



Finance Bill 2010

(incorporating committee stage amendments)

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Transfer pricing

Introduction of transfer pricing regime

Section 38 of the Finance Bill introduces new transfer pricing provisions. The commencement date is for accounting periods beginning on or after 1 January 2011 although the regime will not apply to transactions where the terms are agreed before 1 July 2010.

The rules apply to trading transactions between “associated persons”. The regime will apply to both domestic and international trading transactions. It endorses the arm’s length principles and the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines.

Exemption

There is an exemption for small and medium enterprises (i.e. where the overall enterprise has less than 250 employees and either turnover of less than €50 million or assets of less than €43 million).

Affected transactions

Intercompany trading transactions such as the provision of management services, intra-group transfers of trading stock and certain intellectual property licensing will all be affected by the transfer pricing rules. Conversely, non-trading transactions such as the letting of buildings and interest-free loans not advanced in a trading context will not be impacted upon.

Understatement of Irish profits/adjustments

The new rules are founded on a “one way” system. The regime facilitates an upwards adjustment to taxable profits where the profits of an Irish taxpayer are understated. Where an upward adjustment is required in respect of an arrangement between two Irish companies the counterparty may claim a corresponding downward adjustment to eliminate double taxation. Where a counterparty claim results in the profits of a foreign branch being adjusted downwards, a corresponding adjustment will be made to any available foreign tax credits.

Documentation

The entities to whom transfer pricing applies must maintain sufficient documentation to show compliance and must ensure that this documentation is available upon request.

Commentary

The new provisions have received a broad welcome although in practical terms they may not have a significant impact as the low corporate tax rate is the key factor for many companies in deciding to locate in Ireland.



VAT

VAT to apply to State and public bodies

Further to a decision of the European Court of Justice (ECJ), changes to the VAT treatment of public bodies are outlined in the Bill. Local authorities will be subject to VAT at the underlying rates on services where there is potential for a distortion of competition e.g. waste disposal, leisure facilities etc., and on other activities listed in the Directive e.g. telecommunications services, passenger transportation services etc. Where appropriate, input VAT on these supplies will be recoverable.

Forced sale of property

A proposed amendment will remove an anomaly which imposed a potential VAT cost in the case of certain sales of

property by receivers, liquidators and banks as mortgagee-in-possession.

Second-hand motor industry

The Finance Bill outlines legislation to support the changes for the VAT treatment of second-hand means of transport announced in the Budget. This change is aimed at alleviating difficulties currently prevalent in the motor trade. A VAT margin scheme for sales of second-hand means of transport has been introduced. There will also be a partial input VAT credit for dealers on the first acquisition of a second-hand means of transport between January and June 2010.

Similar provisions have been introduced for agricultural machinery dealers.

VAT deduction for hotel accommodation

Measures have been introduced to ensure businesses may continue to reclaim VAT on hotel accommodation costs relating to a “qualifying conference” taking place in Ireland.

Telephone cards

From 1 July 2010 the VAT liability in relation to phone cards will shift from the point when the card is supplied, to when the card is used by the customer.

VAT rate decrease

The Bill confirms the Budget change, which provided for a decrease in the standard rate of VAT from 21.5% to 21% with effect from 1 January 2010.

Changes to VAT exemptions and supplies at lower rates

Changes are proposed to schedules of the VAT legislation which deal with exemptions from VAT and supplies which are vatable at the 13.5% and zero rates. The main changes include certain services provided by An Post, professional medical care services, Islamic finance and the provision of driving instruction as part of VAT exempt training services.

Notice of appeals

Section 3 of the Bill sets out the matters that must be included in a notice of appeal against an assessment for VAT. Any matters not set out in the notice of appeal cannot be relied on before the Appeal Commissioners or Circuit Court unless it would have been unreasonable to include them in the notice.



