specify action to be taken on discontinuance.

Frozen or Paid Up Schemes

14.2

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

Winding-Up

14.3

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

1. Transfer to another approved scheme or to a PRSA
2. Securing the benefits under individual *buy-out bonds*,
3. Assigning individual scheme policies to the members.

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

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

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

Tax

14.4

There should not be any provision permitting full commutation on grounds of triviality or the pensioners subsequent *ill-health* unless the Life Office concerned has first made satisfactory arrangements for any payment of tax due.

Surplus on Winding-Up

14.5

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

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

Partial Winding-Up

14.6

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

Discontinuance at Interim Stage

14.7

Where a definitive Trust Deed is not in place and a scheme is operating on an interim Trust Deed, and the scheme is to be discontinued, Revenue must be informed.

CHAPTER 15

TAX TREATMENT OF APPROVED SCHEMES

Taxation of Pensions

15.1

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

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

Pensioners Resident Abroad

15.2

No general exemption from income tax is given by the Taxes Acts to pensioners resident abroad. Exemption is granted where:

(a) the last 10 years' *service* in respect of which the pension is paid was abroad,

or

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

Exemption may also be available under a Double Taxation Agreement between Ireland and the country of residence. Where there is no exemption, relief may be due to Irish citizens and certain others resident abroad by virtue of Section 1032, Taxes Consolidation Act, 1997.

Scheme Investments

15.3

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

Section 608, Taxes Consolidation Act, 1997 exempts gains accruing from disposals of investments held by *exempt approved schemes*.

Exempt approved schemes are also exempted from Deposit Interest Retention Tax (D.I.R.T.) by virtue of Section 256, Taxes Consolidation Act, 1997.

Dealings in financial futures and traded options by *exempt approved schemes* are deemed investments and therefore exempt from tax (Sections 774(4) and 608 Taxes Consolidation Act, 1997).

Life Office Pension Business

15.4

Sections 706 and 717, Taxes Consolidation Act, 1997 enable part of the business of a Life Office to be treated as "pension business". When an *exempt approved scheme* applies funds as premiums on an insurance policy which qualifies for "pension business" treatment, income from the scheme investments qualifies for the tax exemptions detailed in 15.3 above.

Correspondence

15.5

To qualify for pension business treatment, policies taken out by an *exempt approved scheme* must be so framed that the liabilities undertaken by the insurance company correspond with the liabilities against which the contract is intended to secure for the scheme (Section 706, Taxes Consolidation Act, 1997). The policy need not secure the scheme against all liabilities, but the benefits it does provide must correspond with those payable under the rules of the scheme.

Refund of Scheme Surplus to Employer

15.6

Section 782, Taxes Consolidation Act, 1997, provides that this amount is taxable.

CHAPTER 16

GROUP SCHEMES

Associated Employers

16.1

Revenue are prepared to exercise their discretion to approve a group scheme in which two or more employers participate, provided that the following conditions are satisfied:

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

shareholders, inter-changeable or jointly employed staff and inter-dependent operations (e.g. one selling the bulk of the other's products).

- (b) Each employer participating in the scheme must be under an obligation to observe the rules of the scheme.
- (c) Each employer must contribute in respect of his own employees. Relief is confined to contributions paid in respect of persons employed in the employer's trading activities.
- (d) The rules must provide for the withdrawal of an employer who ceases to be sufficiently closely associated with, or related to, the other, or who goes out of business. This usually involves the segregation of an appropriate proportion of the scheme assets and the application of the winding-up rule. If, however, the seceding employer is continuing in business, the segregated assets may form the nucleus of a new scheme, or be transferred to another scheme in which the employer has become eligible to participate.
- (e) An employer who is not resident in the State may participate in a group scheme if there is a sufficiently close association with the principal employer.

Approval

16.2

Any proposal to establish a group scheme to admit an employer to participate, or to retain in the scheme an employer who has ceased to satisfy the conditions for participation, should be submitted to Revenue for consideration.

Basis for Providing Benefits

16.3

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

Employers Not Related or Associated

16.4

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

- (a) The employees are employees working in a particular industry in a particular area or, on a nation-wide basis, or are employees of employers who are members of a particular professional or trade association or similar body and wish to participate in a scheme sponsored by the association or body. In such cases, Revenue must be satisfied not only that the sponsoring body is truly representative of the employers desiring to participate and actively concerned with such matters as the code of conduct of its members and conditions of employment in the trade or profession, but also that the participating employers together have enough pensionable employees to ensure reasonable continuity in the scheme.

- (b) Each employer participating in the scheme must be under an obligation to observe the rules of the scheme.
- (c) Each employer must contribute in respect of his own employees.
- (d) The rules must provide for the withdrawal of an employer who ceases to satisfy the conditions of approval or goes out of business.
- (e) If any of the participating employers have other schemes in which members of the group scheme also participate, Revenue will require that the group scheme be treated in all such cases as the employer's basic scheme. It will follow that if any restrictions in members' benefits are necessary they will be affected primarily in the other schemes.

Basis for Providing Benefits

16.5

An employee, as described in 16.4, who moves from one participating employer to another, is changing employment and should not receive greater total benefits than he would if each employer had his own scheme. Accordingly, although each employer may provide benefits by reference to the employee's *final remuneration* while in his *service*, when an employee moves, the benefits attributable to *service* up to that date must be "frozen" within the maximum allowable for an employee who withdraws from *service* on a given level of remuneration, and cannot be increased solely because under a subsequent employer the employee is paid more.

Refunds to Employers

16.6

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

Irish Employers Associated with Overseas Employers

16.7

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

Change of Residence

16.8

Where an overseas branch of an Irish employer becomes a separate company resident abroad for tax purposes, or there is any change in the tax residence status of any employer participating in a scheme, the approval of the scheme will need to be reconsidered by Revenue.

CHAPTER 17

OVERSEAS EMPLOYERS, OVERSEAS EMPLOYEES and EMPLOYEES SECONDED from OVERSEAS

17.1

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

Overseas Employer - Irish Scheme

17.2

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

Employees Seconded from Overseas

17.3

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

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

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

- (a) such charge is relieved under the terms of a double taxation agreement, or
- (b) where the provisions of section 778 Taxes Consolidation Act 1997 applies, i.e. where -
 - i. the emoluments of the office or employment are not chargeable to tax here; or
 - ii. the remittance basis of taxation applies to the emoluments of the office or employment; or
 - iii. the employer pension contributions are made to:
 - an approved scheme; or
 - a statutory scheme; or
 - a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

In bona fide cases, where :

(a) the employee -

- (i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;
- (ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);
- (iii) is either not Irish-domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;
- (iv) had, prior to coming to work in the State, been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and

(v) is not resident in the State for a period of more than 5 years (but see Note below);

(b) the foreign employer -

- (i) is resident for tax purposes in an EU member state or in a country with which the State has a Double Taxation Agreement;
- (ii) has, prior to the individual coming to work in the State, been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;
- (iii) the foreign pension scheme is a statutory scheme in a state or country mentioned in (b)(i) above, other than a state social security scheme, or is a scheme in respect of which tax relief is available in such a state or country; and
- (iv) both the employer and employee contributions comply with the rules of that foreign pension scheme,
then Revenue will -
 - treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable; and
 - allow relief for the pension contributions made directly by the employee (subject to the normal income percentage limits).

Note - Where an individual is resident in the State for a period of more than 5 years, ignoring any periods prior to 1 January 2003, written permission of the local Revenue office will be required for the continuation of the above treatment of pension contributions beyond a period of five years.

Migrant Member Relief

17.4

Where contributions made by seconded individuals to foreign pension schemes do not qualify for relief as detailed above, relief may still be available if the contributions come within the scope of Migrant Member Relief (see 17. 10 below). Migrant Member Relief only applies to individuals coming to Ireland with pre-existing pension plans established in another EU Member State. Prior to the introduction of Migrant Member Relief secondees from the UK could avail of relief under the terms of the Protocol to the Ireland/UK Double Taxation Agreement. The Protocol may still be of relevance to migrant workers coming to the State from a third country.

Seconded Employees not covered by 17.3 or 17.4

17.5

An employee who was a member of an Overseas Employers Scheme before being transferred to Ireland to work for an associated employer may remain in that scheme and get relief on his contributions against his Irish Tax provided that -

- (i) The secondment is for a period of less than 10 years.
- (ii) The scheme is a Trust Scheme.

- (iii) The benefits to be provided by the Overseas Scheme are within Irish approvable limits.

Overseas Employer - Irish Employee Transferred Abroad

17.6

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

The accrued benefits should remain in the approved scheme unless a special arrangement for the transfer of benefits is in operation.

