



Relate

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Finance Act 2013

Introduction

The Finance Act 2013, which was signed into law on 27 March 2013, implements the changes announced in the Budget and some other changes. Many of its provisions were already in effect, some came into effect when the Act became law and some require Commencement Orders.

The Budget changes were described in the January 2013 issue of *Relate*. Here we give further information on some of these changes and describe some of the other changes affecting personal taxation.

Taxation of Maternity Benefit and related benefits

The Act provides that Maternity Benefit, Adoptive Benefit and Health and Safety Benefit will be taxable from 1 July 2013. Like all other social welfare payments, they are not subject to PRSI or the Universal Social Charge (USC).

Maternity Benefit may be payable for a period of 26 weeks if certain PRSI conditions are met. It is payable to both employed and self-employed mothers (and, in certain cases where the mother dies, to fathers). Employees must be entitled to maternity leave to qualify for the benefit. Employed women may also take a further 16 weeks' unpaid leave but Maternity Benefit is not paid for this leave.

The rules in relation to Adoptive Benefit are broadly the same, except that it is payable for 24 weeks from the date of placement of the child. Health and Safety Benefit may be payable to employed expectant or breastfeeding mothers who are given leave for health and safety reasons.

There were over 45,000 recipients of Maternity Benefit in 2012 at a cost of €303 million. On average, there are about 22,800 recipients in any given week. There were 226 recipients of Health and Safety Benefit in 2012 (an average of 60 a week).

The amount of Maternity or Adoptive Benefit payable is related to earnings in the relevant tax year. The minimum personal rate is €217.80 a week and the maximum is €262 a week. About 90% of claimants get the maximum amount. Extra amounts may be payable if you have dependants. Health and Safety Benefit is also pay-related – the maximum personal rate is €188 a week.

The majority of social welfare weekly benefits are taxable. These include long-term payments such as the State Pension, Widow's/Widower's/Surviving Civil Partner's Pension, Invalidity Pension, Blind Pension, Carer's Allowance, the One-Parent Family Payment (OFP), as well as short-term benefits such as Jobseeker's Benefit and Illness Benefit. Jobseeker's Allowance is not taxable.

Some employees are paid in full by their employer while they are on maternity leave. This has meant that those employees were paying less tax while on leave than they were while at work. It is expected that the taxation of these payments will yield €40 million in a full year.

In practice, if your only income is a social welfare payment, you are unlikely to have to actually pay any tax on it because your tax credits are likely to be greater than your taxable income. However, if you are married and jointly taxed, you are likely to have to pay some tax on your benefit.

Charitable donations

Up to 2012, the tax relief was given to the charity in the case of donations made by people paying their income tax under PAYE whereas self-employed people were themselves granted the tax relief. The tax relief will now be given to the charity in all cases.

The tax relief on qualifying charitable donations is at the rate of 31% from 2013. Until the end of 2012, the relief was granted at your marginal tax rate.

The Act also provides for the simplification of the process of getting the tax relief. Donors will be able to complete an *enduring* rather than an annual statement that can last for up to five years.

Foreign Earnings Deduction

The Foreign Earnings Deduction scheme is being extended. When it was introduced in 2012, it applied to Brazil, Russia, India, China and South Africa. From 2013, it will also apply to Algeria, the Democratic Republic of the Congo, Egypt, Ghana, Kenya, Nigeria, Senegal and Tanzania. The scheme means that employees based in Ireland who spend at least 60 days in a tax year in these countries can have €35,000 of their annual income tax-free. The scheme is due to last until the end of 2014.

Withdrawals from AVCs

The Act provides that people can withdraw up to 30% of their investment in Additional Voluntary Contributions (AVCs). You may do this up to 27 March 2016. You may withdraw up to 30% of the AVCs you invested for the purpose of improving your pension but you may not withdraw the AVCs you invested to buy notional service.

