



# *Irish ProShare Association IPSA Members Briefing*

Update on changes to  
Employee Share Schemes  
21 March 2011

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## ***Outline of Discussion***

Overview of share scheme changes

Impact on Revenue approved schemes

Impact on non-approved schemes

Position for share options

Other issues to consider

Employee communications

Ongoing IPSA representations

Last Friday's developments!

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## ***Statement by Minister for Finance - 18<sup>th</sup> March***

“ The Minister for Finance has now clarified that the charge to PRSI (both employer and employee) will not apply where the share based remuneration was the subject of a written agreement, entered into between the employer and the employee before 1 January 2011.

The PRSI charge will however, apply to share based remuneration where this is subject to agreements entered into on or after 1 January 2011.

The legislative changes required to underpin this clarification will be made in the next Social Welfare Bill. “

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## ***Announcement by Minister***

### **What is it likely to mean**

- USC was not mentioned so unlikely to be any row back here
- Options already granted pre 2011 should be PRSI free
- SAYE options already granted pre 2011 should also be ok
- Restricted stock awarded pre 2011 but not yet vested should be ok
- Awards of shares post 2010 liable for PRSI
- APSS shares yet to be appropriated caught within PRSI charge?
- Shares held in an ESOT for distribution via APSS might be ok?
- Actual wording of proposed legislative change will be important
- Written evidence of employee & employer agreement is key

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# *Employee Share Schemes*

## **Overview of changes**

- Income and health levies abolished
- Replaced with universal social charge (USC)
- USC to apply to all share schemes – most cases @ 7%
- Employee PRSI to apply to all new share awards - @ 4%
- Employer PRSI to apply to all new share awards - @ 10.75%
- PAYE to apply to some share schemes – now tax at source
- All effective since 1 January 2011!
- Period of grace to 30 June?

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# ***Revenue Approved Schemes***

## **Approved share options**

- Abolished effective 24 Nov 2010 for grants and exercises!
- Now treated the same as unapproved options (revisit later)

## **Approved SAYE options**

- Still tax effective on grant/exercise (discount & growth)
- Employee PRSI & USC on exercise (gain over option price) - @ 11%
- Employer PRSI on exercise - @ 11%~
- USC/PRSI via payroll – ‘notional pay’
- Options already granted *should* now to be free of PRSI?
- Position in relation to leavers to be clarified?

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## ***Revenue Approved Schemes***

### **Where to now for approved SAYE options?**

- Limited number of savings carriers
- Bonus rates offered less than what is permissible
- Reduced discounts offered (but up to 25% available)
- USC charge @ 7% in most cases
- PRSI charge @ 4% for new grants
- Additional employer PRSI cost & administration
- Economic benefit considerably reduced / market purchased shares
- Limited incentive to implement new schemes

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## ***Revenue Approved Schemes***

### **Approved profit sharing scheme (APSS)**

- Still tax free on appropriation (no change)
- Now employee PRSI & USC on appropriation
- Employer PRSI on appropriation
- Position in 2011 for current year schemes?
- Salary foregone as previously - PRSI/USC on appropriation
- No impact on €12,700 upper limit

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## ***Approved Profit Sharing Schemes***

### **APSS 2010 position - €2,000 discretionary bonus**

- Shares to a value €2,000
- No income tax
- Employer PRSI saving of 10.75%
- No employee PRSI
- No employee levies

Value received €2,000

- 'Economic cost' €1,785  $\approx$  89% to deliver €2,000

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## ***Approved Profit Sharing Schemes***

### **APSS 2011 position - €2,000 discretionary bonus**

- Shares to a value €2,000
- No income tax
- Employer PRSI cost 10.75% (assumes PRSI may arise in 2011)
- Employee PRSI @ 4%
- Employee USC @ 7%

Value received €2,000?

