

Finance Bill 2012

Introduction



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Welcome to our analysis of the Irish Finance Bill 2012 which was published today 8 February 2012.

Coming in at 279 pages - the largest Finance Bill for over a decade - there are 4 particular initiatives that should make a difference to targeted segments of the Irish economy:

- R&D tax credit
- Special Assignment Relief Programme
- Foreign Earnings Deduction and
- International Financial Services Sector

On the R&D front there are changes for companies and individuals. One of the weaknesses of the R&D regime has been the requirement to compare the R&D expenditure in the current year with the spend in 2003 with a view to claiming a credit for the incremental spend. This incremental basis has now been removed for the first €100,000 of qualifying expenditure which will be of real benefit to SMEs.

But in a major change, flagged in the Budget, companies in now have the option of using a portion of the R&D credit to reward key employees involved in this activity. Essentially they can let employees use the tax credit of the company as a credit against their own income tax bill.

The Special Assignment Relief Programme (SARP) is a relief targeted at people who come to work in Ireland having spent at least 5 years outside the country. So, certain returning Irish people will qualify.

The Bill also contains details of a new Foreign Earnings Deduction, which will apply to an employee who spends 10 consecutive days working in either Brazil, Russia, India, China or South Africa (BRICS), provided he or she has at least 60 such days working abroad in those countries in a 12 month period.

Finally, there are a number of technical changes and initiatives relating to the International Financial Services Sector. Perhaps not everything which the industry was looking for but a positive signal that Ireland wants to retain and improve its impressive global standing in this area.

Overall a Finance Bill which continues the pro-business focus of Irish economic policy, bolsters employment and rewards innovation.

I hope this has been of interest. Please don't hesitate to contact me or any of your usual PwC contacts if you want to discuss these or other issues.

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Business Tax



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R&D tax credits

The Bill has announced a number of positive changes to enhance the R&D tax credit regime. The amendments should continue to encourage companies to invest in R&D activities and help them to retain and attract key talent.

In a very innovative policy move, the Minister has introduced increased flexibility for companies in terms of utilising the benefit of the R&D tax credit. Companies who are in receipt of an R&D tax credit will now in certain instances have the option to reward key employees. In effect the company may surrender a portion of their R&D credit that could otherwise have been used to reduce corporation tax against employees' income (subject to the credit not reducing the employee's effective rate of tax below 23%). Key employees are typically those who perform 75% or more of their employment duties undertaking R&D. This increased flexibility should help companies attract the skills and knowledge required to expand R&D activities.

Improvements to the sub-contracting provisions should also provide an additional benefit to R&D undertaken by SMEs. At present sub-contracted R&D costs are eligible where they do not exceed 10% of total R&D costs or 5% in the case of sub-contracting to third level institutions. However, this limit has now been increased to the greater of 10% / 5% (as appropriate) or €100,000.

It is important to note that the area of payments to third parties has been tightened and will need careful consideration by companies engaging externally provided workers, particularly in the context of their contractual arrangements.

Another positive change for SMEs is the introduction of a limited volume-based approach for the purposes of calculating the tax credit. Going forward, the first €100,000 of qualifying R&D expenditure will now benefit from the 25% R&D tax credit on a volume basis (thus ignoring the 2003 base year spend). The tax credit will continue to apply to incremental R&D expenditure in excess of €100,000.

New reliefs have been introduced to cater for the transfer of R&D tax credits in the context of group reorganisations. Subject to certain conditions, where a trade is transferred between two group companies, the transferee company may claim any R&D tax credits not previously used by the transferor company.

Where a building, on which R&D credits have been claimed, is disposed of as part of transfer a trade, then, subject to certain conditions, the transferor company will not suffer a clawback of any credits previously claimed and the transferee company may claim any unutilised credits arising on the building.

The Finance Bill has extended the application of the interest and penalties provisions to include refunds of R&D tax credits. Where a company has made a claim for the refund of a credit or where the credit has been surrendered to a key employee, and such a claim is found not to be due, the refunded amounts will be recovered by Revenue and will be subject to interest and penalties.

Finally, the definition of expenditure not qualifying for the credit has also been extended to include any expenditure met by grant assistance from the EU or European Economic Area (State assistance had already been excluded) thereby removing a technical anomaly in the legislation.

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Group relief for Irish losses

The Bill contains a positive and very welcome development in relation to the surrender of Irish losses in group situations. It is another significant measure designed to enhance the attractiveness of Ireland to foreign head-quartered groups.

Previously, it was the position that a group for Irish loss relief purposes could not exist where it was necessary to trace ownership through a company not resident in an EU Member State (or Iceland or Norway) in order to establish a 75% group relationship between the surrendering company and the claimant company. In practice, the most frequent difficulties arose where it was necessary to trace through a parent company resident in Switzerland or the USA.

The amendments introduced in the Bill now allow Irish losses to be surrendered from the surrendering company to a claimant company where both companies are at least 75% members of the same corporate group and the difficulties which existed in establishing a 75% group relationship are now relaxed as (in addition to tracing through EU resident companies) it is now possible to trace through companies resident in a country with whom Ireland has a double taxation agreement and it is also possible to trace through companies

quoted on certain recognised stock exchanges (or 75% subsidiaries of companies so quoted).

These changes only apply for accounting periods ending on or after 1 January 2012. Apportionment rules apply if an accounting period starts before 1 January 2012 and ends after that date.

