

Exploring what it means for you Finance Act 2013

*We take a look at how
the Finance Act will
impact you and your
business*

Welcome

Welcome to our analysis of the Irish Finance Act 2013, enacted into law on 27 March 2013.

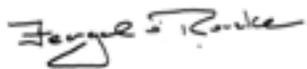
The Finance Bill, released in February, has been finalised and was enacted into law as Finance Act 2013 on Wednesday 27 March 2013. In line with expectations following the publication of the Finance Bill in February, there were relatively few changes in the Act from the original Finance Bill.

The key objective of Budget and Finance Act 2013 has been to ensure that Ireland's adjustment process remained on track by delivering a further reduction in the deficit while at the same time not derailing a fragile economic recovery. The proposals outlined in the Budget and confirmed in the Finance Act should continue to help this to be achieved.

The focus has been on providing support for SMEs, with the introduction of a number of initiatives to support the small and medium enterprise sector. In addition, the introduction of REITs and new initiatives for the funds industry and the aviation sector will be of benefit to the FDI sector.

The Government has continued its initiative to enhance Ireland's knowledge economy, with improvements to the R&D regime and the IP regime. A Consultation in relation to the R&D tax credit was announced as part of Budget 2013. The Consultation closed on 12 April 2013.

In parallel with the budgetary process, the wider context for business is a changing tax environment with both increased competition for mobile international investment and pressure from certain countries to collect additional corporation tax. In today's global economy, companies will be as concerned with tax developments in the US, the UK and the wider EU as they are with those in Ireland.



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Innovation Ireland

The Act includes three welcome enhancements to Ireland's R&D and IP innovation regimes, which had previously been flagged in the Budget and Finance Bill:

Increase in volume based R&D tax credit

The amount of qualifying R&D spend excluded from the incremental basis is being increased from €100k to €200k. This is a positive change which will greatly assist small and medium enterprises.

Remunerating key R&D employees

The Finance Act includes a key development by decreasing the threshold that must be satisfied in order to utilise the R&D tax credit to reward 'key employees'. Previously, an individual had to devote at least 75% of their time to R&D activities in order to qualify as a 'key employee'. This threshold was onerous in nature and extremely hard to satisfy in practical terms.

The decrease of this threshold to 50% gives companies a lot more flexibility in utilising the R&D tax credit to attract and retain key R&D talent.

IP Regime

The Act also introduces an encouraging amendment to the intangible assets regime. The Act provides that a clawback of allowances claimed on intangible assets will not occur where the asset is disposed or ceases to be used more than 5 years after it was first provided. The clawback period is currently 10 years so the decrease to 5 years should help to increase Ireland's attractiveness as a location for IP.

R&D Tax Credit Consultation

As part of the Finance Bill documentation in February, the Department of Finance issued a consultation paper regarding a review of the R&D tax credit regime. Companies and interested parties were invited to make written submissions on a number of aspects including potential enhancements to optimise the structure and design of the regime.

Venture Capital

The Act includes the legislative measures to implement the ten point plan for job creation, and provides clarity in relation to the "carried interest" provision to assist companies access investment from venture capital funds.

The amendments enhance the relief as follows:

- scope of relief is extended beyond the start-up phase
- the relief is linked to the overall performance of the fund and not to individual investments
- the required investment period is reduced from 6 to 3 years
- the relief is extended to individual venture fund managers

Business Tax

Mobile Employees

Outbound Assignees

The Finance Act extends the Foreign Earnings Deduction (FED) to include Algeria, Democratic Republic of Congo, Egypt, Ghana, Kenya, Nigeria, Senegal and Tanzania. The FED was introduced in 2012 to encourage Irish based employers to maximise business opportunities in the BRICS (Brazil, Russia, India, China and South Africa) countries. The relief is calculated based on the ratio of qualifying days spent in these countries to total days in the tax year. There are no changes to the method of calculation, the qualifying conditions or the maximum amount of the relief (€35,000).

