Finance Act 2009 Briefing

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TAX PARTNERS

FINANCE ACT 2009 BRIEFING

Finance Act 2009 was enacted in June giving effect to the tough measures that were contained in the Supplementary or "Emergency" Budget announced on 7 April 2009. The aim of the supplementary budget was to raise revenue in order to bridge the ever increasing gap in the public finances. In particular, high earners were targeted as the new income levy and health levy rates were doubled. However, certain measures were also introduced to encourage further inward investment to Ireland. Such measures included the introduction of a new capital allowances regime for intangible assets and an extension to the scope of the stamp duty exemption available in respect of intellectual property.

It remains to be seen as to whether the Minister for Finance will continue to increase personal taxes in future Budgets. The Commission on Taxation is due to finalise its report by 30 September 2009. Future Budgets are likely to reflect any recommendations made in this report.

A summary of the principal tax measures which were contained in the Finance Act 2009 are outlined below.

RESIDENTIAL DEVELOPMENT LAND

CHANGE IN TAX RATE

The preferential 20% tax rate which applied to profits arising on the sale of residential development land has been abolished with retrospective effect. With effect from 1 January 2009, individuals will be liable to income tax under normal rules in respect of any profits arising on the sale of residential development land. This means that such profits could be subject to tax at an overall effective tax rate of 55%, which includes the marginal rate of income tax (41%), PRSI (3%), top income levy rate (6%) and top health levy rate (5%).

For companies, any profits arising on the sale of residential development land will be subject to corporation tax at the higher rate of 25%. This higher rate will apply to profits arising on or after 1 January 2009. Companies will be required to split their accounting period in two where it begins before 31 December 2008 and ends after that date.

RESIDENTIAL LAND DEALING LOSSES

New rules have also been introduced regarding the treatment of trading losses arising on the sale of residential development land. Previously losses arising on a sale of residential development land were available for offset against other income taxable at the higher rate of tax on a euro for euro basis notwithstanding that the losses arose in connection with a trade, the profits from which would have only been subject to tax at 20%.

The new rules apply to losses which arose before 1 January 2009 unless the Revenue received a claim for loss relief before 7 April 2009. The effect of the new rules is to ensure that tax relief for residential losses is limited to the value of those losses. Therefore where losses arose prior to 1 January 2009, such losses will be converted into a tax credit calculated at the 20% rate of tax. By way of example, if a residential land dealer has losses forward of €1 million at 31 December 2008 and makes a €1 million profit in 2009, the loss is only relievable on a value basis i.e. the tax on the profits is reduced by a tax credit of €200,000 (i.e. €1 million @ 20%).

The Finance Act also restricts terminal loss relief where the loss arose in a trade of dealing in residential development land.

PERSONAL TAXATION

INCOME LEVY

There were no changes to the income tax rates or standard rate bands because of the administrative complexity of such a change mid year. Instead, the income levy rates have doubled from those announced in the October 2008 Budget. The income entry levels at which the rates apply have also been significantly reduced.

The income levy that applies from 1 May 2009 is as follows:

Income Per Annum	Income Levy
First €75,036	2%
Next €99,944	4%
Balance	**6%**

Income, including employment income, will be deemed to have been earned proportionately over the full tax year. This means that individuals may need to pay an additional income levy to the Revenue where salaries or bonuses were received prior to 30 April 2009 and the income levy was deducted at the lower rate. However any taxable ex-gratia redundancy payments made to employees prior to 30 April 2009 will not be subject to the higher income levy. Tax free ex gratia redundancy payments are not subject to the income levy.

For the self-employed, the new legislation provides for a composite blended rate with the effect that the increase in levies is effectively backdated to 1 January 2009. These rates may be summarised as follows:-

Aggregate Income	Rate of Income Levy
First €75,036	1.67%
Next €25,064	3.00%
Next €74,880	3.33%
Next €75,140	4.67%
Balance	**5.00%**

Individuals holding a full medical card for any part of 2009 are exempt from the income levy for 2009.

PRSI CEILING - EMPLOYEES

The PRSI ceiling has been increased to €75,036 from 1 May 2009. This represents an increase of €23,036.

HEALTH LEVY

The health levy rates have doubled to 4% and 5% from 1 May 2009. The entry point to the higher threshold will be €75,036.

