



PENSIONS – “HOME AND AWAY”

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HOME

OVERSEAS PENSIONS IN IRELAND

- The “foreign lump sum precedent”
- Section 200 TCA 1997 exemption
- Other exemptions



THE FOREIGN LUMP SUM PRECEDENT

- Revenue Precedent PREC/28 cited in Taxes Consolidation Act under section 772 TCA 1997
- Occupational pensions: Are tax free lump sums in commutation of foreign pensions taxable in Ireland should the individual come to reside in this country following their retirement? No

THE FOREIGN LUMP SUM PRECEDENT

- Updated Revenue Tax and Duty Manual 07-01-09



- New example

- Conor worked in Cayman Islands for 10 years
- No connection to Ireland, not resident no duties performed in Ireland
- Returns to Ireland pension lump sum drawdown now considered taxable



THE FOREIGN LUMP SUM PRECEDENT

- What next?
- Being raised at high level with Revenue
- Practitioners not aware precedent “withdrawn”
- KTA seeking to take a “test” case but this will be a slow process!



SECTION 200 TCA 1997 EXEMPTION

- Exemption from Irish income tax for certain foreign pensions
- Applies to:
 - Occupational pensions
 - State old age pensions

Provided

Such pensions not regarded as taxable income in country of payment for a resident



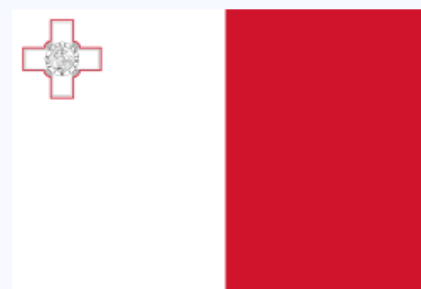
SECTION 200 TCA 1997 EXEMPTION

- Country where pension arises must have a tax corresponding to Irish income tax
- Exemption will not apply to pensions (annual or lump sum) from a tax haven e.g. Cayman Islands



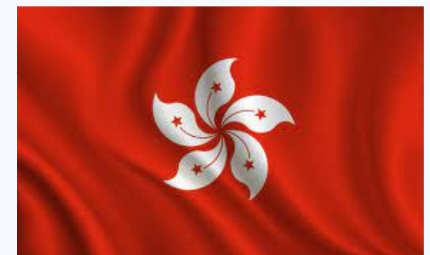
SECTION 200 TCA 1997

- Where might it apply?
 - Exempt lump sums e.g. from a UK or Malta pension fund
 - Exempt annual pension e.g. Australia
- Important to examine nature of pension ill health/invalidity



OTHER EXEMPTIONS

- Double Taxation Agreements
- Article 19 Government Service
 - Pension taxed only in source country
- Specific Taxation Agreements
 - Germany
 - Hong Kong



OTHER EXEMPTIONS

- Article 19
- What is Government Service?
 - Working directly for the State, Local Authority other subdivision
 - Not applicable to commercial entities e.g. semi-states
- Not in all treaties e.g. Australia, Canada, Russia

OTHER EXEMPTIONS

- Specific Taxation Agreements

- **Germany**

Article 17

Conor retires in Ireland having last worked for 10 years in the private sector in Germany

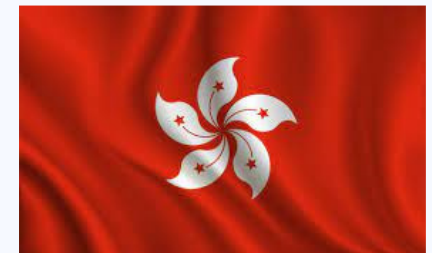
Occupational pension taxable only in Ireland. Social security pension taxable only in Germany

- **Hong Kong**

Article 17

Conor retires in Ireland having worked in the private sector in Hong Kong

Both his private sector pension and social security pension should be taxable only in Hong Kong



AWAY

IRISH PENSIONS

- Non –resident tax planning
- ARFs – tax issues
- Transfer of pension overseas

IRISH PENSION - RETIREMENT BENEFITS



- 25% - lump sum
 - EUR200,000 tax free
 - EUR300,000 at 20%
- 75% - ARF or annuity (48%/52%)
- Excess fund charge – 40% on value above EUR2.15M

NON-RESIDENCE PLANNING

1. Cease tax residence in Ireland.
2. Take up residence in tax favourable overseas jurisdiction.
3. Ensure the overseas jurisdiction has taxing rights on pension payments.

