#8/5

Personal Retirement Savings Accounts (PRSAs) are low cost, easy-to-access private pension savings vehicles designed to allow individuals save for retirement flexibly and transfer their pension funds between jobs. They are available to anyone regardless of employment status.

Revenue has brought to my attention certain tax-planning opportunities entailing PRSAs that were not envisaged by the legislation. Section 13 of the Bill will close-off the opportunities concerned by amending the legislation to ensure that all PRSA benefits are deemed to commence on the PRSA owner's 75th birthday i.e. deemed to become vested PRSAs on that date, regardless of whether the benefits commence on that date or at all.

PRSAs which become vested in these circumstances will come within the imputed distribution regime that applies to vested PRSAs, be treated as a Benefit Crystallisation Event for Standard Fund Threshold purposes and, on the death of the PRSA owner, pass to a surviving spouse or civil partner under the rules applying to Approved Retirement Funds.

Where PRSA owners have, to date, maintained their PRSAs intact beyond their 75th birthday, these will be deemed, subject to transitional arrangements, to vest on the date of passing of Finance Bill 2016.

#9|1

Kevin Nolan

From: Croke, Mick <miccroke@revenue.ie>
Sent: 21 October 2016 13:19
To: Kevin Nolan
Subject: RE: FB 2nd stage speech material

Sensitivity: Confidential

Kevin,

We'll have a quick look at this & get back to you.

Regards,

Mick

From: Kevin Nolan [mailto:Kevin.Nolan@finance.gov.ie]
Sent: 21 October 2016 13:15
To: Croke, Mick
Cc: Fiachra Quinlan; McCabe, Brian; Dalton, Jennifer
Subject: RE: FB 2nd stage speech material
Sensitivity: Confidential

Mick

As discussed, below is foreshortened material.
This is just 186 words and has a better chance of going into the speech "undisturbed".

Many thanks.

KN

Personal Retirement Savings Accounts (PRSAs) were introduced in 2002 as low cost, easy-to-access private pension savings vehicles designed to allow individuals to save for retirement flexibly and to transfer their pension funds between jobs. They are available to anyone regardless of employment status.

Revenue has brought to my attention certain tax-planning opportunities entailing PRSA assets being passed to surviving spouses or civil partners in a "tax-free" manner that was not envisaged by the legislation. Section 13 of the Bill will close-off the tax-planning opportunities concerned by amending the legislation to ensure that all PRSA benefits are deemed to commence on the PRSA owner's 75th birthday i.e. deemed to become vested PRSAs on that date, regardless of whether the benefits commence on that date or at all, and that such a deemed vesting of a PRSA comes within the imputed distribution regime and is treated as a Benefit Crystallisation Event (BCE) for Standard Fund Threshold purposes. In addition, where PRSA owners have, to date, maintained their PRSAs intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016.

From: Croke, Mick [mailto:miccroke@revenue.ie]
Sent: 21 October 2016 11:55
To: Kevin Nolan
Cc: Fiachra Quinlan; McCabe, Brian; Dalton, Jennifer
Subject: RE: FB 2nd stage speech material
Sensitivity: Confidential

#9|2

Kevin,

We have made some changes to your draft for consideration – these are mainly concerned with a rearranging of some of your material & a "softening" the avoidance aspect.

I attach a tracked and clean version.

Regards,

Mick

From: Kevin Nolan [mailto:Kevin.Nolan@finance.gov.ie]
Sent: 20 October 2016 16:38
To: McCabe, Brian
Cc: Croke, Mick; Fiachra Quinlan
Subject: FB 2nd stage speech material
Sensitivity: Confidential

Brian

I'm proposing the material below for inclusion in the Minister's 2nd stage speech on the FB.
Any comments, etc. you might have would be welcome.

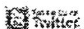
Many thanks.

KN

Section 13 - Personal Retirement Savings Accounts (PRSAS) and Tax Planning
Personal Retirement Savings Accounts (PRSAs) were introduced in 2002 as low cost, easy-to-access private pensions savings vehicles designed to allow individuals to save for retirement flexibly and to transfer their pension funds between jobs. They are available to anyone regardless of employment status.

Because of their particular features and flexibility, PRSAs have increasingly become used for pension tax-planning purposes for high net-worth individuals. The Revenue Commissioners have brought to my attention that the legislation requiring that benefits payable from a PRSA should not commence before the PRSA owner's 60th birthday and not later than the PRSA owner's 75th birthday has been interpreted in a fashion that facilitates pension benefits never being drawn from the PRSA. As a result of this interpretation, the PRSAs in question are never subject to the imputed distribution regime that applies to vested PRSAs, are passed to the spouses of the PRSA owners on death (after age 75) tax-free in a manner that was not envisaged by the legislation. They also avoid being treated as benefit crystallisation events (BCEs) for the purposes of determining if the PRSA owner's pension benefits exceed the life-time Standard Fund Threshold (SFT) limit, or Person Fund Threshold (PFT) where applicable.

Section 13 of the Bill will close-off the tax-planning opportunities by amending the legislation to ensure that all PRSA benefits are deemed to commence on the PRSA owner's 75th birthday. This means they will be deemed to become vested PRSAs on that date, regardless of whether the benefits commence on that date or at all, and that such a deemed vesting of a PRSA comes within the imputed distribution regime and is treated as a benefit crystallisation event (BCE) for purposes of the Standard Fund Threshold. In addition, where PRSA owners have, to date, maintained their PRSAs intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016.