MORTGAGE INTEREST RELIEF

Mortgage interest relief has been discontinued for any mortgage over 7 years from 1 May 2009 with limited relief for individuals with mortgages that would have qualified for mortgage interest relief under the old rules. The Minister has indicated that mortgage interest relief will be kept under review with a view to its eventual abolition.

BUSINESS TAXATION

CORPORATE TAX RATES

There has been no change to the standard rate of corporation tax (12.5%) or the higher rate of corporation tax (25%).

ACQUISITION OF INTELLECTUAL PROPERTY

A tax relief on capital expenditure incurred on the acquisition of Intellectual Property has been introduced by the Act in order to strengthen Ireland's attractiveness as a location for the development and management of intellectual property. The tax write-off shall be granted as a capital allowance which will be available in line with the depreciation policy of the company. Alternatively, the company can elect to take the tax write-off over 15 years. The 15 year write-off period shall be available at the following rates, 7% for years 1 to 14 and 2% for year 15.

The previous provisions in relation to patent rights and know-how are to be discontinued for companies. The new provisions above shall instead apply to these assets. Transitional provisions will apply to permit companies to elect to avail of the old provisions until 7 May 2011. The election must be made within twelve months of the end of the relevant accounting period.

Specific anti avoidance measures have also been introduced in the context of the above provisions which will operate to restrict the level of capital allowances and tax deductions for related interest costs. In particular, such measures will ensure that the above reliefs cannot be claimed against unrelated income.

TERMINATION OF CAPITAL ALLOWANCES SCHEMES FOR HEALTHCARE PROJECTS

The Finance Act has provided for the termination of capital allowances schemes for private hospitals, registered nursing homes, convalescent homes and associated residential units as well as mental health centres. However, transitional arrangements have been put in place for projects which are at an advanced stage of development.

A deadline of 31 December 2009 has been stipulated for expenditure incurred on qualifying construction or refurbishment costs of certain healthcare projects unless certain conditions are satisfied. Where planning permission is not required and 30% of the qualifying work has been incurred before 31 December 2009, the deadline is extended to 30 June 2010. Where planning permission is required and the application is submitted and acknowledged as being received on or before 31 December 2009, a further extension of the deadline is available until 30 June 2011 for registered nursing homes, convalescent homes and mental health centres. In the case of qualifying hospitals the deadline for expenditure is extended to 31 December 2013.

Schemes for palliative care units and childcare facilities have not been affected by these new provisions.

INTEREST RELIEF ON RENTED RESIDENTIAL PREMISES

Tax relief has been restricted for interest paid on borrowings used to purchase or improve rented residential premises after 7 April 2009. The relief is now restricted to 75% of the total interest incurred annually on the property. The restriction applies to new and existing loans. Commercial properties are not affected.

MID-SHANNON CORRIDOR TOURISM INFRASTRUCTURE INVESTMENT SCHEME

The deadline for applications to the relevant Tourism Board for the above scheme has been extended from 31 May 2009 to 31 May 2010. The period within which the expenditure must be incurred for capital allowance purposes has also been extended from 31 May 2011 to 31 May 2013.

CAPITAL TAXES

CAPITAL GAINS TAX

The rate of capital gains tax has been increased from 22% to 25% for disposals made on or after 8 April 2009.

CAPITAL ACQUISITIONS TAX

The rate of capital acquisitions tax has also been increased from 22% to 25% for gifts or inheritances received on or after 8 April 2009.

The CAT thresholds were decreased by 20% in respect of gifts or inheritances received on or after 8 April 2009. This means that the Group A (Parent to child) threshold is now €434,000, Group B (related persons) threshold is €43,400, and Group C (non-related persons) is €21,700.

