FINANCE BILL 2022 PENSIONS UPDATE

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TECHNICAL GUIDANCE

The Finance Bill, published on 20th October 2022, contains important proposed pension taxation changes.

This Update is my analysis of these proposed changes. **The provisions will not be effective until the 2023 tax year.** Please note that the relevant provisions could be amended before the Bill is passed in December. Also, some issues may be subject to later Revenue practice clarification and interpretation.

IMPORTANT

The views expressed in this Update are my own and this Update is for the use of Financial Brokers only.

As a Financial Broker you should take your own professional taxation advice on these changes, before making specific recommendations to clients.

Executive Summary

Finance Bill 2022 makes the following proposed changes in private pensions:

- **Employers will from 1st January 2023 be able to pay unlimited BIK free contributions to a PRSA for an employee or director. The contributions will not be limited by salary/service, existing scheme funding or retained benefits, as scheme funding is.**

  The current BIK charge on employer PRSA contributions will be lifted so that from 1st January 2023 such contributions will not attract a tax charge for an employee. This will give rise to new planning opportunities.

- **Lump sums taken by Irish residents from foreign pension arrangements from 1st January 2023 will be taxed as if taken from an Irish pension arrangement**.

  This will reduce the attractiveness of transferring funds to such places as Malta, as a lump sum taken by an Irish resident from a foreign pension arrangement will now count against their normal €200,000 tax free and €300,000 taxed @ 20% pension lump sum limits.

- **Tax relief on Pan European Pension Plans (PEPPs) will be provided as for PRSAs.**

Please turn over for more details.

Tony Gilhawley FSAI

Technical Guidance

20th October 2022

EMPLOYERS WILL FROM1ST JANUARY 2023 BE ABLE TO PAY UNLIMITED BIK FREE CONTRIBUTIONS TO A PRSA FOR AN EMPLOYEE OR DIRECTOR

What is the change?

Currently an employer contribution paid to an employee's PRSA is a Benefit in Kind (BIK) for income tax purposes for that employee, but:

- the BIK is not put through the PAYE system and does not attract a USC or PRSI charge; while
- the contribution is treated for tax relief purposes, as if it were a personal contribution and so tax relief is limited by the age related % limits and the €115,000 earnings limit.

In effect the current regime restricts employer PRSA contributions to a max of the personal tax relief limits which is usually significantly less than could be contributed by the employer BIK free to an Executive Pension Plan (EPP) (or its Master Trust equivalent) for the same employee.

Finance Bill 2022 proposes to change this from 1st January 2023 by removing the BIK charge related to an employer PRSA contribution, and also no longer treating such a contribution for tax relief purposes as an employee contribution. For the employee, the PRSA contribution will be entirely tax free[1].

Will this change apply to 20% directors as well?

Yes, as long as at the time of payment of the employer PRSA contribution they are (or were) an 'employee' of the employer which means is currently working (or worked in the past) for the employer under a contract of employment.

The contract of employment means a contract of service (i.e. normal employer/employee relationship) *'whether the contract is express or implied or if express, whether it is oral or in writing'*.

Will BIK free employer PRSA contributions be limited in any way?

No, it seems. It will not be determined or restricted by the employee's salary/service, retained benefits or existing scheme funding.

Of course, the €2m Standard Fund Threshold (SFT) and affordability will limit contributions for some.

In addition, the salary sacrifice legislation may limit the scope for employers to make large BIK free PRSA contributions, where the PRSA contribution is seen to be funded

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[1] *The removal of the current BIK charge on employer contributions may unintentionally classify an employer funded PRSA as an unapproved retirement benefit scheme, with a consequent BIK charge in respect of the employer contribution under s777(1) TCA 1997. However, as the clear intention of Finance Bill 2022 is to remove a BIK charge in respect of an employer PRSA contribution, I have assumed in this Update that Revenue will not post January 2023 consider an employer funded PRSA as an unapproved retirement benefit scheme and hence that no BIK charge will apply in respect of an employer contribution under s777(1). But Revenue may need to confirm this.*

by a corresponding reduction in the employee's or director's contractual remuneration.

Can an employer contribute to an EPP and a PRSA at the same time for the same employee?

There is nothing in the legislation to prevent employer 'double funding' for an employee in an EPP and a PRSA at the same time.

However, as the PRSA benefits will be 'retained benefits' for the EPP, employer PRSA funding will reduce the EPP max funding potential where an employer wants to continue funding through an EPP.