If your AVCs are subject to a pension adjustment order (an order made in family law proceedings to grant part of the pension to a spouse/former spouse/civil partner/former civil partner), then each of you may independently decide to withdraw from your portion of the AVCs.

If you do make such a withdrawal, you will have to pay tax at your current marginal rate (that may be different from the rate at which you were granted tax relief on the contributions). You do not have to pay PRSI or the USC on the withdrawal (this will be provided for in the next Social Welfare and Pensions Bill).

Lump sum payments

It was announced in the Budget that Top Slicing Relief on lump sum payments of €200,000 or more made in compensation for loss of employment was to be abolished from 1 January 2013. *Top Slicing* means that the tax applied to the taxable part of the lump sum is your average rate of tax over the previous three years and not necessarily your marginal rate.

The Act provides for this and it also provides that amounts over €200,000 received on death or disability are taxable. The rules on the taxation of lump sum payments are quite complex but, in general, there is now a tax-free limit of €200,000 on lump sums granted by your employer or your pension fund when you leave employment for whatever reason. This is a lifetime limit – lump sums received in a previous similar situation are taken into account. You are also liable for the Universal Social Charge (USC) on the taxable amount of the lump sum. PRSI is not payable.

In summary, the tax treatment of lump sum payments received when you leave employment is now as follows:

Compensation for loss of employment

Statutory redundancy payments are tax-free. If you receive a lump sum of more than €200,000 (more than the statutory redundancy payment) you have to pay tax at your marginal rate on the amount above this figure. Some of the amount below €200,000 may also be taxable, depending on your circumstances.

The first €10,160 plus €765 for each year of service is tax-free. If you are not a member of an occupational pension scheme, or if you give up your right to get a lump sum from the pension scheme, you get a further €10,000 tax-free. You can only get this extra exemption if you have not received similar compensation for loss of employment in the previous 10 years. If you get a lump sum from your pension scheme or if you are due to get one in the future, this €10,000 is reduced by the amount of that lump sum or the present day value of the future lump sum.

It is possible to get an exemption greater than the amounts described. This is an extremely complex situation but the people most likely to benefit are those who have long years of service and little or no pension entitlement. If the following formula gives an amount greater than the amount to which you are otherwise entitled, then you get the higher amount tax-free:

Take your average annual earnings over the past 3 years and multiply by the number of years' service; divide by 15 and subtract the lump sum superannuation payment (maximum €200,000), if any, received. This is known as the *standard capital superannuation benefit*. This cannot be greater than €200,000.

Where an employer pays the cost of retraining an employee as part of a redundancy package, the cost of the retraining, up to a maximum of €5,000, may also be exempt from tax.

Payments made because of death or disability

If you die while employed or leave employment because of a disability and receive a lump sum of €200,000 or more from your employer, the amount over that figure is taxable at your marginal rate.

Pension lump sums

If you receive a pension lump sum of more than €200,000, you pay tax at 20% on the amount between €200,000 and €575,000 and 41% on the amount above that. This does not apply to lump sum death-in-service benefits paid by the pension provider to widows, widowers, surviving civil partners and children.

Approved Retirement Funds

In 2011, the rules about investing in Approved Retirement Funds (ARFs) were changed – see *Relate*, October 2011. The Finance Act 2013 provides that these changes have been rescinded until 2016. The Minister for Finance has said that adequate transition arrangements were not made at the time to allow people to make plans for the implementation of the new rules. This proved particularly difficult for people with modest pension pots.

The 2011 rules provided that you may place your accumulated pension money in an Approved Retirement Fund (ARF) if you are aged over 75 or if you have a guaranteed income of at least 1.5 times the level of the State Pension (Contributory) – €18,000 at present. Before 2011, the required minimum income was €12,700.

If you do not have this guaranteed minimum income and are aged under 75, you must invest your accumulated pension money in an Approved Minimum Retirement Fund (AMRF). The 2011 rules provided that you must set aside 10 times the maximum rate of the State Pension (Contributory) – €119,800 at present – or a lesser amount if less is available in your pension fund in the AMRF. The pre-2011 rules provided that you must set aside €63,500.

