

Finance Act 2008

PRICEWATERHOUSECOOPERS 



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13 March 2008

The Finance Act was signed into law on 13 March 2008. This guide provides an insight into key Irish taxation changes and how these changes may impact both businesses and individuals.

For further information about the potential impact of these changes on you or your organisation please refer to your usual PricewaterhouseCoopers contact, or refer to one of our specialist contacts at [tax contacts](#)

Further information can also be found on our dedicated Finance Act webpage at www.pwc.com/ie, or email ie.pwc.epublications@ie.pwc.com



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VAT on Property

The Finance Act introduces a new system for the application of VAT on property transactions that will be effective from 1 July 2008. The new system represents the most significant change to the VAT rules on property transactions in Ireland since the introduction of the tax in 1972. The changes come as a result of an extensive project commenced by the Revenue Commissioners in May 2005 to create a more simple and robust system for the VAT on property regime.

The rules from 1 July 2008 can be summarised as follows:-

- Sales (including very long leaseholds) of *new* properties continue to be taxable at the 13.5% rate. A property will be regarded as *new* if sold within five years after construction. However, if it is a second or subsequent sale of the property within five years and has been occupied for two years or more then it will be regarded as a *second-hand* property.
- Sales of *second-hand properties* will be VAT exempt (currently most second-hand commercial properties). If the parties do not opt to tax the sale the vendor may suffer a claw-back (time apportioned) of VAT previously deducted. Therefore, the vendor may seek the agreement of the purchaser to opt to tax the sale in order for the vendor to maintain (or even increase) his VAT deductibility entitlement.
- All *occupational lettings* (of whatever duration) will be exempt from VAT – again with the option for the landlord to charge VAT at the 21% rate on the letting. The landlord will typically exercise the option to preserve (or potentially increase) the landlord's VAT deductibility entitlement. However, the entitlement of the tenant to deduct VAT will be an

important commercial consideration in deciding/agreeing whether or not to charge VAT on the periodic rents.

- Therefore the current system of charging VAT upfront (typically in the order of twice the annual rent) on leases in developed properties of ten years or more duration will no longer apply.
- Transitional rules are being introduced to deal with, in particular, prevailing leases as at the commencement of the new rules on 1 July 2008.
- A new *Capital Goods Scheme* is to be introduced whereby VAT initially deducted on the acquisition of property interests will be subject to review and possible adjustment (time apportioned) for the VAT life of the property – up to twenty years. The same will apply to any refurbishment of the properties – subject to a VAT life of up to ten years. Therefore, any change in the use to which the property is put could result in an adjustment to the VAT initially deducted. The adjustment could give rise to a VAT clawback or an additional VAT deduction depending on the circumstances.

New considerations will therefore apply where someone is considering the sale of *second-hand* properties in the course of business. Currently the sale is subject to VAT at the 13.5% rate on the amount payable where the vendor was entitled to *any* VAT deduction when the property was initially acquired or developed by the vendor. Typically, the vendor is liable for VAT on the full sales proceeds but the vendor is not entitled to go back and recover a proportion of VAT which may not have been deducted at the outset. Under the new rules, the sale is exempt from VAT but the parties can agree to opt to tax the sale. This will obviously depend on the VAT status of the purchaser. The key difference between the current and new rules is that the vendor will be entitled to deduct (on a time apportioned basis) VAT which was previously not deductible.

On the other hand, if the parties do not opt to tax the sale then the vendor will suffer a clawback (on a time apportioned basis) of VAT previously deducted. This can be particularly costly for a vendor and will be a very important factor in the commercial negotiations. The question of whether or not to opt to tax the sale of second-hand properties will require some form of cost benefit analysis in order to decide on the best VAT result. The intention of the purchaser vis-à-vis the property acquired will also be significant as the twenty year clock starts again for the purchaser, i.e. any VAT deducted by the purchaser on the acquisition of the property will be subject to review, and possible adjustment, during the new VAT life of twenty years.

