NEW IRELAND ASSURANCE

Pensions Technical Manual

taking care of you...

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Foreword

Making adequate provision for retirement is a very important aspect of financial planning for clients and pension provision is central to that for most people. New Ireland has a long history of pension provision and is a major force in the growth and development of pensions in Ireland. We continue to invest heavily in technology and supports for financial advisors and the launch of this manual is further evidence of that.

Pension provision can be complicated and access to accurate, concise and up-to-date information is essential. Over the last number of years we have seen many changes to the pension landscape and the effect of legislative and practice changes is that never before has sound professional advice been so important.

I am delighted to launch the 4th edition of the New Ireland Pensions Technical Manual, which will be a valuable tool as a single source reference point for generic pension information and also as a means to keep up-to-date with current pension practice. I would like to thank Eleanor Hendy for all her hard work in bringing a new update of this valued manual to you.

I hope you find this Pensions Technical Manual of benefit in the management and development of your pension business.

James Skehan

Head of Pension Sales

October 2012

Introduction

This 4th edition of the New Ireland Pensions Technical Manual is designed to provide you the financial advisor with generic information on pensions. The purpose of this manual is to give you access to technical information on pension provision which is both easy to understand and concise.

The manual has chapters on all aspects of pension provision from setting up a pension plan to drawing down retirement benefits. We have also included chapters on Pension Adjustment Orders, Disability Cover, Income Tax and Corporation Tax and also a chapter on Social Protection Pensions.

If you have any queries on the contents of this manual please contact myself or any member of the Life and Pension Technical Support Team on 01 6172780. An online version is available on our Broker Centre at www.newireland.ie.

Eleanor Hendy

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Whilst great care has been taken in its preparation, this Pensions Technical Manual is of a general nature and should not be relied on in relation to a specific issue without taking appropriate professional advice. Such advice should always be taken before acting on any of the issues mentioned. It is based on our understanding of pension and tax legislation as at October 2012 and is subject to change.

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Chapter 1

Occupational Pension Scheme Design

1.1 Introduction

An occupational pension scheme (otherwise known as a pension scheme, a retirement benefit scheme or a company pension scheme) is set up by an employer under trust to provide retirement and/or death benefits for an employee/director or a group of employees (see paragraph 1.7 below).

The employer is normally a company but it could be a self employed individual, a partnership, a club or a charitable institution or any other type of employer who has employees. A key requirement to set up an occupational pension scheme is the existence of taxable Schedule E remuneration for the employee in respect of service completed with that employer.

The legislation dealing with the approval of an occupational pension scheme by Revenue is found in Part 30 of the Taxes Consolidation Act 1997 (as amended).

Disability Cover (sometimes referred to as Permanent Health Insurance (PHI) or Income Protection), is often packaged with an occupational pension scheme. The Disability Cover is not part of an "approved pension arrangement" but is in fact a separate insurance policy. Disability Cover is dealt with separately in Chapter 13.

1.2 Provision of Benefits

The retirement benefits to be provided by an occupational pension scheme can be arranged in a number of different ways:

1. Defined Benefit
2. Defined Contribution
3. Hybrid Scheme

1.2.1 Defined Benefit (DB)

With a defined benefit (DB) scheme the Scheme Rules promise to provide a defined level of benefits, within Revenue approved maximum limits, for a member and/or his/her dependants. The benefits are normally based on an employee's final salary and number of years service completed with the employer, or number of years as a member of the pension scheme. For example the scheme may provide the member with a pension of 1/60th of final salary for every year of service with the employer. The Scheme Rules will normally define what salary the benefits will be based on.

In order for the scheme to deliver on the benefits to be provided, the employer and in most cases the member also must make contributions to fund the scheme.

The cost of providing benefits is known as the funding rate and is calculated/reviewed by the scheme actuary every 3 years. You can find more details on defined benefit schemes in Chapter 8.

1.2.2 Defined Contribution (DC)

With a defined contribution (DC) scheme the benefits available at retirement for a member and/or their dependants are based on the value of the accumulated contributions (less charges) paid to the scheme by or on behalf of that member. Ultimately the benefits provided for that member cannot exceed Revenue approved maximum benefits and this will be covered in the Scheme Rules/policy conditions. A DC scheme can also be referred to as a money purchase scheme.

1.2.2.1 Target Benefit Concept

In some cases a "target benefit" approach is adopted to provide pension benefits. A DC scheme is set up and the contribution rate is designed at the outset to provide a certain level of benefits at retirement. The employer in a separate letter to the member will set out what the objectives/intended benefits are. The scheme is legally a DC scheme and the benefits that will be available are not promised but will depend on the value of the fund at retirement. Because there is no promise of benefits within the scheme, it is up to the employer to review the contribution rate and if necessary to change it. Extreme care is needed with this type of arrangement because in many cases the contribution rate is not reviewed and the DC scheme assets will not be able to provide the "target benefits" estimated at the outset.

1.2.3 Hybrid Schemes

A relatively recent development in occupational pension scheme design is the introduction of a hybrid type of pension scheme which can be a mixture of defined benefit and defined contribution. Normally such schemes are set up on a defined benefit basis in respect of an agreed maximum level of salary e.g. 1/60th of salary for each year of service subject to a maximum salary of say €30,000. Further retirement benefits in respect of the employee's salary above this amount are then provided on a DC basis.

1.3 Main Types of Occupational Pension Schemes

While all occupational pension schemes are governed by the same legal and taxation provisions there are different types of schemes operating in the market depending on how and why they are set up.

1.3.1 Insured Arrangements

Insured pension arrangements are set up by effecting a policy/policies with a life assurance company. The life assurance company usually looks after the administration of the pension scheme and investment is normally in unit linked funds.

- An executive pension arrangement is normally designed for a company director(s) and/or selected employee(s). Executive pensions are 'one member arrangements' – a separate policy will be set up for each director/employee for whom benefits are to be provided.
- A group pension arrangement or scheme is normally set up where there are or is likely to be a number of members. A group pension scheme may be established on either a "defined benefit", a "defined contribution" or a hybrid basis. Most new group pension schemes are established on a defined contribution basis. Under a defined contribution group pension arrangement a separate account is maintained for each member.

- A member can normally make additional voluntary contributions (AVCs) to either the main pension scheme or a separate group AVC scheme to "top up" the benefits provided by the employer's main scheme within Revenue limits. The Pensions (Amendment) Act 2002 prohibits the setting up of a new individual AVC policy. The Rules of a pension scheme may allow for a member to make AVCs to a separate AVC policy and in such cases an individual AVC policy (subject to the trust of the existing scheme) can be set up. Otherwise all individual AVCs must be paid into an AVCPRSA. Group AVC schemes can still be established. Refer to Chapter 5 for further information on AVCs.

1.3.2 A Self Administered Scheme

A self administered scheme is a scheme which undertakes the administration and sometimes the investment management of its funds directly, without using a life company for these functions. The trustees normally engage parties to carry out various aspect of running a large occupational pension scheme e.g. actuarial services, legal/documentation services, pension consultancy services, professional investment managers. The scheme can invest directly in assets, subject to the Scheme and Revenue Rules. The trust deed will normally set out the investment powers of the trustees.

A life company may become involved if:

- scheme funds are placed with an investment manager via a life company to be invested on a segregated basis
- the self administered scheme invests some of its fund in units of a life company's standard pension funds
- the self administered scheme invests some of its funds in a life assurance policy. (There is an exemption from life assurance exit tax once the appropriate Revenue declaration is completed.)
- the self administered scheme insures its death in service benefits via a group life policy.

A self administered scheme can be defined contribution or defined benefit. If it is defined contribution, all contributions are pooled and invested, with a notional separate account for each member (the actuary will work out the share of the overall fund applicable for each member).

1.3.2.1 A Small Self Administered Scheme

A small self administered scheme is a type of self administered pension scheme that falls within the Revenue definition of a 'small' scheme. The scheme will generally have less than twelve members and in most cases will provide benefits mainly for 20% Directors. Because the principal parties to the scheme – the employer, trustees and members are essentially the same persons, Revenue impose certain additional approval conditions on a small self administered scheme which include:

- the appointment of a Pensioneer Trustee
- the production of annual accounts
- the production of periodic actuarial reports
- restriction on certain types of investments.

1.3.3 A Self Directed Insured Scheme

A self directed insured scheme is a mix of both an insured scheme and a self administered scheme because it allows the trustees of an insured scheme to become more directly involved in the selection of actual underlying investment assets. The trustees liaise with the stockbroker or specialist investment manager when selecting the underlying investment assets in their earmarked fund. Management charges for these funds tend to be higher than for normal insured pension funds.

Our focus in this manual is the design of insured defined contribution (DC) arrangements.

1.4 Revenue Approval

One of the many reasons why an employer sets up a Revenue approved occupational pension scheme for employees is to avail of the tax benefits attaching to such a scheme. An exempt approved scheme provides for tax free investment growth*, tax relief on the employer's and member's contributions and tax efficient payout of benefits. In addition employer contributions paid into an exempt approved scheme are not considered to be a benefit in kind (BIK) for the employee. For a scheme to be exempt approved it must first meet the criteria for approval in accordance with Part 30 of the Taxes Consolidation Act (TCA) 1997 and in addition it must be set up under an irrevocable trust. Each occupational pension scheme must apply to Revenue for exempt approval (unlike PRSAs and personal pensions, where the product itself is approved).

*Temporary Government levy of 0.6% p.a. of fund value for the four years, 2011, 2012, 2013 and 2014.

1.4.1 Approval of 'Generic' Retirement Benefits Product

In certain circumstances Revenue will approve a generic retirement benefits product and schemes set up under this product can be treated as exempt approved, without the need for each scheme to apply for approval. The type of product that can apply for approval is:

- a one member arrangement,
- marketed by a life office and
- established using standard documentation secured by way of an insurance contract.

The combined employer and employee contributions cannot exceed the tax relief limits that would apply to employee contributions (% of remuneration, depending on age). The life office applies to Revenue to have the product approved as a retirement benefits product. The full criteria and approval process is described in section 772A of TCA 1997.

1.5 Trust Deed

Pension fund assets held under trust are legally separate from the employer's business assets and can therefore provide potentially greater security to members and beneficiaries of the scheme.

An irrevocable trust is a trust that cannot be withdrawn. The trust mechanism is ideally suited to the provision of benefits by an employer for an employee. A trust, at its simplest, is a legal arrangement under which assets are held, managed and controlled by certain persons, called trustees. With an occupational pension scheme the value of contributions paid by the employer and employees become the trust fund or assets of the scheme. The trustees hold and look after these funds/assets for the benefit of the employees and their dependants until they are to be paid out.

For group schemes a Trust Deed is executed to establish the scheme under trust.

Instead of using a Trust Deed an occupational pension scheme can also be set up by a Letter of Exchange. In effect the Letter of Exchange replaces the function of the Trust Deed and establishes the trust. The Letter of Exchange, which is normally used for setting up an executive pension, is completed by the employer and employee or director involved and it normally appoints the employer as trustee.

The trustees may be individuals appointed by the employer, trustees appointed through member trustee process, corporate trustees or indeed, the employer itself. If there are individuals acting as trustees there must be a minimum of two or a company can act as sole trustee. In most small to medium businesses the employer traditionally was appointed as the trustee. Most Trust Deeds allow the employer/trustees the right to wind up the scheme in certain circumstances.

Since 1 February 2010 all existing trustees have had to undergo appropriate trustee training within two years (i.e. 1 February 2012). New trustees (trustees appointed since 1 February 2010) must complete their training within six months of their appointment. Trustee training must be repeated every two years.

'Appropriate' training must cover the duties and responsibilities of trustees generally; the Pensions Act; the regulations made under it; and any other general laws governing the operation of the scheme. Where a company is acting as trustee, all directors of the company must complete the training. Trustees who do not comply with the trustee training requirement may be subject to an on the spot fine by the Pensions Board.

The obligation to arrange the training is on the employer who operates the scheme (except in the case of a pensioneer trustee or professional trustee). An employer who breaches this obligation may be prosecuted. There is no trustee training requirement for trustees of death benefit only schemes.

This requirement has led many trustees of schemes to review how their schemes were established and has led to many schemes moving away from having the employer as trustee and appointing a corporate/professional trustee instead.

1.6 Scheme Rules

In addition to the Trust Deed or Letter of Exchange every occupational pension scheme must have a set of Rules, which must also be approved by the Revenue Commissioners. The Rules deal with the practical operational aspects of the scheme such as the eligibility criteria, the contribution rates, and the maximum benefits to be provided. Life companies normally have a standard set of Rules, which they have approved in advance by Revenue.

1.7 Membership

Membership of an occupational pension scheme is restricted to employees (including directors) who are remunerated by their employer and are taxed under Schedule E in respect of their service with that employer. Employees of a partnership, sole trader, charitable institution, union, club etc. provided they are taxed under Schedule E are eligible to be members of an occupational pension scheme. In addition an employer can decide who can be a member of the scheme as long as he/she does not discriminate on the grounds set out in legislation e.g. gender, marital status, religion, sexual orientation etc. The Rules of the scheme should state who is eligible to join the pension scheme and when. Former employees can remain in the scheme e.g. after leaving service.

An individual taxed under Schedule D cannot be a member of an occupational pension scheme in respect of those earnings. There is one exception to this rule, in the case of doctors who are in receipt of income from the GMS (General Medical Services) scheme. Although the income from the GMS scheme is taxed under Schedule D, they are allowed to be members of the GMS Superannuation Plan (an occupational pension scheme) in respect of this income. This is specifically provided for in Section 773 of TCA 1997.

A 20% Director of an investment company, i.e. a company which accrues most of its income from non trading activities, cannot be included in a scheme established by the company, even if in receipt of Schedule E remuneration from that company (see paragraph 6.11). An ordinary employee or someone with less than a 20% shareholding can be a member of an occupational pension scheme set up by an investment company.

The spouse/civil partner of a 20% Director, or partner or self employed owner can be a member of a scheme in respect of their Schedule E earnings for work genuinely carried out in the business on a regular basis.

1.7.1 Scheme Membership and PRSAs

Under the Pensions (Amendment) Act 2002 employers must provide employees (including full time, part time, temporary, seasonal, casual employees) with access to at least one standard PRSA where there is no scheme in place for pension benefits or where there is a scheme and employees cannot join within 6 months of starting work, or where membership of the scheme is restricted to certain employees. The 6 month period includes any probationary period.

In addition, where the rules of the pension scheme do not permit additional voluntary contributions (AVCs) to be made and there is no separate AVC scheme in operation, the employer must provide the members with access to a standard AVCPRSA.

To fulfil their obligations in such situations an employer must enter into a contract with a PRSA provider (Section 121 Contract) to provide access to a standard PRSA and amongst other things provide their "excluded employees" with specific information within certain time limits. Please refer to section 10.15 for more details on the employer obligations.

1.7.2 Scheme Membership and prior Personal Pension/PRSA

Once an individual becomes a member of an occupational pension scheme they cannot continue to claim tax relief on any existing personal pension/PRSA contributions unless they have a separate source of relevant earnings other than the earnings from their pensionable employment (see Chapter 9 – Personal Pensions). If the member does not have a separate source of relevant earnings and wants to continue making pension contributions then they should consider paying them into an AVC/AVCPRSA where they may be able to claim tax relief subject to normal tax relief limits.

1.8 Employer Contribution

One of the conditions for Revenue Approval is that the employer must make a "meaningful" contribution to the scheme. Revenue view the following as "meaningful":

- the employer meets the cost of the scheme set up and ongoing operating costs, as well as the cost of provision of death in service benefits, or
- the employer pays at least 1/10th of the total ordinary annual contributions to the scheme exclusive of risk costs and employee additional voluntary contributions.

For Revenue approval purposes, an employee does not have to contribute to their occupational pension scheme but it may be a condition of their employment.

1.9 Provision of Death in Service Benefits

In the event of an employee dying in service before normal retirement, Revenue allow for the following benefits to be payable within limits (see Chapter 2 – Revenue Maximum Benefits Allowed).

- A lump sum benefit , and/or
- A pension for a spouse/civil partner and/or dependant(s).

The accumulated pension fund is available to provide benefits for a spouse/civil partner and dependants. Life Cover in excess of this amount can be provided within Revenue limits (fund value and life cover combined are subject to the limits) through an insurance policy.

- In the case of a DC scheme the amount payable on death can be expressed as being inclusive of the fund value e.g. if the life cover is €200,000 and the fund value is €50,000, on death €200,000 is payable. Alternatively the amount payable can be exclusive of the fund value and in the example above both the €200,000 and €50,000 would become payable.
- If a dependant's pension is to be provided, cover can be arranged in one of two ways:
  - by insuring a multiple of salary, say 8 times, and in the event of death the maximum lump sum (4 times salary plus the value of employee's contributions) is paid out and the balance used to provide dependant's pensions within Revenue limits, or
  - by costing a separate dependant's pension which will normally be expressed as a % of final salary.
- If the scheme is a DB scheme, the Rules will specify both the lump sum amount and any pensions payable in the event of the member dying in service.

1.10 Pensions Board

The Pensions Board was established by the Pensions Act 1990, with a specific responsibility to monitor the operation of the Pensions Act in relation to occupational pension schemes, and pension developments generally.

In addition to obtaining Revenue approval all occupational pension schemes must be registered with the Pensions Board and pay an annual registration fee. The Pensions Board also monitors the compliance of all occupational pension scheme trustees with the various provisions of the Pensions Act and regulations made under the Act, including the trustee training requirement.

1.11 Registered Administrators (RA)

With effect from 1 November 2008 occupational pension scheme trustees must now appoint an RA. Failure to do so is an offence. An RA is any individual or entity providing "core administration functions" to an occupational pension scheme which has registered with the Pensions Board. Core administration functions are:

- preparation of annual reports
- preparation of annual benefit statement
- maintenance of sufficient and accurate member records to discharge above.

RAs can be prosecuted by the Pensions Board for not providing "core administration functions". Alternatively or in addition the Board may not renew registration or renew it subject to conditions e.g. restriction on taking on new business.

Chapter 2

Revenue Maximum Benefits Allowed

2.1 Introduction

As outlined in Chapter 1, once an occupational pension scheme is 'exempt approved' by Revenue it can avail of the tax benefits for exempt approved schemes (tax free investment growth, tax relief on contributions etc). One of the conditions for a scheme to be exempt approved is that the benefits provided by the scheme must be within certain limits specified by Revenue. These maximum benefits are set out in the Revenue Pensions Manual, and are referred to as 'maximum approvable benefits' – the maximum benefits an exempt approved scheme can provide. Another important control for exempt approved schemes is on the level of contributions that can be made to the scheme. The maximum contribution is calculated in line with formula and capitalisation factors which are outlined in the Revenue Pensions Manual. In this chapter we will outline the Revenue limits on benefits and in Chapter 3 we will examine the formula and capitalisation factors that determine the maximum level of contributions that can be paid. Chapter 4 deals with the tax relief limits on contributions to occupational pension schemes.

It is important to note that there may be substantial differences between the maximum level of benefits provided under the Rules of a particular occupational pension scheme and the maximum level of benefits that may be permitted by Revenue. On retirement the actual benefits payable will be in accordance with the Scheme Rules but subject to Revenue maximum limits. This chapter deals with Revenue maximum benefit limits and NOT the benefit limits set out in Scheme Rules which may be less than Revenue maximum. Most schemes will provide less than the Revenue maximum. No exempt approved scheme can provide more than the Revenue maximum level of benefits.

In addition to the Revenue limits on maximum approvable benefits, retirement benefits may be limited by:

- Revenue cap on the amount of an individual's tax relieved pension fund, known as the Standard Fund Threshold, and
- Revenue cap on the amount of retirement lump sum that can be taken tax free, and the amount that may be taxed at the standard rate of tax.

Additional tax charges apply where benefits exceed these limits. Further details on these restrictions can be found in paragraphs 2.11 and 2.12 below.

All DC scheme members and some retirement bond and DB members have what is referred to as "traditional retirement options" (retirement lump sum based on salary and service and the balance, if any, used to buy an annuity) and "alternative retirement options" (retirement lump sum of 25% of their fund and balance can be invested in an ARF or taken as taxable cash – conditions apply). Irrespective of which options are exercised the overall fund value at retirement cannot exceed the amount required to provide Revenue maximum benefits as set out in this chapter.

Before we examine the limits on benefits we will first consider a number of terms, as their definition is important for calculating the level of benefits that can be provided.

2.2 Terms Used

2.2.1 Normal Retirement Age (NRA)

An occupational pension scheme must have a normal retirement age (NRA) between age 60 and 70. If an employee is a member of more than one pension scheme with the same employer then each scheme must have the same NRA. This is an important consideration when setting up an AVC/AVCPRSA. Different retirement ages may be chosen for different categories of members within a scheme. Earlier NRAs are sometimes allowed for special occupations, for example Revenue have approved a normal retirement age of 55 or later for fishermen and for directors engaged as moneybrokers/dealers.

Provided the Scheme Rules allow, it is possible under Revenue rules to change the NRA that was selected at the outset (within the normal range of 60 to 70) if there is agreement to do so between the member and employer. Revenue allow this change to be made without their prior approval. The change must be communicated to the member concerned.

2.2.2 Service

Service is "salaried service" in respect of the same employment and is not restricted to service only as a member of the pension scheme. Salary comprises Schedule E earnings in respect of that employment – taxed in the main under the PAYE collection system. Schedule E earnings include salary/wages, overtime, bonuses, BIKs and directors' fees – these are collectively referred to as emoluments. Drawing a Schedule E salary is an important consideration for a start up business where the temptation is for a director not to draw an income from the business until it is established.

Even a small salary drawn in a year that is potentially taxable under Schedule E will mean that year can count for the purpose of maximum retirement benefits.

In a situation where an individual trades as self employed for a number of years and subsequently sets up as a company, it is not possible to take into account the years of service while self employed when calculating retirement benefits under an occupational pension scheme (OPS) in respect of the company. In such a situation, in fact, any personal pension/PRSA benefits accrued while self employed would be regarded as a retained benefit when calculating maximum benefits allowed under the OPS.

In relation to public sector DB schemes, it is important to note that there may be a difference between 'pensionable' service under the Scheme Rules, and service that can be counted under Revenue rules. In general, the scheme will only give credit for service while a contributing member of the scheme, which may often be less than actual service completed. Therefore there may be scope for the member to pay AVCs to make up the shortfall between what the scheme will provide and the Revenue maximum. Before commencing to pay AVCs a public sector employee should consider if they can purchase 'added years' from their employer.

There are two situations where service can still be counted, even if the member is not in receipt of salary from the employer:

- An employee who is temporarily absent from work can, subject to certain conditions, remain in the scheme with benefits continuing, even where no remuneration is received during the period of absence (employer/employee relationship must be regarded as continuing). If the period of absence exceeds 5 years, it must be reported to Revenue.
- An employee who is absent from work due to illness/disability but remains in service of the employer can remain in full membership of the scheme, regardless of whether or not they are receiving sick pay from the employer or payments under a PHI/income protection scheme. This service can be counted even though it is not 'salaried service'. The 5 year time limit does not apply in these cases.

2.2.2.1 Part Time Employees

In the case of a part time/job sharing employee, credit can be given for the full period of Schedule E employment for Revenue maximum benefits (without any reduction for any time the member did not work as a result of their part time/job sharing service) but based on their part time/job share salary. Alternatively service is converted down to take account of the fact that they worked part time/job shared but the full time equivalent of their salary is used in their calculation. Note however, if the employee had a combination of both part time and full time service with the employer, the maximum benefits must be calculated in accordance with the methods set out in Chapter 20 of the Revenue Pensions Manual.

In the case of a DB scheme, the Scheme Rules may restrict service for part time/job sharing employees to the period of time for which the member actually worked. However for Revenue maximum benefits, it is important to note that credit can be given for the full period of Schedule E employment without any reduction for any time the member did not work as a result of their part time/job sharing status. It is possible for the member to fund for the difference between the Revenue maximum benefits and the benefits provided by the scheme by making AVCs. This may result in the member being able to receive a greater retirement lump sum than would be the case if only the 'pensionable' service is taken into account.

2.2.3 Final Salary

NRA, service and salary together determine the Revenue maximum benefits which can be provided. The Revenue Pensions Manual refers to final salary as final remuneration. There are three definitions of final salary, but only option (b) can be used when calculating final salary for a 20% Director who is retiring.

For the purpose of calculating Revenue maximum benefits, final salary can be determined by one of the following.

(a) Remuneration (basic pay, salary, wages,) in any twelve month period of the five years preceding retirement/date of leaving service/date of death plus the average of any fluctuating emoluments (commission, bonuses, BIK etc) over three or more consecutive years ending on the last day of the twelve month period used to determine basic remuneration.

(b) The average of total emoluments (income taxed under Schedule E) for any three or more consecutive years ending not earlier than ten years before retirement/date of leaving service/date of death. This is the only definition of final salary allowed when calculating maximum retirement benefits for 20% Directors.

(c) Basic pay at the date of retirement/leaving service/death or any date within the year ending on that date plus the average of any fluctuating emoluments over three or more consecutive years ending on the last day of the twelve month period used to determine basic pay. The use of this basis may be restricted where the member has had an exceptional increase in salary during the three years preceding retirement/date of leaving/date of death.

Remuneration can also include the value of shares issued to an employee under an Approved Profit Sharing Scheme.

Most Scheme Rules will only take account of basic annual salary and will exclude fluctuating emoluments such as commission or bonuses to be included in their definition of final salary. In such a scenario, there would usually be scope for making AVCs to increase retirement benefits within Revenue limits.

2.2.3.1 Inflation Increases (Dynamisation)

Revenue practice allows any remuneration and fluctuating emoluments which relate to any year other than the 12 months preceding retirement/date of leaving/date of death to be increased in line with inflation, for the purpose of calculating final salary.

For a 20% Director choosing the traditional retirement options (e.g. lump sum based on salary and service and an annuity), dynamisation is restricted so that after dynamisation the lump sum benefit cannot exceed one third of the value of all benefits (the fund).

2.2.4 Aggregate Benefits

When determining the maximum level of benefits that may be provided for a member, all schemes in respect of that same employment must be taken into account. Where, for example, a member of a pension scheme also has AVCs, these benefits must be taken into account when calculating maximum benefits.

2.2.5 Retained Benefits

A retained benefit is any retirement benefit including lump sum benefit from a pension scheme (including PRB) in respect of a previous employment or from a personal pension or PRSA from a previous period of self employment or non pensionable employment. Any benefit accrued in respect of a concurrent employment is not a retained benefit. All retained benefits whether deferred or already in payment must be taken into account when calculating maximum retirement benefits using the uplifted scale (see section 2.3 below). A small deferred pension of not greater than €330 p.a. or lump sums not greater than €1,270 in total can be ignored. Similarly any refund of contributions can be ignored.

2.3 Maximum Pension at NRA

Under Revenue rules, the maximum pension that a member can receive at NRA is a pension of 2/3rds of final salary. This is the maximum total benefit that can be provided at NRA. The maximum benefit for an individual can be calculated in one of two ways.

(a) A pension of 1/60th of final salary can be provided for each year of completed service with the employer, subject to a maximum of 40 years service. The maximum pension is therefore 40/60ths or 2/3rds of final salary. This basis is known as the n/60ths scale (or 'strict' 60ths). Where this scale is used to determine benefits at NRA, retained benefits can be ignored. An exception to this is where an employee in non pensionable employment effects a personal pension and subsequently that same employment becomes pensionable. In this scenario the benefits arising from the personal pension are taken into account when calculating maximum benefits as the personal pension relates to the same employment.

(b) Where a member has less than 40 years service it is possible to earn a pension of 2/3rds of final salary over a shorter period using the uplifted scale of benefits which is set out below. Under this scale a maximum pension of 2/3rds final salary can be provided for any member who has completed at least ten years service with the employer by NRA.

Where the uplifted scale is used the maximum pension payable is the lower of:

- the pension entitlement under the uplifted scale, or
- 2/3rds of final salary, less retained benefits.

Years of service to NRA	1	2	3	4	5	6	7	8	9	10 or more
Maximum pension as a fraction of final salary	4/60	8/60	12/60	16/60	20/60	24/60	28/60	32/60	36/60	40/60

Fractions of a year can be taken into account in both calculations (a & b), for example, a member who has completed 7 years and 6 months would be entitled to take a maximum pension of 30/60ths of final salary using the uplifted scale.

In both calculations, the maximum pension allowed is reduced by the pension equivalent of any retirement lump sum taken, and includes the value of any AVCs related to that employment.

With a defined contribution plan, either the straight n/60ths scale or the uplifted scale is available to determine maximum benefits. In most cases the uplifted scale will provide a higher level of benefits allowable but where the individual has large retained benefits the pension calculated on the straight n/60ths scale may be higher, as retained benefits can be ignored. A member is always entitled to fund based on the n/60ths scale, regardless of the level of retained benefits.

Example:
An employee took retirement benefits at normal retirement age 60 and immediately set up his own company. His new salary is €40,000 p.a. His pension from his previous employment is also €40,000 p.a. By age 70 his salary will be almost €54,000 approx. based on a 3% p.a. growth rate.

If he wants to fund for maximum benefits at age 70 (in respect of his new employment), the uplifted scale is of no use as he already has a pension far in excess of 2/3rds of his final salary. However, on the n/60ths scale, he can still fund for a further 10/60ths of final salary because his retained benefits can be ignored.

With a DB scheme, the Scheme Rules will determine the rate at which benefits will accrue. If this is less than the Revenue maximum then there may be scope for the member to make AVCs to bring benefits up to the Revenue maximum.

Example:
An employee is a member of a DB scheme that provides a pension of 1/60th of final salary for each year of service. The employee will have 11 years service completed by NRA and has no other pension benefits. Under the Rules of the scheme, the pension provided by the scheme will be 11/60ths of final salary. Under Revenue rules, the maximum pension allowed would be 40/60ths of final salary – the member may fund for up to this additional amount by paying AVCs.

It is important to note that the maximum Revenue limits still apply to schemes even where the member does not choose to buy a pension, i.e. even when choosing the 'alternative' retirement options (see Chapter 11). The pension equivalent of the overall fund at retirement cannot exceed the maximum approvable pension as described above. In addition there is an overall lifetime cap on the amount of tax relieved pension fund an individual can have and any amount above this limit will be subject to tax – see section 2.11 below.

2.3.1 Member's Pension

A pension is an income payable for life and can remain level or can increase by a set amount each year.

It is possible to add on protection for dependants so that in the event of the annuitant dying:

- the pension can be paid to the annuitant's estate for the remainder of a set period of time (called a 'guaranteed period', this can be up to 10 years). If the guaranteed period is 5 years or less a lump sum in lieu of the remaining pension payments can be paid to the annuitant's estate.
- a specified percentage of the pension can be paid to a spouse, civil partner or dependant (called a 'dependant's pension', this can be up to 100% of the annuitant's maximum pension allowable). Payment of the dependant's pension will normally start after the guaranteed period (i.e. without overlap), and under Revenue rules if the guaranteed period is more than 5 years then the dependant's pension cannot commence until the end of the guaranteed period.

A 10 year guaranteed period can be attractive as the difference in the annuity rate in comparison with a shorter guaranteed period can be relatively small.

Example:
Male age 65, single life level pension, €100,000 fund

	10 Year guarantee	5 Year guarantee
Pension per annum	€5,085	€5,175

Annuity rates as at 06/09/2012

Please note that the figures provided above are intended for illustration purposes only – actual annuities payable will be different.

2.3.2 Pension Increases

A pension in the course of payment that is equal to the Revenue maximum pension can be increased in line with the following Revenue rules.

- A fixed rate not exceeding 3% per annum, regardless of inflation, or
- Increases in line with CPI.

2.4 Maximum Retirement Lump Sum at NRA

Following the passing of the 2011 Finance Act, members of DC pension schemes now have a choice of benefit options at retirement.

1. They can take a retirement lump sum calculated based on service and final salary and take the balance of the fund as a pension (additional options apply for AVCs).
2. Alternatively they can take up to 25% of the accumulated fund as a retirement lump sum and avail of the ARF options with the balance of the fund. (see Chapter 11 for further details on retirement options).

In addition there is an overall lifetime cap on the amount of retirement lump sum an individual can receive tax free, and taxed at the standard rate of income tax, and any amount above this limit will be subject to tax at the individual's marginal rate of income tax – see paragraph 2.12 below.

Under 1 above the Revenue maximum lump sum that a member can receive at NRA is 1.5 times final salary and this can be calculated in one of two ways.

(a) The lump sum benefit can accrue at the rate of 3/80ths of final salary for each year of service up to a maximum of 40 years service. The maximum lump sum is therefore 120/80ths or 1.5 times final salary.

(b) Where an individual has completed more than 8 years service with the employer at their NRA, it is possible to improve on the accrual rate by using the uplifted scale as outlined in the table below. The maximum lump sum entitlement of 1.5 times final salary can therefore be obtained after 20 years service.

Where the uplifted scale is used the maximum lump sum allowed is the lower of:

- the lump sum entitlement on the "uplifted scale", or
- 1.5 times final salary, less retained lump sum benefits.

Years of service to NRA	1-8	9	10	11	12	13	14
Maximum lump sum as a fraction of final salary	3/80 p.a.	30/80	36/80	42/80	48/80	54/80	63/80

Years of service to NRA	15	16	17	18	19	20 or more
Maximum lump sum as a fraction of final salary	72/80	81/80	90/80	99/80	108/80	120/80

Fractions of a year can be taken into account, for example, an individual who has completed 14 years and 4 months service could be entitled to take 66/80ths of final salary as a retirement lump sum.

Example:

John is married and is a member of a defined contribution occupational pension scheme, with a fund value of €1,000,000. His final salary at NRA is €100,000 and he has completed 22 years service with his employer. He received a retirement lump sum of €20,000 from a retirement bond from a previous employment. His maximum lump sum entitlement using the uplifted scale is therefore 1.5 times his final salary less €20,000 which is €130,000.

Fund at NRA	**€1,000,000**
Maximum retirement lump sum	**€130,000**
Balance available to buy an annuity	**€870,000**

As outlined earlier in this section, if a member chooses ARF options a retirement lump sum up to 25% of the fund can be taken instead of the traditional lump sum.

Depending on the circumstances, this may or may not provide a higher retirement lump sum entitlement than under the traditional occupational pension scheme retirement lump sum rules.

The option selected by a member should be suitable for his/her needs at retirement (and not necessarily influenced solely by how to obtain the highest lump sum).

2.5 Early Retirement

In order to be able to take early retirement the member must be aged 50 or over and normally the employer's and/or trustee's consent must be given. The member must have ceased employment with that employer, and in the case of a 20% Director they must dispose of their shareholding and sever all links in the company before early retirement benefits can be taken. Where a member chooses early retirement Revenue will restrict the maximum benefits that may be taken, as outlined below.

2.5.1 Maximum Early Retirement Pension

The maximum pension on voluntary early retirement is calculated as the greater of:

(a) 1/60th of final salary for each year of actual service, or

(b) an amount calculated using the following formula:

$$\frac{\text{Actual years of service at early retirement age}}{\text{Potential years of service to NRA}} \times \begin{array}{l}\text{Maximum pension approvable at}\\ \text{Normal Retirement Age}\end{array}$$

Retained benefits must be taken into account when working out maximum benefits at (b) above.

If the member has completed less than 10 years service, the maximum benefits at (b) above cannot exceed the maximum benefits the member would have received assuming that actual service ended at normal retirement age. This means that the maximum pension calculated using (b) above must be restricted to the pension entitlement under the uplifted scale, based on actual completed service.