The extension of the relief may help to boost Irish food exports to the growing African market however the relief was not extended to include key financial hubs, such as Singapore, Hong Kong and Dubai where Irish companies have a strong presence.

Inbound Assignees

The enhanced “Special Assignment Relief Programme” (SARP), which allows a tax deduction for certain employees assigned to work in Ireland, is intended to assist employers in attracting highly specialised resources and senior executives to Ireland. However, the relief in its current form has a number of limitations and it was hoped these might be addressed in Finance Act 2013. Therefore it is disappointing that no changes have been introduced in the Act.

Group Relief

The Act includes legislation designed to limit the availability of group relief for losses for subsidiaries where an intermediary company is not tax resident in a country with which Ireland has concluded a double taxation agreement.

Credit for Foreign Dividends

The Act provides for an additional credit for tax on certain foreign dividends. This change is a direct result of the final ECJ decision in the FII case last November. The court’s decision was explained as follows:

The exemption of the nationally-sourced dividends from tax gives rise to no tax liability for the resident company which receives those dividends irrespective of the effective level of taxation to which the profits out of which the dividends have been paid were subject. By contrast, application of the imputation method to foreign-sourced dividends will lead to an additional tax liability so far as concerns the resident company receiving them if the effective level of taxation to which the profits of the company paying the dividends were subject falls short of the nominal rate of tax to which the profits of the resident company receiving the dividends are subject.

Dividends that are directly or indirectly attributable to profits of third country connected companies that have not been subject to tax are excluded. The total credit, including the additional credit, cannot exceed the corporation tax attributable to the income. This additional credit, which is available on dividends paid on or after 1 January 2013, will not be eligible for pooling of foreign tax credits nor will it be available to carry-forward. The additional

foreign credit provided for in the Finance Act allows for increased double taxation relief when the existing credit for foreign tax on the relevant dividend is less than the amount that would be computed by reference to the nominal rate of tax in the country from which the dividend is paid. The credit is applicable to certain dividends received from companies resident in EU or EEA treaty-partner countries.

Financial Services



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Real Estate Investment Trusts (REIT)

REITs are the internationally recognised collective investment structure for holding commercial and/or residential property. Although the regimes differ somewhat from country to country, the REIT typically takes the form of a listed company (or group) with a diverse shareholding base. A REIT regime is in place in 35 of the largest jurisdictions around the globe so its absence from the Irish suite of products was an issue of some surprise to international investors as they began to look seriously at the Irish property market in recent times.

Following extensive lobbying, the Minister announced its introduction in the December budget and the legislation introducing Irish REITs is now contained within the Finance Act. The stated primary objectives of the REIT regime are to facilitate the attraction of foreign investment capital to the Irish property market, helping to stabilise that market and release bank financing from the property market for use by other sectors of the economy, and to provide investors with an alternative lower-cost, lower-risk method for property investment

As expected, the legislation closely follows the UK regime. Thankfully it picks up a number of improvements made by the UK since REITs were first introduced there in 2007. Thus we do not have any entry charge into the regime (for existing property companies), the company can be listed on a recognised stock exchange in any EU member state (although it must be resident and incorporated in Ireland), and a grace period (of 3 years) is allowed before a number of technical conditions have to be complied with.

The tax regime applicable to the Irish REIT is relatively straightforward. While the normal stamp duty rate (2%) applies to Irish property transfers into the REIT, the REIT itself is exempt from tax on rental income and on any capital gains arising on property disposals. However distributions out of the REIT to shareholders are liable to dividend withholding tax at the rate of 20% subject to a number of exceptions and comments:

- Irish resident shareholders are liable to tax on REIT distributions at their normal tax rates. Thus Irish resident individuals will be taxed at marginal rates with credit being allowed for the 20% withholding tax rate while Irish corporates will be taxed at the passive income rate of 25%. Capital gains (e.g. on the disposal of REIT shares) will be taxable at the normal CGT rate (currently 33%).
- Shareholders who are tax resident in countries that have a double taxation agreement with Ireland can benefit from a lower dividend withholding tax rate if that is provided for under the agreement. Although rates vary depending on the double taxation agreement, typically the treaty rate would be less than 20% and this would represent the final Irish tax liability of the foreign shareholder. Relief is not available at source and the tax would have to be reclaimed from Irish Revenue.
- Certain exempt investors such as pension funds will not suffer any withholding tax.