Pooling of royalties

The Bill introduces a number of beneficial and welcome changes to the computational rules which provide relief for foreign tax on royalties. They represent a further range of pro-business measures which will be welcomed by the software industry in particular.

In effect, the changes provide for a form of pooling of tax deductions (not credits) in relation to foreign tax on royalties. The pooling is however limited to companies where the royalty income is taken into account in computing the trading income of a trade carried on by the company. All royalties sourced from non-treaty territories from which foreign tax has been deducted are aggregated and, to the extent possible, the foreign tax applicable to that pool of royalties is used to reduce the amount of such royalties subject to Irish tax. (This treatment applies as

respects accounting periods ending on or after 1 January 2012). To the extent that the amount of the foreign tax exceeds the amount of such royalties subject to Irish tax, the excess can then be used to reduce the aggregate of any other foreign royalties from which no foreign tax has been deducted. (This treatment applies in relation to foreign tax suffered on royalties received on or after 1 January 2012).

Cross-Border Mergers Directive

The Bill provides certain relieving measures from a capital gains perspective in order to give effect to certain aspects of the Cross-Border Mergers Directive. It provides that, where a subsidiary company is dissolved without going into liquidation and it transfers all of its assets and liabilities to its 100% parent, the parent will not be deemed to have made a disposal of the share capital of the subsidiary company. This relieving provision applies in respect of assets and liabilities transferred on or after 1 January 2012.

Similar relieving measures have also been introduced in relation to stamp duty.

Start-up company exemption

To support the Government's commitment to the promotion of job creation and indigenous enterprise, the Bill gives legislative effect to

the Budget announcement to extend the exemption for start up companies from corporation tax and capital gains tax. The relief is now extended to companies which commence a new trade in 2012, 2013 and 2014.

Foreign dividends

A favourable amendment has been included to the tax treatment of certain foreign dividends received by Irish resident companies. At present, dividends received by an Irish resident company from a trading company resident in an EU Member State or a territory with which Ireland has concluded a tax treaty or which is part of a quoted group can be taxed at the 12.5% rate. The Bill extends these provisions to include dividends received from trading companies resident in a territory that has ratified the Convention on Mutual Administrative Assistance in Tax Matters and it will apply to dividends received on or after 1 January 2012.

Relevant Contracts Tax (RCT)

There are a number of amendments to the new eRCT legislation introduced in 2011. Whilst many of the changes are related to the administration of eRCT, there are some changes which will require further consideration by interested parties. Some of

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the other important proposals are summarised below:

- Significantly, the definitions of ‘Principal’ and of ‘Relevant Operations’ have been broadened. Telecom companies and others in that sector are now defined as Principals. Up to now such companies would only be considered to be Principals under certain contractual arrangements. Relevant Operations in respect of the installation of telecommunications systems have also been broadened to include repair and alteration works.
- Relevant Operations for RCT purposes will now include repair and alternation works in a number of areas, including the installation of telecommunications systems, systems of power supply, fire protection, heating and water supply, ventilation and air conditioning.
- The provision for avoiding a penalty in respect of a payment without a deduction authorisation (where the payment is notified in a return by the return due date) has been removed. Where the provision for reducing the tax rate applies, the penalty will remain by reference to 35% RCT rate.

- Revenue takes account of contractor information and circumstances in authorising the 20% RCT rate. A new provision may allow a subcontractor, taking all the circumstances into account, to satisfy Revenue that the 20% rate should apply.
- The Bill sets out in detail the basis for applying RCT deducted as a payment on account of income tax or corporation tax, and the options for the offset and/or repayment of “deducted tax”.

Miscellaneous

The Bill amends the definition of “transfer pricing guidelines” in section 835D of the Taxes Consolidation Act (TCA) 1997 in order to reflect the July 2010 modifications to the OECD Transfer Pricing Guidelines.

A number of technical amendments are introduced which have application to non-resident companies carrying on a trade in Ireland through a branch or agency. The amendments have been made to secure the payment of withholding tax on yearly interest payments made by such non-resident companies. The withholding tax will be treated as forming part of the corporation tax liability of the non-resident company.

A number of provisions are introduced which are intended to facilitate current Revenue proposals in relation to the submission of electronic financial statements in iXBRL format with the corporation tax return via ROS.

The Bill amends the provisions relating to record retention to ensure the current six year requirement to keep records and other documentation, which currently exists for all taxpayers, will also apply to companies in liquidation and companies that are dissolved without being liquidated.

A number of technical changes have been made to the pay and file provisions which effectively consolidate all relevant legislation in this area.

A number of provisions have been introduced to strengthen Revenue’s powers in certain areas.

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Employment Taxes and Incentives



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The Bill introduces a number of employment focussed initiatives, most notably some very welcome news for internationally mobile employees.

Inbound assignees

A cornerstone of the new Government incentives towards employment creation is an enhanced Special Assignee Relief Programme (SARP). This essentially removes many of the restrictions which limited the attractiveness of the old regime and it is likely to be warmly welcomed, particularly by multinationals considering further investment in Ireland. The positive aspects of the new SARP regime include:

- Irish domiciled individuals can now qualify for the relief unlike the pre-2012 scheme;
- the income threshold for relief to apply has been reduced to €75,000 from €100,000;
- qualifying individuals may now be engaged on Irish employment contracts rather than just overseas contracts, meaning Irish companies can now make better use of the incentive also;
- the relief may be claimed up front via a payroll deduction, rather than after the end of the tax year;

- school fees of up to €5,000 per child will be tax free subject to certain conditions; and
- the application of the relief is likely to be more straightforward than its predecessor.

