Approved Retirement Funds

Pensions Manual – Chapter 23

This chapter should be read in conjunction with Part 30, Chapter 2 of the Taxes Consolidations Act 2007

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1 Introduction

New options on retirement for pension arrangements were introduced by 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) or Approved Minimum Retirement Fund (AMRF), 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.

This Chapter details the retirement options and should be read in conjunction with Tax and Duty Manuals (TDM) Chapters 6 and 7 dealing with maximum benefits for employees (including directors), and also Chapters 21 and 24 dealing with Retirement Annuity Contracts (RACs) and Personal Retirement Savings Accounts (PRSAs).

The topics covered are:

- Eligibility
- Deferral of Annuity Purchase
- Specified Income Requirement
- Approved Minimum Retirement Funds
- Withdrawals from an AMRF/Conversion of an AMRF to an ARF
- Full withdrawal of balance in retirement fund
- Approved Retirement Funds
- Qualifying Fund Managers
- Death
- Proprietary Directors
- Additional Voluntary Contributions
- Buy Out Bonds
- Imputed Distributions
- PAYE Exclusion Orders.

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2 Eligibility

The retirement options are available only to certain individuals who started to take retirement benefits after 2 December 1998. They apply at retirement only and do not apply to death in service benefits.

The retirement options are available to:

- All holders of retirement annuity contracts (RACs) set up after 6 April 1999 and, in certain circumstances, they may also be offered to 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).

(Please refer to paragraph 13 for additional information on AVCs)

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Notes

- 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 his or her AVCs) the value of the lump sum that he or she can take in part commutation of pension cannot exceed 25% of the value of the pension fund.

All individuals wishing to avail of the retirement options must satisfy the specified minimum income requirement detailed in paragraph 5.

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 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 his or her main occupational pension scheme benefits.

Proprietary director means a director who, either alone or together with his or her 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 his or her 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 voluntary contributions made to a scheme by an employee which are -

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- 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 has been granted with effect from 1 April 2014. From that date the ARF/taxable lump sum options will be permitted in respect of a DC scheme that is 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 details of how this will apply in practice are as follows:

- ❖ It continues to be the case that 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, 2/3rds 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 Revenue 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.
- ❖ 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

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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:

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

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

The maximum pension that she 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 impact on her 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 (i.e., €40,000) permitted under the uplifted scales. 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.

4 Deferral of annuity purchase

Under the deferred annuity purchase option[1] introduced on 4 December 2008, a member of a DC occupational pension scheme who retired on or after that date, and who would otherwise have been compelled to purchase an annuity, was allowed to postpone the purchase of an annuity until 31 December 2010. That deadline was further extended to 5 March 2011.

The deferred annuity option did not apply to holders of RACs or PRSAs or to proprietary directors who qualified for the ARF options.

Individuals who postponed the purchase of an annuity and who wished to avail of the ARF option following the amendment of the rules of their former DC scheme to allow for the option had until 5 March 2011 in which to do so.

[1] Section 772(3A)(ab) Taxes Consolidation Act 1997.

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5 Specified income requirement

An individual wishing to have the balance of his or her pension fund, after taking any retirement lump sum, paid to him or her or transferred to an ARF, must, if under 75 years of age, have a minimum guaranteed annual pension income ("specified income") for life in payment at the time an ARF option is exercised in order to avoid having to put money into an Approved Minimum Retirement Fund or purchase an annuity.

The specified income amount is currently €12,700.

For ARF options exercised on or after 6 February 2011 and before 27 March 2013 (the date of passing of Finance Act 2013) the specified income requirement had been increased from €12,700 per annum to an amount equal to 1.5 times the maximum annual rate of State Pension (Contributory) (rounded up or down to the nearest €100), which during that period was €18,000.

The previous limit of €12,700 was reinstated for ARF options exercised on or after 27 March 2013. It was intended that the lower limit would remain in place for a period of three years, whereupon the higher limit implemented on 6 February 2011 would be reapplied by legislation[2]. However, the higher limit has not been re-instated, so the limit of €12,700 continues to apply.

Specified income is defined in section 784C (4)(b) TCA as a pension or annuity which is payable for the life of an individual, including a pension payable under the Social Welfare Consolidation Act 2005[3], inclusive of the increase in the weekly rate which applies to individuals who live alone, where payable, and any pension payable to which the provisions of section 200 TCA applies. (Section 200 provides that certain foreign occupational and social security pensions may be exempt from income tax, whether the recipient is resident in Ireland or otherwise. While a pension to which section 200 TCA applies may be exempt for tax purposes, the amount of the pension can be taken into account by an individual when determining whether he or she meets the specified income requirement.)