Financial Services

For non-resident shareholders the REIT regime carries one particularly attractive feature. Capital gains generated by the REIT do not have to be distributed to shareholders and if retained and reinvested by the REIT will be reflected in its share price. The non-resident investor can then dispose of the REIT shares free of Irish CGT. This would not be available if the non-resident investor held the property directly. It does appear however that the disposal of the REIT shares would be liable to stamp duty (at the rate of 1%).

The introduction of REITs is to be warmly welcomed. In terms of tax attractiveness it does not rival the QIF structure (which has been used for large private property deals and is completely free of Irish tax for non residents) but it is a very different product. While there may be very few of them in practice, and it may take some time before the first is launched, REITs should bring in new sources of finance into the Irish property market. Further tax changes will be required if the Irish REIT is to become an attractive structure for holding international property but we understand that this feature is to be actively worked on and modifications can be expected in future Finance Acts.

Incentives for the aviation industry

With a view to enhancing and expanding Ireland's current aviation industry offering, in particular into the MRO (maintenance, repair or overhaul) space, the Act now provides the details of the accelerated industrial buildings allowances on capital expenditure incurred on the construction or refurbishment of buildings or structures which are employed in a MRO trade where the MRO is in respect of commercial aircraft. The scheme will be available for a period of 5 years from the date the scheme becomes operational and the write-off period is 7 years (15% x 6 years, and 10% in the final year). The legislation also contains the typical provisions and restrictions included in the mainstream industrial buildings legislation in so far as it relates to property developers and high earners. The provisions of the section do not, however, become operable until such date as the Minister specifies and the section, interestingly, provides for different parts of the section to be operable at different dates.

The concept of an Irish EETC ("Enhanced Equipment Trust Certificate"), as an aviation financing tool in Ireland, was hinted at during the budget speech. While we were hopeful that some supporting changes would make an appearance in the original draft Bill, the Government subsequently introduced an amendment at Committee Stage to adapt Ireland's stamp duty legislation to facilitate the issue, transfer or redemption of EETCs.

Arguably, the stamp duty exemption needed to be accompanied by a targeted interest withholding tax (and residual income tax) exemption to make this a marketable product on the tax side. This is because, in many cases, Ireland's domestic interest withholding tax exemptions are treaty focused. However, in many cases lenders / investors may either be based in newer markets which tend to be non-treaty jurisdictions, or there may simply be a level of uncertainty as to where future lenders may be based, whether by reason of syndications, or secondary trading of EETCs.

A treaty based exemption system may therefore limit the pool of potential financiers unless the EETC issuances can rely on Ireland's eurobond mechanism. This brings its own restrictions, so it will be interesting to see how the market responds to this when the time comes for an Irish EETC issue to take place. Bear in mind that for now however, the missing piece of the jigsaw, adoption of Alternative A of the Capetown Convention, needs to also take place before this could be feasible.

Foreign Account Tax Compliance Act (FATCA)

The Minister for Finance announced as part of the budget that Ireland had concluded negotiations with the US on a bilateral intergovernmental agreement (IGA) in relation to FATCA. The full text of this agreement was signed and made public on Friday 21 December 2012.

By being one of the first movers in this area, the Irish Revenue has afforded the Irish financial services sector significant advantage over other territories. The agreement is expected to reduce the burden of complying with FATCA by simplifying the compliance process and minimising the risk of withholding tax.

Financial Services

Under the agreement, Irish financial institutions will be required to report details of financial accounts held by US persons to Irish Revenue on an annual basis. Irish Revenue will then exchange this information with the US tax authorities, with reciprocal information to be provided on Irish account holders in US financial institutions.