Kevin Nolan | Tax Policy Division | Department of Finance, Government Buildings, Upper Merrion Street, Dublin 2 D02 K728 |
Direct: (+353) 01 604 5581
Website: *www.finance.gov.ie*


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#111/1

Kevin Nolan

From:	Croke, Mick <miccroke@revenue.ie>
Sent:	21 October 2016 11:55
To:	Kevin Nolan
Cc:	Fiachra Quinlan; McCabe, Brian; Dalton, Jennifer
Subject:	RE: FB 2nd stage speech material
Attachments:	Second Stage speech 2016 Section 13.doc; Second Stage speech 2016 Section 13 (3)A.doc
Sensitivity:	Confidential

Kevin,

We have made some changes to your draft for consideration – these are mainly concerned with a rearranging of some of your material & a "softening" the avoidance aspect.

I attach a tracked and clean version.

Regards,

Mick

From: Kevin Nolan [mailto:Kevin.Nolan@finance.gov.ie]
Sent: 20 October 2016 16:38
To: McCabe, Brian
Cc: Croke, Mick; Fiachra Quinlan
Subject: FB 2nd stage speech material
Sensitivity: Confidential

Brian

I'm proposing the material below for inclusion in the Minister's 2nd stage speech on the FB.
Any comments, etc. you might have would be welcome.

Many thanks.

KN

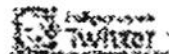
Section 13 - Personal Retirement Savings Accounts (PRSAS) and Tax Planning
Personal Retirement Savings Accounts (PRSAs) were introduced in 2002 as low cost, easy-to-access private pensions savings vehicles designed to allow individuals to save for retirement flexibly and to transfer their pension funds between jobs. They are available to anyone regardless of employment status.

Because of their particular features and flexibility, PRSAs have increasingly become used for pension tax-planning purposes for high net-worth individuals. The Revenue Commissioners have brought to my attention that the legislation requiring that benefits payable from a PRSA should not commence before the PRSA owner's 60th birthday and not later than the PRSA owner's 75th birthday has been interpreted in a fashion that facilitates pension benefits never being drawn from the PRSA. As a result of this interpretation, the PRSAs in question are never subject to the imputed distribution regime that applies to vested PRSAs, are passed to the spouses of the PRSA owners on death (after age 75) tax-free in a manner that was not envisaged by the legislation. They also avoid being treated as benefit crystallisation events (BCEs) for the purposes of determining if the PRSA owner's pension benefits exceed the life-time Standard Fund Threshold (SFT) limit, or Person Fund Threshold (PFT) where applicable.

#1|2

Section 13 of the Bill will close-off the tax-planning opportunities by amending the legislation to ensure that all PRSA benefits are deemed to commence on the PRSA owner's 75th birthday. This means they will be deemed to become vested PRSAs on that date, regardless of whether the benefits commence on that date or at all, and that such a deemed vesting of a PRSA comes within the imputed distribution regime and is treated as a benefit crystallisation event (BCE) for purposes of the Standard Fund Threshold. In addition, where PRSA owners have, to date, maintained their PRSAs intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016.

Kevin Nolan | Tax Policy Division | Department of Finance, Government Buildings, Upper Merrion Street, Dublin 2 D02 K728 |
Direct: (+353) 01 604 5581
Website: *www.finance.gov.ie*



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#11/3

Section 13 - Personal Retirement Savings Accounts (PRSAS) and Tax Planning

Personal Retirement Savings Accounts (PRSAs) were introduced in 2002 as low cost, easy-to-access private pension savings vehicles designed to allow individuals to save for retirement flexibly and to transfer their pension funds between jobs. They are available to anyone regardless of employment status.

Revenue has brought to my attention that the legislation requiring that benefits payable from a PRSA should not commence before the PRSA owner's 60th birthday and not later than the PRSA owner's 75th birthday is being interpreted in a fashion that facilitates pension benefits never being drawn from the PRSA – in other words the PRSA never becomes what is called a vested PRSA and the assets in the PRSA are left untouched until the death of the owner after age 75. As a result of this, the PRSAs in question avoid becoming benefit crystallisation events (BCEs) for the purposes of determining if the PRSA owner's overall pension benefits exceed the life-time Standard Fund Threshold limit of €2m or Personal Fund Threshold limit, where applicable; they are never subject to the imputed distribution regime that taxes, in certain circumstances, a certain percentage of the value of vested PRSA assets each year, and, on the death of the PRSA owner after age 75, the PRSA assets can be passed to the surviving spouse or civil partner in a "tax-free" manner that was not envisaged by the legislation.

Section 13 of the Bill will close-off the tax-planning opportunities by amending the legislation to ensure that all PRSA benefits will be deemed to commence on the PRSA owner's 75th birthday. This means that, even though the PRSA assets cannot be accessed after the owner's 75th birthday, they will nonetheless be deemed to become vested PRSAs on that date; will be treated as a BCE on that date for purposes of the Standard Fund Threshold regime; will come within the annual imputed distribution regime; and will, on the death of the PRSA owner, pass to a surviving spouse or civil partner under the rules applying to Approved Retirement Funds, as the legislation intended. The bottom line is that in the future it will make no financial sense for a PRSA owner not to actually vest his or her PRSA on or before their 75th birthday.

Where PRSA owners have, to date, maintained their PRSAs intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016 and there will be transition arrangement to cater for such cases.

Fiachra Quinlan #13/1

From:	Croke, Mick <miccroke@revenue.ie>
Sent:	12 October 2016 09:37
To:	Fiachra Quinlan
Cc:	McCabe, Brian
Subject:	RE: Update re: drafting

Fiachra,

I'll aim for today, but it may be tomorrow.

Regards,

Mick

From: Fiachra Quinlan [mailto:Fiachra.Quinlan@finance.gov.ie]
Sent: 12 October 2016 09:33
To: Croke, Mick
Cc: McCabe, Brian
Subject: RE: Update re: drafting

Mick,

Many thanks for the below, just as a reminder our PO will need to clear the material for explanatory memorandum, I understand the time line with respect to collating all the material before publication is quite tight this year. Would it be possible to get the explanatory memorandum material to our PO today please?