But EPP funding has no impact on the level of employer PRSA funding which can be made.

What are the differences between employer EPP[2] funding and PRSA funding post 1st January 2023 for an employee?

	EPP	Employer PRSA funding post 1st January 2023
Revenue approval of arrangement required in advance?	Yes	No
Limits on benefits	Yes. Revenue maximum approvable related to best final remuneration, service and retained benefits.	No
Revenue practice restriction on level and incidence of employer funding	Yes. Revenue practice max ordinary annual contribution (OAC) and special contributions related to maximum approvable benefits.	No.
Access to retirement benefits on ill health	Yes, on physical or mental deterioration which is serious enough to prevent the individual from following her/his normal employment or which seriously impairs her/his earning capacity. It does not simply mean a decline in energy or ability.	Yes, on becoming permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted
Access to retirement benefits	Yes, on termination of that	Yes, on termination of the

[2] *Including EPP type Master Trusts*

	EPP	Employer PRSA funding post 1st January 2023
from 50 and before 60	employment.	PRSA holder's current employment.
Access to retirement benefits from 60	Yes, on termination of that employment before NRA. On reaching scheme NRA.	Yes, from 60; no requirement to terminate that employment.
Latest date retirement benefits can be accessed	NRA, up to 70.	75
Salary/service lump sum option when benefits are taken	Yes, but balance of fund must be used to purchase an annuity	No.
ARF option when benefits are taken	Yes	Yes, in addition to the option to retain a vested PRSA.
Option to defer taking retirement benefits	Benefits must be taken at NRA or later termination of employment.	Yes, up to 75, whether still in employment or not.
Option to phase in retirement benefits	No. All scheme benefits related to the same employment must be taken at the same time. All or nothing.	Yes, through using multiple PRSA contracts. Individual PRSAs can be matured in stages up to 75.
Death in service	Lump sum limit of 4 x final remuneration; balance can be transferred to ARFs for spouse/dependants.	Full PRSA value payable as lump sum to estate. No requirement to transfer any part of the funds to an ARF.
Limits on charges	No statutory limits on charges which can vary between different employers.	Statutory limit on Standard PRSA charges. Some restrictions on variation in charges between different PRSA contributors to the same PRSA contract.
Early exit charges	No.	No.
Initial charge on transfer values in	No	No
Tax relief on employer contributions	Ordinary Annual Contribution allowed in accounting period in which it is paid.	All contributions allowed in accounting period in which they are paid. No distinction between

	EPP	Employer PRSA funding post 1st January 2023
	Relief on Special Contributions may be spread forward over a period of up to 5 years.	ordinary annual and special contributions.
Adding on DIS cover	Yes	No.

If the employer is only funding for an employee or director through a PRSA, is that employee/director deemed to be in 'non pensionable' employment and entitled to take out a s785 policy and get tax relief on it?

Such an employee would, in my view, be still deemed for tax purposes to be in pensionable employment and hence would not be able to claim income tax relief on a s785 premium against that income.

Employer PRSA funding seems to fall within the definition of a 'sponsored superannuation scheme' in s783 TCA 1997 and hence income from such an employment would **not** be deemed to be relevant earnings, against which income tax relief on a s785 policy could be claimed.

What are the planning opportunities post 1st January 2023 provided by the proposed BIK free employer PRSA contributions for an employee?

There are a number, post 1st January 2023:

- Larger contributions can be made to a PRSA for an employee/director with low salary and/or short service, than could be made under an EPP.
- No spreading of tax relief will apply for once off employer PRSA contributions, regardless of size, as there is no distinction for tax relief purposes between ordinary annual contributions and special contributions paid to a PRSA. Relief will be allowed in the company's accounting period in which the contributions are paid. Greater certainty therefore on employer tax relief, than under EPPs, as no max funding calculations have to be done.
- Additional top up funding can be made to a PRSA for cases which have already reached max funding levels under an EPP.
- Employer funding can be split over a number of PRSA contracts, to allow phased taking of benefits, which can't be done with an EPP as all scheme benefits related to the same employment must be taken at the same time.
- Employer funding can be split over a number of PRSA contracts with *different* PRSA providers; it is more awkward to do this with EPPs.
- Additional employer post NRA funding can be made to a PRSA which carries a right to take 25% as a lump sum, in cases where EPP benefits have already been taken at NRA and fresh EPP funding post NRA would all have to be taken as a transfer to an ARF.

