Limit on Tax Relieved Pension Funds

Pensions Manual - Chapter 25

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1. Introduction

Chapter 2C[1] of Part 30 of, and Schedule 23B to, the Taxes Consolidation Act 1997 (TCA) deal with the limits on tax-relieved pension funds. These provisions impose a maximum allowable retirement pension fund for tax purposes.

The provisions impose a lifetime limit, or ceiling, on the total capital value of pension benefits that an individual can draw in her or his lifetime from tax relieved pension products where those benefits are taken, or come into payment, for the first time on or after 7 December 2005 (benefits which came into payment prior to this date are ignored). This limit is called the standard fund threshold (SFT) and is currently €2m (see paragraph 2). In certain circumstances, a higher threshold called the personal fund threshold (PFT) may apply (see paragraph 3). In many cases individual pension funds will be restricted to lower limits reflecting Revenue maximum benefit rules.

On each occasion on or after 7 December 2005 that an affected individual becomes entitled to receive or, in the case of vested RACs or vested PRSAs (see Chapters 21 and 24 respectively) is treated as having received, a benefit (for example, a pension or a retirement lump sum) under a pension arrangement (referred to in the legislation as a "benefit crystallisation event" or BCE – see paragraph 4), s/he uses up part of her/his SFT or PFT to the extent of the capital value of that benefit.

When the capital value of a BCE (either on its own or when added to BCEs that have been taken since 7 December 2005) exceeds an individual's SFT or PFT, a "chargeable excess" arises equal to the amount by which the fund threshold is exceeded (see paragraph 6). The whole of the amount of the chargeable excess is subject to an upfront income tax charge[2], at the higher rate of income tax for the year in which the BCE occurs. The pension scheme administrator is required to deduct and pay this tax to the Collector-General.

This Chapter summarises how the provisions operate and how any tax charge is calculated. The topics covered in this Chapter are:

- Standard fund threshold (SFT)
- Personal fund threshold (PFT)
- Benefit crystallisation events (BCEs)
- BCE certificate
- Chargeable excess
- Pension adjustment orders
- Credit for lump sum tax against chargeable excess tax
- Schedule 23B TCA

A suggested format for a BCE declaration is provided in the Appendix to the Chapter.

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[1] Part 30 Chapter 2C TCA contains sections 787O to 787U.

[2] For the years of assessment 2015 to 2019 the higher rate of income tax is 40%. For earlier years when the SFT and PFT applied, the higher rate was 41% from 2007 to 2014 and 42% in 2005 and 2006, depending on when the BCE occurred.

2. Standard fund threshold (SFT)

The SFT is the generally applicable maximum tax-relieved pension fund[3] for an individual and, as provided for in section 18 Finance (No. 2) Act 2013 which amended section 787O TCA, is set at €2m from 1 January 2014 (the "specified date"). The Minister for Finance may amend the SFT in line with an earnings adjustment factor (as provided for in the definition of "standard fund threshold" in section 787O).

From 7 December 2010 to 31 December 2013 the SFT was €2.3m

The amount of the SFT prior to 7 December 2010 was:

Tax Year	Factor	SFT
2005	n/a	€5,000,000 (from 7 December 2005)
2006	n/a	€5,000,000
2007	1.033	€5,165,000
2008	1.049	€5,418,085
2009	1	€5,418,085
2010	1	€5,418,085 (to 6 December 2010)

3. Personal fund Threshold (PFT)

A PFT is an increased maximum tax-relieved pension fund which may apply instead of the SFT where the capital value of an individual's pension rights on the "specified date" (within the meaning of section 787O TCA) exceeds the amount of the SFT which applies on that date. As noted in paragraph 2, section 18 Finance (No. 2) Act 2013 amended the SFT for the tax year 2014 to €2m (from the previous value of €2.3m). In addition, the specified date was amended to 1 January 2014 (from 7 December 2010).

Individuals with pension rights whose capital value as at 1 January 2014 exceeds €2m can claim a PFT, up to an amount not exceeding the previous SFT of €2.3m, from Revenue. Details of the procedures for making a PFT notification on or after 1 January 2014 are set out below.

[3] The maximum tax-relieved pension fund is the limit on the capital value of pension benefits (benefit crystallisation events) that may be drawn down by an individual on or after 7 December 2005, without the application of excess fund tax.

Calculation of a PFT

A PFT is calculated by taking the sum of the capital values on 1 January 2014 of all of an individual's

- "uncrystallised" pension rights[4] , that is, pension rights that the individual is building up on that date but has not yet become entitled to, and

- "crystallised" pension rights[5], that is, pension benefits that an individual has already become entitled to from any pension arrangements since 7 December 2005.

Where, on 1 January 2014, the overall capital value of an individual's crystallised and uncrystallised pension rights exceeds the SFT of €2 million, that higher amount will be the individual's PFT, subject to a maximum PFT of €2.3m (the previous SFT limit). The only exception to this is where an individual holds a PFT issued in accordance with the legislation as it applied before 18 December 2013 (the date Finance (No.2) Act 2013 was enacted). Such an individual retains that earlier PFT and there is no need to make a new application to Revenue.

Where a pension arrangement is (or was) subject to a Pension Adjustment Order (PAO), the PAO must be ignored in determining the capital value of the pension arrangement for PFT purposes. In other words, the capital value must be calculated as if the PAO had never been made. This requirement applies regardless of whether the PAO beneficiary takes a transfer value to another pension arrangement. The corollary of this is that the designated benefit under the PAO in favour of the former spouse or civil partner does not form part of the former spouse/civil partner's PFT calculation.

Determination of pension rights for PFT purposes

In the case of uncrystallised rights, the capital value of defined contribution (DC) arrangements for PFT purposes is the value of the assets in the arrangement that represent the member's accumulated rights on 1 January 2014, that is, the value of the DC fund on that date.

The position is different for members of defined benefit (DB) arrangements because such arrangements do not have an individual "earmarked" fund for each member.