Again, the pension calculated as per above is the maximum total benefit that the member can have at early retirement date, in respect of service with that employer. It will be reduced by the pension equivalent of any retirement lump sum taken, and includes any AVCs or other schemes relating to the same employment.

When taking early retirement benefits, a member of a DC scheme will also have the option of taking retirement lump sum of up to 25% of the fund, and with the balance invest in an ARF and/or withdraw subject to tax, subject to meeting specified income test. The pension that could be purchased by the fund cannot exceed the maximum pension as described above.

2.5.2 Maximum Early Retirement Lump Sum

If the member is taking 'traditional' retirement options, the Revenue maximum retirement lump sum on early retirement is the greater of:

(a) 3/80ths of final salary for each year of actual service, or

(b) an amount calculated using the following formula:

$$\frac{\text{Actual years of service at early retirement age}}{\text{Potential years of service to NRA}} \times \text{Maximum lump sum receivable at Normal Retirement Age}$$

Retained lump sum benefits must be taken into account when working out maximum benefits at (b) above.

If the member has completed less than 20 years service the maximum benefits at (b) above cannot exceed the maximum lump sum the member would have received assuming that actual service ended at normal retirement age. This means that the retirement lump sum calculated using (b) above must be restricted to the retirement lump sum entitlement under the uplifted scale, based on actual completed service.

Example:
The NRA on a scheme is 65 and there are two members taking early retirement at age 58. Neither has retained benefits. Both have a final salary of €50,000 but John has completed 20 years service and Tom has only completed 10 years service.

John's maximum lump sum on early retirement is the greater of:

(a) 20*3/80ths X €50,000 = €37,500

or

(b) 20/27 x maximum lump sum at NRA

John's maximum potential lump sum at NRA in the formula is 1.5 times €50,000 = €75,000

20/27 X €75,000 = €55,555.

Tom's maximum lump sum on early retirement is the higher of:

(a) 10*3/80ths X €50,000 = €18,750

or

(b) 10/17 x maximum lump sum at NRA

Tom's maximum potential lump sum at NRA in the formula is 90/80 X €50,000 = €56,250

10/17 X €56,250 = €33,088

As he has completed less than 20 years service, (b) cannot exceed the retirement lump sum entitlement based on actual service on the uplifted scale (36/80 x €50,000 = €22,500).

Therefore maximum retirement lump sum is €22,500.

2.6 Ill Health Early Retirement

Where a member retires due to ill health, Revenue will allow retirement benefits to be paid immediately regardless of the member's age. The maximum benefits allowed are those benefits the member could have received if they had stayed until NRA but based on final salary at date of early retirement. Actual service is therefore equal to service up to NRA to a maximum of 40 years. The options available are the same as those for normal retirement, i.e. the member can still avail of the 'new' retirement options introduced by Finance Act 2011.

"Ill Health" means physical or mental deterioration (as diagnosed by a medical professional), which is serious enough to prevent the individual from following their normal employment or which very seriously impairs their earning capacity. Revenue will not accept a decline in energy, or ability as being ill health. Revenue consent is not required for individual cases but trustees should ensure that independent medical evidence is obtained.

2.7 Serious Ill Health

Full commutation of the pension is allowed by Revenue in "exceptional circumstances of serious ill health".

This is only possible where the administrator of the pension scheme receives medical evidence indicating that the member's life expectancy is measured in months rather than years. If a 20% Director wishes to avail of the serious ill health concession which permits the commutation of pension in "exceptional circumstances of ill health", then the Retirement Benefits District of Revenue must be notified.

Revenue have separate rules with regard to the taxation treatment of a benefit commuted on grounds of serious ill health and the main issue is how much can be paid out as retirement lump sum. The rules of the particular scheme will determine what amount can be paid as retirement lump sum amount and the balance will then be subject to tax at 10%. Revenue will allow under their discretionary powers for the retirement lump sum amount to be calculated on a similar basis as for ill health retirement – 3/80ths of final salary for each year of potential service that could have been completed to NRA.

2.8 Late Retirement

While a member's normal retirement date for pension scheme purposes must fall between the ages of 60 and 70 there is normally no upper age limit by which someone must retire from their work (subject to consent of the employer).

There are practical implications as regards continuation of any life cover and/or Disability Cover benefit. If a member is working on beyond their NRA then their benefit(s) may have to be fully underwritten. Disability Cover can normally be extended to a maximum age of 65 and life cover to a maximum age of 70.

There are however limits on the amount of additional retirement benefits that can accrue after NRA.

On late retirement (i.e. reaching NRA and continuing to work) the member can choose to:

1. commence all benefits
2. take retirement lump sum and defer pension
3. defer all benefits until actual retirement.

2.8.1. Commence All Benefits

A member who is continuing to work for the employer after NRA can choose to draw all benefits immediately at NRA, or at any time before actually retiring and if so Revenue limits will be based on service to the date benefits are drawn down from the scheme. If maximum allowable benefits have not been taken, contributions can continue to be made to the scheme to provide benefits up to Revenue maximum approvable at NRA (or date benefits were first drawn), but no further lump sum is payable. If an employee had received maximum benefits under their occupational pension scheme the option exists to effect a PRSA/personal pension if that employee is subsequently classed as being in non pensionable employment for tax relief purposes and they have not attained age 75 years. When benefits are drawn from the PRSA/PP, the employee will then have the option to take a retirement lump sum of up to 25% of the fund. However it should be noted that the cap on tax relieved pension funds (see 2.11 and 2.12 below) apply to the benefits from all pension arrangements of the individual.

2.8.2 Take Retirement Lump Sum And Defer Pension

A member who is continuing to work for the employer after NRA can choose to take their retirement lump sum entitlement at NRA (or at any time before actually retiring) and defer taking their pension until actual retirement. If the scheme does not provide the maximum Revenue benefits allowed at the time of taking the retirement lump sum, contributions can continue to be made to the scheme to provide benefits up to Revenue limits at the date of taking the retirement lump sum, but no further lump sum is payable. This option is only available if 'traditional' retirement benefits are being taken – i.e. retirement lump sum based on salary and service, with balance used to set up a pension.

2.8.3 Defer All Benefits Until Actual Retirement

There are a number of different options for a member who wants to defer all benefits until they actually retire from that employment. Which option is best for them will depend on their own individual circumstances.

(a) Change NRA

A member who defers benefits may be provided with benefits up to Revenue maximum limits on the basis that their actual date of late retirement was their NRA. In other words, service up to the date of actual retirement can be counted, not just service to NRA. This option is beneficial where at NRA the member has less than the maximum approvable benefits permitted i.e. they have less than 10 years service at NRA for pension or less than 20 years service at NRA for lump sum. The consent of the employer and trustees is required in order to change the NRA, and the member must be notified. The Scheme Rules may need to be amended to allow the change of NRA.

Example:
A member reaches age 60 (NRA) with 5 years service and has no retained benefits. The maximum pension available at NRA 60 is 20/60ths of final salary. If the employer/trustees change the NRA for that member to 65, then the member will have completed 10 years service by NRA 65 and so their maximum allowable pension is increased to 2/3rds of final salary.

(b) Additional Years

If a member's total service to the date of actual retirement exceeds 40 years, they can be granted 1/60th of final salary for each extra year served after NRA subject to a maximum of 45/60ths. Similarly the part that can be taken in lump sum form can be increased by 3/80ths of final salary for each year served after NRA subject to a maximum of 135/80ths.

Example:
A member with NRA of 65 remains in service until age 68 having commenced service at age 21. The maximum pension as a fraction of final salary on late retirement is 43/60ths i.e. 40 years service allowed up to NRA plus 3 years allowed for service after NRA. If the same member remained in service until 70 they could fund for a pension of 45/60ths of final salary, i.e. the maximum of 5/60ths in extra pension.

For a 20% Director, Revenue insist on the actual date of retirement being the individual's NRA for all ages up to age 70 if allowing for additional years. So irrespective of the NRA selected, additional years will only accrue after age 70.

Example:
A 20% Director with NRA of 65 retires at 72 having completed 47 years service. Their maximum pension could be increased to 42/60ths, i.e. only the 2 years service completed after age 70 can be counted as 'additional years'.

If this member was not a 20% Director they would have been entitled to fund for a maximum pension of 45/60ths, i.e. the service completed after NRA 65 could be counted as 'additional years', to a maximum of 5 years.

2.9 Death in Service

2.9.1 Lump Sum

Irrespective of whether the scheme is DC or DB, under Revenue rules the maximum lump sum payable on the death of an active member is four times final salary, plus an amount equal to the return of the member's contributions (including AVCs), if any, with reasonable interest (i.e. value of member's contributions in the case of a DC scheme).

The definition of final salary for this purpose does not have to be the same as for the calculation of retirement benefits, e.g. a 20% Director does not have to use the average of total emoluments for 3 consecutive years, and can use the salary at date of death, provided it can be verified.

2.9.2 Dependant's Pensions

In addition to a lump sum benefit it is also possible to provide for a pension to be payable to a dependant (see 2.10 below for definition of a dependant).

In total, dependants' pensions cannot exceed the maximum immediate pension the member could have received if they had stayed in service until NRA but based on final salary at date of death. Actual service is therefore equal to service up to NRA to a maximum of 40 years. With a DC scheme, the value of the fund will determine what level of pension can be purchased for the member and any dependants.

The maximum benefits payable on death in service are inclusive of any retained death in service benefits from other pension arrangements, however the following benefits can be ignored:

- any death benefits payable under a personal pension or a PRSA
- any small preserved lump sum benefits not exceeding €1,270, or dependants' pensions up to €330 p.a.
- a refund of contributions from a previous employer.

Where the lump sum payable from the current employment does not exceed twice final remuneration (excluding any refund of contributions) then any preserved lump sum benefits can be ignored.

Example:
A member dies after completing 10 years service. He has no retained benefits. His only dependant is his spouse. The maximum pension that could be paid to his spouse is two-thirds of his final remuneration as at his date of death.

If in this example the member had less than 10 years service the maximum pension payable to the spouse would be reduced in line with the uplifted scale.

The above limits apply equally to benefits held in a retirement bond if the benefits are **not** preserved. For example, if the individual has not left service with that employer, and is a member of another occupational pension scheme in respect of the same employment, with benefits still accruing for them in that scheme.

Please see Chapter 7 - Early Leavers and Scheme Discontinuance for details on how preserved benefits (held in a scheme or in a retirement bond) are paid out on death.

2.10 Death in Retirement

With a DC scheme, the benefits payable on death in retirement will depend on what options were chosen at retirement. Please refer to Chapter 11 - Retirement Options for details on the treatment of ARFs/AMRFs on the death of the owner.

With a pension, the benefits on death will depend on what type of pension was purchased. As mentioned earlier, a member's pension is payable for life and can be guaranteed to be paid for up to 10 years. If the member dies within the guaranteed period, the pension payments will continue until the end of the guaranteed period. If the guaranteed period is 5 years or less a lump sum in lieu of the remaining pension payments can be paid to the annuitant's estate.

In addition, dependants' pensions of up to 100% of the member's maximum allowable pension (inclusive of lump sum and increased in line with CPI or up to 3% p.a.) can be provided for dependants, following the death of the member/pensioner. A dependant is a person who is financially dependent on the member at the time of their death. A spouse or civil partner is automatically deemed to be a dependant. Children are normally dependants until they reach age 18 or age 21 if they are in full time education. A relative (other than a spouse or civil partner) who was not supported financially by the member is not regarded as a dependant. A cohabiting partner, who was financially dependent on the member at the date of death could be considered a dependant.

The total amount paid to all dependants cannot exceed the member's maximum pension entitlement (at retirement), whether or not the member actually received that maximum level of pension at retirement. If for example the member has a spouse and no other dependants then the maximum pension allowable could be paid to the spouse. If there is no spouse, or a spouse and children then the combined pensions cannot exceed the maximum permissible.

On the member's death in retirement the dependant's pension can usually commence immediately. If there is a guarantee period on the member's pension and it is more than five years, the dependant's pension must not commence until the end of the guaranteed period.

2.11 Cap on Tax Relieved Pension Fund

On 7 December 2005 (Budget Day 2005) a cap was introduced on the total capital value of pension benefits that an individual can draw on in their lifetime from tax relieved pension arrangements. Benefits paid in excess of an individual's cap attract additional tax.

Standard Fund Threshold

The cap on tax relieved pension funds is referred to as the Standard Fund Threshold (SFT) and was originally set at €5.0M and is currently (2012) €2.3M.

Personal Fund Threshold

If the capital value of an individual's pension rights on 7 December 2005 (Budget Day 2005) exceeded the SFT (of €5.0M then), and provided certain Revenue notification requirements were met, the actual capital value of their pension rights as at 7 December 2005 became their Personal Fund Threshold (PFT).

When the SFT was reduced to €2.3M on 7 December 2010 (Budget Day 2010) individuals with a capital value of pension rights greater than €2.3M could be granted their own PFT equal to the actual value of their pension rights as at 7 December 2010 provided certain Revenue notification requirements were met. The maximum PFT that could be granted was €5,418,085.

The PFT replaces the SFT for these individuals. The Minister of Finance may change the amount of the SFT or PFT in the future.

The SFT or PFT applies to all benefits paid on or after 7 December 2005 from a 'relevant pension arrangement' which includes all occupational pension schemes (including AVCs), personal pensions and trust schemes, PRSAs, public sector schemes, statutory schemes and certain overseas schemes. Benefits paid or in payment prior to 7 December 2005 are ignored. Also ignored are private sector pensions drawn down in full by public sector employees who have exceeded the SFT, which were taxed at 41% and subject to USC (with no retirement lump sum allowed) – see section 2.11.4 below for more details on this.

2.11.1 Benefit Crystallisation Events (BCEs)

On each occasion after 7 December 2005 that an individual becomes entitled to receive a benefit from a pension, they use up part of their SFT or PFT. These occasions are referred to as a Benefit Crystallization Events (BCEs). The value of the benefit being taken, together with the other benefits (if any) taken since 7 December 2005 must be tested against the lifetime limit. BCEs occur when an individual takes any of the following:

- a retirement lump sum
- an annuity

- an ARF option
- an increase of a pension in payment in excess of the greater of 5% p.a. or CPI plus 2%
- a transfer to an overseas pension scheme.

Payment of death in service benefits (lump sum and dependant's pensions) are not regarded as BCEs. The transfer of a vested PRSA to an ARF/AMRF is not regarded as a BCE (the BCE occurs at the time the retirement lump sum is taken).

Before paying out benefits, the administrator of the pension arrangement must get a declaration completed by the individual, giving information on any previous BCEs.

2.11.2 Taxable Excess

Where benefits are to be taken by an individual which either on their own, or together with previous BCEs exceed the SFT or their PFT, as the case may be, the excess is subject to tax under Case IV of Schedule D at the rate of 41% (2012). There is no allowance given for any reliefs, tax credits or other deductions. The tax is paid upfront, except in the case of public sector schemes where the tax can be paid by alternative arrangements. The administrator of the relevant pension arrangement is primarily responsible for the payment of this tax. The tax is payable even if the individual and/or the administrator is non resident.

Any benefit paid to a member by a pension arrangement, with the exception of the tax free lump sum of up to €200,000, is liable to tax again. So any benefit, which has been the subject of the excess tax charge of 41%, will be taxed again. The Finance Act of 2012 relaxed this provision and allowed for any standard rate tax amount on the retirement lump sum to be offset against the tax due on the taxable excess (excess over SFT/PFT). See section 2.12 below for more details on taxation of retirement lump sums.

2.11.3 Pension Adjustment Orders (PAOs)

Finance Act 2007 included PAOs in the new regime when calculating BCEs and determining if the individual's benefits have exceeded the SFT/PFT. In effect a PAO is treated as not having been made and the benefit payable under a PAO is taken into account when calculating the capital value for BCE purposes.

2.11.4 Public Sector Employees

Finance Act 2012 introduced a provision to allow public sector employees, subject to certain conditions, to fully or partially encash any private pension arrangements where it is likely that their retirement benefits under the public sector scheme will exceed SFT/PFT. The encashment is subject to the higher rate of income tax and USC, and no retirement lump sum is allowed. The encashment of the private pension arrangements does not count towards using up the SFT or the individual's PFT if applicable.

2.12 Cap on Retirement Lump Sum

The Finance Act 2006 also introduced a cap on the amount of tax free retirement lump sum an individual could take in their lifetime. This was set at 25% of the SFT.

Budget 2010 reduced this limit further.

- With effect from 1 January 2011, the overall maximum retirement lump sum that an individual can take tax free from all pension arrangements is €200,000.

- Any amount taken between €200,000 and €575,000 is subject to income tax at the standard rate. No reliefs, allowances or deductions can be made against this tax. However, as noted above, this tax can be off set against any tax due on the taxable excess if the benefits exceed SFT/PFT.
- Any amount in excess of €575,000 will be taxed at the individual's marginal rate of income tax and will also be subject to PRSI and USC.
- Any retirement lump sums taken on or after 7 December 2005 will count towards these limits.

The limit on the retirement lump sum is similar to the SFT/PFT, in that each time an individual receives a retirement lump sum this 'uses up' part of the tax free amount, or part of the amount taxed at the standard rate of income tax, whichever applies.

Chapter 3

Maximum Contribution Rates

3.1 Introduction

In Chapter 2 we set out the maximum level of benefits approvable by Revenue for an exempt approved scheme and we will now consider the limits on contributions put in place by Revenue to ensure maximum benefits are not exceeded and Revenue limits are not breached.

We will consider contributions to a DC scheme in this chapter. Based on certain assumptions a contribution rate is agreed with the trustees/employer to accumulate a fund for the members at retirement age to pay estimated retirement benefits. The employer alone can make contributions but in many cases the contribution is shared between the employer and the employee. It is important to remember that irrespective of the contribution rate agreed there is no promise that any estimated benefits will be payable at retirement. The actual benefits payable at retirement will depend on a number of factors including investment returns etc.

3.2 Calculation of Revenue Maximum Ordinary Contribution

In 2008 Revenue introduced standard methodology and capitalisation factors to be used by all life offices to calculate the maximum ordinary annual contribution for occupational pension schemes. The maximum contribution includes both employer and employee contributions but excludes the cost of any risk benefits (e.g. death in service cover).

The maximum ordinary (regular) contribution allowed in a given year is the higher of:

$$\frac{\textbf{B x CF – (value of assets plus retained benefits)}}{\textbf{term in years to normal retirement date, min 1 year}}$$

OR

$$\frac{\textbf{n/60ths pension x CF – value of assets}}{\textbf{term in years to normal retirement date, min 1 year}}$$

Where:

B = the Revenue maximum pension on uplifted scale (see Chapter 2) based on current remuneration but with service to normal retirement date.

n/60ths pension = pension on strict n/60ths scale (see Chapter 2), using current remuneration but with service to normal retirement date.

CF = maximum benefit capitalisation factor (see below).

3.2.1 Revenue Benefit Capitalisation Factors

Revenue have provided maximum benefit capitalisation factors to be used in the above formulae. These are used in the formulae to capitalise the maximum pension, i.e. convert it into a lump sum.

The current maximum benefit capitalisation factors are shown below:

NRA	Female, no spouse or civil partner	Female with spouse or civil partner	Male, no spouse or civil partner	Male with spouse or civil partner
60	27.5	30.0	24.4	32.4
61	26.8	29.2	23.6	31.6
62	26.0	28.4	22.8	30.8
63	25.3	27.5	22.0	30.0
64	24.6	26.7	21.2	29.2
65	23.8	25.9	20.4	28.4
66	23.1	25.1	19.6	27.6
67	22.4	24.3	18.9	26.8
68	21.6	23.5	18.1	26.0
69	20.9	22.6	17.4	25.2
70	20.2	21.8	16.7	24.4

These capitalisation factors are based on annuity rates, and will be reviewed and updated by Revenue from time to time. In relation to civil status, Revenue have confirmed that funding must be based on current civil status and it is not possible to fund for spouse's/civil partner's benefits on the assumption that the individual will marry/become a civil partner at some point in the future.

If the member is within 3 years to retirement, a current annuity rate can be used instead of the capitalisation factor from the table. The annuity rate can include up to 100% dependant's pension (if married, or in a civil partnership), escalation up to the greater of 3% or CPI, and up to a 10 year guarantee period.

Revenue have also provided a formula and capitalisation factors to be used to convert benefits held in DB pension schemes into a fund value for the purposes of calculating 'value of assets' in the above formulas. These are set out in Chapter 5 of the Revenue Pensions Manual. These scheme capitalisation factors depend on the structure of the DB scheme.

3.2.2 Examples

Below are some examples showing how to calculate the maximum annual contribution using the Revenue formulas and capitalisation factors.

Example 1:

Tom has 5 years service completed to date with his employer and is now joining the employer's occupational pension scheme. He is single and has retained benefits of €100,000 from a previous employment. The NRA on the scheme is 65, and Tom has 15 years to NRA. His salary is €50,000.

Using the formula, the maximum total (employer and employee) annual contribution that could be paid is the higher of:

$$\frac{\textbf{B x CF – (value of assets plus retained benefits)}}{\textbf{term in years to normal retirement date, min 1 year}}$$

B = 2/3 x €50,000 = €33,333 (maximum pension on uplifted scale based on service to NRA)

CF = 20.4 (from table above, capitalisation factor for single male, NRA 65)

Value of assets/retained benefits = €100,000

$$\frac{€33{,}333 \times 20.4 - (€100{,}000)}{15} = \frac{€579{,}993}{15} = €38{,}666$$

OR

$$\frac{\textbf{n/60ths pension x CF – value of assets}}{\textbf{term in years to normal retirement date, min 1 year}}$$

n/60ths pension = 20/60 x €50,000 = €16,667

CF = 20.4

$$\frac{€16{,}667 \times 20.4}{15} = €22{,}667$$

The maximum annual contribution is €38,666.

Example 2:

Mary has 8 years service completed to date with her employer and is a member of her employer's occupational pension scheme. The current value of her fund is €60,000, and she also has retained benefits of €900,000 from a previous employment. The NRA on the scheme is 70, and Mary is married and has 10 years to NRA. Her salary is €100,000.

Using the formulas, the maximum total (employer and employee) annual contribution that could be paid is the higher of:

$$\frac{\textbf{B x CF – (value of assets plus retained benefits)}}{\textbf{term in years to normal retirement date, min 1 year}}$$

B = 2/3 x €100,000 = €66,667 (maximum pension on uplifted scale based on service to NRA)

CF = 21.8 (from table above, capitalisation factor for married female, NRA 70)

Value of assets + retained benefits = €60,000 + €900,000 = €960,000

$$\frac{€66{,}667 \times 21.8 - (€960{,}000)}{10} = \frac{€493{,}340}{10} = €49{,}334$$

OR

$$\frac{\textbf{n/60ths pension x CF – value of assets}}{\textbf{term in years to normal retirement date, min 1 year}}$$

n/60ths pension = 18/60 x €100,000 = €30,000

CF = 21.8

Value of assets = €60,000

$$\frac{€30{,}000 \times 21.8 - (€60{,}000)}{10} = €59{,}400$$

The maximum annual contribution is €59,400.

3.2.3 Table of Maximum Funding Rates

We have prepared a table of maximum funding rates as a percentage of salary using the Revenue methodology and capitalisation factors. The rates vary depending on age, gender, NRA and civil status, and assume that the individual has no pension provision in place and will have completed at least 10 years service at normal retirement age. This table can be found in Appendix 2 at the back of this manual.

3.3 Revenue Maximum Single Contribution

The above section refers only to the calculation of the Revenue maximum ordinary annual contribution. Different calculations apply if a special contribution/single premium is to be paid. A single contribution can only be made to provide benefits for past service. Past service is years of remunerative employment with the same employer where little or no pension contributions were paid. The calculation done is to ensure Revenue maximum benefits are not exceeded if the member was assumed to leave service after the single contribution was paid. See Chapter 4 for information regarding tax relief for employer single contributions.

3.4 Standard Fund Threshold (SFT)

As explained in Chapter 2, Revenue also impose a limit on the maximum tax relieved pension fund that an individual can draw on in their lifetime, known as the Standard Fund Threshold (SFT). Some individuals may have a higher Personal Fund Threshold (PFT). Any benefits paid in excess of the SFT or PFT, as the case may be, attract additional tax.

The Revenue maximum funding calculations as outlined above do not take account of these fund thresholds.

Chapter 4

Tax Treatment of Contributions and Benefits

4.1 Introduction

With a Revenue exempt approved occupational pension scheme, specific limits on pensions and other benefits are set, which, in effect limit the amount that can be contributed – this is otherwise known as funding limits. In Chapter 2 we outlined the limits on benefits allowed and in Chapter 3 we examined contribution levels. In this chapter we will deal with the method with which tax relief is given for contributions, the taxation treatment of benefits arising from a pension scheme and finally the temporary pension levy introduced in 2011.

4.2 Regular and Single Contributions

4.2.1 What is a Regular Contribution?

A regular contribution is a fixed contribution, or a varying one calculated on a stated basis e.g. percentage of earnings, which is payable every year until retirement. Revenue refer to a regular contribution as an ordinary annual contribution.

The regular contribution amount must be such that if paid throughout the life of the scheme it would not lead to overfunding. There are formulae as set down by Revenue which must be used to determine the maximum regular contribution amount permitted to be paid by or on behalf of an employee (see Chapter 3).

4.2.2 What is a Single Contribution?

A single contribution is a lump sum premium paid to a pension scheme to provide benefits for past service. Revenue refers to a single contribution as a special contribution. It is important to ensure a scheme can legally accept a single contribution and the test performed here is to ensure Revenue maximum benefits are not exceeded if the member was assumed to leave the scheme after the single contribution was paid.

4.3 Employer Regular Contributions

An employer's regular contribution to an exempt approved occupational pension scheme is usually tax deductible as an expense in the chargeable period (company's financial year) in which it is paid. Funding limits (see Chapter 3) will determine the maximum amount that can be contributed. An employer contribution is only tax deductible if it is in respect of employees working in the business and the business is liable to income tax or corporation tax, as the case may be.

> The employer regular contribution must be actually paid in the chargeable period in order to be treated as an expense for that period.

It is not sufficient for tax relief purposes that the contribution was due but not actually paid in the chargeable period even if provision had been made in the employer's accounts. Tax relief is only allowed against the profits arising from trading activities, there is no relief against profits arising from non trading activities, e.g. rental income, investment income.

4.3.1 Chargeable Period

Where the employer is a company the chargeable period is the company's accounting period. A regular contribution must be paid within the accounting period if it is to be tax deductible for that accounting period.

Where the employer is assessed for income tax under Schedule D, Case I or II (i.e. self employed individual) their chargeable period is their basis period (the period of accounts which form the basis of tax liability for a year of assessment e.g. if annual accounts end on 31 March each year, then accounts for year ending 31 March 2012 would fall into the 2012 year of assessment). A regular contribution must be paid within the accounts year end period (basis period) if it is to be tax deductible in that relevant year of assessment.

4.4 Employer Single Contributions

Before considering the application of tax relief it is important to remember that a single contribution cannot be made to provide benefits for future service so where an employee has just started service or has short service there may well be little or no scope to make a single contribution. Revenue rules apply to the payment of single contributions.

4.4.1 Calculating Tax Relief

When calculating tax relief on an employer's single contribution remember tax relief is based on the pension contribution and life cover premium position of the employer as a whole and not just specifically in relation to any one member.

"Total Regular Contributions" means the total amount of regular contributions paid to all Revenue approved schemes in the chargeable period by the employer.

"Total Single Contributions" means the total amount of single contributions paid to all Revenue approved schemes in the chargeable period by the employer.

Example:
An employer has been paying a regular pension contribution for employees and decides to make a once off single contribution for himself. The contribution for employees can be taken into account when working out the timing of tax relief available on the single contribution.

(a) If the employer's Total Single Contributions do not exceed the greater of their Total Regular Contributions, or €6,350 in the chargeable period then full tax relief will be given in the year in which it was paid.

Example:
An employer pays a regular contribution of €10,000 for one employee and now makes a single contribution of €10,000 in respect of another employee. As the Total Single Contributions do not exceed the Total Regular Contributions a total of €20,000 is allowed in the chargeable period.

(b) Where the employer single contribution exceeds the greater of €6,350 and the Total Regular Contributions the relief must be spread forward. The number of years that relief is spread forward is arrived at by dividing the Total Single Contributions by the Total Regular Contributions. This is subject to a maximum spread of 5 years and minimum divisor of €6,350.

Example:
An employer pays a regular contribution of €20,000 and now makes a €150,000 single contribution. Relief will be allowed over 5 years. €30,000 of the single contribution will be allowed in the current year and in each of the following 4 years.

4.4.2 Rounding

The spread forward period for tax relief is, as stated above, worked out by dividing the Total Single Contributions by the Total Regular Contributions to a maximum of 5 years and subject to a minimum divisor of €6,350. Where the number of years arrived at is not a whole number, Revenue require that the fraction be rounded.

- Where the number is between 1 and 2, the relief will be spread evenly over 2 years.
- Where the number is a fraction up to and including a half it must be rounded down and tax relief given evenly over those years.
- Where the number is a fraction exceeding a half it must be rounded up and the relief allowed in respect of the single contribution each year, except the last, is the greater of:

  - the Total Regular Contributions (in the year the single contribution is made) and

  - €6,350

  with the balance of the tax relief being allowed in the final year.

Example:

If an employer pays the following contributions the relief will usually be as follows:

Year	Regular contribution	Single contribution	Total tax relief on single contribution	Total tax relief in chargeable period
1	€15,000	€57,000	€15,000	€30,000
2	€17,000		€15,000	€32,000
3	€20,000		€15,000	€35,000
4	€25,000		€12,000	€37,000

4.4.3 Second Special Contribution

Where a second special contribution is paid later in the same chargeable period – it is simply added to the previous special contributions in that accounting period and the calculation above carried out. i.e. Total Single Contributions divided by Total Regular Contributions subject to a minimum divisor of €6,350.

If a subsequent single contribution is paid in a following accounting period and there is still unused tax relief from a previous single contribution, the total of the unused relief is treated as though it was a single contribution paid in the current accounting period and is added to the current single contribution and the spread forward calculation done again.

The following example will help explain what happens when a subsequent single contribution is paid in a later accounting period. We will use the example above and assume that another €57,000 is paid in Year 3. Tax relief will usually be given as follows:

Year	Regular contribution	Single contribution	Total tax relief on single contribution	Total tax relief in chargeable period
1	€15,000	€57,000	€15,000	€30,000
2	€17,000		€15,000	€32,000
3	€20,000	€57,000	€21,000	€41,000
4	€25,000		€21,000	€46,000
5	€25,000		€21,000	€46,000
6	€25,000		€21,000	€46,000

4.4.4 Employer Sponsored Risk Premiums

Essentially there are two types of risk premiums that have traditionally been associated with an occupational pension scheme – life cover premium and disability cover premium. Life cover forms part of an exempt approved occupational pension scheme and therefore the life cover premium can be included as part of the Total Regular Contributions when working out tax relief available on a single contribution. Disability Cover and premium protection are not considered part of an occupational pension scheme as the legislation governing pension schemes relates only to retirement and death benefits and so should not be included as part of the employer's Total Regular Contributions.

4.4.5 Employer Sponsored Disability Cover /Premium Protection

An employer may agree to pay employees a certain level of income (sick pay) for a period, while they are out of work due to a "disability". After that period of sick pay has expired the employer can provide for a continuance of income until the employee recovers, dies or reaches retirement age. The employer insures this risk by effecting a Disability Cover scheme with a life assurance company which although separately established is often provided in conjunction with the pension scheme.

In addition the employer can choose to put insurance in place, which will pay the pension contribution in respect of the disabled employee and any life cover premium while they are out of work and drawing Disability Cover benefit. This is often called premium protection or contribution protection (or waiver of premium). The premium incurred by the employer for the Disability Cover and/or Premium Protection cover should be treated as a trading expense for corporation tax purposes.

4.5 Corporation Tax - Loss Relief

There is no direct legislative provision for employer pension contributions to be backdated. However, this may occur in practice where:

- a company goes into voluntary liquidation or
- a company incurred a loss in an accounting period which can be offset against the profit arising in the previous accounting period.

4.5.1 Voluntary Liquidation

A company which goes into voluntary liquidation can apply for Terminal Loss Relief which will allow the company to set off losses made in the last 12 months of trading against any profits earned from the same trade over the accounting periods falling wholly or partly within the 3 years preceding those last 12 months. A single contribution paid in the final year can be included in the amount of this terminal loss. In addition any unused relief from a previous single contribution can be included for Terminal Loss Relief.

4.5.2 Accounting Loss

A loss arising in an accounting period can be offset against profit arising in a previous accounting period of the same length. A pension contribution could give rise to a loss or indeed increase a loss in an accounting period which can be set back against profit arising in the previous accounting period. Remember there is a requirement for a single contribution to be spread forward.

4.6 Employee Regular Contribution

The employee's regular contribution whether it is either an employee contribution required under the Rules of the scheme, an AVC, or an AVC PRSA contribution, or a combination of these, is normally fully tax deductible at the employee's marginal rate of income tax. Tax relief on an employee's regular contribution is normally given in the tax year in which the contribution is paid. The maximum amount expressed as a percentage of earnings (Revenue refer to employee earnings as remuneration), which can be relieved, is determined by the age of the member.

Age	Maximum tax relief limit as a % of earnings
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 and over	40%

Income tax relief is granted at the higher percentage if the individual reaches that age at any time during the tax year (calendar year) in question.

It should be noted that tax relief is not automatically granted. Revenue terms and conditions must be complied with. In certain circumstances employee contributions may have to be restricted in order to ensure that Revenue limits (including Revenue limits on benefits) are not breached.

There is a limit of currently €115,000 (for 2012) on the amount of earnings, which can be taken into account for the purpose of claiming contribution relief. This limit may be reviewed each year. This earnings limit, and the tax relief limits set out above do not apply to any employer contributions to an occupational pension scheme.

Remuneration can include bonuses, overtime and other fluctuating emoluments etc as well as basic salary. Remuneration can also include the value of shares issued to an employee under certain share schemes.

Where contributions paid in a tax year exceed the contribution limit for tax relief, any unrelieved contributions can be carried forward and granted relief in future years subject to the annual limit for those years, but they can only be set off against remuneration from that same employment.

Pension contributions no longer qualify for PRSI relief and never qualified for USC relief.

4.6.1 Individual with two Earned Incomes

If an individual has more than one source of earnings i.e. employment income and self employed income, the overall maximum limit on earnings which applies in a tax year in respect of pension contributions is €115,000 (for 2012). If the individual is making pension contributions to an occupational pension scheme, then the employment income is offset against the €115,000 earnings limit first.

Example:

Tom has earnings from employment of €100,000 in 2012. He also has self employed income of €100,000. He is aged 29 and is required to make a contribution of 10% of salary (i.e. €10,000) to his occupational pension scheme. Because of Tom's age he could make and claim tax relief on a pension contribution of 15% of his salary.

As Tom is already making pension contributions in respect of his employment earnings of €100,000, he has, in effect, "used up" €100,000 of the aggregate earnings limit of €115,000.

Tom could top up his scheme benefits by making AVCs of up to an additional 5% of salary subject to funding limits.

In relation to his self employed income, because Tom has "used up" €100,000 of the aggregate earnings limit of €115,000 in contributing to his occupational pension scheme, his capacity to make tax relievable contributions to a personal pension/PRSA in respect of his self employed income is restricted to a maximum of 15% of €15,000 (i.e. €2,250).This is the position irrespective of whether Tom decides to make an AVC or not.

