

(8) Any lump sum tax or tax balance referred to in this section—

(a) shall be used only once to reduce a chargeable excess tax, and

(b) shall be used for no other purpose.”,

and

(b) by inserting the following after section 787T:

“Encashment option.

787TA.—(1) In this section—

‘active member’, in relation to a public sector scheme, means a member of the scheme who is in reckonable service within the meaning of section 2(1) of the Pensions Act 1990;

‘AMRF’ means an approved minimum retirement fund;

‘ARF’ means an approved retirement fund;

‘Personal Retirement Savings Account’ has the meaning assigned to it by section 787A and the expression ‘PRSA’ shall be construed accordingly;

‘private sector scheme’ means a relevant pension arrangement of a kind described in paragraphs (a) to (d) of the definition of ‘relevant pension arrangement’;

‘PRSA administrator’ has the meaning assigned to it by section 787A;

‘public sector scheme’ means a relevant pension arrangement of a kind described in paragraphs (e) and (f) of the definition of ‘relevant pension arrangement’;

‘qualifying fund manager’ has the meaning assigned to it by section 784A;

‘relevant individual’ means an individual who on 8 February 2012—

(a) (i) is a member of one or more than one private sector scheme or was such a member before that date and one or more than one benefit crystallisation event has occurred in respect of the scheme or schemes in the relevant period, and

(ii) is a member of one or more than one public sector scheme,

or

- (b) is a member of one or more than one private sector scheme or becomes such a member after that date and who subsequently becomes a member of one or more than one public sector scheme,

and who continues as an active member of his or her public sector scheme until his or her retirement date;

‘relevant manager’, in relation to a relevant individual, means a qualifying fund manager of an ARF or an AMRF or, as the case may be, a PRSA administrator of a PRSA, the assets in which are beneficially owned by that individual;

‘relevant period’ means the period starting on 7 December 2005 and ending on 7 February 2012;

‘retirement date’, in relation to a public sector scheme, means the earlier of—

- (a) the date on which a member of the scheme retires where that date is on or after the date on which the member reaches the age of 60 years, and
- (b) the date on which a member of the scheme retires on grounds of incapacity under the rules of the scheme;

‘tax year’ means a year of assessment for income tax purposes.

(2) Subject to subsection (11), this section shall apply in relation to a relevant individual where—

- (a) no benefit crystallisation event has occurred in relation to the relevant individual in the relevant period,
- (b) the aggregate of the amounts to be crystallised by benefit crystallisation events in relation to the relevant individual under his or her private sector scheme or schemes and his or her public sector scheme or schemes would, but for this section, exceed the standard fund threshold or, as the case may be, the relevant individual’s personal fund threshold (in this section

referred to as the ‘specified amount’), and

- (c) the benefit crystallisation events in relation to the public sector scheme or schemes of the relevant individual occur after the occurrence of all other benefit crystallisation events in relation to the private sector scheme or schemes of that individual.
- (3) (a) Where the conditions set out in subsection (4) are met, an individual in relation to whom subsection (2) may apply may irrevocably instruct in writing the administrator of the private sector scheme or schemes to exercise the option (in this section referred to as the ‘encashment option’) provided for in subsection (6).
- (b) The encashment option may be exercised in respect of a relevant individual on one occasion only and on the same date in relation to each of the private sector schemes of the individual in respect of which he or she has irrevocably instructed the administrator to exercise the option.
- (c) Where an administrator referred to in paragraph (a) or subsection (11)(a) or, as the case may be, a relevant manager referred to in subsection (11)(a) (in this paragraph referred to as the ‘relevant administrator’) receives an irrevocable instruction in writing from an individual the relevant administrator shall keep and retain for a period of 6 years each such instruction and on being so required by notice given to the relevant administrator in writing by an officer of the Revenue Commissioners make available within the time specified in the notice such instructions as may be required by the notice.
- (4) The conditions are that the relevant individual—
- (a) notifies the Revenue Commissioners in writing of his or her intention to have the encashment option exercised at least 3

months before the date on which the first benefit crystallisation event in relation to the public sector scheme or schemes is to occur and provides the following information—

