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Tax Bulletin – Finance Bill 2010 – Some Highlights

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Budget 2010 was noteworthy for the very few tax changes that were announced. In contrast, Finance Bill 2010 is a comprehensive piece of tax legislation which introduces some totally new concepts, such as transfer pricing, into Irish law while at the same time seeking to be 'pro-enterprise'. The following is a summary of some of the measures contained in the Bill which were not mentioned in the Minister's budget speech

COMMERCIAL

- The R&D tax credit has been further tweaked. A new concept, the "R&D development centre", has been introduced. Where a group of companies carry out R&D in different R&D development centres, and cease to use one of those centres, the R&D expenditure carried out in that centre does not have to be included when calculating the credit available.
 - R&D activity carried out before a company commences to trade can qualify for the tax credit but it must be claimed within 12 months of the company commencing to trade.
 - A package of "pro-enterprise" measures have been announced including:
 - The existing tax exemption for new start up companies is to be extended to companies commencing to trade in 2010.
 - Ireland's position as an attractive holding company location is to be further improved through a number of enhancements to the tax treatment of foreign dividends received by Irish companies. Simplification measures concerning the operation of dividend withholding tax are also being introduced.
 - Enhancement of the capital allowances scheme for intangible assets introduced in Finance Act 2009.
 - New transfer pricing rules are to be introduced to apply the "arms length principle" (as per OECD guidelines) to trading transactions between associated parties. These seek to ensure that associated parties cannot gain an unfair advantage from their relationship through either overstating an expense or understating profit. The transfer pricing rules are being promoted by Revenue as 'light touch' in practice but whether or not this will be reflected in practice is unclear.
- The new rules are to come into force in 2011. Small and medium enterprises i.e. enterprises with less than 250 employees or turnover of less than €50M or assets of less than €43M are excluded from the rules.

PROPERTY

- The 80% windfall tax, introduced as part of the NAMA Act, will not apply to the sale of a site with planning permission provided the site does not exceed 1 acre i.e. 0.4047 hectares and its market value is not more than €250,000. The sale must also not form part of a larger transaction or series of transaction. The exemption is to be back dated to disposals taking place on or after 30 October 2009.
- The 80% windfall tax is payable on the "windfall gain" i.e. the increase in the market value of land which is attributable to rezoning. The term "rezoning" is extended to include a decision by a local authority to allow development that is in "material contravention" of a development plan. This change is to apply to disposals taking place on or after 4 February 2010.
- When calculating the tax payable on rental income capital allowances arising in the year are to be deducted in priority to losses carried forward from an earlier year.

PERSONAL INCOME

- The remittance basis of tax will only apply to persons who can satisfy Revenue that they are not Irish domiciled. Up until now persons who were non-ordinarily resident (i.e. non resident in Ireland for 3 consecutive years) also qualified for the remittance basis so that any foreign income of theirs would only be liable to tax in Ireland to the extent that it was remitted here. An Irish domiciled individual who had been working overseas for a number of years will now no longer qualify for the remittance basis when they return home.
- An annual “domicile levy” of €200,000 is to be payable from 1 January 2010 by an individual who is Irish domiciled and an Irish citizen with world wide income exceeding €1M, Irish located property exceeding €5M and an Irish income tax liability of less than €200,000.

In calculating the value of Irish property no account is taken of borrowings. Shares in trading companies, or shares in a holding company which derive the greater part of their value from trading subsidiaries, are ignored when calculating the amount of Irish property the individual has. The levy is payable on a self assessment basis. Irish income tax for the year in question which has been paid will be allowed as a credit against the levy.

- The relief for high-earning executives, introduced to provide a limited ‘remittance basis’ to mainly US executives posted or seconded to Ireland has been extended to cover EU and EEA resident executives. Whilst this change is welcome, the fact that the relief does not extend to returning Irish domiciled executives is not.

ANTI – AVOIDANCE AND OTHER ISSUES

- A general anti-avoidance measure has been introduced to disallow capital losses which arise from arrangements entered into to secure a “tax advantage”. The measure is extremely broad and could potentially attack any planning to generate capital losses.
- Agricultural relief which applies to CAT will be clawed back if the agricultural property is sold or compulsorily acquired within 6 years of the

date of the gift or inheritance unless the proceeds are reinvested in other agricultural property within 1 year. Using the proceeds to buy back agricultural property which had been transferred to a spouse will not satisfy the reinvestment requirement.

- CAT is to be modernised and brought into line with self assessment principles while at the same time seeking to simplify and streamline its administration and collection. The changes to be introduced include;
 - Personal representatives are not to be held secondarily liable for CAT not paid by a beneficiary. Unpaid CAT is no longer to attach as a charge on property for 12 years after the date of the gift or inheritance.
 - The payment of CAT and the filing of a return where the valuation date arises in the period from 1 January to 31 August will be on or before 31 October in that year. Where the valuation date arises in the period from 1 September to 31 December the CAT must be paid a return filed no later than 31 October in the following year. A surcharge will apply where a return is not filed on time.
 - An Irish resident personal representative taking out a grant of probate or letters of administration will be appointed agent of a non resident beneficiary where the benefit received is greater than €20,000.
- Local authorities and other public bodies engaging in waste collection, recycling services, landfill and other listed services, or where there would otherwise be a distortion of competition must, from 1 July 2010, charge VAT on these services. This brings them into line with other private operators in these areas who have always been under an obligation to do this.

For further information on any of the above matters or on any tax matters, please contact [John Cuddigan \(john.cuddigan@rdj.ie\)](mailto:john.cuddigan@rdj.ie) or [Eoin Tobin \(eoibn.tobin@rdj.ie\)](mailto:eoibn.tobin@rdj.ie) at 021-4802700