Where a DB arrangement provides a lump sum commutation option, the amount of a member's pension rights is the annual amount of the gross pension (that is, before

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[4] For example, rights under defined benefit (DB) and defined contribution (DC) occupational pension schemes, AVCs, retirement annuity contracts and PRSAs.

[5] For example, the commencement of a pension or annuity, the receipt of a retirement lump sum or the proceeds of a pension fund being placed in an Approved Retirement Fund (ARF), an Approved Minimum Retirement Fund (AMRF) or retained in a vested PRSA. These are known as "benefit crystallisation events" (BCEs).

any commutation for a lump sum) that would have been payable under the rules of the arrangement if the member had retired on 1 January 2014 ("the specified date") at her/his salary and service on that date and on the assumption that s/he had attained normal retirement age on that date, multiplied by 20 – which is the "relevant valuation factor" on the "specified date" (section 787O(2)(a)(i) TCA).

Where a DB arrangement provides a separately accrued lump sum entitlement (otherwise than by way of commutation of part of the pension) – for example, in public service schemes - the value of the lump sum entitlement (calculated on the same assumptions as in the preceding paragraph) is added to the capital value of the DB pension to arrive at the overall capital value of the member's pension rights on 1 January 2014.

In the case of crystallised rights, the capital value of the pension benefits from DC arrangements is the value of the cash/assets that were used, for example, to purchase an annuity or that were transferred to an ARF. The value of a retirement lump sum is the amount of the lump sum paid.

For a DB arrangement with a lump sum commutation option, the capital value of the crystallised pension benefits is the gross amount of pension that would have been payable (before any commutation for a lump sum) in the first 12 months (ignoring any adjustments over that period) from the date the individual became entitled to it, multiplied by 20 (the standard capitalisation factor).

Where a DB arrangement provides for a separately accrued lump sum (other than by way of commutation of part of the pension), the capital value of the crystallised pension benefits is the annual amount of pension paid in the first 12 months (ignoring any adjustments over that period) from the date the individual became entitled to the pension multiplied by 20, plus the cash value of the separate pension lump sum paid at that time. (Disbursements from the lump sum, for example, for arrears of spouse's and children's pension, do not reduce its cash value for PFT purposes.)

Notes:

(i) In the case of a crystallised DB pension with a commutation option, the gross amount of the DB pension for PFT purposes is the amount that would have been payable in the first 12 months before any commutation. It is not the initial annual rate of pension paid to the individual in the first 12 months (which would probably reflect the fact that part of the pension was commuted for a lump sum) nor the annual rate of the pension being paid at the specified date or later (which could reflect increases in the pension since it was first awarded). Rather, it is the amount of pension that would have been payable in the first 12 months from the date the individual became entitled to it on the assumption that there had been no commutation of part of the pension for a lump sum. Any lump sum actually paid is, therefore, ignored in computing the capital value of the crystallised pension rights in such cases as it is already reflected in the calculation of the pension capital value.

(ii) The higher age–related valuation factors which apply for determining the capital value of DB pension benefits at the point of retirement, where an individual retires after 1 January 2014 (see the table to Schedule 23B TCA) must *not* be used for PFT purposes. The factor for PFT purposes is always 20.

(iii) The value of a lump sum is the amount before excess lump sum tax, if any.

Procedures for making a PFT notification on or after 1 January 2014

Section 787P TCA requires that a PFT notification in respect of the capital value of pension benefits on 1 January 2014 must be made electronically within 12 months of a new electronic notification system being made available by Revenue. However, regardless of this 12-month period, where an individual becomes entitled to a pension benefit (that is, a benefit crystallisation event occurs) after 1 January 2014 (for example, through retirement) in circumstances where s/he would be claiming a PFT, the notification must be submitted to Revenue prior to the BCE arising.

The electronic system was made available in July 2014, with a deadline for making notifications until 31 July 2015.

For the purposes of the application an individual must

- provide basic identifying information about him or herself and the various pension arrangements he or she is a member of,
- obtain from the administrator of each pension arrangement of which s/he is a member, a statement –
  - certifying the capital value of her/his pension rights (both crystallised and uncrystallised) on 1 January 2014 in relation to each arrangement, calculated in accordance with the provisions of Schedule 23B TCA, and
  - in the case of a DB arrangement, certifying the annual amount of pension accrued at 1 January 2014 underpinning that calculation (see above for details of how this amount is computed).

Miscellaneous

PFT certificates issued by Revenue stating the amount of an individual’s PFT should be retained as they will be required by pension scheme(s) administrator(s) when retirement benefits eventually come into payment or are drawn down to determine if a chargeable excess arises.

The Revenue Commissioners may withdraw a certificate issued in respect of a PFT and, where appropriate, issue a revised certificate if it subsequently transpires that the information included in the PFT notification is incorrect or it comes to light that the individual is not entitled to a PFT.

As with the SFT, there is provision for amending the PFT from 2015 in line with an earnings adjustment factor.

An individual who received a PFT certificate from the Revenue Commissioners following the introduction of the limit on tax-relieved pension funds on 7 December 2005 or following the reduction of the SFT from €5,418,085 to €2.3m on 7 December 2010 continues to be entitled to the amount on that certificate, amended, as appropriate, in line with the earnings adjustment factors applicable since the PFT was granted, and there is no need to apply to Revenue for a new certificate.

Examples

The following examples illustrate how the PFT provisions operate in practice.

Example 1

The capital value of Paul's pension fund on 1 January 2014 (that is, his uncrystallised pension rights) was €1.5m. He had not become entitled to any pension rights since 7 December 2005. As the capital value of Paul's uncrystallised rights on 1 January was below the SFT of €2m, he cannot claim a PFT and the maximum allowable pension fund for tax purposes that he can build up is €2m.

Example 2

The capital value of John's uncrystallised pension rights on 1 January 2014 was €2.2m. He had not become entitled to any pension rights since 7 December 2005. As the capital value of John's uncrystallised pension rights exceeded the SFT of €2m, he is entitled to claim a PFT of €2.2m.