In a situation where an individual's pensionable income is €115,000 or more there will be no scope to claim tax relief in respect of pension contributions made in respect of self employed income. This is particularly relevant in the case of a doctor who is in receipt of General Medical Services (GMS) income as well as private practice income. Pensionable GMS income (net GMS remuneration) makes up the first part of the aggregate earnings limit of €115,000. This earnings rule may also affect consultants working with the HSE where they receive pensionable income and they also have separate private practice income.

4.6.2 Net Pay Arrangement

The employee's regular contribution can be deducted from the employee's gross salary by the employer before income tax is charged. This arrangement is known as the net pay arrangement and allows the employee to enjoy income tax relief upfront on pension contributions. Pension contributions are not allowable against PRSI or USC. Employers can no longer claim relief from employer PRSI on employees' pension contributions paid via net pay.

4.6.3 Claiming Relief when Contributions not Deducted from Salary

Where net pay is not an option e.g. an AVCPRSA paid by direct debit, tax relief can be claimed by an employee on application to Revenue for an adjustment to be made to their certificate of tax credits and standard rate cut off point. If the employee is a higher rate tax payer their certificate would be adjusted as follows:

- the tax credit is increased by the premium amount at standard rate of tax, and
- the standard rate band is also increased by the premium amount.

Increasing the tax credits gives relief at the standard rate of tax, while increasing the standard rate band ensures relief is obtained at the difference between the standard rate and the higher rate of tax. The combined effect ensures relief is obtained in full at the higher rate of tax.

Each year thereafter the certificate of tax credits and standard rate cut off point should reflect the pension contribution without the need to reapply unless there has been a change in the contribution amount.

Example:

An employee makes a regular contribution of €5,000 per annum.
Relief is given as follows:

	Relief given
Tax credit given at standard rate (€5,000 X 20%)	€1,000
Standard rate band increased by €5,000	€1,050
Total amount relieved	€2,050

4.7 Employee Single Contribution

Similar to an employer single contribution an employee single contribution can only be made to provide benefits for past service. In general, an employee single contribution is classified as an AVC.

Tax relief can be allowed on the single contribution in the year of payment provided that when aggregated with any regular employee contribution in the tax year it does not exceed the employee's tax relief contribution limit (see table at 4.6 above). Tax relief can be claimed by the employee on request to Revenue for a refund or an adjustment be made to their certificate of tax credits and standard rate cut off point. Any single contribution still not relieved can be carried forward for relief in future years. However, tax relief can only be obtained in future years if the employee is still in that same employment with earnings to offset the unused pension contribution against.

4.7.1 Backdating

An employee who is still in the same employment and a member of a pension scheme with the same employer can make a single contribution after the end of a tax year but before the following 31 October and elect to backdate it to the previous tax year. The election to backdate must also be made before 31 October. However, if an individual is retiring and is not self assessed for income tax, they have up until 31 December in the year they are retiring to make the election to backdate to the previous tax year but they must have paid the contribution before the filing date (31 October). Tax relief in the previous year is still subject to the normal tax relief limits that applied in that (previous) year. Certain employees e.g. directors who both file and pay their tax returns using ROS (the Revenue Online System) can avail of the ROS extended deadline when backdating a single contribution.

This facility for employees to backdate a single pension contribution allows them to increase their pension funding by making an AVC or AVCPRSA and reduce their tax liability for the previous tax year.

Only in very limited situations normally associated with public sector pension schemes can a special contribution be backdated for tax relief purposes for up to 4 years.

4.8 Taxation of Benefits

4.8.1 Retirement Lump Sum

On retirement from an occupational pension scheme a member traditionally had the right to take a retirement lump sum based on earnings and service which is capped at 1.5 times final salary if the member has completed at least 20 years service by normal retirement age (NRA). A sliding scale applies if a member has completed less than 20 years service.

Alternatively a member of a DC scheme or a 5% Proprietary Director of a DB scheme who chooses the ARF options at retirement can take up to 25% of the fund as a retirement lump sum subject to the scheme rules being amended to allow for same.

Under current Revenue rules the overall maximum retirement lump sum that can be taken tax free from all pension arrangements is €200,000, with any balance up to €575,000 subject to income tax at the standard rate. Any amount paid out in excess of €575,000 will be taxed at the individual's marginal rate and will also be subject to PRSI and USC. Any retirement lump sums taken on or after 7 December 2005 will count towards these limits.

4.8.2 Pension (Annuity) Payments

All pension benefits, whether member's, spouse's or dependant's are subject to income tax at the individual's marginal rate. The pension payer should operate the PAYE system. Pension income is also liable to USC where appropriate.

4.8.3 Withdrawals from an ARF/AMRF

For an ARF/AMRF effected after 6/4/2000 all withdrawals (including deemed withdrawals) are subject to PAYE. The Qualifying Fund Manager deducts income tax, PRSI and USC where appropriate.

4.8.4 Taxable Cash

The balance of the fund after taking 25% retirement lump sum may be withdrawn as taxable cash in certain circumstances. It will be treated as part of the individual's income for the year of assessment in which the payment is made and will be liable to income tax and USC where appropriate.

4.8.5 Refund of Employee Contributions

In certain circumstances, a member leaving an occupational scheme may be entitled to the surrender value of their own contributions (including any AVCs that have been made). Any such refund is subject to standard rate tax, which is currently 20%. The refund can be paid tax free where it is being transferred directly into a PRSA of the contributor.

4.8.6 Ill Health

In the case of ill health retirement it is possible to increase the retirement lump sum available under the traditional lump sum option as Revenue will allow ill health benefits to be based on service had the ill member stayed until NRA but based on final salary at date of leaving. If choosing this traditional lump sum route the balance in the fund must then be used to provide a pension which is subject to income tax and USC as appropriate.

4.8.7 Commutation of Pension if Seriously Ill

Full commutation of the pension is allowed by Revenue in "exceptional circumstances of serious ill health". The member must be terminally ill and their life expectancy must be only a few months and not years.

Revenue have separate rules with regard to the taxation treatment of a benefit commuted on grounds of serious ill health and the main issue is how much can be paid out as retirement lump sum (of which up to a total of €200,000 can be paid tax free). The Rules of the particular scheme will determine what amount can be paid out as retirement lump sum and the balance will then be subject to tax at 10% under Case IV of Schedule D. Revenue will allow under their discretionary powers for the retirement lump sum amount to be calculated on a similar basis as for ill health retirement – 1.5 times final salary if at least 20 years service could have been completed by NRA.

4.8.8 Commutation of a Trivial Pension

There are two options when it comes to establishing if pension scheme benefits are considered trivial or not and each option has its own tax implications (see Chapter 2 – Revenue Maximum Benefits Allowed).

1. If a member's total pension entitlements relating to that employment are deemed to be trivial (pension of less than €330 p.a. based on a single life annuity with no escalation) then the Rules of the particular scheme will determine what amount can be paid out as retirement lump sum and the balance will then be subject to tax at 10%. As the benefit is trivial it is quite likely that there would be little or no tax payable.

Example:

Jane is a paid up member of a DC scheme and has now reached NRA after completing only 3 years service. Let's assume her final salary at NRA is €40,000 and she has a fund value of €6,000 and no other retirement benefits.

Assuming an annuity rate of 5% at the time she is drawing benefits she is entitled to a single life level pension of €300 p.a. She can take her retirement lump sum of €4,500 and the balance of €1,500 will then be subject to tax at 10%.

2. In 2004 Revenue introduced alternative rules regarding the calculation of trivial benefits and they will allow for a once off pension to be paid if after taking retirement lump sum the balance of the individual's pension funds from all sources is less than €20,000. As the fund value is payable as a once off pension it is subject to income tax and USC as appropriate as would apply to a normal pension payment.

Example:
Mary is a member of a DC scheme and has now reached NRA after completing 25 years service. Her final salary is €45,000 and she has a fund value of €80,000 and no other retirement benefits.

She opts to take her retirement lump sum entitlement of (€45,000 X 1.5) = €67,500 which leaves a balance of €12,500. As the balance remaining is less than €20,000 it can be paid to Mary as a once off pension payment subject to income tax and USC as appropriate.

4.8.9 Benefits payable on Death

Where a benefit is payable on a member's death either by way of a lump sum or pension to a dependant(s) under the scheme, the payment is deemed to be a benefit received from the member and not from the scheme for Capital Acquisitions Tax (CAT) purposes. Whether or not any liability to CAT arises depends on the relationship between the deceased member and the person in receipt of the benefit. Where the benefit is payable to a spouse or civil partner there is a specific exemption from CAT. Any pension payable as a result of the death of the member is given a capital value for the purpose of the CAT calculation. In reality the benefit will still be paid out as a pension and will also be liable for income tax. There is no liability to income tax on a lump sum death in service benefit payable.

4.8.10 Benefits payable on Disability

In the event of an employee being out of work due to a "disability" for longer than the chosen deferred period, the insurer pays the disability benefit to the employer tax free and the employer is taxed on it as if it was a trading receipt. In turn, the payment by the employer to the employee who is "disabled" is treated as a deductible expense like any other remuneration.

Any amount paid out under the scheme to an employee, who is absent from work due to illness or an accident, is regarded as a continuation of earnings and is therefore subject to income tax, PRSI and USC as appropriate.

4.8.11 Standard Fund Threshold/Personal Fund Threshold - Taxable Excess

There is a cap on the total capital value of pension benefits that an individual can draw on in their lifetime from tax relieved pension arrangements. Benefits paid in excess of an individual's cap will be subject to tax under Case IV of Schedule D at 41%. This is an upfront tax charge and there is no allowance given for any reliefs, tax credits or other deductions. All benefits received since 7 December 2005 must be taken into account.

Standard Fund Threshold

The cap is referred to as the Standard Fund Threshold (SFT) and at its highest point was €5.4M before being reduced to its current (2012) level of €2.3M.

Personal Fund Threshold

If the capital value of an individual's pension rights on 7/12/2005 (Budget Day 2005) exceeded the SFT (of €5.0M then), and provided certain Revenue notification requirements were met, the actual value of their pension rights as at 7/12/2005 became their Personal Fund Threshold (PFT).

When the SFT was reduced to €2.3M on 07/12/2010 (Budget Day 2010) individuals with a capital value of pension rights greater than €2.3M were granted their own PFT equal to the actual value of their pension rights as at 07/12/2010 provided certain Revenue notification requirements were met. Individuals who had a PFT prior to 7/12/2010 still retained that PFT.

The Minister for Finance may change the amount of the SFT or PFT in the future.

The administrator of the relevant pension arrangement is primarily responsible for the payment of any tax on the taxable excess.

Any benefit which has been the subject of the upfront taxable excess charge of 41%, will be taxed again on drawdown. Most drawdowns with the exception of retirement lump sums up to €575,000, are liable to income tax at the individual's marginal rate and USC as appropriate.

4.9 Pension Levy

In 2011 the Government introduced a temporary pension fund levy on the value of pension fund assets. The pension fund levy is an annual stamp duty of 0.6% on the value of the pension fund assets as at 30 June for each of the four years 2011, 2012, 2013 and 2014.

It applies in respect of private pension funds e.g. pension schemes, retirement bonds, personal pensions and PRSAs. It does not apply to ARFs or annuities.

For insured arrangements the life assurance company is usually responsible for remitting the levy to Revenue by 25 September each year.

Chapter 5

Additional Voluntary Contributions (AVCs)

5.1 Introduction

It is estimated that the vast majority of members of occupational pension schemes (OPS) will not receive benefits at retirement anywhere near Revenue limits. For this reason a member of a pension scheme can normally make additional voluntary contributions (AVCs) to "top up" the benefits being provided under the main scheme, so as to provide additional benefits at retirement within Revenue limits. Most AVCs are made to provide additional retirement benefits but they can be used to provide additional death in service benefits also.

5.2 Who can make AVCs?

Only an existing member of an occupational pension scheme (OPS) can make AVCs. Contributions are made by the member in addition to any compulsory contribution payable under the main scheme. The employer cannot contribute to an AVC.

The member is only eligible to continue making AVCs while they are an active member of an occupational pension scheme linked to that employment.

This is also an important consideration when backdating a single AVC contribution – the employee must still be with the same employer and a member of the same scheme when making the contribution to be backdated.

The Rules of the relevant OPS should also permit the making of AVCs, if not a supplementary group AVC scheme must be put in place by the employer or alternatively an AVCPRSA arrangement set up.

If the main scheme operates on a defined benefit (DB) basis it is usual to facilitate AVCs on a defined contribution basis in a different scheme, either under the Rules of the main scheme or established as a separate legal entity.

If the main scheme operates on a defined contribution (DC) basis it is usual to allow AVCs to be paid into the main scheme.

5.3 Scope for AVCs

At retirement, many employees will not receive the maximum retirement benefits allowed by Revenue for a number of reasons, as outlined below, and therefore the member can choose to make up the shortfall by making AVCs.

- The level of contributions paid into most DC plans will not provide the maximum benefits allowed at normal retirement.
- Most pension schemes will only base benefits and/or contributions on an individual's basic annual salary. Usually fluctuating emoluments such as commission, bonuses or notional salary (BIKs) are not taken into account.

- DB schemes may provide a pension of 1/60th of pensionable salary for each year of service so a member with less than 40 years service cannot under the Rules of the scheme obtain the Revenue maximum allowable pension (of up to 2/3rds of final salary, provided they have completed at least 10 years service).
- The DB scheme may not provide for escalation of pensions in payment.
- The DB scheme may not provide for a dependant's death in retirement pension.

The increase in the qualifying age for the State Pension (Contributory) from age 66 to age 67 in 2021 and the further increase to age 68 in 2028 has heightened the need for considering making AVCs.

5.4 Paying AVCs

AVCs can be paid in one of the following ways:

- under the employer's main scheme
- to a separate group AVC scheme
- to an AVCPRSA
- purchase added years (public sector schemes).

Most pension schemes allow for AVCs to be made either as part of the main scheme or as a separate AVC scheme. In either case the AVCs are held under trust for the benefit of the member and/or dependants and are not legally owned by the individual member. However, the Rules of the scheme will provide that the funds in the AVC can only be used to provide benefits for that member. Since 15 September 2003 traditional individual AVC schemes (except those set up under the main scheme trust) can no longer be set up.

An individual who is a member of an OPS also has the option of setting up an AVCPRSA. The member sets the AVCPRSA up in their own name. If there are a number of members involved the employer can set up a group AVCPRSA in the names of the individual members, i.e. each member would establish a separate AVCPRSA in their own name under the employer sponsored group AVCPRSA arrangement.

An individual AVCPRSA can be set up on a direct debit basis without the need to obtain the trustee's/employer's consent. It is up to the PRSA provider to get sufficient information (normally a benefit statement or copy of the scheme booklet) from the member to ensure Revenue maximum allowable benefits are not exceeded.

An AVCPRSA allows an individual to select the advisor they want to deal with – as opposed to the advisor appointed by the trustees of the main scheme. It can also allow an individual to select an investment manager/fund rather then invest in a fund or funds selected by the trustees of the main scheme. An AVCPRSA is seen by many as having an advantage over an AVC paid to an OPS because, amongst other things, an AVCPRSA is set up in the individual's own name, with benefit statements sent to their member's home address.

Group AVCPRSAs are generally established on a net pay basis and so the employer's consent is required to operate payroll deduction.

Benefits from an AVC/AVCPRSA can only be taken at the same time as benefits are taken from the main scheme. It is important when setting up an AVC scheme/AVCPRSA that the NRA is the same as the main scheme.

Note that if the main scheme is a DB, there may be an option to 'buy back years' from the main scheme. This means that the member buys extra years which are then added to their actual service when working out their benefit entitlements in the scheme. This type of arrangement is more likely to apply in the public sector. The member would need to contact the administrator of the scheme in order to arrange same. It is important for the member to consider this option, if available, before deciding to pay AVCs.

The charges imposed by the provider is also another factor for the member to consider when deciding to make AVCs to an OPS or to an AVCPRSA. Under legislation the maximum charges that can be imposed on a standard AVCPRSA are 5% of the contribution and 1% p.a. of the fund value.

5.5 Tax Relief on AVCs

The maximum income tax relief a member can claim on contributions to an AVC/AVCPRSA is limited to a percentage of earnings and these limits include any personal contributions made to the main scheme and/or other AVCs in respect of that employment. Earnings are essentially earnings from that employment which are subject to tax under Schedule E. Revenue refer to earnings as remuneration.

The percentage increases with age and is as follows:

Age	Maximum tax relief as a % of earnings
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 and over	40%

Relief is granted at the higher percentage if the individual reaches that age at any time during the calendar year in question.

There is a limit of currently €115,000 (for 2012) on the amount of earnings, which can be taken into account for the purpose of calculating the tax relief limits above. The earnings limit is an aggregate limit in respect of earnings from all sources for the purpose of tax relief on personal pension, PRSA, OPS and AVC funding. This earnings limit is reviewed each year by the Minister for Finance and may change. Please refer to Chapter 4 for more information on contribution tax relief and also claiming relief when an individual may be contributing to two pension arrangements.

It should be noted that tax relief is not automatically granted. Revenue terms and conditions must be complied with. In certain circumstances employee contributions may have to be restricted in order to ensure that Revenue limits are not breached.

5.6 Claiming Tax Relief on AVCs

Contributions are normally deducted from pay by the employer under what is referred to as the "net pay arrangement". Under this arrangement, contributions are deducted before income tax in which case relief is obtained automatically at the individual's marginal rate and it is not necessary for the contributor to lodge a separate claim with the Inspector of Taxes.

If contributions are not deducted at source by the employer i.e. paid by direct debit from the individual's own account, in the case of certain AVCPRSAs for example, income tax relief can be obtained directly from the Revenue Commissioners by amending the individual's certificate of tax credits and standard rate cut off point. Please refer to Chapter 4 for more details on tax relief.

5.7 Backdating AVCs

An employee who makes a special contribution e.g. a single AVC, after the end of a tax year but before the following 31 October can usually elect to backdate that special contribution for tax relief purposes. The tax relief limits for the previous tax year will apply.

For those individuals who pay and file their tax returns online through ROS (the Revenue Online System) the practice has been to extend the deadline date of 31 October by about two weeks. A special contribution paid before the extended deadline (generally two weeks after 31 October) can usually be backdated and treated as paid in the previous tax year. As the exact date available under ROS can change from year to year it is important to check the date every year.

An employee must still be with the same employer and a member of the same scheme when making an AVC single contribution to be backdated.

An employee has to apply to Revenue before the deadline date for a refund of income tax paid in respect of a single contribution.

If the individual is retiring and is not self assessed for income tax, they have up until 31 December in the year they are retiring to make the election to backdate to the previous tax year but they must have paid the contribution before the filing date (31 October).

5.8 AVCs and Revenue Maximum Benefits

Benefits provided by AVCs/AVCPRSAs and the member's main scheme combined cannot exceed Revenue maximum benefits limits. If a combination of both AVCs/AVCPRSAs and the main scheme benefits give rise to benefits in excess of the maximum Revenue approvable benefit, then the benefits under the main scheme will generally be reduced and this may give rise to a surplus which would be returned to the employer and taxed as a trading receipt. It is important when setting up an AVC/AVCPRSA to ensure that Revenue benefit limits are not going to be exceeded as the member may end up subsidising the employer's contribution to the main scheme. In any case, an overfunding check must be done before an AVC is paid.

In addition for those individuals who may have very large pension funds accumulated under the main scheme or elsewhere, there is a need to ensure that the cap on maximum tax relieved pension funds is not exceeded. The current level of the Standard Fund Threshold is €2.3M (for 2012). (See paragraph 4.8.11 for more details on the SFT).

5.9 Drawing AVC Benefits

5.9.1 Death in Service

If the member dies in service the value of the AVCs can be paid as a lump sum and will normally be paid at the discretion of the employer/trustees in accordance with the Rules of the relevant OPS or separate AVC scheme as appropriate. The Rules of the scheme generally allow for the lump sum benefit to be paid to a dependant or to personal representatives. The proceeds of an AVCPRSA will be paid as a lump sum to the deceased's personal representatives.

5.9.2 Retirement

All members of a DC pension scheme and 5% proprietary directors who are members of a DB scheme, can exercise ARF options both in respect of their main scheme fund and any AVCs as an alternative to the traditional retirement options. Members of a DB scheme who are not proprietary directors only have the ARF options in respect of any AVCs.

If a member takes traditional options (e.g. pension) in respect of the main scheme fund, they still have the ARF/taxable cash option (subject to pension income test) in respect of their AVCs. Alternatively, a member of a DB scheme may use their AVC fund to pay their retirement lump sum without having to surrender part of their DB pension - for example where the DB scheme does not provide a separate retirement lump sum (gratuity).

AVCs could be used to bring the retirement lump sum up to the maximum possible under Revenue rules (if the maximum has not been paid from the main scheme) and then the balance can be used to buy an annuity or can be invested in an ARF or withdrawn less tax subject to satisfying the pension income requirements. (See Chapter 11 – Retirement Options)

In a DC scheme, if the member chooses to take the 25% retirement lump sum and alternative options, then they will exercise these options in respect of both their main scheme and any AVCs.

Chapter 6

20% Directors

6.1 Introduction

Pensions legislation can be complicated when dealing with proprietary directors. On one hand it gives additional retirement options to 5% Directors who are members of DB schemes and on the other hand it imposes special restrictions on all 20% Directors who are scheme members.

6.2 20% Director Definition

The Revenue Pensions Manual defines a 20% Director as "someone who directly or indirectly at any time in the last three years owned or controlled more than 20% of the voting rights in the employer company, or in the parent company of the employer company".

There are a few points worth noting in relation to this definition:

- the three year period relates to the date of leaving/retiring/death
- if the member's shareholding reduces below 20% for three or more years before retirement then he/she is not considered to be a 20% Director for the purposes of calculating maximum benefit entitlements
- "owned or controlled" means shares held by any of the following are also included:
  - spouse/civil partner
  - minor children
  - trustees of any settlement to which the member or his/her spouse/civil partner had transferred assets
- a combined shareholding of exactly 20% is not sufficient. The member must have a combined shareholding of greater than 20%.

6.3 Main Restrictions for 20% Directors

Because a 20% Director is deemed to have control over the level of their own salary and contributions made on their behalf by the "employer", Revenue have imposed additional restrictions on 20% Directors.

The main restrictions that apply are in relation to:

- final salary
- normal retirement
- late retirement
- early retirement
- serious ill health
- death in service
- refunds of contributions
- investment companies
- continuity of service after company re-organisation.

6.4 Final Salary for 20% Directors

A 20% Director can generally influence their remuneration and therefore Revenue insists that only one definition of final salary can be applied in the case of a 20% Director.

The definition which must be used is the average of total emoluments for any three or more consecutive years ending not earlier than ten years before the date of retirement/leaving/death. When calculating emoluments for a director it is important not to include dividend payments from their company as these are assessed for income tax under Schedule F. Only Schedule E earnings can be included in the definition of final salary.

For clients who are 20% Directors, it is important that they are aware of the calculation of final salary, and that this is planned for in advance. Depending on an individual's circumstances it might suit to establish a final salary figure from age 48 – 50 (assuming a normal retirement age of 60) and to then reduce the salary drawn etc.

Normally when working out final salary each year's total remuneration can be indexed up to date of leaving/retiring/death (otherwise known as dynamisation). For a 20% Director indexation is restricted so that the retirement lump sum (based on salary and service) is equal to one third or less of the total fund available to provide retirement benefits (from all schemes of that employer). If it exceeds one third of the total fund then indexation will not be allowed.

Note that as an alternative to taking retirement lump sum based on salary and service all members of a DC scheme or a 5% Director in a DB scheme could choose ARF options and take up to one quarter of the fund as a retirement lump sum.

An example will best explain the purpose of the dynamisation restriction.

Example:

A 20% Director is about to retire with more than 20 years service and has an accumulated pension fund of €600,000. He wants to maximise his retirement lump sum. Let's assume inflation of 5% p.a. over the 10 years.

Years to Retirement	Remuneration €	Indexed Remuneration €
10	72,000	117,280
9	75,000	116,350
8	78,000	115,242
7	81,000	113,975
6	84,000	112,568
5	87,000	111,036
4	90,000	109,396
3	95,000	109,974
2	97,000	106,942
1	100,000	105,000

With indexation his best three years are 8, 9 and 10 and so his final salary is (117,280 + 116,350 + 115,242) divided by three = €116,291

His maximum retirement lump sum is therefore €116,291 X 1.5 = €174,436. Revenue will allow this lump sum to be paid out as it does not exceed one third of his retirement fund of €600,000. If he went the ARF route he could take (€600,000 x 25%) = €150,000 retirement lump sum.

6.5 Normal Retirement for 20% Directors

A normal retirement age lower than age 60 and later than age 70 is allowed in certain cases subject to approval from Revenue. However if the member is a 20% Director, the normal retirement age must be between ages 60 and 70.

6.6 Late Retirement for 20% Directors

The options on late retirement have been set out in Chapter 2 of this manual and the only difference for a 20% Director is if choosing to defer taking any benefits until the date of actual retirement.

There are a number of different options for a 20% Director who wants to **defer all benefits until actual retirement.** The best option will depend on the individual's own circumstances (refer to 2.8.3).

If a 20% Director has chosen an NRA of less than 70 and subsequently decides to work on beyond NRA then their actual date of retirement or age 70 if later becomes their new NRA. The effect of this is that:

- a 20% Director with 40 years service at the scheme NRA can only accrue extra 60ths (additional years) after age 70 to a maximum of 45/60ths.

Example:
A 20% Director with an NRA of 65 retires at age 71 with 47 years service. The maximum pension he can fund for is 41/60ths of final salary at the actual date of retirement. If he was not a 20% Director he could have funded for 45/60ths of final salary at the actual date of retirement.

6.7 Early Retirement for 20% Directors

Early retirement is allowed from age 50, however, a 20% Director must sever all links with the employer company, including the disposal of all shares in the company. A disposal of shares to a spouse/civil partner or to minor children will not meet this requirement. However a disposal to an adult child who is working in the business is allowed.

6.8 Serious Ill Health for 20% Directors (Death's Door Concession)

If a 20% Director wishes to avail of the serious ill health concession which permits full commutation of the pension in "exceptional circumstances of ill-health", (see section 2.7) then the specific permission of the Retirement Benefits District of the Revenue must be sought.

6.9 Death in Service for 20% Directors

As outlined earlier in this chapter, the definition of final salary for a 20% Director must normally be based on the three or more years average rule. However, in the event of death in service final salary can be calculated using the rate payable at the date of death, provided it can be verified. In addition the 20% Director (like any other member) can get a refund of the value of his own contributions as part of the lump sum benefit payable in the event of death in service.

6.10 Refund of Contributions for 20% Directors

A 20% Director cannot under any circumstances take a refund of contributions on leaving service even if they have left the scheme having completed less than two years qualifying service. In any event once two years qualifying service is completed, scheme benefits must be preserved in accordance with the provisions of the Pensions Act 1990.

6.11 20% Director of an Investment Company

A 20% Director of an investment company cannot be a member of an OPS in relation to their employment in that company even if in receipt of income from the company taxed under Schedule E. However if the investment company is a holding company of a group of trading companies and acts as coordinator of the group, it may be possible for a 20% Director of the holding company to be included in an OPS in respect of their employment in that company. In general the definition of an investment company is dependent on its sources of income. An advisor should refer the client to their own tax advisor if in any doubt regarding a company's tax status.

It is also worth noting that a proprietary director of an investment company (owns or controls more than 15% of the shareholding) is prohibited from effecting a personal pension nor can they claim tax relief on PRSA contributions.

6.12 Continuation of Service after Company Reorganisation

Where there is a company reorganisation e.g. merger, buy out etc, the two periods of employment can normally be treated as continuous for arms length employees (for the purposes of calculating maximum benefits).

Where the member was a 20% Director before and after the reorganisation, the service can only be treated as continuous where a claim was admitted under Section 400, TCA 1997. This would have been done at the time of the reorganisation. A claim under Section 400 means that the new company would get the benefit of any unused losses and capital allowances from the old company, provided they also took over all the assets, liabilities and business of the old company.

Chapter 7

Early Leavers and Scheme Discontinuance

7.1 Introduction

There are a number of options generally available to a member when they leave a scheme before normal retirement age. These early leaver options are not to be confused with the options available when a member takes early retirement or ill health retirement which we have already dealt with earlier in this manual. Early leaver options depend firstly on the provisions of the Pensions Act, and then on Revenue requirements and finally on Scheme Rules.

In the first part of this chapter we will examine the provisions of the Pensions Act which gives a statutory minimum entitlement to a preserved benefit in certain circumstances. We will then examine the various options available for early leavers.

This chapter also covers redundancy payments and their interaction with pension schemes.

7.2 Pensions Act - Statutory Preserved Benefits

Statutory preserved benefits were introduced in the Pensions Act (1990) in order to protect pension scheme members who left an employer and found that they were not entitled to the value of their employer's pension contributions (no vested rights). Quite often, the only benefit a scheme member got was a refund of their own contributions or the value of their own contributions. Statutory preservation in the case of a DC scheme ensures the member gets the benefit of the value of pension contributions paid into a pension scheme by and/or on behalf of the member.

The provisions of the Pensions Act take priority over Revenue practice and also Scheme Rules.

7. 3 What is a 'Preserved Benefit'?

If the member satisfies the qualifying service condition as described in section 7.4, the member's benefits in the scheme are 'preserved'. This means the option to take a refund of personal contributions no longer applies. In the context of a defined contribution scheme it also means the member will be entitled to the value of the employer contributions, as well as their own.

Benefits become preserved when the member satisfies the qualifying service condition described in section 7.4, AND:

- the member's relevant employment ceases OR
- his/her employment does not terminate but the scheme ceases to be "related to that employment" (e.g. the scheme is frozen and not replaced, or the scheme is wound up and not replaced or the member has opted to terminate his/her membership of the scheme).

7.4 Qualifying for Preserved Benefits

Prior to 1 June 2002 the minimum preserved benefit entitlement for a member leaving was based on the member having completed at least five years qualifying service as a member of the pension scheme, of which at least two years were completed after 1 January 1991.

Since 1 June 2002 a member leaving a pension scheme must be given preserved benefits where they have two years qualifying service completed after 1 January 1991.

Qualifying Service is the aggregate of each period of "reckonable service", whether or not continuous, under:

- the scheme
- every other scheme relating to the same employment
- a previous employer's scheme where the benefits of that scheme have been transferred to the current scheme.

"Reckonable service" means service in the relevant employment while a member of the scheme i.e. where contributions to a pension scheme are being made by or on behalf of a member.

Service with an employer while not a member of the pension scheme or being a member of a life assurance scheme only, does not count when establishing an entitlement to a preserved benefit.

Membership of a previous employer's scheme where the benefits of that scheme have been transferred into the current scheme counts for the purpose of calculating entitlement to preserved benefits. Service while a member of both schemes are added together to establish an entitlement to a statutory preserved benefit.

This is an important consideration when deciding to make a transfer payment or not. If an entitlement to a preserved benefit is left in the previous scheme it will not count for the purpose of establishing an entitlement to a preserved benefit under a current employer's scheme.

Example:
Joe started working with company A in 2005 and became a member of their pension scheme in 2009 before leaving in 2010. He started with company B in 2010 and immediately became a member of their pension scheme. He had vested rights with company A so Joe transferred his benefits to B's pension scheme.

Joe left company B in 2011. Because he transferred his benefits from his previous employment his reckonable service was aggregated and so he had the two years qualifying service necessary for statutory preservation of his pension from company B (and company A).

Once a member becomes entitled to a statutory preserved benefit they no longer have the option of taking a refund of their own contributions. They may instead be able to avail of one of the other options listed at paragraph 7.7.

7.5 Calculating Minimum Preserved Benefits

In a DC scheme the preserved benefit is equal to the accumulated value of the appropriate contributions in respect of the member concerned under the scheme. The term "appropriate contributions" includes AVCs and benefits secured by transfer values paid into the scheme which are always preserved irrespective of the two year service requirements.

7.6 Scheme Rules - Vested Rights

Before we consider the options available for early leavers it is necessary to understand the concept of vested rights. The rules of a particular pension scheme will normally set out the entitlements of a member on leaving the scheme with less than two years qualifying service (if leaving after 1 June 2002). If a member leaves (after 1 June 2002) with two or more years qualifying service then they are automatically entitled to a preserved benefit, therefore the vesting rule will usually not matter.

If an employee has full vested rights then they will be able to exercise the options below in respect of both their own contributions and the employer's contributions to the scheme. Full vested rights under a DC scheme entitles a member to exercise these options in respect of the accumulated value of the policy (i.e. in respect of the value of both employer and their own contributions). Where a refund of contributions is chosen the member will lose the value of the employer contributions.

Where the scheme rules state an employee has "nil" vested rights, the right to the employer's contributions is forfeited on leaving service with less than 2 years qualifying service. The options outlined below are still available but only in respect of member's own contributions (including AVCs) or the accumulated value of member's own contributions.

7.7 Options for Early Leavers

Generally speaking a member must exercise one of the options below. Please note that certain conditions apply to these options and they may not be available in all circumstances. It is important to check the rules of the scheme to establish which options are available in a particular case.

- Take a refund of their own contributions/value of own contributions (including AVCs if any) made to the scheme. (Only available if less than 2 years qualifying service.)
- Leave benefits paid up (defer benefits).
- Take a transfer value to new employer's OPS.
- Take a transfer value to a personal retirement bond.
- Take a transfer value to a PRSA if member has completed 15 years or less scheme service.
- Take a transfer value to a public sector scheme.
- Take a transfer value to a suitable pension arrangement outside the State.

If the member is aged 50 or over at the date of leaving service, they may be able to exercise early retirement options, as an alternative to the options listed above. See Chapter 2 for benefits available on early retirement.

It is important that a member obtains appropriate independent advice before deciding on which course of action to follow.

7.8 Refund of Contributions

The right to take a refund of the value of member contributions on leaving applies to members who leave service after 1 June 2002 with less than two years qualifying service.

As the policy is not long in existence it is quite possible that the transfer value will be less than the actual amount of the member's contributions paid in.

Where a refund of member's contributions is allowed it will be taxed at the standard rate of tax which is currently 20% (2012). If the member elects for this option then they must also effect a refund of the value of any AVCs that they may have made to the scheme.

The refund of contribution option is not available for 20% Directors.

Where a refund of member contributions is made, the employer portion of the contributions is refunded back to the scheme trustees.

7.9 Paid Up Benefits

An employee can choose to leave benefits paid up in the scheme on leaving (deferred benefits). Paid up benefits can usually be taken at the following dates.

- On or after the NRA under the scheme.
- At the earliest age the scheme allows early retirement benefits to be drawn (generally age 50 with employer/trustee consent).
- At any age if the employee is retiring on grounds of ill health (with the consent of the employer/trustees).

With a DC scheme the preserved benefit remains invested and is linked to the investment performance of whatever fund or vehicle it is invested in until the benefits become payable.

Paid up members with member fund choice should be reminded to review their fund choice taking into account the date they intend to retire and how they expect to draw down their retirement benefits. If no member fund choice available, it is the trustees who make investment decisions.

7.9.1 Transfer to a PRSA/Personal Retirement Bond Without the Member's Consent

The member can usually leave their benefits paid up in the scheme for at least 2 years after leaving service. After this, and where the transfer value is less than €10,000, the trustees may make a transfer payment to a personal retirement bond/PRSA without the member's consent. The following conditions apply to the transfer.

- The member must have left service for at least two years.
  - At least 30 days written notice must have been received by the member before the transfer is made. The notice should provide details of the insurance company/PRSA provider where the transfer value will be placed.
  - There must be no outstanding request from the member for a transfer payment to be made to another scheme, personal retirement bond, or PRSA.