Thanks,
Fiachra

From: Croke, Mick [mailto:miccroke@revenue.ie]
Sent: 07 October 2016 16:25
To: Fiachra Quinlan
Cc: McCabe, Brian
Subject: RE: Update re: drafting

Fiachra,

I have just sent the PRSA provisions to the OPC.

Position noted in relation to the explanatory memorandum.

Regards,

Mick
8589830

From: Fiachra Quinlan [mailto:Fiachra.Quinlan@finance.gov.ie]
Sent: 07 October 2016 10:50

#B/2

To: McCabe, Brian
Subject: Update re: drafting

Hi Brian,

As discussed earlier this week those coordinating the Finance Bill on our side are looking for regular updates on the drafting status of the various provisions.

With that in mind can you confirm that the PRSA provisions have been sent to the OPC or if not can you give me an update to pass onward please?

We have also been asked to remind our Revenue counterparts that material for the explanatory memorandum will be required as early as possible so everything can be cleared by POs in good time before publication.

Thanks and regards,

Fiachra

Fiachra Quinlan
Tax Policy Division
Department of Finance
01-6045591

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#14/1

00400-16: Personal Retirement Savings Accounts (PRSAs) and tax planning (FB17#8)

To: Minister	**Author:** Donal Murtagh
Status: For Review by Minister	**Owner:** Sub_FIN Ministers Office
Purpose: For Decision	**Reviewers:** Des O'Leary,Gary Tobin
Division/Office: Tax Division	
Decision By:	

Action Required

To amend Part 30 Taxes Consolidation Act 1997 in order to close off tax planning practices

Executive Summary

Agreed 29/6/2016

- It has been brought to the attention of the Revenue Commissioners that the legislation requiring that benefits payable from a PRSA should not commence before the PRSA owner's 60th birthday and not later than the PRSA owner's 75th birthday is being interpreted for tax-planning purposes by high net-worth individuals in a fashion that facilitates pension benefits never being drawn from the PRSA.

- As a result, the PRSA is never subject to the imputed distribution regime that applies to vested PRSAs, is passed to the spouse of the PRSA owner on death (after age 75) tax-free in a manner not envisaged by the legislation and avoids being treated as a benefit crystallisation event (BCE) for the purposes of determining if the PRSA owner's pension benefits exceed the life-time Standard Fund Threshold limit (€2m) or Personal Fund Threshold (if he or she has one).

- Your approval is sought to close-off these tax-planning opportunities by amending the legislation to ensure that all PRSA benefits are deemed to commence on the PRSA owner's 75th birthday i.e. deemed to become vested PRSAs on that date (regardless of whether the benefits commence on that date or at all) and that such a deemed vesting of a PRSA comes within the imputed distribution regime and is treated as a BCE for Standard Fund Threshold purposes. In addition, where PRSA owners have, to date, maintained their PRSA(s) intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016.

#14/2

Comments

- (27/06/2016 09:24:04) Gary Tobin: Minister, this proposal is to amend the Finance Act to counter a tax planning activity by high net worth individuals whereby individuals dont draw down their PRSA by the time they are 75 so as to facilitate a tax free transfer to their spouse upon their death. This activity would seem to fly in the face of the original intention of PRSAs. It is proposed that all PRSAs are deemed to have vested not later than the PRSA owner's 75th birthday.

Detailed Information

Background

1. PRSAs were introduced in 2002 as a low cost, easy-access, private pensions savings vehicle designed to allow individuals save for retirement flexibly and to be transferable from job to job. They are available to anyone regardless of employment status – you can open a PRSA if you are a part-time or casual employee, a highly paid professional, self-employed, unemployed or a homemaker. Because of their particular features and flexibility, however, they have over the years increasingly become the pension vehicle of choice for pension tax-planning purposes for high net-worth individuals.

2. One of the conditions of approval of a PRSA product by Revenue is that-

"it does not .....provide for the annuity or other sums payable to the individual to commence or for assets to be made available to the individual before the individual attains the age of 60 years or after he or she attains the age of 75 years."

3. On the face of it, the intention of this approval condition seems quite clear – a PRSA product cannot provide for retirement benefits to be taken by the PRSA owner before age 60 and the benefits must commence by age 75. However, it appears that some tax advisers are of the view that the wording is open to the interpretation that, whilst a PRSA owner who wishes to take benefits from his or her PRSA must do so by their 75th birthday at the latest, there is no compulsion to take benefits at that age (or indeed any age) and that the PRSA can continue up to time of death of the owner, even though the owner no longer has the option to take benefits

#14/3

from it after age 75. While this may seem to fly in the face of the whole raison d'etre for pension savings – i.e. to provide an income in retirement – for those with substantial pension assets it can provide significant tax planning opportunities.

4. This is best illustrated by comparing a vested and a non-vested PRSA against a number of benchmarks. Non-vested PRSAs are PRSAs in respect of which benefits have not yet commenced to be drawn down by the PRSA owner (they are treated as still being in the pensions "savings" phase), while vested PRSAs are PRSAs in respect of which benefits have commenced (usually by way of drawdown of up to 25% of the fund as a lump sum – tax-free up to €200,000). There is no limit on the number of separate PRSAs that an individual can establish.

Death of the PRSA Owner

5. In the case of a non-vested PRSA, on death of the owner the funds in the PRSA will be transferred to his or her estate tax-free and, under CAT rules, would pass to any surviving spouse tax-free. The existing legislation, effectively, envisages and provides for this up to the PRSA owner's 75th birthday (the latest date by which benefits under the PRSA must be taken – as generally understood) but did not envisage that this tax efficient transfer of the PRSA fund could continue if the PRSA owner survived beyond his or her 75th birthday. The intent of the legislation is that, by age 75, a PRSA owner is required to have vested his PRSAs and to use the funds therein to provide an income over the course of his/her retirement and, possibly, that of his spouse or partner.