Overall, it is expected that the new rules will be intuitively more straight-forward than the excessively complex current system. The transitional measures will no doubt add a layer of complexity. In particular for waivers of exemption these will continue after 1 July 2008. However, waivers between connected parties will cease immediately on 1 July unless the VAT on the rent charged to the tenant equates a specified amount – that amount calculated to ensure that input VAT claimed originally (on acquisition or development of the property) will have been paid back to the Revenue Commissioners within a twelve year period from commencement.

The new Capital Goods Scheme is also likely to give rise to “winners” and “losers” depending on the VAT status of the parties and the commercial nature of the transactions.

Other VAT matters

Where an order or a reservation is cancelled and the business is entitled to retain a deposit the business may now claim a deduction in respect of any VAT reported on that deposit when it was received. This measure impacts all industries where non refundable deposits occur in particular the hotel and leisure sectors.

A new VAT reverse charge regime will apply within the construction sector. From 1 September 2008 sub-contractors will no

longer levy VAT on their services, rather the principal will self-account for the VAT arising. This measure should provide cash flow relief for sub-contractors but will increase the reporting obligations of principals. The measure will impact non-Irish sub-contractors in particular and such contractors will no longer be obliged to register for VAT in Ireland in respect of these services.

Key issues affecting business

Taxation of foreign dividends

Changes have been included in the Act which are expected to have a positive impact in making Ireland an attractive holding company location for foreign investors.

While the measures have not exempted foreign dividends from corporation tax, they will have the effect of halving the tax rate applicable to foreign dividends to 12.5% from 25%, to the extent that the dividend is paid out of trading profits of the foreign company (or out of dividends received by the foreign company from trading profits of its subsidiaries). The move has been necessitated by a recent decision in the European Court of Justice (ECJ), which (from an Irish perspective) focussed on the anomaly that domestic dividends from an Irish resident company to another Irish resident company are exempt from corporation tax, but foreign dividends paid to an Irish resident company are subject to corporation tax at 25%.

The change introduced in this Finance Act will bring Ireland into line with EU requirements. Domestic sourced dividends are exempt from corporation tax but the underlying profits will have suffered corporation tax at 12.5% where the profits are generated from trading activities. The Finance Act changes will mean that foreign dividends from underlying trading profits sourced from an EU country or a country with which Ireland has a double tax agreement, will also be taxed at the 12.5% rate. The full amount of the foreign dividend will be chargeable at the 12.5% rate when certain conditions are met, even though part of the dividend may not be paid out of trading profits. These conditions are:

- 75% or more of the dividend paying foreign company's profits must be

trading profits from that company or lower tier companies resident in the EU or in a country with which Ireland has a double tax treaty; and

- on a consolidated basis, the aggregate value of the trading assets of the company that receives the dividend and all of its subsidiaries, must not be less than 75% of the aggregate value of all of their assets.

If these two conditions are satisfied, there is no apportionment of the dividend received, between the 12.5% and 25% rates of tax. All of the dividend will be taxed at the lower 12.5% rate. Otherwise the dividend will be apportioned between the two rates.

In taxing foreign sourced dividends, credit is available for any foreign withholding taxes suffered or underlying taxes on profits out of which the dividend is paid. Finance Act 2004 introduced a form of onshore pooling so that, where foreign dividends have suffered foreign tax in excess of the Irish rate, excess foreign tax credits in respect of these dividends may be offset against Irish tax on dividends which have suffered foreign tax at a rate lower than the Irish rate. i.e. excess foreign tax credits can be pooled.

Following the changes introduced in the Finance Act, there will now be two pools of credits available, those at the 12.5% rate and those at 25%. Excess credits arising on dividends taxed at the lower rate will be available for offset only against tax on other dividends taxed at the 12.5% rate. Excess credits at the higher rate can be used against dividend income at either rate. Excess credits can be carried forward to future years for use against tax on dividends taxed at 12.5% in future years or for use against dividends taxed at 25% (where the excess credits arise on similarly taxed dividends).

Additionally, portfolio corporate investors that receive a dividend from a company resident in an EU Member State or a country with which Ireland has a double tax treaty will be taxed on the dividends at the 12.5% rate. A portfolio investor in a company is an investor with a holding of not more than 5% (and not more than 5% of the voting rights) in the company. The dividend will be deemed for

portfolio investors to have been paid out of the trading profits of the payee company.