If the transfer payment exceeds €10,000, the trustees may apply in writing to the Pensions Board for permission to make a transfer payment on the basis outlined above, without the member's consent.

7.10 Transfer to New Employer's Scheme

Instead of leaving the paid up benefit in the previous employer's scheme, the member may elect to take a transfer value to their new employer's scheme.

Any transfer payment must be made within three months of receiving instructions from the member.

Once the appropriate transfer payment is made, the trustees of the previous scheme are discharged from any further liability in relation to that member and their benefits under the old scheme.

By transferring benefits to the new employer's scheme the member will get an annual benefit statement combining the benefits from their previous and current employment. As mentioned above any transfer of benefits from a previous employment will count towards the qualifying period for preserving benefits in a current employment. However, a transfer of benefits from a previous employer's scheme may eliminate investment diversification. In addition, benefits in respect of the transfer value must be paid out at the same time as benefits are paid from the scheme it has been transferred into.

7.11 Transfer to a Personal Retirement Bond

A personal retirement bond (PRB) or buy out bond (BOB) is an insurance policy purchased by the scheme trustees and effected in the individual's own name and has the same tax exempt status as an approved OPS. It is designed to accept a transfer payment or payments from an OPS where either the member is leaving the scheme or the member has paid up benefits in a scheme or the scheme is being wound up.

The features of a PRB include the fact that the policy is issued in the former employee's own name. The employee can opt to receive the benefits at any time from the earliest date retirement was permitted under the scheme which paid out the transfer (normally age 50) up to normal pension date, or can be deferred after normal retirement age. It is not necessary to be retired to take benefits from a PRB. However if the PRB is in relation to current employment, benefits cannot be taken before the NRA under the original OPS unless the member is actually retiring. In addition there is flexibility with regard to investment of assets. With a PRB the individual usually can select their own advisor, investment manager and have access to the full range of funds of a particular investment manager. In addition an annual benefit statement is sent out to the employee which they may not get if benefits left in previous employer's scheme.

Retirement options from a PRB must follow the rules of the original scheme – see paragraph 11.8.4 of Chapter 11 for more details on the retirement options available.

7.12 Transfer to a PRSA

A member with 15 years scheme service or less (in all schemes relating to that employment) who is either leaving service or the scheme is being wound up can take a transfer to a PRSA. Standalone AVCs can be transferred to a PRSA at any time at which stage they become AVCPRSA contributions i.e. the 15 year rule does not apply to AVCs, nor does the requirement for the member to be leaving service or for the AVC scheme to be winding up.

In order to transfer benefits into a PRSA (other than in a scheme wind up situation), the PRSA provider (or an intermediary acting on its behalf) must provide the scheme member with:

- a written certificate comparing the benefits payable from the scheme with those of a PRSA (Certificate of Benefit Comparison) and
- a letter stating the reasons why it would be in the best interests of the individual to transfer assets from the scheme to the PRSA (Reasons Why Letter).

The entity providing the Certificate of Benefit Comparison and Reason Why Letter must have professional indemnity insurance cover in place of at least €1m per case. In practice very few entities in the market are prepared to provide these documents, thus reducing the ability of occupational scheme members to transfer to PRSAs.

There are some exemptions from the need for the Certificate/Reason Why, as follows:

- the scheme is winding up
- the transfer value is less than €10,000
- the transfer value represents the value of accrued benefits (employer & employee) to a member who has less than 2 years service
- the transfer value represents a refund of contributions from the occupational pension scheme.

7.13 Transfer to an Unfunded Scheme

Transfers are permitted to a public sector scheme where the member is joining that scheme and the scheme is willing to accept the transfer.

7.14 Transfer to a Pension Arrangement Outside the State

Prior to making any overseas transfer payments, the trustees must be satisfied that the transfer is to facilitate bona fide transactions only and:

(a) the member has requested a transfer

(b) the overseas arrangement provides relevant benefits as defined by Sec.770, TCA 1997

(c) the overseas arrangement has been approved (as a pension scheme) by the appropriate regulatory authority in the country concerned.

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

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

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

Transfers that comply with the above can be made without prior Revenue approval, but details of the transfer must be sent to Revenue before the transfer payment is made. When making a transfer payment, the amount that could be taken in lump sum form should be notified to the receiving scheme.

Whether or not a transfer can be made overseas will also depend on the rules which apply in the country to which the transfer is to be made. Not all countries or pension arrangements may allow transfers in from overseas pension schemes.

7.15 Mixed Benefits

Where a transfer value has been accepted by a scheme the member is entitled to full preserved benefits in respect of the transfer value irrespective of whether they qualify for statutory preserved benefits or not. A transfer of retained benefits might reduce or even eliminate the two-year waiting period for an entitlement to preservation in the current scheme (as described in the example in section 7.4).

With a DC scheme the total preserved benefits could include the accumulated value of employer contributions, employee contributions, any AVCs and any benefits secured by a transfer value paid into the scheme. In general mixed benefits cannot be taken e.g. a refund of member's contributions and a preserved benefit in respect of a transfer value but there are exceptions.

If the combined reckonable service in the new scheme and the service in respect of the transfer payment is less than two years, the member can opt for a refund of their personal contributions. This will include their contributions to the new scheme and the employee and AVC portion of the transfer value. The employer contributions and the employer portion of the transfer value (if any) are all refunded back to the trustees of the new scheme. If the member was a 20% Director in the previous employment relating to the transfer, but not a 20% Director in the new employment, then the refund of contribution option can be offered for the personal contributions in the new scheme, and the transfer value remains preserved - in the scheme or transferred to a PRB/new scheme etc. This is possible even though normally split transfers/mixed benefits are not allowed.

Where a scheme has accepted a transfer from a PRSA, the monies from the PRSA are treated as AVCs in the scheme but if the member subsequently leaves service they cannot get a refund of the PRSA money. If they have less than 2 years service and want a refund of their own contributions from the scheme they have to transfer the PRSA money out first, before the refund of contributions can be processed.

7.16 Death before Payment of Preserved Benefits

Where benefits have been preserved within a scheme, or are preserved in a retirement bond or held in a PRSA they will usually be paid out as a lump sum to the estate of the deceased, in the event of the member's death before payment of benefits had commenced. The full amount can be paid out as a lump sum on death.

However a paid-up pension, a PRSA and/or a retirement bond would be regarded as a retained benefit and therefore must be taken into account when calculating maximum death benefits allowable under a subsequent scheme with either the same employer or a new employer. Small preserved benefits i.e. lump sums not exceeding €1,270 in aggregate or spouse/dependants pensions not exceeding €330 per annum in aggregate may be ignored.

If the lump sum death in service benefit from a member's current employment does not exceed twice their salary then there is no need to take into account any retained death in service benefits.

If the preserved benefits have been transferred to their current employer they will be paid out in accordance with the rules of the current scheme.

7.17 Summary of Main Options

The table below summarises some of the issues to be considered in relation to preserved benefits.

	Paid up	Transfer to new 'er scheme	Transfer to PRB	Transfer to PRSA
Drawdown Of Benefits	Age 50 onwards with 'er/trustee consent	At same time as benefits taken from new scheme	Age 50 onwards	Age 50 onwards (if employee and retiring)
Count Towards 2 Year Vesting in New Scheme	No	Yes	No	No
Investment Choice	Based on rules of the scheme*	Based on rules of new scheme*	Range of funds available for PRB from PRB provider	Range of funds available for PRSA from PRSA provider
Payment On Death	Estate	Rules of new scheme	Estate	Estate

* In relation to investment choice for DC schemes, the rules of the scheme may allow members investment choice; or investment decisions may be made by the trustees.

7.18 Scheme Discontinuance

A pension scheme can be discontinued for a number of reasons such as bankruptcy or liquidation of the employer, or where the employer decides not to make any further contributions. What happens in the event of discontinuance is usually stated in the scheme rules. In other cases the intention is to replace/reconstruct an existing scheme and this will be dealt with below.

A scheme that is to be discontinued can be either made paid up or wound up.

7.18.1 Paid Up (Frozen) Schemes

No further contributions can be made in respect of a scheme which is paid up. The assets of the scheme are held in accordance with the scheme rules to provide benefits for the members. If the scheme is not replaced then the members become entitled to preserved benefits. The scheme is still under trust and the trustees still have duties and obligations under Trust Law and the Pensions Act which includes trustee training and investment decisions etc.

7.18.2 Winding Up

In the event of a scheme winding up the trustees have the right to and will make a transfer payment to another exempt approved scheme or to purchase an annuity or a retirement bond in order to discharge their liability. The Pensions Act allows a transfer to a PRSA where the member has 15 years or less scheme service in certain circumstances (see 7.12 above).

The trustees must advise each member that the scheme is to be wound up and provide each member with information on their benefits and options (if any) available. If the trustees cannot contact a member to notify them of the wind up, then they must put an advertisement in a national paper, advising the members of the wind up and who to contact.

As soon as practicable after the scheme benefits have been transferred out, the trustees must then provide each person with further information on the benefits transferred.

7.19 Scheme Reconstruction

When a scheme is reviewed and changes are proposed which involve moving the scheme to a different insurer then there are usually two main options as to how the reconstruction can be effected.

Option 1

This option is to establish a new legal entity and in this scenario, the bulk transfer regulations (set out below) need to be followed.

In practice what happens is:

- a new scheme is set up in respect of the ongoing contributions
- the consent of the active members is obtained to transfer their funds across
- the previous scheme is wound up.

Because the active members consent is obtained, the bulk transfer regulations (see below) do not apply and once the new scheme has been approved and the assets of the active members transferred across, the old scheme can be wound up. If there are deferred members in the old scheme, it cannot be wound up unless they are transferred to either a PRB or PRSA (see 7.20 below). Alternatively, paid up members could be left in the old scheme which would become a paid up or frozen scheme. However, this means there will be two schemes going forward.

Option 2

Option 2 is to take over the existing legal entity and to simply appoint a new Registered Administrator and Investment Manager. This approach means that there is no change to the legal structure of the scheme and as a result the bulk transfer regulations (set out below) do not apply and the agreement of members is not required. However, a possible disadvantage of this approach is that all members continue to be in the scheme (both active and deferred).

7.20 Bulk Transfer Regulations

Bulk Transfer Regulations came into effect on 1 August 2009, and apply where the trustees of a group occupational pension scheme decide to wind up the scheme and transfer benefits under the plan to an employer sponsored PRSA (where the employer is making contributions) OR another group occupational pension scheme (where the new scheme is set up under a separate trust from the original scheme). The regulations apply where more than one member is being transferred, and the transfer is made without the members' consent.

The main points are as follows:

- Trustees have to give members 2 months notice before the transfer is affected. Trustees also have to advise any authorised Trade Union about the transfer
- Members have a right to make "observations" to the Trustees within 1 month from the notification and the Trustees are obliged to "duly consider" any such observation and give their reply in writing.
- There are additional disclosure requirements on the Trustees before the transfer. For example the trustees must advise the members of:

  - the circumstances giving rise to the proposed bulk transfer

- the benefit structures of the transferring scheme and the receiving scheme
- any loss to, or other adverse effect on, the interests of the transferring members,
- charges and recurring charges to be paid by the transferring members, arising from the bulk transfer.

Bulk transfers to personal retirement bonds, or to a PRSA where the employer is not making contributions are excluded from this legislation. On scheme wind up, the trustees can transfer members' benefits to PRBs or PRSAs without prior consent from the member subject to the following conditions.

- Members must be informed of the trustees' decision to wind up the scheme, their benefits under the scheme, the intention to transfer benefits to a PRB/PRSA and the life office the PRB/PRSA will be set up with.
- Leaving service options must be issued for any members who are leaving service.
- There must be no outstanding request from the member for a transfer payment to be made to another scheme, Personal Retirement Bond, or PRSA.

7.21 Redundancy Payments

Redundancy payments and the criteria to qualify as a redundancy situation are regulated by the 1967-2007 Redundancy Acts. Redundancy generally occurs where an employee's job no longer exists and they are not replaced. There is an interaction between redundancy and pensions when it comes to working out the amount of tax (if any) payable on a redundancy payment.

It is important to note that any part of the termination payment that is specifically provided for under the employee's contract of employment is automatically within the charge to Schedule E, and the provisions for tax relief outlined below do not apply to that payment.

7.21.1 Statutory Redundancy

An employee in a genuine redundancy situation will be entitled to receive a minimum statutory redundancy payment, subject to meeting certain qualifying conditions. The current level of statutory redundancy is two weeks pay for every year of service, with a bonus week added on, subject to the prevailing maximum ceiling on gross weekly pay of currently €600 per week. Statutory redundancy payments are tax free.

Example:
John was made redundant after 31 years in employment with the same employer.
His pay at date of termination was €800 per week.

His statutory redundancy entitlement is €600 X 63 = €37,800.

However, many employers will pay redundancy payments over and above the amount of statutory redundancy they are required to pay. Any redundancy payment in excess of the statutory amount is potentially taxable, but may qualify for tax relief as outlined in the next section.

7.21.2 Tax Relief for Redundancy Payments

It is when working out the tax relief on the redundancy payment that the link with pensions occurs.

The tax relief available on the balance of the termination package after statutory redundancy amount is the higher of the following three exemptions.

1. **Basic Exemption** - Basic tax exempt amount €10160 + €765 per full year of service in employment. The employer does not have to get approval from Revenue to pay an amount tax free using this exemption.

2. **Increased Exemption** - Basic amount may be increased by €10,000 if:

   - the employee has not claimed the increased exemption or SCSB in the previous 10 years,

   AND

   - the employee is not a member of an occupational pension scheme relating to that employment OR irrevocably gives up the right to receive a lump sum from such a scheme.

   If an employee receives or is entitled to receive, a pension lump sum then the additional exemption of €10,000 is reduced by the present day value of the tax free pension lump sum. Therefore if the present day value of the tax free lump sum from the pension scheme is more than €10,000 and the employee is not giving up the right to the lump sum, the increased exemption does not apply.

   Prior Revenue approval is required before the increased exemption can be used.

3. **Standard Capital Superannuation Benefit (SCSB)**

   The formula for calculating the SCSB is:

$$\frac{A \times B}{15} - C$$

A = Average annual earnings over last 3 yrs of service ending on the date of termination. The earnings figure is gross salary before employee contributions to an approved pension scheme, and can include benefits in kind, bonuses etc.

B = Number of complete years of service.

C = Present value of any tax free pension lump sum* received or receivable from an approved pension scheme.

* The pension lump sum is calculated in accordance with the rules on early leavers of pension schemes This amount is then rolled forward to NRA to allow for inflation and discounted back to give the present day value.

If the employee irrevocably waives the right to receive a tax free lump sum from the pension scheme before the date of termination, then C will be €0. The lump sum to be waived refers to any/all lump sums from approved occupational pension schemes relating to the employer paying the termination payment. It does not include lump sums payable from a personal pension or a PRSA.

The employer does not have to get advance approval from Revenue to pay the SCSB amount without deduction of PAYE.

The remaining balance of the redundancy payment (after statutory redundancy and tax relief) if any, is subject to income tax at the employee's marginal rate and USC as appropriate (no PRSI). This taxable portion of the redundancy payment is included as income for PAYE purposes, and is shown on the employee's P45.

Example:

John is made redundant at age 50 after 31 years exactly. His NRA is 60. His gross weekly pay is €800, and his average annual pay over the last three years was €41,600. The present day value of his lump sum entitlement is €27,000. His employer is going to pay 4 weeks redundancy pay for each year of service, so his total redundancy payment is (4 X 31) X €800 = €99,200. His taxable portion is worked out as follows:

Tax free statutory redundancy €600 X 63 =	€37,800
Balance of termination package after statutory redundancy amount (€99,200 – €37,800)	€61,400
Tax relief – higher of following:	
1. Basic Exemption: €10,160 + €765 per complete year of service	€33,875
2. Increased Exemption: (Pension tax free lump sum > €10,000)	N/A
3. SCSB: €41,600 X 31/15 - €27,000	€58,973
Total tax free amount (€37,800 + €58,973)	€96,773
Taxable part of redundancy payment (€99,200 - €96,773)	€2,427

John should not sign an irrevocable waiver to his €27,000 tax free lump sum under his pension scheme as under exemption 3 above he can retain the pension lump sum and only pay tax on €2,427.

It may make sense for an employee to irrevocably give up the right to receive a tax free lump sum from their pension scheme under exemptions 2 or 3 above. In order for Revenue to accept that rights to a tax free lump sum have been waived, confirmation from the trustees of the scheme will be required. This will normally take the form of a declaration signed by both employee and trustees, and must be done by the date of termination. It should be noted that the right to make such a waiver needs to be provided for under the scheme rules – if necessary the rules will need to be changed.

An employee who has waived their right to a pension scheme tax free lump sum can subsequently use the uplifted scale without any restriction for retained lump sum, when working out the maximum retirement lump sum allowed under an OPS for a subsequent employment. The receipt of the termination payment is not taken into account.

7.21.2.1 Limit on tax relief for redundancy payments

Finance Act 2011 introduced a lifetime limit on the amount of tax relief available on redundancy payments. This is currently €200,000. Therefore the maximum tax relief available is the lower of the lifetime limit and the amount calculated using the three exemptions.

7.21.3 Top Slicing Relief

As mentioned earlier, the taxable portion of the redundancy payment is subject to income tax at the employee's marginal rate and USC (no PRSI).

At the end of the tax year in which the redundancy payment was received the employee may be able to avail of top slicing relief. Top slicing relief works by calculating the average rate of tax for the previous three years of assessment and if this rate is lower (normally is) than the rate of tax paid on the redundancy payment, the tax will be recalculated at the lower rate and a refund given. The employee has to contact Revenue after the end of the tax year to claim this relief.

Chapter 8

Defined Benefit & Public Sector Schemes

8.1 Introduction

In Chapter 1 we gave a brief overview of the main types of occupational pension schemes, and the manual so far has focussed on defined contribution (DC) occupational pension schemes. We will now look at the main features of defined benefit public sector pension schemes.

Historically many employers set up defined benefit (DB) (rather than DC) pension schemes for their employees. But the open ended commitment of a DB scheme for employers has meant that DB schemes are very much in decline with more and more DB schemes closing to new entrants or winding up.

8.2 Typical Structure of a Private Sector Defined Benefit Scheme

Most private sector defined benefit schemes provide a pension benefit of 1/60th of pensionable salary for each year of service of which some of the pension benefit can be commuted to provide a retirement lump sum benefit within Revenue limits. The NRA is generally age 65.

Integration of benefits with the State Pension is not uncommon. If a scheme is integrated the employer decides on the level of benefits to be provided for the members, which includes Social Protection entitlements. Where the scheme is a DB 60ths scheme the most common way of integrating it is to deduct 1.5 times the State Pension (Contributory) amount from the member's salary to give a figure for "pensionable salary" which is then used to calculate pension entitlements. In other words the company is assuming that Social Protection will look after the first €17,964 of an individual's salary and provide a pension of two thirds of it (€11,976).

Example:

An employer wishes to provide a pension at normal retirement age of two-thirds of salary which is inclusive of the State Pension (Contributory):

Salary	€40,000
State Pension for 2012	€11,976
Pensionable salary €40,000 – (€11,976 X 1.5)	€22,036
Pension entitlement under scheme (two-thirds of €22,036)	€14,691
State Pension	€11,976
Total pension	€26,667 (2/3rds of €40,000)

Revenue discretionary approval allows for a pension of 2/3rds of final salary exclusive of the State Pension and so members of an integrated scheme could consider making AVCs as a means of topping up their scheme benefits.

Other issues which integrated schemes have to consider is that the State Pension is going to be delayed on a gradual basis until age 68 for those retiring from 2028 onwards and revised qualifying conditions have been introduced.

Benefits are generally based on basic pay only which also leaves scope for making AVCs in respect of non pensionable remuneration.

Most schemes are contributory with member's paying about 5% of pensionable salary.

8.3 Public Sector Schemes

Public sector pension schemes (known as superannuation schemes) are not occupational pension schemes. They are usually DB style schemes paid for by the exchequer on a pay as you go basis. This means that funds are not set aside in advance to pay out the benefits. In this chapter we will outline the general provisions of these schemes but it is important to remember that each public sector scheme has its own version of these general rules which may vary from scheme to scheme.

8.4 Public Sector - Structure of Schemes

Public sector schemes generally have the following structure.

(a) A Main Scheme which provides:

- a retirement pension and a separate lump sum (gratuity)
- a lump sum payment on death in service (death gratuity).

(b) A Spouse's/Civil Partner's and Children's Pension Scheme which provides:

- a pension for a spouse/civil partner/dependent children on death in service or
- a pension for a spouse/civil partner/dependent children on death after qualifying for a pension or preserved pension.

8.5 Public Sector - Eligibility for Membership

All employees over the age of 16 who have the potential to complete at least two years service are automatically included in the superannuation scheme operated by their employer.

8.6 Public Sector - Normal Retirement Age

If the employee joined before 1 April 2004 they will most likely have an optional retirement age ranging from ages 60 to 65. If they joined on or after 1 April 2004 (referred to as 'new entrants'), in general the minimum retirement age is 65 and there is no maximum retirement age.

8.7 Public Sector - Benefits at Normal Retirement

The benefits outlined below are only a broad outline of what is generally available in the public sector. Local Government schemes in particular differ in detail from other public sector schemes. We first need to understand some important terms used to determine benefits payable.

<u>Pensionable service</u> (reckonable service) is usually the sum of service actually completed with the employer. Provided the employee has two years service completed, this can include service transferred from other bodies under the Transfer Network or from private sector schemes or PRSAs, notional years (years of service purchased or awarded in certain circumstances), part time service and job sharing service.

Pensionable remuneration is basic salary at the date of retirement or death, plus any pensionable allowances. If the member has changed grade or received a personal increase in salary within the last 3 years of service, an average salary figure will then be used.

Pensionable allowances (i.e. shift allowances or weekend allowances) are averaged over the best 3 consecutive years of service in the final 10 years of service. Bonuses, overtime and other taxable income are generally ignored.

Net pensionable remuneration is pensionable remuneration less twice the maximum rate of State Pension (Contributory) payable to a single person.

8.7.1 Public Sector Employees who Joined before 6 April 1995

Public sector employees who joined before 6 April 1995 and pay Class B, C, or D PRSI are not entitled to the State Pension (Contributory) when they retire.

Their superannuation schemes will usually provide benefits on a DB basis in accordance with the following scale.

- a pension of 1/80th of pensionable remuneration for each year of service, to a maximum pension of 50% of pensionable remuneration, PLUS
- a separate retirement lump sum (gratuity) of 3/80ths of pensionable remuneration for each year of service to a maximum lump sum of 150% of pensionable remuneration.

Most Local Government Superannuation Scheme members pay Class A PRSI which entitles them to the State Pension (Contributory) subject to normal conditions. Their pension benefits are integrated with the State Pension (Contributory) (see below for integration rules).

8.7.2 Public Sector Employees who Joined on or after 6 April 1995

All public sector employees who joined on or after 6 April 1995 pay PRSI at the Class A rate, i.e. the full rate and are therefore entitled to the State Pension (Contributory), subject to the normal conditions regarding number and average of PRSI contributions paid etc. Their public sector retirement benefits are integrated with Social Protection benefits.

Because of the flat rate deduction of twice the State pension which was used in the integration formula a public sector employee on a low income could end up with a very small pension and in some cases no pension at all . To address this issue a new integration scale was introduced in 2004 which resulted in an increase in the rate of pension for public sector employees retiring on levels of pay below a cut-off point of 3.3333 times the current rate of State Pension (Contributory).

The new scale provides for pension to be calculated at:

- 1/200th per year of pensionable service for pensionable remuneration up to and including 3.3333 times the State Pension (Contributory)

PLUS

- 1/80th per year of pensionable service for pensionable remuneration in excess of this limit.

In addition they are entitled to a retirement lump sum of:

- 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths of pensionable remuneration.

Example:	
Pensionable service at retirement age	40 years
Pensionable remuneration	€35,000
State Pension (Contributory) €230.30 x 52	€11,976
Cut off point (€11,976 X 3.3333)	€39,920
Pension entitlement 40/200 X €35,000	€7,000
Retirement lump sum entitlement 120/80 x €35,000	€52,500

8.8 Public Sector - Pension Increases

One of the most valuable features of public sector pensions is the provision of "pay parity" which allows for pensions to increase in line with the salary scale of the respective individual's job/grade after retiring. However, all increases in pensions in payment are made at the discretion of the Minister for Finance.

8.9 Public Sector - Early Retirement

Entrants after 1 April 2004 can retire from age 55 onwards. Entrants who joined prior to 1 April 2004 can choose to retire from age 50 onwards. If going early a member can choose to defer benefits until NRA and if so benefits will be preserved until that date. The benefits preserved are based on salary and service as at date of leaving and are reviewed in line with salary increases for that job/grade annually.

Alternatively a member can choose to commence benefits immediately and if so their entitlement based on salary and service as at date of leaving will be scaled back (actuarially reduced in accordance with term to NRA).

8.10 Public Sector - Ill Health Retirement

Ill health early retirement is allowed if the member has completed at least 5 years pensionable service. The pension and lump sum are based only on pensionable pay and completed service as at the date of retirement.

However, the ill member may also qualify for an additional period of notional service not exceeding 6.67 years. These additional years are added to actual service to work out the ill health retirement benefits.

If the member has between 1 and 5 years service then benefits can be preserved until NRA or a once-off lump sum (called short service gratuity) can be paid immediately.

8.11 Public Sector - Leaving Early

If a public sector employee leaves early and has completed at least 2 years service then their retirement benefits must be preserved. Benefits are based on salary and service as at date of leaving and are reviewed in line with salary increases for that job/grade annually (pay parity). Public sector employees can move within the public sector generally and their service is brought with them for pension purposes under what is called the "transfer network".

If the member has less than 2 years service then the only option is a refund of contributions, less income tax at 20%.

8.12 Public Sector - Death in Service

If a member dies before retirement age there is a lump sum payable from the main superannuation scheme and also a dependants pension payable from the Spouse's/Civil Partner's and Children's scheme.

8.12.1 Lump Sum

The lump sum (gratuity) payable is 3/80ths of pensionable remuneration for each year of completed service subject to a minimum of 1 times pensionable remuneration and a maximum of 1.5 times pensionable remuneration.

8.12.2 Spouse's/Civil Partner's and Children's Pensions

On death in service the spouse's/civil partner's and any children's pensions are calculated on the same basis as the member's pension would have been but based on projected service to NRA of 65 (subject to a max. of 40 years).

The spouse's/civil partner's pension is 50% of the deceased's pension (if the member joined on or after 6 April 1995, based on integration of once state pension – not twice). Each dependent child gets 1/3rd of the spouse's/civil partner's pension if there are up to 3 children, and if there are 4 or more children then an amount equal to the spouse's/civil partner's pension is shared equally between the children.

Previously the death in service pensions were only based on the employee's actual service completed. There may a clawback from the death in service lump sum payable to pay for the upgrading of spouses'/civil partner's and children's pensions to include potential service to NRA.

Spouse's/civil partner's and children's pensions increase at the same rate as the salary would have increased for the member if still alive (pay parity).

8.13 Public Sector - Death in Retirement

The member's pension ceases completely on death in retirement – there is no guarantee period given. If however less than one year's pensionable salary has been paid out between retirement lump sum and pension, the balance will be payable to their estate.

The spouse's/civil partner's pension is 50% of the deceased's pension (if the member joined on or after 6 April 1995, based on integration of once state pension – not twice). Each dependent child gets 1/3rd of the spouse's/civil partner's pension if there are up to 3 children, and if there are 4 or more children then an amount equal to the spouse's/civil partner's pension is shared equally between the children.

8.14 Public Sector - Member Contributions

The contribution rate for those who joined before 6 April 1995 and pay Class B, C or D PRSI is 1.5% of pensionable remuneration in respect of the spouse's/civil partner's and children's pension scheme if a member.

Generally they do not pay any explicit contribution to the main scheme but please see paragraph below regarding the public sector pension related deduction. Some pay 5% of pensionable remuneration in respect of the main scheme e.g. HSE.

Anyone who joined on or after 6 April 1995 and most Local Government employees pay a contribution rate of 6.5% which is broken down as follows:

- 1.5% of pensionable remuneration for lump sum
- 3.5% of net pensionable remuneration for pension and
- 1.5% of pensionable remuneration for the Spouses'/Civil Partner's and Children's Scheme.

8.15 Public Sector Pension Related Deduction

With effect from 1 January 2010 public sector employees are subject to a pension related deduction (sometimes referred to as the public sector pension levy) from their gross remuneration if they:

- Are members of a public sector pension scheme
- Are entitled to a benefit under a public sector pension scheme
- Have an entitlement to join a public sector pension scheme
- Receive any type of payment or allowance in lieu of membership of a public sector pension scheme

The pension related deduction is payable on all income, pensionable and non pensionable such as overtime and allowances. The amount of the deduction is calculated as follows.

Remuneration	Levy amount
First €15,000	Exempt
Next €5,000	5%
Next €40,000	10%
Excess over €60,000	10.5%

The levy is deducted before income tax is applied and is payable in addition to any other pension contribution a member might be making. However, it is not taken into account for the purpose of calculating a member's pension contribution tax relief limits in any year.

8.16 Summary of Public Sector Superannuation Scheme Features

	Appointed before 6 April 1995	Appointed on or after 6 April 1995
Normal Retirement Age	Optional from age 60 – 65	If joined before 1 April 2004 – optional from age 60 - 65. If joined on or after 1 April 2004 - minimum 65 and no maximum.
Normal Retirement	Pension of 1/80th of pensionable remuneration for each year of pensionable service to a max. of 40 years service. Retirement lump sum of 3/80ths of pensionable remuneration for each year of pensionable service to a max. of 40 years service.	Pension of 1/200th of pensionable remuneration up to 3.333 X State Pension (Contributory) plus 1/80th of pensionable remuneration in excess of this limit, to a max. of 40 years service. Retirement lump sum of 3/80ths of pensionable remuneration for each year of pensionable service to a max. of 40 years service.
Early Retirement	Option to take scaled back benefits (actuarially reduced benefits based on term to NRA) from age 50, instead of a preserved benefit.	Option to take scaled back benefits (actuarially reduced benefits based on term to NRA) from age 50 or age 55 if appointed on or after 1 April 2004.
Leaving Early	If at least 2 years pensionable service completed, pension and lump sum must be preserved. Benefits based on salary and service completed at date of leaving. Preserved benefits revalued in line with salary scale for that job grade.	
Ill Health Retirement	If 5 + years pensionable service completed, benefits are based on actual salary and service completed with notional years of up to 6.67 years normally added depending on length of service. If 1 - 5 years service completed, a once-off lump sum (short service gratuity) can be taken or benefits preserved to NRA.	
Death in Service	Lump sum of 3/80th of pensionable remuneration for each year of pensionable service subject to a minimum of 1 times pensionable remuneration and a max of 1.5 times pensionable remuneration.	
	Spouse's/civil partner's pension of 50% of member's pension based on final remuneration at date of death and service to age 65. Children's pensions of 1/3rd of spouse's /civil partner's pension for each dependent child to a max. of 3 children. 4 or more children share equally.	Spouse's/civil partner's pension of 50% of member's pension based on pensionable remuneration less once the State Pension (Contributory) and service to age 65. Children's pensions of 1/3rd of spouse's /civil partner's pension for each dependent child to a max. of 3 children. 4 or more children share equally.
Death in Retirement	Spouse's/civil partner's pension of 50% of member's pension at date of death. Children's pensions of 1/3rd of spouse's /civil partner's pension for each dependent child to a max. of 3 children. 4 of more children share equally.	Spouse's pension of 50% of members pension at date of death but based on pensionable remuneration less once the State Pension (Contributory). Children's pensions of 1/3rd of spouse's /civil partner's pension for each dependant child to a max. of 3 children. 4 or more children share equally
Contributions	1.5% of pensionable remuneration for the spouse's/civil partner's and children's scheme Some pay 5% of pensionable remuneration for the main scheme.	1.5% of pensionable remuneration for the spouse's/civil partner's and children's scheme. 1.5% of pensionable remuneration, plus 3.5% of net pensionable remuneration for the main scheme.

8.17 Public Sector - Additional Voluntary Contributions (AVCs)

Public sector employees can make AVCs in two ways.

(a) Purchase Scheme (Notional years) – Where there will be a shortfall of service (less than 40 years) at NRA it is possible for the employee through the Purchase Scheme to purchase additional years of reckonable service, or notional years as they are sometimes referred to.

The purchase of notional years guarantees the member enhanced benefits from the scheme at retirement, as the additional service is counted as actual service when calculating the retirement lump sum and pension from the scheme. They are also counted when calculating benefits from the spouse's/civil partner's/dependants' scheme. Notional years can be funded either by lump sum or by regular annual contributions from salary. The amount paid is normally allowable against income tax within the usual pension contribution tax relief limits.

The purchase of additional years service should always be raised with a client where there is a shortfall of service. If a client requires information about purchasing notional years he/she should contact their own HR/Personnel Section.

(b) Invest in a defined contribution AVC Plan or AVCPRSA – Alternatively or in addition to buying notional years a member can choose to contribute to a defined contribution AVC Plan or AVCPRSA. Most public sector employers have an AVC Plan in place which allows members to make their AVC contributions by deduction from salary and so enjoy income tax relief at source.

AVCs be used to fund for:

- uplifted benefits where there is a shortfall in service
- integration
- elements of remuneration not included in the main scheme's definition of pensionable remuneration e.g. bonuses, or overtime,
- life cover (not possible with AVCs to an AVCPRSA).

With AVCs a member can fund to increase their retirement lump sum only, and/or increase the pension, or exercise ARF options.

AVCs usually qualify for full and immediate relief from income tax if paid via payroll deduction. If AVCs are paid by direct debit, as is usually the case for an AVCPRSA, then tax relief can be claimed from Revenue by an adjustment to the member's tax certificate or making a claim at the end of the tax year.

Both an AVC Plan and an AVCPRSA are generally flexible products where contributions can be increased, decreased or suspended subject to certain limits.

8.18 Proposed Scheme for New Entrants to Public Sector

A new single pension scheme has been proposed for new entrants to the public sector. New entrants includes the civil service, education sector, health sector, local authorities, Gardai, Defence Forces, Regulatory sector and non-commercial semi state bodies. It also includes Oireachtas members and the Judiciary. Under the new scheme, benefits at retirement will be based on the member's average career earnings throughout their period of membership of the scheme and not on their pensionable remuneration at date of retirement.

It is expected that an accrual rate will be applied to pensionable earnings in each year and the benefit accrued in that year is then indexed up to retirement age in line with CPI.

Other features of the new public sector pension scheme include:

- Raising the minimum retirement age from 65 to 66 and it will then rise on a phased basis to 67 and 68 and in future to link it to the increase in the State Pension age.
- Restoring the maximum retirement age - but at age 70 (was 65 for staff recruited before 2004)
- The accrual rate will be based on integrated benefits
- Member contribution rate of 6.5% which will be based on all pensionable pay and not on net pensionable pay as currently exists.

Chapter 9

Personal Pensions

9.1 Introduction

A personal pension (PP) is a long-term savings plan designed to provide benefits in retirement in a flexible and tax efficient manner. PPs are also known as Retirement Annuity Contracts (RACs). PP retirement benefits are provided by means of an insurance policy effected by an individual which builds up a fund on a defined contribution basis to provide a range of benefits on retirement. Even since the introduction of Personal Retirement Savings Accounts (PRSAs), a PP can still be a suitable retirement planning vehicle for certain individuals.