- (i) his or her full name, address and PPS Number,
- (ii) an estimate of the value of the accrued rights in respect of which the encashment option is to be exercised or, as the case may be, the specified amount,
- (iii) particulars of the private sector scheme or schemes in respect of which the encashment option is to be exercised,
- (iv) the name, address and telephone number of the administrator of each such scheme, and
- (v) such other information and particulars as the Revenue Commissioners may reasonably require for the purposes of this section,

and

- (b) notifies the Revenue Commissioners in writing, within 7 working days of the exercise of the encashment option, that the option has been exercised and provides a schedule, with the notification, setting out the aggregate amount in respect of which the option was exercised and the amounts in respect of each of the private sector schemes concerned.

(5) Subsections (3) and (4) of section 787P shall, with any necessary modifications, apply to a notification under paragraph (a) or (b) of subsection (4) as they apply to a notification under subsection (2) of that section.

- (6) (a) The exercise of the encashment option is the transfer by the administrator of the private sector scheme or schemes to the relevant individual—

- (i) where the relevant individual's retirement date is the date referred to in paragraph (b) of the definition of 'retirement date', on that date, or
- (ii) in any other case, on or before the relevant individual's retirement date but not before the date on which the relevant individual attains the age of 60 years,

of the amount of the value of the relevant individual's accrued rights under the private sector scheme or schemes, including rights, if any, which relate to additional voluntary contributions under the scheme or schemes, equal to—

- (I) where the condition referred to in paragraph (b) applies, the value of those rights, and
  - (II) in any other case, the specified amount.
- (b) The condition needed is that the amount to be crystallised by the benefit crystallisation events in relation to the relevant individual under his or her public sector scheme or schemes exceeds the standard fund threshold, or, as the case may be, the relevant individual's personal fund threshold.

- (c) (i) In this paragraph—

'rules' means anything contained in the rules of a scheme or the terms and conditions of any contract in respect of a scheme;

'tax-free lump sum' means the lump sum of a kind that would under the rules have been payable tax-free to a relevant individual if section 790AA had never been enacted;

'restricted tax-free lump sum' means an amount equivalent to the amount

determined by the formula—

$$A \times \left(1 - \frac{B}{C}\right)$$

where—

A is the amount of the tax-free lump sum,

B is—

- (I) the specified amount, or
- (II) where the encashment option is exercised in respect of any other private sector scheme or schemes of the relevant individual, an amount equivalent to the amount determined by the formula—

$$D - E$$

where—

D equals the specified amount, and

E equals the encashment amount or, as the case may be, the aggregate of the encashment amounts arising from the exercise of the encashment option in respect of the other private sector scheme or schemes,

and

C is the amount equal to the value of the relevant individual's accrued rights under the scheme.

- (ii) Notwithstanding anything contained in this Part or anything contained in the rules, where an encashment option is exercised in respect of a scheme and—
  - (I) the encashment amount is equal to the value of the relevant individual's accrued rights

under the scheme, the tax-free lump sum shall not be payable, or

- (II) the encashment amount is less than the value of the relevant individual's accrued rights under the scheme, the tax-free lump sum shall be restricted to the restricted tax-free lump sum.

(7) Where an encashment option is exercised in respect of a relevant individual, the whole of the encashment amount in respect of each of the private sector schemes of the relevant individual in respect of which the encashment option is exercised shall be regarded as income of the individual for the tax year in which the amount is paid and shall be chargeable to income tax under Case IV of Schedule D.

(8) Income tax chargeable in accordance with subsection (7) shall be charged at the higher rate for the tax year in which the payment is made (in this section referred to as the 'encashment tax') and the administrator of each of the private sector schemes referred to in subsection (7) shall deduct the income tax due from the encashment amount and remit it to the Collector-General in accordance with subsection (10).