Implementation of the IGA requires the issue of supporting regulations and the Finance Act now contains provisions which enable Ireland to introduce these specific regulations for the implementation of the IGA. We expect to see a first draft of these regulations and supporting guidance notes by the end of May, with a consultation process to follow in anticipation of having final regulations by late summer. PwC's commentary on the IGA and its impact on Irish financial institutions can be found here. http://download.pwc.com/ie/pubs/2013_fatca_for_irish_financial_institutions.pdf

DIRT and exit taxes

The Act confirms the 3% increase in the rate of DIRT applying to interest on deposit accounts which is paid or credited on or after 1 January 2013. A similar 3% increase to the rate of exit tax applying to life assurance policies and investment funds is also legislated for with effect from 1 January 2013.

Islamic finance

The Act contains a technical amendment to certain provisions of Ireland's Specified Financial Transactions tax legislation. In the case of certain sukuk type transactions, the sukuk (or investments certificates) needed to be issued to the "public" and public was widely defined. This amendment now removes that requirement and replaces it with a restriction, namely that the certificates cannot be issued to connected companies or the originator of the assets in certain cases.

Withholding tax on interest

The Act provides for two amendments to the domestic interest withholding tax exemptions. The first is a clarification to confirm the continued availability of what was previously known as the Shannon or IFSC exemption. This exemption will continue to be available in respect of interest paid by certain Irish companies where such companies were licenced under the Shannon or IFSC regimes, where the loan ("relevant security") was issued prior to expiry of those licences if the company is obliged to redeem that security within 15 years of its issue.

The second change should facilitate the automatic payment of interest to approved pension funds on a gross basis – previously, although such pension funds are exempt from income tax, withholding tax had to be deducted and then reclaimed by the pension funds. This should remove the historic administrative and cash flow burden.

Investment limited partnerships

The Act confirms the tax transparency of Irish regulated investment funds structured as investment limited partnerships under the Investment Limited Partnership Act, 1994. Previously such funds were regarded as opaque under Irish tax legislation. The change offers the Irish funds industry a real opportunity in attracting new asset management activity into Ireland, such as private equity funds and alternative investments. With the Alternative Investment Fund Managers Directive coming into force in July 2013, many global fund managers are looking to locate investment funds in regulated jurisdictions that will facilitate the international distribution of their funds. Ireland is already the leading global alternative funds centre and the changes being made should further enhance Ireland's reputation. Further legislative changes are proposed, including the introduction of a new corporate fund vehicle, which will have the ability to meet certain US tax elections that will make it more effective for sale to US investors.

Personal Tax



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Pensions

As expected, there were no provisions in the Finance Act limiting tax relief on pension contributions. Further details of the rules for 2014 onwards are likely to emerge in the 2014 Budget after a consultation process. In the meantime there may be opportunities for individuals to optimise the current tax relief regime.

AVC refunds

As indicated in the budget, the Act provides for a mechanism for individuals to seek a refund of up to 30% of the value of their Additional Voluntary Contributions (AVCs). Refunds will be liable to tax at one's marginal rate but will be exempt from USC and PRSI charges. The AVC refund will not crystallise a tax liability under the lifetime pension limit tax rules and may in fact represent an opportunity for those whose pensions exceed the lifetime pensions limit to release some funds from the otherwise penal tax rates of that regime. Pension contributions made by employers are not available for refund under these AVC rules.

The AVC refund can be sought in the 3 years following the passing of Finance Act 2013 but all refunds must be taken on one occasion only. While this refund may be

welcomed by many individuals experiencing current financial difficulty, there may be a shortfall of income in the retirement years.

The early access to AVCs will be unavailable to individuals whose AVCs bought 'notional added years' in their pension scheme (generally Public Servants) and it is also notable that the Minister did not offer a similar early access facility to those with Personal Pension Plans (RACs or PRSA plans, effected by the self-employed or those in non-pensionable employments).

