Taxation of foreign retirement lump sums

Part 07-01-09A

This document should be read in conjunction with section 200A of the Taxes Consolidation Act 1997 (TCA)

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1 Introduction

Section 200A Taxes Consolidation Act 1997 (TCA 1997) provide rules for the treatment of lump sum payments from foreign pension arrangements.

This is a new section which was inserted into the TCA 1997 by section 19 Finance Act 2022. It applies to tax resident individuals who are paid a lump sum payment from a foreign pension arrangement, as defined, on or after 1 January 2023. As and from this date, the lifetime tax-free limit on all lump sums which are paid to a resident individual from a foreign pension arrangement, as defined, is €200,000. This lifetime limit applies to a single lump sum or, where more than one lump sum is paid to an individual over time, to the aggregate value of those lump sums and/or lump sum or sums received under existing pension lump sum rules (s.790AA TCA 1997).

Amounts paid in excess of this tax-free limit are chargeable to tax under Case III of Schedule D in two stages. The portion between €200,000 and €500,000 is taxed at the standard rate of tax, while any portion above is taxed at the higher rate. The lump sum amount if any, in excess of €500,000 is also chargeable to the Universal Social Charge (USC).

2 Key definitions

To come within the provisions of s.200A, the following requirements apply to the payment of the lump sum.

(i) The lump sum must be paid under the rules of a "foreign pension arrangement", and
(ii) The lump sum must come within the meaning of a "foreign lump sum", as defined.

2.1 Meaning of "foreign pension arrangement"

This is defined under s.200A(1)(a) to mean a contract, an agreement, series of agreements, a trust deed or other arrangement, other than a state social security scheme, which-

a) is established in, or entered into the law of, a territory other than the State,
b) is, in good faith, established for the sole purpose of providing benefits of a kind similar to those referred to in Chapter 1, 2, 2A or 2D of Part 30 TCA 1997, and
c) is not a relevant pension arrangement for the purposes of s.790AA TCA 1997.

With respect to condition (b), this means any pension, lump sum, gratuity or other like benefit given or to be given on or after retirement in connection with past service.

It should be noted that if the payment of the lump sum arises from a "relevant pension arrangement", as defined in s.790AA TCA 1997, then the lump sum payment is chargeable to tax in accordance with the provisions of that section. Further

guidance on these rules is outlined in Chapter 27 of Pensions Manual (Taxation of Retirement Lump Sums).

2.2 Meaning of "foreign lump sum"

For the purposes of s.200A TCA 1997, a foreign lump sum means a lump sum that is paid to an individual under the rules of a foreign pension arrangement "by means of commutation of part of a pension or of part of an annuity or otherwise".
With respect to the commutation of part of a pension or of part of an annuity, this means that the holder of the foreign pension has replaced, by means of a lump sum, some or all of their pension or annuity payments from the arrangement.

The definition also provides for cases where the foreign pension arrangement allows for the payment of a lump sum "otherwise" than in cases of commutation of a pension or annuity. This can cover cases where the holder may draw down irregular lump sum payments from the scheme at intervals.

3 Basis of assessment

Section 200A(2) TCA 1997 sets out the charging provisions of the section.

It provides that where a foreign lump sum is paid on or after the specified date (1 January 2023), to an individual who is resident in the State at the time the lump sum is paid, the excess lump sum shall be regarded as income of the individual for the tax year in which that foreign lump sum is paid and it shall be chargeable to income tax and the USC in accordance with subsection (3).

In summary, when an Irish resident individual receives a lump sum from a foreign pension, the first €200,000 of the payment is tax-free. With respect to amounts paid over €200,000, the portion of the lump sum between €200,000 and €500,000 is chargeable to income tax at the standard rate (currently 20%), with the balance chargeable at the higher rate (currently 40%). The excess lump sum over €500,000 will also be chargeable to the USC. This treatment mirrors the treatment of pension lump sums which are chargeable to tax under s.790AA TCA 1997.