PRSAs are similar in many respects to PPs, especially when claiming tax relief on contributions. This chapter will include details on tax relief for both PPs and PRSAs and chapter 10 will deal specifically with other aspects of PRSAs and a comparison of PPs versus PRSAs. Chapter 11 will deal with retirement options which are quite similar.

9.2 Revenue Approval

PP contracts must be approved by the Revenue Commissioners in order to avail of the generous tax benefits associated with pension funding e.g. tax relief on contributions, tax free growth on investments, tax free lump sum up to €200,000 on retirement. The legislation governing the approval of PPs or Retirement Annuity Contracts as they are referred to in the legislation, is found is Section 784 of the Taxes Consolidation Act 1997 (TCA). Section 785 of the TCA deals with the provision of life cover. Section 784 sets out specific rules to apply in order for a PP to be approved by the Revenue Commissioners.

The approval procedure is quite simple. The insurer submits a standard policy to the Retirement Benefits District of Revenue which complies with the requirements of S784. Revenue approve the policy and it can then be classified as an approved policy for the purpose of effecting a PP.

9.3 Insurance Policy

A PP must provide benefits by means of an insurance policy. The only exception to this are group schemes established under trust (see 9.6 below). In practice most PPs are provided by means of an insurance policy.

9.4 Self Directed PP

As an alternative to or in addition to investing in an insurer's pension funds, an individual can set up a self directed personal pension where they can exercise control over the assets that the pension is invested in. A self directed personal pension is still an insurance policy which generally offers a wider range of investment choices.

9.5 Relevant Earnings

A key condition for an individual to be eligible to start a PP is that they must have or had a source of earned income which is taxable or potentially taxable in Ireland. The phrase used in the legislation is "relevant earnings". There is no such requirement for effecting a PRSA and almost anyone can start a PRSA. Relevant earnings however must exist in order to claim tax relief on PRSA contributions.

With a PP the eligibility criteria set out below is relevant in relation to both being able to effect a PP and obtaining tax relief on contributions.

The insurer must establish the eligibility of an individual to effect a PP and an appropriate declaration normally forms part of the PP proposal.

Eligible income or "relevant earnings" includes the following.

Schedule D	**Case I**	**Income from a trade**
	Case II	**Income from a profession**
	Case III	**Foreign income from a trade, profession or employment.**
Schedule E		***Earnings from a non-pensionable office or employment.**

* All elements of taxable earnings are taken into account including taxable expenses and notional salary (BIKs).

An individual can contribute to a PP if they:

- have relevant earnings or
- had relevant earnings and had made a contribution to a PP in the year that they had relevant earnings.

Unless the PP policyholder has relevant earnings in the year of assessment that they wish to claim tax relief in, no tax relief can be claimed. In such circumstances the contributions to the PP will be carried forward, until such time, if any, that the individual acquires a source of relevant earnings against which the contributions may be offset for tax relief purposes.

The following are not considered to be relevant earnings.

- Profits arising in respect of a trade where the individual is not actively employed, which are normally taxed under Schedule D Case IV.
- Investment income i.e. dividends, deposit interest, rent.
- Covenant income.
- Income received from a pensionable employment.
- Stallion fees.
- Income from commercial woodland activity.
- Earnings from artists, composers, writers, etc where there is an exemption from income tax.
- Earnings from diplomats, EU officials and other members of multi-national bodies that also have a specific exemption from income tax.
- Pension/annuity income.

9.5.1 Non Pensionable Employment

Relevant earnings include Schedule E earnings from a non pensionable employment. A non pensionable employment is an employment where the individual concerned is not a member of an employer sponsored pension scheme. An individual is still regarded as being in non pensionable employment if the only benefit provided by the employer scheme is a lump sum payable on death.

Where an individual has the option to participate or not in an occupational pension scheme and decides not to be a member, then that individual is not in pensionable employment and can effect a PP in respect of such earnings.

If the same individual subsequently joins the occupational pension scheme, there is an option for the individual to continue with the PP contributions but without tax relief, unless of course there is a separate source of relevant earnings to claim the tax relief against. Contributions to the PP under these circumstances can be carried forward indefinitely, until such time, if any, that the employee acquires a source of relevant earnings against which the contributions may be offset subject to normal rules. An individual may wish to continue to contribute to a PP even if they are not entitled to tax relief where there is, for example, good guaranteed annuity rates attaching to the PP. However, in most cases they will cease making contributions to the PP as it will be more beneficial to make AVCs to the occupational pension scheme or to a separate AVC arrangement, especially from the point of view of obtaining tax relief on their contributions. Accordingly it is important that such an individual obtains appropriate advice to ensure that they follow the most appropriate course of action.

9.5.2 Investment Company

"Relevant earnings" for eligibility to effect a PP expressly excludes earnings from an investment company of which the individual is a proprietary director or proprietary employee. A proprietary director or proprietary employee is defined as "any individual who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than 15% of the ordinary share capital of the company".

A proprietary director or proprietary employee of an investment company cannot claim tax relief in respect of their earnings from the investment company on PRSA contributions, nor are they eligible to effect a PP in respect of those earnings.

9.5.3 Joint Assessment

In the case of married couples or civil partners, each spouse/civil partner is treated separately for the purpose of relevant earnings – their incomes are not aggregated. If for example a married woman is in pensionable employment and her husband is self-employed and has a source of relevant earnings, then he can effect a PP and/or PRSA in respect of his own earnings, despite the fact that they may be assessed to income tax under joint assessment (see chapter 14).

Where spouses/civil partners carry on a trade jointly, it is important from both an income tax and pension point of view that income is returned in both names. Both partners could then take advantage of the higher standard rate income tax band for a married couple/civil partners with two incomes, and each spouse/civil partner would also be eligible to effect a pension in respect of their own earnings. If one spouse's/civil partner's income is returned under Schedule E (employee) it will then be possible to set up an executive pension in respect of those earnings. Each spouse's/civil partner's earnings in the context of pension funding are effectively ring fenced.

9.5.4 Working Abroad

An individual is still considered to have a source of "relevant earnings" where they go abroad on a temporary basis and their earnings are liable to tax under Schedule D Case III. They can continue to make contributions provided that secondment abroad is directly related to the source of earnings prior to the move, and is for a period of less than 5 years with a clear expectation of return.

9.5.5 Medical Practitioner in Receipt of General Medical Services (GMS) Earnings

Medical practitioners who are part of the GMS scheme are taxed under Schedule D Case II in respect of their GMS earnings. However, legislation allows medical practitioners join the GMS pension scheme in respect of their Schedule D Case II GMS earnings – this is unique in that the GMS pension scheme is an OPS but the members of the scheme are not employees. Legislation specifically excludes GMS income from being counted as net relevant earnings, therefore a PP cannot be effected in respect of GMS earnings. A doctor in receipt of GMS earnings may however effect a PP in respect of any additional private earnings they may have. Please see section 9.15.3 below with regard to the special circumstances that apply when claiming tax relief on pension contributions where two sources of income exist.

9.6 PP Trust Schemes

S784 also provides for approval of a PP trust scheme, with the same tax advantages as an individual PP. Such schemes can be established under irrevocable trust for groups of individuals engaged in or connected with a particular occupation i.e. solicitors, accountants. However, there are a number of additional requirements which these trust schemes must comply with in order to get Revenue approval. Some of these schemes invest their assets in insurance policies. PP trust schemes are included under the provisions of the Pensions Acts (unlike non trust PP contracts) and therefore the trustees have the same duties and responsibilities as other pension scheme trustees.

9.7 Retirement Options

On maturity (any time between age 60 and 75) the policyholder can draw benefits from a PP.

They can take up to 25% of the fund as a retirement lump sum. The balance can then be:

- used to purchase an annuity
- invested in an Approved Retirement Fund (ARF)
- taken as a lump sum less tax.

Prior to being able to set up an ARF and/or withdraw the balance of the fund less tax an individual must have personal annual pension income payable for life of at least 1.5 times the maximum annual rate of State Pension (Contributory) payable per annum (€18,000 for 2012) known as "specified income". This requirement does not apply if the individual is over age 75, or had taken retirement benefits before 6 February 2011, and at that time had pension income for life of €12,700 per annum, or used €63,500 to invest in an ARF and/or to set up a pension.

If the specified income test cannot be satisfied the individual must invest up to 10 times the maximum annual rate of State Pension (Contributory) payable (€119,800 for 2012) or the full value of the remaining retirement fund if less, in the purchase of an annuity and/or in an Approved

Minimum Retirement Fund (AMRF). Alternatively the individual could buy a pension to bring their income up to €18,000 per annum.

With a PP it is not necessary for the individual to retire to draw the retirement benefits. The individual can draw retirement benefits at any time between ages 60 and 75. Legislation does not require an individual to choose the same retirement age in a situation where he may have more than one PP in respect of the same earnings. This differs from the situation with an occupational pension scheme where there can be only one retirement age in respect of the same employment irrespective of how many pension schemes exist in respect of that employment. A PP can therefore give greater flexibility with regard to drawing benefits from various policies on a phased basis.

Please see Chapter 11 for more details on retirement options.

9.8 Early Retirement

Early retirement before age 60 (but not before age 50) is only allowed for certain occupations where it represents the retirement age at which people involved in those particular occupations normally retire e.g. normal retirement age for jockeys is 50.

Appendix 1 has a list of Revenue approved early retirement ages allowable for various occupations.

9.9 Ill Health

Benefits can be drawn before age 60 if the individual becomes permanently incapable through infirmity of mind or body of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted. This definition of ill health is far more stringent than the definition for an ill health early retirement benefit under an occupational pension scheme. On retirement due to ill health, the individual can choose from the same retirement options that are available at normal retirement – there is no full commutation of the fund allowed on ill health early retirement as would be the case under the 'death's door concession' on an OPS. (Commutation may be allowed under normal trivial option rules.)

9.10 Death before Retirement

In the event of the death of the policyholder before the main benefits above become payable, a lump sum benefit can be paid to the policyholder's personal representatives, equal to a return of premiums with interest. In practice under a unit-linked PP the value of the fund is payable on death. It is possible to have additional benefits payable on death - see paragraph 9.14 below.

9.11 Transfer to another PP

All PP plans approved on or after 6 April 1999 must contain an option to allow the policyholder to transfer from one PP plan to another at any time. PP plans approved before 6 April 1999 may provide such transfers by agreement between the individual and the PP provider. It is possible to transfer the full value of a PP (partial transfer not allowed) to one or more PP subject to the consent of the insurers.

9.12 Transfer to a PRSA

The Pensions (Amendment) Act 2002 made provision for a PP to be cancelled and the assets under it transferred to one or more than one PRSA owned by the PP policyholder subject to the consent of the PRSA provider and the policyholder. The advisor must advise the individual in writing of the financial consequences of replacing the PP with the PRSA.

Transfers			Allowed
Personal Pension	→	PRSA	Yes
PRSA	→	Personal Pension	No

9.13 Assignment or Encashment

A PP cannot in whole or in part be surrendered (before retirement age), or assigned.

9.14 Life Cover (Section 785 Cover)

Life Cover can be provided through the terms of Section 785 (S785) of the Taxes Consolidation Act.

The eligibility conditions to effect a S785 policy are the same as those for a PP, i.e. must have relevant earnings (self employed, or non pensionable employment).

The benefit of a S785 policy is normally a lump sum payable on the death of the policyholder to personal representatives before age 75. Alternatively the benefit could be an annuity payable to a spouse/civil partner or dependants on the death of the policyholder. There is no limit on the lump sum amount that can be provided but in practical terms it is limited by the tax relief limits applying for various ages in respect of aggregate PP, PRSA and S785 contributions.

Life cover can be set up as part of the personal pension (associated cover) or set up as a standalone policy. It is not possible to include life cover with a PRSA and if required it must be set up on a standalone basis.

9.15 Income Tax Relief on Contributions

One of the many tax advantages of PP and/or PRSA funding is the tax relief available on pension contributions. As mentioned above an individual must firstly have relevant earnings in order to be able to set up a PP, but this is not a requirement when setting up a PRSA. Relevant earnings is important however when claiming tax relief on PP and/or PRSA contributions as tax relief is expressed as a percentage of "net relevant earnings".

9.15.1 Net Relevant Earnings

Broadly speaking net relevant earnings are calculated as follows:

Income from a trade or profession

LESS
1. Deductible Payments
2. Capital Allowances and
3. Losses

1. Deductible Payments

This would include the following.

- Expenses such as wages, professional fees, repairs, travel expenses etc, which are deducted from profits to arrive at the taxable profits.
- Tax deductible covenant payments.
- Certain maintenance payments.

2. **Capital Allowances**
Where the individual incurs capital expenditure on plant and machinery used for the purposes of the trade he/she may be entitled to a tax allowance (Capital Allowance) in respect of the expenditure. The allowances are given over the expected tax life of the asset, normally 8 years – 12.5% of qualifying cost per year. The capital allowances serve to reduce taxable profits from the trade or business and consequently the net relevant earnings of the individual for the purpose of contribution relief.

3. **Losses**
Trading losses carried forward from the previous year. These are off-set against profits from the same trade and therefore reduce taxable profits.

Deductions for calculating Income Tax such as charitable donations or nursing home expenses are not deductible items for the purpose of net relevant earnings. These items are deductible for the purpose of arriving at an individual's taxable income.

Example:
A self-employed individual aged 45 has gross income of €80,000 in the 2012 tax year.

His year end accounts are as follows:	
Gross Income	€80,000
Payments	
• Wages	€12,000
• Repairs	€3,000
• Business travel	€2,000
• Allowable interest (not private residence)	€4,500
• Covenant	€700
• Nursing home expenses	€800
• Charitable donations	€9,000
Capital Allowances (Machinery)	€4,000
Losses (from previous tax year)	€2,500
Taxable profit (€80,000 - €38,500)	€41,500
Calculation of Net Relevant Earnings (NRE)	
Gross Income	€80,000
Less Deductible Payments	
• Wages	€12,000
• Repairs	€3,000
• Business travel	€2,000
• Allowable interest (not private residence)	€4,500
• Covenant	€700
Less Capital Allowances	€4,000
Less Losses	€2,500
Deductions for NRE	€28,700
Net Relevant Earnings (€80,000 - €28,700)	**€51,300**
Allowable pension contribution – 25% (see table below)	€12,825

9.15.2 Age Limits for Income Tax Relief

Contributions paid to any PP, PRSA or S785 policy are simply aggregated and subject to an overall limit for income tax relief. These limits are expressed as a percentage of net relevant earnings and depend on the age attained in the tax year. The current limits (for 2012) are:

Age	Maximum Tax Relief Limit as a % of Earnings
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60 and over	40%

Relief is granted at the higher percentage if the individual reaches that age at any time during the calendar year in question. Relevant Revenue requirements must be satisfied.

There is a limit of currently €115,000 (for 2012) on the amount of net relevant earnings, which can be taken into account for the purpose of contribution relief. This limit may be reviewed each year. Bear in mind that this is an overall earnings cap of €115,000 in respect of an individual's contributions to an occupational pension scheme (including AVCs), PP, S785 policy and PRSA.

9.15.3 Two Sources of Earnings

If an individual has more than one source of earnings i.e. employment income and self employed income, the overall maximum limit on earnings which applies in a tax year in respect of pension contributions is €115,000 (for 2012). If the individual is making pension contributions to an occupational pension scheme, then the employment income is offset against the €115,000 earnings limit first.

In a situation where an individual's pensionable income is €115,000 or more there will be no scope to get tax relief on pension contributions made in respect of self employed income. This is particularly relevant in the case of a doctor who is in receipt of General Medical Services (GMS) income as well as private practice income. At present doctors in receipt of GMS income contribute 5% of their capitation fees to the GMS pension scheme. Pensionable GMS income (net GMS remuneration) makes up the first part of the aggregate earnings limit of €115,000. Therefore if net GMS remuneration is €115,000 or more, there is no scope for tax relief on pension contributions in respect of any private practice income. The individual can however make AVCs to either the GMS Group AVC scheme or an AVCPRSA, to top up their benefits within Revenue maximum funding limits. See example in paragraph 4.6.1. This earnings rule may also affect consultants working with the HSE where they receive pensionable income and they also have separate private practice income.

9.15.4 Specified Occupations (Professional sportspeople)

Finance Act 1999 introduced a tax relief rate of 30% of net relevant earnings in respect of PP and/or PRSA contributions which applies irrespective of age for the following occupations:

- athletes
- badminton players
- boxers
- cricket players
- cyclists
- footballers
- golfers
- jockeys
- motor racing driver
- rugby players
- squash players
- swimmers
- tennis players.

9.15.5 Carry Forward of Relief

Where contributions paid to a PP, S785 policy and/or PRSA in a tax year exceed the contribution limit for tax relief, any unrelieved contributions can be carried forward to the next available tax year until all contributions have been given tax relief or until no source of relevant earnings exists.

Example:

A man aged 42 has net relevant earnings in the 2012 year of assessment of €50,000. In 2012 he contributed €15,000 to his PP plan. The available limit for relief is 25% of net relevant earnings.

Amount contributed	€15,000
Limit for Relief (€50,000 X 25%)	€12,500
Balance for carry forward	€2,500

€2,500 can be carried forward for relief in the following year(s) provided he has a source of relevant earnings in that tax year.

9.15.6 Backdating of Relief

Tax relief can be backdated to the previous calendar tax year provided PP, S785 and/or PRSA contributions are paid before 31 October in the current tax year. For self assessed tax payers, 31 October is the latest date for return of income tax and payment of any balance of tax outstanding for the previous calendar tax year. It is also the date by which preliminary tax for the current tax year must be paid.

Where an individual qualifies for the extended pay and file deadline available through ROS by both filing and paying online, the deadline for making PP and PRSA contributions and claiming the relief is extended by up to two weeks generally.

Relief can only be backdated if the individual elects in writing before the deadline date (31 October or extended ROS date, if applicable) to backdate the contribution. However, if an individual is retiring and is not self assessed for income tax, they have up until 31 December in the year they are retiring to make the election to backdate to the previous tax year but they must have paid the contribution before the filing date (31 October). Any backdating is still subject to the normal contribution limits for tax relief for that tax year and eligibility criteria.

Example:
A self employed individual was 50 in February 2012. In 2011 he had net relevant earnings of €50,000. He started a PP with a contribution of €7,500 on 1 April 2012 and elected to backdate the contribution to the previous tax year (relief limit of 25% at age 49 for 2011).

Being a higher rate taxpayer his final tax liability for 2011 was reduced by €3,075. As his preliminary tax for 2012 was based on 100% of the final tax payable for the previous tax year, he also reduced the amount of preliminary tax payable and therefore improved his cashflow position.

9.16 Employer Contribution to a PP/PRSA

It is possible for an employer to make contributions into a PP and/or PRSA on behalf of an employee. Employer contributions are regarded as a benefit in kind for the employee and therefore considered as notional pay. There is a difference in treatment of employer contributions to a PP versus those to a PRSA.

For both PP and PRSA, the employee is entitled to claim income tax relief on the employer contribution as if it had been paid directly by them. The end result should be a situation where the income tax paid and income tax relief cancel each other out leaving the employee in an income tax neutral position, unless the combined employer and employee contributions exceed the relevant age based tax relief limit.

Employee PRSI/USC

For PRSAs, Revenue has confirmed that employer contributions are not chargeable to PRSI. The employee will pay USC only on the contribution paid by the employer.

For PPs, the employer contribution is chargeable to both PRSI and USC.

Because the contribution payable by the employer is regarded as notional pay, the employer is normally entitled to write off any contributions made on behalf of an employee as a deductible expense.

9.17 Claim for Income Tax Relief

When a PP/S785 policy is issued, a Retirement Annuity Contract certificate (RAC cert) is also issued which shows the premiums paid and the premiums expected to be paid in the future.

The RAC cert should be included in income tax returns where the individual is taxed under Schedule D. The amount contributed is treated as a deduction against Case I/II profits before income tax is charged. This means income tax relief is given at the higher rate of tax, if the individual is a higher rate taxpayer.

Where the individual is a PAYE taxpayer the RAC cert should be submitted to the local Inspector of Taxes so that their certificate of tax credits and standard rate cut-off point can be adjusted as outlined below where the individual is a top rate taxpayer.

- The tax credit is increased by the premium amount at standard rate of tax, and
- The standard rate band is also increased by the premium amount.

Increasing the tax credits gives relief at the standard rate of tax, while increasing the standard rate band ensures relief is obtained at the difference between the standard rate and the higher rate of tax. The combined effect ensures relief is obtained in full at the higher rate of tax.

Example:
An individual is a higher rate taxpayer and makes a pension contribution of €1,000 per annum. Relief is given as follows:

Relief given

Tax credit given at standard rate (€1,000 X 20%)	€200
Standard rate band increased by €1,000	€210
Total amount relieved	€410

9.18 Tax Free Investment Growth

Under current legislation all PP and PRSA funds are exempt from both income tax and capital gains tax and grow tax free.* The huge benefit of tax free investment growth should not be understated.

*It should be noted however that a temporary Government pension fund levy of 0.6% will be applied to the value of the pension assets as at 30 June for the years 2011-2014.

9.19 Retirement Lump Sum

Section 784 of the TCA 1997 allows a PP policyholder to take up to 25% of the accumulated fund as a retirement lump sum. Under current Revenue rules the overall maximum retirement lump sum that can be taken tax free from all pension arrangements is €200,000, with any balance up to €575,000 subject to income tax at the standard rate. Any amount paid out in excess of €575,000 will be taxed at the individual's marginal rate and will also be subject to PRSI and USC. Any retirement lump sums taken on or after 7 December 2005 will count towards these limits.

PP retirement benefits are discussed in detail in Chapter 11 – Retirement Options.

9.20 Maximum Tax Relieved Pension Fund

There is a cap on the total capital value of pension benefits that an individual can draw on in their lifetime from tax relieved pension arrangements. Benefits paid in excess of an individual's cap, which is currently €2.3M (2012), will attract additional tax. See paragraph 4.8.11.

Chapter 10

Personal Retirement Savings Accounts

10.1 Introduction

A Personal Retirement Savings Account (PRSA) is as the name suggests an individually held retirement investment account. The provision for PRSAs was introduced in the Pensions (Amendment) Act 2002. Each PRSA Product must be approved by the Pensions Board under PART X of the Pensions Act 1990 and by the Revenue Commissioners under Part 30, Chapter 2A, of the Taxes Consolidation Act 1997.

A PRSA is a retirement planning vehicle for everyone e.g. employees, self employed, home makers, carers, part-time workers, contract workers, unemployed. While the main objective in introducing PRSAs was to increase overall pension coverage, over the years PRSAs have developed as niche pension products and have become a viable alternative to more traditional pension products.

- An AVC PRSA - Employees already in an occupational pension scheme can use a PRSA for the purpose of making AVCs, as an employee who is a member of pension scheme is only eligible to obtain tax relief on contributions made to an AVC PRSA and not to a PRSA (unless they have a separate source of relevant earnings). From an advisor's point of view, it allows them to give advice to individual employees and also to arrange the AVC PRSA .
- In a scheme wind up, a transfer to a PRSA provides an individual with access to ARF options at retirement. Whilst the ARF option has now been extended to DC schemes, the PRSA still remains a route whereby members of DB schemes can access ARF options at retirement. There are specific rules regarding transfers from an occupational pension scheme to a PRSA, and the transfer may not be possible in all cases. See paragraph 10.13 below and paragraph 7.12 in Chapter 7 – Early Leavers and Scheme Discontinuance for more details.
- As Trust based company pension schemes became more onerous to operate, a group PRSA scheme became a popular alternative to the traditional DC arrangement. Although employees now have to pay the USC on any employer contribution to an employee's PRSA, the PRSA does remain an option where a company does not want to get involved in Trusteeship.

The provisions for tax relief on contributions to PRSAs are similar to those for personal pensions (PPs), and are dealt with in Chapter 9 - Personal Pensions. Chapter 11 covers retirement options for all types of pension arrangements including PRSAs.

10.2 Product Approval

Both the Pensions Board and the Revenue Commissioners must approve all PRSA products. Similar to PPs, it is the product that is approved rather than each individual PRSA policy. The approval of either party can be withdrawn if certain conditions are not complied with. The Pensions Board supervises the activities of providers in relation to their approved products and monitors compliance with PRSA legislation. The Revenue Commissioners deal with the tax relief entitlements of PRSA contributors. The Central Bank is responsible for the prudential supervision of PRSA providers and the supervision of the sales process of approved products.

10.3 PRSA Structure

A PRSA is a contract between an individual and a "PRSA Provider" in the form of an account, which will hold units in investment funds managed by approved PRSA providers. It is established on a DC basis and can be funded by the individual and/or their employer. Even if the employer contributes, it is important to note that the PRSA is still owned by the individual and not by the employer. In addition, the concept of 'vested rights' and 'preserved benefits' do not apply to PRSAs, so employer contributions immediately belong to the employee. A PRSA cannot be written under trust or assigned.

10.4 PRSA Providers

PRSAs can only be provided by a life assurance company, a credit institution or an investment firm.

10.5 Eligibility

Subject to certain conditions any individual can commence and contribute to their own PRSA regardless of their employment or type of earnings. However tax relief on contributions is only available against 'relevant earnings' – see section 9.5 of Chapter 9 for an explanation of relevant earnings. An individual should be over age 18 and under age 75 before they can set up a PRSA policy (age 70 for an AVCPRSA). An AVCPRSA can only be set up by an individual who is a member of an occupational pension scheme.

Again subject to certain conditions there is normally no restriction on the number of PRSAs an individual can have. Employers can also contribute to an employee's PRSA (but not to an AVC PRSA) however they are not obliged to do so under the legislation.

10.6 Types of PRSAs

There are two main types of PRSA allowed for in legislation:

- Standard PRSA
- Non-standard PRSA.

The main differences between the two are there is no cap on the charges for a non-standard PRSA and it allows for a wider choice of funds.

10.7 PRSA Charges

The only charges that can apply to any type of PRSA must be expressed as:

- a percentage of the contributions, and/or
- a percentage of the PRSA assets.

(No policy fee can apply)

These charges can vary in amount between different PRSA products depending on the particular

PRSA product, distribution method, mode of payment, investments held, term of contract, or amount of contribution paid.

In addition there is a cap on the charges that can apply to a standard PRSA. These charges have been capped at:

- 5% of the contribution, and
- 1% per annum of the PRSA assets.

No charges can be applied to transfers out of or transfers into any type of PRSA. No charges can be made on the suspension, resumption, or varying of contributions.

10.8 Default Investment Strategy

Each type of PRSA must have a Default Investment Strategy (DIS), which a contributor can opt out of in writing if they so wish. Apart from holding some assets in cash on a temporary basis the DIS may only provide for investment in one or more pooled funds. The DIS in practice is a lifestyle fund.

A standard PRSA can (apart from temporary holdings in cash) invest only in pooled funds.

10.9 Risk Benefits

Legislation specifically prohibits the conditional selling or advertising of any other product with a Standard PRSA. Any risk benefits required have to be purchased separately. They cannot be bundled with a PRSA.

If life cover is required, the individual, if eligible, could effect a separate Section 785 term assurance policy (see section 9.14 Life Cover, in Chapter 9). If the individual is an employee, they may be included in an occupational pension scheme providing death in service benefits.

10.10 Minimum Contributions

The minimum contribution allowable for any type of PRSA is €300 per annum. For payment of contribution by electronic transfer including direct debit the minimum amount is €10. For any other method of payment the minimum contribution is fixed at €50.

10.11 Flexibility of Contributions

The legislation permits PRSA contributions to be suspended, resumed or varied at any time.

If a contributor changes job and becomes a member of an occupational pension scheme, they can, subject to certain conditions, transfer the PRSA benefits to the occupational pension scheme or simply cease contributing to the PRSA. PRSA assets transferred into an occupational pension scheme become AVC assets in the scheme.

10.12 Refund of PRSA Contributions

A refund of contributions can be made at the request of the contributor or by the PRSA provider without the consent of the contributor in the following circumstances only.

- The fund value is not greater than €650 and
- No contributions have been made for at least two years and

- Three months notice in writing has been given by the PRSA provider to the contributor advising the contributor to transfer the PRSA assets to another PRSA or pension scheme or recommence contributions.

A refund of contributions is also available under the 30 day cooling off period which runs from when the first Statement of Reasonable Projection (SRP) was issued to the contributor.

10.13 Transfers In

A PRSA may accept a transfer payment from another PRSA. Therefore an individual with a PRSA who starts working for an employer who provides access to a Standard PRSA will be able to transfer the value of his/her existing PRSA into the employer's PRSA arrangement. Before the transfer can be processed the intermediary must advise the individual in writing of the financial consequences of replacing the existing PRSA.

A transfer from an occupational pension scheme to a PRSA is an option where the member has 15 years or less scheme membership and the scheme is being wound up or the member is leaving employment. AVCs can be transferred to a PRSA at any time. However, before a transfer from an occupational pension scheme to a PRSA can take place there are a number of compliance requirements which must be met unless the scheme is winding up (see Chapter 7 Early Leavers and Scheme Discontinuance, paragraph 7.12 – Transfer to a PRSA).

A refund of contributions taken from an occupational pension scheme can be transferred into a PRSA without any deduction for tax being made from the refund. Of course, this refund will not qualify for tax relief when invested in the PRSA.

The proceeds of a personal pension can be transferred into a PRSA with the consent of the personal pension policyholder and the insurance company, which issued the personal pension. Again, the intermediary must advise the individual in writing of the financial consequences of replacing the PP with the PRSA.

The proceeds of a retirement/buy out bond cannot be transferred into a PRSA.

No charges can be made on any transfer payments into any type of PRSA.

10.14 Transfers Out

A transfer payment from a PRSA to another PRSA is allowed at any time. A transfer payment is also allowed from a PRSA to an occupational pension scheme or an overseas pension scheme, subject to certain conditions.

It is not possible to transfer a PRSA to a personal pension or a Retirement/Buy Out Bond.

No charges can be made from the transfer payment out.

10.15 PRSA Access for Employees

All employers (companies, partnerships, sole traders etc.) must give any "excluded employee" immediate access to at least one Standard PRSA. An "excluded employee" is an employee who falls into one of the following categories.

- There is no occupational pension scheme providing retirement benefits for the employees at present or

- There is an occupational pension scheme for retirement benefits but membership is restricted to certain employees or there is a waiting period of over six months from the date of commencing employment.

Note a scheme, which only provides death in service benefits for its members, must also provide access to a Standard PRSA.

To provide access to a Standard PRSA, an employer must:

- enter into a contract (Section 121 contract) with a PRSA provider (designate a provider) to provide access to at least one Standard PRSA to "excluded employees"
- notify "excluded employees" of their rights to contribute to a Standard PRSA
- allow PRSA providers or intermediaries to have reasonable access to "excluded employees" at their workplace so that Standard PRSAs can be arranged
- allow reasonable paid leave of absence, subject to work requirements, to "excluded employees" so they can set up a Standard PRSA
- make PRSA deductions from wages on request from the contributor and remit these contributions to the relevant PRSA provider within 21 days of the end of the month in which deductions were made. No charge can be made by the employer for making these deductions and the full amounts deducted must be remitted to the PRSA provider
- remit any employer contribution to the PRSA provider within 21 days of the end of the month in which the contribution is due to be paid
- advise the contributor in writing – normally done on an employee's pay slip - at least once a month of the total contributions deducted and any employer's contributions paid to the PRSA on the employee's behalf
- advise the PRSA provider in writing each month of contributions deducted from wages and any employer contributions remitted to the PRSA provider during the previous month.

10.15.1 PRSA Access for Employees with no AVC Scheme

An employer who has an occupational pension scheme, which does not allow for AVCs or where there is no separate AVC scheme in existence, must provide his/her employees with access to at least one standard AVC PRSA.

Individual AVC policies have been replaced by AVC PRSAs. It is now no longer possible to establish an individual AVC Scheme (unless it is set up under the main scheme trust) although Group AVC Schemes (schemes capable of having more than one member) can still be set up.

10.16 Tax Relief on Contributions

Please refer to Chapter 9 – Personal Pensions, paragraph 9.15 as the tax relief provisions for PPs and PRSAs are similar.

Note that if an employer makes a contribution to a PRSA, the employee will be liable to pay USC on this amount, see paragraph 9.16 for more details.

10.16.1 Minimum Tax Relief on a PRSA

Each PRSA taxpayer other than an employee who is a member of an occupational pension scheme is entitled to tax relief on contributions up to €1,525 paid to a PRSA even if this exceeds the normal limit allowable for tax relief purposes.

10.16.2 AVCPRSA Contributions

The contribution limits for tax relief for AVC style PRSAs are the same as those for a PRSA and include any employee contributions and/or any AVCs paid in relation to the main scheme. The earnings cap of €115,000 (for 2012) for tax relief also applies.

The benefits which can be provided by an AVC style PRSA when combined with benefits being provided under the main OPS and any other AVC arrangement cannot exceed the maximum limits permitted by the Revenue Commissioners. It may therefore be necessary to restrict AVC PRSA contributions in certain circumstances. See Chapter 2 Revenue Maximum Benefits Allowed for more details on these limits.

10.16.3 Claiming Tax Relief on a PRSA

The Revenue requests that each PRSA provider issue a relevant PRSA Certificate to a contributor in order that the appropriate amount of tax relief can be claimed. They have allowed for three types of certificates.

PRSA 1 Certificate: This certificate is issued to individuals taking out a PRSA where contributions are not deducted at source i.e. self employed individual, employee where the employer will not operate deductions from wages.

PRSA 1 (Net Pay) Certificate: This certificate is issued to employees taking out a PRSA whose employer has agreed to make deductions for PRSA contributions through the payroll (net pay). These employees are in non pensionable employment.

PRSA 2 AVC (Net Pay) Certificate: This certificate is issued to employees and directors taking out a PRSA AVC, which is linked to an occupational pension scheme.

The PRSA Certificates contain the individual's date of birth and PPS Number, both of which must be evidenced before the PRSA can be set up.

10.17 Tax Free Investment Growth

Under current legislation all PRSA funds are exempt from both income tax and capital gains tax and are said to grow tax free.* Therefore virtually anyone can invest in a tax free fund without having to meet pension eligibility criteria. This huge benefit of tax free investment growth cannot be understated.

* It should be noted however that a temporary Government pension fund levy of 0.6% will be applied to the value of the pension assets as at 30 June for the years 2011-2014.

10.18 Taking Retirement Benefits

Retirement benefits can normally be taken from age 60 to 75 similar to the position for PPs. In addition early retirement is also allowed for people in certain occupations that Revenue consider it is normal for them to retire early - but not before age 50. Appendix 1 has a full list of Revenue approved early retirement ages allowable for various occupations.

In contrast though with a PP, early retirement for employees with a PRSA is allowed from age 50 onwards if the employee is retiring.

Ill health early retirement benefits can be taken in the event of an individual becoming permanently incapable of carrying on his or her occupation or any occupation of similar nature for which he or she is trained or fitted. This is the same ill health provision as applies for personal pensions and is a much stricter exclusion than exists for an OPS where in the latter case the ill health need only impair the individual's ability to carry on his/her own occupation.

Benefits arising from an AVCPRSA must be taken at the same time as main scheme benefits.

10.19 Retirement Lump Sum

For all non-AVC style PRSAs the maximum lump sum allowable at retirement is 25% of the fund. For AVC style PRSAs the maximum lump sum allowable is still determined by the rules of the occupational pension scheme – see Chapter 2 - Revenue Maximum Benefits Allowed.