How does the relief apply?

The relief will apply to individuals:

- asked by existing employer organisations to come to Ireland from 1 January 2012 onwards;
- with base salaries of €75,000 or more;
- who will exercise predominantly all their employment duties in Ireland for a minimum of 12 months;
- who were non Irish resident for the 5 years immediately preceding the tax year of arrival in Ireland; and
- who were employed on a full time basis by an associated employer outside Ireland for the entire 12 months immediately before arrival in Ireland.

It would appear an individual is not prevented from qualifying for the relief if they have worked in Ireland prior to the 12 months immediately before arrival in Ireland, provided they did not previously trigger Irish tax residence.

A qualifying individual will be entitled to a tax deduction amounting to 30% of

employment income liable to Irish tax (net of qualifying pension contributions) in excess of €75,000. The maximum income upon which relief may be claimed is €500,000. In essence, the maximum permitted tax deduction will be €127,500 (i.e. €425,000 x 30%).

Some limitations

- As currently drafted, the Bill suggests the “old SARP” will cease without any announcements to date of any grandfathering provisions. Whilst this initially suggests an individual who has historically availed of “old SARP” in 2011 might not qualify under the old or new regime in 2012, we would expect this will need to be reconsidered prior to the Bill being enacted.
- The relief is geared towards individuals exercising their employment duties wholly in Ireland – the qualifying conditions allow for overseas duties of up to 30 days to be treated as incidental. However, if the individual has in excess of 30 overseas workdays, the relief is likely to be impacted.
- The relief will not apply to organisational “new hires”.
- Further, in arriving at relevant income threshold of €75,000, only basic salary may be included (bonus, benefits in kind, share awards etc are excluded in determining eligibility).

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Outbound assignees

A new tax relief aimed at employees working in Brazil, Russia, India, China & South Africa (“BRICS”) has been announced. This should encourage Irish based employers to continue efforts in maximising business opportunities in those countries. The relief will be calculated on the ratio of qualifying days spent in these countries to total days in the tax year. This ratio will be applied to income earned from the employment in a tax year, including share based benefits but excluding termination payments, company cars and preferential loans.

The maximum deduction available is limited to €35,000 and conditions include:

- 60 days minimum p.a. to be spent in the BRICS; and
- all trips must be for at least 10 full days to be counted towards the 60 threshold.

Tracking employee mobility

Both of the main international mobility announcements above highlight the need for employees and employers to accurately track overseas workdays, so as to ensure tax risk is minimised and tax incentives maximised. This may lead to increased administration and record keeping for all concerned. The use of tracking software in mobile applications, such as PwCs specialist technology

“MyTravel”, are likely to become even more critical towards helping employers limit the administrative burden associated with tracking international movement of staff.

R&D tax credit for key employees

Companies will now be permitted to transfer part of their R&D tax credit relief to ‘key employees’ who have spent at least 75% of their time in a year on the relevant activity. Details are included in the ‘Business Taxation’ section.

Share schemes

A number of administrative changes have been announced involving share schemes including:

- employers will now be entitled to sell shares to meet tax withholding obligations in instances where the other income of the employee is insufficient to meet the tax or Universal Social Charge (USC) charges arising on share awards;
- relief from USC will apply to Revenue Approved Profit Sharing Schemes shares which are sold prior to the normal three year holding period where USC has been paid on appropriation; and
- a USC exemption for shares held in a Revenue Approved Employee Share Ownership Trust prior to 1 January 2011.

Mortgage interest relief

The Bill confirms mortgage interest relief will remain in place until 2017 but only for loans taken out from 2004 to 2012 inclusive. Enhanced relief has been announced for first time buyers in the period 2004-2008 (including those who bought their first home in that period but subsequently moved to a second home at any stage thereafter). For a single person in the 2012 tax year, the value of the relief can be summarised as follows:

Date of Purchase	First Time Buyers Max value of relief	Non-First Time Buyers Max value of relief
2004-05	€900 (€3,000 @ 30%)	€450 (€3,000 @15%)
2006-08	€3,000 (€10,000 @30%)	€450 (€3,000 @15%)
2009-10	€2,250 (€10,000 @ 22.5%)	€450 (€3,000 @15%)
2011-12	€2,500 (€10,000 @ 25%)	€450 (€3,000 @15%)

Domicile levy

The domicile levy applies to certain high net worth individuals who are Irish domiciled. Previously the levy only applied where the individual was a citizen of Ireland. This requirement has now been removed. This means that, regardless of citizenship, the

domicile levy will be payable by Irish domiciled individuals whose Irish assets exceed €5m, whose worldwide income exceeds €1m, and whose liability to Irish income tax for the relevant year is less than €200,000. This amendment applies for 2012 and subsequent years.

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Pensions

Following on from pension measures announced in the Budget, the Bill now introduces the necessary legislative changes in the following areas:

Approved Retirement Funds (ARFs)

The annual imputed distribution from ARFs has been increased from 5% to 6% for ARFs or multiple ARFs exceeding €2m at 30 November in the relevant year. The Bill clarifies that in such cases the 6% distribution rate applies to the entire ARF and not simply to the excess above €2m. The annual imputed distribution is the amount of an ARF which must be subject to tax annually. This change has effect from 2012.