Irish resident, but non-domiciled taxpayer

Section 70(2) TCA 1997 states that income chargeable under Case III of Schedule D shall "be computed on the full amount of the profits or income arising within the year of assessment".

However, for taxpayers who are not domiciled in the State, income tax shall be computed on the full amount of the actual sums received in the State in the relevant tax year, rather than the income arising in that year. This basis of computation is more commonly known as the "remittance basis" of assessment (s.71(3) TCA 1997 refers).

Therefore, an individual resident but not domiciled here is only chargeable to tax on the lump sum to the extent that the lump sum is remitted to the State.

4 Charging provisions

The following provisions apply for the purposes of charging a foreign lump sum payment to tax.

4.1 The tax-free amount

The lifetime 'tax-free amount' on a foreign lump sum is €200,000.

When calculating this amount, the aggregate value of all retirement lump sums paid to an individual under existing pension lump sum rules (s.790AA TCA 1997) (on or after 7 December 2005) and from a foreign pension arrangement (on or after 1 January 2023) must be taken into account when determining the tax-free amount appropriate to a foreign lump sum taken on or after 1 January 2023. This include the aggregate values of all retirement lump sums paid to date.

For example, if an individual has already taken retirement lump sums of €200,000 or more under existing pension lump sum rules (s.790AA TCA 1997) or from a foreign pension arrangement on or after 1 January 2023, the lifetime tax-free limit will have been "used up" and any further retirement lump sums paid to the individual will generate an income tax liability (and/or USC, depending on the amount of the lump sum).

4.2 Meaning of excess lump sum

An 'excess lump sum' is the taxable portion of a retirement lump sum received from a foreign pension arrangement, that is, the amount by which such a lump sum exceeds the tax-free amount of €200,000. It is calculated by reference to all retirement lump sums received from a foreign pension arrangement on or after 1 January 2023 and from a pension arrangement under s.790AA TCA 1997.

4.3 Charging rules for the "excess lump sum"

An excess lump sum is chargeable to tax as follows.

4.3.1 Portion of lump sum within standard chargeable amount

The portion of the lump sum between the tax-free amount of €200,000 and an amount equivalent to 25% of the Standard Fund Threshold (SFT)[1] is chargeable to tax under Schedule D Case III at the standard rate of income tax in force when the retirement lump sum is paid. This is called the "standard chargeable amount".

As the SFT is currently €2,000,000, the current standard chargeable amount is €300,000, which is calculated as follows:

25% of SFT:	€500,000
Less:	€200,000
	€300,000

[1] The SFT is the generally applicable maximum tax-relieved pension fund for an individual. It was set at €2 million for 2014 and that amount continues to apply.

4.3.2 Portion of lump sum in excess of the standard chargeable amount

The balance, if any, of an excess lump sum in excess of the standard chargeable amount (currently €500,000) is chargeable to tax under Schedule D Case III at the individual's marginal rate. It is also chargeable to the Universal Social Charge (USC).

4.3.3 The calculation of the excess lump sum

The rules for calculating the excess lump sum are as follows:

Scenario 1 (where there are no earlier lump sum(s))

Where, before the current foreign lump sum was paid, an individual has not been paid:

(I) a lump sum subject to the provisions of s.790AA TCA 1997, or
(II) another foreign lump sum on or after the specified date,

the excess lump sum is the amount by which the lump sum exceeds the lifetime tax-free limit of €200,000.

Example

If a retirement lump sum of €600,000 was paid in February 2023 (being the first such lump sum paid to an individual) then the excess lump sum is €400,000, that is €600,000 - €200,000 (the tax-free amount).

Scenario 2 (where earlier lump sum(s) were paid)

Where, before the current lump sum was paid, an individual was paid:

(I) a lump sum subject to the provisions of s.790AA TCA 1997, or
(II) another foreign lump sum on or after the specified date,

the excess lump sum is calculated as follows:

- Where the amount of the earlier lump sum(s) is less than the tax-free amount, the amount by which the aggregate of the earlier lump sum(s) and the current foreign lump sum exceeds the tax-free amount,

  or

- Where the amount of the earlier lump sum(s) is equal to or greater than the tax-free amount, the amount of the current lump sum.