Irish Employer - Overseas Employees

17.7

If an employee of an Irish employer is not assessable to Irish tax on his remuneration, or is assessable only on the "remittance" basis, no liability arises under Section 777, Taxes Consolidation Act, 1997. It is, therefore, not necessary for a retirement benefits scheme for such employees to conform to the conditions for approval if the employer is prepared to forego the tax reliefs available to an *exempt approved scheme*. A scheme exclusively for, or including employees working abroad *may*, however, be approved and enjoy the reliefs if the employer is resident in the State.

17.8

It follows from the preceding paragraph and from paragraph 17.2 that a scheme, or a part of a scheme, approved cannot cater for employees working abroad for a non-resident employer. But there are two exceptions to this principle, viz.

- (a) Where employees are only on secondment from an Irish employer for a limited period and can be deemed to remain on his payroll,
- (b) Where employees are sent abroad, in circumstances which cannot be regarded as secondment, to serve with non-resident companies in a group, of which the parent company is resident in the State but the parent company retains control over the movements of the employees within the group i.e. remains in a position to recall them or to direct them elsewhere.

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

Relief for Contributions to EU Pension Plans

17.9

Revenue will approve occupational pension schemes provided to Irish employers and employees by pension providers based in other EU Member States provided the standard approval conditions are met. Section 21, Finance Act, 2005, introduced the concept of an "overseas pension scheme". To

qualify for approval, and attaching tax reliefs, the overseas pension scheme must be operated or managed by an Institution for Occupational Retirement Provision, within the meaning of the EU Pensions Directive, and must be established in a Member State of the European Communities which has implemented the Directive in its national law.

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

Relief for Migrant Workers

17.10

There is a statutory scheme of relief for contributions paid by an individual who comes to the state and who wishes to continue to contribute to a pre-existing “overseas pensions plan” in another EU Member State.

Relief is available for contributions paid on or after 1 January 2005 by a relevant migrant member who comes to the State and who wishes to continue to contribute to a pre-existing “qualifying overseas pension plan” (see paragraph 3) concluded with a pension provider in another EU Member State.

The expression “overseas pension plan” includes both occupational pension schemes and personal pension plans (products similar to PRSA’s and RAC’s), but excludes any state social security scheme (i.e. a system of mandatory protection put in place to provide a minimum level of retirement income or other benefits).

Conditions

The migrant member must meet certain conditions to be a “relevant migrant member” and to qualify for relief for contributions made to a qualifying overseas pension plan.

The individual must:

be a resident of the State,

have been a member of the plan on taking up residence of the State,

have been a resident of another EU Member State at the time he or she first became a member of the plan and must have been entitled to tax relief on contributions to the plan under the law of that Member State,

have been resident outside of the State for a continuous period of 3 years immediately before becoming a resident of the State,

be a national of an EU Member State or, not being such a national, must have been resident in an EU Member State (other than the State) immediately before becoming a resident of the State.

Where an individual does not satisfy the 3 year test but all other conditions are met, the case should be referred to Revenue.

The normal rules (183 day rule and the 280 day look back rule) for determining if an individual is resident in the State should be applied when considering if an individual is resident in the State for the purposes of migrant member relief.

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

In the case of an EU Member State with whom Ireland has a Double Taxation Treaty, that the individual is regarded as being resident of that State under the relevant treaty

- **In any other case, that the individual is by virtue of the law of that State a resident of that State for the purposes of tax.**

Overseas Pension Plan – Information

The relevant migrant member must irrevocably instruct the administrator of the overseas pension plan to provide the Revenue Commissioners with any information, in relation to payments under the plan that they may reasonably require.

In addition, on an annual basis, he or she must obtain from the administrator a “certificate of contributions” setting out contributions made by the migrant member to the plan, and where relevant, contributions to the plan, made by the migrant member’s employer in the State.

Relief for contributions

Where the conditions set out above in relation to the overseas plan and the migrant member are met, relief may be granted in respect of contributions paid. Claims for relief should be submitted to the employee’s local tax office.

Relief is subject to the same age based relief limits as apply to relief for individual contributions to Irish approved pension plans (occupational, PRSA, RAC). The combined remuneration/earnings thresholds apply: Tax Year 2006 and prior: €254,000. Tax Year 2007: €262,382.

An employer is authorised to operate the “net pay arrangement” in respect of allowable contributions to a qualifying overseas pension plan where such contributions are deducted from the employee’s emoluments.

CHAPTER 18

ADMINISTRATIVE MATTERS

Approval Applications

18.1

Applications should be made in writing to Revenue by, or on behalf of, the *administrator*, before the end of the first period of assessment for which approval is required.

18.2

The statutory requirements relating to applications for approval are set out in Schedule 23, Part 1, Taxes Consolidation Act, 1997. In practice, Revenue may agree detailed approval procedures with

Life Offices and pensions practitioners. The Act empowers Revenue to request any information regarding a scheme as "the Commissioners may consider relevant".

18.3

An application will normally include copies of -

- The deed or other instrument establishing the scheme.
- The scheme rules.
- Members' booklet or announcement letter.
- Any actuarial advice received or details of scheme funding.

Documentation Procedure

18.4

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

Information to Employees

18.5

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

Alterations to Schemes

18.6

Copies of all scheme amendments must be forwarded to Revenue.

Reporting Requirements

18.7

Schedule 23, Part 1, Taxes Consolidation Act, 1997, obliges the scheme *administrator* to furnish to the Inspector of Taxes any information and particulars as the Inspector considers relevant. The reporting requirements for small self-administered schemes are set out in Chapter 19.

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

Unapprovable Schemes

18.8

- (a) Every employer is required to deliver to Revenue, particulars of any scheme that has not been approved.
- (b) Section 777, Taxes Consolidation Act, 1997, provides that a payment made by any employer to an unapproved scheme is assessable under Schedule E on the employee.
- (c) If an employee has a right under an unapproved scheme, and the rights are not fully secured in advance by payments by the employer, then the employee is assessable under Schedule E on the estimated amount required to secure the benefit.

Withdrawal of Approval

18.9

- (a) Section 772 (5), Taxes Consolidation Act, 1997 empowers the Revenue to withdraw approval from a scheme. Withdrawal is effected by notice in writing to the *administrator*, specifying the grounds for, and the operative date of, the withdrawal.
- (b) An unacceptable amendment to a scheme will cause approval to lapse automatically. Approval may also be withdrawn for payment of excessive or unauthorised benefits, for failure to furnish information or to meet the scheme's tax liabilities, unacceptable investments or any serious breaches of the scheme rules.
- (c) Following withdrawal of approval, the employees would be chargeable to tax under Section 777, Taxes Consolidation Act, 1997 in respect of any contributions from the employer.

CHAPTER 19

SMALL SELF-ADMINISTERED SCHEMES

General

This Chapter explains the special requirements that these types of schemes must comply with in order to achieve and maintain exempt approved status. These special requirements are additional to the normal approval requirements. Their purpose is to ensure that the scheme is in fact "bona fide established for the sole purpose of providing *relevant benefits*", (Section 772 (2)(a), Taxes Consolidation Act, 1997 and not a scheme designed for tax avoidance.

Usually, the sole members of "small" schemes are 20% Directors. Revenue concerns relate to the potential for conflicts of interest as the individuals involved are the owners of the business, scheme trustees and scheme members.

Definition of "Small" Scheme

19.1

A scheme with less than 12 members will generally be regarded as "small". A scheme designed primarily for a few family directors, to whom are added some relatively low paid employees with entitlement to only insignificant benefits, included to bring membership to 12 or more, **OR** a scheme with more than 12 members where most or all of the members are 20% directors will both be regarded as small.

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

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

Pensioner Trustee

19.2

The trustees must include a Revenue approved "Pensioner Trustee". The duties of the Pensioner Trustee are set out in the following undertaking that must be given:

" I undertake that in relation to any pension scheme, approved under the Taxes Consolidation Act 1997, of which I am a Trustee that I will:

- (a) Not consent to any action which is contrary to any Revenue regulations. I will report immediately to Revenue full particulars of any action to which I am requested to consent which I consider may be contrary to Revenue regulations.
- (b) Supply annual accounts, periodic actuarial reports, or any other information required by Revenue.
- (c) Not agree to the termination of any scheme of which I am Pensioner Trustee otherwise than in accordance with the terms of the approved winding up provisions.

Nor will I delegate powers to any other Trustee of such a scheme or to any outside person or body on behalf of any other Trustees so as to circumvent the foregoing undertaking.

I further undertake to advise Revenue immediately I cease to be a Trustee of any such approved Scheme."

It is a precondition of Revenue approval that at all times the scheme must have a Revenue approved Pensioner Trustee. The Trust Deed must provide that the Pensioner Trustee cannot be removed without prior Revenue approval and that the Pensioner Trustee must be a co-signatory on all financial transactions.