When will we know the final details of how employer PRSA funding will work?

We will have to wait until the Finance Bill is passed in December and await any Revenue clarifications/practice updates which may emerge.

The proposed removal of the BIK charge for an employer PRSA contribution doesn't kick in until January 2023 for contributions made after that date, and hence any employer contribution to a PRSA paid before the end of 2022 WILL be a BIK charge for the employee.

LUMP SUMS TAKEN BY IRISH RESIDENTS FROM FOREIGN PENSION ARRANGEMENTS WILL BE TAXED AS IF TAKEN FROM AN IRISH PENSION ARRANGEMENT

Currently lump sums taken by Irish residents from foreign pension arrangements (i.e. that have not benefited from Irish tax reliefs) are not in taken into account for the purposes of the Irish €200,000 tax free and €300,000 taxed at 20% lump sum limits. In effect they appear to be not taxed under Irish law or the practice has been not to tax them.

However, Finance Bill 2022 will change this by pooling lump sums taken from foreign pension arrangements from 1st January 2023 with lump sums taken from Irish pension arrangements since 1st January 2011 for the purposes of the €200,000 tax free and €300,000 taxed at 20% lump sum limits.

The new provision kicks in from 1st January 2023 so that lump sums taken from foreign pension arrangements before that date do **not** eat into the €200,000 and €300,000 pension lump sum limits.

Example #1:

An Irish resident has not taken any prior lump sum from a foreign or Irish pension arrangement. Post 1st January 2023 they take a lump sum of €150,000 from a Maltese pension scheme.

Their remaining future tax free lump sum limit, for Irish and foreign scheme lump sums, is then €50,000.

Example #2:

An Irish resident takes a €125,000 prior lump sum from an Irish pension arrangement after 1st January 2023; prior to this they had not taken any other lump sum from a pension arrangement. In February 2023 they take a lump sum of €400,000 from a Maltese pension scheme while still resident in Ireland.

The €400,000 Maltese lump sum will be taxed on them as follows in 2023:

- €75,000 tax free; their €200,000 tax free pension lump sum limit for future lump sums is now fully used up.
- €300,000 taxed at standard rate income tax under Schedule D Case III by self-assessment; their €300,000 limit for pension lump sums taxed at standard rate is now fully used up.
- €25,000 taxed at higher rate + USC under Schedule D Case III by self-assessment.

So post 1st January 2023 there will be only **ONE** €200,000 tax free and **one** €300,000 taxed at 20% limit available for lump sums taken from Irish pension arrangements since 1st January 2011 plus lump sums taken from foreign pension arrangements from 1st January 2023.

This may make transfers to Malta, for example, less attractive for those who envisage being resident in Ireland when they take their benefits from the Maltese scheme after 1st January 2023, as the taking of the 30% lump sum from the Maltese scheme will then be taxed as if taken from an Irish pension arrangement.

But there appears to be a 'gap' period between now and 1st January 2023 when lump sums taken from foreign pension arrangements by Irish residents may not be taxed and will not eat into the €200,000 tax free and €300,000 taxed at standard rate lump sum limits?

For those who will be non-resident in Ireland by the time they plan on taking their benefits in the overseas jurisdiction, the change may not be relevant.

Remember a transfer of funds to an overseas pension arrangement is a benefit crystallisation even for the purposes of the Threshold limits to the amount transferred. But of course, further growth in the foreign pension arrangement is then outside the Irish Threshold limits.

Interestingly standard rate tax charged on a lump sum taken from a foreign pension arrangement cannot, it seems, be offset against an Irish chargeable excess tax liability in the same way that standard rate tax taken from an Irish pension lump sum can. This may be a legislative oversight which may be corrected before the Bill is passed in December?

Tax relief for PEPPs introduced

A PEPP is a Pan European Personal Pension Product, similar in many ways to a PRSA.

An individual who takes out a PEPP can bring it with them if they move to other EU Member States and continue contributions there.

The PEPP was introduced to Ireland by the European Union (Pan-European Personal Pension Product) Regulations 2022, with effect from 28th August 2022, with the Central Bank of Ireland being the competent authority to approve PEPPs in Ireland.

The Finance Bill 2022 makes provision for tax relief on PEPP contributions and taxation of benefits etc. similar to PRSAs.

However, as no PEPPs have yet been approved in Ireland and I suspect the vast majority of PRSAs will not seek PEPP status, I have not included a review of the Finance Bill 2022 provisions in relation to PEPPs.