Where an individual transfers an ARF on death to a child aged over 21 the assets are to be taxed at 30% (formerly standard rate Income Tax at 20%). This change takes effect from the passing of the Finance Act.

Personal Retirement Savings Accounts (PRSAs)

Vested PRSAs (PRSAs from which the retirement lump sum has been taken) are now liable to the same annual imputed distribution rules as for ARFs above and the measures will combine ARFs and vested PRSAs for the purposes of the imputed distribution.

The following measures were not announced in the Budget but have come through in the Bill:

Credit for double taxation where pension benefits exceed the lifetime pensions limit

Pension lump sums above a lifetime limit of €200,000 are taxable at either the standard or marginal rate and the Bill now provides that in such cases any taxes paid on lump sums above the €200,000 limit can be used as a credit against separate taxes arising where the total value of the pension exceeds the lifetime pensions limit.

Provision for the payment of tax where public sector pension benefits exceed the lifetime pensions limit

A once-off income tax of 41% applies on the amount of the capital value of an individual's pension benefits in excess of their lifetime pension threshold (the standard threshold is €2.3m).

Due to the unfunded nature and relative inflexibility of public sector pensions, difficulties arose with regard to the payment of the once-off tax arising at retirement. The Bill provides that, for public sector pensions, going forward any such taxes are to be financed as follows:

- A minimum of 50% of the pension lump sum is to be used initially.
- Any remaining taxes to be discharged, by agreement, through a combination of a reduction (for up to 10 years) in the gross annual pension payable to the individual, a gross distribution from an ARF owned by the individual or from the individuals own resources.

Clearly it is more tax efficient to use the gross pension or ARF distribution to fund the taxes due.

Encashment of private pensions by public sector employees

Public sector employees who, perhaps through a combination of private sector pension funds and public sector accruals, have exceeded the lifetime pension limit were in a difficult position as they did not have the flexibility to cease their public sector pension accrual or exchange their pension accrual for alternative sources of income.

The Bill introduces arrangements to allow public servants who also have private pension arrangements in respect of private earnings to, subject to certain qualifying conditions, consider cashing in their private pensions so as to minimise the extent their public sector pensions exceed the lifetime pensions limit. In such cases the encashment of their private

pension arrangements will attract marginal rate income tax and the USC – effectively reversing the tax breaks given on the pensions contributions in the first instance.

Prior to the Budget in December a reduction in the lifetime pension threshold, from its current level of €2.3m down to around €1.3m had been much anticipated. One of the obstacles to this change was thought to be the lack of flexibility around the accrual of public sector pension benefits or the payment of any attendant taxes for those who exceeded the limits. Given the measures announced in the Bill for those with public sector pension benefits a view could be taken that these changes now pave the way for further reductions to the lifetime pension limits into the future.

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Financial Services



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Financial Services Tax Changes

The Budget speech in December described the international financial services industry in Ireland as “one of the great export success stories of the last 20 years”. The Minister announced that he intended “to introduce a package of measures in the Finance Bill to support the continued success of the international funds industry, the corporate treasury sector, the international insurance industry and the aircraft leasing industry”. The Minister has largely delivered on his promises. Certainly the changes to the SARP, the FED, the Group Relief and the R&D tax credit regimes, which are detailed in the Business Tax section of the release, had long been sought by the international financial services industry. The specific changes affecting each of the sectors mentioned by the Minister can be summarised as follows;

International Funds Sector

Periodic reporting by investment undertakings

The Finance Bill introduces new provisions which allow the Revenue Commissioners to make regulations requiring the periodic reporting of certain information by Irish funds, with effect from 1 January 2012. The information that would be reported in relation to certain classes of unit holders

includes the tax reference number and value of units held.

The Finance Bill also removes the grandfathering of certain domestic and international bonds for the purposes of the EU Savings Directive.

Funds re-domiciling to Ireland

Where the Central Bank has authorised an investment fund that has re-domiciled to Ireland from certain offshore centres, the Finance Bill provides that a declaration can be made by the fund stating that the unitholders are non-Irish resident, to ensure that no Irish tax charge arises in respect of such non-residents. To the extent that there are any Irish resident unitholders, these need to be identified in the declaration and tax accounted for, where appropriate, on any payments made to such unitholders.

The Finance Bill makes certain technical amendments to clarify the tax exemption applying to payments made by Irish funds to non-resident investors.

Cross-border fund mergers involving Irish funds

The Finance Bill includes new measures confirming that mergers (both inbound and outbound) involving an Irish fund with a fund located in a member state of the EU, EEA or

an OECD country with which Ireland has entered into a double tax agreement will not give rise to a charge to tax in respect of Irish resident investors. Effectively the charge to tax is deferred until the ultimate disposal of the replacement units. The calculation of any future gain on such units is calculated by reference to the cost of the original units.

The Finance Bill also confirms that no charge to Irish tax shall arise on the transfer of units in the formation of certain master/feeder structures.

Stamp Duty Changes (applicable to international funds sector)

The Finance Bill extends the significant exemptions available in respect of collective investment vehicles. The key measures are as follows:

- Introduction of an exemption from Irish stamp duty on the transfer of assets on a merger of an Irish fund into a foreign fund;
- Introduction of an exemption from Irish stamp duty arising where Irish assets transfer on a reorganisation or merger of two foreign funds located in EU/treaty jurisdictions;
- Removal of the charge to Irish stamp duty arising on a transfer of foreign immovable property in exchange for the issue of units/shares in an Irish fund;

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- Introduction of an exemption for the transfer of an interest in an Exempt Unit Trust; and
- Introduction of an exemption for the transfer of assets between an Exempt Unit Trust and an investment undertaking.