Example – the amount of the earlier lump sum(s) is less than the tax-free amount

An individual received the following lump sum payments:

- €50,000 in January 2022 (chargeable under s.790AA TCA 1997),
- €100,000 in June 2022 (chargeable under s.790AA TCA 1997),
- and the "current lump sum" of €250,000 in January 2023 from a foreign pension arrangement (chargeable under s.200A TCA 1997).

As stated in paragraph 4.3, the excess lump sum is chargeable to tax on the portion between the tax-free amount of €200,000 and the standard chargeable amount of €500,000 (25% of the SFT[2] which is currently €2m) at the standard rate of tax, currently 20%.

The excess lump sum is €200,000, calculated as follows –

- the total of the earlier lump sums (€50,000 + €100,000) = €150,000
- plus, the current lump sum (€150,000 + €250,000) = €400,000
- minus, the tax-free amount (€400,000 - €200,000) = €200,000

The tax due is €40,000 (€200,000 @ 20%).

Example - the amount of the earlier lump sum(s) is equal to or greater than the tax-free amount

An individual received the following lump sum payments:

- €180,000 in January 2022 (chargeable under s.790AA TCA 1997),
- €320,000 in June 2022 (chargeable under s.790AA TCA 1997),
- and the "current lump sum" of €210,000 in January 2023 from a foreign pension arrangement (chargeable under s.200A TCA 1997).

As stated in paragraph 4.3, the excess lump sum is chargeable to tax in two stages:

- The portion between the tax-free amount and 25% of the SFT when the payment is made is taxed at the standard rate of tax, currently 20%, and
- the portion above 25% of the SFT is taxed at the individual's marginal rate of income tax.

The excess lump sum is the current lump sum of €210,000 which is taxable at the individual's marginal rate of income tax because the earlier lump sums has used up the tax-free amount and the standard chargeable amount threshold. This is calculated as follows-

- the total of the earlier lump sums (€180,000 + €320,000) = €500,000
- minus, the tax-free amount (€500,000 - €200,000) = €300,000

The earlier lump sum was taxable at the standard rate of tax and has used the full €300,000 standard chargeable amount threshold. Therefore, the current lump sum is taxable at the individual's marginal rate of income tax and is chargeable to the USC.

[2] The SFT is the generally applicable maximum tax-relieved pension fund for an individual. It was set at €2 million for 2014 and that amount continues to apply.

The tax due is €84,000 (€210,000 @ 40%).

5 Excess lump sum between €200,000 and 25% of the SFT ("standard chargeable amount")

As outlined in paragraph 4.3.1, the "standard chargeable amount", the portion of the excess lump sum between the tax-free amount of €200,000 and 25% of the applicable SFT is chargeable to income tax under Case III of Schedule D at the standard rate of income tax in force when the lump sum is paid (currently 20%).

Such income –

- does not form part of the individual's total income,
- is to be computed without regard to any deductions allowed in computing income for the purposes of the Tax Acts.

In addition, no reliefs, deductions or tax credits may be set against the amount so charged or against the tax payable on that amount. The income tax exemption limits and marginal relief will also not apply to the income tax which is charged.

In effect, the charge under Case III applies to the whole of that part of the excess lump sum that does not exceed the standard chargeable amount and nothing may be deducted or set off to reduce the tax due. This effectively ring fences the charge to tax on this amount.

6 Balance of lump sum over "standard chargeable amount"

The balance if any, of a retirement lump sum in excess of 25% of the SFT in force when the lump sum is paid, is taxed under Schedule D Case III at the higher rate of tax (currently 40%). USC is payable as appropriate.

As this portion of a lump sum forms part of the individual's total income, all relevant reliefs and deductions are available in the normal manner.