DEPOSIT INTEREST RETENTION TAX AND WITHHOLDING TAX ON OTHER SAVINGS

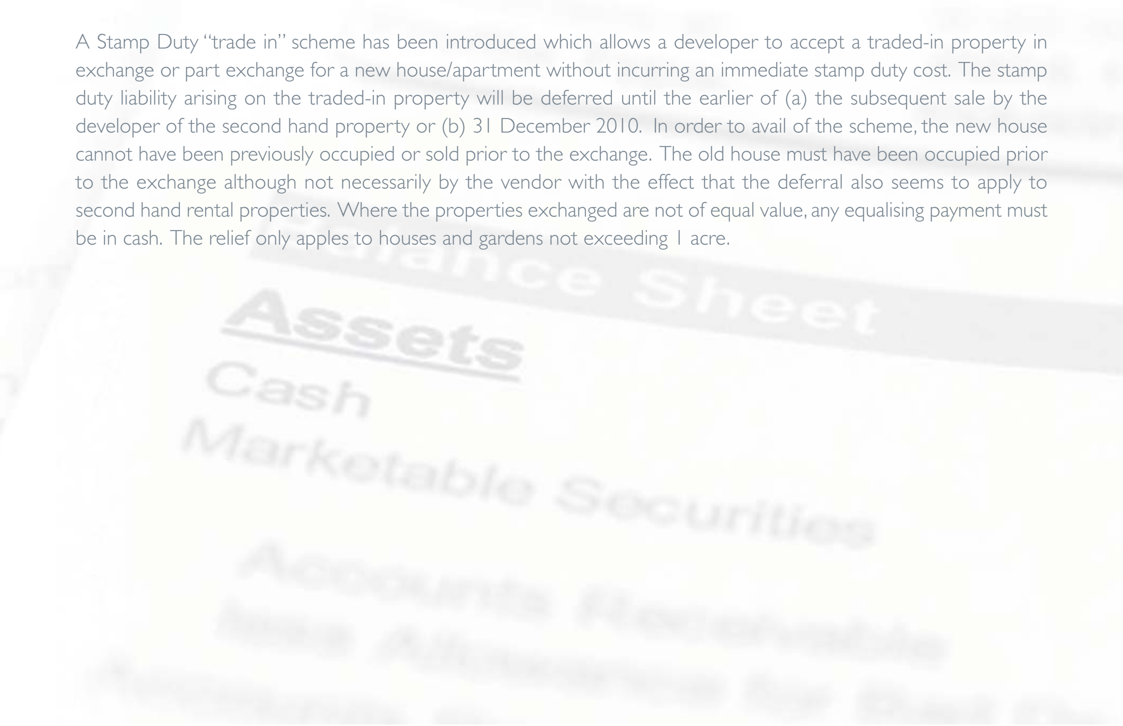
The rate of DIRT applicable to deposit interest income has been increased from 23% to 25% for standard rate DIRT deposit accounts. The Act has also increased the tax rates on investment funds and life policies by 2%. A 28% tax will now apply to such payments. These increases will apply to payments including deemed payments, made on or after 8 April 2009.

STAMP DUTY

STAMP DUTY "TRADE IN" SCHEME

No change has been made to the existing stamp duty rates that apply to residential and commercial property.

A Stamp Duty "trade in" scheme has been introduced which allows a developer to accept a traded-in property in exchange or part exchange for a new house/apartment without incurring an immediate stamp duty cost. The stamp duty liability arising on the traded-in property will be deferred until the earlier of (a) the subsequent sale by the developer of the second hand property or (b) 31 December 2010. In order to avail of the scheme, the new house cannot have been previously occupied or sold prior to the exchange. The old house must have been occupied prior to the exchange although not necessarily by the vendor with the effect that the deferral also seems to apply to second hand rental properties. Where the properties exchanged are not of equal value, any equalising payment must be in cash. The relief only apples to houses and gardens not exceeding 1 acre.



VAT

VAT ON PROPERTY

New provisions in relation to a waiver of exemption were introduced at Committee Stage. A deemed cancellation has been introduced if the landlord sells a property on which a waiver has been exercised without having cancelled the waiver. The provisions also deal with cases where the property concerned has been sold since 1 July 2008 deeming the date of cancellation of the waiver to be the date of the passing of the Finance Act 2009. Under these new provisions, the landlord will be required to repay to the Revenue an amount equal to the VAT originally reclaimed on the acquisition or development of the property less the amount of VAT received from short term lettings during the period the waiver was in place.

The new VAT provisions are complex and landlords with a waiver of exemption in place should consider their impact when intending on selling any properties subject to the waiver.

VAT RATES

No change has been made to the current VAT rates. The standard rate and lower rate of VAT remain at 21.5% and 13.5% respectively.

VAT MARGIN SCHEME FOR SECOND-HAND CARS

The Supplementary Budget announced the introduction of a margin scheme for car dealers in respect of second hand cars. At that time it was indicated that further details of the measure would be included in the Finance Bill. This did not materialise and it is understood that industry consultation is ongoing with the Department of Finance in order to agree the details of the scheme.

The above is intended as a general guide to the measures announced in the Finance Act 2009. No action should be taken on the basis of the above without obtaining professional taxation advice.

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