This section shall be deemed to have applied as respects a dividend received on or after 1 January 2007. It is potentially advantageous for companies to re-examine the tax treatment of dividends from that date and if necessary to re file their corporation tax returns.

Taxation of foreign branches

Finance Act 2008 re-instates the pre Finance Act 2006 position for calculating the double tax relief ("DTR") available in respect of foreign branches. The DTR calculation for foreign branches is now based on the actual profits of the branch, rather than the profit calculated by using the turnover basis. Initially, the re-instatement of the pre-Finance Act 2006 position was said to apply retrospectively to 1 January 2006. This meant that companies which had used the turnover basis in calculating branch DTR for 2006 and 2007 would need to amend their corporation tax returns for these periods.

Committee stage amendments to the Finance Bill state that the effective date for these changes is now 31 January 2008 (i.e. the date of publication of the Bill). For the interim period (from 1 January 2006 to 31 January 2008), the "turnover basis" rules introduced in Finance Act 2006 automatically apply. However, a company can make an election to apply the "actual profits" basis (i.e. pre Finance Act 2006 position) for the interim period, provided that a consistent approach is adopted for the entire period. Therefore, a review of the double tax relief available to companies for 2006 and 2007, using both the turnover basis and the re-instated actual profits basis, should be carried out in order to ensure that the maximum relief available has been claimed.

Dividends paid in connection with a disposal of shares

The Act introduces a new anti-avoidance provision in relation to dividends or distributions paid in connection with the disposal of shares.

Heretofore, dividends received from companies resident in the State would be exempt from tax whereas, absent relief,

proceeds on the disposal of shares would be liable to capital gains tax.

The section provides that where an "abnormal" dividend or distribution is received in connection with the disposal of shares, the dividend or distribution is regarded as consideration for the disposal of the shares.

There is an exception to this new provision where the transaction is effected for a bona fide commercial reason and does not form part of a scheme whose main purpose is tax avoidance.

This provision applies to distributions/dividends paid on or after 19 February 2008.

Close company surcharge

The Act amends the surcharge provisions that apply to "close companies" (companies under the control of five or fewer persons or any number of persons who are directors).

The amendment allows a close company making a distribution and a close company receiving the distribution to jointly elect to have it disregarded for surcharge purposes. This measure will therefore make it possible for a close company (typically a holding company) to receive distributions (e.g. a dividend) that do not become potentially surchargeable income for that company.

These measures will apply to distributions made on or after 31 January 2008.

Preliminary tax

As announced in the Budget, the following changes have been introduced in the Act in relation to preliminary corporation tax.

- The small company threshold has been increased by €50,000 to €200,000.
- The threshold for relieving companies in a start-up situation from their obligation to pay preliminary tax has increased from €150,000 to €200,000.

The above provisions apply in respect of preliminary corporation tax due on or after 5 December 2007.

The Act also introduces a provision which puts the transitional rule in relation to preliminary tax when a company applied IFRS to gains/losses from financial instruments on a permanent basis. This rule provides that the amount of preliminary tax to be paid one month before the accounting period end does not have to take into account these gains/losses which may arise in the last two months of the accounting period. In addition it allows a top up preliminary tax payment to be made in respect of these gains one month after the accounting period to ensure that the 90% preliminary tax obligation is satisfied.

R&D tax credits

The Act introduces two changes in relation to the base year for R&D tax credit calculations.

Firstly, the base year for calculating R&D tax credits has been fixed at 2003 for years up to 31 December 2013; secondly, for 2014 onwards the base year will now be the corresponding year 10 years before the end of the year of the claim rather than the corresponding year 3 years before.

This means up until 31 December 2013 the base year that needs to be considered is 2003. In 2014 the base year to be considered will be 2004 and in 2015 the base year to be considered will be 2005 and so on.

These provisions apply to accounting periods on or after 1 January 2008.

