LEGISLATION & NEWS UPDATE

GUIDING, GUARDING AND GROWING WEALTH IN IRELAND.

February 2023

This note is for information purposes only and therefore cannot be relied upon as legal advice.

UNIO EMPLOYEE BENEFITS

2022 in Review

IORPs and the State Pension

IORPs II and transfers to Master Trusts

Irish pension schemes continue to be steered in a particular direction by the governance requirements and regulatory supervision introduced by The European Union (Occupational Pension Schemes) Regulations, 2021 and the Pensions Authority's Code of Practice for Trustees

The Pensions Authority advised those aiming to transfer to a master trust in 2023 to make the commitment to wind-up their scheme before the end of 2022 to ensure that IORP II requirements will not apply to the scheme before the transfer occurs next year.

IORPs II and Ongoing Schemes

In respect of those schemes which are to continue, the sponsoring employers, registered administrators and trustees will need to work together to identify what processes and procedures are required for ongoing compliance and ensure the administrative burden remains manageable.

State Pension Age

The State Pension age will remain at 66 years old against the advice of the Commissions on Pensions

A new "flexible" system is to be introduced, which gives people the choice to work until 70 in return for a higher state pension.

2022 in Review

Finance Act 2021 (the “2021 Act”)

Approved Retirement Fund (“ARF”) option for Death in Service Provision

Previously, after the Revenue limit of four times salary for the payment of death in service benefits in lump sum form had been reached, any additional funds payable in lump sum form could only be used to purchase annuities.

Under section 12 of the 2021 Act it is now possible for trustees to transfer such additional or surplus funds to an ARF for the benefit of the deceased’s spouse or dependents. The ARF option provides more cost efficiency and more flexible alternatives for drawdown by beneficiaries.

Transfers to PRSAs: 15 Year Rule abolished

Previously, members of an occupational pension scheme were not able to transfer their benefits under the scheme to a PRSA if they had more than 15 years of service.

Section 13 of the 2021 Act removed this long standing anomaly and it is now possible for a scheme member to transfer their entitlements under an occupational pension scheme to a PRSA irrespective of the length of their service.

Approved Minimum Retirement Fund (“AMRF”) Requirements abolished

Previously, AMRF requirements had to be complied with by individuals seeking to avail of the ARF option on retirement.

Section 14 of the 2021 Act removed the paternalistic AMRF concept from Irish law and any existing AMRFs on 1 January 2022 automatically converted to ARFs.

Foreign Lump Sums

Section 200A of the Taxes Consolidation Act 1997 (“TCA”)

From 1 January 2023 Section 200A of the TCA (as inserted by the Finance Act 2022) provides rules for the treatment of lump sum payments from foreign pension arrangements.

- Such payments do not come within the scope of the tax rules for lump sums payable under Irish occupational pension schemes under section 790AA of the TCA.
- As and from 1 January 2023, the lifetime tax-free limit on all lump sums from a foreign pension arrangement, as defined, which are paid to a resident individual has the same meaning as it has in section 790AA (currently €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 Section 790AA of the TCA.
- The portion of any excess payable between €200,000 and €500,000 will be taxed at the standard rate (20%) with any portion above that level taxed at the individual’s marginal rate of income tax and USC.
- Exemption for beneficiaries of a deceased individual It should be noted that Section 200A contains an exemption in respect of death in service lump sums from foreign pension arrangements that are payable to the widow/widower, surviving civil partner, children, children of the civil partner, dependents or personal representatives of a deceased individual.
- On the basis of this amendment to the TCA, Trustees will need to arrange for the members to formally declare any lump sums that they have received from overseas pension arrangements on or after 1 January 2023.

Section 200A of the TCA
Example 1

Where the amount of the earlier foreign lump sum is **less** than the tax free amount and the amount by which the aggregate of the earlier lump sums and the current lump sum **exceeds** the tax-free amount.

A lump sum of €50,000 from a foreign pension arrangement is paid in January 2023 and is subject to Section 200A of the TCA.

A lump sum is paid from an Irish occupational pension scheme of €180,000 is paid in January 2024.

The excess lump sum is therefore:

The aggregate of the lump sums (€50,000 + €180,000)
= €230,000

Minus the tax-free lump sum limit (€230,000 - €200,000)
= €30,000

The excess lump sum is €30,000 and as the amount does not exceed the standard chargeable amount of €300,000, it is charged to tax at the standard rate for the tax year in which the lump sum is paid.

Section 200A of the TCA
Example 2

Where the amount of the earlier lump sums is **equal to or greater** than the tax free amount.

A lump sum of €120,000 and €80,000 from foreign pension arrangements is paid in January 2023 and February 2023 and are subject to Section 200A of the TCA.

A lump sum is paid from an Irish occupational pension scheme of €180,000 is paid in January 2024.

The excess lump sum is therefore:

The aggregate of the lump sums (€120,000 + €80,000 + €180,000)
= €380,000

Minus the tax-free lump sum limit (€380,000 - €200,000)
= €180,000

The excess lump sum is €180,000 and as the amount does not exceed the standard chargeable amount of €300,000, it is charged to tax at the standard rate payable.

Finance Act 2022

Employer PRSA Contributions

What is the change?

- Traditionally an occupational pension scheme ("OPS") has been used for company directors and employees.
- Funding limits for OPS are based on salary and years of service with the company.
- Previously tax relief contributions to a PRSA were limited to employee age related percentage limits).
- However, with effect from 1 January 2023 there is no funding restrictions or BIK charge in a PRSA.
- Employer PRSA contribution no longer counts towards the individual's own tax relief limit
- Also, the funding is not based on salary or service as still applies with an OPS.

What are the opportunities with a PRSA?

- Larger contributions can now be made to a PRSA for an employee/director with low salary/service than could be made into an OPS.
- No spreading of tax relief. Relief should be allowed in the company's accounting period as there is no distinction for tax relief purposes between an ordinary annual and special contribution paid into a PRSA (as is the case in a Company Pension).
- Where someone is actively involved in the running/managing of a business there is a great opportunity to fund up a PRSA to levels not permitted under an OPS.

Automatic Enrolment Retirement Savings System Bill 2022 (the "Bill")

In broad terms there will be auto-enrolment in a workplace pension of those employees between ages of 23 and 60 and earning more than €20,000. The employees can only do so after being enrolled for 6 months at which point they would be refunded their contributions and re-enrolled periodically.

- The final design of the system was approved in March 2022 and will operate on an opt-out basis.
- Provisional implementation date of Q4 2024 – Intended to be phased in over the course of a decade.
- Contributions starting at 1.5% of gross salary and escalating every 3 years to a maximum to 6%
- State will make a contribution of €1 for every €3 saved by the employee
- This system will be managed by a Central Processing Authority, which will be responsible for overall administration of the system.
- It is expected that the Bill will be introduced in the Oireachtas in early 2023.
- Introduction of auto enrolment expected to result in 750,000 new enrolments into a workplace pension scheme.

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