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Important Note

Significant Impact of the Removal of BIK on Employer Contributions to PRSAs

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Backdrop - Finance Act 2022

The Finance Act, passed into law in December, implemented changes to the tax treatment of PRSAs announced in the Budget. These are extremely favourable to all employers, corporate and individual, who make pension contributions to employee PRSAs.

These changes have created an opportunity for Owner Directors/Employees, who wish to accelerate their pension funding in a highly tax efficient manner and to invest in a wide range of investment options including direct shares, commercial and residential property.

It is wise to assume that contribution restrictions, which previously affected company pensions will be reintroduced in time, perhaps during 2023. Any changes will require legislation, possibly the next Finance Act.

<u>So we believe that there is a window of opportunity to avail of this legislation.</u>

We have consulted experts across the industry. It is our view that anyone who is in a position to accelerate pension funding from their company, for themselves, their senior employees, who may be family members, should consider doing so in the immediate future. The legislation allows investors to fund pension quickly and the extent of corporate and personal tax savings are very significant.

A Note on Finance Act 2022

The Finance Act makes PRSA an extremely attractive alternative for many investors. Section 18 removes a BIK charge on employer PRSA contributions from 1 January 2023 by amending Section 118. Previous tax efficient contributions were restricted to an age based percentage of the earnings cap. For example: maximum annual contribution for a 52 year old limited to 30% x €115,000 = €34,500. There are now no limits to an allowable pension contribution except for the Standard Fund Threshold of €2,000,000.

<u>So, according to the legislation, an employer could fund a single pension contribution of €2 million for any employee. The company would receive full corporation tax relief on the contribution and the employee would suffer no Benefit in Kind tax.</u>

Unlike traditional pension schemes, there is no 'Revenue discretion' with a PRSA. The only rules that apply are those detailed in legislation. It is our understanding that the Revenue Commissioners have been made aware of this. Current legislation has no mention of maximum funding or annual reports to Revenue. There are no references to employer ordinary annual or special contributions. There are no restrictions on shareholder directors. It seems a €2,000,000 fund will be available to all employees.

The need for genuine Employer/Employee relationship

To claim tax relief for a business expense, it must be incurred 'wholly and exclusively' for the purposes of the trade. One might ask, could Revenue argue that substantial PRSA contributions were made for the benefit of the PRSA owner and not for the purpose of the business? However, Section 787J states that any sum paid by an employer by way of a contribution to a PRSA shall be allowed to be deducted as an expense in the chargeable period in which the contribution is paid. There is also a requirement to comply with salary sacrifice rules. In simple terms, exchanging salary for pension contributions triggers a tax charge. There needs to be a genuine employer/employee relationship. Definitions of employer and employee are set out in Section 787A. Finally, Pension Auto Enrolment that is due to start in January 2024. This may be an unattractive obligation for employers and employees. It will be possible for employers to avoid involvement if there are existing PRSAs in place for employees.

The PRSA provides attractive investment rules

PRSAs holders are allowed to invest in mixed or manage regulated investment funds and ETFs. PRSA holders may select their own shares and quoted bonds as well as invest in residential and commercial property.

Company Pension/PRSA Comparisons

	Company Pension	PRSA
Is Revenue Approval required for Individual arrangements?	New Master Trust Pension arrangements are already approved	No.
Limits on Employer Contributions	Yes by calculation relating to salary, age and years of service	No. However fund threshold €2 million applies
Limits on Benefits	Yes. Related to final remuneration, service and retained benefits.	No
Investment Rules	Limited to Regulated Funds and ETFs	Regulated funds, ETFs , Individual quoted securities, residential and commercial property
Access to Early Retirement after age 50 and before age 60	Yes, on termination of that employment. 20% directors must dispose of shareholding and terminate all links to the business	Yes, on termination of that employment. No requirement for 20% directors to dispose of any shareholding or terminate links to the business.
Phased Retirement/Phased access to Lump Sum	No	Yes

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Company Pension/PRSA Comparisons

	Company Pension	PRSA
Latest Age Benefit can be accessed	Up to Age 70	75
ARF Option when benefits are taken	Yes	Yes, Also the option to retain balance of funds in a Vested PRSA
Death in Service	Lump sum limit of 4 x final remuneration inclusive of retained death benefits; balance can be transferred to ARF	Full PRSA value payable as lump sum to estate, without tax deduction.
Legal Ownership of Member's funds/assets	Trustees	The PRSA holder
Limits on Charges	No statutory limits on charges which can vary between different employers.	Statutory limit on Standard PRSA charges.
Early Exit Charges	No	No
Initial Charge on transfers in	No	No

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