If you do invest in an AMRF, you do not get access to the capital in the fund until you reach the age of 75. At that stage the AMRF is converted to an ARF. The AMRF may be converted to an ARF at an earlier stage if you meet the minimum income requirements.

The pre-2011 rules are temporarily reinstated by the Finance Act 2013. This will remain the case until 2016 when it is intended that the 2011 rules will come into effect again.

Those people who were affected by the higher limits (that applied from 6 February 2011 until the date the Finance Act 2013 was passed – 27 March 2013), may now convert any AMRF into an ARF provided they have a minimum income of at least €12,700. If they have minimum income of less than this but have more than €63,500 in an AMRF, the excess amount now becomes an ARF.

Similar arrangements are made for people who have invested in a vested Personal Retirement Savings Account (PRSA).

Third-level fees

As was done in previous years, the thresholds for tax relief on third-level fees are being increased in line with the Student Contribution increase. The Student Contribution is being increased by €250 a year in each year up to 2015. This means that tax relief is available on fees of more than €2,500 in 2013 (€2,250 in 2012) for full-time courses. This will increase by a further €250 in each of the years 2014 and 2015. The threshold for part-time courses is €1,250 in 2013 and this will increase by €125 in each of the years 2014 and 2015.

Basic payment accounts

The Finance Act 2012 provided for basic payment accounts (see *Relate*, April 2012) including, among other things, that these accounts would not be liable for stamp duty on their debit and ATM cards. The Finance Act 2013 provides for the continued exemption from stamp duty and makes some changes in the definition of a basic payment account. A basic payment account must meet the following conditions:

- The account holder must have been *financially excluded* – this means that they must not have had a bank account in the previous three years
- Their social welfare payments must be paid into the account
- The turnover in the account (excluding social welfare payments) must not be more than €4,500 a quarter for two consecutive quarters

The Act also provides that the period of financial exclusion and the turnover threshold may be changed by regulation, depending on the outcome of the pilot project that is currently running in certain bank branches.

Mortgage interest tax relief

The Finance Act does not provide for any general change in the rules governing entitlement to mortgage interest tax relief. In general, mortgage interest tax relief is not available for loans taken out after 2012. However, the Finance Act 2013 provides that, if you started to draw down a loan in 2012 for building or improving your principal private residence and you draw down further parts of the loan in 2013, you may qualify for tax relief on the total drawn down in the two years. Any required planning permission must have been granted before the end of 2012. Only a small number of people are likely to be affected by this change.

All mortgage interest tax relief will cease at the end of 2017.

Personal insolvency and debt write-offs

The Finance Act deals with several tax issues that may arise in the new personal insolvency processes and in bankruptcy. We will describe these provisions in the June 2013 issue of *Relate*.

Living City Initiative

The Living City Initiative is an incentive scheme for the regeneration of certain urban areas. Incentives are available for the conversion and refurbishment of Georgian houses for use by owner-occupiers and for certain commercial premises. Initially the scheme will apply to Limerick and Waterford. The incentives will be available for five years. The scheme requires EU approval and will come into effect when that approval has been granted.

Revenue Job Assist

The Act provides that the Revenue Job Assist scheme will be closed when the new JobsPlus scheme is implemented. Further information on this scheme will be set out in a future issue.

Medical cards for people over 70

The Health (Alteration of Criteria for Eligibility) Act 2013 has been passed and came into effect on 5 April 2013. It provides for the changes to the rules governing the entitlement of people over the age of 70 to medical cards and GP Visit Cards that were announced in the Budget. Everyone aged over 70 who had a medical card before 5 April 2013 has had their entitlement to the card extended to the end of May 2013.

Income limits for over-70s medical card

The Act provides for a reduction in the income limits up to which people aged 70 and over may qualify for medical cards. The limits are reduced from €700 a week (about €36,000 a

year) for a single person to €600 a week (€31,000 a year) and from €1,400 a week (about €72,000 a year) for a married couple to €1,200 a week (€62,000 a year). People who lose their medical card as a result of this change will qualify for a GP Visit Card.

