Approved Retirement Funds

Pensions Manual – Chapter 23

This chapter should be read in conjunction with Part 30, Chapter 2 of the Taxes Consolidations Act 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1 Introduction

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

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

This Chapter should be read in conjunction with Revenue Pensions Manual Chapters 6 and 7 dealing with maximum benefits for employees (including directors), and Chapters 21, 24 and 31 dealing with Retirement Annuity Contracts (RACs), Personal Retirement Savings Accounts (PRSAs) and Pan-European Personal Pension Products (PEPPs) respectively.

2 Eligibility

The ARF retirement options are available only to certain individuals who started to take retirement benefits after 2 December 1998. They apply at retirement only, with the exception of benefits transferred to an ARF on the death-in-service of an employee of an occupational pension scheme (see Chapter 10). In such cases, the retirement options are not available to such beneficiaries, benefits are transferred to an ARF and subject to the rules on ARFs (see paragraph 6).

The retirement options are available to:

- All holders of retirement annuity contracts (RACs) set up after 6 April 1999 and, in certain circumstances, holders of contracts established prior to that date.
- Members of retirement annuity trust schemes approved under section 784(4) Taxes Consolidation Act 1997 (TCA).
- Holders of personal retirement savings accounts (PRSAs).
- All members of defined contribution (DC) schemes and members of defined benefit (DB) schemes who are proprietary directors, in respect of their accrued benefits from:

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

- Members of DB schemes who are not proprietary directors in relation **only** to pension benefits arising from their AVCs.
- The spouse or former spouse, or (with effect from 27 July 2011) civil partner or former civil partner of all members of DC or DB schemes where there is a pension adjustment order. (Where the member of a DB scheme is not a proprietary director, the ARF option applies **only** to benefits arising from AVCs).
- Holders of Pan-European Personal Pension Products (PEPPs).

Please refer to paragraph 10 for additional information on AVCs.

Prior to 6 February 2011, only proprietary director members of retirement benefits schemes (and their spouse or former spouse) could avail of the retirement options in respect of all their benefits (whether from a DB or DC scheme). Other members of such schemes (again whether DB or DC schemes) could avail of the options in respect of benefits arising from AVCs only.

In relation to DC schemes, the retirement options apply to the main benefits from schemes approved on or after 6 February 2011 and from schemes in existence prior to that date where the scheme rules are amended to allow the exercise of the option.

Where an individual opts for the retirement options (other than an individual who opts only in respect of their AVCs) the value of the lump sum they can take in part commutation of pension cannot exceed 25% of the value of the pension fund.

The previous specified minimum income requirement for all individuals wishing to avail of the retirement options no longer applies from 21 December 2021, the date of the passing of Finance Act 2021.

Benefits being transferred to an ARF on the death-in-service of a member of an occupational pension scheme can be provided for a spouse, or civil partner, or where there is no spouse or civil partner, for dependants of the deceased member, in accordance with section 772(3)(b) TCA.

The option to purchase an annuity at retirement remains.

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

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

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

- The specified normal retirement date,
- An earlier retirement date, where applicable,
- Leaving service, or
- In the case of a pension or part of a pension payable in accordance with a pension adjustment order, the relevant date in relation to that order.

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

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

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

3 Benefits from DC scheme replacing wound-up DB scheme

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

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

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

If a retirement lump sum of 1½ times final remuneration (or the maximum allowed on the uplifted scale for the total service with the employer) is taken from the DB scheme, then no retirement lump sum may be taken from the DC scheme.

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

Example:

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

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

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

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

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

Approved Minimum Retirement Fund (AMRF)

Up to 31 December 2021, an individual aged under 75 years who wished to have the balance of their pension fund, after taking any retirement lump sum, paid to them or transferred to an ARF, had to have a minimum guaranteed annual pension income ("specified income") of €12,700 (a total of €63,500 or the balance of the fund if less) for life in payment at the time an ARF option was exercised to avoid having to put money into an Approved Minimum Retirement Fund (AMRF) or purchase an annuity.

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

The changes made were -

- The AMRF requirement no longer applies to individuals availing of the ARF option from occupational pension schemes, retirement annuities and personal retirement savings accounts,
- On 1 January 2022 all current AMRFs automatically become an ARF, and the operating and administrative provisions rules applying to ARFs now apply to those funds (see paragraph 6), and
- QFMs shall not accept any assets into an AMRF on or after 1 January 2022.

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

From 1 January 2015, a payment or transfer on one occasion only in any tax year of up to 4% of the value (at the time of the payment or transfer) of the assets in an AMRF could be made to the AMRF owner. Any amount paid or transferred to the owner is taxable in the same manner as a distribution from an ARF (see paragraph 6). This applied to withdrawals from an AMRF prior to them automatically converting to an ARF on 1 January 2022. From 1 January 2022, distributions will be from an ARF and taxable under ARF provisions

Please refer to paragraph 13 regarding the issue of PAYE Exclusion Orders.