Example 3

Mary had uncrystallised pension rights valued at €2m on 1 January 2014. She became entitled to pension benefits under another scheme on 1 January 2011, with a capital value of €0.5m. The combined value of Mary's crystallised and uncrystallised pension rights is €2.5m. As this amount exceeds the old SFT of €2.3m, the maximum PFT she can claim is €2.3m.

Example 4

Jean had uncrystallised pension rights on 7 December 2010 valued at €4m and had crystallised pension benefits under another scheme on 1 July 2006 with a capital value of €2m. As the combined value of Jean's crystallised and uncrystallised pension rights on 7 December 2010 exceeded the (then) SFT of €2.3m, she applied for, and received, a PFT of €5,418,085, i.e. the amount of the SFT which applied from 7 December 2005 to 6 December 2010 (as adjusted by the earnings adjustment factors designated by the Minister for Finance). She continues to be entitled to the amount on that certificate and she is not required to apply for a new PFT.

Example 5
Ben is a member of a DB scheme on a salary of €200,000 and had 39 years of service on 1 January 2014. The scheme provides for a separately accrued lump sum entitlement. His accrued pension rights on that date were an annual pension of €97,500 (€200,000 x 1/80 x 39) and a gratuity of €292,500 (€200,000 x 3/80 x 39). He may claim a PFT of €2,242,500, calculated as follows: (Annual pension €97,500 x 20 = €1,950,000 + gratuity of €292,500).

If the scheme had provided for a lump sum commutation option instead of a separately accrued lump sum entitlement, the amount of Ben's pension rights would be the annual amount of the gross pension (i.e. before any commutation for a lump sum) multiplied by 20.

4. Benefit crystallisation events (BCEs)

A BCE occurs in a "relevant pension arrangement" of which the individual is a member when any of the following events takes place:

1. The individual takes a pension, annuity or retirement lump sum.

2. The individual exercises an ARF option.

3. The individual does not elect under section 787H(1) TCA to transfer PRSA assets to an ARF and instead retains the assets in a PRSA.

4. A payment or transfer is made to an overseas pension arrangement.

5. There is an increase in a pension which an individual becomes entitled to on or after 7 December 2005 in excess of the "permitted margin" (the greater of 5% p.a. or the Consumer Price Index (CPI) plus 2%). This is an anti-avoidance measure to prevent commencement of a pension at a low rate in order to bring the capital value of the pension benefit below the SFT, with the pension subsequently increased at an accelerated rate after the benefit has been valued for BCE purposes.

6. A retirement annuity contract (RAC) or PRSA becomes vested on the date the owner attains age 75, or on 25 December 2016 (the date Finance Act 2016 was passed) if the owner was 75 before that date, where retirement benefits from the RAC or PRSA have not commenced by age 75. For additional information on vested RACs and PRSAs, see Chapters 21 and 24 respectively.

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

A "relevant pension arrangement" means any one or more of the following –

- a retirement benefits scheme, within the meaning of section 772 TCA, approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 30 TCA,

- an annuity contract or a trust scheme or part of a trust scheme approved by the Revenue Commissioners under section 784 TCA,

- a PRSA contract, within the meaning of section 787A TCA, in respect of a PRSA product within the meaning of that section,

- a qualifying overseas pension plan within the meaning of Chapter 2B of Part 30 TCA,

- a public service pension scheme within the meaning of section 1 Public Service Superannuation (Miscellaneous Provisions) Act 2004,

- a statutory scheme, within the meaning of section 770(1) TCA, other than a public service pension scheme referred to above.

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

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

How is the capital value of a BCE calculated?

In the case of DB pension arrangements, the capital value of pension rights drawn down after 1 January 2014 is determined by multiplying the gross annual pension that would be payable to the individual (before commutation of part of the pension for a lump sum) by the appropriate age-related valuation factor as provided for in the Table to Schedule 23B TCA.

If the DB arrangement provides for a separate lump sum entitlement (otherwise than by way of commutation of part of the pension) e.g. most public service schemes, the value of the lump sum is added to the capital value of the DB pension to arrive at the overall capital value.

However, where part of a DB pension has been accrued at 1 January 2014 and part after that date, transitional arrangements allow the capital value of the pension at retirement to be calculated by way of a "split" calculation, so that the part accrued up to 1 January 2014 (called the "accrued pension amount") is valued at a factor of 20 and the part accrued after that date is valued at the appropriate higher age-related factor as set out in the Table to Schedule 23B TCA. A condition of applying the "split" calculation is that the administrator concerned is satisfied from information and records available to the administrator that an accrued pension amount arises in relation to the DB pension in question.

For DC pension arrangements, the capital value of pension rights when they are drawn down after 1 January 2014 is the value of the assets in the arrangement that represent the member's accumulated rights on that date. For example, in the case of an annuity, it is the value of the assets used to purchase the annuity.

The value of a retirement lump sum is the amount of the lump sum (before excess lump sum tax, if any).

In the case of the exercise of an ARF option, or an overseas transfer, the capital value is the actual amount transferred to the ARF or to the overseas arrangement.

In the case of an increase in a pension in payment in excess of the "permitted margin", the value is calculated by applying the appropriate age-related factor as set out in the Table to Schedule 23B TCA (see paragraph 10) to the amount of annual pension which exceeds the "permitted margin".

In a case involving the retention of assets in a PRSA, the amount crystallised is the aggregate of the retirement lump sum (before excess lump sum tax, if any) and the market value of any assets retained in the PRSA.

In the case of an RAC or a PRSA vesting due to the owner not taking benefits on or before age 75, the amount crystallised is the aggregate of the cash sums and the market value of any assets which represent the owner's rights under the RAC at the date the owner attains the age of 75 years or, in the case of a PRSA, the aggregate of the cash sums and the market value of the assets in the PRSA at that date. Where the owner attained the age of 75 years prior to 25 December 2016, the relevant date for establishing the aggregate of the cash sums and the market value of the assets is 25 December 2016.