The Act provides that the Minister for Health may increase or reduce the income limits on 1 January each year in accordance with movements in the Consumer Price Index.

You may appeal against any decision to refuse or withdraw a medical card or a GP Visit Card.

Numbers affected

There are approximately 370,000 people aged over 70 living in Ireland. Of these, about 360,000 (97%) had medical cards before this change. The cost of over-70s medical cards is about €750 million a year. About 35% of people aged under 70 have medical cards. The changes to eligibility for people over 70 will mean that about 20,000 people will lose their medical cards and there will be savings of about €12 million a year. So, when these new rules are fully implemented, 92% of people aged 70 and over will still be entitled to a medical card.

At the end of 2012, there were 1.85 million medical cards – this had increased by 600,000 since 2007. Almost 2 million people are covered by either a medical card or a GP Visit Card.

Means test for under-70s medical card

The general income guidelines for under-70s medical cards remain the same. However, two changes have been made in the assessment of means with effect from 1 April 2013. Rent and mortgage payments are taken into account in the means assessment but home improvement loan repayments are no longer taken into account. The costs of travelling to work are also taken into account but are now limited to the mileage costs. The €50 a week that was allowed for standing charges such as depreciation is no longer allowed.

GP Visit Card

The GP Visit Card, as the name suggests, gives entitlement to free GP visits. It does not give entitlement to free prescribed drugs and medicines. People with GP Visit Cards are entitled to subsidised prescribed drugs and medicines under the Drugs Payment Scheme in the same way as the rest of the population. This means that the maximum they have to pay for such drugs and medicines is €144 a month.

The income limits for GP Visit Cards for people over 70 will be €700 a week for a single person and €1,400 a week for a couple.

Civil partners

The Act provides that the rules in relation to medical cards and GP Visit Cards take account of the rights of civil partners. This means that civil partners are treated in the same way as married couples in relation to means testing and entitlements.

Exchange of information

As already stated, if you have an over-70s medical card, you are entitled to retain it and use it until the end of May 2013. The Health Service Executive (HSE) does not intend to contact all current holders of over-70s medical cards. Instead, it proposes to get information from the Revenue Commissioners about those who have higher incomes and contact them. The Act provides for greater exchange of information between the HSE, the Revenue Commissioners and the Department of Social Protection.

Retention of GP Visit Cards

If your spouse or civil partner has died on or after 5 April 2013 and you are then over the income limit for a GP Visit Card, you may retain that card for three years provided you are over 70 at the time of the death and your income is below the limit for a couple.

Means test

Income from virtually all sources is taken into account in the means test for over-70s medical cards and GP Visit Cards. However, income from the various redress and State compensation schemes is not taken into account.

Savings or investments of €36,000 for a single person and €72,000 for a couple are disregarded. Amounts above these limits are assessed at a notional interest rate that is based on the prevailing interest rates at the time of application. These rates are reviewed every quarter. Alternatively, if it would be to your advantage, you can have the actual rates that you receive taken into account.

The net income from property owned by you is taken into account but the capital value of the property is not. If the property is producing no income, there is no assessment.

Failure to qualify

If you do not meet the income limits you may apply for a medical card on the grounds of hardship. In general, you would have to show that you had exceptional medical expenses. It is possible that you can qualify if, for example, you are paying high nursing home fees. These are not taken into account in the over-70s means test but are for the purposes of the general medical card.

Further information on over-70s medical cards is available from the HSE Client Registration Service, Finglas, Dublin 11 (Tel: 1890 252 919). Website: hse.ie.

Extension of the powers of the Ombudsman

The Ombudsman (Amendment) Act 2012 extends the remit of the Ombudsman to various public bodies that were not previously within remit. The extended remit takes effect from 1 May 2013. The Act also provides for some other changes.