7 Submission of return and payment of tax

The amount of the lump sum which is chargeable to tax under Schedule D Case III should appear on the individual's Form 11 self-assessment tax return for the year in which a tax liability arises on the income. The tax in question must be paid to the Collector-General in accordance with self-assessment rules.

8 Administrative Provisions

The individual to whom the retirement lump sum is paid is liable for the payment of the tax on the portion of the lump sum charged under Schedule D Case III.

The standard assessment, late payment and appeal provisions apply in relation to tax due on that part of an excess lump sum that is charged to tax under Schedule D Case III.

9 Lump sums not subject to tax under this regime

Lump sums payable in the following circumstances are not subject to tax under this regime:

- a lump sum from a qualifying overseas pension plan (QOPP)[3];
- a lump sum from an Occupational Pension Schemes, Retirement Annuities, Purchases Life Annuities and certain Pensions which are dealt with under Part 30 of TCA 1997[4]
- a lump sum paid to the widow, widower, surviving civil partner, children, dependants, personal representatives, or children of the civil partner of a deceased individual (s.200A(9) TCA 1997);
- a lump sum payable following a full commutation of pension where the scheme provides for full commutation in the case of serious ill-health (see Pensions Manual Chapter 7 - Lump sum benefits and commutation for further details);
- the balance of a lump sum paid at normal preserved pension age to an individual under the Incentivised Scheme of Early Retirement (Department of Finance Circular 12/09), (s.790AA(18)(b) TCA 1997), (see Pensions Manual Chapter 3 - Contributions by Employees for further details).

10 Pension Adjustment Orders

Where s.790AA TCA 1997 applies to a retirement lump sum which is the subject of a pension adjustment order (PAO) the portion of the lump sum which is paid to each party in accordance with the terms of the PAO is treated as a separate lump sum for the purposes of the section.

This means, for example, that for the part of a retirement lump sum paid to each party under the terms of the PAO, the tax-free limit of €200,000 applies individually and the extent to which a party is charged to income tax under Case III of Schedule D is based on the amount of the lump sum paid to the individual.

11 Revenue Precedent 28

A prior Revenue precedent on lump sum payments from foreign pensions (Precedent 28) which issued on 30 July 1987 stated the following:

"Tax free lump sums in commutation of foreign pensions were not taxable in Ireland should the individual come to reside in the country following their retirement".

In common with most precedents over five years old, Revenue treats this precedent as having lapsed. As such, the benefits associated with the precedent are no longer available. The tax treatment of foreign pension lump sums is now covered under s.200A TCA 1997.

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[3] This is a scheme for tax relief on contributions made by migrant workers to pre-existing overseas pension plans (i.e. employees or self-employed individuals coming to or returning to Ireland with a

Appendix 1 – Worked examples

The following examples illustrates how the taxation of retirement lump sums from a foreign pension arrangement work in practice.

Example 1

Adam retired on 10 January 2023, following which he is paid a lump sum from a foreign pension arrangement of €180,000. He has not received any earlier retirement lump sums from a foreign pension arrangement on or after 1 January 2023 or under existing pension lump sum rules (s.790AA TCA 1997). This is the first retirement lump sum he has ever received. Adam´s retirement lump sum is tax-free as it less than the tax-free limit of €200,000. The lump sum of €180,000 counts towards his lifetime tax-free limit.

Example 2

Adam is paid a further retirement lump sum from a foreign pension arrangement of €150,000 on 30 January 2023. The tax-free limit applies to the aggregate of all retirement lump sums received either under existing pension lump sum rules (s.790AA TCA 1997) or from a foreign pension arrangement paid on or after 1 January 2023.

Both lump sums are added together to determine how much of the second lump sum is chargeable to tax. The aggregate of the lump sums received as of 30 January 2023 is €330,000 (€180,000 + €150,000). This exceeds his lifetime tax-free limit of €200,000 by €130,000. It is within the "standard chargeable amount" (between €200,000 and €500,000).