4.1 Pension and Property Adjustment Orders

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

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

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

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

5 Full withdrawal of balance in retirement fund

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

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

Please refer to paragraph 13 regarding the issue of PAYE Exclusion Orders.

6 Approved Retirement Fund

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

6.1 Exemption from income tax of rental income by an ARF in possession of a residential property.

An ARF fund is exempt from income tax on rental income received, where the ARF acquires a residential property as an investment asset for the purposes of the fund.

The general obligation to register a tenancy with the Residential Tenancy Board (RTB) is provided for in Part 7 of the Residential Tenancy Act 2004.

Prior to 1 January 2024, this exemption from income tax on rental income received by an ARF was not dependent on the registration of the tenancy with the RTB. However, Finance (No. 2) Act 2023 amended the TCA to provide that, from 1 January 2024, should an ARF wish to avail of this exemption, the “person chargeable” (as defined in section 790F TCA and in this case the QFM) must now ensure that the tenancy is registered with the RTB.

Where such a requirement applies –

(a) Revenue may request by written notice that the person chargeable provide, within 30 days of such notice, evidence that the qualifying lease has been registered with the RTB, under the provisions of Part 7 of the Residential Tenancies Act 2004, and

(b) a copy of an entry in respect of the published register provided under section 132 of the Residential Tenancy Act 2004, by the person changeable, will be accepted by Revenue as evidence of this registration.

6.2 Distributions

An amount withdrawn from an ARF, including an imputed amount (see paragraph 12 and Revenue Pensions Manual Chapter 28), is referred to as a “distribution”. A distribution has a very wide meaning and encompasses any payment or transfer of assets out of an ARF, or the assignment of the ARF, or assets in the ARF, by any person, including a payment, transfer or assignment to the person beneficially entitled to the assets. It does not include the transfer of assets to another ARF owned by the individual or the transfers described in paragraph 4.1.

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

- loans, or the use of ARF assets as security for a loan, made to:
  - the beneficial owner or a connected person, or
  - a close company where the beneficial owner or a connected person is a participator[1],
- acquisition of property from the beneficial owner or connected person,
- sale of an ARF asset to the beneficial owner or connected person,

[1] This provision was inserted by section 18 of Finance (No. 2) Act 2023, and only applies to loans made after the passing of the Act.

- acquisition of residential or holiday property for use by the beneficial owner or connected person,

- acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person,

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

- the use of ARF assets by an ARF owner to invest in any fund, trust or scheme, etc., where a pension arrangement of a person connected with the ARF owner (for example, an adult child, spouse, etc.) invests in the same, or any other, fund, trust or scheme etc., and there is an arrangement whereby the investment return to the pension arrangement is attributable in any way to the investment by the ARF owner (for example, any remaining income or capital in the fund reverts to the pension arrangement on the death of the ARF investor or otherwise on the winding up of the fund). (Where a distribution arises in these circumstances, section 790E TCA provides that the connected person's pension arrangement is chargeable to income tax under Case IV of Schedule D on any income or capital gains arising to the arrangement from the investment in the fund etc.).

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

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

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

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

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

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

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

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

- Certain distributions arising following the death of the ARF owner (see paragraph 8).

Please refer to paragraph 13 regarding the issue of PAYE Exclusion Orders.

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

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

7 Qualifying Fund Manager (QFM)

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

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

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

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

A QFM must advise Revenue of the intention to act as a QFM within one month of commencing to act in that capacity by emailing LCHWID (Pensions Branch) at retirebens@revenue.ie.[2]

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

The **declaration** should contain the following:

- the name, address and tax reference number of the beneficial owner;
- confirmation that the assets which are to be transferred consist only of assets to which the individual is beneficially entitled;
- confirmation that the assets which are to be transferred are currently held in an RAC, PRSA, PEPP, or an exempt approved occupational pension scheme; and
- the policy number and name of the Life Office/Provider or the name and Revenue reference number of the scheme; or,
- in the case of a PEPP, the registration number of the PEPP provider and the PEPP in EIOPA's central public register, as set out in the PEPP Regulation.

8 Death

Any payment, or imputed payment, from an ARF following the death of the ARF owner is a distribution and is taxable as such. The amount of the distribution is treated as income of the ARF owner for the year of assessment in which he or she dies.

The following are not treated as distributions:

- a transfer to an ARF in the name of the deceased's spouse or civil partner (referred to below as the second-mentioned ARF); and

[2] Notifications may also be sent in via MyEnquiries.

- a transfer to, or for the sole benefit of, any child of the deceased or of the deceased's civil partner who is aged under 21 years at the time of ARF owner's death.

