



ITI Submission to Revenue Seeking Further Clarification on Revenue's Pensions Manual: Chapter 23 - Approved Retirement Funds

05 August 2020

Background - Distributions from Approved Retirement Funds (ARFs) to non-residents

Practitioners expressed concern at a TALC Direct/Capital Taxes meeting in September 2019 over uncertainty within the industry regarding the basis on which Ireland has taxing rights over ARFs where a person is not resident in Ireland. Practitioners raised the issue of treaty relief being denied. Revenue advised that an internal communication was sent to Revenue staff in December confirming that treaty relief should apply. There was a discussion regarding the requirement to segregate distributions between income and capital and also the basis for operating PAYE in cases where there is no underlying income tax charge where a person is resident in another country.

At the February 2020 TALC Direct/Capital Taxes meeting, Revenue advised that an internal memo had issued to staff and that the Tax and Duty Manual (TDM) on this matter would be published shortly confirming that treaty relief applies.

Revenue updated the TDM Pensions Manual "[Approved Retirement Funds – Chapter 23](#)" in June 2020, to explain how a distribution is treated in light of the terms of the relevant double taxation agreement. Owners of ARFs, vested PRSAs and AMRFs who are not resident in Ireland may be subject to taxation on this income, both in Ireland and their country of residence and subsequently tax relief may be available under the terms of a DTA. To claim relief, the guidance states:

"To ascertain the amount of relief due, information must be provided by the taxpayer indicating how the income arose within the ARF, including the date when the income arose. Once the distribution is broken down into its constituent parts (for example, interest income, dividend income, return of capital, etc.) each part should then be examined to see if DTA relief is available under the different articles of the treaty with the country of residence. Accordingly, full or partial refunds of Irish tax deducted under PAYE may be due to these taxpayers."

In a case encountered by a practitioner, the ARF distribution suffered 52% PAYE at source in Ireland and was taxed again in Spain where the individual was resident. The practitioner received a note through MyEnquiries from the caseworker dealing with the case, confirming:

"as the Ireland/Spain DTA grants taxation rights on both income and capital gains to the state of residence, and as your client is resident there, taxation rights rest with Spain. Consequently, Ireland does not have taxation rights and your client can claim a refund of PAYE withheld from her ARF distribution".

It was understood from the February TALC Direct/Capital Taxes meeting (and from this outcome) that this is Revenue's position. However, the updated TDM which issued in June 2020 continues to require distributions to be analysed between original capital, income and capital gains in order to determine the basis on which to eliminate double taxation.

Further guidance is essential regarding the level of analysis that is actually required if Revenue asserts this position. For example, if some of the assets within the ARF comprise of offshore funds, does a further analysis need to be done in that context?

The Tax Appeals Commission (TAC) Determination 36TACD2019 dealt with a case of an individual who asserted he was treaty resident in Malta and accordingly entitled to treaty relief on an Irish ARF distribution. The TAC held the appellant was treaty resident in Ireland but also expressed an opinion on the availability of DTR under the DTA if it had found him to be treaty resident in Malta. The TAC concluded that to the extent that the distribution comprised of income, DTR could be claimed under the appropriate article (e.g. dividends, interest etc.) but that no relief was available for the capital as the Maltese treaty did not provide for DTR on capital.

The updated TDM sets out Revenue's view on the taxation of, and DTR for, distributions from Irish ARFs to non-residents, requiring an analysis of income, gains and capital to determine appropriate double tax relief under individual articles. This more or less aligns with the TAC determination.

If a distribution is income or capital, and both the income and capital DTR articles provide for an exemption from Irish (source) tax and tax in the country of residence, we believe the analysis is not necessary and imposes disproportionate administration and costs on all stakeholders.

We are also seeking guidance on the taxation of, and DTR for, distributions from the foreign equivalent of ARFs or post-retirement pension funds to an Irish resident fund-owner. **Is it expected that a similar analysis should be carried out and income tax or CGT, as appropriate, be imposed, or is the distribution within the scope of income tax, as it would be for an Irish ARF distribution?**