



Tax Matters

Finance Bill 2008

Tax Matters

Finance Bill 2008 (No 2)

Summary of key provisions

December 2008

Personal tax

- Income levy
- Benefit in kind
- Medical expenses
- Mortgage interest relief
- Tax residence
- Retirement
- Car park levy

Corporation tax

- Corporate tax changes

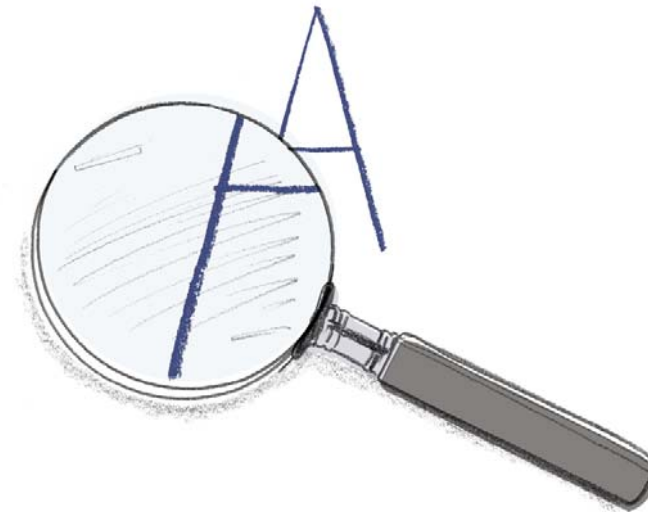
Capital taxes

- Capital gains tax
- UK gains
- CGT rate
- CAT rate
- Stamp duty

Other matters

- Revenue Powers and Penalties
- Urgent issues

Our specialists



Personal tax

Finance (No 2) Bill 2008 was published on 18 November 2008 containing the legislative provisions to introduce the items announced in the budget, and a number of additional measures which were not previously flagged.

In this tax matters we examine the main provisions of the Bill.



1. Income levy

- calculated on the aggregate gross assessable income of the individual, from all sources, with no deductions, with effect from 1 January 2009.
- the levy is to be charged at three different rates:
 - 1% on the first €100,100
 - 2% on the next €150,020
 - 3% on aggregate income in excess of € 250,120
- exemptions will apply for those on low income (below €18,304 or below €20,000 if over 65) and those entitled to a medical card.
- collected through the PAYE system.
- the **income of jointly assessed couples** will be viewed separately in computing their liability to the levy.
- assessable income will include heretofore exempt sources including patent income, artistic income, stallion fees and greyhound stud fees.
- certain income such as social welfare payments, deposit interest subject to DIRT, Credit Union Dividends, payments from certain offshore funds and investment undertakings and Irish & foreign life policies will be exempt from this levy. This is, presumably, due to the fact that such income will attract the increased exit/DIRT rate of 23/26%
- in computing the amount of the income assessable to the levy, no deductions are available for pension contributions, certain interest payments, capital allowances, double rent allowances, surplus S23 relief and certain donations.
- profits or gains arising from dealing in or developing residential development land, currently taxable at 20% - anticipated that this exclusion will also apply to the income levy, however, this is yet to be clarified by revenue.
- consider incorporation?
- accelerate bonuses etc. to pre 31 Dec 2008?
- income splitting

Personal tax

2. Benefits in kind

2.1 Company cars

- in line with introduction of a CO₂ emissions basis to determine VRT and road tax introduced earlier this year, the method of computing BIK on company cars will be calculated on a similar basis for cars first provided for use in 2009.
- the table below sets out the revised rates, in kilometres. It should also be noted that increased rates of BIK will apply for cars in categories D, E, F and G.

Table A

Business Mileage		Vehicle Categories A,B and C (3)	Vehicle Categories D and E (4)	Vehicle Categories F and G (5)
Lower limit (1)	Lower limit (2)			
Kilometres	Kilometres	per cent	per cent	per cent
-	24,000	30	35	40
24,000	32,000	24	28	32
32,000	40,000	18	* 31	24
40,000	48,000	12	14	16
48,000	-	6	7	8

* rate as per Finance Bill 2008 published 20 November 2008, which may be subsequently amended in the Finance Act.