A distribution:

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

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

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

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

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

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

Where an individual dies in service and the equivalent pension value is transferred to an ARF for the individual's spouse, civil partner or dependant(s) (as set out in Pensions Manual Chapter 10 – Benefits on death-in-service) the person(s) taking the benefits in the form of an ARF are deemed to take an inheritance for CAT purposes. The usual CAT provisions determine whether any CAT liability arises on the individual(s) deemed to take the inheritance. No CAT arises on gifts or inheritances between spouses or civil partners. Persons other than a spouse or civil partner may have a CAT liability.

9 Proprietary directors

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

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

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

A retirement option may be exercised on early retirement.

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

10 Additional voluntary contributions

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

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

11 Buy-out bonds (BOBs)

Defined Benefit (DB) Schemes:

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

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

Defined Contribution (DC) Schemes:

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

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

12 Imputed distributions

Section 790D TCA provides for a scheme of imputed distributions for ARFs, vested PRSAs and vested PEPPs on a composite basis**.** Please refer to Pensions Manual Chapter 28 for further details.

More than one ARF

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

Where the ARF owner has more than one ARF, which are not all managed by the same QFM, the ARF owner may nominate one of the QFMs to operate these provisions and account 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 the ARFs and had made all the distributions.

Further information on imputed distributions is provided in Chapter 28.

Procedure for payment of tax

The imputed distribution is treated as a distribution made not later than February in the year of assessment following the year of assessment to which the imputed distribution relates. The specified amount is regarded as having been distributed or made available not later than the second month of the year of assessment following the year of assessment for which the specified amount is determined, in accordance with section 790D(4) TCA. The QFM must deduct tax from the imputed distribution in accordance with the provisions of section 784A(3) TCA. Tax deducted must be included in the QFMs payroll submission to Revenue and the tax paid not later than 14 March of that year. For example, in respect of an imputed distribution calculated for 2023, the tax must be paid by 14 March 2024.

All payments of tax should be made via ROS or forwarded to:

Office of the Revenue Commissioners

Collector-General's Division

PO Box 354

Limerick

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

Approved Retirement Funds

Name of QFM:

Address:

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

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

Authorised Signatory: Date:

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

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

PAYE exclusion orders

Income and assets retained in an ARF (see paragraph 6) are beneficially owned by the ARF owner. Distributions (including deemed distributions) from ARFs are generally[3] treated and taxed as emoluments under Schedule E, regardless of the residence status of the individual recipient.

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

PAYE Exclusion Orders are not issued where an individual takes the balance of his or her pension fund as a taxable lump sum (see paragraph 5).

Interaction with Double Taxation Agreements (DTAs)

Some of Ireland's Double Taxation Agreements (DTAs) with other countries have a provision dealing specifically with the taxation of distributions from ARFs.[4]

For those DTAs which do not have such a provision, while a distribution of income or gains arising from the underlying investments, or of the original capital, is the taxable event in Ireland under domestic legislation, it is not regarded as the taxable event for DTA purposes. As the ARF owner is the beneficial owner of the ARF capital and any income and gains arising, they should be treated as such for the purposes of applying the various articles of the DTA between Ireland and the country of residence.

Therefore, to determine where the taxing rights lie in relation to a distribution from an ARF, the distribution should be broken down between the underlying income, gains or capital which it represents. The appropriate articles in the DTA should then be applied accordingly as at the dates on which the income or gains arose to the ARF. If the individual was a resident of Ireland at those dates, the DTA does not apply. Where a

[3] See paragraph 6 for exceptions to the general rule.

[4] The DTAs with Germany, The Netherlands, Pakistan and Kosovo are Ireland's only current DTAs to specifically provide for the taxation of distributions from ARFs.

distribution involves the return of all or part of the original capital invested in an ARF, then, unless there is a capital article in the DTA, any Irish tax charge under Part 30 TCA that relates to a capital disbursement is not limited by the DTA.

Notwithstanding the foregoing, Revenue had previously allowed on an administrative basis that the tax deducted by a QFM from an ARF distribution could be refunded where the taxpayer could demonstrate that the distribution had been taxed in the DTA country in which they were resident. However, as there is no legislative basis for this approach, it was discontinued.

With effect from 22 December 2017, Revenue only allows for the correct legislative basis for taxing a distribution from an ARF. To determine where the taxing rights lie in relation to the income and gains, the amount of any distribution should be traced to the underlying income, gains or capital which it represents.

The DTA treatment of ARF distributions as described above also applies from 22 December 2017 to distributions and withdrawals from AMRFs (held before they automatically became ARFs on 1 January 2022) and vested PRSAs (see Chapter 24.10) and where an individual takes the balance of their pension fund[5] as a taxable lump sum (see paragraph 5).

Application of DTAs to non-Irish resident owners of ARFs, vested PRSAs and AMRFs.