RCT connected persons

The "connected persons" rule for relevant contract tax (RCT) purposes is being amended with effect from the date of passing of the Finance Act so that it no longer applies to "innocent" incidental connections. The amendment is aimed at companies obliged to operate RCT because they are connected with a company engaged in the business of land development or construction. In future, those companies will not have to operate RCT where they engage a subcontractor solely to carry out work on their own business premises (provided they are not otherwise engaged in the business of land development or construction).

The amendment also ensures that a person connected to a company in the meat processing or forestry industries will not have

to operate RCT where they engage a subcontractor to carry out construction operations in relation to a private dwelling or their own business premises (again, provided they are not otherwise engaged in the business of land development or construction).

The Finance Act also allows for the exclusion of certain principal contractors and subcontractors from the requirement to complete an RCT1 declaration (i.e. declaration that the contract entered into by both parties is a Relevant Contract for RCT purposes and not an employment contract) if one of the parties comes within a class of persons to be specified in the RCT regulations which are to be amended by the Revenue Commissioners.

Environmental initiatives

As part of the Government's environmental initiatives, the Act introduced a number of environmentally orientated provisions.

As flagged in the Budget, the availability of capital allowances and allowance of leasing charges on business cars will now be linked to the carbon emission levels of the car. This means that motor vehicles will be categorised on the basis of their CO₂ Emissions. The availability of capital allowances and the deductibility of leasing expenses will be linked to this categorisation, with vehicles in the higher carbon emission categories having their ability to claim capital allowances restricted and the ability to claim a deduction for leasing expenses restricted. This measure applies in respect of companies and sole traders.

These measures will come into effect in respect of cars purchased or leased on or after 1 July 2008.

The Act also introduces a tax incentive for the purchase of energy efficient equipment. Under this provision accelerated capital allowances of 100% will be available in the first year in which the qualifying expenditure is incurred. This will only apply where the expenditure is incurred on equipment which is new, unused and neither leased nor hired. To qualify the equipment must be specified on a list of approved products and the expenditure

must be above the minimum thresholds for that category of equipment.

The introduction of this scheme is subject to a Commencement Order being made following approval by the European Commission and the scheme is set to run for a period of 3 years after that commencement order is made.

Profit resource rent tax

Further to the Ministerial announcement in August 2007, the Finance Act introduces a new "profit resource rent" tax in respect of certain petroleum activities. Specifically, companies which are awarded a license from the Irish Government to carry out petroleum activities in a "taxable field" after 1 January 2007 will be subject to an additional profit resource rent tax on profits arising from those activities. This tax will be in addition to the 25% corporate tax rate currently employed and will operate on a graded basis of profitability as detailed below:

- An additional 15% tax in respect of fields where the profit ratio equals or exceeds 4.5
- An additional 10% tax where the profit ratio is between 3.0 and 4.5
- An additional 5% where the profit ratio is between 1.5 and 3.0
- No change where the profit ratio is less than 1.5

The profit ratio is defined as the rate of profits (less 25% corporate tax) divided by the accumulated level of capital investment. Accordingly, certain companies exploring the more profitable oil and gas fields will therefore see their tax rate increase above 25%.

Transfers of assets between companies

Anti-avoidance legislation has been introduced to prevent the tax free transfer of assets from companies into tax exempt regulated vehicles. In the future, such transfers will be liable to Capital Gains Tax. This applies to transfers on or after 18 February 2008.

Revenue Powers and Anti-Avoidance

The anti-avoidance provisions of S811 and S811A have been amended in the 2008 Finance Act. The key changes to the provisions are:

- The normal four year time limit for Revenue to make enquiries, raise or amend assessments no longer applies to S811 and S811A. Revenue now have the power to make any enquiries or take any action at any time under S811 and S811A.
- Where a protective notice has been filed under S811A, a two year time limit now applies in relation to Revenue forming a view on whether or not the transaction is a tax avoidance transaction.
- New procedures now apply to the appeal process available to a tax payer where Revenue has formed an opinion under S811. The procedures applying where a protective notice disclosure has not been filed now differ from the procedures for appeals where a protective notice disclosure has been filed.