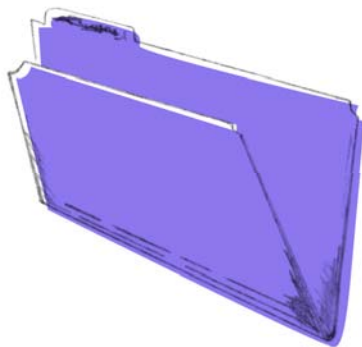
Table B

Vehicle Category (1)	CO ₂ Emissions (CO ₂ g/km) (2)
A	0g/km up to and including 120g/km
B	More than 120g/km up to and including 140g/km
C	More than 140g/km up to and including 155g/km
D	More than 155g/km up to and including 170g/km
E	More than 170g/km up to and including 190g/km
F	More than 190g/km up to and including 225g/km
G	More than 225g/km



Personal tax

- it should also be noted that two separate systems of BIK will now apply for 2009 in order to calculate the benefit assessable. The present method, based on OMV, will continue to apply to vehicles currently provided and the new CO2 basis will apply for cars provided in 2009, from a date to be confirmed by Ministerial order.



Combined road tax, VRT and BIK for switch to low emission vehicle. In the current climate, take up is likely to be higher and clients may wish to be informed of implications in advance of January purchases. Alternatively, consider pre 31 December 2008 purchase for higher emission vehicles.

2.2 Bicycles

- bicycles and safety equipment - The bill provides for the previously announced exemption from BIK for new bicycles and safety equipment up to a value of €1,000.

2.3 Preferential loans

- preferential loans – the rate at which the BIK charge is computed for preferential loans will increase from 13% to 15% with effect from 1 January 2009.

3. Medical expenses

Income tax relief for health expenses, other than nursing home fees, will be granted as a standard rate tax credit only with effect from January 2009. It should also be noted that the mechanics of the new provisions are such that the relief is given at the lesser of 20% of the expenses incurred or such amount as will reduce the income tax due to “nil” i.e. no refund or credit against the levies.

Note the benefit of pre 31 December 2008 medical expenditure where possible, there are a significant savings in cases where procedure is not covered by insurer (eg laser eye surgery).

4. Mortgage Interest Relief

From 1 January 2009 the rate at which mortgage interest relief is granted to first-time buyers will be 25% for years one and two, 22.5% for years three, four and five and 20% for years six and seven.

The rate of mortgage interest relief for non-first-time buyers will be reduced from 20 per cent to 15 per cent.



Personal tax

5. Tax residence

An unexpected measure targeted at tax exile and non-resident status individuals. Under current tax law a person may spend up to 183 days a year, or 280 days over two years, in Ireland without becoming resident for tax purposes. When counting days for this purpose, consideration is given to the “Cinderella” rule introduced in 1994 which provides that a day spent in the State does not count if the person is not present in the State at midnight. From 1 January 2009 a day must be counted if an individual is present in the State at any time during that day.

This change will affect individuals who must carefully manage their travel schedule to ensure that they do not become tax resident here. In particular, it will affect persons living in Northern Ireland who regularly travel south of the border. With care, it should be possible for most individuals returning to Ireland to preserve their non-Irish residence status.

6. Retirement benefits

As announced in the Minister’s Budget speech, the annual ‘earnings limit’ for pension purposes is being set at €150,000 for 2009 as compared with the 2008 limit of €275,239.

To put this in perspective, the actual amount that may be contributed is taken by multiplying the earnings limit

by a percentage that ranges from between 15%, for persons under 30, and 40%, for persons aged 60 and over. As a consequence of this change the maximum allowable pension contribution for a person aged 45 will fall from €68,810 in 2008 to €37,500 in 2009.

This change will affect individuals with a high income who are reliant on personal pension contributions to fund for their retirement. These persons will be required to make greater provision for their retirement from their after-tax income.