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

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

It is clear from the above that quite onerous obligations are placed on the Pensioner Trustee. These are in addition to the normal obligations that apply under trust law.

In order to qualify for Pensioner Trustee status, the applicant must be widely involved with occupational pension schemes and their approval. Experience in processing approval of schemes, administration of small self-administered schemes and a good working knowledge of Revenue Practice, are necessary qualifications. Arrangements should be in place for the provision of a complete range of services: actuarial, legal, investment and administration.

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

Applications for approval to act as a Pensioner Trustee should be sent to the Pensions Business Unit. The application should include a full "pensions C.V." together with details of any self-administered schemes established and administered by the applicant.

A list of Revenue approved Pensioner Trustees is available on request.

Scheme Approval & Compliance Requirements

19.3

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

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

The supporting documentation required is:

1. Funding Report with full details of retained benefits
2. Copy of the relevant pages of the Trust Deed showing employer name, trustee details, scheme title and commencement date.

Incomplete submissions will be returned.

As a condition of approval, Revenue will expect actuarial reports to be made at intervals not greater than 3 years, and will examine the assumptions that have been used as a basis for funding the scheme. A further condition of continuing approval is a requirement to submit annual accounts within 9 months of the end of the year.

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

Investment of Funds in Small Self-Administered Schemes

19.4

All scheme investments must be on an arm's length basis. The investment powers of Trustees are circumscribed in a number of areas which are detailed below. The list is not exhaustive and is merely intended as a guide. A ruling on any specific proposal can be requested.

(i) Loans

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

(ii) Property Investments

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

- (a) The vendor is at arm's length from the scheme and the employer including its directors and associated companies;
- (b) The purpose of the acquisition is not for disposal or letting to the employer, including its directors and associated companies;
- (c) Disposal of the property is on an arm's length basis
- (d) The scheme has sufficient liquid investments to ensure that the requirement to provide benefits, including ill-health and early retirement benefits, can be met. Where the main or only asset is property, it is considered that the concentration of investments in an asset not readily realisable does not satisfy the overriding need to match investment of the assets with a scheme's liabilities with particular reference to the requirement to provide benefits. The situation could arise when the first or subsequent individual retirements take place that a scheme would be compelled to realise its only or main asset in order to comply with the requirement to provide benefits.
- (e) Purchase of overseas property will only be permitted where there are appropriate arrangements in place to enable the Pensioner Trustee to maintain control of the asset to ensure that Revenue rules are complied with.
- (f) A transaction which involves the scheme trustees directly in the acquisition and development of property with a view to its disposal will not constitute an investment to which the exemption in Section 772 (2), Taxes Consolidation Act ,1997, will apply.
- (g) Any proposal that involves the diversion of the sponsoring employer's taxable activity into the scheme is not acceptable.

(iii) Self-Investment

The following type of self-investment is *not acceptable*:

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

(iv) Pride in possession articles

Schemes are not permitted to invest in personal chattels such as works of art, jewelry, vintage cars, yachts etc. Schemes can invest in choses in action which are not tangible, moveable or visible. Examples are company shares, copyrights, and financial futures.

(v) Private Companies

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

(vi) Transactions deemed to be pensions in payment

Certain transactions made by an Approved Retirement Fund, as detailed in 23.5, are deemed to be a distribution from the ARF. A similar provision now applies to pension schemes. When certain transactions occur, the use of scheme assets are treated as a pension payment from the scheme. Any amount treated as a pension payment is no longer regarded as a scheme asset. The transactions are:

Loan made to the beneficial owner or connected person.

Acquisition of property from the beneficial owner or connected person

Sale of ARF asset to the beneficial owner or connected person

Acquisition of residential or holiday property for use by the beneficial owner or connected person

Acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person. The distribution arises on the date such use commences. The distribution is the amount of the value of the ARF assets used in connection with the acquisition and any expenditure on improvement or repair of the property

Acquisition of shares in a close company in which the beneficial owner, or connected person, is a participator.

A close company means a company under the control of 5 or fewer participators, or of participators who are directors. Please refer to Sec.430, Taxes Consolidation Act, 1997, for a complete definition.

A participator in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to Sec.433, Taxes Consolidation Act, 1997 for a complete definition.

Definitions of "connected persons" and "relative" are contained in Sec.10, Taxes Consolidation Act, 1997.

Benefits

19.5

A final funding review must take place before any benefits are paid. The scheme rules should provide that benefits be secured by either the purchase of an annuity from a Life Office or in accordance with Section 772 (3)(A) Taxes Consolidation Act 1997.

Death Benefit

19.6

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

Full Commutation of Pension

19.7

Where the rules include a provision for the full commutation of pension where the member is "in exceptional circumstances of serious *ill-health*" it has always been practice to leave the application of the rule in particular cases to the trustees. In large schemes the arm's length relationship, and in insured schemes the interest of the Life Office, each provide a reasonable assurance that the facility will not be abused. Neither factor is present in the context of small self-administered schemes and the rules should, therefore, provide for full commutation on serious *ill-health* grounds to be subject to the agreement of Revenue. In such cases Revenue would seek to establish that proper medical evidence has been obtained (see paragraph 7.5) and that its terms appeared to warrant a conclusion that the member's expectation of life was very short.

General Enquiries

19.8

Enquiries must disclose the title of the scheme to which they relate and all other relevant facts and figures. As the facts of any particular case are all important, it is not possible to deal with purely hypothetical situations.

CHAPTER 20

PART-TIME EMPLOYEES

General

20.1

This Chapter deals with the methods of calculating maximum benefits where an employee has a combination of full-time and part-time *service* including periods of job-sharing. The contents should

assist in scheme design where part-time employees are included as members. The Chapter should be used as a guide in calculating funding rates where employees have changed status while remaining with the same employer. The normal method of calculating maximum benefits where job-sharers are concerned is by conversion of part-time (job-sharing) *service* to full-time equivalent.

There are two options available:

- A. Separate Calculation, or
- B. Converted *Service*.

Both options are explained below. The application of *dynamisation* is covered in the examples.

Separate Calculation

20.2

In a switch from part-time to full-time employment, or vice versa, it is always possible to compute benefits for each period of *service* separately.

EXAMPLE 1:

8 years P/T (20 hrs) to age 58, final salary €8,000
 7 years F/T (40 hrs) to age 65, final salary €20,000

Maximum benefits for the period of part-time employment are the greater of:

$$\begin{array}{ll} N/60 \times \text{Final Salary} & 8/60 \times 8,000 = 1,067 \\ & \text{Or} \\ N/NS \times P & 8/15 \times 2/3 \times 8,000 = 2,844 \end{array}$$

Note: The use of the $N/NS \times P$ formula is always subject to the overriding limits in Chapter 6.6. In this case $32/60 \times 8,000$, viz. 4266.

Assuming *dynamisation* @ 1.25, maximum benefit = $2,844 \times 1.25 = 3,555$

Maximum benefits for the period of full-time employment are the greater of:

$$\begin{array}{ll} N/60 \times \text{Final Salary} & 7/60 \times 20,000 = 2,333 \\ & \text{or} \\ \text{Uplifted scale} & 28/60 \times 20,000 = 9333 \\ \text{Limit in Ch 6.6 (} 2/3 \times \text{Salary - Retained Benefit)} & 2/3 \times 20,000 - 3,555 = 9,778 \\ \text{Total maximum benefit is} & 3,555 + 9333 = 12,888 \end{array}$$

EXAMPLE 2:

5 years P/T (20 hrs) to age 61, final salary €8,000
 4 years F/T (40 hrs) to age 65, final salary €20,000

Maximum benefits for the period of part-time employment are the greater of:

$$(a) \quad n/60 \times \text{Final Salary} \qquad 5/60 \times 8,000 = 667$$

or

$$(b) \quad n/ns \times P \qquad 5/9 \times 36/60 \times 8,000 = 2,667$$

Provided that if actual *service* at date of leaving is less than 10 years then (b) above cannot exceed the lesser of:

$$(i) \quad \text{Uplifted 60ths as per scale in 6.6} \qquad 20/60 \times 8,000 = 2667$$

or

$$(ii) \quad 2/3\text{rds of Final Salary less any } \textit{Retained Benefits} \quad 2/3 \times 8,000 - 0 = 5,333$$

Assuming *dynamisation* @ 1.15, maximum benefit = $2667 \times 1.15 = 3067$

Maximum benefits for the period of full-time employment are the greater of:

$$n/60 \times \text{Final Salary} \qquad 4/60 \times 20,000 = 1,333$$

or

$$\text{Uplifted scale } 16/60 \times 20,000 = 5,333$$

Total maximum benefit is $3067 + 5333 = 8400$

EXAMPLE 3:

8 years F/T (40 hrs) to age 58, final salary €16,000

7 years P/T (20 hrs) to age 65, final salary €10,000

Maximum benefits for the period of full-time employment are the greater of:

$$8/60 \times 16,000 = 2,133$$

or

$$8/15 \times 2/3 \times 16,000 = 5,689$$

$$\text{Limit in Ch 6.6 is } 32/60 \times 16,000 = 8,533$$

Assuming *dynamisation* @ 1.25, maximum benefit = $5,689 \times 1.25 = 7,111$

Maximum benefits for the period of part-time employment are the greater of:

$$7/60 \times 10,000 = 1,167$$

or

$$28/60 \times 10,000 = 4,667$$

$$\text{Limit in Ch 6.6 is } 2/3 \times 10,000 \text{ less retained benefits} = 6,667 - 7,111$$

As the 6.6 limit gives a minus figure, the maximum benefit is 1,167.