BREAK RESIDENCE IN IRELAND

- Short term – 12 to 18 months timeframe
- No permanent home in Ireland and benefit from DTA
- Long term – 4 year non residence plan
- For those who cannot give up permanent home

NON-RESIDENT PLANNING INDIVIDUAL MOVES OVERSEAS

Portugal

The NHR!



PORTUGAL AND NHR

- Foreign Pensions – 10%
- Foreign dividends – 0%
- Cryptoassets – no tax
- 10 year term



RESIDENCE IN PORTUGAL

- Rent/buy property
- Spend time in Portugal
- No minimum/maximum days requirement



TRANSFER IRISH PENSION FUND OVERSEAS

Why?

- Client considering retirement or move overseas
- Member of Occupational pension scheme
- Better tax outcome
- ARF – tax issues



ARFS – NON RESIDENTS

ARFs and Vested PRSA

- December 2017 – change in Revenue approach
- Distributions to non-residents subject to PAYE
- Difficult to get a tax refund
- Potential double taxation



ARFs – REVENUE POSITION



- ARF - not a pension
- ARF distributions - not pension income
- Pensions Article of DTA not relevant
- New DTA's give sole taxing rights to Ireland – Germany, Pakistan, The Netherlands

ARF – TAX APPEALS CASE

- 36 TACD 2019
- Agreed with Revenue view
- Initial funds transferred to ARF are capital
- Distributions to be broken down between income, gains and capital
- DTA relief only available in respect of income/gains arising when not resident

ARF – DISTRIBUTIONS



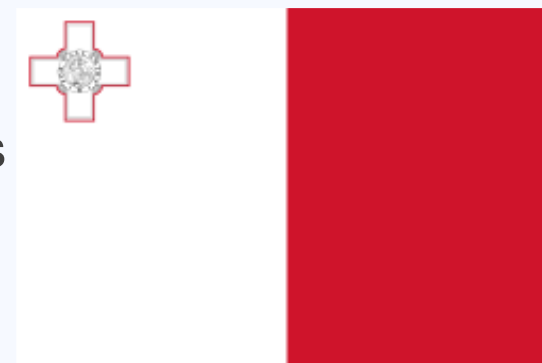
- EUR1.5M transferred to ARF – 1 January 2019
- Individual moves to Portugal – 1 January 2022
- ARF fund current value EUR1.65M

ARF FUND

- EUR150K – income or gain?
- 1.5M – capital
- If EUR150K distributed in 2022 – Irish tax refund?
- If EUR150K is income or gain arising in 2022 (non-resident period) then possible DTA relief and tax refund

WHERE TO TRANSFER - MALTA

- 30% lump sum from age of 50
- Flexible drawdown – further lump sums year 4 onwards
- No EUR2.15m threshold
- No imputed distributions
- No Maltese withholding tax or estate taxes



THE TRANSFER

- Pension regulations/EU law
- Irish Occupational scheme can transfer
- PRSAs – yes but a tax cost if a direct transfer
- Maltese scheme – occupational or personal
- Bona fide reasons - Notification to Revenue

MALTESE PENSION SCHEME

- Pensions assets do not have to move
- Existing Investments – may not need to encash before transfer
- Watch Irish regulated funds
- Can the scheme hold Irish land/buildings – Yes
- But income and gains from Irish land/buildings not tax exempt

SUMMARY

- Individual to Portugal
- Pension to Malta
- Tax – 10%

FUTURE CHANGES

- No changes expected in Malta or Portugal but possible
- DTA – future changes possible
- IRE/Netherlands New DTA - Pension Article gives Ireland taxing rights on payments from foreign pensions funded by transfer from Irish tax relieved pension scheme.



THANK YOU

QUESTIONS?