As with the position in determining pension benefit capital values for PFT purposes, where a pension arrangement is subject to a PAO, the PAO must be ignored in determining the capital value of a BCE arising under the pension arrangement. In other words, the capital value of the BCE must be calculated as if the PAO had never been made. This requirement applies regardless of whether or not the PAO beneficiary had taken a transfer value to another pension arrangement. (See paragraph 7). The corollary of this is that the former spouse or civil partner's designated benefit under the PAO when drawn down is not treated as a BCE for SFT/PFT purposes in respect of the former spouse/civil partner

Examples

The following examples illustrate how BCE capital values are determined.

Example 6

Michael is a member of a DC pension scheme. He has no PFT. Michael retires on 1 July 2015. The value of his DC fund on that date is €1.5m. The capital value of the BCE is therefore €1.5m. As this is below the SFT of €2m no chargeable excess arises.

Example 7

Jim is a member of a private sector DB scheme. He retires on 1 February 2020 aged 65. The relevant age-related valuation factor applying to Jim is, therefore, 26 (as provided for in the Table to Schedule 23B TCA). The annual amount of pension that his scheme would pay him on retirement (before any commutation of part of the pension for a lump sum) is €75,000. Jim's pension fund administrator is aware that €50,000 of this pension had already been accrued at 1 January 2014 (i.e. the accrued pension amount). The administrator calculates the capital value of Jim's pension rights at retirement for BCE purposes as follows:

€50,000 x 20 = €1m (i.e. accrued pension amount x the standard valuation factor)
€25,000 x 26 = €0.650m (pension accrued after 1 January 2014 x age-related factor)
Capital Value = €1.65m.

As the capital value of Jim's retirement benefits based on the "split" BCE calculation is less than the SFT, no chargeable excess arises.

Example 8

Lucy retires at age 60. She does not have a PFT. Her annual DB pension at retirement is €90,000 (before commutation for a lump sum). The relevant age-related valuation factor applying to Lucy is 30, as per the table to Schedule 23B TCA). Lucy's pension fund administrator is aware that €45,000 of her pension had already been accrued at 1 January 2014 (the "accrued pension amount"). The administrator calculates the capital value of Lucy's pension rights at retirement for BCE purposes as follows:

€45,000 x 20 = €0.900m (accrued pension amount x the standard valuation factor)
€45,000 x 30 = €1.350m (pension accrued after 1 January 2014 x age-related factor)

Capital Value =	€2.25m
Less SFT =	(€2.00m)
Chargeable excess =	€0.25m

As Lucy has a chargeable excess of €250,000, she is liable to chargeable excess tax at the higher rate of income tax. If this rate is 40% in the year she retires, the chargeable excess tax due will be €250,000 @40% = €100,000. The pension fund administrator must pay this tax to Revenue upfront and recover it from Lucy.

5. BCE certificate

To determine if a chargeable excess arises on a BCE, an administrator may request information on any previous BCEs from an individual for that purpose. There is provision for an administrator to withhold payment of benefits until a completed declaration is provided. The administrator must retain the declarations for a period of six years and make them available to Revenue on request. The suggested format of the declaration is set out at paragraph 8.

However, an individual whose RAC or PRSA is treated as vesting at age 75, or on 25 December 2016 (the date Finance Act 2016 was passed) must provide a declaration to the administrator within 30 days from the date of the deemed vesting, regardless of whether the administrator requests a declaration. Where such an individual fails to provide a declaration, the administrator must assume that the individual's SFT or PFT is fully used up and treat the entire value of the BCE as a chargeable excess taxable at the higher rate of income tax in force for the year in which the BCE arises.

Where a chargeable excess has been incorrectly included in a return or the full amount of a BCE has been charged to tax (in the circumstances of the preceding paragraph) Revenue may, when its attention is drawn to the matter, make the necessary adjustments to ensure that the tax chargeable on the BCE in question does not exceed the charge that would have arisen if all details had been provided.

6. Chargeable Excess

When the capital value of a BCE, either on its own or when aggregated with a previous BCE which occurred since 7 December 2005, exceeds the SFT or a PFT, a chargeable excess arises. The following examples illustrate how this applies in practice:

Example 9

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

Value of current BCE	€4.0m
SFT	(€2.0m)
Chargeable excess	€2.0m

Example 10

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

PFT	€5m
Value of earlier BCE	(€4m)
Remaining PFT	€1m
Value of current BCE	€2m
Chargeable excess	€1m

Example 11

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

SFT	€2m
Value of earlier BCEs	€3m
Chargeable excess	€1m
Remaining SFT	Nil
Value of current BCE	€0.2m
Chargeable excess	€0.2m

The full amount of a chargeable excess is subject to an upfront income tax charge (see footnote 2 for the appropriate rate of tax) under Case IV of Schedule D in the year of assessment in which the BCE giving rise to the chargeable excess occurs. No reliefs, allowances or deductions may be set against the chargeable excess when computing the amount of tax due. In certain circumstances, however, standard rate lump sum tax may be offset against tax due on a chargeable excess (see paragraph 9).

The administrator of a pension arrangement who deducts tax from a chargeable excess in accordance with section 787R TCA, must submit a Form 787S to the Collector-General and pay the tax, by electronic fund transfer (EFT), within three months of the end of the month in which the BCE giving rise to the chargeable excess occurs.

The chargeable excess should **not** be included on the employer's monthly return to Revenue.

Tax on a chargeable excess is payable by the administrator of the relevant pension arrangement in the first instance although both the administrator of the relevant pension arrangement and the individual are jointly and severally liable for the tax due. This means that both the administrator and the individual are equally and separately liable for the whole charge to tax and that payment by one will discharge the liability of the other to the extent of the payment made. The liability arises irrespective of whether either of them is resident in the State. Please refer to paragraph 7 where a chargeable excess arises under a pension arrangement in respect of which a PAO has been made.

Recovery of chargeable excess tax paid by an administrator

In the case of private sector DC arrangements, the administrator pays the chargeable excess tax due from the assets held in the individual's fund.