VAT

Change in use of properties developed before 1 July 2008 (Transitional properties)

A proposed committee stage amendment will impact on the calculation of deductible VAT where there is a major change in the use of a transitional property e.g. change from taxable use to mainly VAT exempt use.



Stamp duty

Share transactions

A new provision has been proposed to counteract the avoidance of stamp duty on share transactions. This arises through the use of debt which ultimately benefits the shareholder either directly or indirectly. The new provision deals with situations where there is an arrangement for the purchaser to pay off the debt of the target company or a company connected with the target and the purpose of this arrangement is to secure a reduced stamp duty liability for the purchaser. Where such an arrangement exists the amount of the debt to be paid off by the purchaser will be treated as part of the consideration for the company and will be liable to stamp duty.

Islamic financing

A new stamp duty exemption has been introduced for the issue, transfer or redemption of investment certificates related to Islamic financing structures.

Reorganisation of funds and transfer of assets within unit trusts

The stamp duty exemption for reconstructions or amalgamations of foreign funds into Irish funds has been extended so that an Irish fund can now either issue units to the unit-holders in the foreign fund or to the foreign fund itself. This allows for effective reorganisation of funds into master/feeder structures as permitted under UCITS IV.

The second amendment is the removal of the charge to stamp duty arising from the transfer of assets from one sub-fund to another within the same unit trust scheme.

Farm relief

The Bachelor of Agricultural Science in UCD is to be included on the list of qualifications to which young trained farmer stamp duty relief applies.

Exchange of information

The Revenue Commissioners may exchange, at defined intervals, information with the Property Registration Authority and vice versa.



CGT/CAT changes

Retirement relief

The Finance Bill amends the retirement relief provisions. The amendments clarified the position that an individual can come within the scope of the retirement relief provisions on the proceeds of a disposal of shares pursuant to a qualifying redemption, repayment or purchase by a family company of its own shares. Therefore, the payments will fall within the scope of the €750,000 threshold relevant to CGT retirement relief.

Windfall tax

Amendments have been proposed to the 80% windfall tax introduced by the NAMA legislation. The Finance Bill provides for an exemption for disposals of small sites of under one acre and with a market value below €250,000.

It also extends the remit of the tax to profits or gains attributable to planning decisions which may be in contravention of the development plan for the area.

Administration

Changes have been proposed to the CAT regime to simplify and streamline the administration and collection of CAT. Such changes include:

- removal of the requirement for Revenue certification of the Inland Revenue Affidavit prior to submission to the Probate office. This is to apply from mid-June 2010 where the deceased died on or after 5 December 2001. The Revenue Commissioners will receive the information electronically from the Probate office.

- introduction of a pay and file regime for CAT. The pay and file deadline will be aligned with the income tax deadline. The tax year will be split into two periods – where the valuation date for the gift or inheritance arises between 1 January and 31 August, the pay and file deadline will be on 31 October that year. Where the valuation date arises between 1 September and 31 December the pay and file deadline will be 31 October in the following year. The extended Revenue Online Service (ROS) filing deadline will apply where ROS is used.
- e-filing will be required where certain reliefs are being claimed.
- abolition of CAT as a charge on property, eliminating the need for certificates of discharge.
- abolition of the concept of secondary accountability for the tax due. This is to be abolished retrospectively.
- requirement for an Irish resident agent to be responsible for pay and file procedures where the beneficiaries are non-resident.

The Revenue Commissioners will include questions on the Forms 11 and 12 and CG50 in relation to gifts or inheritances received in the year.



International/corporate tax

Foreign dividends

- the 12.5% tax rate will apply to foreign dividends paid from non-treaty/non-EU locations where the company paying the dividend is quoted on a recognised stock exchange in another EU member state or tax treaty country.
- the rules for identifying the underlying profits out of which foreign dividends are paid have been simplified.
- tax on foreign dividends received by an Irish company, where it holds less than 5% of the share capital and voting rights in the foreign company, will be exempt from corporation tax. This exemption only applies where the Irish company is taxed on this dividend income as trading income.