The Irish funds industry's competitive offering

The Irish funds industry continues to work with the Irish Government to explore new products and new fund structures which could enhance the competitiveness of Ireland's fund offering on the global stage.

Of particular importance are the ongoing discussions regarding the introduction of a new corporate structure, which may elect to be treated as tax transparent in certain jurisdictions. Furthermore, the anticipated future introduction of Irish real estate funds and an enhanced regime governing investment limited partnerships shows Ireland's commitment to continue to evolve as a leading global funds domicile.

Corporate Treasury Sector

The corporate treasury sector had long been looking for changes to facilitate international cash pooling operations. Under a typical cashpool arrangement, interest payments by the Irish cashpool leader constitute "short"

interest for tax purposes because of the short term nature of these arrangements. Prior to the introduction of the Finance Bill, an interest payment by an Irish cashpool leader to a "group" company (75% or more direct or indirect relationship) resident outside the EU in a country with which Ireland does not have a double tax treaty was deemed to be a dividend for tax purposes. There were two tax consequences of this. Firstly this interest is not deductible for corporation tax purposes giving rise to an Irish tax cost of 12.5%. Secondly dividend withholding tax (DWT) at a rate of 20% may apply although there are a number of exemptions from DWT which may be relevant depending on the specific circumstances.

The Finance Bill has introduced a relieving provision effective for accounting periods ending on or after 1 January 2012 in respect of short interest. Essentially the Irish company will be entitled to a tax deduction for the interest payable to any group company resident outside the EU in a non-treaty country provided the recipient country taxes foreign interest income at a rate equal to, or greater than the Irish corporate rate. If the recipient country taxes foreign interest at a rate of less than 12.5%, then relief will be given in Ireland at that effective tax rate. If the recipient country exempts foreign interest then no relief will be available in Ireland.

This welcome change will affect not only cash pooling operations but all forms of short term lending (i.e. less than 1 year).

Changes have also been introduced into the foreign tax crediting rules on trading interest received under deduction of withholding tax from non treaty countries.

Insurance Sector

Despite the Minister's Budget statement there are few amendments which are specific to the insurance sector. Relevant changes include an increase of 3% in exit tax rates on life policies, an increase in health insurance levies and a change to due dates for the payment of the non-life insurance premium levy. The Finance Bill puts the exemption from exit tax in respect of exempt approved pension schemes, approved retirement funds and approved minimum retirement funds on a legislative footing.

The insurance sector sought changes to align the Irish and foreign basis of taxation of foreign branches of Irish resident companies. This issue is of particular relevance to the insurance industry given the success of Ireland as a headquarter location for pan European (re)insurance operations. Such alignment should result in no loss of revenue to the Irish Exchequer and would

make the calculation of double tax relief in respect of foreign branch profits less onerous. The Finance Bill does not however provide for changes in this area but, given the nature of the change required, it is possible that the matter could be dealt with by way of a Statement of Practice.

The due date for payment of the non life levy to Revenue has changed from the 30th of the month following the end of each quarter to the 25th of the month following the end of each quarter. The health insurance levy, introduced by the Health Insurance (Miscellaneous Provisions) Act 2009 and payable by health insurance providers, will increase from €66 to €95 for insured persons aged under 18 and from €205 to €285 for insured persons aged 18 and over. This increase applies to relevant health insurance contracts renewed or entered into on or after 1 January 2012. From 1 January 2013 the levy will be an annual levy payable on 21 September in respect of the period ending 31 July.

Aircraft Leasing Sector

The aircraft leasing sector had lobbied hard for personal tax changes so the new SARP and FED regimes provided for in the Finance Bill will be particularly welcome. Also on the wish list was the introduction of unilateral

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credit relief where withholding taxes were suffered on lease rental payments from non-treaty countries and the Finance Bill introduces this with effect from 1 January 2012.

Green IFSC

Further positive changes have been made to facilitate the development of the Green IFSC. The range of carbon offsets that a Section 110 company can acquire has been extended to include forest carbon credits. Clarification is also expected shortly from Revenue in relation to the tax treatment of carbon credit trading activity in Ireland.

Banking Sector

There were very few changes specifically affecting the banking sector. The Finance Bill confirms the increase in the rates of DIRT, as well as the tax rates that apply to payments received (including deemed payments) by Irish residents from Irish and offshore life assurance policies and investment funds for payments made on or after 1 January 2012. The rates have increased by 3% from 27% and 30% to 30% and 33% respectively.

On the property side it was a surprise to find that there were no provisions in the Finance Bill that deal with the tax treatment of receivers as this has been creating significant

practical difficulties in the market place. We understand that the changes have been deferred until a consultation process currently being conducted is concluded.

Technical changes were made to the provisions dealing with Islamic finance and short term leasing to improve the functioning of the existing legislation. In addition the technical liability to Irish tax has been removed in the case of certain non treaty recipients of Irish source interest which can be paid free of withholding taxes. This measure should improve the competitiveness of the Irish debt market.