Total maximum benefit is $7,111 + 1,167 = 8,278$

EXAMPLE 4:

5 years F/T (40 hrs) to age 61, final salary €16,000

4 years P/T (20 hrs) to age 65, final salary €10,000

Maximum benefits for the period of full-time employment are the greater of:

(a) $n/60 \times \text{Final Salary}$ $5/60 \times 16,000 = 1,333$

or

(b) $n/ns \times P$ $5/9 \times 36/60 \times 16,000 = 5,333$

Provided that because actual *service* at date of leaving is less than 10 years then (b) above cannot exceed the lesser of:

(i) Uplifted 60ths as per scale in 6.6 $20/60 \times 16,000 = 5,333$

or

(ii) $2/3$ rds of Final Salary less any *Retained Benefits* $2/3 \times 16,000 - 0 = 10,666$

Assuming *dynamisation* @ 1.15, maximum benefit = $5,333 \times 1.15 = 6,133$

Maximum benefits for the period of part-time employment are:

$n/60 \times \text{Final Salary}$ $4/60 \times 10,000 = 667$

or

$16/60 \times 10,000 = 2,667$

Limit in Ch 6.6 is $36/60 \times 10,000 - \text{Retained Benefits}$ $6,000 - 6,133$

As the 6.6 limit gives a minus figure, the maximum benefit is 667

Total maximum benefit is $6,133 + 667 = 6,800$

Converted Service

20.3

Alternatively, where there is a switch from part-time to full-time *service*, or vice versa, benefits may be based on *final remuneration* in the full-time employment. The proviso applying is that part-time employment is converted into its full-time equivalent using the formula:

$$\text{Years of P/T service} \times \frac{\text{P/T Working Hours}}{\text{F/T Working Hours}}$$

Using the uplifted scales, anomalies will arise in situations where there is a short period of full-time *service*. To prevent this happening, the uplifted scales may only be used if there is a minimum period of six years full-time *service*.

When using the uplifted scales to calculate lump sum benefits there must be a minimum period of nine years full-time *service*.

EXAMPLE 5:

8 years P/T (20 hrs) to age 58, final salary €10,000

7 years F/T (40 hrs) to age 65, final salary €20,000

Convert P/T to F/T: $8 \times 20/40 = 4$ years

Total F/T *service* = $4 + 7 = 11$

Maximum benefit, using the uplifted scale, is $2/3 \times 20,000 = 13,333$

EXAMPLE 6:

5 years P/T (20 hrs) to age 61, final salary €8,000
4 years F/T (40 hrs) to age 65, final salary €20,000

Convert P/T to F/T: $5 \times 20/40 = 2\frac{1}{2}$ years
Total F/T *service* = $2\frac{1}{2} + 4 = 6\frac{1}{2}$ years

Because F/T *service* < 6 years, uplifted scale cannot be used.

Maximum benefit, therefore, is $6\frac{1}{2}/60 \times 20,000 = 2,167$

EXAMPLE 7:

8 years F/T (40 hrs) to age 58, final salary €16,000
7 years P/T (20 hrs) to age 65, final salary €10,000

Convert P/T to F/T: $7 \times 20/40 = 3\frac{1}{2}$ years
Total F/T *service* = $8 + 3\frac{1}{2} = 11\frac{1}{2}$

Maximum benefit is the greater of:

(i) $\frac{11\frac{1}{2}}{60} \times 16,000 = 3,067$

or

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

Assuming *dynamisation* @ 1.25 maximum benefit is $10,667 \times 1.25 = 13,333$

EXAMPLE 8:

5 years F/T (40 hrs) to age 61, final salary €20,000
4 years P/T (20 hrs) to age 65, final salary €10,000

Convert P/T to F/T: $4 \times 20/40 = 2$ years
Total F/T *service* = $2 + 5 = 7$ years

Because F/T *service* < 6 years, uplifted scale cannot be used.

Maximum benefit, therefore, is $7/60 \times 20,000 = 2,333$

Assuming *dynamisation* @ 1.15 maximum benefit is $2,333 \times 1.15 = 2,683$

Note: In the examples relating to converted *service* it is assumed that the requirement that a minimum of 6 years F/T *service* must have been completed if uplifted scales are to be used applies and that it refers to actual F/T *service* as opposed to adjusted F/T *service* following conversion of P/T to F/T.

Early Retirement Benefits on Change to Part-Time Employment

Revenue do not accept that early retirement benefits could become payable to an employee who remains on in the *service* of an employer in a part-time capacity following a change from full-time employment. For the purposes of early retirement benefits, it is a firm Revenue principle that “retirement” means “retirement from *service* with the employer, with no employee expectation of return with the same or associated employer”.

Employee Contributions

20.5

Relief in respect of employee contributions (ordinary annual and AVCs) is always restricted to the age related percentage limit of actual remuneration in the year of payment.

Death-in-Service

20.6

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

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

Final Remuneration

20.7

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

- (a) *Final remuneration* in relation to previous full-time *service* or converted *service* may be calculated by reference to current remuneration of a full-time job-holder provided it can be clearly established that an equivalent full-time position continues to exist.
- (b) In relation to converted *service* only, final part-time remuneration may also be converted into its full-time equivalent. In Example 7 in 20.3 conversion of part-time *final remuneration* is as follows:

$$€10,000 \times 40 \text{ hours} / 20 \text{ hours} = €20,000$$

Maximum benefit is then greater of

$$11.5 / 60 \times 20,000 = 3,833$$

or

$$2/3 \times 20,000 = 13,333 \quad \text{No Dynamisation}$$

20.8

The rules are an alternative method of calculating benefits for part-time employees by recognizing periods of full-time service. However, the rules are intended to prevent the calculation of excessive benefits based on equivalent full-time salary and uplifted scale, where full time service is very short.

Benefits can still be calculated based on the traditional method of final remuneration and actual service.

In Example 8, final remuneration €10,000 , service 9 years
Benefit is $36/60 \times 10,000 = 6,000$

If, in Example 8, full-time service followed part-time, it would not be correct to apply the uplifted scale to a full time salary of €20,000. Benefits should be calculated based on 'Converted Service', as in Example 8, or 'Separate Calculation', similar to Example 2.

CHAPTER 21

RETIREMENT ANNUITY CONTRACTS

Introduction

21.1

The legislation governing retirement annuity contracts, often referred to as personal pensions, is contained in Sections 783 to 787, Taxes Consolidation Act, 1997. The contract must be between an individual and an insurance company. The Life Office will agree the terms of a standard contract with Revenue and is then able to market the contract. Following receipt of a contribution or premium, the insurance company issues an RAC Certificate to the individual who is then in a position to claim relief.

Eligibility

21.2

In order to obtain tax relief on contributions to a contract the individual must have a source of "relevant earnings". In simple terms "relevant earnings" means income arising in any income tax year from a trade or profession or from a non-pensionable employment.

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

Once there is a source of relevant earnings, the fact that an individual may also have a separate source of pensionable employment is not of concern. However, tax relief will be allowable based on the source of relevant earnings only. Income must be earned income and 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 his/her source of earnings prior to the move and is for a period of less than 5 years with a clear expectation of return following the absence.

In the case of married couples, each spouse must have his/her own source of relevant earnings in order to effect or contribute to a contract. Again tax relief is allowable against own relevant earnings only.

Tax Reliefs

21.3

Relief is limited in any one year to an aged based percentage of the individual's "net relevant earnings". Contributions in excess of this limit may be made but will not qualify for tax relief. A contribution not allowed in one year may be carried forward and relief allowed in subsequent years. If a premium is paid after the end of the year of assessment, but before the following 31 October, relief may be allowed in the earlier year. This conforms with the income tax return filing date.

| | | |
|--|------------|-----|
| The aged based percentage limits for relief are: | under 30: | 15% |
| | 30 - 39: | 20% |
| | 40- 49 | 25% |
| | 50 or over | 30% |
| | 55 or over | 35% |
| | 60 or over | 40% |

The 30% limit applies , irrespective of age, to certain categories of professional sportspersons.