Where Revenue made an assessment under S811, and the taxpayer appealed this assessment on the basis that the transaction was not a tax avoidance transaction, the Appeal Commissioners had to consider whether or not there were grounds for the view that the transaction, or any part of the transaction, **was** a tax avoidance transaction.

Under the new provisions where a protective notice disclosure has not been filed and the taxpayer appeals on the basis that the transaction is not a tax avoidance transaction, the Appeal Commissioners must now decide whether or not there are grounds for the view that the transaction, or any part of the transaction, could **reasonably be**

considered to be a tax avoidance transaction.

- Where Revenue form the view that a transaction is a tax avoidance transaction and no protective notice disclosure has been filed, the new provisions increase the surcharge which arise from 10% to 20% of the tax due.

These commencement rules depend upon whether the benefit of the transaction is received on or after 19 February 2008 and whether the transaction or any part of the transaction is commenced on or after 19 February 2008.

Key issues affecting individuals

Salary sacrifice

The Act seeks to copperfasten existing administrative salary sacrifice arrangements, which at face value should be tax neutral. However, the provision could have much wider implications for many organisations which operate flexible benefit arrangements as part of an overall remuneration strategy. Examples might include situations where employees may agree to forego an amount of salary in return for additional holidays or increased employer pension contributions.

Under the existing rules the exchange of salary for extra holidays can be attractive, as in effect the extra days holiday amounts to a tax free benefit. Under these provisions the salary foregone could be deemed to be taxable earnings and the Minister's own comments, in the course of the Dáil debates, would suggest that the provision could have some wider implications.

Salary sacrifice, however, is generally a matter of employment law rather than tax law, so it remains to be seen how this provision will be implemented in practice.

SAYE savings cap

The maximum monthly savings cap for SAYE schemes has been increased from €320 to €500 in respect of savings contracts entered into from 1 February 2008. The increase in

this cap is long overdue (unchanged from 1999) and there is renewed interest in SAYE schemes since the SSIA schemes matured.

Employees who participate in Revenue Approved SAYE schemes are only liable to capital gains tax on gains made on the acquisition and disposal of shares under such schemes, providing certain conditions are satisfied. The ability to offer shares at a discount of up to 25% on the market value, the tax differential of 21% between capital gains tax and income tax and the exemption from PRSI are attractive features from an employee/employer perspective.

ESOT and APSS

In certain circumstances, shares to a maximum value of €38,100 can be appropriated tax efficiently to participants of an employee share ownership trust (ESOT) through an approved profit sharing scheme (APSS). To date, this increased tax free appropriation could only be made ten years after the establishment of the ESOT, at the earliest. In practice, this requirement caused some ESOTs to unnecessarily prolong loans to satisfy the condition that 50% of the shares are encumbered throughout the first ten years after the ESOT was established.

With effect from 31 January 2008, it is now possible (subject to the prior approval of Revenue) to appropriate up to €38,100 worth of shares tax free following earlier repayment of the loans by the ESOT. The provision only has application in relation to an APSS operated in conjunction with a Revenue approved ESOT.

Separately, and perhaps of more wider application, Revenue has announced that it is undertaking a review of the practices, procedures and legislation relating to approved profit sharing schemes. It is understood that particular emphasis will be placed on the extent to which the practices that have evolved over the years have diverged from the original intent of the profit sharing legislation. The outcome of this review could have significant cost and employee relations implications for many organisations which operate such APSS arrangements in conjunction with discretionary bonus schemes.

New reporting requirements for certain share schemes

Trustees of an APSS or ESOT and companies which implement SAYE schemes and Approved Share Option schemes will now be obliged to provide an annual return of information to Revenue on or before 31 March after the end of the relevant tax year. The new reporting requirements apply from the tax year 2008, which means that the return forms for 2008 must be filed with Revenue on or before 31 March 2009.

For companies which operate unapproved share option schemes for employees and directors, there is an existing mandatory filing requirement in relation to the grant and exercise of share options. The 2007 return, Form SO2, is due for submission to the Revenue on or before 31 March 2008.