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Property and Investment



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Property based tax incentives

Legacy property reliefs

Finance Act 2011 introduced provisions related to the phasing out of legacy property tax reliefs but was subject to a Commencement Order. These provisions would have 'ring fenced' the tax relief (s.23/s.50 allowances or capital allowances on industrial buildings) against rental income generated from the specific property concerned and would have also applied time limits for carrying forward unused reliefs. The Bill proposes to repeal these provisions in relation to s.23/s.50 type properties. This means that s.23/s.50 investors can continue to claim relief subject to the various conditions in place prior to the passing of Finance Act 2011.

The Bill modifies the rules for passive investors in industrial buildings (e.g. hotels). Investors in industrial buildings will no longer be able to use any capital allowances beyond the tax life of the particular scheme where that tax life ends after 31 December 2014. Where the tax life of a scheme ends on or before 31 December 2014 then no carry forward of allowances into 2015 will be allowed.

The above provisions have been informed by the findings of the report titled "Economic

Impact Assessment of Potential Changes to Legacy Property Reliefs" published in conjunction with the Bill.

A sale of a tax relieved property (s.23/s.50 properties and industrial buildings) within its "tax life" could result in a claw-back of tax relief. The interaction between the claw-back provisions and the High Earners Restriction could distort the tax computation to the disadvantage of the taxpayer in cases where the allowances attaching to the building had not been utilised. The Finance Bill introduces new provisions aimed at correcting this anomaly.

The Bill also introduces an additional USC charge of 5% for property investors whose gross income exceeds €100,000. The charge will apply on the amount of income sheltered by property reliefs (s.23/s.50 allowances or capital allowances on industrial buildings) in a given year and is effective from 1 January 2012.

CGT property incentive

As announced in the Budget, the Bill includes measures to introduce CGT relief for properties purchased between 7 December 2011 and 31 December 2013 where that property is held for seven years or more. This relief applies to residential and commercial properties situated in an EEA State.

The draft legislation provides for no CGT relief if the property is sold less than seven years from the date that it was acquired. Full CGT relief is available if the property is sold seven years from the date that it was acquired. Where the property is held for a period in excess of seven years, the relief is allowed in the proportion that seven years bears to the total period of ownership.

Heritage property relief

The Finance Bill amends the relief for expenditure on significant buildings and gardens by imposing a requirement that the property is open to the public for visits during National Heritage Week (August 2012).

Employment and Investment Incentive (EII) and Seed Capital Scheme (SCS)

The European Commission approved the introduction of the EII and SCS with effect from 25 November 2011. During negotiations with the European Commission the Government undertook to introduce a small number of amendments to the legislative provisions governing the new schemes. These amendments are largely technical in nature and are reflected in the Bill. The Bill also confirmed that a "qualifying company" could avail of the old Business Expansion Scheme (BES) scheme for fundraisings completed between 25 November 2011 and 31 December 2011.

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Capital Gains Tax

CGT Rate

As announced in the Budget, the rate of CGT was increased from 25% to 30% effective from 7 December 2011.

CGT Retirement Relief

In the context of farming and agribusiness, the Minister announced changes to CGT retirement relief in the December Budget. As expected the Bill extends these changes to other businesses outside of farming and agribusiness. CGT retirement relief allows for the transfer of qualifying businesses and farms between certain close family members free of CGT. In an effort to incentivise the timely transfer of such businesses and farms, the Bill introduces a cap of €3m on the CGT retirement relief available in respect of family business and farm transfers by individuals aged 66 or over. This amendment applies to transfers made on or after 1 January 2014. Full CGT retirement relief will continue to apply to individuals aged 55 or over but who have not attained the aged of 66.

The intention of the Bill seems to be to allow full CGT retirement relief to continue to apply to family business and farm transfers made by individuals aged 66 or over in the period up to 31 December 2013. It is unclear as to whether the draft legislation as currently worded achieves this objective.

CGT retirement relief also applies to business and farm transfers to non-family members, subject to a cap of €750,000. This cap will be reduced to €500,000 for individuals aged 66 or over in respect of transfers made on or after 1 January 2014.

Contingent liabilities

The Bill includes a measure which provides that a contingent liability cannot be used for the purposes of computing a gain or loss on the disposal of an asset for CGT purposes. The objective of this measure is to ensure that a contingent liability must actually be paid before it can be taken into account for CGT purposes. This applies to disposals made on or after 8 February 2012.

Bearer shares

The Bill contains a measure which ensures that shares (including bearer shares) in an Irish incorporated company will always be regarded as an Irish asset for CGT purposes.

Non-resident trusts

The Bill amends an anti avoidance provision which can in certain circumstances attribute gains accruing to non resident trusts to the Irish resident beneficiaries of such trusts. The amendment provides that gains accruing to a non-resident trust at a time where a beneficiary was temporarily not resident in the State will be deemed to accrue to the

beneficiary on their return to the State. In addition, where a person is temporarily excluded as a beneficiary of a trust, gains arising during the period of exclusion may be treated as accruing to the individual in the tax year in which the beneficiary is reinstated.

Capital Acquisitions Tax (CAT)

CAT rate and thresholds

The Bill gives effect to proposals announced in the Budget to increase the rate of CAT from 25% to 30% and to reduce the parent-to-child tax-free threshold to €250,000. In addition, the Bill rounds-up the close relative and stranger tax-free thresholds to €33,500 and €16,750 respectively and it abolishes the indexation of the tax-free thresholds. These amendments apply to gifts and inheritances taken on or after 7 December 2011.