In the case of private sector DB pension arrangements, section 787Q TCA provides for an administrator to recover any chargeable excess tax paid either by way of an actuarial reduction in the individual's pension rights or by arranging to be directly reimbursed by the individual.

In the case of public sector DB pension arrangements, a range of reimbursement options were introduced in Finance Act 2012 and these were amended and extended in Finance (No.2) Act 2013. As a result, the following options are now available from 1 January 2014.

1. Where the excess fund tax amounts to 20% or less of the tax-free lump sum net of any standard rate tax (referred to as the 'net lump sum'), the reimbursement of the chargeable excess tax is by way of:
   (i) appropriation from the net lump sum,
   (ii) payment by the individual to the administrator,
   (iii) a combination of (i) and (ii), or
   (iv) solely by way of a reduction in the gross pension payable to the individual over a period not exceeding 20 years.

2. Where the excess fund tax is greater than 20% of the net lump sum, the reimbursement of the chargeable excess tax is to be by way of:
   (i) appropriation of not less than 20% of the net lump sum,
   (ii) payment by the individual to the administrator of an amount that equates to at least 20% of the net lump sum, or
   (iii) a combination of (i) and (ii), such that the aggregate is not less than 20% of the net lump sum,

   with any balance to be reimbursed by:
   a) reducing the gross pension for an agreed period of up to 20 years,
   b) a payment by the individual to the administrator within 3 months of the relevant BCE, or
   c) a combination of both (a) and (b).

   or

   (iv) solely by way of a reduction in the gross pension payable to the individual over a period not exceeding 20 years.

Where an individual agrees to pay an amount to a public sector pension administrator to reimburse the administrator for tax paid "up-front" on a chargeable excess, rather than the administrator appropriating part of the net lump sum for that purpose, that payment must be made before the administrator pays over the lump sum, or the appropriate part of the lump sum, to the individual.

With effect from 1 January 2015, where a PAO (see paragraph 7) applies to a public sector scheme in situations where no transfer amount has been applied to provide an independent benefit for the non-member spouse/civil partner, or where a transfer amount has been applied to provide an independent benefit for the non-member within the member's scheme, the reimbursement options described above also apply to the non-member spouse/civil partner.

From 8 February 2012 to 31 December 2013, the reimbursement options were the same as those set out above, except:

- the applicable percentage rate was 50% rather than 20%;
- the period over which the gross pension could be reduced under option 2 to recoup the balance of the chargeable excess tax was ten years rather than 20 years; and
- options (1)(iv) and (2)(iv) did not apply.

Chargeable excess tax paid by administrator

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

For example, on 1 March 2019, the capital value of benefits for an individual without a PFT is €2.1m, which gives a chargeable excess of €100,000 (€2.1m minus the SFT of €2m). The tax due at the higher rate of income tax for 2019 is €100,000 @ 40% = €40,000.

If the administrator pays the tax without recovering it from the individual, a grossing up calculation is required to arrive at the correct tax liability due.

The chargeable excess of €100,000 is taken to be the after-tax balance of a chargeable excess which has been taxed @ 40%. The €100,000 is therefore grossed up to €166,666 and the correct tax charge is €166,666 @ 40% = €66,666, which the administrator is required to pay.

The administrator must, within three months of the end of the month in which the BCE giving rise to the chargeable excess occurs, make a return to the Collector-General on Form 787S and pay the tax due by electronic fund transfer (EFT).

In situations involving PAOs, special arrangements apply in relation to the liability for, payment and recovery of chargeable excess tax. Please refer to the Notes for Guidance to Chapter 2C of Part 30 TCA for further details.

The chargeable excess should not be included on the employer’s monthly return to Revenue.

The standard assessment, collection, late payment and appeal provisions apply.

7. Pension adjustment orders

Chapter 22 explains the impact of a PAO when calculating maximum retirement benefits for a pension scheme member, etc. Paragraphs 3 and 4 note, respectively, that, when determining capital values for PFT and BCE purposes, PAOs must be ignored, with the calculations carried out as if no PAO had been made

As described in paragraph 6**,** where the SFT or an individual’s PFT is exceeded, a chargeable excess arises which is subject to an immediate tax charge at the higher rate of income tax for the year in question. Prior to 1 January 2015, any chargeable excess tax arising on a BCE in situations where a PAO applied, was recovered by the administrator solely from the member’s part of the pension benefits after the application of the terms of the PAO such that the former spouse/civil partner’s designated share of the pension benefits was unaffected.

Section 19 Finance Act 2014 made a number of amendments to Chapter 2C of Part 30 TCA in this regard. With effect from 1 January 2015, chargeable excess tax arising on pension scheme or pension plan benefits that are subject to a PAO must be apportioned by the scheme administrator, having regard to the terms of the PAO, so that both the member and non-member spouse/partner share the tax charge with the charge being recovered from their respective retirement funds.

Section 787R(2A) TCA sets out how the apportionment is to be made between the parties and who is liable for the respective shares of the tax in such situations. It also provides, in cases where a non-member spouse/civil partner has availed of a transfer amount to provide an independent benefit in a separate scheme, for a process of certification by the administrator of the member’s scheme, of the amount of the non-member‘s share of the tax, to the administrator of the non-member spouse/civil partner‘s scheme etc. In addition, the section provides for notification of the amount of the non-member‘s share of the tax to the non-member.

It should be noted that the requirement to apportion chargeable excess tax applies equally to the administrator of a pension arrangement to which a member may have taken a transfer value after the PAO was made. In other words, the chargeable excess tax liability to be shared may arise on foot of a BCE in an entirely different scheme to the one where the PAO was originally made.

Section 787R(b) and (c) TCA set out how the sharing of a chargeable excess tax liability is to be determined. The approach depends on whether the former spouse/civil partner in whose favour the PAO was made leaves the designated benefit in the member's scheme or takes a transfer value (within the same scheme) or to an independent scheme.