10.20 Retirement Options

After taking retirement lump sum the balance can be:

1. invested in an Approved Retirement Fund (ARF) subject to conditions (see below)
2. withdrawn as taxable cash subject to conditions (see below)
3. used to buy an annuity
4. retained in the PRSA until age 75 at the latest (see 10.21 Vested PRSAs)

In order to avail of options 1 or 2 the PRSA contributor must have pension income of at least 1.5 times the maximum annual rate of State Pension (Contributory) payable per annum (€18,000 for 2012) known as "specified income". This requirement does not apply if the individual is aged 75 or over.

If the specified income test cannot be satisfied the individual must invest up to 10 times the maximum annual rate of State Pension (Contributory) payable (€119,800 for 2012) or the full value of the retirement fund if less, in the purchase of an annuity or in an Approved Minimum Retirement Fund (AMRF), or this amount must be retained in the PRSA (until age 75 or the date of attaining the specified income, whichever occurs first). Alternatively the individual could buy a pension to bring their income up to €18,000 per annum.

More details on retirement options can be found in Chapter 11.

10.21 Vested PRSAs

It is possible to take benefits (between ages 60 and 75) on a gradual basis from the PRSA itself and once commenced the PRSA is known as a vested PRSA. However, the retirement lump sum can only be taken once. If the individual wishes to continue with PRSA contributions then they should consider setting up a new PRSA where the 25% retirement lump sum would still be available. All PRSA benefits must be taken by age 75 and contributions must have ceased before that age.

10.21.1 How can Funds be Accessed from a Vested PRSA?

A vested PRSA holder is subject to the specified income requirement each time a withdrawal is made. In order to make a withdrawal the individual must show that they are in receipt of the specified income amount or that they have satisfied the AMRF/annuity requirement. If not, they must retain an amount equal to the AMRF requirement in the vested PRSA, and can only withdraw any amount above this.

The requirement to maintain this amount in the vested PRSA ceases if the individual subsequently meets the specified income requirement.

Vested PRSAs are subject to 5% deemed distribution similar to ARFs. However, if the individual has not satisfied the specified income test or AMRF/annuity requirement, it is only any amount above the AMRF requirement which remains in the PRSA that will be liable to deemed distribution. The deemed distribution rate increases to 6% where the aggregate value of PRSAs and ARFs is greater than €2M.

A vested PRSA can transfer to another similar vested PRSA with no tax liability on the transfer. The receiving PRSA provider should endorse the contract to reflect that no further retirement lump sum is available. Any subsequent withdrawals allowed from the receiving PRSA will be subject to tax as normal. It is not possible to transfer the proceeds of another pension after taking retirement lump sum entitlement into a vested PRSA i.e. the full transfer must go to a PRSA and the retirement lump sum taken from the PRSA leaving the residual fund 'vested'.

10.22 Maximum Tax Relieved Pension Fund

There is a cap on the total capital value of pension benefits that an individual can draw on in their lifetime from tax relieved pension arrangements. Benefits paid in excess of an individual's cap, which is currently €2.3M (2012), will attract additional tax. See paragraph 2.11.

10.23 PRSA Investments Treated as a Distribution

If PRSA assets are used for the purpose of "certain transactions" e.g. loan made to the beneficial owner or connected person or acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person, then the use of those assets will be treated as a withdrawal from the PRSA and will be subject to tax under PAYE.

A list of these "certain transactions" can be found in Chapter 11 – Retirement Options. These are only really relevant to 'self directed' type non-standard PRSAs, as standard PRSAs can only invest in pooled funds.

In addition where PRSA assets are treated as a withdrawal, they will no longer be regarded as PRSA assets.

10.24 Death before Retirement

In the event of a contributor dying before retirement i.e. before benefits (including retirement lump sum) are taken from the PRSA, the PRSA fund will be paid to the personal representatives of the deceased person free of income tax. Inheritance tax may apply depending on the relationship between the PRSA contributor and the ultimate beneficiary.

10.25 Death after Retirement

The position on death in the event of a PRSA contributor dying after benefits have commenced depends on the options chosen at retirement. If an annuity has been purchased then any part of the pension which remains may be paid to the personal representatives. This may occur if a minimum guaranteed payment period was selected when originally purchasing the annuity, and the individual dies within the guaranteed period. If the guaranteed period is 5 years or less a lump sum in lieu of the remaining pension payments can be paid to the annuitant's estate. If the guaranteed period is more than 5 years then the remaining pension payments will be paid to the estate. A spouse's/dependant(s)' pension may be payable if the contributor provided for same when setting up the annuity. These would normally start after the end of the guaranteed period if any. Refer to Chapter 11 – Retirement Options for more detail on annuities.

If an AMRF/ARF has been set up the provisions for same on death are dealt with in Chapter 11 – Retirement Options.

If benefits are only partly drawn down from the PRSA (vested PRSA), any balance in the PRSA at date of death will be treated as if it were a distribution from an ARF. Please refer to Chapter 11 for full details of the taxation provisions of an ARF/vested PRSA on death.

10.26 Standard PRSA v Personal Pension

The table below provides a general comparison of the main differences between a standard PRSA and a personal pension.

	Standard PRSA	Personal Pension
Charges	5% of contribution paid and 1% p.a. of assets are maximum charges allowed. No policy fee	No cap on charges, will vary based on PP contract selected
Access for Employees	"Excluded employees" must be given access to at least one Standard PRSA	Not compulsory to provide access to a personal pension.
Risk Benefits	Life cover and/or Disability Cover cannot be set up in association with a PRSA – can only be done on a standalone basis	Life cover and/or Disability Cover can be set up with a personal pension
Investment Restrictions	PRSA assets must be invested in pooled fund(s) apart from temporary cash holdings. Contributor can choose to have default investment strategy (DIS) applied. Difficult for new\limited term funds to be added	Much wider range of funds to invest in

Chapter 11

Retirement Options

11.1 Introduction

Prior to 2 December 1998, a pension policyholder had no option but to purchase an annuity with the balance of their fund after taking their retirement lump sum or simply purchase an annuity with their entire fund. This type of annuity was appropriately named a compulsory purchase annuity (CPA). The 1999 Finance Act did away with obligatory annuity purchase in certain cases, and in doing so revolutionised retirement planning for certain individuals. In this chapter we will review all the different options available when taking retirement benefits.

11.2 Retirement Lump Sum

Most pension arrangements provide an option to take part or all of the fund as a retirement lump sum rather than using it to buy an annuity or exercise ARF options (where these options are available – see below). The options available as regards a retirement lump sum depend on the pension arrangement and are summarised in the table below.

Pension Arrangement	Based on Final Salary and Service	Up to 25% of Fund
PRSA	N	Y
Personal Pension	N	Y
DC Scheme	Y	Y
Personal Retirement Bond from DC scheme	Y	Y (if set up after 6/2/2011or if 5% Director at date of leaving service)
Personal Retirement Bond From DB scheme	Y	N (unless a 5% Director at date of leaving service)
DB scheme	Y	N (unless a 5% Director)

The overall maximum lump sum that can be taken tax free from all an individual's pension arrangements is €200,000. Any amount taken between €200,000 and €575,000 will be subject to income tax at the standard rate. Any amount taken in excess of €575,000 will be taxed at the individual's marginal rate and will also be subject to PRSI and USC.

Any retirement lump sums taken on or after 7 December 2005 will count towards these limits.

11.3 Annuity

An annuity is a secure income for life in exchange for all or part of the pension fund accumulated at retirement. The amount of secure income payable relative to the fund amount depends on a number of factors including the age of the individual, interest rates at the time of annuity purchase and the type of pension purchased. An increase in interest rates will mean that a higher amount of income/pension can be bought for a given fund amount, while the converse equally applies.

11.3.1 Single Life Annuity

A single life pension is payable for the life of the annuitant and ceases on their death. An annuity can be paid for a set period of years of up to 10 years (guaranteed period) Should the annuitant die before the expiry of the guaranteed period the balance of payments is paid to their personal representatives. Where the guaranteed period is 5 years or less the balance of payment due on death under any unexpired guaranteed period can be paid out as a lump sum. However, for a guaranteed period of over 5 years, the balance must continue to be paid out as a pension irrespective of how long is left to the end of the guaranteed period.

A 10 year guaranteed period can be attractive as the difference in annuity in comparison with a shorter guaranteed period can be relatively small.

Example:
Male age 65, spouse age 62, level annuity, €100,000 fund, monthly in advance

10 Year Guarantee	5 Year Guarantee
€5,085 p.a.	€5,175 p.a.

Annuity figures as at 06/09/2012

11.3.2 Joint Life Annuity

A joint life pension is payable for the life of the annuitant and on their death may continue to be payable for another period depending on the type of pension purchased at retirement. For a married couple or civil partnership a joint life pension will ensure a secure income for both their lives i.e. until they both die.

A joint life pension is more expensive than a single life and in the case of a defined contribution scheme would therefore reduce the amount that could be paid to an annuitant during the course of their life.

Example:
Male age 65, spouse age 62, level annuity, €100,000 fund, guaranteed 5 years, monthly in advance

	Single Life	With 50% spouse's pension
Pension payable to main annuitant:	€5,175 p.a.	€4,515 p.a.

Annuity figures as at 06/09/2012

On the main annuitant's death the spouse/dependant(s) pension (50% of €4,515 p.a. in the example above) can commence immediately and therefore overlap with the balance of the guarantee period of the member's pension. However, for occupational pension schemes, if the guarantee period is longer than 5 years the spouse's/dependants' pension will not commence until the end of the guaranteed period (no overlap).

11.3.3 Indexed Annuity

An annuity can be index linked to protect it from inflation but where the indexation option is chosen the amount of pension payable initially will be lower than a level annuity, as the annuity will increase each year. The higher the level of indexation chosen, the lower the initial annuity becomes. So an individual who chooses indexation should be hoping they will live long enough to recover the reduction in their initial income that an indexed annuity provides, compared to a level annuity.

Most insurers offer fixed indexation rates of 3% or 5% p.a. The example below shows how a 3% indexation rate reduces the initial annuity amount by about 30%. In this case the indexed annuity being paid will reach €5,175 when the annuitant is 78!

Example:

Male age 65, €100,000 fund, guaranteed 5 years, monthly in advance.

Single Life - Level	Single Life – Indexed at 3%
€5,175 p.a.	€3,515 p.a.

Annuity figures as at 06/09/2012

Please note that the figures provided above are intended for illustration purposes only – actual annuities payable will be different.

11.3.4 Open Market Option

An annuity can only be purchased from a life assurance company. Most pension policies allow an "open market option" which means that whoever is purchasing the annuity has a choice of going to any insurance company operating in the market. Before availing of the "open market" option, the individual should first determine which company may offer the "best" annuity rates. Certain policies may have bonuses or guaranteed annuity rates attaching to them.

11.3.5 Tax Payable on an Annuity

The annuity payable to the individual, surviving spouse or dependant(s) is subject to income tax and USC under the PAYE system. There is no liability to PRSI.

11.4 ARF Options

PP and PRSA contributors, DC scheme members and some other scheme members now have a range of options available to them at retirement. These options which are generally known as ARF options give effective control and ownership of the pension fund to the pension contributor in retirement.

ARF options have evolved since 1999 and the table below summarises same.

Year	
1999	Net ARFs introduced for personal pensions and 20% Directors
2000	Gross roll-up ARFs were introduced and options extended to 5% Directors and members of OPSs with AVCs (AVCs made on a DC basis)
2002	PRSAs introduced which included ARF options
2003	Investment restrictions introduced- similar to an SSAP
2007	Imputed distributions introduced on phased basis initially
2010	Imputed distribution rate increased from 3%p.a. to 5%p.a.
2011	ARF options extended to all DC schemes and specified income rules changed
2012	Tax rate increased from 20% to 30% on proceeds passing on death to certain people Imputed distribution rate increased to 6% p.a. where aggregate value of ARFs/vested PRSAs exceeds €2 million

This manual only deals with ARFs/AMRFs effected after 6/4/2000 (gross roll-up ARFs). If you have a query in relation to a net ARF, please contact our ARF Team or our Life and Pensions Technical Support Team.

With ARF options the individual can take up to 25% of the fund as a retirement lump sum and:

- invest in an Approved Retirement Fund (ARF)*
- withdraw the balance subject to tax (taxable cash).

The options above are subject to satisfying a "specified income" test if the individual is under age 75.

* An ARF can be used to purchase a pension at any stage.

11.4.1 Specified Income Test (ARFs set up on or after 6 February 2011)

Prior to being able to set up an ARF or withdraw the balance of the fund less tax an individual must have pension income of at least 1.5 times the maximum annual rate of State Pension (contributory) payable per annum (€18,000 for 2012) known as "specified income". This requirement does not apply if the individual is aged 75 or over.

If the specified income test cannot be satisfied the individual must invest up to 10 times the maximum annual rate of State Pension (Contributory) payable (€119,800 for 2012) or the full value of the retirement fund if less, in the purchase of an annuity or in an Approved Minimum Retirement Fund (AMRF). Alternatively the individual could buy a pension to bring their income up to €18,000 per annum.

If the individual has taken retirement benefits before 6 February 2011 and at that time had pension income of at least €12,700 p.a. or used €63,500 to invest in an AMRF and/or annuity, then the requirements above do not have to be satisfied.

Example:
A self-employed man already has an AMRF for €63,500 (taken out prior to 6 February 2011) and is now about to draw benefit from another PRSA. If he draws down more retirement benefits he does not need to invest any more in an AMRF or an annuity.

It is possible to satisfy the AMRF requirement by splitting the €119,800 between an AMRF and the purchase of an annuity e.g. €60,000 invested in an AMRF and the balance of €59,800 used to buy an annuity.

Specified income can include Social Protection pension, Social Protection widow's/widower's pension, an overseas pension (except USA state pensions), any pension from an occupational pension scheme or any annuity bought with the proceeds of a pension fund. Pensions paid directly to a spouse e.g. State pension, or pensions/allowances received on behalf of a spouse/dependant, may not be taken into account. Specified income does not include rental income or the Farm Early Retirement pension.

Example:
An individual has pension income of €16,000 p.a. (less than the minimum required of €18,000 p.a. to satisfy the specified income test). He/she can buy an annuity of €2,000 p.a. to bring income up to €18,000 p.a. or alternatively invest €119,800 or the fund value, if less, in an AMRF. Based on an annuity rate of 5.4% - €2,000 annuity income would cost €37,000 approx.

The specified income test only has to be satisfied once by any individual so if an individual already has €119,800 in an AMRF there is no need to satisfy the specified income test in respect of any other pension policies. However, if an individual already has an AMRF for less than €119,800 and is now about to draw retirement benefits from another pension then if the specified income requirement is not met the shortfall in the AMRF/annuity must be met before monies can be invested in an ARF or taken as taxable cash.

11.4.2 Transitional Arrangement for AMRFs

Prior to 6 February 2011 the specified income limit was only €12,700 and the amount required to be set aside for an AMRF/annuity was €63,500.

An AMRF set up prior to the passing of the Finance Act 2011 (6 February 2011) can become an ARF when the client meets the lower minimum income requirement of €12,700 p.a. This provision is only in place for 3 years from the passing of the Finance Act and after the 3 year period (6 February 2014) the client must have a minimum pension income of 1.5 times the annual rate of State Pension (Contributors) payable at that time.

An individual can use AMRF funds to purchase a compulsory purchase annuity at any time. So an individual who has an AMRF prior to the passing of the Finance Act 2011 and who is now in receipt of the State pension can use part of their AMRF to allow them purchase that amount of pension to satisfy the €12,700 specified income requirement.

AMRF holders should be advised to let their Qualifying Fund Manager know if their guaranteed income reaches €12,700 p.a. on or before 5 February 2014 (if their AMRF was set up before 6 February 2011), or 1.5 times the maximum annual rate of the State Pension (currently €18,000p.a.) after that date, so that their AMRF can be converted to an ARF.

11.5 Approved Retirement Fund (ARF)

An ARF is a post retirement investment fund for monies arising from certain types of pension arrangements. It is beneficially owned by the individual but is managed by a Qualifying Fund Manager (QFM).

It is possible to transfer all or some monies in an ARF to another ARF. An individual can have more than one ARF.

An ARF can buy a compulsory purchase annuity for the ARF holder at any time. Any death benefit payable under the annuity (remaining guaranteed payments) is held as an asset of the ARF and is taxed on death as a distribution from the ARF (see paragraph 11.12)

11.6 Taxable Cash

Alternatively the balance of the pension fund after taking the retirement lump sum (of up to 25%) can be withdrawn in cash. It will be treated as part of the individual's income for the year of assessment in which the payment is made and will be liable to income tax and USC as appropriate.

11.7 Approved Minimum Retirement Fund (AMRF)

Similar to an ARF an AMRF is an investment fund, which is beneficially owned by the individual but is managed by a Qualifying Fund Manager (QFM). It has the following features.

- The maximum capital, which can be invested in an AMRF, is 10 times the maximum annual rate of State Pension (Contributory) payable which is €119,800 (for 2012). Investment growth can increase the fund value above this amount, which is permitted.
- An individual cannot take a withdrawal from AMRF capital. Only the investment growth can be accessed at any time and this will be subject to income tax, USC and PRSI as appropriate.
- The full amount of an AMRF can be transferred to another QFM at any time
- An AMRF can be converted to an annuity at any time.
- An individual can only ever have one AMRF.
- An AMRF becomes an ARF on the earliest of:
  - the individual reaching age 75, or
  - the individual having the minimum specified income, or
  - the death of the individual.
- Imputed distributions do not apply to an AMRF but a distribution from an AMRF (investment growth only) can count towards the minimum 5%/6% ARF/vested PRSA imputed distribution.
- An AMRF cannot be used as security for a loan.

11.8 Access to ARF Retirement Options

ARF options can be accessed by any of the following.

- a PP contributor
- a PRSA contributor
- A member of a DC scheme
- A retirement bond holder (in certain circumstances)
- A member of a DB Scheme with an AVC and/or an AVCPRSA (in respect of their AVC funds made on a DC basis only)
- A "5% Director" of a DB scheme

- A former spouse/civil partner/cohabitant of the above in receipt of a pension adjustment order
- A spouse/civil partner of an ARF holder on the death of the ARF holder.

ARF options apply at the time of retirement only and do not apply to death in service benefits.

11.8.1 PP Contributor

A PP contributor can exercise ARF options when drawing retirement benefits at normal retirement or ill health early retirement. Normal retirement is between the ages of 60 and 75. Certain occupations which have approved early retirement ages for the purpose of PP/PRSA funding can also have ARF options (see Appendix 1).

PP/PRSA contributor with more than one policy may exercise a different option in respect of each contract and at different times.

11.8.2 PRSA Contributor

A PRSA contributor can access ARF options both in respect of their own contributions and also any employer contributions made to their PRSA, when taking retirement benefits. ARF options for PRSA contributors are available when benefits are taken between ages 60 and 75, on early retirement from age 50 (if an employee) and on ill health early retirement.

Vested PRSA

A vested PRSA is the term used to describe the PRSA once the individual takes their retirement lump sum and leaves the balance invested in the PRSA. If an individual opts to leave the balance of their fund in a vested PRSA they must meet the specified income requirement every time they look to make a withdrawal from the vested PRSA. As the specified income amount is linked to the State Pension (Contributory) this amount may change every year.

If the individual does not have the specified pension income amount then they must leave aside an amount equal to the AMRF requirement (currently €119,800) before making any withdrawals from the PRSA. As the AMRF amount is linked to the State Pension (Contributory) this amount may also change every year.

With both a PRSA and a vested PRSA, the fund must be drawn down by age 75 at the latest.

Imputed distributions apply to vested PRSAs – see paragraph 11.11 below for details.

11.8.3 A Member of a DC Scheme

With effect from 6 February 2011, all members of a DC scheme have access to ARF options on retirement in respect of both their main scheme and AVC/AVCPRSA funds where the scheme rules have been amended to provide for same. A member of a DC scheme can therefore choose between the traditional options (lump sum of n/80ths and annuity) and ARF options (lump sum of 25% and ARF/taxable cash). In many cases, scheme members may find that the traditional route will give the higher lump sum amount, depending on their salary and length of service with the employer.

Members (including 5% Directors) who take a retirement lump sum on the traditional basis (n/80ths) can still use any AVC fund (made on a DC basis) to invest in an ARF or take as taxable cash (subject to normal restrictions).

11.8.4 Retirement Bond Holder

The ARF option for a retirement bond is available in respect of transfer values from DC schemes where the scheme rules have been amended to provide for the option before the date of transfer and :

- the member was a 5% Director at date of leaving, or
- the transfer takes place on or after 6 February 2011.

A transfer to a retirement bond from a DC scheme before 6 February 2011 (other than in the case of a 5% plus proprietary director) does not have ARF options.

Where the transfer value into a retirement bond came from a DB scheme, ARF options will only be allowed if the individual was a 5% Director at the date of leaving service (see 11.8.6 below).

AVCs (paid on a DC basis) have ARF options under all circumstances.

11.8.5 A Member of a DB Scheme with AVCs

An employee who makes AVCs (on a DC basis) to their DB pension scheme can exercise ARF options whether part of a group AVC scheme, an individual AVC scheme, a group AVCPRSA or an individual AVCPRSA. The ARF option is only available to the AVC part of the eventual retirement fund. The retirement lump sum, which may be taken by an employee of a DB scheme with an AVC/AVCPRSA, is still governed by the n/80ths rules. An employee of a DB scheme with AVCs cannot therefore access the 25% retirement lump sum option. ARF options in relation to an AVC/AVCPRSA are exercisable only at the same time as the main scheme benefits are taken.

11.8.6 5% Director of a DB scheme

When drawing retirement benefits a 5% Director of a DB scheme can decide between the ARF options and the traditional scheme benefits. Scheme rules must allow or be amended to allow for ARF options.

A 5% Director of a DB scheme who takes a retirement lump sum on the traditional basis (n/80ths) can still use any AVC fund (made on a DC basis) to invest in an ARF or take as taxable cash (subject to normal restrictions).

A 5% Director of a DB scheme continues to have ARF options after transferring their benefits to a retirement bond, on leaving service/leaving the scheme.

The definition of a 5% Director was defined in legislation when ARFs were introduced and is "a director" who, either alone or together with his or her spouse/civil partner and minor children is or was, at any time within 3 years of the date of:

- the specified normal retirement date
- the earlier retirement date, where applicable
- leaving service
- 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,

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/civil partner had 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.

11.8.7 A Former Spouse/Civil Partner/Cohabitant

A former spouse/civil partner/cohabitant of any of the above in receipt of a pensions adjustment order can also avail of ARF options. In the case of a 5% Director of a DB scheme the director must have held the 5% shareholding at the date of the Decree of Judicial Separation or the Decree of Divorce or the Dissolution of Civil Partnership as the case may be.

11.8.8 A Spouse/Civil Partner of a Deceased ARF Holder

On the death of an ARF holder their surviving spouse/civil partner can elect to transfer the proceeds of the deceased's ARF into an ARF in their own name without the payment of any tax. Subsequent withdrawals by the spouse would be subject to income tax, USC and PRSI as normal. The annual imputed distribution as described in paragraph 11.11 below will also apply to the spouse's/civil partner's ARF on an ongoing basis.

11.9 Distributions from an ARF/AMRF/Vested PRSA

All distributions are subject to PAYE. The Qualifying Fund Manager deducts income tax, PRSI and USC where appropriate before the income is paid out to the individual. Unless the Qualifying Fund Manager is in possession of an individual's certificate of tax credits and standard rate cut-off point, tax at the higher rate of income tax must be deducted by the QFM and the individual can make an application to Revenue for any over deducted tax at the end of the tax year.

Where an individual chooses to transfer their ARF/AMRF to another Qualifying Fund Manager the value of the ARF/AMRF is paid gross to the other Qualifying Fund Manager.

11.10 Transactions Treated as a Distribution

Where ARF/AMRF assets are used for the purpose of "certain transactions" listed below, the use of those assets will be treated as a distribution and therefore subject to tax.

In addition where ARF/AMRF assets are treated as a distribution, they will no longer be regarded as assets of the ARF/AMRF.

These "certain transactions" include:

- a loan made to the beneficial owner or connected person
- acquisition of property from the beneficial owner or connected person
- sale of ARF assets to the beneficial owner or connected person
- acquisition of residential or holiday property for use by the beneficial owner or connected person
- acquisition of property which is to be used in connection with any business of the beneficial owner, or of a connected person
- acquisition of shares or interest in a close company in which the beneficial owner, or connected person, is a participator
- use of ARF assets as security for a loan.

11.11 Imputed Distributions from an ARF/Vested PRSA

Since 2007 it is a Revenue requirement that ARF holders (age 61 or over) make assumed or notional distributions from their ARF and pay tax on them as if they had made actual withdrawals.

The Qualifying Fund Manager managing the ARF is obliged to operate PAYE on this imputed or assumed/notional distribution, and deduct from the ARF the resulting tax due and pay it over to Revenue. Rather than leave the balance of the imputed distribution in the ARF/vested PRSA where it would be subject to further tax when eventually withdrawn, New Ireland's approach is to pay out the imputed distribution amount, after deducting tax, to the ARF holder on an annual basis (unless requested otherwise).

With a vested PRSA, if the individual has not satisfied the specified income requirement or the AMRF/annuity requirement, it is only any amount above the AMRF requirement, which remains in the PRSA, which is liable to imputed distribution. However if the vested PRSA holder subsequently attains the specified income requirement then all of the vested PRSA will be liable for the annual imputed distribution. Therefore the vested PRSA holder should immediately advise New Ireland if/when they satisfy the specified income requirement as failure to do so could give rise to significant tax consequences.

Imputed distributions do not apply in the case of an AMRF. However it is important to note that an AMRF ceases to be an AMRF when the policyholder reaches age 75 or attains the specified income, whichever occurs first. Therefore the AMRF policyholder should immediately advise New Ireland if/when they satisfy the specified income requirement, as failure to do so could give rise to significant tax consequences.

The imputed distribution rate is currently 5% (2012) where the aggregate value of ARFs and vested PRSAs at 30 November each year is €2M or less. If the aggregate value of ARFs and vested PRSAs is greater than €2M then the imputed distribution rate is 6% on the full value. Actual distributions which the individual has made from their ARF/vested PRSA and any AMRF (growth only) during the year will be taken into account and will be deducted from the imputed distribution.

Imputed distributions apply where the ARF/vested PRSA holder is aged 61 or over at 31 December. Distributions taken from an AMRF (growth only) can count when satisfying the imputed distribution requirement. When an AMRF becomes an ARF at age 75 or when the QFM/vested PRSA holder has been notified that the specified income requirement has been satisfied, whichever is the earlier, this ARF immediately becomes liable for imputed distributions.

Where a client has more than one ARF and/or vested PRSA totalling in excess of €2M with different QFMs and/or PRSA providers, then they must appoint one of the QFMs or PRSA providers as a "nominee". The nominee must ensure that the correct amount of tax due on deemed distributions is remitted to Revenue.

If the total value of a client's ARFs/vested PRSAs is less than €2M then they may if they wish appoint a nominee but are not obliged to do so.

New Ireland will not act as a "nominee QFM" but will provide a "nominee QFM" with details of a client's ARF held with us.

11.12 ARF/Vested PRSA Distributions on Death

Below is a summary of the taxation treatment of an ARF/vested PRSA on death.

Taxation on death of original ARF / vested PRSA holder:

Proceeds of ARF/ vested PRSA Inherited by:	Rate of Income Tax Deducted by QFM/PRSA Provider	Capital Acquisitions Tax (CAT)
Spouse or civil partner	If encashed: Treated as income of the deceased in the year of death and subject to tax under the PAYE system at the deceased's marginal rate of income tax plus PRSI and USC as appropriate. If transferred to an ARF in name of spouse/civil partner of deceased: Transfer is exempt from income tax. Subsequent withdrawals by spouse/civil partner will be subject to tax under PAYE system at their marginal rate of income tax plus PRSI and USC as appropriate.	None (exemption applies)
Child (under 21) of deceased, or of civil partner of the deceased	None (exemption applies)	May be liable, normal rules and thresholds apply
Child (21 or over) of deceased, or of civil partner of the deceased	Taxed at 30%*	None (exemption applies)
Any other individual	Treated as income of the deceased in the year of death and subject to tax under the PAYE system at the deceased's marginal rate of income tax, PRSI and USC as appropriate.	May be liable, normal rules and thresholds apply

* The 30% rate of income tax is applied under Schedule D Case IV. No reliefs, deductions or tax credits can be set against this tax, and the income tax exemption limits and marginal relief do not apply.

Taxation on death of second ARF holder:

Proceeds of ARF Inherited by:	Rate of Income Tax Deducted by QFM/PRSA Provider	Capital Acquisitions Tax (CAT)
Child (under 21) of deceased, or of civil partner of the deceased	None (exemption applies)	May be liable, normal rules and thresholds apply
Child (21 or over) of deceased, or of civil partner of the deceased	Taxed at 30%*	None (exemption applies)
Any other individual	Taxed at 30%*	May be liable, normal rules and thresholds apply

* The 30% rate of income tax is applied under Schedule D Case IV. No reliefs, deductions or tax credits can be set against this tax, and the income tax exemption limits and marginal relief do not apply.

11.13 Trivial Benefits

If retirement benefits are below certain amounts, they can alternatively be paid out as trivial benefits. There are two options when it comes to establishing if pension scheme benefits are considered trivial or not.

1) If a member's total pension entitlements from the same employment (before any lump sum is taken) do not exceed €330 p.a. then this benefit is considered to be trivial and can be fully commuted. In a DC scheme the annuity rate used must be based on a single life annuity with no escalation in order to determine whether or not the fund is within the €330 p.a. trivial limit. Where a trivial pension is a deferred pension, it cannot be commuted until it becomes payable unless the scheme is winding up.

   The rules of the particular scheme will determine what amount can be paid out as a retirement lump sum amount and the balance will then be subject to tax at 10%. As the benefit is trivial it is quite likely that there would be little or no tax payable if the scheme rules allowed for Revenue's maximum retirement lump sum amount to be payable.

   Unlike commutation on grounds of serious ill health, the retirement lump sum amount cannot be calculated on the basis of including potential service to NRA, only actual completed service can be taken into account in the calculation.

2) In 2004 Revenue introduced alternative rules regarding the calculation of trivial benefits. A once off pension can be paid if, after taking the maximum retirement lump sum the balance left in the fund is less than €20,000. Benefits from all sources must be taken into account when determining if the fund value after retirement lump sum is less than €20,000.

   The fund value is payable as a once off pension and is therefore subject to PAYE as would apply to a normal pension payment.

Chapter 12

Family Law & Pension Adjustment Orders

12.1 Introduction

This chapter on Family Law and Pension Adjustment Orders is not intended as a definitive statement of the law. Appropriate independent legal advice must be obtained when dealing with this area as the issues involved are quite complex.

Pension Adjustment Orders (PAOs) were first introduced by the Family Law Act 1995 and the Family Law (Divorce) Act 1996. More recently, The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (2010 Act) provided for a PAO to be granted in the case of same sex couples or opposite sex couples separating under certain circumstances. The 2010 Act commenced on 1 January 2011 and it extends marriage-like benefits to same sex couples in registered civil partnerships in the areas of property, Social protection, succession, maintenance, pensions and tax. It also establishes a financial redress scheme for opposite sex and same sex cohabiting couples who meet certain conditions.

12.2 What is a Pension Adjustment Order (PAO)?

Essentially, a PAO transfers the legal ownership of certain designated pension and/or death benefit rights to the non member spouse, registered civil partner, qualified cohabitant or other dependant (e.g. a child). The Court orders the reallocation of a portion of the accrued benefits to the husband, wife, civil partner, qualified cohabitant or other dependant of the person with the entitlement.

A PAO is legally enforceable and overrides pension scheme rules, trustee discretion and legislative restrictions in relation to pensions (e.g. Pensions Act 1990). A trustee of a scheme is not liable for any loss or damage caused by his/her non-compliance with the rules of the scheme or with the Pensions Act 1990 if the non-compliance was caused by their complying with a direction of the Court under the Family Law legislation.

It is only possible to divide a member's pension and death benefit by means of securing a Pension Adjustment Order.

12.3 When Can a PAO be Sought?

A PAO can only be applied for by a spouse or in some cases a person acting on behalf of the dependent member of a family under:

- the Family Law Act 1995 in the context of a judicial separation obtained under that Act or
- the Family Law (Divorce) Act 1996 in the context of divorce.

Under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (2010 Act) a PAO can be sought by:

- a civil partner following a decree of dissolution of a registered civil partnership
- a qualified cohabitant at the end of the relationship whether this occurs by way of break up or death.

Under the 2010 Act a PAO can only be made in favour of a civil partner or qualified cohabitant. There is no provision for the making of an order in respect of a dependent member of the family.

12.4 Obtaining Information on Pension Benefits

When proceedings have been instituted for any Order under the 1995 Act, 1996 Act or the 2010 Act each member is required to furnish particulars of his/her property and income to the other spouse/civil partner/cohabitant (or to a person representing dependent children of the spouse) and this includes pension scheme benefits.

In addition to the information which must be made available to a non member spouse on request e.g. member booklet, Annual Report, the court may direct that the trustees of the member's pension scheme provide more specific information in relation to pension benefits. This can be initiated by the Court itself but can only be done at the request of either spouse/civil partner/cohabitant (or a person representing a dependent child of the spouses). Such information must be supplied within the period specified by the Court. Ideally the trustees should, if possible, provide the information voluntarily to avoid putting the parties to the expense of obtaining a Court order but this can only be done with the consent of the scheme member.

12.5 Considerations for the Court When Granting a PAO

The Court's primary objective in considering whether or not to grant such orders is to ensure that proper provision is made for the spouse/civil partner/cohabitant and any dependent members of the marriage. The provisions of the 1995, 1996 and 2010 Acts clearly advocate that the preferred approach to be taken by the Court is to adjust the other assets before interfering with the pension benefits of either party e.g. the family home, cash, shares, the car, etc.

However, in many cases, the pension can be the second most valuable asset after the family home. For example, a married couple's family home may have a value, net of mortgage, of €200,000 and a spouse who has been contributing to or been a member of a pension scheme for many years may have an accumulated fund value of €100,000.

In situations where a couple are separating after a lengthy period during which time pension provision applied for only one of them, it may not be possible to reach an equitable settlement between the parties without the Court making a PAO.

Furthermore even if an equitable settlement has been reached the member spouse may still proceed to obtain a nominal value PAO (see paragraph 12.13 below) with a non variation clause as a defensive measure against a possible future claim on their pension.

As stated previously, Family Law and PAOs can be quite complex. Under no circumstances should advice be provided. Any impacted party must be referred to their own legal advisors.

12.6 Pension Arrangements Affected by a PAO

PAOs impact significantly on the "trustees" of "pension schemes" as the adjustment of pension assets will override the governing provisions of "pension schemes".

For the purposes of the Acts, "pension scheme" is defined to include occupational pension schemes, retirement annuity contracts (personal pensions) under Section 784 of the Taxes Consolidation Act 1997, personal retirement savings accounts (PRSAs), approved buy-out bonds and annuities in payment. For the purposes of the Acts a life office is deemed to be the "trustee" of the buy-out bond and the personal pension as they are administered by the life office and in the case of a PRSA it is the PRSA Provider.

Even though not specifically mentioned in the Act, the courts have also awarded PAOs in respect of ARFs and AMRFs (although this was on consent between thewith consent or both parties).

The Courts in considering an application for a PAO will have regard to many factors including ages, duration of marriage/relationship, earning capacity of each etc.