Owners of ARFs, vested PRSAs, vested PEPPs and AMRFs (held before 1 January 2022) who are not resident in Ireland may be subject to taxation on this income both in Ireland and their country of residence and subsequently tax relief may be available under the terms of a DTA. Ireland's DTAs provide for relief from double taxation and dispute resolution under the "Elimination of double taxation" and "Mutual agreement procedure" articles in a typical DTA. If a source of income, gains or capital is taxable in both countries which are party to a DTA, generally the country of residence gives credit for any tax payable in the other country.

An ARF distribution might not be fully taxed in the country of residence, depending on how that country classifies the withdrawn amount. For example, some countries tax ARF distributions only to the extent that the income and capital gains arising (but not capital) are remitted to the country of residence.

To ascertain the amount of relief due, information must be provided by the taxpayer indicating how the income arose within the ARF, including the date when the income arose. Once the distribution is broken down into its constituent parts (for example,

[5] That is, the balance of the fund after any retirement lump sum and used to purchase an annuity.

interest income, dividend income, return of capital, etc.) each part should then be examined to see if DTA relief is available under the different articles of the treaty with the country of residence. Accordingly, full or partial refunds of Irish tax deducted under PAYE may be due to these taxpayers. Case law has established that, where a payment is made from a mixed fund, income and gains of the year are treated as being paid out first, and any amount paid out in excess of that year's income and gains is treated as a return of capital.

Some ARF products sold by life assurance companies are structured as unit linked funds, where the individual invests their pension pot into a pooled fund and owns units in that fund. The ARF owner, in these cases, simply owns a share of that fund, the units; they are not the beneficial owner of the underlying assets in the fund. Revenue accepts that it is not appropriate for the underlying accumulation of income within the unit linked fund to be broken down and provided in support of the refund claim. Accordingly, it is the income which arises from the units or disposal of the units that constitutes the distribution.

Taxpayers should, in all cases, consult the relevant treaty and check the relevant provisions to satisfy themselves in terms of its application.

Claims for relief must be made through a Refund of Taxes paid on ARF Distributions Claim form and returned via MyEnquiries.

Ireland's DTAs which contain a capital article

There are articles dealing with the taxation of capital in a number of Ireland's DTAs. Generally, where the DTA contains a capital article, a distribution from an ARF consisting of capital will be taxable in the country of residence. However, the text of DTAs are not standard and the capital article of a relevant DTA must be examined carefully to ascertain the taxing right to capital.

Ireland's DTAs which deal specifically with ARFs

There is an article dealing with ARFs in Ireland's DTAs with the following countries:

- Germany
- The Netherlands
- Pakistan
- Kosovo

Examples showing the treatment of ARF distributions to an individual resident in a treaty country

Example 1 – ARF holder resident in a country where the DTA does not have a capital article

Adrian, treaty resident for DTA purposes in Country X, has an ARF valued at €500,000 at 31 December 2022. During the year of assessment 2022 the qualifying fund manager made distributions to Adrian of €20,000 from their ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

Under the appropriate Articles of the Ireland-Country X DTA, treaty relief is allowed in relation to the income arising from the Dividend Income and the Interest Income.

However, there is no basis for claiming treaty relief under the Ireland-Country X DTA in respect of the capital element of the ARF distribution of €17,350. As a result, an assessment to tax under Schedule E applies, in respect of the capital element of the ARF distribution.

Example 2 – ARF holder resident in a country where the DTA has a capital article

Gene, treaty resident for DTA purposes in Country Y, has an ARF valued at €500,000 at 31 December 2022. During the year of assessment 2022 the qualifying fund manager made distributions to Gene of €20,000 from their ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

Under the appropriate Articles of the Ireland-Country Y DTA treaty relief is allowed in relation to the income arising for the full sums of Dividends of €1,750 and Interest of €900.

There is also a basis for claiming treaty relief under the Ireland-Country Y DTA in respect of the capital element of the ARF distribution of €17,350.

Example 3: ARF holder resident in a country where the DTA has an article on ARFs

Leslie, treaty resident for DTA purposes in Country Z, has an ARF valued at €500,000 at 31 December 2022. During the year of assessment 2022 the qualifying fund manager made distributions to Leslie of €20,000 from their ARF. The distributions consisted of income arising of Dividends (€1,750) and Interest (€900) and a distribution of Capital (€17,350).

The Ireland-Country Z DTA states that **“distributions (for the purposes of section 784A of the Taxes Consolidation Act 1997) from an approved retirement fund (within the meaning of that section) that was created by the transfer of accrued rights or assets from a pension fund shall only be taxable by reference to the provisions of that section, notwithstanding any provision of this Agreement.”**

This means Ireland retains the taxing right on this ARF distribution and the full ARF distribution is taxable under Schedule E.

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