The main function of the Ombudsman's office is to investigate complaints from members of the public who feel that they have been unfairly treated by certain public service providers. The Ombudsman's remit already covered all government departments and offices; local authorities; the HSE, voluntary hospitals and certain voluntary agencies that provide services on behalf of the HSE.

New agencies within remit

The Act uses the term *reviewable agency* to describe those organisations that come under the remit of the Ombudsman. If new agencies are established that come within the general definition, then they will be under the remit of the Ombudsman unless specifically exempted.

The Act gives the Minister for Public Expenditure and Reform the power to add various bodies to the list of reviewable agencies. In general, these are bodies that are established by statute, have obligations to the public and/or are recipients of public money. The Minister also has the power to make orders to exempt bodies or to make bodies which are currently exempt reviewable.

About 180 additional agencies will come within the Ombudsman's remit from 1 May 2013. These include universities, institutes of technology and other third-level education institutions that receive public funding. Also included are:

- Education and training bodies such as FÁS, Vocational Education Committees, the National Educational Welfare Board and the National Council for Special Education
- Health-related bodies such as the Health Information and Quality Authority, the Food Safety Authority of Ireland and the Blood Transfusion Service Board
- The National Roads Authority and the Road Safety Authority
- The Pensions Board
- The Citizens Information Board

Agencies some of whose functions are within remit

Certain bodies are generally reviewable but this does not extend to all their activities. The statutory regulatory bodies for medical and other professionals (for example, the Medical Council, An Bord Altranais) are generally reviewable only in respect of their administrative functions. Their quasi-judicial

functions are not reviewable. So, their decisions in relation, for example, to fitness to practise, are not reviewable by the Ombudsman.

Decisions made by the Adoption Authority on the making of an adoption order or the recognition of an inter-country adoption are not reviewable but other actions of the Authority are.

The Courts Service, the Personal Injuries Assessment Board, the Private Residential Tenancies Board, the Property Services Regulatory Authority and the Property Services Appeal Board are reviewable only in respect of their administrative functions.

Certain activities of the Department of Justice and Equality are not reviewable. These are actions taken in:

- The administration of the law on immigration or naturalisation
- The administration of the prisons
- Pardoning, commuting punishments or remissions

The HSE is generally reviewable but actions taken in the exercise of clinical judgments are not.

The Legal Aid Board is generally reviewable but not in respect of the provision of legal services to clients by the Board's solicitors or by private solicitors working on behalf of the Board.

Local authorities are already reviewable but their *reserved functions* are not – that means those functions that are exercised exclusively by the elected members of local authorities.

An Post

The Ombudsman's remit covered all An Post services until 2 August 2011. The office cannot investigate any complaint about An Post postal services which arose on or after this date. These services are regulated by the Commission for Communications Regulation (ComReg) and complaints about postal services should be made to it at comreg.ie.

Disability Act

The Ombudsman has certain powers under the Disability Act 2005. Among other things, this Act requires public bodies to ensure that public buildings and services are accessible to people with disabilities. Complaints about the failure to provide such access may be made to the Ombudsman. The Ombudsman may also deal with complaints in relation to the delivery of the sectoral plans under the Act.

Exempt agencies

The Act lists a total of 110 exempt agencies. These include:

- Commercial State bodies, for example, Electricity Supply Board, Bord Gáis, CIÉ and its constituent companies
- Regulatory authorities, for example, Broadcasting Authority of Ireland, Central Bank, Commission for Aviation Regulation, Commission for Communications Regulation, Commission for Energy Regulation, Health Insurance Authority
- Law enforcement and prosecution bodies – the Gardaí, Garda Síochána Inspectorate, Garda Síochána Ombudsman Commission, Criminal Assets Bureau, Director of Public Prosecutions, Office of the Director of Corporate Enforcement
- Bodies which make quasi-judicial decisions, for example, An Bord Pleanála, Employment Appeals Tribunal, Equality Tribunal
- Coroners
- Comptroller and Auditor General
- Data Protection Commissioner
- Environmental Protection Agency
- Defence Forces
- Other designated Ombudsmen, for example, Ombudsman for Children, Financial Services Ombudsman, Pensions Ombudsman
- The President
- Human Rights Commission
- Judicial Appointments Advisory Board
- Labour Court, Labour Relations Commission
- National Asset Management Agency
- National Disability Authority
- Office of the Attorney General
- Refugee Appeals Tribunal, Refugee Applications Commissioner