Agricultural relief

Changes have been made to agricultural relief (a provision which provides that only 10% of the value of agricultural property taken by a “farmer” is taken into account when calculating CAT). A “farmer” for this purpose is an individual at least 80% of whose assets comprise of agricultural property after taking the gift or inheritance. Borrowings are deductible against the value of the family home in deciding whether or not an individual qualifies as a “farmer”. The Bill

ensures that borrowings secured on a family home are only deductible where they are used for the purchase, improvement or repair of that house. The Bill also removes the condition that an individual must be resident in Ireland for three years after the gift or inheritance. These amendments apply to gifts and inheritances taken on or after 8 February 2012.

Discretionary Trust Tax

Discretionary Trust Tax (DTT) is a levy that applies in certain circumstances on the death of a settlor of a trust. Previously, this levy only applied in relation to will trusts when the assets became subject to the trust (i.e. were transferred to the trust). In the case of will trusts, the Bill now applies the levy from the date of death of the settlor. In addition, the charge to DTT has been extended to Foundations.

Administration

The pay and file date for CAT has been changed from 30 September each year to 31 October. The new pay and file date of 31 October will apply to gifts and inheritances which have a valuation date falling in the 12 month period ending on the previous 31 August. An amendment has been made to the CGT buyback provisions to reflect the new payment dates for CAT.

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VAT

Vat rate

The Bill confirms the increase in the standard rate of VAT from 21% to 23%, effective from 1 January 2012.

Construction

The reverse charge mechanism, as currently applied in the case of construction services supplied by Sub-contractors to Principals, will be extended from 1 May 2012 to the supply of construction services between connected parties. Therefore from 1 May 2012 it will no longer be necessary for a Principal/Sub-contractor relationship to exist in order to apply the reverse charge when the parties are connected.

Property (transitional)

It has been confirmed that, in the case of pre-1 July 2008 'transitional properties', where refurbishment work has been carried out the adjustment period will not automatically revert to 20 years for the purposes of any Capital Goods Scheme adjustments.

VAT refund orders

From time to time Ministerial Orders may enable certain persons not registered for VAT to obtain a refund of VAT. The Bill enables the application of certain VAT legislative provisions to persons who obtain these refunds including:

- the specification of certain requirements to be complied with by the beneficiary,
- an obligation to repay part or all of the refund if the specified requirements have not been fulfilled,
- the raising of assessments by Revenue where the refund was not properly refundable and the application of interest where necessary, and
- the application of a penalty to a person who has not complied with the terms of the refund order.

Bread

There have been changes to the technical definition of bread to take account of health and ethnic issues and accordingly the zero rate will continue to apply.

Heat & cooling energy

For VAT purposes a person who supplies heat or cooling energy through heating or cooling networks will be given the same status as is afforded to a person who supplies electricity or gas through a natural gas distribution system with effect from the passing of the Act.

Stamp duty

Non-residential property

The Bill confirms the significant change announced in the Budget in relation to stamp duty on acquisitions of non-residential

property. The rate of stamp duty on non-residential property is reduced from a top rate of 6% (on transfers exceeding €80k) to a flat rate of 2%.

This new 2% rate not only applies to transfers of commercial and industrial land and buildings, but also to farmland and transfers of business assets such as goodwill, debtors, contracts, etc. The new rate also applies to premiums paid on leases of commercial buildings.

The 2% rate applies to instruments (e.g. deed of conveyance / lease for immovable property, asset purchase agreement for business assets) executed on or after 7 December 2011. Where the new flat rate would give rise to a higher stamp duty charge than the previous rate (e.g. on transactions not exceeding €20,000 in value which would have been liable to 0% or 1% duty), stamp duty will be payable at the old rate provided certain conditions are met.

Financial transactions

The Bill also clarifies and extends the scope of a number of exemptions from stamp duty applying to financial transactions. It clarifies that a 1% rate of stamp duty applies in respect of options over Irish shares and it extends the stamp duty exemption available in respect of a transfer of shares/securities of foreign

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companies to cover a wider range of foreign legal entities.

Pensions and Charities

The Bill provides for exemptions from stamp duty in respect of the following transactions involving an in-specie transfer of assets belonging to pension schemes and charities:

- A transfer of investment assets from one institution to another institution;
- The transfer of assets from a unit trust in one institution to either a segregated fund or a similar unit trust in the same or another institution;
- A transfer of assets from a corporate fund in one institution to either a similar corporate fund in the same or another institution; and
- The transfer of assets from a life company to a related or unrelated financial institution, which may hold the assets either as a segregated asset or as an asset in a unit trust or in a life company.

The effective date for these changes is 8 February 2012.

Abolition of relief for transfers within families

The Bill also confirms the abolition of the existing 50% stamp duty reduction for transfers within families. This relief was removed for transfers of residential property

in Budget 2011 and is to be totally abolished from 1 January 2015.

Move to self-assessment

The Bill contains detailed changes to the stamp duty legislation in order to move stamp duty to a self-assessment basis. The main change will be the removal of the obligation to submit certain documents to the Revenue Commissioners for “adjudication”. It is currently necessary to submit documents for adjudication where certain reliefs or exemptions are being claimed or where instruments operate as gifts. The removal of this obligation should speed up the stamping of instruments and reduce the administrative burden for taxpayers.