6. In the case of a vested PRSA, on death of the owner the vested PRSA is treated as if it was an Approved Retirement Fund (ARF) and, as such, the remaining funds in the vested PRSA are treated as a distribution to the owner in the year of death and taxed accordingly, except where the funds are transferred to an ARF of a surviving spouse, in which case the funds transfer tax-free but will be subject to the spouse's marginal rate of income tax when eventually drawn down from the surviving spouse's ARF.

7. Therefore, by not vesting the PRSA, the PRSA owner retains the possibility that the fund will pass tax free to the surviving spouse with no further tax consequences.

Exposure to the Imputed Distribution Regime

8. Under the imputed distribution regime, ARFs and vested PRSAs are subject to an annual taxable imputed distribution (in effect a minimum drawdown) requirement which varies between 4% and 6% of the value of the assets in the ARF/vested PRSA, depending on the individual's age and the overall size of the fund. The imputed distribution regime was introduced in Finance Act 2006 following a review which found that many ARF owners were not using these funds, as intended i.e. to provide an income stream in retirement, but as a form of tax-efficient estate planning. The imputed distribution regime was extended to vested PRSAs by Budget and Finance Act 2012.

9. So long as a PRSA remains unvested, it can continue to build up tax-free and is not subject to the imputed distribution requirement. In addition, by not vesting the PRSA, the rate of imputed distribution on any ARF(s) and/or other vested PRSA(s) which the individual has, can be kept to a minimum.

Treatment as a BCE

10. The Standard Fund Threshold (SFT) regime is designed to act as a deterrent to the over-funding of supplementary pension provision through tax-relieved pension saving arrangements. It does this by placing a limit of €2m on the total capital value of pension benefits that an individual can draw in their life time from such arrangements. Tax at the higher rate (40%) is payable up-front at the point of drawdown on any excess over the limit (known as a "chargeable excess"). This is in addition to tax on the pension benefits when paid out in the normal way from the pension arrangement. In measuring the extent to which an individual has "used up" his or her SFT limit of €2m, pension benefits are only taken into account at the point at which they "crystallise", which is generally at the point of retirement in the case of occupational pension schemes, or at the time when benefits are first drawn down, in the case of personal pensions such as PRSAs. This is known as a Benefit Crystallisation Event or BCE.

11. In the case of a PRSA, once any benefit has been drawn down, the PRSA is treated as a vested PRSA for SFT purposes. Both the lump sum taken and the remaining funds in the PRSA (which, once vested, can be accessed at the PRSA owner's discretion) are treated as having

"crystallised" at that point i.e. a BCE has occurred. The value of the lump sum and the remaining PRSA fund are taken into account in determining if (either on their own or when aggregated with any earlier BCEs) they exceed the SFT limit of €2m.

12. If no benefits are ever drawn from a PRSA, a BCE never arises in respect of that PRSA and it is, therefore, never taken into account for SFT purposes. As indicated earlier, on the death of the PRSA owner, the unvested PRSA fund is transferred to his or her estate and can pass tax-free to a surviving spouse.

13. There are, therefore, clear tax planning and possible tax avoidance advantages in seeking to maintain a PRSA intact without vesting it i.e. in the event of the death of the PRSA owner, it can pass tax-free to a surviving spouse (even after the PRSA owner has attained the age of 75), it avoids the imputed distribution regime (and may help to suppress the rate of the imputed distribution on other ARFs/vested PRSAs) and it is never taken into account for SFT purposes.

14. These tax planning opportunities are clearly of most interest and advantage to those with substantial pension savings the capital value of which might exceed the SFT limit of €2m at the point of retirement i.e. high net-worth individuals. An example of how this can arise is set out below.

Illustrative Example

15. Assume A is approaching retirement and has a defined contribution (DC) occupational pension scheme valued at €2.5million. He has no personal fund threshold[1], so faces a potential tax bill of €200,000 if he crystallises the DC pension pot on retirement (i.e. €2.5m *less* the SFT limit of €2m = chargeable excess of €0.5m x tax at 40% = €200,000). He decides to resign before his retirement date and, as he has been with his company for less than 15 years, he takes a transfer value in respect of his deferred pension benefit to a PRSA (which he is entitled to do). He then establishes two PRSAs putting €2m into PRSA 1 and €0.5m into PRSA 2.

#14/6

16. He decides to draw down a tax-free retirement lump sum from PRSA 1 of €200,000 (he may if he wishes draw up to 25% of the fund as a lump sum but any amount in excess of €200,000 will attract tax). As he has now vested PRSA 1 it gives rise to two BCEs. However, as the combined value of the BCEs e.g. a lump sum of €0.2m and remaining €1.8m balance in the PRSA does not exceed the SFT limit of €2m no chargeable excess tax arises at that point.

17. He decides to keep PRSA 2 intact and does not vest it. This can continue to grow tax-free. He still has sufficient income coming from PRSA 1 by the time his 75th birthday arrives and he decides to forego the possibility of taking benefits from PRSA 2. This means that PRSA 2 will never feature as a BCE and no chargeable excess tax will ever arise. In addition, PRSA 2 will continue intact and grow tax-free to date of death. If he predeceases his spouse, the PRSA 2 fund will pass to her tax-free as part of his estate. In fact, the funds in PRSA 2 will have benefited from marginal rate tax relief during the contribution phase of pension saving, tax exemption during the growth phase as well as tax-free transfer to the beneficiary.

18. In addition, the unvested PRSA 2 is not subject to the annual taxable imputed distribution that applies to vested PRSAs and ARFs (including in this example PRSA 1). This imputed distribution is at the rate of 4% of the annual value of the assets in the ARF/vested PRSA up to age 70 and 5% thereafter, or if the value of the assets exceeds €2m, 6% regardless of age.