Net relevant earnings consist essentially of income less deductions which would be made in computing total income for tax purposes. These deductions include losses and capital allowances.

For the purposes of calculating relief, an individual's net relevant earnings shall not exceed €254,000 for the tax years 2006 and prior. The limit for the tax year 2007 is €262,382. The limit is an overall aggregate earnings limit on an individual's tax relieved contributions in a tax year.

Relief may be obtained on claim to the individual's local tax office. In the case of employees who are contributing to an RAC relief may be given using the net pay arrangement as is the case for AVCs.

Benefits on Retirement

21.4

Benefits may be taken at any time after age 60, even if the individual is still working, but must be taken before the individual's 75th birthday. In certain occupations, with prior RBD approval, benefits may be taken before age 60 but in no case before age 50. 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 own occupation or any occupation of a similar nature for which he is trained or fitted". (Section 784 (3) (b)).

25% of the fund may be taken as a tax free lump sum 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. All annuity payments are chargeable to tax under Schedule E.

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

Death Benefits

21.5

On death before retirement, the value of the fund may be used to purchase a spouse's or *dependants'* 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 is limited to the age based percentage limits detailed in **21.3**.

Group Schemes

21.6

It is possible for a representative body to establish, under an irrevocable trust, a group scheme to provide Section 784 and 785 benefits. 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.

22.1 Introduction

The provisions of the Family Law and Divorce Acts can have significant implications for pensions. Practitioners are advised to consult the Pensions Board's Guidance Notes. The courts have powers to make a Pensions Adjustment Order (PAO) which entitles a spouse and /or dependants to a specific proportion of an individual's benefits. A PAO can apply to benefits held by a scheme, buy out bond, retirement annuity contract or personal retirement savings account. A PAO may include death in service benefits and dependants' benefits. The purpose of this Chapter is to set out how a PAO affects the calculation of benefits.

22.2 Options for Beneficiary

Once a PAO has been made, the beneficiary has two options:

1. Keep a separate benefit in the scheme
2. Transfer the benefit to his/her employer's scheme, a buy out bond, or a PRSA.

Examples of calculations are in 22.5

22.3 Impact on Member

The maximum benefit which an employee may take from a scheme is exactly the same whether or not part of the benefit is the subject of a PAO. The existence of a PAO does not affect maximum contribution limits for either employers or employees.

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

22.4 Impact on Beneficiary

The benefit arising from a PAO is not regarded as a retained benefit for the purposes of calculating maximum benefits for the beneficiary. Any pension is liable to taxation in the hands of the recipient

22.5 Examples of Benefit Calculation

Benefit retained in scheme:

Scheme provides a pension at NRA of 1/60th per year of service. Employee joins the scheme on 1/1/86 at age 35. Employee was married on 1/1/83 and divorced on 1/1/01.

The PAO specified that 50% of the pension relating to the period the employee was married and a scheme member be allocated to the non-member spouse. Final remuneration was €90,000 @ NRA (age 65).

Benefits @ NRA are:

Member's pension is $€90,000 \times 30/60 = €45,000$

Non-member spouse's pension is $€45,000 \times 15/30 \times 50\% = €11,250$

Note: the employee was a scheme member for 30 years and married for 15 of those years.

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

The pension paid to the member is $€45,000$ minus $€11,250 = €33,750$.

Benefit transferred:

Employee joins scheme on 1/1/85, is married on 1/1/90 and divorces on 1/1/00. The PAO specified that 50% of the pension relating to the period the employee was married and a scheme member be allocated to the non-member spouse.

The scheme is a defined contribution one and the value of the member's fund @ date of divorce is €40,000. The non-member spouse opts for a transfer to a PRSA.

The transfer payment is: $€40,000 \times 50\% \times 10/15 = €13,333$.

Note: the employee was married for 10 of the 15 years he was a scheme member.

22.6 ARF/AMRF

A transfer from an ARF or AMRF into another ARF/AMRF in the name of a spouse in exercise of rights under a PAO will not be regarded by Revenue as a distribution from the transferring ARF/AMRF.

22.7 Interaction with Limit on Tax Relieved Pension Funds

Please refer to 25.8

CHAPTER 23 APPROVED RETIREMENT FUNDS

23.1 Contents

This Chapter explains a number of options (in addition to annuity purchase) which are available to certain individuals at retirement. This Chapter should be read in conjunction with Chapters dealing with maximum benefits for employees (including directors), and also the Chapters dealing with Retirement Annuity Contracts (RAC) and Personal Retirement Savings Accounts (PRSA). The topics covered in this Chapter are:

- Eligibility.
- Approved Minimum Retirement Funds.
- Full Withdrawal Option
- Approved Retirement Funds
- Qualifying Fund Managers
- Death
- 5% Directors
- Additional Voluntary Contributions

23.2 Eligibility

The options explained in this Chapter are only available to individuals who commenced to take retirement benefits after 2 December 1998. The options apply at retirement only and do not apply to death in service benefits.

The options are available to:

All holders of Retirement Annuity Contracts set up after 6 April 1999 and may also be offered to holders of contracts established prior to that date.

Members of Retirement Annuity Trust Schemes approved under Sec. 784(4), Taxes Consolidation Act, 1997.

Holders of a Personal Retirement Savings Account.

Proprietary Directors (see definition below).

Individuals entitled to rights arising from Additional Voluntary Contributions (see definition below) paid to a scheme.

All individuals wishing to avail of the options must satisfy the minimum income requirements detailed in paragraph 3. The option to purchase an annuity at retirement

remains. Holders of more than one Retirement Annuity Contract may exercise a different option in respect of each contract.

Proprietary director means a director who, either alone or together with his or her spouse and minor children is or was, at any time within 3 years of the date of-

- (i) The specified 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 the trustees of any settlement to which the director or his or her spouse has transferred assets, carry more than 5 per cent of the voting rights in the company providing the benefits or in a company which controls that company.

Additional voluntary contributions means voluntary contributions made to a scheme by an employee which are-

- (i) Contributions made under a rule or part of a rule, as the case may be, of a retirement benefits scheme (in this definition referred to as the “main scheme”) which provides specifically for the payment of members voluntary contributions, other than contributions made at the rate or rates specified for members’ contributions in the rules of the main scheme, or
- (ii) Contributions made under a separately arranged scheme for members’ voluntary contributions which is associated with the main scheme.

23.3 Approved Minimum Retirement Fund (AMRF)

Prior to exercising any of the options described in this Chapter, an individual must satisfy the AMRF requirement. Having taken up to 25% of the fund value as a tax free lump sum, the balance, or €63,500 if less, must be transferred to an AMRF or used to purchase an annuity. The AMRF requirement can be satisfied by splitting the €63,500. For example: Use €30,000 to purchase an annuity and place €33,500 in an AMRF.

There are two exceptions to the AMRF requirement. It does not apply:

1. If the individual is aged over 75.
2. If the individual has “specified income” of at least €12,700 per annum. Specified income is a pension or annuity which is payable for the life of the individual. The specified income must exist at the point of retirement. An individual retiring at age 60 could not include a Social Welfare pension payable from age 65 as specified income. Specified income includes Social Welfare pensions and pensions paid from overseas. Pensions paid directly to a spouse , or pensions/allowances received on behalf of a spouse/dependant, may not be taken into account.

The AMRF requirement applies whenever an individual has specified income of less than €12,700. There is no facility for apportionment. For example: An individual who has specified income of €5,000 must place €63,500 in an AMRF.

The initial capital invested in an AMRF cannot be withdrawn but any income or gains may be. All withdrawals from an AMRF are taxable. When an individual reaches age 75, or dies, the AMRF becomes an Approved Retirement Fund (ARF).

Transfers may be made from one AMRF to another AMRF.

An individual cannot have more than one AMRF.

The AMRF requirements do not have to be satisfied for each contract. The overall maximum an individual must transfer to an AMRF is €63,500, regardless of the number of contracts held.

An AMRF may not be used as security for a loan.

AMRF funds may be used to purchase an annuity for the beneficial owner at any time.

Similar operating rules apply for an AMRF and an ARF and these are detailed in Paragraph 5.

23.4 Full Withdrawal

Provided the individual has satisfied the AMRF requirements, the balance of the retirement fund, excluding any amounts taken as a tax free lump sum, may be paid to the individual. This amount is treated as income of the individual and is taxable. The person making the payment (Life Office or Scheme administrator) is deemed to be an employer for all obligations under the Taxes Consolidation Act.

Life Offices and Scheme Trustees should record the following details of individuals availing of this option: name, address, tax reference number, amount withdrawn.