The "excess lump sum" of €130,000 is therefore charged to tax under Case III of Schedule D at the standard rate of income tax in force in 2023 i.e. 20%. The tax due is €26,000 (€130,000 @ 20%).

Example 3

Adam is paid a further retirement lump sum of €450,000 on 30 September 2023. As illustrated in Example 2, his lifetime tax-free limit of €200,000 has already been fully "used up" and he has also "used up" €130,000 of the "standard chargeable amount" (which is €300,000, the difference between the tax-free limit of €200,000 and €500,000).

The current lump sum is charged to tax as follows:

- €170,000 under Case III of Schedule D at the standard rate in force in 2023; tax due @ 20% = €34,000. (€170,000 is the balance of the "standard

pre-existing pension plan concluded with a pension provider in another EU State which they want to retain).

[4] Part 30 TCA 1997 provides the existing pension lump sum rules (s.790AA TCA 1997) and for other types of pension schemes.

chargeable amount" available after the second lump sum: €300,000 – €130,000 = €170,000),

- the remaining €280,000 under Case III of Schedule D at his marginal rate of tax in 2023. The tax due @ 40% is €112,000 (€280,000 is the balance of the lump sum after deducting the amount taxable at 20%).

- The total tax due on the lump sum is €34,000 + €112,000 = €146,000. The balance taxable at the marginal rate of tax (€280,000) is also subject to the Universal Social Charge.

Example 4

Mary retired on 31 January 2023 and is paid a retirement lump sum from a foreign pension arrangement of €800,000. This is the first retirement lump sum ever received.

The lump sum is charged to tax as follows:

- the first €200,000 is exempt,
- the next €300,000 is taxed under Case III of Schedule D at the standard rate in force in 2023 (20% - tax due on this portion of the lump sum is €60,000), and
- the balance, i.e. €300,000, is taxed under Schedule D Case III at her marginal rate in 2023 – assuming her marginal rate was the higher rate of 40%, the tax due on this portion of the lump sum is €120,000.

- Total tax due on the lump sum: €60,000 + €120,000 = €180,000. The balance taxable at the marginal rate of tax (€300,000) is also subject to the USC.

If Mary receives any future retirement lump sum, it will be subject to tax under Schedule D Case III at her marginal rate in the year it is paid.

Example 5

Ann retired on 10 January 2023 and is paid a retirement lump sum of €120,000. Ann had previously received a lump sum on 30 June 2022 under s.790AA TCA 1997 of €150,000. Even though the earlier lump sum was not taxable, it counts towards her €200,000 lifetime tax-free limit. This means that the "unused" balance of the tax-free limit is €50,000 (€200,000 – €150,000) and this amount is offset against the lump sum paid on 10 January 2023. Therefore, €70,000 of the later lump sum is chargeable under Case III of Schedule D at the standard rate in force for 2023 of 20% (tax due @ 20% = €14,000).

Example 6

David retired on 10 January 2023 and is paid a retirement lump sum of €100,000. David had previously received a lump sum on 30 June 2022 under s.790AA TCA 1997 of €300,000. As David´s earlier lump sum already exceeds the tax-free limit,

the taxable lump sum is the current lump sum in full under Case III of Schedule D at the standard rate for 2023 of 20% (tax due = €20,000).

Example 7

Fred retired on 1 July 2023 and is paid a retirement lump sum of €400,000. Fred had previously received a retirement lump sum of €450,000 under s.790AA TCA 1997 on 1 January 2021. The earlier lump sum used up the €200,000 lifetime tax free limit, and €250,000 of the €300,000 that is chargeable under Case III of Schedule D at the standard rate. Therefore:

- €50,000 of the later lump sum is charged under Case III at the standard rate for 2023 of 20% (tax due = €10,000), and
- the remaining €350,000 of the later lump sum is charged under Schedule D Case III at his marginal rate in 2023 (assuming the higher rate of 40%, tax due = €140,000).
- Total tax due on the lump sum = €10,000 + €140,000 = €150,000. The balance chargeable at the marginal rate of tax (€350,000) is also chargeable to the USC.