Cross border mergers relief

A transfer of trade and assets in a cross border merger will not give rise to a balancing charge as a result of the newly introduced Section 308A TCA 1997.

Royalties

Unilateral credit relief has been extended in respect of withholding taxes on royalty income from non-treaty countries to all trading companies.

Royalty payments can be made free of withholding tax to recipients resident in an EU or tax treaty country, subject to satisfying certain conditions.

Islamic finance

Amendments were introduced to facilitate Islamic finance transactions in Ireland. This will

promote Ireland as an attractive location for international fund raising operations in addition to providing Irish companies with an alternative source of funding. The new legislation facilitates sukuk (i.e. Islamic bond) transactions by extending the relieving provisions which currently apply to conventional financing to this form of financing.

R&D credit

The Bill introduced a new definition “an R&D development centre,” while certain other definitions have been amended. Where a group ceases to use an R&D centre for trading purposes, the expenditure may be ignored in computing the “threshold amount” for relief purposes. There is also clarification on pre-trading R&D expenditure and a 12 month time limit

applies for claiming relief in respect of such pre-trading expenditure.

Interest payments

Under existing legislation there is an exemption from income tax on interest payments to a company resident in a relevant territory where the interest is paid by an Irish company or investment undertaking in the course of business. There is also relief from withholding tax on the payments. The Bill amends the sections to ensure relief will only apply where the interest payment is liable to tax in the relevant territory. In these cases, the rate of tax for interest payments as set out in the relevant treaty will apply.



International/corporate tax

Start-up companies

The relief from corporation tax for start-up companies with a tax liability of less than €40,000 has been extended to companies commencing trade in 2010. It applies for three years from the commencement of the trade.

Capital allowances on energy efficient equipment

The categories of energy-efficient equipment qualifying for 100% capital allowances in the year of purchase, where they are purchased for trading purposes, have been extended to include refrigeration and cooling systems and catering and hospitality equipment.

Childcare capital allowances scheme

The Bill proposes the termination of capital

allowances for expenditure on the construction, conversion or refurbishment of buildings used as childcare facilities.

Dividends from Irish companies previously non-resident

Dividends paid by an Irish subsidiary to its Irish parent would normally be exempt from tax. Anti-avoidance provisions have been introduced which may treat these dividends as being taxable where the subsidiary was non-resident within the previous ten years subject to certain conditions.



Income tax

Restriction of reliefs for high earners

Section 22 of the Finance Bill pertains to the increase in the effective rate of income tax for high income individual taxpayers to 30% (previously 20%) through applying higher restrictions on the use of certain income tax reliefs. The full restriction will apply where adjusted income is over €400,000 and the entry level to which the restriction will apply is reduced to €125,000.

Mortgage interest relief

Mortgage interest relief is extended to 2017 for qualifying loans taken out on or before 31 December 2011. Current rates and levels of relief will apply to these loans. Extended relief at reduced levels will apply for those taking out qualifying loans during 2012. Mortgage interest

relief will be abolished from 2018 onwards.

Relief for health expenses

The Minister may deem certain treatments ineligible for tax relief where those treatments would be considered to be contrary to public policy. There is a disallowance of general cosmetic surgery costs. The Bill removes the requirement that health institutions must be approved before tax relief to individuals can be allowed.

Nursing home fees (where 24 hour on-site qualified nursing care is available) and payments to foreign-based hospitals also qualify for tax relief.

Domicile levy

The 2010 Finance Bill introduced an Irish domicile/nationality levy for the first time. It applies to individuals who have a certain

level of Irish assets (€5 million) and whose worldwide income exceeds €1 million, no matter where the individual is resident. The new annual domicile levy of €200,000 applies to individuals whose liability to Irish income tax is less than €200,000, whose worldwide income for a tax year is over €1m and whose Irish situated property is valued at over €5million on a valuation date.

