WALLACE O'DONOGHUE

CHARTERED ACCOUNTANTS & BUSINESS ADVISORS

Finance Bill - 2010

Introduction

The purpose of the Finance Bill is to give legislative effect to the tax changes announced in Budget 2010 introduced by Finance Minister Brian Lenihan on 9 December. There were relatively few tax changes announced that day and it is not surprising therefore that the Bill contains a number of new measures, some of which remove tax reliefs that have been available for a number of years.

The business community and in particular the internationally traded sector will undoubtedly welcome various technical measures aimed at improving Irelands attractiveness as a centre for inward investment.

The retention for now of well established reliefs for passing businesses on to succeeding generations will be welcomed as will the fact that the tax regime applicable to pensions, BES and seed capital relief remain unchanged.
As with all Finance Bills a number of anti avoidance measures are included and we would caution that amendments to this legislation may be made any time up to 9th April 2010.

This is the date on which the Finance Bill must be signed into law and it is essential that the reader obtains prior professional advice from either a qualified Accountant or registered Tax consultant before taking any action on foot of any of these changes.

The main proposed changes are now summarised as follows:

Income tax

- As expected tax rates and income tax bands remain unchanged from 2009. PRSI and income levies are also unchanged which means that the effective marginal tax rate for individuals earning over €175,000 per annum is 55%. This has increased the attractiveness of incorporating a business into a limited company in recent times.

- Tax relief for medical expenses is being extended to contributions made under the Governments Fair deal scheme towards upkeep in nursing homes and to certain other non approved facilities.

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Suite 138/139
The Capel Building
Mary's Abbey
Dublin 7

T: 353 1 8880830
F: 353 1 8880833

www.wallaceodonoghue.ie

- As indicated in the Budget mortgage interest relief is being retained up to the year 2017 on qualifying loans taken out before 31 December 2011. In certain cases restricted relief will be available on loans taken out in 2012 also.

- Tax relief for service charges is being abolished on a phased basis from 2011 onwards.

- There are new provisions which increase the restriction on use of tax incentives by “high earners” who are now regarded as individuals earning more than €125,000 (previously €250,000) per annum. Essentially, subject to availability of marginal relief on income up to €400,000 per annum, all such individuals will now pay an effective 30% (previously 20%) rate of income tax on their earnings.

- The remittance basis of taxation whereby Irish tax residents who were either non domiciled or non ordinarily tax resident in Ireland were taxed only on investment income remitted into Ireland is restricted considerably. In future this will only be available where the taxpayer is non domiciled – usually this is equated to being a citizen of another State.

- ·However in a welcome measure which will hopefully assist inward investment, new measures are proposed which will extend the relief from Irish tax on employment income earned by non Irish citizens in the State. Going forward this will now apply to a person from an EU/EEA State working in Ireland and the minimum period of stay in Ireland is reduced from 3 years to 1 year.

- A domicile levy of €200,000 will apply to Irish citizens living abroad who have Irish capital worth at least €5 million, and earn more than €1 million per annum. Where their Irish tax liability is already more than €200,000 per annum it appears this levy will not apply.

Tax shelters and capital allowances incentives

- Tax shelters and capital allowances incentives

- Capital allowances on costs incurred on provision of childcare facilities will not be allowed when incurred after 30 September 2010 except in the case of certain pipeline projects.

- Loss relief for passive investors in certain significant buildings or gardens against other income will be discontinued.

- The BES, seed capital and film investment reliefs have not been altered.

Taxation measures for companies

- There is no change in the 12.5% tax rate.

- There is a welcome extension in the corporation tax exemption for new start up companies engaged in certain trading activities. Where they commence trading in 2010 the three year exemption will now apply once all other conditions have been met – previously they were required to commence trade in 2009.

- Dividends received from overseas companies are usually taxed at 25% but the measures introduced last year allowing such dividends be taxed at 12.5% have now being extended and simplified. In addition in certain cases these may now be completely exempt.

- In keeping with the “Green” agenda additional items of capital expenditure will now qualify for capital allowances at a rate of 100%.

- The 25% tax credit available on costs incurred on research and development activities is retained with some technical amendments to deal with pre trading expenditure and the manner of dealing with expenditure incurred at a research site that has closed down.

- The manner of dealing with overseas tax already charged on income earned by an Irish company and use of branch losses in certain cases is simplified.

- Transfer pricing legislation is being introduced for the first time

- Capital gains tax/ windfall tax

- The general 25% rate of capital gains tax will still apply but as outlined in the recent NAMA legislation an 80% tax will apply on “windfall gains “ arising on sales of land which have been rezoned. An exemption has now been proposed in the Finance Bill for sites of less than one acre in size which are worth less than €250,000. However, gains arising from land which have been subject to material contraventions will now also be taxed at 80%. The practical aspects of the windfall tax have been the subject of much controversy and it remains to be seen if it will in fact generate any additional tax revenues in the short term at least.

- Anomalies in relation to the date of payment of capital gains tax arising on a CPO have been removed.

- Retirement relief which grants an exemption on certain business disposals to persons aged 55 or over is retained and the €750,000 ceiling will now include any gains arising on a buy back of shares by a company from that shareholder.

Anti avoidance measures

These are largely aimed at counteracting particular schemes which have come to the attention of Revenue in recent times and include:

- Measures preventing Revenue from approving profit sharing schemes where there are arrangements in place to allow employees take loans from employers.

- Tighter rules in relation to the deemed 3% distribution form pension funds for tax purposes

- Measures aimed at avoiding artificial capital losses arising for tax purposes on futures contracts.

Other measures

- As indicated in the Budget the VAT rate is reduced to 21%.
- VAT will apply from 1 July on the provision of certain service by local authorities such as waste management and off street car parking.
- There are no material changes to the existing Business asset relief for capital acquisitions tax.
- Relief for golden handshakes and pension contributions remains unchanged for now
- The life assurance levy will no longer apply to pension products which will be welcomed by brokers and pension companies alike.
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