Specified income must be in payment at the date of exercise of the ARF option. For example, an individual retiring at age 60 cannot include a Department of Social Protection pension payable from age 66 as specified income at the time of retirement. Pensions paid directly to an individual's spouse or civil partner or pensions/allowances

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[2] Paragraph 7.1 outlines measures that may be relevant to individuals who were subject to the higher specified income and AMRF requirements in the period 6 February 2011 to 26 March 2013.

[3] State Pension, Widow's, Widower's or Surviving Civil Partner's Pension, Invalidity Pension and Blind Pension, regardless of whether the pension is contributory or non-contributory.

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received on behalf of a spouse, civil partner or dependant may not be taken into account in computing that individual's specified income.

Revenue will allow individuals who received a Christmas bonus under S.I. No. 523/2017 – Social Welfare (Temporary Provisions) Regulations 2017 to take the bonus into account in determining the amount of their annual pension or annuity income for the purposes of section 784C (4) TCA and the related PRSA provision in section 787K TCA (see TDM Chapter 24).

If a Christmas bonus is paid in 2018 or any subsequent year, it may be taken into account in determining an individual's annual pension or annuity income for the purposes of sections 784C (4) and 787K TCA.

Revenue will also allow individuals who received from the Department of Social Protection a fuel allowance payment, household benefit package and/or telephone support allowance, as described in the table to section 126 TCA,[4] to take those payments into account in determining the amount of their annual pension or annuity income for the purposes of section 784C(4) TCA and the related PRSA provision in section 787K TCA (see TDM Chapter 24).

6 Approved Minimum Retirement Fund (AMRF)

Where the specified income requirement is not satisfied in the case of an individual aged under 75, he or she must, after taking a retirement lump sum, transfer the lesser of the balance of the pension fund or €63,500 to an AMRF or use it to purchase an annuity (or a combination of both).

For ARF options exercised on or after 6 February 2011 and before 27 March 2013 (the date of passing of Finance Act 2013), the amount to be transferred to an AMRF had been increased to an amount equal to ten times the maximum annual prevailing rate of State Pension (Contributory) (rounded up or down to the nearest €100), which during that period was €119,800.

The previous lower amount of €63,500 was reinstated for ARF options exercised on or after 27 March 2013. As with the specified income requirement, it was intended that this lower amount would remain in place for a period of three years, whereupon the higher amount implemented on 6 February 2011 would be reapplied by legislation

[4] 'A payment made under a scheme administered by the Minister of Employment Affairs and Social Protection and knows as 'Fuel Allowance'; 'A payment made under a scheme administered by the Minister of Employment Affairs and Social Protection and knows as 'Household benefit package'; 'A payment made under a scheme administered by the Minister of Employment Affairs and Social Protection and knows as 'Telephone Support Allowance': inserted by section 13(d) Finance Act 2018.

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(please refer to footnote 1). However, the higher amount has not been re-instated, so the amount of €63,500 continues to apply.

Where an individual exercises a sequence of ARF options for separate pension benefit schemes, the maximum amount that must be placed in an AMRF or used to purchase an annuity in respect of all such schemes is €63,500 or, where the maximum amount is calculated by reference to the maximum annual rate of the State Pension (Contributory), the rate that applies at the date each option is exercised.

The following general points should also be noted:

- An individual cannot have more than one AMRF at any one time. However, all assets in an AMRF may be transferred from that AMRF to another AMRF.
- An AMRF may not be used as security for a loan.
- AMRF moneys may be used to purchase an annuity for the beneficial owner at any time.
- Similar operating and administrative provisions apply for AMRFs as apply for ARFs (see paragraph 9).
- There is no provision for an apportionment of the maximum amount that must be placed in an AMRF or used to purchase an annuity where an individual partially meets the specified income requirement. For example, an individual who has specified income of €6,350 p.a. (at a time when the specified income requirement is €12,700) must still place €63,500 or the fund balance, if lower, in an AMRF rather than half of that amount (on the basis that they satisfy half the specified income requirement).

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

Section 19(2)(b) Finance Act 2014 introduced a measure, effective from 1 January 2015, which allows for the 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 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 9).

Please refer to paragraph 16 regarding the issue of PAYE Exclusion Orders.

Prior to 1 January 2015, the initial capital transferred into an AMRF could not be withdrawn other than to purchase an annuity, which meant that only the income or gains of an AMRF could be paid or transferred to the AMRF owner, subject to tax.