19. Also, because the value of PRSA 1, after taking his tax free lump sum of €200,000, is less than €2m he only needs to drawdown 4% of the annual value of the fund (i.e. €72,000) up until his 70th birthday and 5% thereafter (i.e. €90,000) to meet the imputed distribution requirement. If he had vested both PRSA 1 and 2 and taken the same €200,000 tax-free lump sum the value of his vested PRSAs would have exceeded €2m such that he would have had to draw an annual amount of 6% of the value of the assets to meet the imputed distribution requirement.

20. All told, by tax planning in this fashion, he can:

- At minimum, defer any chargeable excess tax on his pension benefits until he draws down PRSA 2 and avoid it altogether by leaving PRSA 2 intact until date of death.

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- Arrange to pass on PRSA 2 (which has already benefited from tax reliefs in the contribution and growth phases of pension saving) tax-free on his death to a surviving spouse as part of his estate.

- At minimum, defer the imposition of the imputed distribution regime on PRSA 2 until he draws benefits from it and avoid it altogether by leaving PRSA 2 intact until date of death.

- Minimise the impact of the imputed distribution regime on vested PRSA 1 because the value of that fund remains below €2m.

Conclusion and recommendations

21. The premise behind the tax reliefs provided during the contribution and growth phases of pension saving is that the benefits ultimately payable (with the exception of the permissible tax-free lump sum) will be taxable in accordance with relevant legislation. This principle is being frustrated by the tax planning opportunities detailed above. With a view to removing these tax planning opportunities, it is proposed with your approval, to make the necessary amendments to tax legislation to ensure that:

1. all PRSAs are deemed to vest no later than the PRSA owner's 75th birthday (regardless of whether benefits are drawn by that date),

2. in the case of PRSAs that have to date remained unvested at the PRSA owner's 75th birthday and are still intact, they will be deemed to vest at the date of passing of Finance Bill 2016, and

3. PRSAs that are deemed to vest in accordance with a) and b) foregoing will be subject to the imputed distribution regime, treated as BCEs for the purposes of the SFT regime and in the event of death of the PRSA owner will be passed to his or her surviving spouse under the ARF regime.

22. In the case of individuals who are currently over the age of 75 who will face a "deemed vesting" of their PRSA(s) on the date of passing of the Finance Bill, with all that entails in terms of possible tax liabilities (i.e. potential chargeable excess tax and tax on ongoing imputed

F/14/8

distributions from the PRSA), the question arises as to whether, notwithstanding that they consciously planned their affairs in a manner that would deny them access to their PRSA assets after age 75, they should nonetheless be allowed to draw their tax-free lump sum[2] and access any remaining funds in the PRSA in the normal way, like any other PRSA.

23. On balance, it would not seem to be a proportionate response to deny access to a possible tax-free lump sum and impose income tax at the marginal rate plus USC annually on imputed distributions from the PRSA while preventing the PRSA owner from taking actual distribution from the PRSA. Your approval is sought, therefore, to permit those affected to access their tax-free lump sum (if any) and draw down the balance of the PRSA should they so wish notwithstanding that the current legislation requires access to be exercised not later than an individual's 75th birthday.

Additional tax yield

24. While the proposed "deeming" of PRSAs to be vested, as outlined above, would give rise to transactions which would be liable to tax, we do not have information on the numbers of PRSAs involved or on the particular tax liabilities that may arise such that any kind of reliable estimate of the additional tax yield involved could be made.

[1] Under the SFT regime, an individual the capital value of whose pension benefits on the date of the introduction of the regime (or on the dates when the SFT was subsequently reduced) exceeded the SFT, could apply for a Personal Fund Threshold or PFT of that value.

[2] At present an individual has a lifetime limit of €200,000 on the cumulative tax-free lump sum he or she can draw from all their pension funds. Whether an individual over the age of 75 with an unvested PRSA can draw down some of that PRSA as a tax free lump sum will, therefore, depend on the extent to which he or she has already availed of the tax-free lump sum limit of €200,000.

#14/9

Action Logs

Created: 20/05/2016 14:53:18: Submission created by Donal Murtagh

Grant Access: 20/05/2016 14:54:23: Donal Murtagh granted access to Ciaran Parkin

Sent by email: 20/05/2016 14:56:43: Email sent by Donal Murtagh to Ciaran Parkin, Donal Murtagh, bmccabe@revenue.ie

Access on Completion changed: 26/05/2016 16:25:41: Donal Murtagh changed Access on Completion to Secret

Sent by email: 09/06/2016 10:29:56: Email sent by Donal Murtagh to Ciaran Parkin, Donal Murtagh, bmccabe@revenue.ie, miccroke@revenue.ie

Sent For Review: 09/06/2016 10:30:15: Submission sent to Des O'Leary for Review by Donal Murtagh

Sent For Review: 14/06/2016 12:34:14: Submission sent to Gary Tobin for Review by Des O'Leary

Sent by email: 15/06/2016 08:35:04: Email sent by Des O'Leary to Pat Leahy,

Sent to the Secretary General: 27/06/2016 09:24:25: Submission sent to Secretary General for Review by Gary Tobin

Sent to the Minister: 28/06/2016 17:49:59: Submission sent to Minister for Review by Niamh Murtagh

Fiachra Quinlan #15/1

From:	McCabe, Brian <bmccabe@revenue.ie>
Sent:	24 May 2016 15:36
To:	Donal Murtagh
Cc:	Croke, Mick
Subject:	RE: PRSA loophole
Attachments:	PRSAs and tax planning.docx

Donal

See some suggested amendments (subject to space in the summary) and in particular the last 2 new paragraphs.

Brian

From: Donal Murtagh [mailto:Donal.Murtagh@finance.gov.ie]
Sent: 24 May 2016 11:42
To: McCabe, Brian
Subject: RE: PRSA loophole

Brian,

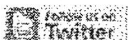
Yes.