The levy applies to individuals who are Irish domiciled and Irish citizens regardless of residence.

Irish income tax will be allowed as a credit against the domicile levy. To avail of the credit the income tax must have been paid at the same time as, or before, the domicile levy is paid. No deduction is given for borrowings in

calculating the value of Irish property. The valuation date is 31 December. The new levy applies from 2010 and is payable on a self-assessment basis. For 2010, the levy will be payable on or before 31 October 2011.

Shares in trading companies (or holding companies whose main value derives from subsidiary trading companies) are excluded from the definition of Irish situated property for the purposes of the €5 million test. There are 'look through' provisions for offshore companies deriving the greater part of their value from Irish situated property.

The committee stage amendments to the bill, which have been proposed by the Minister for Finance, include anti-avoidance provisions

Income tax

whereby Irish property transferred at below market value on or after 18 February 2010 will be deemed to still belong to the individual for the purpose of the €5 million assets test. This applies to transfers to the individual's spouse, minor children, a discretionary trust or a foundation.

These anti-avoidance provisions do not apply to maintenance arrangements having force of law or to discretionary trusts which are shown to the satisfaction of the Revenue Commissioners to have been created exclusively for charitable purposes or for the benefit of children or incapacitated persons that are incapable of managing their own affairs. An individual who is considering the making of a significant

investment in the State may apply to the Revenue Commissioners for an opinion as to whether the section is applicable to that individual.

Remittance basis

The Bill proposes to abolish the remittance basis of taxation for Irish domiciled individuals who are not ordinarily resident in Ireland. Therefore, the remittance basis will only apply to non-Irish domiciled individuals.

Cross border relief

This relief has been amended such that the definition of a day has now been brought in line with the definition for residence purposes. This would mean that an individual who spends any part of the day in Ireland in a week could meet the criteria to claim cross-border worker relief.

Other

- an exemption from a BIK charge on the provision of qualifying art objects to certain employees or directors has ceased from 1 January 2010.
- relief will no longer be available for premiums paid for certain long term care policies.
- there is an abolition of income tax relief for service charges paid in 2011 and subsequent years.



Whistle-blowing

Whistle-blowing Provisions

The committee stage amendments propose a new whistle-blowing obligation for tax advisers in relation to certain tax schemes.

The proposed legislation is similar to UK legislation. Experience in the UK shows that the type of change proposed can greatly increase the cost of tax compliance and it is therefore a significant issue for tax advisers and for business.

Under the proposed legislation “promoters” of certain tax schemes will be required, by a certain date, to provide details to the Revenue Commissioners regarding such schemes. The transactions which must be disclosed will be set out by the Revenue Commissioners by way of

regulations which have yet to be issued. The transaction to be disclosed must enable a person to obtain a tax advantage; the main, or one of the main, benefits of the transaction must be the obtaining of that tax advantage; and it must fall within a certain category such as involve standardised documentation, have fees linked to a tax advantage or be a transaction one would want to keep confidential from the Revenue Commissioners!

There are also provisions requiring the person undertaking the transaction to disclose it to the Revenue Commissioners in certain cases and requiring persons marketing such transactions to provide Revenue, if requested, with information in relation to persons undertaking the transaction.

If we introduce the new proposals, Ireland will find itself in the unique position of operating a general anti-avoidance regime, an optional notification procedure and a new mandatory reporting regime. The level of uncertainty caused by the existing provisions is now being exacerbated by the addition of new legislation.

The proposed levels of penalty for the promoters of tax schemes who do not comply with their reporting obligations are €500 per day. The penalties that apply where legally privileged information is involved are subject to a cap of €4,000 for an initial period.

The new provisions allow the Revenue Commissioners to make regulations with the consent of the Minister for Finance.

The section lists a number of significant matters which the regulations will cover. We understand from the Revenue Commissioners that there will be consultation on these regulations and the accountancy and tax bodies will be engaging closely in this process.



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