Retirement Annuity Contracts

Chapter 21

Document last updated November 2017

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Introduction

21.1

The legislation governing retirement annuity contracts (RACs), often referred to as personal pensions, is contained in sections 783, 784 and 785 to 787 of the Taxes Consolidation Act 1997. 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 either the individual is not included for retirement benefits under an approved occupational pension scheme relating to the employment or where the sole benefit arising is 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 or couples in a civil partnership, each spouse or civil partner 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 Relief

21.3

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

The first control is an age-related percentage limit of an individual's net relevant earnings[1]. This provides that the maximum amount of pension contributions in respect of which an individual may claim tax relief may not exceed the relevant age-related percentage of the individual's net relevant earnings in any year of assessment.

The age-related percentage limits are:

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

* The 30% limit applies, irrespective of the lower actual age based percentage limits, to certain categories of professional sportspersons[2].

The second control places an overall upper limit on the amount of net relevant earnings that may be taken into account for the purposes of giving tax relief.
The earnings limit is currently set at €115,000[3] and applies whether an individual is contributing to a single pension product or to more than one pension product.

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

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

Where an individual has two sources or more of income (e.g. earnings from employment and profits from self-employment and is making pension contributions to an occupational pension scheme and to an RAC) a single aggregate earnings limit, which, as noted above, is currently €115,000, applies in determining the amount of tax relievable contributions.[4]

For years of assessment prior to 2011, the earnings limits were as follows:

2003 - 2006: €254,000

2007: €262,382

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[1] 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 relating to a source of relevant earnings.
[2] Athletes, badminton players, boxers, cricketers, cyclists, footballers, golfers, jockeys, motor racing drivers, rugby players, squash players, swimmers and tennis players.
[3] The limit of €115,000 was introduced by section 19 Finance Act 2011.
[4] Please refer to **Chapter 26** for detailed information and examples on tax relief for pension contributions, including contributions to more than one pension product.

2008: €275,239

2009 & 2010: €150,000[5]

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

If a premium is paid after the end of the year, but on or before the following 31 October relief may be allowed in the earlier year provided an election to do so is made by the individual on or before the 31 October. Taxpayers who are entitled to avail of the extended return filing and payment date under ROS may also avail of the extended date to make an election and pay a premium. As the payment of a qualifying premium is a pre-condition to the availability of relief, an election made in advance of such a payment is not effective.

The date for making elections for premiums paid in the year of retirement may be extended in certain circumstances (see **Appendix III** of this Manual).

Full details of RAC premiums should be included on the annual Return of Income. 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.

Tax relief is non transferable between spouses or civil partners.

The calculation of the respective amounts of net relevant earnings for retirement annuity relief under section 787(8) and of total income for chargeable annual payments to “descendants” under section 792(2) of the TCA 1997, in circumstances where the provisions in question interact, gives rise to complex computations.

In order to overcome difficulties in this regard, the calculation of the limits to the reliefs may be made as follows:

(a) the chargeable annual payments to “descendants” in accordance with section 792 may be computed as 5% of the provisional total income before deducting retirement annuity relief, and
(b) the retirement annuity relief in accordance with section 787 may be computed as the appropriate age-related percentage limit of net relevant earnings after deducting the amount in respect of chargeable annual payments to “descendants” as computed.

[5] For the year of assessment 2010, the earnings limit is deemed to be €115,000 for the purpose of determining how much of a premium paid by an individual in the year of assessment 2011, is to be treated as paid in the year of assessment 2010. Please refer to **Chapter 3.2** for an example.

PRSI & Universal Social Charge

21.4

There is no relief from PRSI or the Universal Social Charge in respect of premiums made to RACs.

Benefits on Retirement

21.5

Benefits may be taken at any time after age 60, even if the individual is still working, but must be taken on or before the individual's 75th birthday (see **Para 21.8** in relation to RAC benefits which are not taken on or before an individual's 75th birthday). In certain occupations, with prior Large Cases Division (Financial Services Pensions) 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)).

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

With effect from 8 February 2012, section 787TA provides a one–off opportunity (the encashment option) for individuals with dual private and public sector pension arrangements who meet certain conditions to encash their private pension rights, in whole or in part, from age 60 (or earlier, where retirement is due to ill health) with a view to eliminating or reducing the chargeable excess that would otherwise arise when their public service pension crystallises. The exercise of this option attracts income tax (which is ring-fenced) at the point of encashment on the full value of the rights at the higher rate of tax in force at that time plus 4% USC. No benefits can be taken from a scheme in respect of which the encashment option has been exercised. Please refer to **Chapter 25** for information on the circumstances in which a chargeable excess can occur.

Please refer to **Chapter 7.4** for details of the circumstances in which the practice relating to the commutation of trivial pensions may be extended to holders of RACs.

Death Benefits

21.6

On death before retirement, the value of the fund may be used to purchase a spouse's, civil partner'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 and earnings ceiling detailed above.

Please refer to **Para. 21.8** in relation to the treatment of cash and other assets in an RAC from which benefits had not been taken on or before the individual's 75th birthday.

Group Schemes

21.7

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.

Retirement benefits not taken on or before age 75

21.8

An RAC from which retirement benefits have not commenced on or before the date of an individual's 75th birthday is treated as becoming a vested RAC (within the meaning of section 787O) on that date. Where the individual was 75 before 25 December 2016 (i.e. the date on which Finance Act 2016 was passed), the RAC is deemed to vest on 25 December 2016. A consequence of an RAC vesting in these circumstances is that, subject to the transitional measures described below, the individual cannot access the RAC assets in any form from the date of his or her 75th birthday.

As a transitional measure, the owner of an RAC which is deemed to vest on 25 December 2016 (i.e. where the owner was 75 before that date) may, on or before 31 March 2017, take retirement benefits from the RAC in the form of an annuity, a retirement lump sum or under the ARF options.

The vesting of an RAC is a Benefit Crystallisation Event for the purposes of Chapter 2C of Part 30 of the TCA 1997 (see **Chapter 25**).

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

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