By the way, there seems to be a view emerging at senior management level here that we may have to cut back on "non-priority" issues in the FB. Potential tax yield or savings may emerge as a benchmark for items remaining on the list. We wouldn't be able to hazard a guess at the additional tax we might get from closing of the "EEE" route for PRSAs not BCEd up to now?

Regards,

Donal

Donal Murtagh | Tax Division | Department of Finance, Government Buildings, Upper Merrion Street, Dublin 2 D02 R583 |
Direct: (+353) 1 6045876 (ext. 5876)
Mobile:
Website: *www.finance.gov.ie*



From: McCabe, Brian [mailto:bmccabe@revenue.ie]
Sent: 24 May 2016 11:35
To: Donal Murtagh
Subject: FW: PRSA loophole

Is this the most recent version you sent me?

From: Donal Murtagh [mailto:Donal.Murtagh@finance.gov.ie]
Sent: 04 May 2016 11:25
To: McCabe, Brian

#15/2

Cc: Croke, Mick; Ciaran Parkin
Subject: RE: PRSA loophole

Brian,

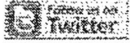
I have made minor amendments and additions to your draft and put the draft in a format to allow it transfer easily to an eSubmission to the Minister. I did not track the changes I made to your draft but they are not substantive and I will be happy to highlight where they are and discuss same with you. Anyway, you can re-amend the attached as you see fit.

We discussed briefly the possibility of placing some restriction on the ability of individuals to transfer funds from an occupational scheme to a PRSA as part of the solution to the tax planning (such a transfer forms part of the "Illustrative example" in your draft submission). Given the various circumstances which can give rise to legitimate transfers from occupational schemes to PRSAs (scheme members leaving the employment of an employer sponsored scheme for various reasons – new job, starting own business etc,. occupational scheme wind-ups...), it does not seem feasible to me to differentiate in tax legislation between totally legitimate transfers from occupational schemes to PRSAs and transfers that might be undertaken solely for tax planning reasons.

Regards,

Donal

Donal Murtagh | Tax Division | Department of Finance, Government Buildings, Upper Merrion Street, Dublin 2 DO2 R583 |
Direct: (+353) 1 6045876 (ext. 5876)
Mobile:
Website: *www.finance.gov.ie*



From: McCabe, Brian [mailto:bmccabe@revenue.ie]
Sent: 28 April 2016 17:33
To: Donal Murtagh
Cc: Croke, Mick
Subject: PRSA loophole

Donal

As discussed this is a draft of the submission – I'll send the final version after discussing aspect s with you. Presumably this is suffice for ticking off the end April deadline.

Regards

Brian

Please note that Revenue cannot guarantee that any personal and sensitive data, sent in plain text via standard email, is fully secure. Customers who choose to use this channel are deemed to have accepted any risk involved. The alternative communication methods offered by Revenue include standard post and the option to use our (encrypted) MyEnquiries service which is available within myAccount and ROS. You can register for either myAccount or ROS on the Revenue website.

Tabhair faoi deara nach féidir leis na Coimisinéirí Ioncaim ráthaíocht a thabhairt go bhfuil aon sonraí pearsanta agus íogair a gcuirtear isteach i ngnáth-théacs trí r-phost caighdeánach go huile is go hiomlán slán. Meastar go nglacann custaiméirí a úsáideann an cainéal seo le haon riosca bainteach. I measc na modhanna cumarsáide eile atá ag na

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Coimisinéirí ná post caighdeánach agus an rogha ár seirbhís (criptithe) M'Fhiosruithe a úsáid, tá sí ar fáil laistigh de MoChúrsaí agus ROS. Is féidir leat clárú le haghaidh ceachtar MoChúrsaí nó ROS ar shuíomh gréasáin na gCoimisinéirí.

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#15/4

Submission title: Personal Retirement Savings Accounts (PRSAs) and tax planning (FB17#XX)

Action required: To amend ~~Chapter 2A of~~ Part 30 of the Taxes Consolidation Act 1997 in order to close off tax planning practices

Executive Summary:

- It has been brought to the attention of the Revenue Commissioners that the legislation requiring that benefits payable from a PRSA should not commence before the PRSA owner's 60th birthday and not later than the PRSA owner's 75th birthday is being interpreted for tax-planning purposes by high net-worth individuals in a fashion that facilitates, in certain situations, pension benefits never being drawn from the PRSA.

- As a result, the PRSA is never subject to the imputed distribution regime that applies to vested PRSAs, is passed to the spouse of the PRSA owner on death (after age 75) tax-free in a manner not envisaged by the legislation and avoids being treated as a benefit crystallisation event (BCE) for the purposes of determining if the PRSA owner's pension benefits exceed the life-time Standard Fund Threshold limit (€2m) or Personal Fund Threshold (if he or she has one).

- It is proposed, with your approval, to close-off these tax-planning opportunities by amending the legislation to ensure that all PRSA benefits, where not already commenced, are deemed to commence on the PRSA owner's 75th birthday i.e. they are deemed to become vested PRSAs on that date (regardless of whether the benefits commence on that date or at all) and that such a deemed vesting of a PRSA comes within the imputed distribution regime and is treated as a BCE for Standard Fund Threshold purposes. In addition, where PRSA owners have, to date, maintained their PRSA(s) intact beyond their 75th birthday, these will be deemed to vest on the date of passing of Finance Bill 2016.

Detailed Information:

Background

1. PRSAs were introduced in 2002 as a low cost, easy-access, private pensions savings vehicle designed to allow individuals save for retirement flexibly and to be transferable from job to job. They are available to anyone regardless of employment status – you can open a PRSA if you are a part-time or casual employee, a highly paid professional, self-employed, unemployed or a homemaker. Because of their particular features and

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flexibility, however, they have over the years increasingly become the pension vehicle of choice for pension tax-planning purposes for high net-worth individuals.

1.