Convertible shares

The Act includes new taxing provisions in relation to convertible shares. Convertible share awards typically involve a class of shares with limited rights which have an automatic entitlement to convert into a separate class of shares in the company subject to corporate performance or other conditions over a period of time. Often, the convertible shares will convert into ordinary shares if pre-determined targets are reached e.g. trade sale above a certain price or an IPO.

These legislative changes aim to put the Irish tax treatment, in Revenue's view, beyond doubt and in broad terms, the changes mirror the current UK tax treatment. The Irish legislation will only apply to shares acquired on or after 31 January 2008.

In general terms, income tax will now apply on the occasion of a conversion, release or sale of the convertible shares. The charge will be on the difference between the value received and the price paid for the original convertible share.

A new corporate reporting requirement is imposed on any convertible share awards to which this new legislation applies. Furthermore, individuals who are now taxable in accordance with the new provisions will have automatic tax payment and tax reporting obligations under self-assessment.

Extension of remittance basis of taxation to UK source income

The Act provides for the extension of the favourable remittance basis rules to UK source income with effect from 1 January 2008, for certain qualifying individuals. This amendment is a direct response to the EU Commission enquiry into the previous remittance basis provisions, which in effect discriminated against UK source income.

Similarly, the UK has moved to extend the remittance basis to Irish source income with effect from 6 April 2008. The UK already provided for a remittance basis in relation to Irish source capital gains, so it is somewhat disappointing that the Act makes no provision for extending the remittance basis to UK sourced capital gains.

The net effect of the change from an Irish perspective is that non-Irish domiciled resident individuals will in effect only pay Irish income tax on UK source investment income to the extent to which the income is remitted to Ireland. However, they will continue to pay Irish capital gains tax on the entire gain arising on the sale of UK assets, but only on remittances of other overseas capital gains.

Other forthcoming adverse changes to UK tax residence and domicile rules, mean that Ireland's remittance basis of taxation, although curtailed to some extent since January 2006, might still offer an attractive proposition for Ireland to attract and retain key talent from overseas.

Retirement relief

A number of amendments have been introduced to the CGT retirement relief provisions, as follows:-

- The minimum age and holding period requirements are relaxed to forty five years (usually fifty five years) and six years (usually ten years) for individuals who receive a payment under the scheme for compensation in respect of the decommissioning of fishing vessels. The effective date for this amendment is subject to a Ministerial commencement order.
- The introduction of a bona fide commercial reasons test. Unless a

disposal has been made for a bona fide commercial reason then retirement relief will not be available. This amendment applies for disposals made on or after 31 January 2008.

Provisions are also being introduced to relieve CGT arising on the dissolution of a farming partnership. The relief applies to assets which have been owned and used by the farming partnership for ten years prior to the dissolution of a farming partnership. This amendment will apply to disposals made on or after the passing of the Act and will cease on 31 December 2013.

Disposal of site to child

The gain on the transfer of a site from a parent to a child is exempt from CGT provided the site is for the construction of the child's principal private residence and provided the market value of site does not exceed €254,000.

The exemption threshold of €254,000 is increased to €500,000 for both CGT and stamp duty, and the increased thresholds apply to disposals made on or after 5 December 2007.

Relief for certain retraining costs on redundancy

New provisions have been introduced which provide for a tax exemption in respect of certain retraining costs, up to a maximum of €5,000, provided to eligible employees on termination of their employment.

The exemption is available where an employer provides a retraining program to all eligible employees with a minimum of two years continuous service. The retraining must be made available to employees as part of their redundancy package, and be designed to impart knowledge or improve skills which can be used to secure new employment or in the setting up of a business.

There are a number of conditions which must be met in order to qualify for this relief. In particular the retraining must be completed within six months of the termination of employment. The new provision only applies to retraining made available after the passing of the Act.

Investment opportunities

BES and SCS

Finance Act 2007 introduced new measures to the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS) that were subject to the approval of The European Commission. The European Commission subsequently approved the measures, subject to the addition of restrictions to the areas in which companies can benefit and the inclusion of provisions regarding state aid aggregation rules. These restrictions, which were introduced as a temporary measure by Regulations, are now included in Finance Act 2008.