(9) Where an encashment amount is regarded as income of the individual under subsection (7) and charged to tax in accordance with subsection (8)—

- (a) such income shall be computed without regard to any amount deductible from, or deductible in computing, total income for the purposes of the Tax Acts,
- (b) the charging of that income to tax in such manner shall be without any relief or reduction specified in the Table to section 458, or any other deduction from that income, and
- (c) section 188 shall not apply as regards the amount so charged.

(10) Where the administrator of a private sector scheme or, as the case may be, a relevant manager referred to in subsection (16) deducts encashment tax in accordance with subsection (8) or, as the

case may be, subsection (16), subsections (1) to (8) of section 787S shall, with any necessary modifications, apply as if any reference in those subsections—

- (a) to an administrator included a reference to a relevant manager,
  - (b) to a relevant pension arrangement were a reference to a relevant individual's private sector scheme,
  - (c) to a benefit crystallisation event were a reference to an encashment option,
  - (d) to a chargeable excess were a reference to an encashment amount, or as the case may be, a deemed encashment amount, and
  - (e) to tax were a reference to encashment tax.
- (11) (a) (i) Where the conditions set out in subsection (4), as modified by subsection (12) (in this section referred to as the 'modified conditions'), are met, an individual in relation to whom the circumstances described in paragraph (b) may apply, may irrevocably instruct in writing the administrator or, as the case may be, the relevant manager of the private sector scheme or schemes to exercise the encashment option as if the benefit crystallisation event or events referred to in subparagraph (i) of paragraph (b) had not occurred.
- (ii) Where the encashment option is exercised in respect of a private sector scheme or schemes of a kind referred to in subparagraph (i) of paragraph (b), subsection (6)(a) shall apply as if the reference in that subsection to an administrator were a reference to a relevant manager.
- (b) The circumstances referred to in paragraph (a) are that in



relation to a relevant individual—

- (i) one or more than one benefit crystallisation event has occurred within the relevant period in relation to one or more than one private sector scheme of that relevant individual, and
- (ii) the aggregate of—
  - (I) the amounts so crystallised, and
  - (II) the amounts to be crystallised in the future by benefit crystallisation events in relation to the relevant individual—
    - (A) under his or her other private sector scheme or schemes, if any, and
    - (B) under his or her public sector scheme or schemes,

would, but for this section, exceed the standard fund threshold or, as the case may be, the relevant individual's personal fund threshold (referred to in paragraph (a)(ii) of subsection (4), as modified by subsection (12), and in the construction of 'B' in the formula in subsection (15)(b) as the 'other specified amount'), and

- (iii) the benefit crystallisation events in relation to the public sector scheme or schemes of the relevant individual occur after the occurrence of all other benefit crystallisation events in relation to the private sector scheme or schemes of that individual.

(12) The modified conditions are that the individual complies with subsection (4)

as if the following were substituted for subparagraphs (ii), (iii) and (iv) of paragraph (a) of that subsection:

- ‘(ii) an estimate of the value of the accrued rights in respect of which the encashment option is to be exercised or, as the case may be, the other specified amount,
- (iii) notwithstanding that one or more than one benefit crystallisation event has occurred in relation to one or more than one private sector scheme within the relevant period, particulars of the private sector scheme or schemes in respect of which the encashment option is to be exercised, and
- (iv) the name, address and telephone number of the administrator or, as the case may be, the relevant manager of each such scheme.’

(13) Where an encashment option is exercised in respect of an individual referred to in subsection (11)(a) being at that time a relevant individual, then in so far as the exercise of that option relates to—

- (a) one or more than one private sector scheme of the individual in respect of which no benefit crystallisation event has occurred in the relevant period, subsections (7) to (10) shall apply, and
- (b) one or more than one private sector scheme of the individual in respect of which one or more than one benefit crystallisation event has occurred in the relevant period, subsection (14) or (15), as the case may be, shall apply.