The above restrictions do not apply to contributions made by companies to employee or executive pension schemes.

The Finance Bill also includes a number of technical provisions that enable the Minister for Finance to index the maximum allowable thresholds for pension funds on retirement. The Minister has previously stated that these will not be indexed for 2009.



Personal tax

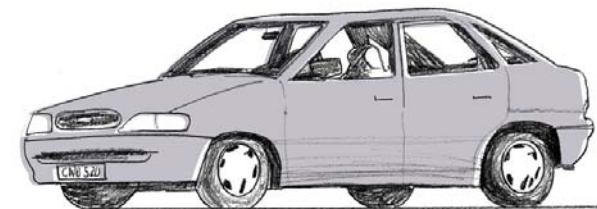
Pension restrictions will have significant impact on many clients and represents a double setback many following recent stock market falls. Service company option should be considered if appropriate, ie incorporation and remuneration provided via a corporate vehicle, which can itself fund the individual's pension fund (with significantly less restrictions on funding).

7. Car park levy

- exposure to the levy arises if an individual employee, including a director, has an entitlement to use a parking space located in an urban area provided directly or indirectly by his or her employer, for the parking of a car.
 - it is anticipated that the areas will be located within the cities of Cork, Dublin, Galway Limerick and Waterford.
 - the levy will be a flat rate of €200 per annum, and will be introduced following the signing of a ministerial order.
 - critical to the operation of this levy is the meaning of "entitlement to use a parking space". An individual will be regarded as having such an entitlement in the following circumstances:
 1. the employee holds or has been issued with an authorization to use a parking space or is otherwise given permission (including oral permission) to use a parking space.
 2. the employee holds or has been issued with any form or means of access to a parking space.
 3. the employee has been allocated a dedicated parking space.
 4. the employee has been allocated a parking space on a shared basis.
 5. a first-come first-served basis applies to the availability of the parking space.
 - an employee shall not be regarded as having an entitlement to use a parking space where the authorization is occasionally given and the total number of days in a year for which permission is granted, and the actual use thereof, does not exceed 10 days in a year of assessment.
 - an employee shall cease to be regarded as having an entitlement to use a parking space for the purposes of this levy if:
 1. they disclaim in writing, or by electronic means, the entitlement to use the parking space.
 2. the entitlement lapses or is withdrawn.
 3. the employee returns to the employer the form of authorization or means of access to the parking space.
 4. the employee ceases to use the parking space.

Personal tax

- exemptions apply to the following:
 1. holders of valid disabled persons parking permit.
 2. the use of parking spaces by employees of State or emergency services where the use relates to a response to an emergency situation.
 3. occasional use of a parking space by a retired person where the space is provided by the former employer
- the levy will be reduced to 50% where the use of the space is on a shared or first-come first served basis where the ratio of employees using the space is equal to or greater than 2: 1.
- employees in job share or short time arrangements will pay a pro-rata levy but not less than 50% of the amount which they would have paid had they been in full time employment (typically €100 p.a.).
- an employee's entitlement to use a parking space for the period in which they are on maternity leave shall be disregarded for the purposes of calculating the levy, as will the immediately preceding 10 weeks.
- employees commencing work before 7.00am or finishing later than 9.00pm (shift workers) will have that part of the year for which they are on shift work disregarded for the purposes of calculating the levy.
- the Bill specifically provides that no tax relief will be available on payments made in relation to the levy either for employers as compensation for, or reimbursement to, employees affected by the levy. Similarly no tax deduction will be available for employees as "expenses in employment" in respect of the payment of the levy.



Corporation tax

8. Corporate tax changes

8.1 Relief for start up companies

An exemption from corporation tax of up to €40,000 per annum (including tax on capital gains on trading assets) for the first three years of trading for new companies, excluding service companies. There is a form of marginal relief where the tax does not exceed €60,000 per annum. Various anti-avoidance provisions are in place to ensure that there is no abuse of the relief in the case of pre-existing trades. The relief is due to take effect for companies starting to trade in 2009 but requires a ministerial order before it becomes operational.