The Act relaxes some of the qualifying requirements for recycling companies. A recycling company will, with effect from 1 January 2008, be able to qualify for the BES and SCS where it has received approval for a grant or financial assistance from an industrial development agency or County Enterprise Board, or where it has obtained written confirmation from such an agency or board verifying that it has submitted a business proposal to it and that the activities carried on by the company are qualifying environmental services.

Registered caravan and camping sites

A new scheme of capital allowances has been introduced for expenditure incurred after 1 January 2008 on the construction or refurbishment of buildings or structures which form part of a registered caravan site or a registered camping site. The capital expenditure will qualify for write off over twenty five years.

Specialist palliative care units

A new scheme of capital allowances is being introduced for expenditure on the construction or refurbishment of specialist palliative care units. Relief is granted over a seven year period. There are a number of conditions that must be satisfied in order for a development to qualify for this relief, including the requirement that the development be pre-approved by the HSE. This scheme is subject to a Commencement Order as EU

approval from a State-aid perspective is required.

Property developers and capital allowances

Currently, a property developer cannot avail of certain property based tax incentives where the property developer, or a connected person, constructed the building. The Finance Act extends this exclusion to a person connected with the property developer. This change applies to childcare facilities, private hospitals, mental health centres and the mid-Shannon Corridor tourism scheme.

Film investment relief

As announced in the Budget, the Act introduces provisions that provide that tax relief under section 481 will be extended for an additional four year period until 31 December 2012. In addition, the overall ceiling on qualifying expenditure for any one film is increased from €35m to €50m. There are no changes to the limits for individual investors.

These new limits and dates will come into effect by order of the Minister of Finance pending EU Commission clearance.

Stamp duty

Residential property

The Act legislates for the new stamp duty regime announced in Budget 2008 which is to apply to all instruments executed on or after 5 November 2007. Under the new regime purchases of residential property will be stamped at 0% on the first €125,000, 7% on the next €875,000 and 9% on the balance. This graduated calculation of duty puts all residential property purchasers in a better position than under the previous regime, where the one rate of duty was applied to the entire purchase price once a certain threshold was exceeded. By way of example, under the old regime a non-owner occupier purchaser of a second hand house would face a €90,000 stamp duty liability on a €1m house (the top rate of 9% applying to all purchases over €635k). Under the new regime the stamp duty liability is reduced to €61,250 (€125k@0% and €875k@7%).

The existing first time buyer exemption and other owner occupier relief (on purchases of new property) remain unchanged.

Clawback where rent received

The Act also confirms the reduction in the stamp duty clawback period where rent is derived by a person who obtained relief on the purchase of the house. The reduction in the clawback period from 5 years to 2 years is effective from 5 December 2007.

Residential property rentals

In recognition of rising rent prices, the threshold for paying stamp duty on a lease of residential property is being raised from an annual rent of €19,050 to €30,000, effective from the date of passing of the Act.

First time purchaser anti-avoidance

First time purchasers of residential property enjoy total relief from stamp duty. The Act contains new measures to deny this relief if the purchase price has been wholly or partly gifted or loaned to the first time purchaser by a person who is not party to the purchase but intends to reside in the property or take an interest in the property at a later date. This anti-avoidance provision will not apply where the donor is a parent of the first time purchaser. The new legislation also confirms that in genuine first time purchaser situations the receipt of an unconditional gift or bona fide loan to fund the purchase will not affect entitlement to the relief.

E-Stamping

The Act amends the SDCA to facilitate the implementation of *e-stamping* as an alternative to the traditional physical stamping of instruments. When in place, the *e-stamping* system should enable taxpayers to *e-stamp* instruments without Revenue needing to see the instrument in up to 90% of cases. The Act contains a provision for Revenue to make regulations with respect to the operation of the *e-stamping* system. A Ministerial Order will be required for this new system to come into effect.

Loan capital exemption

The loan capital exemption is being amended to remove the requirement that the loan capital must be repayable within 30 years.

This is a welcome amendment as this is the condition that is most often failed when considering availability of the exemption. There is also a technical amendment to the condition that interest on / repayment of the loan capital cannot be related to an index or indices. Both changes will take effect on the date of the passing of the Finance Act.