23.5 Approved Retirement Fund (ARF)

Provided the individual has satisfied the AMRF requirements, the balance of the retirement fund, excluding any amounts taken as a tax free lump sum, may be transferred to an ARF. The Life Office or Scheme Administrator should pay any tax free lump sum to the individual prior to transferring the balance of the fund to an ARF. The funds in the ARF remain the property of the individual who is the beneficial owner.

Income and gains of ARF funds are exempt from tax. Any amounts withdrawn from an ARF are referred to as a distribution. A distribution is treated as a payment of emoluments to which Schedule E applies.

Payments from an ARF are not payments of pension. It follows that all payments to non-residents are subject to tax as emoluments and it is not possible to obtain a PAYE exclusion order.

The use of an ARF as security for a loan constitutes a distribution.

An individual may have more than one ARF.

Transfers may be made from one ARF to another ARF.

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

The following are distributions:

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

A close company means a company under the control of 5 or fewer participators, or of participators who are directors. Please refer to Sec.430, Taxes Consolidation Act, 1997, for a complete definition.

A participator in relation to any company, means a person having a share or interest in the capital or income of a company. Please refer to Sec.433, Taxes Consolidation Act, 1997 for a complete definition.

Definitions of "connected persons" and "relative" are contained in Sec.10, Taxes Consolidation Act, 1997.

23.6 Qualifying Fund Manager (QFM)

An ARF or AMRF must be managed by a QFM. A QFM is defined in Section 784A, Taxes Consolidation ACT, 1997 as one of the following:

- Bank
- Building society
- Trustee savings bank
- Post office savings bank
- Credit union
- Collective investment undertaking (e.g. unit trust)
- Life assurance company
- Stockbroker
- Certain authorised investment intermediaries

The QFM has complete responsibility for the discharge of all obligations in relation to tax due on all distributions.

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

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

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

The declaration should contain the following:

Name, address, tax reference number of the beneficial owner

Confirmation that the assets which are to be transferred consist only of assets to which the individual is beneficially entitled

Confirmation that the assets which are to be transferred are currently held in a RAC, PRSA, or an exempt approved occupational pension scheme. The policy Number and name of the Life Office/Provider or the name and Revenue reference of the scheme should be stated.

If the declaration refers to the establishment of an ARF, it must also provide detailed confirmation that the AMRF requirements have been met or that the beneficial owner is in receipt of specified income. It is necessary to state the name and reference number of the QFM who manages the AMRF, details of any annuity purchased, or the name and reference of the person paying the specified income.

23.7 Death

Any payment from the ARF is a distribution and is taxable as such. The amount of the distribution is treated as income of the ARF owner for the year of assessment in which that individual dies. There are some exceptions:

A transfer to an ARF in the name of the deceased's spouse is not a distribution.

A transfer to a child of the individual under 21 is not a distribution.

A transfer to a child of the individual over 21 is a distribution but the tax liability is at standard rate and the amount charged is not treated as income for any other purpose of the Income Tax Acts.

When the surviving spouse dies, any payment out of the ARF in that spouse's name, other than to a child of the deceased aged under 21, will be taxed at standard rate.

The position regarding Income Tax & Capital Acquisitions Tax is summarized below. The usual Cat thresholds apply:

| | | | | |
|----------------|-----------------|-----|-----------------|-----|
| | Death of Holder | | Death of Spouse | |
| | Income Tax | CAT | Income Tax | CAT |
| Spouse | No | No | | |
| Child under 21 | No | Yes | No | Yes |
| Child over 21 | Yes | No | Yes | No |
| Others | Yes | Yes | Yes | Yes |

23.8 Proprietary Directors

A 5% director wishing to exercise one of the options in this Chapter is still subject to the usual funding and contribution rules. A maximum benefits test should take place at retirement and retirement options are based on the fund determined by the maximum benefits test.

A 5% director taking one of the options is allowed to take a tax free lump sum of up to 25% of the value of the retirement fund. This replaces the amount which is calculated by reference to final remuneration and years of service (see Chapter 7). All schemes must offer the options to 5% directors.

The options are available where benefits are held in a buy out bond. However, the individual must be a 5% director of the company which established the scheme. An individual who has retained benefits in a buy out bond, relating to a scheme established by a former employer, can only exercise an option if he/she was a 5% director of that company.

Where a 5% director exercises an option, he/she is treated as having exercised the same option in relation to all schemes from the same employment

An option may only be exercised if the individual is a 5% director of the company that established the scheme and if all benefits from the same employment are treated in the same way.

An option may be exercised on early retirement.

An option may only be exercised when benefits are taken. Where a 5% director reaches NRA and continues working, it is possible to take tax free cash using the rules in Chapter 7 and defer taking pension benefits. In this event, the residual funds must be used to purchase an annuity.

23.9 Additional Voluntary Contributions

Please refer to the definition in 23.2 which clarifies what contributions qualify for the options. The definition of an AVC excludes employee contributions if such employee contributions are matched by employer contributions.

There is a difference in the lump sum calculation from that used for proprietary directors. The 25% rule does not apply to an AVC holder. The lump sum benefit is calculated on exactly the same basis as if there was no entitlement to exercise an option. The lump sum benefit should be calculated in accordance with Chapter 7.

23.10 Imputed Distributions

Sec.14, Finance Act 2006, introduced an imputed 3% distribution on the market value of ARF assets on 31 December each year. The 3% rate is being phased in with 1% applying in 2007, 2% in 2008 and

3% in 2009 and following years. QFMs will need to review all ARFs under management to ascertain if an imputed distribution arises.

When does an imputed distribution arise?

This new regime only applies where the ARF owner is 60 years of age or over for the whole of the tax year and where an ARF is set up after 6 April 2000. It does not apply to AMRFs.

How is the imputed distribution, if any, calculated?

The imputed distribution is calculated as a percentage of the market value of assets in an ARF on 31 December each year. In the case of buildings, where a valuation is not readily obtainable as at 31 December, it is acceptable to use a valuation at any date within 3 months prior to 31 December.

Actual distributions made during the year, from an ARF or AMRF set up after 6 April 2000, may be deducted from the "imputed distribution" to arrive at a "net" imputed distribution (if any).

However, any amounts treated as distributions arising from certain transactions (Sec. 784A (1B) TCA 1997), as detailed in 23.5 above, are not deducted for the purposes of the calculation.

The amount to be treated as a distribution is calculated by using the formula:

$$\frac{(A \times B)}{100} \text{ minus } C$$

A the value of the assets in the ARF at 31 December

B the relevant percentage rate for the year of assessment

C any actual distributions made in the year

Examples:

1. Joe has an ARF valued at €600,000 at 31/12/2008. During the year, he received actual distributions of €10,000.

$$\frac{€600,000 \times 2}{100} = €12,000.$$

$$€12,000 \text{ minus } €10,000 = €2000$$

Imputed distribution is €2000.

2. Joan has an ARF valued at €400,000 and an AMRF valued at €40,000 at 31/12/2009. During the year she received distributions of €2,000 from the AMRF and €4,000 from the ARF. On 30/06/2009 the ARF bought a holiday home for her personal use at a cost of €300,000.

$$\frac{€400,000 \times 3}{100} = €12,000$$

Actual distributions: €6,000 (€2,000 plus €4,000)

The cost of the holiday home is treated as a distribution but cannot be included in the calculation.

Imputed distribution is €6,000 (€12,000 minus €6,000).

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

Procedure for Payment of Tax:

The imputed distribution is to be regarded as a distribution made not later than February in the year following that in which the ARF assets were valued. The QFM must deduct tax from the imputed distribution in accordance with the provisions of Sec.784A (3), TCA, 1997. Tax deducted must be included in the QFMs P30 return submitted to Revenue not later than 14 March of that year. For example: In respect of an imputed distribution calculated for 2007, the tax must be paid by 14 March 2008. Details of the tax deducted should also be included in the annual P35 return due in February 2009.

All payments of tax should be forwarded to:

Office of the Collector General
Revenue
Sarsfield House
Limerick

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

Approved Retirement Funds

Name of QFM:

Address:

I confirm that all Approved Retirement Funds under management have been reviewed for the purposes of establishing if liability arises under Sec. 784 (1BA), TCA, 1997.

Arising from this review, a sum of € ___ is reflected in the P30 for (month) in respect of tax deducted from (insert number) Approved retirement funds, and is included in the remittance to the Collector General in respect of that month.

