

# Finance Bill 2008

PRICEWATERHOUSECOOPERS 

## Finance Bill 2008

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The Finance Bill sets out the Government's proposed legislative changes to the taxation regime in Ireland. What follows in this bulletin is our initial interpretation of the draft legislation published in the Bill highlighting the key taxation changes which will have an impact on businesses and individuals in Ireland. The provisions are subject to amendment as the Bill passes through the various parliamentary stages before it is passed into law as the Finance Act, which must happen by 5 April 2008.

Please refer to our dedicated Finance Bill webpage at [www.pwc.com/ie](http://www.pwc.com/ie) in relation to further developments over the coming weeks. This will also contain our Finance Act publication analysing the final legislation which will be issued as soon as the draft legislation is passed into law. Also available on the website is our companion publication IFS News Alert Finance Bill 2008 Special which covers particular features of the legislation impacting on the Financial Services sector. For further information about the measures contained in the Finance Bill, and the potential impact on your business, please refer to your usual PricewaterhouseCoopers contact or email [ie.pwc.epublications@ie.pwc.com](mailto:ie.pwc.epublications@ie.pwc.com)

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## Summary of key measures

- Long awaited overhaul of VAT on property rules
- Reform of taxation of foreign dividends
- Adjustments of salary sacrifice arrangements
- Relaxation of close company surcharge provisions
- New taxing provisions in relation to convertible shares
- Introduction of profit resource rent tax
- Introduction of environmental initiatives
- Provision of new e-stamping facility
- New excise on electricity

## VAT on property

The Finance Bill introduces the most significant changes to VAT on property in Ireland since its introduction in 1972. The changes will be effective from 1 July 2008. The proposed 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.

Broadly the rules from 1 July 2008 will be:-

- Sales (including very long leaseholds) of *new* properties continue to be taxable at 13.5%. 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 are taxable) but with an *option to tax*. If the parties do not opt to tax the sale the vendor may suffer a clawback (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 21% 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.
- Accordingly, the current system of charging VAT upfront (typically in the order of twice the annual rent) on leases of developed properties of ten years or more duration will no longer apply.
- Transitional rules will be required to deal with, in particular, prevailing leases as at the commencement of the new rules on 1 July 2008.
- A new *Capital Goods Scheme* will be introduced whereby VAT initially deducted on the acquisition of property interests (including pre 1 July 2008 acquisitions) 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. Any change, therefore, 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 13.5% 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 commercially 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 will be particularly costly for a vendor with significant VAT deductibility 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 waivers will continue after 1 July 2008 until the lease expires. Waivers between connected parties, however, will cease immediately on 1 July unless the VAT on the rent charged to the tenant equates to 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 the 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.

The above is a brief synopsis of a complex area, and a more detailed release on VAT on property will be circulated shortly.

### Other VAT issues

Where an order or a reservation is cancelled and the trader is entitled to retain a deposit the trader 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.

As announced in the budget a new 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 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 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 Bill 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 Bill 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 Bill 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 Bill, 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.

The new rules will apply to dividends received by a company on or after 31 January 2008.

### Close company surcharge

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

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

These measures will apply to dividends paid on or after 31 January 2008.

### Preliminary tax

As announced in the Budget, the following changes have been introduced in the Bill 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.

## R&D tax credits

The Bill 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.

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 does not apply to "innocent" incidental connections. The amendment is primarily 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 themselves 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 the RCT procedures in cases where that person engages a subcontractor to carry out construction operations in relation to a private dwelling or their own business premises provided they are not otherwise engaged in the business of land development or construction.

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

## Environmental initiatives

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.

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

The Bill 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 expenditure is incurred. This will only apply where the equipment 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.

This scheme will run from 31 January 2008 to 31 December 2012 but the introduction of this scheme is subject to a Commencement Order being made following approval by the European Commission.

## Profit resource rent tax

Further to the Ministerial announcement in August 2007, the Finance Bill 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%.

The additional tax is only applicable to companies carrying out petroleum activities directly under licence from the Irish Government and should not apply to companies providing related services to the licensees.

## Key issues affecting individuals

### Salary sacrifice

The Bill seeks to copperfasten existing administrative salary sacrifice arrangements, which at face value should be tax neutral. However, as currently drafted 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 the proposed rules the salary foregone could be deemed to be taxable earnings. Salary sacrifice 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 earnings 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 the

scheme, providing certain conditions are satisfied. 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 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 will now be possible (subject to the approval of Revenue) to appropriate up to €38,100 following earlier repayment of the loans by the ESOT.

### New reporting requirements for certain share schemes

Trustees of an APSS and ESOT and companies which implement SAYE schemes and Approved Share Option schemes will be obliged to provide information to Revenue on a prescribed form 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 prescribed forms for 2008 must be filed with Revenue on or before 31 March 2009.

### Convertible shares

The Bill includes new taxing provisions in relation to convertible shares. Convertible share awards typically involve a class of shares with limited rights which have an 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.

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 Bill 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. It is however somewhat disappointing that the Bill makes no provision for extending these provisions to UK sourced capital gains.

## 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 - effective for disposal 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 10 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 6 December 2007.

## 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 Bill 2008.

The Bill 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.

## 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 Bill 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 Bill proposes 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 Bill confirms the new stamp duty regime announced in Budget 2008 and applying to instruments executed on or after 5 November 2007 under which 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. The Bill 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 five years to two years is effective from 5

December 2007. Also, 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 Bill 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 Bill amends the legislation to facilitate the implementation of *e-stamping* as an alternative to the traditional physical stamping of instruments. The Bill 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 thirty 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 Bill 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 “back office to back office” or “OTC” transactions and 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.

### Carbon credits

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

### Excise duty

#### Electricity tax

The Bill 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 Bill 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 ten 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 Bill confirms the changes to the VRT system from 1 July 2008. The tax bands will be based on the CO<sub>2</sub> 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 CO<sub>2</sub> emission rating is not available, the top rate of 36% will apply. This will be of particular significance for imports of used cars.

## For further Finance Bill 2008 information visit our website at [www.pwc.ie](http://www.pwc.ie)

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