12.7 Types of PAO

A PAO may be made in relation to:

- a retirement benefit, that is, pension benefits available on retirement, and/or
- a contingent benefit, that is, benefits payable on death in service.

If both types of benefits are sought then separate orders must be made.

12.8 A Retirement Benefits Order

Retirement Benefits refer to all benefits payable to the member of the pension scheme and includes retirement pensions, retirement lump sums or gratuities, benefits payable following the member's death in retirement and periodic increases on pensions in payment (the fund value in the case of a DC scheme). Where the Court decides to make a PAO in relation to Retirement Benefits, part of the member's benefit is designated for payment to the other spouse/registered civil partner/cohabitant,or dependent child of the member spouse. This part is called the Designated Benefit.

A PAO in relation to retirement benefits can be sought at any time on or after the relevant decree provided that the non member seeking the order has not remarried or entered into a new registered civil partnership or in the case of a person representing a dependent child – that the child is still a dependant.

In deciding to make a PAO for retirement benefits, the legislation provides that the PAOs must contain the following particulars.

- The relevant period, that is, the period over which retirement benefits were earned which must end no later than the date of the granting of the relevant decree, AND
- The relevant percentage, that is, the proportion of the retirement benefits earned during the relevant period which is to be allocated to the person specified in the Order.

Accordingly, the Order made by the Court must specify a relevant period over which the designated benefit is deemed to have accrued together with a relevant percentage of that benefit which is to be allocated to the non member.

12.9 Providing Benefits Under a Retirement Benefits Order

The Court determines what percentage of the pension is to be allocated to the non member. The trustees will then calculate the designated benefit in accordance with the legislation. In the case of a personal pension/PRSA the life office/PRSA provider is deemed to be the trustee. The legislation depends on whether the retirement benefits are determined on a defined benefit or a defined contribution basis.

Example:
Joe joined his employer's DC pension scheme in 1988 and got married on 1 January 1990. On 1 January 2000 a decree of divorce is granted and a PAO for retirement benefits is made in favour of his spouse Mary which specifies:

- the relevant period is from 1 January 1990 to 1 January 2000 (10 years)
- the relevant percentage is 50%

The value of the contributions paid into the scheme during the relevant period is €50,000.

When Joe retired on 1 January 2012 let's assume the value of these contributions has increased, due to investment returns to €80,000.

The value of the non member spouse's designated benefit at retirement is:

- €80,000 x 50% = €40,000.

The division of pension assets is particularly complex and it is recommended that independent expert advice be obtained before applying for such an order.

It is further recommended that following the granting of a PAO a non member should obtain expert, independent and professional advice as to whether they should leave their share of the benefit designated by the PAO as part of the member's fund or apply to have the designated benefit split from the member's benefit and as to whether it would be more to the non member's advantage to have this amount invested in an alternative pension scheme.

Once the PAO has been made, the trustees of the pension scheme in question should notify the person(s) in whose favour the Order is made of the amount and nature of retirement benefits and/or contingent benefits which have been designated under the order(s). Furthermore, the trustees should advise the non member of the options available regarding any transfer amount that may be available in lieu of retaining the designated benefit and provide such information as required by the Disclosure Regulations under the Pensions Act. In this regard it should be noted that specific information must be provided within a specific time limit.

Once the pension has been divided, part of the pension is "earmarked" for the non member within the existing pension scheme, or alternatively it can be "split" away from the existing scheme and transferred elsewhere.

12.9.1 Earmarking

Earmarking means that the beneficiary of the PAO e.g. former spouse, former civil partner takes no action and the designated benefit commences at the same time as retirement benefits start to be paid to the member. As a result, any decision taken by the member to retire earlier or later than their NRA will affect the payment of the designated benefit. In addition, the non member will have no control over how their pension assets are invested and if the trustees allow member fund choice, the future value of the designated benefit will depend on fund(s) selected by the member.

12.9.2 Pension Splitting

Pension splitting means that a percentage of a "retirement benefit" which has been earmarked for the non member is valued and split away from the member's benefits and is therefore no longer affected by decisions taken by the member. The option to split benefits is not available if the order is made in favour of a dependent child.

The transfer value is calculated as if the member was leaving service on the date of the transfer and the proportionate value is then allocated to the non member. Once valued the benefit is then transferred to either:

- a separate pension within the same pension scheme
- another pension scheme of which the former spouse/civil partner/cohabitant is a member
- a Personal Retirement Bond (PRB)or PRSA in the name of the former spouse/civil partner/ cohabitant.

Normal transfer rules apply e.g. not possible to transfer PAO benefit arising from a Personal Pension to an OPS. However, the standard restrictions for transfers from OPSs to PRSAs do not apply (i.e. 15 years pension service restriction and requirements for Certificate of Benefit Comparison and Reason Why Letter if the value of the transfer is €10,000 or more).

The non member spouse/civil partner/cohabitant can apply at any time after the PAO has been granted to have the retirement benefit split away provided benefits have not commenced.

12.9.3 Transfer Out Without Non Member's Consent

The trustees of a DC scheme can compulsorily transfer the non member's designated benefit to another scheme if:

- the scheme is a defined contribution scheme, OR
- the member ceases to be a member of the scheme (otherwise than on death).

The following conditions apply.

- The trustees must be satisfied that the charges, fees and costs are reasonable.
- At least 30 days written notice must have been received by the non member before the transfer is made.
- There must be no outstanding request from the non member for a transfer payment to be made to another scheme, personal retirement bond, or PRSA.
- The trustees should advise the non member and the clerk of the court of the amount transferred and provide details of the insurance company/PRSA provider where the transfer value was placed.

12.10 Contingent Benefits

An order in respect of contingent benefits refers to benefits payable under the Rules of the pension scheme in the event of the death of the member during the period of employment to which the scheme relates. Benefits include lump sum benefits (including value of fund) and pensions payable to dependants. A PAO with regard to contingent benefits ceases once the member leaves the employment to which the scheme on which the order has been made relates.

An order for a contingent benefit will specify if all or a percentage of the member's benefit is payable on the member's death in service to the non member or for the benefit of a dependent child.

An application for an order in relation to contingent benefits must be made within 12 months of the granting of the relevant decree provided that the non member seeking the order has not remarried or entered into a new registered civil partnership. An order for a contingent benefit made for the benefit of a dependent child will only apply so long as the child remains a dependent member of the family.

Example:
Ann is self employed and has a Section 785 policy for €100,000. On 1 January 2000 a decree of divorce is granted and a PAO for contingent benefits is made in favour of her previous husband John which specifies that he is to get 50% of the contingent benefit on her death.

Ann dies in 2012 while the PAO is still in force. John has not remarried or entered into a registered civil partnership.

The life company must pay €50,000 to John and €50,000 to Anne's estate.

A PAO in relation to contingent benefits overrides the scheme rules and any trustee's discretion

12.11 Changes in Benefits

Any changes to scheme benefits which take effect before the date of the relevant decree must be taken into account when calculating the benefit to be designated to the non member. Any changes which take effect after the date of the decree are not taken into account when calculating the non member's benefit. However, in a DC scheme the PAO benefits will continue to participate in fund performance and any death in service benefit will continue to be linked to salary, where relevant.

12.12 Can a PAO be Varied?

A pension adjustment order made in relation to retirement benefits may, on application to the Court, be varied or discharged by a subsequent order unless, in making the order, the Court rules that it may not be varied.

There is no power to vary an order made in relation to contingent benefits.

12.13 Nominal Value PAO

Because legislation does not allow for a PAO to be made for no value, a practice has evolved of a nominal PAO being made where the parties involved in the break up agree not to seek a share of their respective pension scheme benefits. The PAO has no commercial value and generally consists of a relevant period of one day and a relevant percentage of 0.001% and state it is fixed and not subject to variation.

The inclusion of a statement that the order cannot be varied is essential if the intention is that the non member is not to access the member's pension scheme benefits.

It is therefore important that the relevant parties obtain appropriate independent legal advice when dealing with PAOs.

12.14 Cessation of a PAO

A PAO will cease to have effect, for example, in the event of:

- the remarriage or entering into a registered civil partnership by the non member spouse (for contingent benefits but not retirement benefits)
- the non member partner entering into a new registered civil partnership or marriage or dying (for both contingent benefits and retirement benefits)
- the ending of the dependency* in the case of a dependent child or their death

* The definition of a "dependent child" may be defined as a child who:

- is under the age of 18
- is under the age of 23 and receiving full time education
- has a mental or physical disability, regardless of age.

12.15 Qualified Cohabitants

The 2010 Act established a financial redress scheme for same sex and opposite sex cohabiting couples who meet certain conditions ("qualified cohabitants") in the event of breakdown of the cohabiting relationship.

A "qualified cohabitant" is an adult who was in an intimate and committed relationship with another (whether of the same or opposite sex), and who immediately before the time that the relationship ended, was living with the other adult as a couple for a period of two years or more where they are the parents of one or more dependent children and for a period of five years or more in any other case.

Qualified cohabitants do not enjoy the same tax treatment as married spouses or civil partners. None of the concessions available to married spouses or registered civil partners (e.g. joint assessment, exemption from Inheritance Tax) apply to qualifying cohabitants. However a tax concession exists in the area of maintenance payments on the break up of a qualifying cohabitant relationship.

Before the 2010 Act was signed into law there was no mechanism for one of a cohabiting couple to seek financial support/maintenance for themselves from the other nor was there a mechanism for them to interfere with each other's pension benefits in the context of a break up of the relationship.

12.15.1 Qualified Cohabitants and PAOs

One of the provisions of the Act was that either qualified cohabitant can apply for a pension adjustment order in respect of retirement benefits and contingent benefits at the end of the relationship. There is no provision for the making of an order in favour of a dependent child of the cohabitants.

It is, however, possible for qualified cohabitants to contract out of their right to apply for a pension adjustment order or contingent benefit order by entering into a Cohabitation Agreement. Under the 2010 Act, provision is made for the recognition of Cohabitation Agreements which can deal with such issues as property, maintenance and other financial aspects of a relationship ending or one party dying.

It is therefore important that the relevant parties obtain appropriate independent legal advice when dealing with PAOs.

12.16 Revenue Maximum Benefits

The designated benefit payable under a PAO at retirement is still regarded as part of the member's retirement benefits when establishing Revenue maximum benefits under a pension scheme. Therefore the designated benefit is regarded as a retained benefit even if transferred to another pension arrangement for the non member.

The designated benefit in the hands of the non member is not considered to be a retained benefit and so the non member beneficiary of a PAO can receive their own Revenue maximum benefits plus the designated benefit.

Any death in service benefit payable under a PAO is also considered to be the member's death in service benefit and will be taken into account for the purpose of Revenue maximum benefits on death in service.

Chapter 13

Disability Cover

13.1 Introduction

Long term sickness and disability can interrupt an individual's ability to earn an income, either temporarily or permanently, depending on the nature of the sickness or disability. Disability Cover is paid in the event of an individual becoming unable to work due to illness or injury, usually after an initial period (called the deferred period).

Disability Cover, also known as Income Protection, Income Continuance or Permanent Health Insurance (PHI), is often packaged with an OPS. Disability Cover is not part of an "approved pension arrangement" but is in fact a separate scheme. The employer is usually the Grantee and it is governed by a policy. There are no trustees.

The benefit payable from a Disability Cover policy must be paid out as income and not as a lump sum. Disability Cover benefit is designed to replace income lost as a result of a "disability" (see 13.4). Consequently the only income that Disability Cover can replace is earned income.

13.2 Approved Disability Insurance (Previously Referred to as PHI)

A self employed individual or an employee can normally effect Disability Insurance under Section 125 of the Taxes Consolidation Act 1997 and claim full income tax relief on premiums paid up to a limit of 10% of total income for that year. Since April 2001 an employer can make the deduction for Disability Insurance premium under the net pay arrangement and therefore allow the employee to get income tax relief upfront.

Any benefit received from an approved individual Disability Insurance policy is regarded as a continuation of earnings and is taxed by the Insurer under the PAYE system. As the payment is deemed to be Schedule E earnings, it is regarded as relevant earnings for the purpose of PP/PRSA contributions.

These products are generally available in the market as part of an insurer's protection suite.

The rest of this chapter will deal with the provisions of an employer sponsored Disability Cover scheme.

13.3 Employer Sponsored Disability Cover Scheme

Any employer may agree to pay employees their income for a period, while they are out of work due to a disability which usually involves the employee returning their Social Protection Illness Benefit to the employer. At the end of this period the employer may wish to continue with some level of income. The employer may decide to insure this risk by effecting a Disability Cover scheme with a life assurance company. In this scenario the policy is issued in the name of the employer. The income benefit is payable until the employee either recovers, leaves service, retires, reaches the expiry date under the policy or dies.

The premium incurred by the employer should be treated as a trading expense for corporation tax purposes.

The insurer pays the benefit to the employer tax free and the employer is taxed on it as if it was a trading receipt. In turn, the payment by the employer to the employee who is "disabled" is treated as a deductible expense like any other remuneration. The Disability Cover policy is effectively paying for the "sick pay".

Any amount paid out under the scheme to an employee, who is absent from work due to illness or an accident, is regarded as a continuation of earnings and is therefore subject to income tax, PRSI and the Universal Social Charge (USC).

13.4 What is Disability?

Disability generally means the member is totally incapable by reason of injury or illness from following his/her normal occupation and is not undertaking any other occupation for profit or reward.

13.5 Benefit Amount

The benefit paid out under a Disability Cover policy is intended to replace income. However, in view of the fact that an employee could be in receipt of Social Protection Illness Benefit and in order to ensure there is a financial incentive to return to work, the income benefit amount under the Disability Cover policy is restricted to a percentage of earnings.

Typically the maximum disability income payable is 75% of the insured's earnings from his/her occupation in the twelve months prior to the commencement of disability less once the annual State Illness Benefit. These limits are exclusive of any premium protection benefit, see 13.10 below.

13.6 Deferred Period:

The benefit only becomes payable where the insured is absent from work due to illness or accident for longer than a deferred period. The deferred period can usually be either 13, 26 or 52 weeks. The most common deferred period is 26 weeks. The shorter the deferred period the more expensive it is to insure.

13.7 Escalation

A Disability Cover benefit in payment can be an increasing amount. Normally it can increase up to a maximum of 5% p.a.

13.8 Cessation of Benefit

Disability Cover benefit will cease on the earliest date of recovery, withdrawal from service, retirement, reaching policy expiry date, or death.

13.9 Proportionate/Rehabilitation Benefit

Most Disability Cover schemes provide an option for an individual in receipt of a Disability Cover benefit to return to his previous job on reduced pay during a period of rehabilitation. If the member chooses this option the benefit amount payable is reduced on a proportionate basis to the reduction in the employee's earnings before disability to his current earnings after returning to work.

13.10 Premium Protection

Premium protection can also be referred to as waiver of premium (WOP).

An employer initiated scheme can also include an option for premium protection cover, which allows the employer to insure the pension contribution and any life cover premium as well. Generally AVCs are not insured and there is a cap on the amount of benefit payable under this option (e.g. 40% of member's salary).

13.11 Underwriting

Disability Cover premium rates are heavily influenced by the life assureds' health and occupation. Occupations are classed for underwriting purposes and the classes are based on a number of criteria including:

- degree of skill
- amount/type physical work
- degree of stress
- accident/health hazards
- job stability.

The following table gives a guideline to the occupation classes and loadings which would apply.

Class	Description	Example	Loading
Class 1	Low level of risk	Financial, legal, clerica	Normal rates
Class 2	Slight risk	Sales representative, shop assistant	Normal rates
Class 3	Moderate risk	Marine engineer, printer	+75%
Class 4	Appreciable risk	Factory operative (light manual work)	+150%

There are certain occupations that would not be acceptable for Disability Cover e.g. scaffolders.

13.12 Free Cover/Non Medical Limits

Free cover means that the insurer will accept eligible members for Disability Cover up to a certain limit (called the free cover limit or non medical limit) without the need for any medical information or evidence. This is granted at the discretion of the insurer, and is generally offered subject to certain conditions. It does not mean that the cover is 'free'. The usual charges will apply for the benefits insured.

Where there is a minimum of typically five members and they all work in a clearly defined group e.g. all in one employment category, free cover/non medical limits may apply. In order for the free cover/non medical limits to be granted, a member must be actively at work on the day the cover starts and possibly for some specified period before the cover starts.

The level of cover provided under the free cover/non medical limits is related to the number of members and the level of benefit to be provided.

13.13 Medical Underwriting

Where a member does not qualify for free cover/non medical limits or benefits are in excess of those limits, medical underwriting is required. A Private Medical Attendant's report (PMAR) is commonly requested from a proposer's GP. For higher levels of disability benefit or older lives, some clients may be asked to attend for a medical examination and/or additional blood tests or a resting/exercise ECG. A Supplementary Medical Conditions Questionnaire is available to the client for a number of common disorders such as asthma.

13.14 Exclusions

Disability Cover will not normally be paid if disability arises from any of the following causes:

- war and similar risk
- wilfully self inflicted injury or illness.

13.15 Costing

There are two ways of charging for employer sponsored Disability Cover, recurring single premium and unit rate.

13.15.1 Recurring Single Premium (RSP)

This is where the cost of the benefit under the scheme is calculated each year, based on age, gender and the levels of benefit for each member.

13.15.2 Unit Rate

Subject to a minimum number of members, typically 15, a unit rate charge can be calculated. The unit rate is calculated as the average rate per individual. Once calculated it is fixed for 2/3 years provided there is not a significant (25% or more) change in membership.

13.16 Continuation Option

A member who leaves the service of their employer without an immediate pension and ceases to be covered for an Disability Cover Benefit may have the option of effecting an individual Disability Insurance policy with the same insurer.

The Disability Insurance policy will be issued without evidence of health subject to certain conditions which may contain the following.

- The continuation option must be exercised within 30 days of leaving service.
- The deferred period is no shorter and the expiry date no later than those provided under the Disability Cover scheme.
- The benefit will be no greater than that provided under the Disability Cover scheme.
- If any part of the benefit in respect of the member was the subject of an adverse underwriting decision, similar terms will be imposed on the corresponding element of the individual policy.
- The premium rates, benefit limits and policy conditions will be based upon the terms available to members of the public at the date of issue of the individual policy.
- The member must be engaged in another full time occupation which is acceptable to the life assurance company for Disability Insurance.

Chapter 14

Basic Principles of Income Tax and Corporation Tax

14.1 Introduction

Pension planning and tax planning are inter-linked. In this chapter we are going to look at the basic principles of income tax and corporation tax. The legislation relating to income tax and corporation tax in the Republic of Ireland is contained in the Taxes Consolidation Act 1997 - as amended by the Finance Acts.

We will also briefly look at the Universal Social Charge (USC) which came into effect from 1 January 2011. (Refer to Chapter 15 for information on PRSI (Pay Related Social Insurance).)

14.2 Residence and Domicile

The extent of an individual's liability to income tax is determined by whether the person is for the tax year in question:

- resident in Ireland
- ordinarily resident in Ireland
- domiciled in Ireland.

14.2.1 Residence

An individual is deemed to be resident in the State for a tax year if:

- he/she spends 183 days or more in the State in that tax year, or
- he/she spends at least 280 days in the State, between that tax year and the preceding tax year. (An individual must be present in the State for at least 30 days in each of the two years).

For both of these tests, a 'day' is counted if the individual is present in Ireland at any time during the day. Prior to 1 January 2009, a day was only counted if the individual was present in Ireland at midnight.

If an individual is not treated as resident using the above test, he/she may elect to be resident if they are living or working here. The individual must satisfy Revenue that they will be resident here in the following tax year under one of the tests outlined above. Once made, an election cannot subsequently be cancelled.

14.2.2 Ordinary Residence

An individual is deemed to be ordinarily resident in Ireland for a tax year once he/she has been resident in the State for tax purposes for the three previous tax years. Once a person becomes "ordinarily resident", he/she will remain ordinarily resident until they have not been resident in Ireland for three consecutive tax years. Therefore a person can be non resident for a tax year, but still be ordinarily resident for that year.

14.2.3 Domicile

Domicile is a legal term and is not defined in the Tax Acts. Unlike the concept of residence, there are no specific tests to determine where a person is domiciled, but in general an individual is domiciled in the country he considers his natural home. It can broadly be interpreted as meaning residence in a particular country with the intention of residing permanently in that country.

Every individual receives a domicile of origin at birth, normally the domicile of the father, but where the individual's parents have not married, or his/her father is dead at the time of his/her birth, he/she will take the mother's domicile.

A domicile of origin can only be abandoned by acquiring a new domicile of choice. However it is very difficult to lose one's domicile of origin. There has to be clear evidence that the individual has demonstrated a positive intention of permanent residence in the new country and has abandoned the idea of ever returning to live in the "domicile of origin" country. An individual can only have one domicile at any one time.

An individual's residence, ordinary residence and domicile are very important in determining the extent of their income tax liability. The following chart provides a brief summary of the taxation liability:

Taxation Status	Irish Source Income	Foreign Income
Resident, ordinarily resident and domiciled	Liable	Liable
Not resident, but ordinarily resident and domiciled	Liable	Liable, but exempt from tax on income from a foreign trade, profession or employment (duties of which are not exercised in Ireland), and other foreign income that does not exceed €3,810 p.a.
Resident, not ordinarily resident and domiciled	Liable	Liable
Resident, ordinarily resident but not domiciled	Liable	Foreign employment to the extent it relates to Irish duties, irrespective of where it is paid is liable. Taxable if remitted*
Not resident, not ordinarily resident and not domiciled	Liable	Not Liable

* Remittances are sums of money brought into Ireland from another country outside of Ireland.

14.3 Classes of Income

Under the income tax system, income is divided into various classes and the tax is calculated based on the rules within that class. These rules also apply to the income of a company with a number of exceptions (please refer to the corporation tax section of this chapter). We will look at the rules governing the different classes of income, in particular the classes of income in respect of which an individual can effect a pension arrangement and obtain tax relief (Schedule D and E).

The classes of income are as follows:

- Schedule C
- Schedule D (divided into 5 cases)
  - Case I
  - Case II
  - Case III
  - Case IV
  - Case V
- Schedule E
- Schedule F

14.3.1 Schedule C

Assessments to income tax under this Schedule are made on persons entrusted with the payment in the State of public revenue dividends (e.g. dividends, interest and annuities payable out of public revenue). In general, this applies to banks and paying agents.

14.3.2 Schedule D

14.3.2.1 Case I and II

Income derived from a trade is assessable under Case I e.g. carpenter, shopkeeper. Income from a profession is assessed under Case II e.g. solicitor.

A PRSA/personal pension can be effected by an individual taxed under Schedule D, Case I or II. The individual can claim tax relief on the personal pension or PRSA contributions, against their 'net relevant earnings' – please see Chapter 9 for more details on 'net relevant earnings' and tax relief on personal pension/ PRSA contributions.

An individual must prepare an Income Statement (also referred to as 'accounts') and submit it with their tax return. However, the net profit/loss per the accounts must be adjusted to arrive at the profit/loss figure for income tax purposes, referred to as the 'tax adjusted profit/loss'. Income tax legislation disallows certain expenditure or proportions of expenditure, which may be allowed for accounting purposes. For an item of expenditure to be allowable it must be (a) revenue and not capital in nature; (b) incurred wholly and exclusively for the purposes of the trade and (c) not specifically disallowed in law.

The types of expenditure which are disallowed for tax purposes include:

- private expenditure (personal expenses)
- entertainment expenditure except in relation to staff
- capital expenditure
- motor expenses (restricted)
- depreciation (not allowed but relief may be claimed through capital allowances)

- interest on the late payment of tax
- loss on the sale of a fixed asset
- increase in general provisions.

The accounts of a trade/profession are normally prepared for a twelve month period. Any profits that arise in this 12 month accounting period are generally taxed in that tax year. However, in the case where a business has commenced or ceased, where there has been a change in the accounting period or where the accounting period is longer than 12 months, special rules apply.

Losses:
If an election is made, tax losses can be offset against other non-trading income (e.g. rental income) from the same tax year (before charges, personal reliefs or credits). This is known as a section 381 claim, and the election to use the loss in this way must be made within two years of the end of the year of assessment in which the loss arose. Furthermore, when a section 381 claim is made, the full loss must be used even if it means that the individual's personal tax credits are lost.

Alternatively, the loss can be carried forward and offset against trading profits of the same trade or profession only. This is known as a section 382 loss. The loss can be carried forward indefinitely, but must be used against the first available trading profits from the same trade or profession.

14.3.2.2 Case III

The income chargeable under this case can be broadly split into the following headings.

- Interest, annuities and other annual payments where Irish tax was not deducted at source. The main item that is taxable under this heading is a credit union dividend, as no tax is deducted at source.
- Income derived from a foreign source. Examples are income from a foreign trade or employment, the duties of which are not exercised in Ireland, rental income from foreign property and dividends received from a foreign company.
- Interest on Government Securities. This includes interest arising on stocks of semi state companies and interest on Government Gilts.
- All investment discounts.

Tax is assessed on the total Case III income arising in the year of assessment. The deductions allowable are limited but relief is granted for foreign tax withheld.

In the context of pension tax relief, interest, dividends and rental income are ignored. However, income from a foreign trade, profession or employment, which is liable to tax in Ireland, will enable the taxpayer to obtain tax relief on contributions towards a PRSA/pension.

14.3.2.3 Case IV

Case IV of Schedule D is a catchall provision in that any income or gains, which are not taxed under any other Schedule, are charged under this case. Examples of income included under this Schedule are as follows.

- Refunds of contributions from a pension scheme.
- 'Taxed' income, i.e. where the amount received has already suffered deduction of tax e.g. deposit interest where DIRT has been deducted by the bank/building society.
- Covenant payments that are made under deduction of tax.
- Profits or gains from an unknown or unlawful source or activity.
- Post cessation receipts of a trade or profession.
- Shares received in lieu of cash dividends.

An individual's Case IV income is taxed on the actual profits arising in the period 1 January - 31 December of the tax year in question.

An individual cannot claim tax relief on PRSA contributions, or make personal pension contributions in respect of income taxed under Case IV of Schedule D.

14.3.2.4 Case V

The income taxed under this case consists of rental income from Irish properties. In general, expenses incurred in connection with the letting of a property are allowable deductions but there are some exception such as pre-letting expenses and expenses of a capital nature.

The basis of assessment for Case V income is when it is earned as opposed to when it is received.

Losses:

Losses may only be carried forward to reduce the Case V rental income for future tax years.

As rental income is deemed to be investment income, it is therefore not considered to be 'relevant earnings' for the purposes of effecting a pension or claiming tax relief on pension/PRSA contributions.

14.3.3 Schedule E

The income chargeable under Schedule E consists of emoluments from an office or employment and includes salaries, pensions, bonuses, perquisites, benefits in kind, termination payments etc. This Schedule extends to emoluments arising from the office or employment before commencement and after cessation. In addition, most Social Protection pensions and allowances are taxed under Schedule E.

As outlined in Chapter 1, a key requirement for an employee to become a member of an occupational pension scheme (OPS) is that they must be in receipt of remuneration from the employer, which is taxed under Schedule E, in respect of service with that employer. The employee can claim tax relief on their own contributions based on a percentage of their remuneration, depending on their age (see Chapter 4).

In relation to personal pensions/PRSAs (see Chapter 9), Schedule E earnings from a non-pensionable employment are 'relevant earnings' for the purpose of effecting a personal pension, or for claiming tax relief on PRSA contributions.

It should be noted however that not all Schedule E income is relevant income for PRSA/pension purposes e.g. pension payments and other annuities are not included. Casual earnings are taxed under Case IV Schedule D and are as such not relevant for pension purposes.

The year of assessment runs from 1 January to 31 December on income earned in that year, even though part of the emolument may be paid after the tax year. However in saying this, the tax is usually collected (in the cases of bonuses), when the emolument is paid.

Tax under Schedule E is collected under the PAYE system which broadly operates as follows.

- Tax is deducted at source by the employer through the PAYE system on all emoluments earned during the year.
- A certificate of tax credits and standard rate cut off point is issued by Revenue to the employer and employee. This advises the employer of the tax credits, standard rate cut off point applicable and USC (see 14.8 below) to charge for that employee.
- Tax at the standard rate (currently 20%) is deducted from the employee's gross pay up to the standard rate cut off point and the balance is taxed at the higher rate (currently 41%). The resulting figure is reduced by the employee's tax credits.
- An employee's gross pay for income tax purposes is income less employee's own pension contributions. This effectively gives the employee tax relief on pension contributions at their marginal rate. Please refer to Chapter 4 for details on tax relief for employee pension contributions.

14.3.3.1 Benefits in Kind

When an employer provides a benefit to an employee, or where the employee has free use of something, it is taxable as a benefit in kind (BIK). There are certain exemptions, the most significant being the employer's contribution towards an occupational pension scheme (but see below regarding employer's contributions to a PRSA). The employer must calculate the cash value (this is usually taken as the cost to the employer in providing the benefit) of the BIK, and apply PAYE, PRSI and USC to that cash value ('notional pay'). Examples of benefits in kind are as follows.

- Preferential loans are taxed on the difference between the rate specified by the Minister for Finance and the preferential rate paid by the employee. The current specified rates are 5% on qualifying home loans and 12.5% in all other cases.
- Employees are also taxed on the provision of a car. The benefit to be valued is the 'cash equivalent' of the private use of the company car. The cash equivalent is a percentage of the original market value of the car as defined. The percentage (6% - 40%) depends on the employee's annual business kilometres, and for cars bought on or after 1 January 2009, the CO2 emissions category of the car. This figure may be reduced by any expenses paid by the employee directly to the employer towards the cost of providing or running the car. There are alternative rules for certain employees with low business kilometres, and there are separate rules for calculating the cash equivalent of employer provided vans.
- The Finance Act 2011 removed the BIK exemption for professional fees paid by employers on behalf of their employees. However, there is an exception if membership of the professional body is relevant to the business of the employer, i.e. it facilitates the acquisition of knowledge which is necessary for the duties of the employment. In this case payment of the fees by the employer will not constitute a taxable benefit.

Note on Employer Contributions to a PRSA:

Revenue issued an e-briefing in June 2011 to clarify the position in relation to employer contributions to an employee's PRSA. An employer contribution to an employee's PRSA is treated as a taxable benefit in kind for the employee. However, for the purposes of claiming tax relief on the contribution, the employer rather than the employee is deemed to have made the contribution. The effect of this is that the tax relief on the contribution negates the taxable BIK. This treatment only applies when the combined employer and employee contributions to the PRSA do not exceed the age-related limits for tax relief. The employer contribution is not subject to PAYE, and it is the employee's responsibility to contact Revenue where contributions exceed the age-related tax relief limits.

The employer contribution to an employee's PRSA is not chargeable to PRSI, but it is chargeable to USC.

Employers may choose to put the contributions through payroll for the purposes of record keeping, however if this is done it should be cost-neutral for income tax and PRSI for both the employer and employee.

14.3.4 Schedule F

Tax under Schedule F is charged on dividends and other distributions received from Irish resident companies. The basis of assessment is the actual dividends or distributions received in the year of assessment. This means that the income is taxed when it is received.

With effect from 6 April 1999, dividend withholding tax (DWT) at the standard rate is deducted from dividends and distributions paid by Irish resident companies subject to certain exclusions. The Irish resident company paying the dividend is obliged to pay the DWT to Revenue. When an Irish resident individual receives a dividend, the total amount is assessed under Schedule F.

Where dividend withholding tax has been deducted, the individual will receive a credit for the DWT against their personal tax liability. Where the tax withheld exceeds the individual's income tax liability, the excess can be reclaimed from the Revenue Commissioners.

For pension purposes, dividends are not regarded as earned income and are therefore ignored.

14.4 Taxation of Married Couples and Civil Partners

Finance (No 3) Act 2011 followed the passing of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. The Act provides for the same tax treatment for civil partners in a registered partnership as is available to married couples.

There are three methods of assessment for married couples/civil partners.

1. Single assessment (also referred to as separate treatment)
2. Joint assessment
3. Separate assessment

14.4.1 Single Assessment

Under this method of assessment each spouse/civil partner is treated as a single individual, i.e. as though there were no marriage/civil partnership. There is no right to transfer unutilised credits or unutilised lower tax bands between the spouses/civil partners to minimise their aggregate tax liability. In general, married couples/civil partners do not elect for this method of taxation as it often results in a higher tax liability, however it is commonly used where couples are separated. If a couple want to be singly assessed they must make an election before the end of the tax year.

14.4.2 Joint Assessment

Married couples/civil partners are automatically jointly assessed unless either party applies to the Revenue Commissioners and elects for another method of assessment. Where a couple are jointly assessed, the combined income is assessed on one spouse/civil partner (called the assessable person) and they will be entitled to a married person's/ civil partner's tax credit and increased standard rate band (the amount of the standard rate band will depend on the income of each spouse/civil partner and whether each have income in their own name). Under joint assessment, the spouse/civil partner with the higher income will automatically be the assessable person, unless they elect otherwise. The assessable person is responsible for filing the tax return (if one is required) and paying any tax liability. Revenue will automatically give all the tax credits (except PAYE tax credit) and the standard rate band to the assessable person, unless the couple specify how they want the tax credits and standard rate band to be allocated between them.

14.4.3 Separate Assessment

Under this method of assessment each spouse/civil partner is treated as an assessable person. The overall liability will be the same as if they were jointly assessed as excess credits and lower tax bands may be transferred from one spouse/civil partner to another. In general, this method of assessment is used where a couple want to keep their financial affairs separate. If either spouse/ civil partner want to be separately assessed, they must make an election by 31 March in the year of assessment.

Note on Assessment of Cohabitants:
Cohabitants are assessed to tax as single individuals. Any unused tax credits or unused lower tax bands cannot be transferred between the cohabitants to minimise their aggregate tax liability.

14.5 Individualisation and Pensions

The concept of individualisation was introduced in the Budget 2000. The ultimate aim is for each individual to have his or her own standard rate tax band.

The standard rate band, also know as standard rate cut off point (SRCOP), determines how much of an individual's income is taxed at the standard rate (with the balance being taxed at the higher rate). As mentioned above, married couples and civil partners who are jointly or separately assessed have an increased standard rate band. The increased standard rate band does not apply when the couple elect for single assessment.

The standard rate bands for the year 2012 are as follows.

Single Person	€32,800
Single/Widowed with dependent children	€36,800
Married Couple/Civil Partners (one income)	€41,800
Married Couple/Civil Partners (two incomes)	€65,600*

* This standard rate band is calculated by increasing the standard rate band for a couple with a single income (€41,800) by the lower of the following:

- €23,800 or
- the income of the lower earning spouse/civil partner.

The rate of tax applying to the standard rate band is 20% and the balance is taxed at 41% (2012).

Depending on their circumstances, a spouse/civil partner may be entitled to claim the Home Carer's Tax Credit as an alternative to the increased standard rate band available to a married couple/civil partnership with two incomes. Both cannot be claimed together – the couple may claim whichever is more beneficial to them. The individual circumstances would have to be examined in each case to determine which option would result in a lower tax liability. The maximum Home Carer's Tax Credit for the year 2012 is €810.

There may be an opportunity for self employed people, or business owners with their own company to significantly reduce their income tax bill by formally paying their spouse/civil partner (PAYE) for work genuinely done in the business. The advantages of doing this are:

- The amount of income taxed at the standard rate would be increased. Where both spouses/civil partners are earning (and where joint/separate assessment applies), they are entitled to claim a maximum standard rate tax band up to €65,600 between them (depending on the income of the lower earning spouse/civil partner). This compares favourably to the case of a couple with one income where the standard rate band is only €41,800.
- It gives scope for both parties to fund for their retirement independently. The tax relief available for PRSA/personal pension funding is limited to a percent of net relevant earning dependent on age, and subject to an earnings cap, currently €115,000. Where both parties

are earning, each spouse/civil partner can pay contributions to a pension/PRSA and claim tax relief up to the relevant limit. The tax relief limits and earnings cap do not apply for employer contributions to an occupational pension scheme.