8.2 Research & Development tax credits

The extension of the Research and Development (R&D) tax credit regime:

- confirmation of increase in the tax credit to 25% (from 20%);
- base year fixed at 2003 for all future periods;
- the ability to set the tax credit back against corporation tax arising in the prior year;
- the ability to claim a refund from Revenue (over 3 years) for any tax credits which either cannot be carried back or cannot be set off against current year corporation tax liabilities. The refund is restricted to the greater of payroll taxes paid in the period or corporation tax paid in the ten preceding periods.

Where a company is a member of a group, it should be possible to allocate the tax credit to the appropriate company in the group to maximise the refund opportunities;

- full credit for R&D buildings now available in year one (not spread over 4 years)
- the extension of the R&D buildings allowances to buildings which are partly (greater than 35%) in use for R&D purposes for a minimum four year period. In such cases, the allowances can be claimed in proportion to the R&D activities carried out in the building.

There are various clawback provisions where the building is sold or ceases to be used for R&D activities within 10 years of the expenditure being incurred;

- tax credits available under the buildings provisions can also be used to offset current year liabilities, carried back against the prior period liability or claimed as a refund from Revenue, subject to the provisions above regarding payroll tax liabilities and the aggregate corporation tax liabilities in the preceding ten periods.
- the new provisions apply to expenditure incurred in accounting periods commencing on or after 1 January 2009.



Corporation tax

There is also a new time limit in respect of R&D tax credit claims. **With effect from 1 January 2009**, all claims must be made within twelve months of the end of the period in which the relevant expenditure was incurred. It is **imperative that any clients with potential R&D expenditure are notified** of this change so that protective claims can be filed.

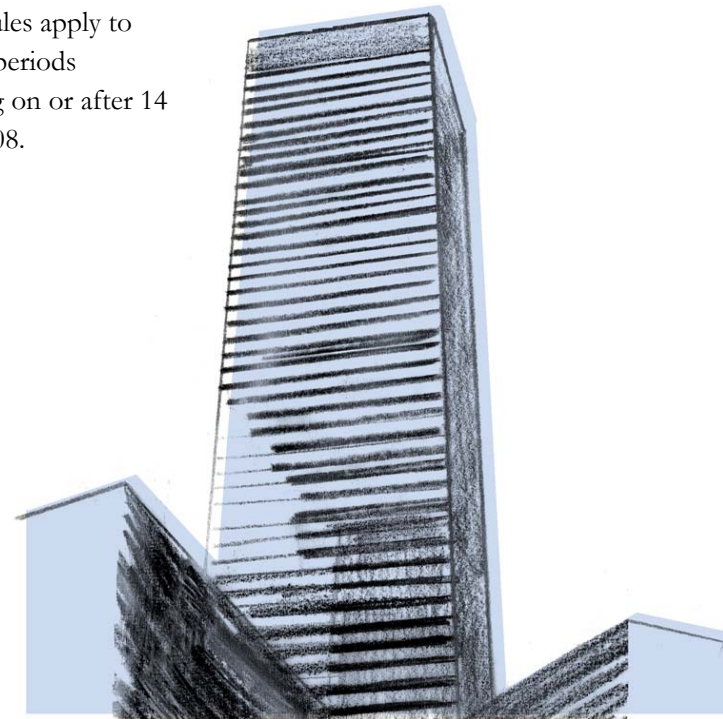
8.3 New preliminary tax dates for large companies

- the bringing forward of the date for payment of the first instalment of preliminary tax for large companies to the sixth month of the accounting period.

Previously, the payment date was in the penultimate month of the accounting period. Large companies are defined as companies with a corporation tax liability in excess of €200,000.

- going forward, there will be two preliminary tax payment dates for large companies. The first instalment must be paid by the sixth month of the current period and must amount to either 45% of the final liability or 50% of the preceding period's liability.
- the second instalment must bring the aggregate of the first instalment and second instalment to 90% of that period's final liability and must be paid by the 21st day of the eleventh month of the accounting period.