Authorised Signatory:

Date:

You can send a payment and return electronically using Revenue-On-Line (ROS). For details phone 1890 201106 or see the Revenue website: www.revenue.ie

CHAPTER 24 PERSONAL RETIREMENT SAVINGS ACCOUNTS

24.1 Introduction

A personal Retirement Savings Account (PRSA), is a long term savings account designed to assist people to save for their retirement. PRSA products are approved jointly by Revenue and the Pensions Board. Anyone may contribute to a PRSA but there is not an automatic entitlement to tax relief. The topics covered in this Chapter are:

- Tax relief
- Benefits on retirement
- Death benefits
- Interaction with other pension arrangements
- Transfers.
- Anti-Avoidance

24.2 Tax Relief

Tax relief is allowed against relevant earnings i.e. earnings from a trade, profession, office or employment. Net relevant earnings are relevant earnings less any items which reduce a person's income for tax purposes (e.g. losses, capital allowances). The maximum allowable contribution for tax purposes in any year are expressed as an age based percentage of net relevant earnings:

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

The 30% limit applies, irrespective of age, to certain categories of professional sportspersons.

Contributions made by an employer are aggregated with employee contributions for the purposes of calculating the maximum tax relieved contribution. Please refer to **24.5** which explains the position if PRSA contributions are made at the same time as contributions to other pension arrangements.

An individual who is not in pensionable employment is entitled to relief on contributions up to €1,525 regardless of the age based percentage rules.

The maximum income figure on which relief may be calculated is €254,000 per annum for the tax years 2006 and prior. The limit for 2007 is €262,382.

Where total contributions in any one year exceed the limit for tax relief, the balance may be carried forward to the following year. There is an option to treat contributions made between the end of the tax year and the following 31 October as having been made in the previous tax year.

Tax relief cannot be claimed against a spouse's income.

24.3 Benefits on Retirement

On the first occasion that benefits are taken from a PRSA, up to 25% of the fund may be taken as a tax free lump sum. The balance of the fund made be used for annuity purchase or to exercise one of the options detailed in **Chapter 23 Approved Retirement Funds**.

Benefits may be taken when the individual reaches age 60. There is a facility to take benefits in stages, but a tax free lump sum may only be taken on the first occasion that benefits are taken. Benefits must be taken before age 75.

Benefits may be taken at any age, if the individual is permanently incapable through infirmity of carrying on his/her occupation. Please refer to **24.5** for cases where the individual has other pension benefits.

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

24.4 Death Benefits

If death occurs before benefits are taken, the fund passes to the estate of the deceased. There is no Income Tax charge but the normal Inheritance Tax rules apply.

If death occurs after draw down of benefits has commenced, the taxation treatment of the fund is similar to that which applies to an Approved Retirement Fund, see **23.7**

24.5 Interaction with other pension arrangements

The tax relief limits detailed in **24.2** apply to the aggregate of all personal contributions made by an individual to either a PRSA, Retirement Annuity Contract or a pension scheme.

An individual who is a member of a pension scheme, may only get tax relief in respect of a PRSA which is linked to the pension scheme. A PRSA which is used as an AVC is treated in exactly the same manner as any other AVC. The total pension and PRSA contributions must be limited to the amount required to provide maximum benefits as set out in **Chapter 6**.

24.6 Transfers

Transfers may be made from one PRSA to another PRSA and from a PRSA to an occupational pension scheme.

Transfers may be made from an RAC to a PRSA.

In certain circumstances, a transfer may be made from an occupational pension scheme to a PRSA provided:

1. The individual has been a member of the scheme for 15 years or less.
2. The scheme is being wound up or the individual is changing employment.

The value of AVC contributions may be transferred to a PRSA at any time.

Where an individual is entitled to a refund of contributions from a scheme, the refund is taxed at standard rate. However, the refund may be transferred to a PRSA without this tax charge.

Transfers to or from a Buy Out Bond are prohibited.

24.7 Anti-Avoidance

Please refer to Sec.787G (4A), which reads as follows:

“Without prejudice to the generality of subsection 4, the circumstances in which a PRSA administrator shall, for the purposes of this Chapter, be treated as making the assets of a PRSA available to an individual shall include the use of those assets in connection with any transaction which would, if the assets were assets of an approved retirement fund, be regarded under Section 784A as giving rise to a distribution for the purposes of that section and the amount to be regarded as made available shall be calculated in accordance with that section”.

The legislation clearly states that linking a PRSA to certain transaction will trigger a tax charge. The transactions are the same as those which are deemed to be a distribution from an Approved Retirement Fund and are detailed in **23.5**

CHAPTER 25

Limit on Tax Relieved Pension Funds and Lump Sums

25.1 Introduction

Section 14, Finance Act 2006, introduced a new limit on the amount of an individual's tax relieved pension fund and capped the amount of tax free cash that can be taken. Both these limits are personal life time limits and apply to benefits taken or which come into payment on or after 7 December 2005. In many cases lower limits will apply because of scheme rules. This Chapter summarises how the new limits are applied and how any tax charge is calculated. Paragraph headings are as follows:

| | |
|------|--------------------------------------|
| 25.2 | Legislative Summary |
| 25.3 | Basic Concepts |
| 25.4 | Benefit Crystallisation Events (BCE) |
| 25.5 | BCE Certificate |
| 25.6 | Chargeable Excess |
| 25.7 | Excess Lump Sum |
| 25.8 | Pension Adjustment Orders |

25.2 Legislative Summary

The principal provisions introduced are a new Chapter 2C, containing sections 787O to 787U, and associated Schedule 23B, while the legislation governing the lump sum limit is contained in section 790AA:

| | |
|---------------|---|
| 787O: | Definitions |
| 787P: | Maximum tax relieved pension fund |
| 787Q: | Chargeable excess |
| 787R: | Liability and rate of tax on Chargeable Excess |
| 787S: | Payment of tax due on Chargeable excess |
| 787T: | Discharge of administrator from tax |
| 787U: | Regulations |
| 790AA: | Taxation of lump sum payments in excess of the lump sum limit |
| Schedule 23B: | |

1. Calculation of uncrystallised pension rights of an individual on the specified date.
2. Occurrence of benefit crystallisation event

3. Calculation of amount crystallised by a benefit crystallisation event.
4. Amount of Standard Fund Threshold or Personal Fund Threshold that is available at the date of a current event.
5. Meaning of previously used amount.

25.3 Basic Concepts

Specified Date: This is 7 December 2005. The limits on tax relieved benefits, both pension and lump sum, only apply to benefits arising or coming into payment for the first time on or after this date. For the purposes of calculating limits, benefits which have come into payment prior to 7/12/2005 are ignored.

Standard Fund Threshold (SFT): This is the amount against which the value of benefits is tested. The SFT is an individual lifetime limit. A tax charge will only arise if the capital value of benefits exceeds the SFT. Each occasion that a **Benefits Crystallisation Event** (see 25.4 below) occurs, reduces the “unused” amount of the SFT. Examples of calculations are in 25.4 below.
The amount of the SFT for the tax years 2005 and 2006 is €5,000,000.

Personal Fund Threshold (PFT): Individuals who had “uncrystallised” benefits the capital value of which exceeded the SFT as at 7/12/05 could apply to Revenue for a PFT. In these cases, the value stated on the PFT Certificate issued by Revenue replaces the SFT for the named individual.

Indexation Factor: The Minister for Finance may provide for an increase in the amount of the SFT or PFT for 2007 and following years by designating an indexation factor.

| <u>Tax Year</u> | <u>Factor</u> | <u>SFT</u> |
|-----------------|---------------|------------|
| 2005 | n/a | €5,000,000 |
| 2006 | n/a | €5,000,000 |
| 2007 | 1.033 | €5,165,000 |

Lump Sum: The maximum tax free lump sum that can be taken, on or after 7 December 2005, is 25% of the SFT. This amount is an individual life time limit and is in addition to any limit imposed by scheme rules. Examples of calculations are at 25.7 below

Relevant Pension Arrangement: The limits apply to the capital value of all benefits from a “relevant pension arrangement” including all Revenue approved occupational pension schemes (including AVCs), Retirement Annuity Contracts and Trust Schemes, PRSA contracts, Qualifying Overseas Pension Plans, all public sector pension schemes and all statutory schemes.

25.4 Benefit Crystallisation Events (BCE)

A BCE occurs on each occasion that, in relation to a relevant pension arrangement of which the individual is a member, any of the following takes place:

1. The individual takes a pension, annuity or lump sum.
2. The individual exercises an ARF option.
3. A payment or transfer is made to an overseas pension arrangement
4. There is an increase in a pension in payment which exceeds the “permitted margin” (viz. the greater of 5% p.a. or CPI plus 2%). This is an anti-avoidance measure to prevent

commencement of a pension at a low rate in order to bring the capital value of the pension benefit below the SFT, with the pension subsequently increased at an accelerated rate after the benefit has been valued for BCE purposes.

Payment of death in service benefits or a dependant's pension is not a BCE.

When a BCE arises, a capital value must be attributed to the benefit and this is tested against the individual's SFT or PFT by the scheme administrator.