Intermediary relief

The Act contains two changes in relation to the Intermediary Relief that was introduced in last year's Finance Act. The relief applies to purchases of shares by intermediaries which are effected on an exchange or market. The first change confirms that a transfer of shares which is required to be reported to a competent authority under the EU Markets in Financial Instruments Directive satisfies the "effected on an exchange or market test". This change was necessary for the relief to apply to intermediaries that are registered on one exchange or market but effect a purchase on another exchange or market where they would have no requirement to report the transaction to the latter exchange / market. The change should also enable the relief to apply to "back office to back office" or "OTC" transactions. The change is effective from 1 November 2007.

The second change is an anti-avoidance provision which denies associated companies relief on an intra-group transfer of shares where the transferor had claimed intermediary relief on the purchase of the shares. This change applies to transfers executed on or after 31 January 2008.

Financial cards

As announced in the Budget, the Finance Act introduces a number of changes in relation to stamp duty on financial cards.

Stamp duty on financial cards will be reduced as follows:

Description	Old	New
Charge Cards & Credit Cards	€40	€30
ATM Cards	€10	€5
Debit Cards	€10	€5
Combined ATM/Debit Cards	€20	€10

The new levies for ATM, debit and combined cards take effect for the year ending 31 December 2007. The new levies for charge cards and credit cards take effect for the year ending 1 April 2008.

The Finance Act also introduces new legislation which will require financial institutions to make a preliminary payment of their stamp duty liability on financial cards on 15 December each year, commencing on 15 December 2008. The preliminary payment will equate to 80% of a financial institution's previous year's liability on financial cards.

Carbon credits

A stamp duty exemption is being introduced for transfers of carbon credits. This exemption applies to transfers executed on or after 5 December 2007.

Stamp duty on bills of exchange

The Act confirms the increase in stamp duty on bills of exchange from 15 cent to 30 cent for bills drawn on or after 6 December 2007. In the case of cheques issued to customers by financial institutions the increase applies to cheques supplied on or after 6 December 2007.

Excise duty

Electricity tax

The Act introduces a new tax on electricity with effect from 1 October 2008.

The tax is charged on electricity supplied to businesses (€0.5 per MW hour) and non-businesses, such as public or local authorities (€1 per MW hour). Households will be exempt. The tax must be paid on an annual basis by the supplier but periodic payments on account may be required from larger suppliers.

Foreign entities who supply directly to consumers must establish a company in the State to account for the tax.

There are various additional reliefs from the Electricity Tax, including electricity generated from eco-friendly / renewable sources and electricity used for certain chemical processes. (Suppliers will be allowed claim a

relief of any excise [mineral oil tax] paid on fuel used to produce electricity which is subject to the electricity tax.)

Tax (excise) warehouses

The Act strengthens the legal provisions relating to tax warehouses by incorporating into legislation many of the existing practices, procedures and obligations. In particular, it introduces requirements for a tax clearance certificate, a 10-year "clean" record throughout the EU and a written contract between the warehousekeeper and any tenants.

Abolition of certain mineral oil reliefs

Excise (mineral oil) duty reliefs have, in general, been withdrawn for fuel used in:

- Passenger bus services and coach tourism services
- Private aircraft and pleasure craft
- Manufacture of recycled waste oil

These abolitions will take effect from 1 November 2008.

Vehicle registration tax (VRT)

The Act confirms the changes to the VRT system from 1 July 2008. The tax bands will be based on the CO₂ emission rating of the vehicle. While the new rates will be ad valorem, there will be a minimum fixed amount within each band.

Where evidence of the CO₂ emission rating is not available, the top rate of 36% will apply. This will be of particular significance for imports of used cars.

The VRT definition for "short-term self-drive contracts" is changed to harmonise it with the VAT definition. This means that a person can no longer hire a car or cars for an aggregated period or periods exceeding five weeks in a twelve month period from the same hire company.

For further Finance Act 2008 information visit our website at www.pwc.ie

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This news bulletin is intended only to provide a general guide to the subject matter. Professional advice should always be taken before acting on any information contained in this guide.

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