An AMRF automatically becomes an ARF where an individual:

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- attains the age of 75 years,
- is in receipt of the required level of specified income, having previously placed funds in an AMRF because the specified income test was not met when the ARF option was exercised (please refer to paragraph 7.1), or
- dies.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

7.1 Transitional arrangements

Section 17(6) Finance Act 2013 introduced measures to ensure that individuals who were subject to the higher specified income and AMRF limits which applied during the period 6 February 2011 to 26 March 2013 were not disadvantaged (**see paragraphs 4 and 5**).

Firstly, where such individuals had guaranteed annual pension income of at least €12,700 on or after 27 March 2013 (the date of passing of **Finance Act 2013**) any AMRF immediately becomes an ARF.

Secondly, where they did not have guaranteed annual pension income of €12,700 on 27 March 2013 but had originally transferred more than €63,500 to an AMRF, the excess amount transferred above €63,500 immediately becomes an ARF.

7.2 Pension and property adjustment orders

A transfer from an ARF or AMRF into another ARF/AMRF 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/AMRF.

In both scenarios the recipient spouse or civil partner may open an ARF/AMRF to facilitate the transfer notwithstanding that he or she may not, strictly speaking, have that option under Part 30 of the TCA 1997.

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

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8 Full withdrawal of balance in retirement fund

Provided the individual has satisfied the specified income or AMRF/annuity requirements (**see paragraphs 5 and 8**), 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 1997.

"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 16 regarding the issue of PAYE Exclusion Orders.

9 Approved Retirement Fund

As an alternative to full fund withdrawal, an individual who has satisfied the specified income or AMRF requirements may transfer the balance of the retirement fund, excluding any amounts taken as a retirement lump sum, to an ARF. The "life office" or scheme administrator should pay any retirement 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 and may be withdrawn at any time.

Income and gains of ARF funds are exempt from tax while retained in the ARF.

An amount withdrawn from an ARF, including an imputed amount (see paragraph 15 and TDM 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, however, include the transfer of assets to another ARF owned by the individual or the transfers described in paragraph 7.2.

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

- loans made to the beneficial owner or connected person, or the use of the assets of an ARF as security for such a loan,
- acquisition of property from the beneficial owner or connected person,
- sale of an ARF asset to the beneficial owner or connected person,

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- 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 tax paid by that administrator on a chargeable excess (see Chapter 25) relating to the ARF holder.

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- 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 his or her 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 11).

Please refer to paragraph 16 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.

10 Qualifying Fund Manager (QFM)

An ARF or 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 (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 from the ARF and, as the case may be, 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

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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.

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:

- 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, 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.

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 the 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 number of the person paying the specified income.

11 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. There are some exceptions:

- a transfer to an ARF in the name of the deceased's spouse or civil partner (referred to below as the second-mentioned ARF) is not a distribution;
- 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 is not a distribution.

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However, 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 the rate of 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 and the tax was collected under the PAYE regime.

The position regarding Income Tax and Capital Acquisitions Tax 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 is summarised below. The usual CAT tax-free thresholds apply:

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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

12 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, he or she 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.

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13 Additional voluntary contributions

Paragraph 2 clarifies 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 that 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 contributions. However, in the case of a DC scheme, the transfer to an ARF of pension rights accruing to an individual from AVCs where there are matching employer contributions is permitted where the individual transfers all of his or her 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.

14 Buy-out bonds

In the case of buy-out bonds (BOBs), access to the ARF option in respect of main scheme benefits under the occupational pension scheme arrangement from which the transfer value to the BOB originated can be summarised as follows:

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.

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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.

15 Imputed distributions – up to 31 December 2011

NB – The following describes the imputed distribution regime which applied for all years to 31 December 2011 in respect of assets held in an ARF. For the year of assessment 2012 and following years, a new regime applies and provides for imputed distributions for both ARFs and vested PRSAs on a composite basis. **Please refer to TDM Chapter 28 for further details.**

An imputed distribution on the market value of assets held in an ARF on the specified date (31 December each year) applied from 2006 to 2011.

The scheme, as introduced, provided for a 3% distribution on the market value of such assets, phased in over a three-year period, with a rate of 1% applying in 2007, 2% in 2008 and 3% in 2009.

The rate applicable in 2010 and 2011 was 5%.

QFMs were required to review all ARFs under their management each year to ascertain if an imputed distribution arose.

When does an imputed distribution arise?

An imputed distribution applies:

- for a year of assessment where the ARF owner is 60 years of age or over for the whole of that year, and
- in respect of ARFs created on or after 6 April 2000.

The imputed distribution regime does **not** apply to AMRFs.

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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 (to 2011). 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 the ARF or AMRF (in respect of income or gains) 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 (section 784A(1B) TCA), as detailed in paragraph 9, are **not** deductible for the purposes of the calculation.