14.6 Income Tax Self Assessment

In general, the self assessment system applies to people who do not pay all of their income tax (including PRSI and USC) under the PAYE system. The people falling under this category (called 'chargeable persons') are as follows.

- The self employed.
- Company directors* (even where their only income is PAYE income).
- People in receipt of any type of income not assessed under PAYE, and where the non-PAYE income has not been coded into their certificate of tax credits.

* Company directors are always chargeable persons, but Revenue practice (SP-IT/1/93) excludes:

- directors of dormant companies
- directors of companies in which they own 15% or less of the share capital, and where all of their income is subject to PAYE or any income not subject to PAYE has been included on their certificate of tax credits.

The self assessment system places the onus on the individual tax payer to ensure that all their tax obligations are complied with. The principal obligations are:

- to register for self assessment by completing Form TR1
- to pay preliminary tax on/before 31 October* in the current year
- to file tax returns by 31 October* following the end of the tax year (see 14.6.2 below for more details on this)
- to pay the balance of the tax on/before 31 October* following the end of the tax year.

* If the individual both pays tax online and files returns online, they can avail of an extended pay and file deadline – the date set each year is usually in mid November.

14.6.1 Payment of Tax

Preliminary Tax:

Under the self assessment system, chargeable persons are obliged to estimate their own tax liability for the year of assessment and to submit a preliminary tax payment on or before 31 October* in the year of assessment, e.g. preliminary tax for 2012 must be paid by 31 October 2012*. To avoid interest, the payment must not be lower than:

- 90% of the total tax payable for that year, or
- 100% of the final tax liability for the previous tax year, or
- 105% of the final tax liability for the pre-preceding tax year (only if the tax is paid by direct debit).

Balance of Tax:

The balance of the tax due must be paid by the return filing date, i.e. 31 October* in the following year.

*or extended pay and file deadline, if applicable.

Interest:

If the preliminary tax is not paid on time or is too low, or if the balance of tax due is not paid on time, interest will be charged at 0.0219% per day or part of a day from the due date until date of payment.

14.6.2 Filing Income Tax Returns

A chargeable person is required to prepare and deliver a return to the Inspector of Taxes on or before 31 October following the end of the tax year. Returns can now be filed electronically using the Revenue Online Service (ROS), and if so (and if tax is also paid online), the extended filing deadline applies.

If the chargeable person fails to submit a return by the specified return date, a surcharge will arise as follows.

- Delay less than two months – surcharge of 5% of the tax liability subject to a maximum of €12,695.
- Delay for two months or more – surcharge of 10% of the tax liability subject to a maximum of €63,485.

In calculating the surcharge, no credit is given for the preliminary tax paid, but credit is given for any PAYE already paid. However in the case of a director, the surcharge will be calculated without credit for PAYE already paid which could result in a significant penalty. Where a surcharge applies, this is deemed to be part of the individual's tax liability for the year. This could then mean that the preliminary tax paid is now not sufficient and therefore interest would also be due on underpaid preliminary tax.

14.7 Income Tax Exemption Limits

An individual is exempt from income tax for 2012 where their total income is less than the following amounts.

Persons aged 65 and over	2012
Single/widowed /surviving civil partner	€18,000
Married or in civil partnership	€36,000
Additional allowance per child* for first two children	€575
Additional allowance for third and subsequent children	€830
Marginal relief	40%

*A child is a dependent child, i.e. under 18 years old, or in full time education or physically/ mentally incapacitated.

If an individual's total income does not exceed the above limits they are completely exempt from income tax. However PRSI and USC may still apply. If married or in a civil partnership, it is the older spouse's or civil partner's age that is relevant.

Income from all sources is included for the purposes of the exemption, e.g. salary, pension, rental income, deposit interest, dividend income etc. If the individual is married or in a civil partnership and jointly taxed, the spouse's or civil partner's income is also included.

If an individual's income exceeds the above limits marginal relief may apply.

Marginal Relief

Marginal relief may apply where the total income is less than twice the exemption limit outlined in the above table. (e.g. if a single person's income is greater than €18,000 but less than €36,000). The relief restricts the maximum tax payable to 40% of the individual's income minus the exemption limit. Marginal relief will only apply if it is more beneficial than applying tax in the normal manner and claiming tax credits.

If an individual doesn't qualify for the exemption limit or marginal relief, tax will applied in the normal manner.

14.8 Universal Social Charge (USC)

The following section is a brief overview of USC. Please refer to Revenue's "Universal Social Charge – Frequently Asked Questions" document (on www.revenue.ie) for more detailed information.

USC is a tax payable by most individuals on gross income, including 'notional pay'. There is relief against USC for certain trading losses and capital allowances, but not for pension contributions.

Employers/pension providers are responsible for deducting USC from their employee's salary. The collection of USC for PAYE tax payers changed with effect from 1 January 2012 from a week one basis to a cumulative basis – similar to the way PAYE is deducted. Revenue notify the employer of the rates of USC and thresholds to be applied for each employee.

Self employed tax payers pay USC along with their income tax and PRSI payments, under the self assessment system. Expenses which are allowed in calculating taxable profits for income tax purposes can also be deducted to determine 'gross income' for USC purposes.

14.8.1 USC Rates for 2012

Standard Rates of USC:

Annual Income Thresholds	Rate
First €10,036	2%
€10,036.01 - €16,016	4%
Over €16,016	7%*

*see note on surcharge for self employed income.

Reduced Rates of USC:

For individuals who are aged 70 or over, or who hold a **full** medical card, reduced rates of USC apply as outlined below.

Annual Income Thresholds	Rate
First €10,036	2%
Over €10,036	4%*

* see note on surcharge for self employed income.

Surcharge for Self Employed Income:

A surcharge of 3% applies on income from self employment that exceeds €100,000 in a year. This applies regardless of age, or whether the individual holds a full medical card. If an individual has both PAYE income and self employed income, it is only the self employed income that exceeds €100,000 that is liable for the 3% surcharge.

14.8.2 Exemptions

An individual is exempt from USC if their total income for the year does not exceed €10,036 (for 2012). However once income exceeds the threshold of €10,036 USC applies to the total income (i.e. the first €10,036 is not exempt).

Income that is exempt from USC includes:

- all Department of Social Protection payments
- income which has already been subjected to DIRT (Deposit Interest Retention Tax).

14.8.3 USC and Pensions

As noted above, there is no relief for pension contributions against USC. Employer contributions to an occupational pension scheme are not liable to USC. However, employer contributions to a PRSA are subject to USC.

In relation to retirement lump sums, USC is only payable on a retirement lump sum in excess of the lifetime limit of €575,000.

14.9 Corporation Tax

A company that is resident in Ireland is subject to corporation tax on its worldwide profits (including gains) regardless of where they arise or whether or not they are brought into Ireland.

There are two ways to determine a company's residence. One comes from case law and the other from the Tax Consolidation Acts, 1997 (TCA, 1997).

- The general rule from case law is that a company is resident in Ireland if it is "centrally managed and controlled" in the State. There are various factors to be looked at in establishing where the company's central management and control lie. This test also applies to companies who are not incorporated in the State.
- The TCA 1997 states that a company is resident in Ireland if it is incorporated in Ireland (subject to 2 exceptions).

A company is assessed on its profits for an accounting period. For tax purposes an accounting period cannot be longer than 12 months, even though the company may prepare their accounts over a longer period.

Corporation tax is chargeable on the company profits i.e. income plus chargeable gains, and the rate of tax is dependent on the type of income. Chargeable gains are calculated in accordance with Capital Gains Tax (CGT) rules. A company's income for tax purposes is calculated broadly in line with income tax rules, i.e. the net profit/loss before tax per the accounts is adjusted for tax purposes by allowing/disallowing certain expenditure.

There are a number of differences between the corporation tax and income tax systems, including, but not limited to the following.

- Companies pay tax by reference to their accounting period while income tax is based on tax years (year of assessment).
- Companies are not entitled to personal allowances.
- The corporation tax rates differ from the income tax rates.
- The director/owner of the company has the option of taking income as salary (taxed under Schedule E) or by declaring a dividend (taxed in the hands of the individual under Schedule F).
- In a company, benefits taken by the owner/director will be taxed as a benefit in kind unlike a sole trader. However, a sole trader is not entitled to a tax deduction for private expenditure.
- If a salary is taken from the company it is taxed under Schedule E, whereas the drawings taken by a sole trader are not. The profits of the sole trader would have been taxed under Schedule D Case I or II, regardless of whether they are actually 'drawn' or not.
- There are different rules around residency for companies and individuals, and different rules around what income is taxable if the person/company is resident in Ireland.
- Dividends received by Irish resident companies from other Irish resident companies are not taken into account when calculating a company's income as they are exempt from corporation tax.

14.9.1 Rates of Corporation Tax

There are currently two rates of corporation tax, 12.5% and 25%.

The standard rate of corporation tax (12.5%) applies to trading income (bar income from an excepted trade).

The higher rate of corporation tax (25%) applies to:

- non-trading or passive income. This would include income chargeable under Case III, IV and V of Schedule D. For example deposit interest, foreign dividends, rental income.
- Income from an excepted trade. Excepted trade is defined in legislation and includes certain land dealing activities, income from working minerals and petroleum activities.

As noted above, chargeable gains for a company are calculated in accordance with CGT rules but the tax is collected through the corporation tax system. The effective rate for capital gains is 25%, but corporation tax payable is 12.5%. The gain must be converted to an amount that will give an effective rate of 25% when corporation tax of 12.5% is applied.

Tax on gains on life assurance policies held in the name of a company are currently taxed at 25%. This tax is known as 'exit tax' and is not collected through the corporation tax system. Exit tax is deducted by the life assurance company on the happening of 'chargeable events', such as encashment of the policy.

14.9.2 Self Assessment

A company can register for corporation tax by submitting Form TR2 to Revenue.

Companies also have certain obligations under the self-assessment system as follows.

Preliminary Tax:

Preliminary tax obligations depend on whether a company is a 'small' company. A small company is one whose corporation tax liability for the prior 12 month accounting period did not exceed €200,000.

- Small companies are required to pay preliminary tax by the 21st* day of the month prior to the end of the accounting period. In order to avoid an exposure to interest, the preliminary payment must not be less than:

  - 90% of the total corporation tax payable for the period, or

  - 100% of the final corporation tax liability for the prior period.

If preliminary tax is late or underpaid, the total corporation tax liability for the period is deemed to be due on the preliminary payment date, and interest applies on the unpaid amount from this date until payment is made. Interest is currently charged at 0.0219% per day or part of a day.

- Companies that don't qualify as 'small' have two preliminary tax payment dates.

  (a) By 21st* day of the sixth month of the accounting period, payment must be made of at least:

    - 45% of the total corporation tax liability for the period, or

    - 50% of the final corporation tax liability for the prior period.

  (b) By 21st* day of the month prior to the end of the accounting period, a further payment must be made to bring the total preliminary tax paid up to 90% of the total corporation tax liability for the period.

If preliminary tax is late or underpaid, the balance of tax liability for the period is deemed to be due on the second preliminary tax payment date. Interest charges of 0.0219% per day or part of a day apply to the unpaid amount.

Balance of Tax:

The balance of the corporation tax is due on the 21st* day of the ninth month after the end of the accounting period.

Corporation Tax Return:

Every company must file a corporation tax return by the 21st* day of the ninth month after the end of the accounting period. The surcharges that apply where the return is late are the same as those outlined above in relation to income tax. Where a company fails to submit a return or the return is late, there are restrictions on the use of certain allowances and losses.

* From 1 January 2009 Revenue extended the deadline for paying and filing as outlined above from the 21st day of the month to the 23rd day of the month. This applies where both returns and payment are made electronically using ROS. Mandatory e-filing applies for returns/payments due on or after 1 June 2011, unless an exclusion has been granted by Revenue.

14.9.3 Relief From Corporation Tax for Start Up Companies

There is relief from corporation tax for companies incorporated on or after 14 October 2008 and which commenced trading in 2009, if their total corporation tax for an accounting period does not exceed the limits set out below. This relief applies for the first three years of trading and has certain conditions attached.

Corporation Tax Liability for the period	Availability of Relief
<€40,000	Fully exempt
€40,000 - €60,000	Marginal relief
>€60,000	No relief

Finance Act 2011 extended this relief to companies which commenced a trade in 2011, and also amended the relief so that it is linked to the amount of employer's PRSI paid by the company in the accounting period. Please refer to Revenue's website (www.revenue.ie) for more details.

Chapter 15

Social Protection Pensions

15.1 Introduction

Social Protection (formerly Social Welfare) pensions are considered to be the "First Pillar" of pension provision in Ireland, with the aim of ensuring a basic level of income in retirement for all. Social Protection benefits have traditionally been funded on a pay as you go basis with benefits being paid out from current Pay Related Social Insurance (PRSI) contributions.

We need to understand how the Social Protection system works and how it interacts with private pension provision. In this chapter we will consider the Social Insurance (PRSI) classes and contributions payable and the main Social Insurance benefits provided. We will also examine the taxation of Social Protection payments and finally look at means testing for Social Assistance benefits, and the State Pension (Non Contributory).

Since 6 February 2011 Social Protection pensions interact more closely with the ARF and taxable cash options as:

- the specified income requirement is now linked to 1.5 times the maximum annual rate of State Pension (Contributory) payable and
- the amount to be set aside into an AMRF/annuity is now set at 10 times the maximum annual rate of State Pension (Contributory) payable.

State Pensions can also be taken into account when establishing if an individual has satisfied the minimum specified income requirement. Note that it is only the personal rate of State Pension that can be taken into account – allowances for a dependant or spouse's/civil partner's pension cannot be included.

> This chapter covers some of the main Social Protection benefits available, and their main features. Please refer to the Department of Social Protection's website (www.welfare.ie) for information on other benefits that may be available and for additional features that may apply to some benefits.
>
> There are changes being made to Social Protection benefits therefore please refer to the website for the most up to date information.

15.2 Social Protection Benefits

There are two main types of Social Protection benefits:

- Social Insurance (also referred to as PRSI) provides certain levels of benefits which primarily depend on qualifying PRSI contributions being paid. These benefits are not means tested.
- Social Assistance – provides certain levels of benefits which primarily depend on a means test being satisfied (see section 15.17). There is no requirement to have made PRSI contributions.

15.3 Pay Related Social Insurance (PRSI)

PRSI contributions are made up of a number of different components including:

- Social Insurance (PRSI) contribution at the appropriate percentage rate for employees, employers and self employed. PRSI is payable on reckonable earnings.
- 0.70% National Training Fund Levy which is included in the employer's contribution in Class A. The National Training Fund levy supports a broad range of employment training initiatives.

Health Levy was abolished with effect from 1 January 2011.

15.4 PRSI Contribution Classes

For PRSI purposes, individuals are divided into contribution classes and sub-classes and these help determine the rate of PRSI payable. The main PRSI contribution classes are as follows.

Class A	Most private sector employees and public sector employees who joined after 6 April 1995 who are under the age of 66.
Class B	Permanent and pensionable public sector employees who joined before 6 April 1995*.
Class S	Self employed people and certain company directors (see below).
Class M	People in receipt of occupational pension payments.

*Some public service employees recruited before 6 April 1995 fall into Class C or Class D.

15.4.1 Company Directors

Company directors will pay income tax, PRSI and USC through the PAYE system (Schedule E) on the salary they receive from the company. For PRSI purposes the director may be classified as a Class A contributor (employee) or a Class S contributor (self employed). There is no hard and fast rule to determine which class the director should be included in.

In general where a director is a major shareholder and has control over the company to such an extent that he decides what work he will do and how it will be done, he would normally be treated as a self employed contributor - Class S.

If a director holds less than 50% of the voting shares the individual circumstances must be examined to determine whether or not a contract of service exists. A director employed under a contract of service is normally insured as an employee under Class A.

As a Class S contributor a company director will not be entitled to Social Protection Illness Benefit but may be considered for Disability Insurance.

15.5 Summary of Main PRSI Contribution Rates for 2012

PRSI Class	Employee Rate	Employer Rate
Class A	4% on all earnings (first €127 per week exempt) Nil if earnings €38-€352 per week	10.75% on all earnings 4.25% if earnings €38 - €356 per week 0.5% for subclasses A8 and A9
Class B	0.9% up to €75,036 4% on balance (first €26 per week exempt)	2.01% on all earnings
Class S	4% on all income (minimum annual contribution €253)	Nil
Class M	Nil	Nil

The rate of PRSI payable by an individual depends on their contribution class and reckonable income. The definition of reckonable income differs by contribution class. In the case of an employee, PRSI is paid on earned income plus notional pay (BIK) if applicable and there is no longer an allowable deduction for pension/PRSA/PHI contributions. Civil and public servants will also pay PRSI on the 'pension levy' portion of their salaries, but the employer does not pay employer PRSI on the 'pension levy'.

Employer and employee PRSI is now payable on all reckonable earnings (except for the weekly PRSI-free allowance). Employees with earnings of less than €352 in any week will not be required to pay PRSI in that week.

A self employed individual is subject to PRSI under Class S on both earned and unearned income. Rental income and investment income is therefore subject to PRSI.

15.6 Credited Contributions

The number of PRSI contributions paid or credited is an important factor when determining an entitlement to Social Insurance benefits. A PRSI credit is a PRSI contribution which is deemed to have been paid by the individual, but which is not actually paid by him or her. The purpose of PRSI credits is to protect an individual's entitlement to certain PRSI benefits in certain circumstances.

For example, when an individual commences insurable employment for the first time, PRSI credits are automatically given for the earlier part of that tax year, in addition to credits for the previous two tax years. PRSI credits are normally awarded for periods where an individual is in receipt of various Social Insurance benefits and allowances, e.g. Illness Benefit, Jobseeker's Benefit, Invalidity Pension and State Pension (Transition), among others. Note that there are various conditions and restrictions on the granting of credited contributions.

15.7 Social Insurance Benefits at a Glance

The table below summarises the main Social Insurance benefits, and the entitlements for various PRSI classes.

Benefit	Class A - Private Sector	Class B - Public Sector	Class S - Self employed/ Certain Company Directors
State Pension (Transition)*	Yes	No	No
State Pension (Contributory)	Yes	No	Yes
Widow's, Widower's or Surviving Civil Partner's Contributory Pension	Yes	Yes	Yes
Invalidity Pension	Yes	No	No
Illness Benefit	Yes	No	No
Jobseeker's Benefit	Yes	No	No

* This pension will no longer be paid from 1 January 2014.

It is important to note that qualifying criteria apply if claiming benefits.

15.8 Social Insurance Benefits

Payments from Social Insurance are not means tested but do depend on a certain level of PRSI contributions being recorded. Increases for adult dependants depend on any savings or income that a spouse/civil partner/cohabitant may have.

We will now examine the following Social Insurance benefits:

- State Pension (Transition) (age 65)
- State Pension (Contributory) (age 66)
- Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension (any age)
- Invalidity Pension (any age)
- Illness Benefit.

Only one of the above pensions is payable by the Department of Social Protection at any one time.

15.9 State Pension (Transition)

The State Pension (Transition) is only payable from age 65 to 66 and will be discontinued for new applicants with effect from 1 January 2014. From 2014 there will only be one State pension age of 66.

At age 66 the individual automatically transfers from the State Pension (Transition) to the State Pension (Contributory). To qualify for the State Pension (Transition) the individual must have retired and have satisfied certain Social Insurance contribution conditions. An individual can however continue to work after age 66 and collect the State Pension (Contributory).

15.9.1 PRSI Conditions for the State Pension (Transition)

In order to qualify for the State Pension (Transition) an individual must have:

- started paying PRSI before age 55, AND
- paid at least 520* PRSI contributions, AND
- yearly average contributions of at least 24. The yearly average determines the weekly rate of payment – 24 for the minimum rate and 48 for the maximum rate.

*changed from 260 with effect from 6 April 2012.

15.10 State Pension (Contributory)

The State Pension (Contributory) is payable from age 66 where the qualifying PRSI conditions have been met. The pension is made up of a personal rate of payment together with extra amounts for dependants, i.e. qualified adult dependant and/or dependent child or children.

A qualified adult dependant is a dependant who does not have income above a certain limit or does not receive a Social Protection payment.

A dependent child is a child under the age of 18 years who is living with the individual, or if in certain full time education.

Please refer to paragraph 15.14 for details on dependent increases.

15.10.1 PRSI Conditions for the State Pension (Contributory)

In order to qualify for the State Pension (Contributory) an individual must have:

- started paying PRSI before age 56 AND
- paid at least 520* PRSI contributions AND
- yearly average contributions of at least 10. The yearly average determines the weekly rate of payment - 10 for the minimum rate and 48 for the maximum rate. The payment rate bands are have been changed with effect from 1 September 2012.

*changed from 260 with effect from 6 April 2012.

15.10.2 Changes to the Qualifying Age for the State Pension (Contributory)

From 1 January 2021 the State Pension (Contributory) and State Pension (Non Contributory) age will increase from 66 years to 67 years, and further increase to 68 years from 1 January 2028.

These changes will mean that if born:

- on or after 1 January 1955 and before 1 January 1961, the qualifying age for the State Pension will be 67
- on or after 1 January 1961 the qualifying age for the State Pension will be 68.

15.11 Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension

The Widow's, Widower's or Surviving Civil Partner's Contributory Pension is payable on the death of a husband/wife/civil partner provided the appropriate PRSI conditions are satisfied on either spouse's/civil partner's insurance record.

If previously divorced from the late spouse, or the civil partnership had been dissolved and there was an entitlement to a Widow's/Widower's/Surviving Civil Partner's (Contributory) Pension had they remained married or in the civil partnership, then the entitlement to this benefit remains.

It is also a condition of this benefit that the recipient is not cohabiting (i.e. living with someone as husband and wife or civil partners). The pension ceases if the individual remarries, registers in a new civil partnership or lives with someone as husband and wife or as civil partners.

The right to this pension is not affected by any other income that the individual may have, from employment, pension, or any other source.

15.11.1 PRSI Conditions for the Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension

The PRSI conditions necessary to claim the Widow's, Widower's or Surviving Civil Partner's Contributory Pension are.

- There must be at least 156 (260 from December 2013) PRSI contributions paid prior to the date of death of the spouse/civil partner or prior to pension age (currently 66), wherever is the earlier,

AND either:

- An average of 39 contributions paid or credited in the 3 or 5 tax years (whichever is more beneficial) before the death of the spouse/civil partner or before he/she reached pension age (66), whichever comes first,

OR

- A specific number of average contributions paid or credited for every year since starting work up to the end of the tax year before the date of death, or pension age (66), whichever comes first. An individual may qualify for the minimum pension with a yearly average of 24 contributions paid or credited. An individual may qualify for the maximum pension with a yearly average of 48 contributions paid or credited.

These PRSI conditions must be met by either the claimant or their late spouse or civil partner (but the two PRSI records cannot be combined to meet these conditions).

15.12 Invalidity Pension

An Invalidity Pension is a payment for someone who is permanently incapable of work due to an illness or incapacity. An individual may qualify for an Invalidity Pension if:

- they have been incapable of work for at least 12 months and are likely to be incapable of work for at least another 12 months, OR
- they are permanently incapable of work.

15.12.1 PRSI Conditions for the Invalidity Pension

The PRSI conditions necessary to claim the Invalidity Pension are:

- have 260 weeks PRSI contributions paid, and
- have 48 weeks PRSI contributions paid or credited in the last complete tax year, prior to making the claim.

15.13 Illness Benefit

Illness Benefit is a weekly allowance paid to an insured individual who cannot work due to an illness.

To qualify for Illness Benefit the insured individual must be:

- unable to work due to illness,
- satisfy certain PRSI conditions, and
- be under age 66.

The benefit may be paid for between 52 weeks and a maximum of 2 years, depending on the number of PRSI contributions the individual has paid. The individual may transfer to the Invalidity Pension in the event of long term illness. The claim for Illness Benefit should be made within 7 days of becoming ill.

15.13.1 PRSI Conditions for the Illness Benefit

The PRSI conditions necessary to claim Illness Benefit are:

- have at least 104 weeks PRSI paid since first started work,

AND either:

- have 39 weeks PRSI paid or credited in the relevant tax year* (a minimum of 13 weeks must be paid contributions**)

OR

- Have 26 weeks PRSI paid in the relevant tax year* and 26 weeks PRSI paid in the tax year immediately before the relevant tax year*.

*The relevant tax year is the second last complete tax year before the year in which the claim is made. So, for claims made in 2012, the relevant tax year is 2010.

**If not 13 paid contributions in the relevant tax year*, the following years can be used to meet this condition:

- The 2 tax years before the relevant tax* year
- The last complete tax year, or
- The current tax year.

15.14 Dependant Increases

An additional benefit may be payable for an adult dependant (called "qualified adult"), while a separate supplement may also apply for a dependent child or children (called "qualified child").

A qualified adult can be a spouse/civil partner or cohabitant (one of two adults, whether of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not close relatives). Alternatively an adult supplement is payable where the claimant is single, widowed, divorced, separated, a former civil partner or not living with a civil partner, and living with a person aged 16 or over who is caring for a child dependant.

For most Social Protection payments, an adult dependant cannot have gross weekly earnings or income (before tax and PRSI deductions) of more than €310, or be in receipt of certain Social Protection payments in their own right. In general, if an adult dependant earns less than €100 per week they will get the maximum dependant's supplement. Please refer to the Department of Social Protection website for the rules on adult dependants for any particular benefit, as they differ for some benefits.

A qualified child is a child under the age of 18 years who is living with the individual, or underage if in certain full time education.

15.15 Taxation of Social Insurance Benefits

In general long term Social Insurance Benefits are subject to income tax e.g. State Pension (Contributory), Invalidity Pension. Short term Social Insurance benefits are not subject to income tax e.g. maternity benefit. Social Protection benefits are not subject to PRSI or USC.

PAYE is not operated on Social Insurance pensions, even though they are potentially liable to tax. Instead an individual in receipt of a Social Insurance pension must complete a self assessed return for the Revenue. Unless the recipient is in receipt of other income there should be no liability to income tax

15.16 Social Assistance Benefits

Where there are not enough PRSI contributions to qualify for Social Insurance benefits or if the individual never worked and paid PRSI contributions, they may instead be entitled to receive a Social Assistance benefit. To qualify for a Social Assistance benefit a means test must be satisfied.

15.17 Means Test

When working out an individual's weekly means, the means of a spouse, civil partner or cohabitant are also taken into account. The means test may vary depending on the benefit to be provided.

The main items that count for the means test are:

- cash income
- income from employment* or self employment
- value of property (excluding own home)
- value of investments, shares, savings and cash-on-hand
- maintenance payments received (if individual divorced or separated).

*The first €200 per week earnings from employment (for both the individual and the spouse/civil partner/cohabitant) are disregarded. The same does not apply for self employed earnings.

The weekly means for property, investments, savings, shares and cash-on-hand is calculated using the following formula:

Capital	Weekly Means
First €20,000	Nil
€20,000 - €30,000	€1 per €1,000
€30,000 - €40,000	€2 per €1,000
Over €40,000	€4 per €1,000

The rate of Social Assistance benefit payable will depend on the level of weekly means assessed. The maximum rate of State Pension (Non Contributory) benefit is payable where the individual's weekly means is €30 per week or less.

Payment received under the EU Early Retirement Scheme from Farming is not actually assessed as means but instead the payment under this scheme is reduced by the amount of any State Pension (Non Contributory).

15.18 State Pension (Non Contributory)

Qualification for the State Pension (Non Contributory) is based on an individual (who does not qualify for the State Pension (Contributory)):

- being able to satisfy a Habitual Residency Condition
- being aged 66 or over
- continuing to live in the State while getting this pension
- having a valid PPS No
- satisfying a means test.

15.18.1 Changes to the Qualifying Age for the State Pension (Non Contributory)

From 1 January 2021 the State Pension (Contributory) and State Pension (Non Contributory) age will increase from 66 years to 67 years, and further increase to 68 years from 1 January 2028.

These changes will mean that if born:

- on or after 1 January 1955 and before 1 January 1961, the qualifying age for the State Pension will be 67
- on or after 1 January 1961 the qualifying age for the State Pension will be 68.

Appendix 1

PP/PRSA Early Retirement Ages

Occupation	Retirement Age
Air Pilot	55
Badminton Player	50
Boxer	50
Brass Instrumentalist	55
Cricketer	50
Croupier	50
Cyclist	50
Dancer	50
Diver	50
Distant Water Trawlerman	55
Fireman (part time)	55
Footballer	50
Golfer (tournament earnings)	50
Inshore Fisherman	55
Jockey (Flat racing and National Hunt)	50
Moneybroker Dealer	55
Motor Cyclists (Competitive)	50
Motor Racing Driver	50
Offshore Rigger	50
Rugby Player (professional)	50
Singer	55
Speedway Rider	50
Squash Player	50
Table Tennis Player	50
Tennis Player	50
Trapeze Artist	50
Wrestler	50

Appendix 2

Maximum Funding Rates for Occupational Pension Schemes

Maximum Pension Contribution

In 2008 Revenue introduced standardised methodology and capitalisation factors to be used by all life offices in calculating the maximum funding rates (regular contributions) for occupational pension schemes.

The table overleaf shows the maximum pension contribution allowed in a given year. Figures are based on current Revenue rules and expressed as a percentage of salary. The maximum contribution includes both employer and employee contributions but excludes the cost of any risk benefits. These contribution rates assume that the individual does not have any pension provision in place and that they will have completed at least 10 years service at retirement age.

Life and Pensions Technical

Please contact the Life & Pensions Technical team on 01-617 2780 or email lifeandpensions@newireland.ie to receive a client specific maximum contribution rate in the following cases:

- if the individual has retained benefits
- if the individual will have less than 10 years service completed by NRA
- to work out the maximum single premium/lump sum that can be paid
- if the individual is within three years of retirement.

Notes and Assumptions

(a) Figures based on Revenue capitalisation factors as of July 2008 which may be reviewed from time to time.

(b) Sufficient service is assumed for maximum possible benefits.

(c) Figures assume no retained benefits or current pension fund value.

(d) No allowance has been made to ensure that the contribution rates will not lead to a fund in excess of the Standard Fund Threshold (SFT), currently €2,300,000.

(e) Pension funding should be reviewed on a regular basis to ensure that an overfunding situation does not arise at retirement.

(f) The rates shown for individuals within 3 years to retirement are based on current annuity rates (August 2011) and are subject to change. Annuity rates assume 3.5% escalation, 10 years guarantee period with no overlap and 100% spouse's pension for married lives.

(g) Please note under current Revenue rules the maximum pension you may retire on is equal to 2/3rds of your final salary.

Maximum Funding Rates for Occupational Pension Schemes

	NRA 60				NRA 65				NRA 70			
Age	Male Single	Male Married	Female Single	Female Married	Male Single	Male Married	Female Single	Female Married	Male Single	Male Married	Female Single	Female Married
19	40%	53%	45%	49%	30%	41%	35%	38%	22%	32%	26%	29%
20	41%	54%	46%	50%	30%	42%	35%	38%	22%	33%	27%	29%
21	42%	55%	47%	51%	31%	43%	36%	39%	23%	33%	28%	30%
22	43%	57%	48%	53%	32%	44%	37%	40%	23%	34%	28%	30%
23	44%	58%	50%	54%	32%	45%	38%	41%	24%	35%	29%	31%
24	45%	60%	51%	56%	33%	46%	39%	42%	24%	35%	29%	32%
25	47%	62%	52%	57%	34%	47%	40%	43%	25%	36%	30%	32%
26	48%	64%	54%	59%	35%	49%	41%	44%	25%	37%	31%	33%
27	49%	66%	56%	61%	36%	50%	42%	45%	26%	38%	31%	34%
28	51%	68%	57%	63%	37%	51%	43%	47%	27%	39%	32%	35%
29	53%	70%	59%	65%	38%	53%	44%	48%	27%	40%	33%	35%
30	54%	72%	61%	67%	39%	54%	45%	49%	28%	41%	34%	36%
31	56%	75%	63%	69%	40%	56%	47%	51%	29%	42%	35%	37%
32	58%	77%	66%	71%	41%	57%	48%	52%	29%	43%	35%	38%
33	60%	80%	68%	74%	43%	59%	50%	54%	30%	44%	36%	39%
34	63%	83%	71%	77%	44%	61%	51%	56%	31%	45%	37%	40%
35	65%	86%	73%	80%	45%	63%	53%	58%	32%	47%	39%	42%
36	68%	90%	76%	83%	47%	65%	55%	60%	33%	48%	40%	43%
37	71%	94%	80%	87%	49%	68%	57%	62%	34%	49%	41%	44%
38	74%	98%	83%	91%	50%	70%	59%	64%	35%	51%	42%	45%
39	78%	103%	87%	95%	52%	73%	61%	66%	36%	53%	43%	47%
40	81%	108%	92%	100%	54%	76%	64%	69%	37%	54%	45%	48%
41	86%	114%	97%	105%	57%	79%	66%	72%	38%	56%	46%	50%
42	90%	120%	102%	111%	59%	82%	69%	75%	40%	58%	48%	52%
43	96%	127%	108%	118%	62%	86%	72%	79%	41%	60%	50%	54%
44	102%	135%	115%	125%	65%	90%	76%	82%	43%	63%	52%	56%
45	109%	144%	122%	133%	68%	95%	79%	86%	45%	65%	54%	58%
46	116%	154%	131%	143%	72%	100%	84%	91%	46%	68%	56%	61%
47	125%	166%	141%	154%	76%	105%	88%	96%	48%	71%	59%	63%
48	136%	180%	153%	167%	80%	111%	93%	102%	51%	74%	61%	66%
49	148%	196%	167%	182%	85%	118%	99%	108%	53%	78%	64%	69%
50	163%	216%	183%	200%	91%	126%	106%	115%	56%	81%	67%	73%
51	181%	240%	204%	222%	97%	135%	113%	123%	59%	86%	71%	77%
52	203%	270%	229%	250%	105%	146%	122%	133%	62%	90%	75%	81%
53	233%	309%	262%	286%	113%	158%	132%	144%	66%	96%	79%	86%
54	271%	360%	306%	333%	124%	172%	144%	157%	70%	102%	84%	91%
55	311%	414%	351%	383%	136%	189%	159%	173%	74%	109%	90%	97%
56	390%	517%	439%	479%	151%	210%	176%	192%	80%	116%	96%	104%
57	755%	1004%	819%	906%	170%	237%	198%	216%	86%	125%	104%	112%
58	1093%	1464%	1187%	1319%	194%	271%	227%	247%	93%	136%	112%	121%
59	2106%	2836%	2295%	2542%	227%	316%	265%	288%	101%	148%	123%	132%
60					260%	363%	304%	331%	111%	163%	135%	145%
61					326%	453%	380%	413%	124%	181%	150%	162%
62					633%	858%	689%	768%	139%	203%	168%	182%
63					915%	1247%	1004%	1112%	159%	233%	192%	208%
64					1758%	2399%	1916%	2141%	186%	271%	225%	242%
65									213%	311%	258%	278%
66									267%	390%	322%	348%
67									523%	721%	568%	635%
68									751%	1043%	819%	915%
69									1437%	2000%	1568%	1753%
70												

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