- 'Economic cost' €2,435  $\approx$  122% to deliver €2,000

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# ***Approved Profit Sharing Schemes***

## **APSS & utilisation of available funds (scenario 1)**

- New rules have no impact on tax free limit
- Salary foregone also unchanged
- Bonus plus salary foregone (say) €12,700
- Cash utilised to buy shares to value €12,700
- Payroll full value of shares delivered as ‘notional pay’
- Employee pays PRSI/USC via deduction from normal salary
- Employer pays PRSI on value of shares delivered

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# ***Approved Profit Sharing Schemes***

## **APSS & utilisation of available funds (scenario 2)**

- Employee wants no impact on normal salary
- Bonus & salary foregone must also satisfy any tax/USC/PRSI
- USC/PRSI on share value will 'cost' 11%
- Tax free element is limited to cash actually used to acquire shares
- Regrossed cost to fund USC/PRSI and knock on tax @ up to 52%
- Payroll lower value of shares actually delivered as 'notional pay'
- Payroll 'PSS non-cash bonus' required for internal funding of same
- Scenario 1 offers employees a better 'after tax' position

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## ***Revenue Approved Schemes***

### **ESOT's**

- Still tax free
- Employee PRSI & USC on appropriation via APSS
- Trust / Employer to operate PRSI?
- Existing ESOTs *may* be ok in relation to shares currently held

### **'Clog' Schemes**

- Tax position unchanged
- PRSI / USC / PAYE on taxable element for post 2010 awards

### **Relief for 'new issue' shares**

- Abolished as and from 8 December 2010!

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# ***Unapproved Share Schemes***

## **Position for share awards (not options)**

- Tax point unchanged – normally at vesting
- Now liable to employee PRSI/USC
- All tax/PRSI/USC to be collected via payroll at source
- Also employer PRSI cost on taxable value delivered
- Based on value/exchange rate on vesting
- Taxable value treated as ‘notional pay’ (see later)
- Pre 2011 awards *should* be free of PRSI on vesting

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## ***Unapproved Share Schemes***

### **2010 Position - €3,500 share award**

Shares to a value €3,500

- Tax @ marginal rate – self assessment
- Income levy 2%/4%/6%
- No employee PRSI charge
- No employer PRSI cost

Total 'tax' cost (say) €1,575

- Net value to employee €1,925

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## ***Unapproved Share Schemes***

### **2011 Position - €3,500 share award**

Shares to a value €3,500

- PAYE tax @ source
- Employee PRSI @ 4%\*
- Employee USC @ 7%
- Employer PRSI @ 10.75%\*

Total 'tax' take (say) €2,196

- Net value to employee €1,680 (52% 'tax' v 45%)

\*Assumes straight award of free shares so PRSI would arise in 2011

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## ***Unapproved Share Schemes***

### **Payroll implications for share awards (not options)**

- ‘Notional pay’ & insufficient cash to fund liabilities?
- Employer obligation to remit liabilities by due date
- Delay in settling shares & impact on tax payment date?
- Revised tracking and reporting systems required?
- Period of grace to 30 June?
- Reminder 2010 annual reporting via RSS1 due by 31 March 2011

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## *Position for Share Options*

### **2010 → 2011**

- No change in overall tax treatment
- Employee tax @ 41% within 30 days
- RTSO1 to be filed with payment

BUT

- Employee USC @ 7% (now to be settled via RTSO1 within 30 days)
- Employee PRSI @ 4% - for 'new' grants
- Employer PRSI @ 10.75% - for 'new' grants

So share options have different treatment – some PRSI formalities open

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## ***Other Issues to Consider***

- New PRSI liability – further clarifications still awaited from DSP
- Applies to ‘new’ share awards/options
- Companies to make provision for PRSI costs
- Collection / payment via payroll for share awards – former employees?
- Exposure moves from employee to employer – action required?
- Share valuation in private companies
- Improved tracking / recording / reporting
- Exercise caution – detail of proposed legislative changes awaited

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## ***Employee Communications***

Other actions required?

- Explanatory booklets now out of date
- Revised communications to reflect changes
- Direct impact on timing of tax payments
- Direct impact on cash earnings

Companies will need to reinvest in employee communications

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## ***IPSA Representations***

### Representations ongoing

- Response to Commission on Taxation Report
- Pre Budget submission / press releases
- Letter to Minister for Finance – National Recovery Plan
- Submission / meeting with Revenue
- Driving TALC sub-committee addressing implementation issues
- Official IPSA position is for a reversal of PRSI changes
- Possibility of grandfather provision re pre Jan options/shares/ESOTS
- Approach of new Government?
- Other issues of concern for members?

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# Questions?

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