ARF options

Individuals electing for the Approved Retirement Fund (ARF) option at retirement after the passing of Finance Act 2013 will have a temporary relaxation of the qualifying conditions for 3 years. For that 3 year period, individuals will be permitted to invest in an ARF at retirement if they have at least €12,700 of other pension income already in payment (the current requirement is closer to €18,000). In addition, for those individuals who cannot satisfy the €12,700 test, they will be required in that 3 year period to invest up to €63,500 in an Approved Minimum Retirement Fund (the prevailing rules require almost €120,000 to be set aside).

These measures are to be welcomed given that those eligible for the ARF options at retirement were extended in 2011 to include all members of Defined Contribution schemes and many of those would have been effectively unable to exercise the ARF options where they had more modest savings at retirement. Individuals should bear in mind, however, that ARF funds are taxed on annual deemed income based on 5% of the value of the ARF (6% if the ARF is worth more than €2m) and ARF values will deplete in retirement where investment returns in the ARF fail to keep pace with the drawdown rate of 5% or 6%.

Employment Taxes

As announced in the budget, income tax, PRSI and USC rates remain unchanged.

PRSI

The 2012 Social Welfare Act implemented the PRSI changes announced in the Budget and abolished the employee Class A PRSI free allowance of €127 per week from 1 Jan 2013. Employees who earn €352 or less per week continue to have no liability to PRSI.

As expected there has been no change to employers' PRSI.

Personal Tax

USC

The Act gives further recognition to USC as a tax on income, allowing a credit for foreign tax paid against the USC charged on the same income. Likewise, Ireland's treaty partners have been notified that USC is to be regarded as income tax for the purpose of granting relief for foreign tax paid.

Severance Payments

Top Slicing Relief

The Act confirms that top slicing relief will not be available to anyone who receives an ex-gratia payment (excluding statutory redundancy) of €200,000 or more on or after 1 January 2013. Top slicing relief ensures that the taxable element of an ex-gratia payment is not taxed at a rate higher than the individual's average rate of tax over the 3 preceding years.

The Act also abolishes the additional relief, known as "Foreign Service Relief", currently available to employees who worked abroad during their careers. This relief is being abolished from the date of the passing of Finance Act 2013.

Employer Rebate

The 2012 Social Welfare Act abolished the employer rebate of 15% on statutory redundancy costs where the date of redundancy, essentially the end of the notice period, is on or after 1 January 2013. This will increase the costs of redundancy packages for employers in 2013.

Benefit-in-kind

The Act confirms that the rate to be used in calculating the benefit-in-kind on home loans will be reduced to 4% from 5%, whereas the rate for other loans will go up to 13.5% from 12.5%.

Donations

The Act confirms that from 2013 onwards tax relief will not be available to self-assessed tax payers on donations to approved charities. Instead, as with donations from PAYE individuals, the tax relief will be paid directly to the charities, albeit at a blended rate of 31%. It remains to be seen what impact this will have on donor behaviour, particularly those donors who previously factored in tax relief when making donations.

Local Property Tax (LPT)

The Finance (Local Property Tax) (Amendment) Act 2013 introduces some limited reliefs from the tax, including an exemption for homes certified as pyrite affected and an exclusion for any increase in valuation as a result of expenditure to accommodate a disabled person. The Act also provides that properties owned by local authorities/ approved housing bodies will be deemed to be valued in the lowest valuation band until 2016.

Personal Insolvency

The Finance Act includes a number of changes to tax law in order to facilitate the personal insolvency legislation introduced last year.

Firstly, it provides that the transfer of property under a Debt Settlement Arrangement or a Personal Insolvency Arrangement to a person to be held in trust for the benefit of creditors (i.e. personal insolvency practitioner) will not trigger a clawback of capital allowances and, where rental income arises in respect of the property while it is held by the practitioner, the debtor will remain liable to income tax in respect of that rental income.

Secondly, it ensures that the transfer of assets to a personal insolvency practitioner will not be liable to CGT. However, the practitioner will be liable to CGT on the subsequent disposal of the asset.

Thirdly, it provides that any benefit arising from the write-off or reduction of debt under a Debt Relief Notice, Debt Settlement Arrangement or Personal Insolvency Arrangement will not be a gift or inheritance for CAT purposes.