Many of the other proposed changes are aimed at bringing the administration of the stamp duty system in line with other taxes, and include:

- The introduction of a more comprehensive “Expression of Doubt” facility where a taxpayer is unsure as to the application of stamp duty law;
- The abolition of the existing late filing penalties of up to 30% and the introduction of a late filing surcharge where the maximum penalty for a stamp duty return being filed more than two months late will be 10% of the duty subject to a cap of €63,485;

- The abolition of the surcharge for under-valuations of property in the case of gifts;
- The reduction of the timeframe within which a stamp duty refund can be sought from six years to four years; and
- The introduction of a requirement to retain records supporting any stamp duty position taken or relief / exemption claimed for at least six years.

This new system of self-assessment and related legislative changes are subject to a Ministerial Order and will only apply to instruments executed on or after the commencement date specified in that Order.

Environmental

Emissions allowances

The Bill includes provisions dealing with the tax treatment to be applied to emissions allowances. For allowances which have been purchased rather than allocated free of charge by the Environmental Protection Agency (EPA), a tax deduction will be available as a trading expense for the amount of the expenditure incurred on the purchase of the allowances. The amount of the tax deduction will be the amount charged to the company’s profit and loss account in accordance with generally accepted

accounting practice. Where a company sells allowances which were purchased for the purposes of its trade, the sales proceeds are to be treated as a trading receipt, taxed at 12.5%.

In contrast, the sale of allowances which were received free of charge from the EPA or received by means of certain group or restructuring transactions, will be regarded as a disposal subject to CGT at 30%. This treatment is to apply to disposals made on or after 8 February 2012.

Revenue have signalled their intention to issue a Tax Briefing note on the tax issues associated with emissions trading.

Forest carbon offsets

As requested by industry, the Bill extends the definition of qualifying assets which a securitisation company can acquire to include forest carbon offsets.

In addition, the existing relief from stamp duty for transfers of greenhouse gas emissions allowances has been extended to apply to any carbon offsets which can be regarded as qualifying assets for securitisation purposes.

Carbon tax

The Bill confirms the rates of increase in carbon tax as announced in the Budget. As

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requested by industry, the Bill also provides for relief from carbon tax in respect of mineral oils and natural gas supplied to certain Combined Heat and Power (CHP) installations (output capacity equal to or greater than 50kWe). The Bill also contains provisions whereby if a consumer provides false or misleading information to a supplier, it is the consumer rather than the supplier who is liable for any resulting underpayment of the carbon tax involved.

Excise

Vehicle Registration Tax (VRT)

The Bill has included provision for the repayment of the VRT paid on a vehicle where that vehicle is exported from the State. In order to be eligible for this repayment, the following requirements must be met:

- the registration documents and a valid NCT certificate (where required) relating to the vehicle in question must be presented and examined to ensure all is in order,
- the open market selling price of the vehicle must be €2,000 or more, and

- the claim for repayment of VRT must be accompanied by documentation showing that the vehicle in question was removed from the State within 30 days of the examination of the documentation and proof that either, the vehicle has been registered in another EU Member State, or, has been permanently exported outside the EU.

Any repayment of VRT shall be made to the person whose name appears on the registration certificate at the time of examination. VRT shall again be payable on the re-importation of a vehicle into the State, and this has been provided for by extending the definition of registration for VRT purposed to include “re-registration”. The repayment provisions will be enacted by Ministerial Order.

Mineral Oil Tax

The Bill sets out a number of changes to the excise provisions on Mineral Oil Tax which are in anticipation of a new Excise Consolidation Bill. The main changes include:

- A re-casting of the mineral oil legislation to separate the provisions relating to mineral oil tax on mineral oils, and mineral oil tax on coal, as these are treated differently.

- Clarification that the mineral oil tax chargeable on recycled oil applies, at the appropriate rate, to recycled oil used both as a propellant and for other uses.
- A consolidation and clarification of the various reliefs applying to mineral oil tax to eliminate overlapping provisions. There are, however, new provisions:
 - excluding mineral oil used for industrial purposes on floating structures designed for such purposes from sea-navigation relief, and
 - extending the carbon charge relief to mineral oil intended for use in environmentally-friendly heat and power cogeneration.
- Changes to the licensing of mineral oil traders.
 - The licensing regime is now extended to “marked” fuels. There will now be two forms of mineral oil traders licences: an “auto-fuel trader’s licence” for mineral oil for use as a propellant; and a “marked fuel trader’s licence” for gas oil or kerosene subject to a reduced rate of excise duty.

- A mineral oil trader must have appropriate licences for all premises in which he trades in licensable mineral oil (and must hold both types of licence for each premises where he is trading in both auto-fuel and marked fuel).
- Strict conditions attach to traders wishing to hold either licence. No-one may hold either licence if they do not have a valid tax-clearance certificate or if they have been convicted of an indictable tax offence.
- Revenue may now publish a list of traders who hold either form of licence and the premises to which the licences attach.

The new licensing provisions will be enacted by Ministerial Order.

Electricity Tax

The Bill removes the requirement for non-State established suppliers of electricity to set up a company in the State for the purposes of paying the electricity tax. A new provision now allows any such non-established suppliers of electricity to make arrangements with Revenue to pay the tax and to have a competent person in the State to effect these arrangements.

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This booklet is intended to provide a general guide only to the subject matter and is necessarily in a condensed form. It should not be regarded as a basis for ascertaining the liability to tax in specific circumstances. Professional advice should always be taken before acting on any information in the booklet.

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