How is the capital value calculated?

When valuing a pension from a defined benefit scheme, the capital value is the gross annual pension multiplied by a factor of 20 (the relevant valuation factor). There is provision to use a different factor, with prior Revenue approval, if the proposed alternative factor is demonstrated to be more appropriate in a particular case. Where an alternative factor has been used in determining the capital value for PFT purposes, then the same factor must be used for subsequent BCE valuations.

When valuing a pension from a defined contribution scheme, the capital value is the amount used to purchase the annuity.

In the case of lump sum benefits, exercise of an ARF option, or an overseas transfer, the value is the actual amount paid or transferred.

In the case of an increase in pension payment in excess of the "permitted margin", the value is calculated by applying a factor of 20 to the amount of annual pension which exceeds the "permitted margin".

Where 2, or more, BCEs occur on the same day, the individual will determine the order in which they are to be deemed to occur. If entitlements from different arrangements occur on the same day, and a chargeable excess arises, the individual may choose which entitlement gives rise to the excess and which administrator should deal with it.

25.5 BCE Certificate

In order that an administrator may determine if a chargeable excess arises, information on any previous BCEs is needed and a declaration must be completed by the individual. There is provision for an administrator to withhold payment of benefits until such time as a completed declaration is provided. The administrator must retain the declarations for a period of 6 years and make them available to Revenue on request. The format of the declaration is at **25.9**

25.6 Chargeable Excess

When the capital value of a BCE, either on its own or when aggregated with a previous BCE, exceeds an SFT or PFT, a chargeable excess arises. Examples:

1. The amount arising exceeds the amount of the SFT available at the date of the BCE.

| | | |
|----------------------|-----|------------|
| Value of current BCE | €6M | |
| SFT | | <u>€5M</u> |
| Chargeable excess | | €1M |

2. Not all of the individual's SFT is available as part of the amount was utilised in earlier BCEs.

| | |
|-----------------------------|------------|
| SFT | €5M |
| Value of earlier BCE | <u>€4M</u> |
| Remaining SFT | €1M |
| <i>Value of current BCE</i> | €2M |
| <i>Chargeable excess</i> | €1M |

3. None of the SFT is available as it was fully used by a previous BCE.

| | |
|-----------------------|-----|
| SFT | €5M |
| Value of earlier BCEs | €6M |
| Remaining SFT | Nil |
| Value of current BCE | €2M |
| Chargeable excess | €2M |

The full amount of any chargeable excess is liable to an up front tax charge under Case IV of Schedule D at the rate of 41% (42% in 2005 and 2006). No reliefs, allowances, deductions, or marginal relief are available to reduce the liability. This charge to tax is without prejudice to any other income tax charge that may arise on payment of benefits.

Tax on a chargeable excess is payable by the administrator of the relevant pension arrangement in the first instance although both the administrator of the relevant pension arrangement and the individual are jointly and severally liable for the tax due. This means that both the administrator and the individual are equally and separately liable for the whole charge to tax and that payment by one will discharge the liability of the other to the extent of the payment made. The liability arises irrespective of whether or not either or any of them are resident in the State.

The legislation also permits documentation governing a pension arrangement to allow for the commutation of so much of an individual's entitlement, as may be necessary, to discharge a tax liability arising from a chargeable excess. Specific provision is included to allow Public Sector scheme administrators to appropriate all, or part of, an individual's entitlements for the purposes of reimbursing the administrator in respect of tax paid on a chargeable excess.

Chargeable Excess Paid by Administrator:

Where the tax arising on a chargeable excess is paid by the administrator, and is not recovered from the individual by restricting benefits, the amount of tax paid will be considered a benefit and subject to tax in its own right. Example:

On 1 March 2006, the capital value of benefits is €6M which gives a chargeable excess of €1M (€6M – SFT of €5M), tax due €1M @ 41%: €410,000. If the administrator pays the tax without recovering it from the individual, a grossing up calculation is required to arrive at the correct tax liability due:

The chargeable excess of €1M is taken to be the after tax balance of a chargeable excess which has been taxed @ 41%. The €1M is grossed up to €1,694,915 and the correct tax charge @ 41% is €694,915 which the administrator is required to pay.

The administrator must, within 3 months of the end of the month in which the BCE giving rise to the chargeable excess occurred, make a return to Revenue detailing:

- the name and address of the administrator
- the individual's name, address and PPS number
- details of the pension arrangement which produced the chargeable excess
- details of the amount and calculation of the chargeable excess
- details of the amount of tax that the administrator has to account for.

Payment of the tax is due on the same date as the return. The standard assessment, collection, late payment and appeal provisions apply.

25.6 Excess Lump sum

Where existing lower limits do not apply, the maximum tax free lump sum is 25% of the SFT in the year of payment. The limit for sums paid between 7 December 2005 and 31 December 2006 is €1,250,000. The limit is an aggregate individual lifetime limit and applies to lump sums paid to the individual under the rules of a "relevant pension arrangement". The limit does not apply to lump sum death in service benefits.

Any amount of lump sum paid in excess of the limit is liable to tax at the individual's marginal rate of income tax.

Examples of Lump Sum Calculations

- A. Lump Sum (LS) to be paid is €1.5M, then the excess LS equals €0.25M (€1.5M - €1.25M), and this amount is taxable at the individual's marginal rate.

- B. LS paid in January 2006 €500,000, a second LS paid in June 2006 €400,000, and the current LS paid in September 2006 €600,000. The excess LS calculation is:
 - 1. Sum of earlier LS: €500K + €400K = €900K
 - 2. Plus the current LS €900K + €600K = €1.5M
 - 3. Minus the LS limit €1.5M - €1.25 = €250K

Taxable amount is €250K

- C. LS paid 1.1.06 €1M, a second LS on 1/6/06 €400K and the current LS on 1/9/06 €600K. The excess LS calculation is:
1. The sum of the earlier LS: €1M + €400K = €1.4M
 2. But as this exceeds the LS limit all the current LS is an excess LS.
This is because at the time the second LS was paid on 1/6, part of that LS would have been treated as an excess LS in its own right: €1M + €400K = €1.4M minus €1.25M (the LS limit) = €150K as an excess LS.

25.7 Pension Adjustment Orders

Chapter 22 explains the impact of a Pensions Adjustment Order when calculating benefits etc. Sec.17, Finance Act 2007, provides that any benefit payable under a PAO is to be included in the calculation of a capital value for BCE purposes as if the PAO had not been made.

Example A:

A PAO provides that the annual pension of €500,000, from a defined benefit scheme, is to be split on a 60/40 basis between the member spouse and the non-member spouse. For BCE valuation purposes, the member's pension is valued at €10,000,000 (€500,000 × 20).

Example B:

A PAO provides that benefits arising from a defined contribution scheme are to be split on a 50/50 basis between the member spouse and the non-member spouse. On the occasion of the BCE, the member's fund is valued at €6,000,000 and this is the amount that is used to determine if a chargeable excess arises.

25.9 BCE Declaration

DECLARATION REQUIRED by SECTION 787R(4), TCA,1997

This Declaration should be completed and given to the Administrator of your pension arrangement prior to the payment of any benefits from that arrangement.

If you have a Personal Fund Threshold Certificate, issued by Revenue, please enclose a copy with your completed Declaration. Where your PFT includes a defined benefit arrangement, please state the valuation factor used.

Information in relation to payment of the State pension from the Department of Social & Family Affairs is **not** required.

This Declaration should be completed in respect of benefits arising on or after **7 December 2005**.

1. Did you become entitled, on or after 7 December 2005, to any pension, lump sum or any other pension related benefit?

YES/NO

2. Prior to, or on, the date of receiving benefits from this pension arrangement, do you expect to become entitled to any pension, lump sum or any other pension related benefit from another pension arrangement?

YES/NO

3. Have you directed, on or after 7 December 2005, or do you intend to direct prior to the date of receiving benefits from this pension arrangement, that a payment or transfer be made to an overseas pension arrangement?

YES/NO

If you have answered YES to any of the above questions, please provide the following details to the Administrator of your pension arrangement:

Name of the scheme or arrangement

Contact details for the Administrator

Policy or reference number

Type of pension arrangement

Date of entitlement to benefits

Benefits provided

Amount of any transfer or payment to an overseas arrangement & contact details for the receiving pension arrangement

If a **defined contribution** arrangement, the value of the fund on the date of benefit entitlement

If a **defined benefit** arrangement the amount of annual pension, the amount of any lump sum and the factor used for calculating the capital value of the pension

The amount or market value of any assets transferred by exercise of an "ARF option".

I declare that to the best of my knowledge and belief, the information in this Declaration is correct.

Name:

Address:

PPS No.:

Signature:

Date