- where chargeable gains arise, there are "top up" payment provisions to ensure that companies are not unjustly penalised where unforeseen gains arise in a period.
- the above rules apply to accounting periods commencing on or after 14 October 2008.



Capital taxes

9. Capital gains tax (CGT)

The payment dates for CGT have been amended. From 2009 onwards, the payment date for a disposal in the period 1 January to 30 November is 15 December of that year. For gains made in December, the payment date is the following 31 January.

10. UK gains

The remittance basis of taxation has been extended to gains arising from the disposal of assets situated in the UK for persons who are Irish resident or ordinarily resident but not Irish domiciled. Such gains will only be taxed in Ireland to the extent that they are remitted into Ireland.

11. CGT rate

The rate of capital gains tax has been **increased from 20% to 22%** in respect of disposals made (contracts signed) on or after 15 October 2008.

12. CAT rate

The rate of CAT is **increased from 20% to 22%** for gifts and inheritances taken on or after 20 November 2008.

13. Stamp duty

1. non-residential property rates – amended so top rate is now 6% where consideration > €80,000;
2. e-stamping regulations – changes and reorganisation of legislation to enable the introduction of same;

3. incentive measure of no imposition of penalties where stamp duty plus interest paid in respect of late stamping once done in the first 56 days of enactment of the Finance Bill;
4. the anti-avoidance provisions introduced in last year's Finance Act relating to resting in contract, licensing and agreements to lease have been repealed and reinstated with exclusions included. The provisions are still subject to a Commencement Order to become effective, however, the Minister indicated in a statement on 26 November that he expects to sign this order in January 2009. Any clients contemplating a land transaction shortly should give this matter careful consideration.

5. anti-avoidance introduced to prevent “exchanges” of property. Affects Section 34 SDCA 1999.
6. confirmation of changes to rates applicable to financial cards, cheques; etc.



Other matters

14. Revenue powers and penalties

A number of new provisions relating to Revenue powers have been introduced including changes in relation to the question of legally privileged documents. The Bill contains provisions to amend and formalise the tax geared penalty imposed in a Revenue Audit case. The proposals are that a taxpayer may now challenge through the courts the extent of a penalty imposed in a revenue audit. This will lead to issues of taxpayer confidentiality and may discourage a taxpayer from making an appeal.

Further amendments require that, for a qualifying disclosure to be valid, a full disclosure of any matter giving rise to tax must be made regardless of the category of the default.

This makes the period of preparation prior to a revenue audit all the more important as it places a significant burden on taxpayers and their advisors to ensure that all matters, however trivial, are considered in relation to a qualifying disclosure within that short timeframe.

Urgent issues before 31 December 2008

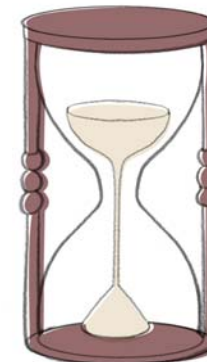
The combined effect of the new income levy and the reduction in the pension cap to €150,000 make it all the more urgent for sole traders, partnerships and other self employed taxpayers to consider the benefits of incorporating some or all of their business.

Companies which have incurred R&D expenditure in the Calendar years 2004, 2005, 2006 or 2007 must file repayment claims before 31 December 2008. Therefore, it is important that companies review their position now.

Taxpayers should consider whether it is possible to accelerate any income into 2008 before the new income levy becomes operational on 1 January 2009 (bring forward bonus payments, dividends; etc).

If new company cars are being considered for next year, think about acquiring before 2009 to avoid increased BIK if the vehicles will be in the higher CO2 brackets.

Employers should immediately review their employee car parking arrangements to determine how many spaces are provided and how many employees will be affected as the number of employees liable to the levy may exceed the number of parking spaces actually available. Employees whose use of employer provided car parking spaces is "occasional" should consider disclaiming the use of the space.



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