For the years of assessment 2010 and 2011, the formula used to calculate the imputed distribution was:

$$\frac{(A \times 5)}{100} \text{ minus } B$$

where A is the value of the assets in the ARF (or ARFs) at 31 December in the relevant year and B is the value of any actual distributions made in that year.

Examples:

1. Joe has an ARF valued at €600,000 at 31 December 2010. During the year of assessment 2010 the qualifying fund manager made distributions of €10,000 from his ARF. The amount of the imputed distribution based on the fund value at 31 December 2010 is calculated using the formula,

$$\frac{(A \times 5)}{100} \text{ minus } B$$

where A is €600,000 and B is €10,000

$$\frac{(€600,000 \times 5)}{100} = €30,000$$

€30,000 minus €10,000 = €20,000, i.e. the amount of the imputed distribution for 2010.

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2. On 31 December 2009 Joan has an ARF valued at €549,000 and an AMRF valued at €63,500. On 30 June 2010 the ARF bought a holiday home for Joan's personal use at a cost of €150,000. During 2010 she received distributions of €2,000 from the AMRF and €4,000 from the ARF. Growth in the ARF during 2010 was €5,000. On 31 December 2010 the value of the ARF was €400,000 and the value of the AMRF was €63,500. (The value of the holiday home is disregarded for this calculation – see note below.)

The amount of the imputed distribution based on the fund value at 31 December 2010 is calculated using the formula,

$$\frac{(A \times 5)}{100} \text{ minus } B$$

where A is €400,000 and B is €6,000

$$\frac{(€400,000 \times 5)}{100} = €20,000$$

€20,000 minus €6,000 = €14,000, i.e. the amount of the imputed distribution.

Notes to Example 2

- Actual distributions are €6,000 (€2,000 plus €4,000)
- Although the cost of the holiday home is treated as a distribution (see paragraph 9), it can't be included in the calculation of B (section 784A(1B)(d) TCA) as an offset against the tax due.
- A is arrived at as follows:

	€
Value at 31/12/2009	549,000
Growth during 2010	5,000
Distributions during 2010	(4,000)
Asset disregarded under S784A(1D)	(150,000)
Value at 31/12/2010	400,000

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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 and AMRFs beneficially owned by the individual.

Where the ARF owner has more than one ARF, not all of which are managed by the same QFM, the ARF owner may nominate one of the QFMs for the purposes of operating these 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 of assessment following the year of assessment to which the imputed distribution relates. 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 2019, the tax must be paid by 14 March 2020.

All payments of tax should be 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.

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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.

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

PAYE exclusion orders

Income and assets retained in an ARF (see paragraph 9) or an AMRF (see paragraphs 6 & 7) are beneficially owned by the ARF/AMRF owner. Distributions (including deemed distributions) from ARFs and AMRFs are generally[5] treated and taxed as emoluments under Schedule E, regardless of the residence status of the individual recipient.

As distributions from ARFs or AMRFs 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 8).

[5] See paragraph 9 for exceptions to the general rule.

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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[6].

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, he or she 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 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 and vested PRSAs (see Chapter 24.10) and where an individual takes the balance of his or her pension fund[7] as a taxable lump sum (see paragraph 8).

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[6] The DTAs with Germany and Pakistan are Ireland's only current DTAs to specifically provide for the taxation of distributions from ARFs. The new DTA with the Netherlands, which was signed in 2019 but is not yet in effect, also contains a provision on ARFs.

[7] That is, the balance of the fund after any retirement lump sum and, in circumstances where the

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

Owners of ARFs, vested PRSAs and AMRFs 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, 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 and/or gains which arise from the units or disposal of the units that constitute the distribution that arises, much as it does to an individual holder of units.

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.

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specified income requirement is not satisfied (see paragraph 5), any amount which has been transferred into an AMRF or used to purchase an annuity.

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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,
- Netherlands (NB: treaty not yet in effect) and
- Pakistan.

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

Elaine, treaty resident for DTA purposes in Country X, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Elaine of €20,000 from her 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

Emma, treaty resident for DTA purposes in Country Y, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Emma of €20,000 from her ARF. The distributions consisted of

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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

Sophie, treaty resident for DTA purposes in Country Z, has an ARF valued at €500,000 at 31 December 2019. During the year of assessment 2019 the qualifying fund manager made distributions to Sophie of €20,000 from her 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."**

Therefore, Ireland retains the taxing right on this ARF distribution. As a result, an assessment to tax under Schedule E applies, in respect of the full ARF distribution.

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