2. One of the conditions of approval of a PRSA product by Revenue is that-

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"it does not .....provide for the annuity or other sums payable to the individual to commence or for assets to be made available to the individual before the individual attains the age of 60 years or after he or she attains the age of 75 years."

3. On the face of it, the intention of this approval condition seems quite clear – a PRSA product cannot provide for retirement benefits to be taken by the PRSA owner before age 60 and the benefits must commence by age 75. However, it appears that some tax advisers are of the view that the wording is open to the interpretation that, whilst a PRSA owner who wishes to take benefits from his or her PRSA must do so by their 75th birthday at the latest, there is no compulsion to take benefits at that age (or indeed any age) and that the PRSA can continue up to time of death of the owner, even though the owner no longer has the option to take benefits from it after age 75. While this may seem to fly in the face of the whole raison d'etre for pension savings – i.e. to provide an income in retirement – for those with substantial pension assets it can provide significant tax planning opportunities.

4. This is best illustrated by comparing a vested and a non-vested PRSA against a number of benchmarks. Non-vested PRSAs are PRSAs in respect of which benefits have not yet commenced to be drawn down by the PRSA owner (they are treated as still being in the pensions "savings" phase), while vested PRSAs are PRSAs in respect of which benefits have commenced (usually by way of drawdown of up to 25% of the fund as a lump sum – tax-free up to €200,000). There is no limit on the number of separate PRSAs that an individual can establish.

Death of the PRSA Owner

5. In the case of a non-vested PRSA, on death of the owner the funds in the PRSA will be transferred to his or her estate tax-free and, under CAT rules, would pass to any surviving spouse tax-free. The existing legislation, effectively, envisages and provides for this up to the PRSA owner's 75th birthday (the latest date by which benefits under the PRSA must be taken – as generally understood) but did not envisage that this tax efficient transfer of the PRSA fund could continue if the PRSA owner survived beyond his or her 75th birthday. The intent of the legislation is that, by age 75, a PRSA owner is required to have vested his PRSAs and to use the funds therein to provide an income over the course of his/her retirement and, possibly, that of his spouse or partner.

#15/6

6. In the case of a vested PRSA, on death of the owner the vested PRSA is treated as if it was an Approved Retirement Fund (ARF) and, as such, the remaining funds in the vested PRSA are treated as a distribution to the owner in the year of death and taxed accordingly, except where the funds are transferred to an ARF of a surviving spouse, in which case the funds transfer tax-free but will be subject to the spouse's marginal rate of income tax when eventually drawn down from the surviving spouse's ARF.

7. Therefore, by not vesting the PRSA, the PRSA owner retains the possibility that the fund will pass tax free to the surviving spouse with no further tax consequences.

Exposure to the Imputed Distribution Regime

8. Under the imputed distribution regime, ARFs and vested PRSAs are subject to an annual taxable imputed distribution (in effect a minimum drawdown) requirement which varies between 4% and 6% of the value of the assets in the ARF/vested PRSA, depending on the individual's age and the overall size of the fund. The imputed distribution regime was introduced in Finance Act 2006 following a review which found that many ARF owners ~~(and, most likely, owners of vested PRSAs – since both are treated similarly for tax purposes)~~ [Donal – I think it was the advent of the imputed distribution regime for ARFs that really "spawned" the vested PRSA market as vested PRSAs were as flexibile as ARFs but without the tax imputed distribution impediment] were not using these funds, as intended i.e. to provide an income stream in retirement, but as a form of tax-efficient estate planning.

9. So long as a PRSA remains unvested, it can continue to build up tax-free and is not subject to the imputed distribution requirement. In addition, by not vesting the PRSA, the rate of imputed distribution on any ARF(s) and/or other vested PRSA(s) which the individual has, can be kept to a minimum.

Treatment as a BCE

10. The Standard Fund Threshold (SFT) regime is designed to act as a deterrent to the over-funding of supplementary pension provision through tax-relieved pension saving arrangements. It does this by placing a limit of €2m on the total capital value of pension benefits that an individual can draw in their life time from such arrangements. Tax at the higher rate (-40%) is payable up-front at the point of drawdown on any excess over the limit (known as a "chargeable excess"). This is in addition to tax on the pension benefits when paid out in the normal way from the pension arrangement. In measuring the extent to which an individual has "used up" his or her SFT limit of €2m, pension benefits are only taken into account at the point at which they "crystallise", which is generally at the point of retirement in the case of occupational pension schemes, or at the time when

benefits are first drawn down, in the case of personal pensions such as PRSAs. This is known as a Benefit Crystallisation Event or BCE.

11. In the case of a PRSA, once any benefit has been drawn down, the PRSA is treated as a vested PRSA for SFT purposes. Both the lump sum taken and the remaining funds in the PRSA (which, once vested, can be accessed at the PRSA owner's discretion) are treated as having "crystallised" at that point i.e. a BCE has occurred. The value of the lump sum and the remaining PRSA fund are taken into account in determining if (either on their own or when aggregated with any earlier BCEs) they exceed the SFT limit of €2m.

12. If no benefits are ever drawn from a PRSA, a BCE never arises in respect of that PRSA and it is, therefore, never taken into account for SFT purposes. As indicated earlier, on the death of the PRSA owner, the unvested PRSA fund is transferred to his or her estate and can pass tax-free to a surviving spouse.

13. There are, therefore, clear tax planning and possible tax avoidance advantages in seeking to maintain a PRSA intact without vesting it i.e. in the event of the death of the PRSA owner, it can pass tax-free to a surviving spouse (even after the PRSA owner has attained the age of 75), it avoids the imputed distribution regime (and may help to suppress the rate of the imputed distribution on other ARFs/vested PRSAs) and it is never taken into account for SFT purposes.

14. These tax planning opportunities are clearly of most interest and advantage to those with substantial pension savings the capital value of which might exceed the SFT limit of €2m at the point of retirement -i.e. high net-worth individuals. An example of how this can arise is set out below.