No transfer value paid out

Where no transfer value has been paid out and hence the member and the former spouse/civil partner remain in the same scheme in respect of which the PAO was made, the apportionment is straightforward. In such cases, the chargeable excess tax shares are calculated **pro rata** to their relative shares (having regard to the PAO) of the value of the retirement benefit giving rise to the BCE.

The following examples illustrate how the calculation is performed:

Example A – Defined Contribution Arrangement

Peter has a PRSA valued at €2.6m at the point it is crystallised. He does not have a PFT. A PAO had previously been made in respect of the PRSA in favour of Peter's former spouse, Mary. The designated benefit to Mary under the PAO represents 40% of the total value of the PRSA at the point of crystallisation. Notwithstanding that a PAO applies to the PRSA, Peter is deemed to mature at full value – in other words, the PAO is ignored so the capital value of the BCE is €2.6m. This means that a chargeable excess of €0.6m arises with chargeable excess tax of €0.240m (i.e. €2.6m - €2m (SFT) x 40%).

The chargeable excess tax must be shared pro rata to the share of the retirement benefit each gets as follows:

In Peter's case it is:	60% x €0.24m = €0.144m
In Mary's case it is:	40% x €0.24m = €0.096m

Example B – Defined Benefit Arrangement

Vivion is a member of a defined benefit arrangement in respect of which a PAO has been made in favour of his former civil partner Michael. Vivion has no PFT. On Vivion's retirement at age 65 (and ignoring the PAO) his scheme will pay him an annual pension of €100,000 (before any commutation for a lump sum). Of this amount, the administrator determines that €60,000 of the pension had been accrued at 1 January 2014. The capital value of Vivion's BCE is therefore:

€60,000 x 20 = €1.200m
\+ €40,000 x 26 = €1.040m
Total capital value = €2.240m.

This results in a chargeable excess of €0.240m (€2.240m – SFT of €2m) and chargeable excess tax of €0.096m

Under the terms of the PAO, Michael's designated benefit provides him with a pension equivalent of €20,000.

Vivion's pension under the pension scheme is therefore the residual benefit of €80,000 (i.e. €100,000 - €20,000).

The chargeable excess tax must be shared pro rata to the share of the retirement benefit each gets as follows:

In Vivion's case it is: €96k x (€80k/100k) = €76,800
In Michael's case it is: €96k x (20k/100k) = € 19,200.

Where no transfer value has been paid out, the administrator of the pension arrangement must recover the chargeable excess tax from the member's and former spouse/civil partner's respective shares of the fund (in the case of DC arrangements) or by way of an actuarial reduction in the pension payable to each (in the case of DB arrangements) and make the necessary return section and pay the tax due to the Collector General in accordance with section 787S TCA.

Transfer value paid out

Where a transfer value has already been paid at the time the member crystallises his or her benefits under the pension arrangement the apportionment of the chargeable excess tax is more complicated. In such situations the member and her/his former spouse or civil partner will be in independent pension arrangements at the time the member's benefits crystallise. In these cases, the chargeable excess tax shares are calculated **pro rata** to their relative shares (having regard to the PAO) of the value of the retirement benefit giving rise to the BCE. However, the respective shares are as follows.

The former spouse/civil partner's share is:

- in the case of a defined contribution arrangement, the actual PAO transfer value originally paid out from the arrangement under the PAO, or
- in the case of a defined benefit arrangement, the designated benefit on which the actual PAO transfer value was calculated.

(NB: the former spouse/civil partner's share is not the current accumulated value of the PAO transfer amount wherever it is held but rather the actual nominal PAO transfer value paid out originally)

The member's share is:

- in the case of a defined contribution arrangement, the total capital value of the BCE giving rise to the chargeable excess tax, less the actual PAO transfer value originally paid out under the PAO, or
- in the case of a defined benefit arrangement, the residual pension at the point of crystallisation after deducting the designated benefit on

which the transfer value was calculated from the pension that would have been payable to the member if no PAO had been made.

The following examples illustrate how the calculation is performed.

Example C - Defined Contribution Arrangement

Eamonn has a PRSA with a value of €1.5m at the point of crystallisation. He does not have a PFT. A PAO had been made in respect of the PRSA in favour of Eamonn's former spouse, Joan. At that time, a transfer value of €1m was paid out of the PRSA in respect of Joan's designated benefit to a separate PRSA with a different PRSA provider.

The capital value of the BCE arising on the crystallisation of Eamonn's PRSA is determined as if no PAO had been made. The PRSA administrator must therefore calculate the investment return earned by the PRSA from the date the transfer value was paid out to Joan's PRSA, to the date of crystallisation of Eamonn's PRSA.

For the purposes of this example we assume a return of 20%, and that the higher rate of income tax at the time of crystallisation is 40%.

The capital value of Eamonn's BCE is therefore deemed to be €1.5m + (€1m x 120%) = €2.7m.

This gives rise to a chargeable excess of €0.7m and chargeable excess tax of €0.28m (€2.7m - €2m (SFT) = €0.7m; tax @ 40% = €0.28m).

The chargeable excess tax must be divided as follows:

In Joan's case it is: €0.28m x €1m (the actual transfer amount)/€2.7m (the deemed capital value of the BCE) = €103,704

In Eamonn's case it is: €0.28m x €1.7m (Eamonn's deemed share of the BCE)/€2.7m (the deemed capital value of the BCE) = €176,296.

Example D - Defined Benefit Arrangement:
Jean is a member of a defined benefit arrangement in respect of which a PAO has been made in favour of her former spouse, Gerry. Jean has no PFT. At the time the PAO was made Gerry took a transfer amount in respect of his designated benefit to a PRSA. The designated benefit payable to Gerry on which the transfer value was calculated (i.e. the portion of the "leaving service" benefits that would have been payable to Jean at the time of the transfer under the rules of the pension arrangement) was a pension of €25,000.