(14) (a) Where an encashment option relates to a scheme referred to in subsection (13)(b), the value of the individual’s accrued rights under the scheme for the

purposes of the exercise of the option shall be the amount crystallised by the benefit crystallisation events and where the encashment option has been exercised in respect of the whole of the scheme the part of the encashment amount from which encashment tax is to be deducted (in this section referred to as the 'deemed encashment amount') shall be the amount referred to in paragraph (b).

- (b) Where the benefit crystallisation event is—
- (i) a lump sum paid under the rules of the scheme (of a kind that would, if section 790AA had never been enacted, have been paid tax-free to the individual and in this section referred to as the 'tax-free lump sum paid'), the deemed encashment amount shall be the amount of that tax-free lump sum paid,
  - (ii) the transfer of an amount to an ARF the assets in which are beneficially owned by the relevant individual, the deemed encashment amount shall be the lesser of the amount transferred to the ARF at the time the benefit crystallisation event occurred and the value of the assets in the ARF at the date of the exercise of the encashment option,
  - (iii) the transfer of an amount to an AMRF the assets in which are beneficially owned by the relevant individual, the deemed encashment amount shall be the lesser of the amount transferred to the AMRF at the time the benefit crystallisation event occurred and the value of the assets in the AMRF at the date of the exercise of the encashment option,
  - (iv) the retention of the assets of a PRSA in the PRSA (in this section referred to as

the 'vested PRSA') beneficially owned by the relevant individual, the deemed encashment amount shall be the lesser of the value of the assets retained in the vested PRSA at the time the benefit crystallisation event occurred and the value of the assets in the vested PRSA at the date of the exercise of the encashment option, and

(v) in any other case, the deemed encashment amount shall be nil.

(c) The whole of the deemed encashment amount—

(i) shall be regarded as income of the individual for the tax year in which the encashment option is exercised, and

(ii) the amount so regarded as income shall be chargeable to income tax in accordance with subsection (16) or, as the case may be, subsection (19).

(15) (a) Where an encashment option relates to a scheme referred to in subsection (13)(b) and that option is exercised in respect of only part of the scheme—

(i) the encashment amount shall be an amount equivalent to B in the formula in paragraph (b), and

(ii) where the benefit crystallisation event was in respect of any one or more of the events described in subsection (14)(b), the deemed encashment amount in respect of each of those events shall be an amount equivalent to the amount determined by that formula.

(b) The formula is—

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

where—

A is—

- (i) the amount of the tax-free lump sum paid,
- (ii) the lesser of the amount transferred to the ARF at the time the benefit crystallisation event occurred and the value of the assets in the ARF at the date of the exercise of the encashment option (in this paragraph referred to as the 'encashment date'),
- (iii) the lesser of the amount transferred to the AMRF at the time the benefit crystallisation event occurred and the value of the assets in the AMRF at the encashment date, or
- (iv) the lesser of the value of the assets retained in the vested PRSA at the time the benefit crystallisation event occurred and the value of the assets in the vested PRSA at the encashment date,

B has the meaning assigned to it in the formula in the definition of 'restricted tax-free lump sum' in subsection (6)(c)(i) as if in that meaning a reference to specified amount were a reference to other specified amount,

and

C is the amount crystallised by the benefit crystallisation events under the scheme.

(c) Paragraph (c) of subsection (14) shall apply to the deemed encashment amounts referred to in paragraph (a).

(16) (a) Any deemed encashment amount shall be charged to

income tax under Case IV of Schedule D.