Illustrative Example

15. Assume A is approaching retirement and has a defined contribution (DC) occupational pension scheme valued at €2.5million. He has no personal fund threshold[1], so faces a potential tax bill of €200,000 if he crystallises the DC pension pot on retirement (i.e. €2.5m *less* the SFT limit of €2m = chargeable excess of €0.5m x tax at 40% = €200,000). He decides to resign before his retirement date and, as he has been with his company for less than 15 years, he takes a transfer value in respect of his deferred pension benefit to a PRSA (which he is entitled to do). He then establishes two PRSAs putting €2m into PRSA 1 and €0.5m into PRSA 2.

[1] Under the SFT regime, an individual the capital value of whose pension benefits on the date of the introduction of the regime (or on the dates when the SFT was subsequently reduced) exceeded the SFT, could apply for a Personal Fund Threshold or PFT of that value.

#15/8

16. He decides to draw down a tax-free retirement lump sum from PRSA 1 of €200,000 (he may if he wishes draw up to 25% of the fund as a lump sum but any amount in excess of €200,000 will attract tax). As he has now vested PRSA 1 it gives rise to two BCEs. However, as the combined value of the BCEs e.g. a lump sum of €0.2m and remaining €1.8m balance in the PRSA does not exceed the SFT limit of €2m no chargeable excess tax arises at that point.

17. He decides to keep PRSA 2 intact and does not vest it. This can continue to grow tax-free. He still has sufficient income coming from PRSA 1 by the time his 75th birthday arrives and he decides to forego the possibility of taking benefits from PRSA 2. This means that PRSA 2 will never feature as a BCE and no chargeable excess tax will ever arise. In addition, PRSA 2 will continue intact and grow tax-free to date of death. If he predeceases his spouse, the PRSA 2 fund will pass to her tax-free as part of his estate. In fact, the funds in PRSA 2 will have benefited from marginal rate tax relief during the contribution phase of pension saving, tax exemption during the growth phase as well as tax-free transfer to the beneficiary.

18. In addition, the unvested PRSA 2 is not subject to the annual taxable imputed distribution that applies to vested PRSAs and ARFs (including in this example PRSA 1). This imputed distribution is at the rate of 4% of the annual value of the assets in the ARF/vested PRSA up to age 70 and 5% thereafter, or if the value of the assets exceeds €2m, 6% regardless of age.

19. Also, because the value of PRSA 1, after taking his tax free lump sum of €200,000, is less than €2m he only needs to drawdown 4% of the annual value of the fund (i.e. €72,000) up until his 70th birthday and 5% thereafter (i.e. €90,000) to meet the imputed distribution requirement. If he had vested both PRSA 1 and 2 and taken the same €200,000 tax-free lump sum the value of his vested PRSAs would have exceeded €2m such that he would have had to draw an annual amount of 6% of the value of the assets to meet the imputed distribution requirement.

20. All told, by tax planning in this fashion, he can:

- At minimum, defer any chargeable excess tax on his pension benefits until he draws down PRSA 2 and avoid it altogether by leaving PRSA 2 intact until date of death.

- Arrange to pass on PRSA 2 (which has already benefited from tax reliefs in the contribution and growth phases of pension saving) tax-free on his death to a surviving spouse as part of his estate.

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- At minimum, defer the imposition of the imputed distribution regime on PRSA 2 until he draws benefits from it and avoid it altogether by leaving PRSA 2 intact until date of death.

- Minimise the impact of the imputed distribution regime on vested PRSA 1 because the value of that fund remains below €2m.

Conclusion and recommendations

21. The premise behind the tax reliefs provided during the contribution and growth phases of pension saving is that the benefits ultimately payable (with the exception of the permissible tax-free lump sum) will be taxable in accordance with relevant legislation. This principle is being frustrated by the tax planning opportunities detailed above. With a view to removing these tax planning opportunities, it is proposed with your approval, to make the necessary amendments to tax legislation to ensure that:

    a) all PRSAs are deemed to vest no later than the PRSA owner's 75th birthday (regardless of whether benefits are drawn by that date),

    b) in the case of PRSAs that have to date remained unvested at the PRSA owner's 75th birthday and are still intact, they will be deemed to vest at the date of passing of Finance Bill 2016, and

    c) PRSAs that are deemed to vest in accordance with a) and b) foregoing will be subject to the imputed distribution regime, treated as BCEs for the purposes of the SFT regime and in the event of death of the PRSA owner will be passed to his or her surviving spouse under the ARF regime.

22. In the case of individuals who are currently over the age of 75 who will face a "deemed vesting" of their PRSA(s) on the date of passing of the Finance Bill, with all that entails in terms of possible tax liabilities (i.e. potential chargeable excess tax and tax on ongoing imputed distributions from the PRSA), the question arises as to whether, notwithstanding that they consciously planned their affairs in a manner that would deny them access to their PRSA assets after age 75, they should nonetheless be allowed to draw their tax-free lump sum[2] and access any remaining funds in the PRSA in the normal way, like any other PRSA.

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[2] At present an individual has a lifetime limit of €200,000 on the cumulative tax-free lump sum he or she can draw from all their pension funds. Whether an individual over the age of 75 with an unvested PRSA can draw down

#15/10

23. On balance, it would not seem to be a proportionate response to deny access to a possible tax-free lump sum and impose income tax at the marginal rate plus USC annually on imputed distributions from the PRSA while preventing the PRSA owner from taking actual distribution from the PRSA. Your approval is sought, therefore, to permit those affected to access their tax-free lump sum (if any) and draw down the balance of the PRSA should they so wish notwithstanding that the current legislation requires access to be exercised not later than an individual's 75th birthday.

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some of that PRSA as a tax free lump sum will, therefore, depend on the extent to which he or she has already availed of the tax-free lump sum limit of €200,000.

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