At the point of her retirement at age 60 (and ignoring the PAO) Jean's scheme would have paid her an annual pension of €90,000 (before any commutation for a lump sum). Of this amount, the administrator determines that €40,000 of the pension had been accrued at 1 January 2014. The capital value of Jean's BCE is therefore:

	€40,000 x 20	= €0.8m
+	€50,000 x 30	= €1.5m
Total capital value		= €2.3m

This results in a chargeable excess of €0.3m (€2.3m – the SFT of €2m) and chargeable excess tax of €0.12m (€0.3m x 40%, assuming that was the higher rate of tax at the time).

The chargeable excess tax must be divided as follows:

In Gerry's case it is: €0.120m x €25,000 (the designated benefit on which the transfer value was based)/€90,000 (the pension that would have been payable to Jean if no PAO had been made) = €33,333

In Jean's case it is: €0.120m x €65,000 (i.e. €90,000 - €25,000)/€90,000 = €86,667.

Please also refer to the Notes for Guidance to Chapter 2C, Part 30 TCA for further information on the interaction of tax-relieved pension funds and PAOs.

8. Credit for lump sum tax against chargeable excess tax

Section 787RA TCA, which applies to BCEs occurring on or after 1 January 2011, provides that where

- tax at the standard rate (i.e., under section 790AA (3)(a)(i) or (3)(b)(i)(I) TCA – please refer to Chapter 27) is deducted from a retirement lump sum paid to an individual under a pension arrangement on or after that date and
- tax also arises on a chargeable excess in relation to that individual (the amount of which will have been influenced by the retirement lump sum)

the pension scheme administrator is required to reduce the tax on the chargeable excess by the amount of standard rate tax deducted from the retirement lump sum under section 790AA (3)(a)(i) or (3)(b)(i)(I) TCA and pay the net amount of chargeable excess tax, if any, to the Collector-General with Form 787S.

Only tax paid on that part of a retirement lump sum up to 25% of the SFT when the lump sum is paid and not previously offset against tax on an earlier chargeable excess, can be offset against chargeable excess tax. (25% of the SFT is €500k for lump sums paid on or after 1 January 2014, periods for which the SFT was €2 m; and 25% of the SFT was €575k for lump sums paid between 1 January 2011 and 31 December 2013, when the SFT was €2.3 m.) The retirement lump sum tax regime is cumulative: individuals have a lifetime tax-free limit of €200k after which tax applies at the standard rate under Schedule D Case IV on amounts between the tax-free limit and

25% of the applicable SFT (the SFT cut-off point) and at the individual's marginal rate under Schedule E on amounts above the SFT cut-off point.

Lump sum tax deducted from the portion of a retirement lump sum over the SFT cut-off point (the portion which is charged to tax under Schedule E at the individual's marginal rate) may <u>not</u> be offset against chargeable excess tax.

This section provides that:

- lump sum tax includes standard rate tax paid on an earlier retirement lump sum from another pension scheme administered by the same administrator or by another administrator (to the extent, in all cases, that the lump sum tax has not been previously offset against chargeable excess tax),

- an administrator (administrator A) can only offset earlier lump sum tax paid by another administrator (administrator B) where administrator A receives a certificate, as required in section 787RA TCA, from B.

- unused standard rate lump sum tax (where the amount of the lump sum tax to be offset exceeds the chargeable excess tax) can be carried forward and used against chargeable excess tax arising on future BCEs occurring in relation to the individual.

9. Schedule 23B TCA 1997

Schedule 23B TCA is linked to Chapter 2C of Part 30 - relating to the limit on tax relieved pension funds. The Schedule deals with the following operational aspects of the arrangements:

- how the value of an individual's uncrystallised pension rights on 1 January 2014 are to be calculated for both DC and DB type arrangements,

- the various types of BCE and when they are deemed to occur e.g. entitlement to a pension, annuity, lump sum etc. under a pension arrangement,

- how the capital value of a BCE is to be calculated for the various types of BCE identified, and

- how the amount of the SFT or PFT that is available at the time of a BCE is to be determined.

Schedule 23B also includes the following table which sets out the relevant age-related valuation factors.

TABLE

Age (1)	Relevant age-related factor (2)
Up to and including 50	37
51	36
52	36
53	35
54	34
55	33
56	33
57	32
58	31
59	30
60	30
61	29
62	28
63	27
64	27
65	26
66	25
67	24
68	24
69	23
70 and over	22

Appendix: BCE declaration

A suggested format for a BCE declaration is set out below.

BCE DECLARATION

AS PROVIDED FOR UNDER SECTION 787R (4) OF THE TAXES CONSOLIDATION ACT 1997

FOR THE PURPOSES OF DISCLOSING PENSION BENEFIT CRYSTALLISATION EVENTS OCCURRING PRIOR TO THE PENSION ENTITLEMENT CURRENTLY BEING CLAIMED

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

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

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

****

PART A

1. On or after 7 December 2005 and up to and including the date you make this declaration:

   (a) Did you become entitled to any pension benefits[6] (ignoring the pension entitlements currently being claimed under this pension arrangement)?

   YES NO

   (b) If the answer to (a) is YES, did you direct that a payment or transfer be made to an overseas pension arrangement?

   YES NO

[6] This includes **any** pension, annuity, retirement lump sum or any other pension related benefit (e.g. transfer to an Approved Retirement Fund) which you became entitled to under a pension arrangement but does not include i) social welfare benefits, such as the State Pension or ii) pension benefits which came into payment before 7 December 2005. Please note the key point is an entitlement to a pension on or after 7 December 2005 in respect of which benefits actually came into payment e.g. if you retired or otherwise became entitled to an immediate payment of a pension benefit from a pension arrangement on or after 7 December 2005).

2. From the date you make this declaration up to the date of receiving benefits under this pension arrangement:

   (a) Do you expect to become entitled to any other pension benefits[7] in addition to the pension entitlements currently being claimed?

   YES NO

   (b) If the answer to (a) is YES, do you intend to direct that a payment or transfer be made to an overseas pension arrangement in respect of those benefits?

   YES NO

3.

IF YOU HAVE ANSWERED NO TO ALL OF THE ABOVE QUESTIONS THEN:-

(i) COMPLETE PART C, and
(ii) SIGN THE DECLARATION.

