

## Tax Bulletin – July 2010

### INTRODUCTION

In this Tax Bulletin we focus on areas where tax savings may be made. These include the R&D tax credit and the intangible assets scheme. We also consider the relief from corporation tax for new start up companies.

We consider the changes made to the remittance basis of tax and how if you previously had UK source income or gains you may be entitled to a tax refund.

Finally, we look at the changes made to the high earner's restriction and their likely extended impact.

### TAX SAVING MEASURES

#### *R&D Tax Credit*

In a recent global study of R&D incentives Ireland was ranked the second most attractive location in the world (Israel came first) for companies making R&D investment. At the same time it would seem that many Irish companies are not availing of the various tax reliefs available on R&D expenditure (both revenue and capital). These include the R&D tax credit, and the intangible assets scheme. This inertia made little sense when the economy was booming and makes less sense now when (1) cash flows are tight and (2) the credit can enable companies to obtain cash refunds.

In the case of the R&D tax credit, a tax credit equivalent to 25% of a company's incremental expenditure on research and development may be available to reduce the company's corporation tax liability. The credit is in addition to the corporation tax deduction of 12.5% for qualifying expenditure.

Companies which carry on research activities, but have not to date considered whether they can claim an R&D tax credit should now consider whether their activities are eligible to ground a claim. Remember, the R&D credit is not just restricted to companies in the high technology or scientific sectors.

#### *Intangible Assets Scheme*

Most companies will have experience of claiming capital allowances on expenditure incurred on plant and machinery used in its business. A broad range of intangible assets, including patents, trademarks, domain names etc. have now been added to the category of assets which a company can claim capital allowances on.

The level of capital allowances available on expenditure on intangible assets can be determined either in accordance with a particular accounts based formula in the legislation or, alternatively, companies can opt for a fixed write down period of 15 years with capital allowances provided at 7% per annum of the actual cost of the asset for the first 14 years and 2% in the final year.

#### *Relief from Corporation Tax for New Start Ups*

Revenue has recently highlighted the availability of relief from corporation tax for new start up companies in their first three years in operation, where certain conditions are met.

The relief, which only applies to new trades, means that a qualifying company with a corporation tax liability of €40,000 (or less) and arising from qualifying trade or the disposal of qualifying assets in its first year of trading will have its liability reduced to nil resulting in no corporation tax being payable by it. The same applies in year 2 and year 3.

One point to take note of is that the provision operates by way of relief, which must be claimed, rather than way of exemption. A company, claiming the relief, must therefore file a corporation tax return for the relevant accounting period specifying the amount of relief claimed.

### REMITTANCE BASIS OF TAX – MIGHT YOU BE ELIGIBLE FOR A TAX REFUND?

Prior to 2008, the remittance basis of tax meant that (1) non Irish domiciled individuals and (2) Irish citizens, who were non-ordinarily resident in Ireland, were liable to Irish income tax on foreign income, excluding UK

source income, only to the extent that the income was remitted or received in Ireland (foreign employment income to the extent that duties of the employment are exercised in Ireland is not covered by the remittance basis).

The remittance basis of tax also applied to foreign chargeable gains, excluding UK source gains, of non domiciled individuals (the remittance basis for foreign chargeable gains never applied to Irish citizens not ordinarily resident in Ireland).

In 2008, and on foot of threatened EU infringement proceedings, changes were introduced so that UK source income (arising on or after 1 January 2008) and UK source gains (where the disposal occurs on or after 20 November 2008) were included in the remittance basis i.e. they would only be liable to Irish tax to the extent that they are remitted to Ireland. The changes did not have retrospective effect which meant UK source income and gains arising before the relevant dates were liable to Irish tax, whether remitted or not.

If you qualified for the remittance basis of tax but paid tax on UK income and gains prior to 2008, even though you did not remit these to Ireland, Revenue now advise that they will consider, on a case by case basis, claims for a repayment of such tax. Claims should be made to the taxpayer's local tax office, should include all relevant details of the income and/or chargeable gains assessed and must be made within the statutory 4 year time limit for claiming repayment of tax.

Separately, from 1 January 2010, the remittance basis of tax no longer applies to the foreign income of an Irish citizen not ordinarily resident in Ireland (bringing it into line with the treatment of foreign chargeable gains). Irish citizens returning to Ireland after a number of years abroad will therefore need to plan their date of return to Ireland carefully to avoid Irish tax on foreign income.

## HIGH EARNER'S RESTRICTION

Important changes have been introduced to the "high earner's restriction". The restriction, which was first introduced back in 2007, seeks to limit the amount of 'specified reliefs' which a taxpayer can use to reduce their tax liability in any one tax year.

When first introduced, the restriction operated to limit the amount of 'specified relief' to 50% of the individual's 'adjusted income' or €250,000, if lower. Therefore, it was generally only individuals with income, before 'specified reliefs' were taken into account, of more than €250,000 who were affected by the restriction.

*This release is intended as a general guide to the subject matter and should not be used as a basis for decisions. Whilst every effort has been made to ensure the accuracy of the content no liability can be taken for any omissions or errors. Professional taxation advice should always be taken prior to proceeding with any transaction giving rise to tax consequences.*

From 1 January 2010 the effective rate of tax has been increased from 20% to 30% (PRSI, the income levy and the health levies, which must also be paid). Additionally, the 'entry' levels for the restriction are much reduced and will affect middle earners.

Individuals with 'adjusted income' of at least €125,000 (down from €250,000) who claim certain 'specified reliefs' with a value of at least €80,000 (down from €250,000) may now be impacted by the high earner restriction.

Individuals in receipt of deposit interest and certain other 'ring-fenced' income will have lower limits prior to the restriction having effect.

There are currently 54 'specified reliefs' which must be taken into account when considering the application of the high earner's restriction. These include the following:

- Exempt patent income.
- Relief on interest paid on loans to acquire an interest in a company / partnership.
- Various capital allowances on property.
- BES / Seed Capital / Film relief.
- Charitable donations / donations to certain sports bodies.

Where the restriction applies the maximum amount of specified relief which the individual can claim in a tax year is restricted to the greater of €80,000 or 20% of the individual's 'adjusted income' (generally income before the specified relief is taken into account). Any remaining unused relief can then be carried forward.

The effect of the changes is to make the 'high earners' restriction' wider in scope than was flagged in the Budget announcement. In particular, for individuals engaged in property rental with 'specified reliefs', and who already have to pay higher bank interest margins as well as increasing capital repayments, the changes are likely to lead to significant cash flow impacts.

Any person who is claiming or in receipt of 'specified reliefs' should at this point carry out a full assessment of the 2010 impact of the revised restriction to him or her to assess any corrective steps which should be taken to avoid the cash flow costs associated with the restriction.

**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 ([eoin.tobin@rdj.ie](mailto:eoin.tobin@rdj.ie)) at 021-4802700**