- (b) The relevant manager shall deduct income tax from the deemed encashment amount at the higher rate for the tax year in which the encashment option is exercised and remit it to the Collector-General in accordance with subsection (10).
- (c) Paragraphs (a) to (c) of subsection (9) shall apply to a deemed encashment amount regarded as income of the relevant individual under subsection (14)(c) or (15)(c) and charged to income tax in accordance with paragraph (a).
- (d) (i) The deduction of income tax by a relevant manager in accordance with paragraph (b) shall include a deduction for a deemed encashment amount in respect of a tax-free lump sum paid under the rules of the private sector scheme from which the assets were, in whole or in part, transferred to the ARF or the AMRF or, as the case may be, in the case of a scheme that is a PRSA, within which the assets were retained in whole or in part.
- (ii) (I) In so far as income tax has been charged under subsection (3)(a)(i) or (3)(b)(i)(I) of section 790AA on an excess lump sum (within the meaning of subsection (1)(e) of that section) (in this paragraph referred to as the 'standard rate income tax') in respect of a lump sum referred to in subparagraph (i) and deducted by and remitted to the Collector-General by the administrator of the private sector scheme in accordance with subsection (8) of that section, the income tax to be deducted by the

relevant manager from the deemed encashment amount in respect of the lump sum shall, where the condition in subparagraph (iii) is met, be reduced by the amount of the standard rate income tax, and

- (II) where a deemed encashment amount in respect of a tax-free lump sum has been calculated in accordance with the formula in subsection (15), then in so far as standard rate income tax has been charged in respect of the lump sum, the income tax to be deducted by the relevant manager from the deemed encashment amount shall, where the condition in subparagraph (iii) is met, be reduced by an amount of income tax equivalent to the amount determined by that formula if 'A' in the formula was the amount of the standard rate income tax.
- (iii) The condition referred to in clauses (I) and (II) of subparagraph (ii) is that the relevant manager obtains from the administrator of the private sector scheme a certificate giving the information set out in paragraphs (a) to (e) of subsection (2) of section 787RA.
- (iv) Where income tax on a deemed encashment amount is reduced by an amount of standard rate income tax in accordance with clause (I) or (II) of subparagraph (ii), that amount of standard rate income tax shall not be available for the purposes of section 787RA.

- (v) Subsection (6) of section 787R shall, with any necessary modifications, apply to a relevant manager who obtains a certificate under subparagraph (ii) as if the reference in that subsection to a declaration, or declarations, were a reference to a certificate, or certificates, to which subparagraph (ii) applies.

(17) The tax required to be deducted by the relevant manager under subsection (16) shall be satisfied out of the funds in the ARF, the AMRF or, as the case may be, the vested PRSA beneficially owned by the relevant individual and the individual shall allow such deduction and where there are no funds or insufficient funds available out of which the relevant manager may satisfy the tax required to be deducted, the amount of such tax for which there are insufficient funds available (in this section referred to as the 'unpaid tax') shall be discharged in accordance with subsection (18).

- (18) (a) The unpaid tax referred to in subsection (17) shall be deemed to be tax on a chargeable excess in respect of the relevant individual and shall be paid and remitted to the Collector-General by the administrator of the relevant individual's public sector scheme at the time of the occurrence of the first benefit crystallisation event in respect of the individual in relation to that scheme and the amount so paid shall be a debt due to the administrator from the individual, or where the individual is deceased, from his or her estate.

- (b) The administrator referred to in paragraph (a) shall be reimbursed by the relevant individual for the payment of the unpaid tax that is deemed to be tax on a chargeable excess in the manner provided for in paragraphs (a) and (b) of section 787Q(7).

- (c) The deemed tax on a chargeable excess referred to in paragraph (a) shall not be tax on a chargeable excess for any other purpose of this Chapter.