IF YOU HAVE ANSWERED YES TO ANY OF THE ABOVE QUESTIONS THEN:-

(i) PROVIDE THE INFORMATION REQUESTED IN PART B, AS APPROPRIATE;
(ii) COMPLETE PART C, and
(iii) SIGN THE DECLARATION.

PART B

4. If you have an entitlement to any pension benefits under a pension arrangement on or after 7 December 2005 and up to the date of receiving benefits under this pension arrangement, please provide the following details, as appropriate, **in a separate document for each such pension arrangement:**

a) The type of pension arrangement (e.g. defined benefit/defined contribution occupational pension scheme, retirement annuity contract, PRSA, Buy-Out-Bond, Additional Voluntary Contributions (AVC) for the purpose of supplementing retirement benefits etc.).

[7] This includes any pension, annuity, retirement lump sum or any other pension related benefit (e.g. transfer to an Approved Retirement Fund) which you expect to become entitled to for the first time under a pension arrangement belonging to you after the date of this declaration, but does not include social welfare benefits such as the State Pension.

b) The date you became (or expect to become) entitled to the benefit(s) under the arrangement.

c) The name of the scheme/arrangement.

d) The contact details for the scheme administrator.

e) Your policy or reference number under the scheme/arrangement.

f) In the case of a transfer made (or to be made) to an overseas pension arrangement, provide the name of the scheme to which the transfer was (or is to be) made,

g) Where the pension arrangement is a **defined benefit scheme** (whether a private sector or a Civil/Public Service scheme) please provide the following details, **as appropriate.** (You should obtain this information from the pension fund administrator):
   (i) where the scheme provided (or provides) you with the option to commute part of the pension for a lump sum (i.e. most private sector schemes), the capital value of the pension benefits based on the annual amount of pension that would have been payable (or is expected to be payable) to you when the pension commenced (or commences), **before any commutation for a lump sum (see footnote for fuller explanation[8])**
   (ii) where the arrangement provides for a separately accrued lump sum benefit (i.e. most Civil/Public Service schemes):
      (a) the capital value of the pension benefit based on the actual annual amount of pension paid (or to be paid) to you in the first 12 months from the date you became (or become) entitled to it, and
      (b) the actual cash value of the separately accrued lump sum paid (or expected to be paid) to you.

h) Where the pension arrangement is a **defined contribution arrangement** (e.g. a defined contribution occupational pension scheme, a retirement annuity contract, a PRSA, a Buy-Out-Bond, an AVC etc.) please indicate in the following table the nature of, and capital value (or the expected capital value) of, the benefits taken (or to be taken) - i.e. the Benefit Crystallisation Events - on the date you became (or expect to become) entitled to them.[9]

[8] Note the capital value to be included here is not to be based on the actual annual rate of pension paid to the individual at the time he/she became entitled to it, which could reflect the fact that the individual commuted part of the pension entitlement for a lump sum. Neither is it to be based on the current annual rate of pension being paid if this reflects adjustments in the pension rate since it was first awarded. Rather, it is to reflect the annual rate of pension that would have been (or would be) payable to the individual on the assumption that there was (or will be) no commutation of part of the pension for a lump sum or no adjustments made in relevant pension payable. The corollary of this is that the capital value of any actual lump sum taken (or to be taken) is ignored as it is already “captured” as part of the pension capital value.

[9] You should obtain this information from the pension fund administrator.

Nature of Benefit (BCE)	**Capital Value of Benefit (€)**
Lump Sum[10]	
Annuity[11]	
Transfer to an ARF[12]	
Transfer to an AMRF[13]	
Transfer to Self[14]	
Amount retained in a vested PRSA[15]	
Transfer to an Overseas Arrangement[16]	
Other	

Note: **Section 787O(3) Taxes Consolidation Act 1997** provides that where more than one pension benefit (BCE) arises on the same day in relation to an individual, the individual must decide which is deemed to arise first and inform the relevant pension administrators accordingly.

PART C

5. Do you have a certificate from the Revenue Commissioners stating the amount of your *Personal Fund Threshold* in accordance with section 787P of the Taxes Consolidation Act 1997?

YES NO

[10] The capital value is the cash value of the lump sum paid to you.
[11] The capital value is the amount or market value of the cash or other assets of the pension fund used to purchase your annuity.
[12] Where you have exercised (or intend to exercise) an "ARF Option" in accordance with section 772(3A), 784(2A) or 787H (1) of the Taxes Consolidation Act 1997, the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to an ARF following the exercise of the option.
[13] Where you have exercised (or intend to exercise) an "ARF Option" (see footnote 5), the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to an AMRF following the exercise of the option.
[14] Where you have exercised (or intend to exercise) an "ARF Option" (see footnote 5), the capital value is the amount or market value of the cash or other assets as were (or are expected to be) transferred to you as a taxable lump sum following the exercise of the option.
[15] Where you have not exercised an ARF Option (or do not intend to do so) (see footnote 5) and instead have retained (or intend to retain) the assets of the PRSA in that or any other PRSA (as a vested PRSA), the capital value is the amount or market value of the cash or other assets as were (or are to be) retained in the vested PRSA(s).
[16] Where you have (or intend to) make a transfer to an overseas pension arrangement, the capital value is the amount or value (or expected amount or value) of the payment or transfer to the overseas arrangement.

6. If the answer to question 5 is YES –
   (a) please enclose a copy of the certificate, and
   (b) where the PFT includes a defined benefit arrangement(s) please state the valuation factor used.

7. May we contact the scheme administrator(s) directly on your behalf for the purposes of clarifying if necessary, any aspect of the information provided by you under this declaration?

YES NO

I DECLARE THAT THE INFORMATION PROVIDED BY ME IN THIS FORM IS COMPLETE AND CORRECT

FULL NAME____________________________

ADDRESS_______________________________

____

____

____

PPS NUMBER __________________________

SIGNATURE: ___________________________

DATE: __________________________________

Pension Declaration Forms may be audited by the Revenue Commissioners.