Duty to give help and guidance

The Act sets out the statutory obligations that reviewable agencies will have towards people when making decisions. These obligations are subject to available resources. If a reviewable agency takes an action which affects a right, privilege or other benefit to which you may be entitled or an obligation, liability, penalty or other detriment to which you may be subject, it must give you reasonable help and guidance in your dealings with it. The agency must have particular regard for people with disabilities in this respect.

The agency must ensure that your business with it in relation to that action is dealt with properly, fairly, impartially and in a timely manner. It must also provide you with information on any rights of appeal or review in respect of that action and on the procedures for, and any time limits applying to, the exercise of those rights.

For some time, there have been charters and codes of practice governing the manner in which decisions are made but this Act puts these requirements on a statutory basis.

New powers

The Act provides that the Ombudsman may make a general recommendation, where relevant, to any of the bodies within remit where, following an investigation, it is considered appropriate to do so. Up to now, the Ombudsman investigated a particular complaint and made recommendations to the agency about which the complaint was made. This new power enables the Ombudsman to make general recommendations to other agencies.

The Act provides that the Ombudsman has the power to take legal action if the requirement to provide information to the Ombudsman is not met. The Ombudsman already had the power to require people to provide information but had no means of enforcing that requirement if a person refused. The Ombudsman will also be able to refer points of law to the High Court.

Making a complaint

Any individual may complain to the Ombudsman. Generally speaking, you must have exhausted the existing complaints machinery – for example, if you have a complaint about the Department of Social Protection or the HSE, you should go through the normal appeals machinery before contacting the Ombudsman.

Ombudsman investigation

The Ombudsman may carry out an investigation where it appears that the action has or may have adversely affected you and the action was or may have been:

- Taken without proper authority
- Taken on irrelevant grounds
- The result of negligence or carelessness
- Based on erroneous or incomplete information
- Improperly discriminatory
- Based on an undesirable administrative practice
- A failure to comply with the new requirements of assisting you in making a complaint
- Otherwise contrary to fair or sound administration

The Ombudsman may investigate an action if you make a complaint or if she considers that an investigation is warranted.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Complaints by employees

In general, the Ombudsman may not investigate a complaint where the action concerned affected you because you were a member, officer, employee or agent of an entity or entities, and related to your performance in that role – this restriction only applies to the performance of your job functions.

Refusal to carry out investigation

The Ombudsman may decide not to carry out an investigation or discontinue an investigation if she forms the view that:

- The complaint is trivial or vexatious
- The person making the complaint has insufficient interest in the matter
- The person making the complaint has not taken reasonable steps to seek redress or has not been refused redress
- Satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the person making the complaint have been, or are proposed to be, taken by the reviewable agency concerned

When investigation may not be carried out

In general, the Ombudsman may not investigate an action if:

- You have started court proceedings in respect of it or you have a specific right to appeal to a court in respect of it
- You have the right to appeal to an independent body
- The action relates to national security or military activity or arrangements regarding participation in organisations of states or governments
- The action relates to recruitment or the terms and conditions of employment
- The complaint is not made within 12 months
- The action is one where another Ombudsman (for example, the Ombudsman for Children or the Pensions Ombudsman) has remit
- Actions taken before the agency in question came under the Ombudsman's remit. So, the additional agencies which come within remit on 1 May 2013 may be investigated only in respect of actions taken after that date.

Further information on the Ombudsman's role and on the additional agencies now coming within remit is available at:

ombudsman.gov.ie.

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