- (19) (a) Where an encashment option is exercised in relation to a private sector scheme of a relevant individual in circumstances where a tax-free lump sum was paid and the remainder of that individual's accrued rights under the scheme were applied by way of—
- (i) the purchase of an annuity for the individual, or
  - (ii) the payment of a pension to the individual from the scheme, or
  - (iii) the transfer to the individual under the rules of the scheme of an amount on the exercise of an option by the individual under section 772(3A)(a) or 784(2A) and taxed in accordance with section 784(2B) (or, as the case may be, taxed in accordance with that section by virtue of section 772(3B)), or an amount transferred to the individual at the time assets of the PRSA are first made available from the PRSA and taxed in accordance with section 787G(1),

then income tax charged under subsection (16)(a) on the deemed encashment amount in relation to the tax-free lump sum shall be chargeable to tax at the higher rate for the tax year in which the encashment option is exercised and the encashment tax so charged shall, subject to paragraph (c), be deemed to be unpaid tax for the purposes of subsection (18) and discharged in accordance with that subsection as if the reference in paragraph (b) of that subsection to paragraphs (a) and (b) of section 787Q(7) were a reference only to paragraph (b) of section 787Q(7).

- (b) Subparagraphs (ii) and (iv) of paragraph (d) of subsection (16) shall, with any necessary modifications, apply to encashment tax referred to in paragraph (a), where the relevant individual obtains from the administrator

of the private sector scheme a certificate giving the information set out in paragraphs (a) to (e) of subsection (2) of section 787RA.

- (c) Subsection (6) of section 787R shall, with any necessary modifications, apply to a relevant individual who obtains a certificate under paragraph (b) as if the reference in that subsection to a declaration, or declarations, were a reference to a certificate, or certificates, to which paragraph (b) applies.

(20) Where a benefit crystallisation event has occurred in relation to a relevant individual under a private sector scheme in respect of which an encashment option is exercised and the benefit crystallisation event has resulted in the individual being the beneficial owner of the assets in an ARF, an AMRF or, as the case may be, a vested PRSA (in this subsection referred to as the 'fund'), then where the exercise of the option was in respect of—

- (a) the whole of the private sector scheme, the value of the assets in the fund, or
- (b) a part of the private sector scheme, the value of the assets in the fund that are deemed to be an encashment amount in accordance with subsection (15),

shall for the purposes of this Part no longer be regarded as assets held in an ARF, an AMRF or, as the case may be, a vested PRSA from the date of the exercise of the option.

(21) Where an encashment option is exercised in respect of a relevant individual the encashment amount or, as the case may be, the deemed encashment amount shall not be—

- (a) a benefit crystallisation event for the purposes of this Chapter and Schedule 23B and where that amount relates to a private sector scheme in respect of which one or more than one benefit crystallisation event has occurred before the exercise of the option such benefit crystallisation events or, as the case may be, the portion of such

benefit crystallisation events represented by the amount of 'B' in the formula in subsection (15)(b), shall be disregarded for the purposes of this Chapter and Schedule 23B,

- (b) used by the relevant individual as a contribution to, or the payment of a premium under, a relevant pension arrangement, and
- (c) regarded under the provisions of Chapter 2 or 2A as a distribution from an ARF or an AMRF or, as the case may be, as the making available to, or paying to, a PRSA contributor of assets of that amount or value from a PRSA.

(22) Where an encashment option is exercised in respect of a relevant individual in relation to a private sector scheme in respect of which one or more than one benefit crystallisation event has occurred in the relevant period and the deemed encashment amount is the amount of the tax-free lump sum paid or, as the case may be, a part of the tax-free lump sum paid, that amount, or that part, shall be disregarded in determining an excess lump sum (within the meaning of subsection (1)(e) of section 790AA) in respect of a lump sum (within the meaning of that section) that is paid to that individual on or after 8 February 2012.

- (23) (a) The persons liable for income tax charged in accordance with subsection (8) or (16) shall be the relevant individual and the administrator of the private sector scheme, the relevant manager referred to in subsection (16) or, as the case may be, the administrator of the public sector scheme referred to in subsection (18) and their liability shall be joint and several.
- (b) A person liable for income tax charged in accordance with subsection (8) or (16) shall be so liable whether or not that person or any other person who is liable for the charge is resident or ordinarily resident in the State.”.

(8) Chapter 4 of Part 30 of the Principal Act is amended by inserting the following after section 790C: