

# Malta and Pension Transfers

11<sup>th</sup> Sept 2014

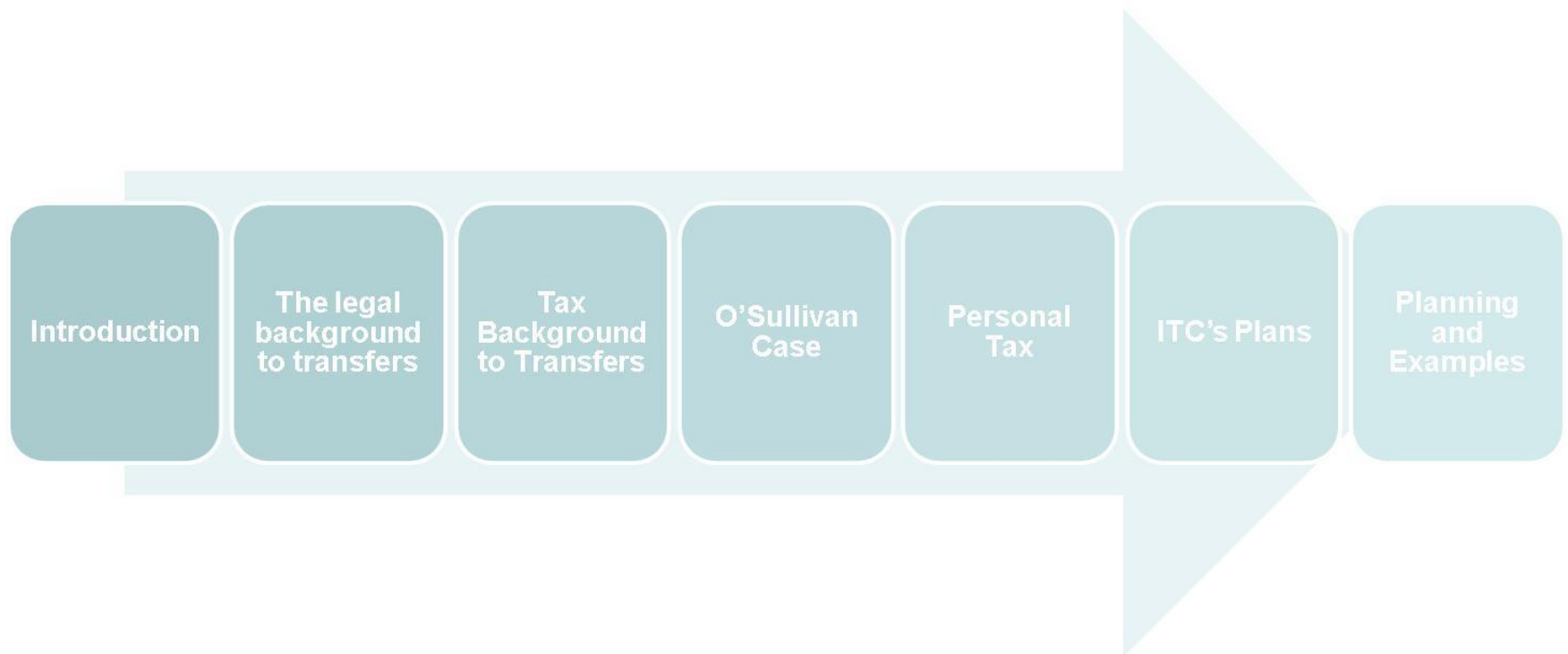




**Aidan McLoughlin**

**Director | ITC International Pensions**  
**[Aidan.McLoughlin@independent-trustee.com](mailto:Aidan.McLoughlin@independent-trustee.com)**

# Agenda



# Introduction



# Legal Background



# Overseas transfers regulations

3. A member of a scheme who is entitled to a transfer payment under section 34(2) of the Act, may direct the trustees of the scheme to apply the transfer payment in the making of a payment to an overseas arrangement, or

a

a PRSA contributor who is entitled to transfer his PRSA assets under section 124(2) of the Act may direct the PRSA provider to transfer those assets to an overseas arrangement

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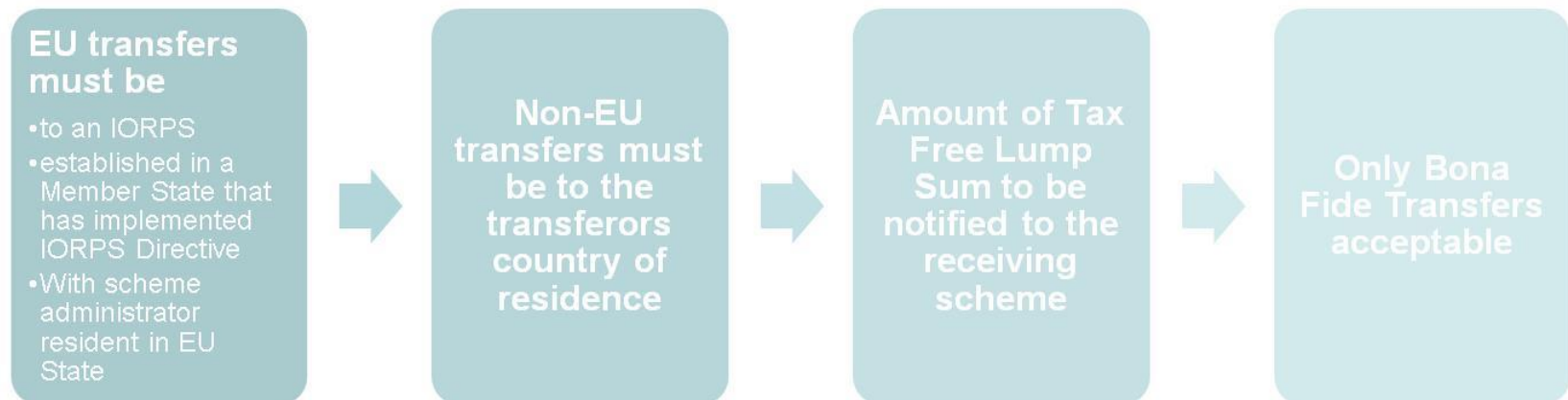


# provided that:

- (i) the trustees or PRSA provider have satisfied themselves that the retirement benefits to be provided under the overseas arrangement are **relevant benefits** by obtaining written confirmation to that effect from the trustees, custodians, managers or administrators of an overseas arrangement to which the transfer is to be made, and
- (ii) the trustees or PRSA provider have satisfied themselves that the overseas arrangement has been approved by an appropriate regulatory authority for the country concerned, and
- (iii) the trustees or PRSA provider have received from the member of the scheme or the PRSA contributor such information in such form as may for the time being be approved by the Pensions Board.



# Chapter 13





## Chapter 24.8

Only bona fide transfers are acceptable. The use of certain transfer arrangements relating to PRSAs, to circumvent Revenue rules ... are not permissible. A PRSA contributor who directs the PRSA provider to make a payment to, or transfer assets to, an arrangement for the provision of retirement benefits outside the State ...under ... S.I. No. 716 must, prior to any transfer, **sign a declaration to the effect that the transfer conforms to the requirements of the regulations and Revenue pension rules, is for bona fide reasons and is not primarily for the purpose of circumventing pension tax legislation and Revenue rules.**

## 19 April 2012 Letter

- **Introduced Chapter 24.8 requirement for both OPSs and PRSAs**
- **Contains the following warning**

Revenue will invoke the provisions of section 772(5) and section 787K(3) & (4) of the Taxes Consolidation Act 1997, as appropriate, where it transpires that a transfer was made primarily for the purposes of circumventing pension tax legislation and rules.

## Section 772(5)

(5) Where in the opinion of the Revenue Commissioners the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time, by notice in writing to the administrator, withdraw their approval on such grounds, and from such date, as may be specified in the notice.

## Section 787K (3) and (4)

- (3) Where, having regard to the provisions of this Chapter, the Revenue Commissioners are, at any time, of the opinion that approval of a product under section 94 of the Pensions Act, 1990, ought to be withdrawn they shall give notice in writing to the Pensions Board of that opinion and such a notice shall specify the grounds on which they formed that opinion.
- (4) Where approval of a product is withdrawn pursuant to section 97 of the Pensions Act, 1990, there shall be made such assessments or amendment of assessments as may be appropriate for the purpose of withdrawing any relief given under this Chapter consequent on the grant of the approval.

# Other Issues

**Pension  
Liberation**

**Section  
811**

General anti-  
avoidance  
provision

**Section  
1078**

“aiding, abetting,  
assisting, inciting,  
inducing” tax  
evasion

“providing false,  
incomplete or  
misleading  
information” is  
evasion



# O Sullivan Case

Decision by Mr Justice Ryan in HC on 1<sup>st</sup> April 2014

Mr O'Sullivan, an accountant, wished to transfer his PRSA to Malta

Canada Life refused transfer as Mr O'Sullivan was not resident/employed there

## Queries

- Did Malta Scheme provide Relevant Benefits?
- Was the transfer Bona Fide?

Revenue appeared as *amicus curiae*



# Relevant Benefits

- **Defined for Tax purposes under s770(1) TCA97**
- **Imported into Pensions Legislation by SI 716**
- **Issue:**
- **Definition refers to “service” as “employee” –**
- **How can that be applied to a self employed accountant?**

# Relevant Benefits

"relevant benefits" means any pension, lump sum, gratuity or other like benefit:

given or to be given on retirement or on death or in anticipation of retirement or, in connection with past **service**, after retirement or death, or

a

to be given on or in anticipation of or in connection with any change in the nature of the **service of the employee** in question.....

B

NOTE: same  
definition  
now has  
different  
meanings

# Relevant Benefits

- **Tax legislation requires strict interpretation**
- **But SI 716 not tax legislation**
- **Therefore “purposive” approach adopted by court**
- **Permitted under ss 5 and 6 Interpretation Act 2005**
- **Court concluded that an employment relationship wasn’t necessary for a self employed PRSA**

# Bona Fide Requirement

From Chapters 13 and 28 and Revenue/PB circulars

Declaration by transferor required

Declaration sufficient unless incomplete or other information available

Not possible to lay down a general rule – it depends on the circumstance of each case

# Conclusions

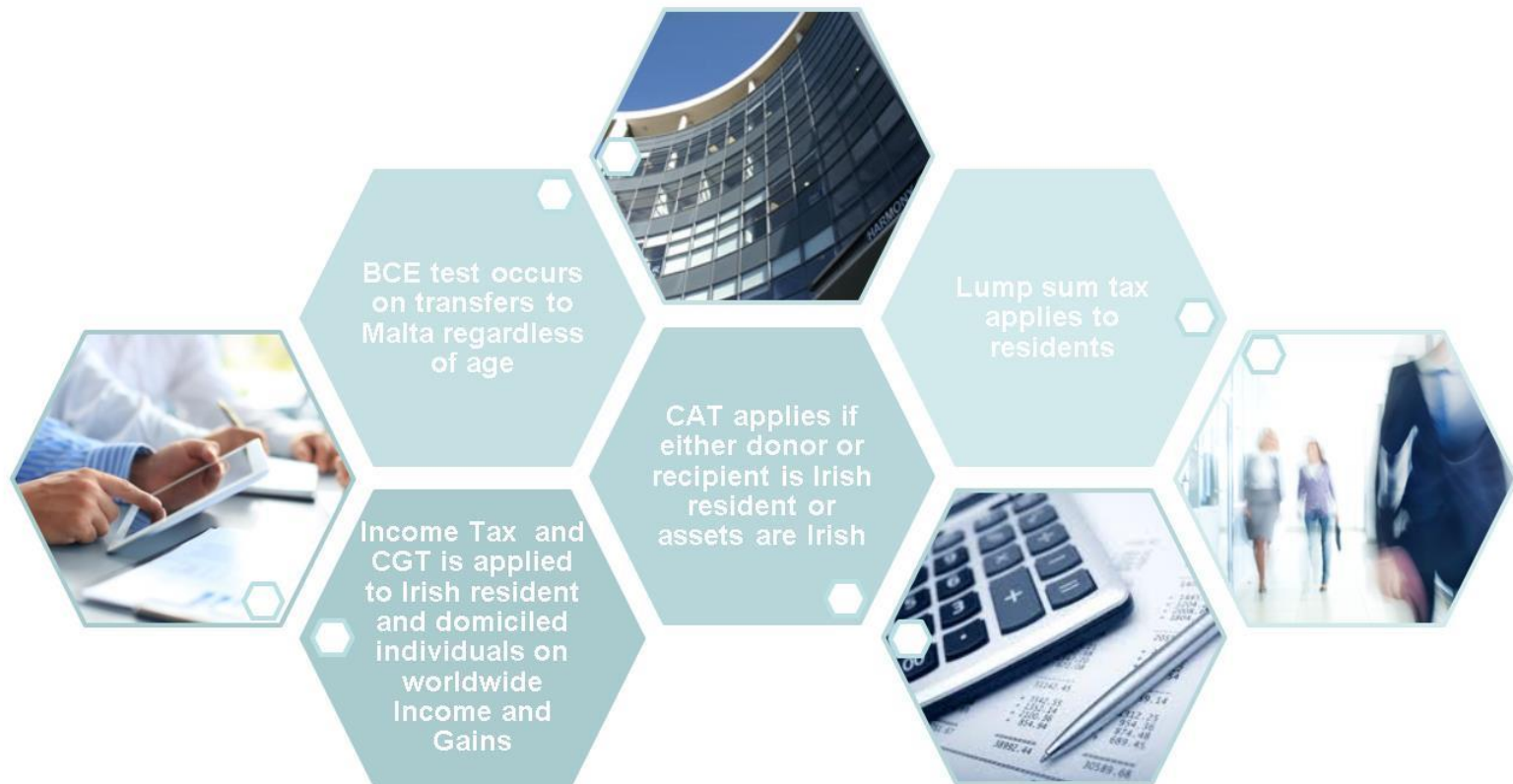
**Overseas  
transfers are  
possible**

**Employment  
not  
necessary for  
PRSAs**

**Declaration  
to confirm  
bona fides  
.....**

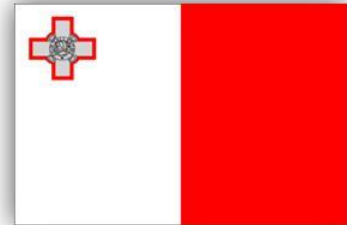
**But beware  
additional  
knowledge  
and exposure  
as advisor to  
litigation or  
tax sanction**

# Personal Taxation





# Malta Tax



Fund is exempt  
from Income  
tax and CGT

No limit on  
pension funds

30% of fund as  
tax free lump  
sum from age  
50

No Malta  
Income tax on  
drawdowns by  
non-residents

No deemed  
drawdowns (as  
not an ARF or  
vested PRSA)

No Inheritance  
Tax on benefits  
to non-  
residents from  
non-resident  
donor if non  
Irish assets

# Planning

## Issues with Transfers

Not available for all pension arrangements

Will current provider facilitate?

## Potential Exposures for advisors

PI Issues

Greater knowledge of circumstances – bona fides

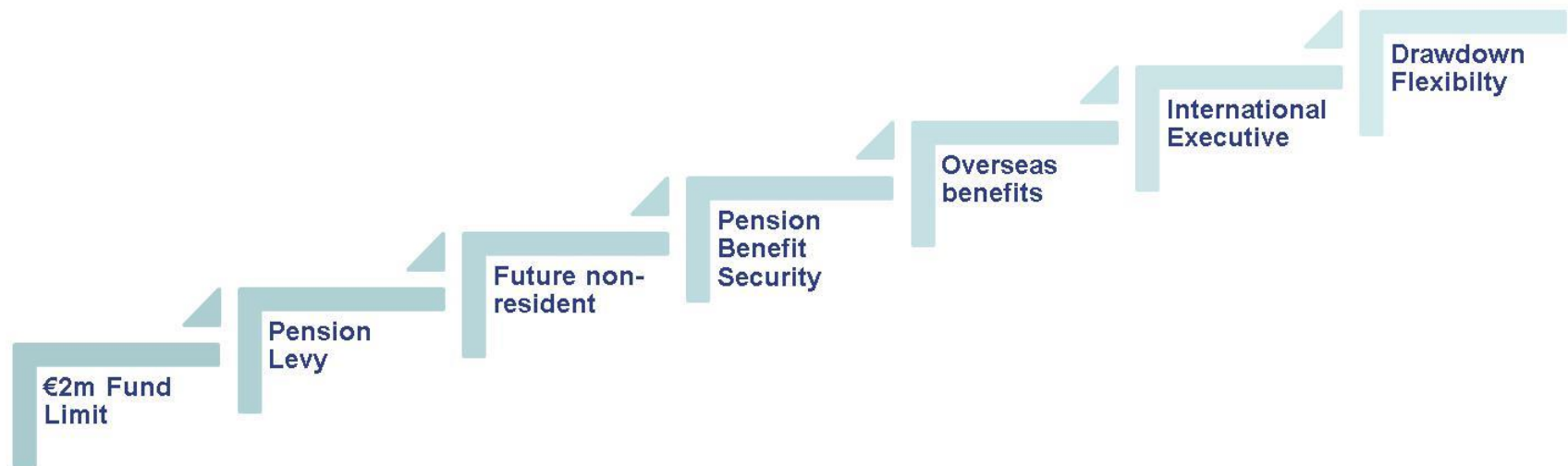
Adequate advice on variety of outcomes and wider circumstances

Selection/advice of Destination and/or provider

# ITC's Plans



# Examples





Questions?