Finally, it provides that any Debt Settlement Arrangement or Personal Insolvency Arrangement will provide for payment of current tax liabilities of the debtor, and for the payment of any tax liabilities of the personal insolvency practitioner during the course of such arrangements.

Personal Tax

Living City Initiative

The Act includes two new incentives that will apply to special regeneration areas which will be welcomed by the construction industry.

Residential Property

The Act introduces, by way of a pilot scheme, a relief for owner-occupiers in relation to expenditure incurred on the conversion or refurbishment of Georgian residential properties located in defined special regeneration areas. The initial qualifying locations will be in Limerick City and Waterford City, but the exact detail of the qualifying areas has yet to be announced.

The relief takes the form of a deduction from the individual's total income for the year in which the expenditure is incurred and the following nine years at a rate of 10% of the relevant conversion/refurbishment expenditure. If in any year the property ceases to be used as the person's only or main residence, then no relief will be available for that year. If the property is sold at any time, there is no clawback of the relief claimed but the relief may not be claimed by a subsequent purchaser.

The relief is limited to owner-occupiers and consequently does not apply to rental properties.

Commercial Property

A relief is also being introduced for expenditure incurred on certain commercial property located in a special regeneration area. The relief is provided in the form of capital allowances for expenditure incurred on the conversion or refurbishment of a qualifying property. The capital allowances are available at a rate of 15% per annum (years 1 – 6) and 10% (year 7). A clawback of capital allowances claimed can arise if the property is disposed of within 7 years.

The relief will apply to expenditure incurred on the conversion/refurbishment of buildings located in a special regeneration area and that are in use for the purposes of the retailing of goods. It will also apply to expenditure incurred on the ground floor or basement areas of a Georgian building in use for the purposes of the retailing of goods or the provision of services within the State provided that qualifying residential conversion or refurbishment expenditure (see above) has also been incurred on the upper floors.

The relief may be claimed by owner-occupiers or landlords but property developers are excluded from claiming the relief. Any relief claimed will be included in the calculation of the high earner's restriction, where applicable.

Both reliefs are subject to EU approval and when effective, will apply for a period of five years. They will also be subject to a system of certification by the relevant Local Authority, details of which have yet to be announced.

Indirect Tax



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Excise

Unjust Enrichment

Finance Act 2013 introduced a new section which states that Revenue will not repay any overpayment of excise duty where they believe that the payment would result in an unjust enrichment of the claimant. This may occur where the cost of the excise duty was subsequently passed on to the purchaser of the goods which were subject to the excise duty concerned.

As a result, future refunds of excise duty will be more critically evaluated by Revenue and unless it can be shown that the refund will be passed, where relevant, to the purchaser, the refund may be withheld in whole or in part.

VAT

Increase in cash receipts threshold

As announced in the budget, Finance Act 2013 confirms that the “cash receipts” threshold has increased from €1m to €1.25m. This increased threshold will take effect from 1 May 2013.

This is a welcomed move as such an increase will provide much needed cash flow benefits to the SME sector together with reduced administration.

Public Bodies and the Provision of Sporting Facilities

Since 1 July 2010 public bodies, acting as such, are obliged to charge VAT, where appropriate, on certain supplies, namely where there is potential for a significant distortion of competition.

In order to put public bodies, in particular School Boards of Management, on an equal footing with private operators, the existing services registration threshold of €37,500 can be availed of in respect of the provision of sporting facilities.

New VAT obligations for Receivers, Liquidators and Mortgagees-in-Possession (“Receivers”)

During 2012 a public consultation was launched by the Department of Finance and the Revenue Commissioners concerning the tax implications of Receivers in which a number of VAT proposals were introduced. Finance Act 2013 has adopted some, but not all, of these proposals.

Where a loan defaulter makes a supply of taxable goods, typically property, existing VAT legislation provides that the Receiver is liable to return and remit any VAT due. The Act has introduced a similar obligation in respect of any taxable services that may be made by either the loan defaulter or the Receiver. This would be relevant, for example, where the loan defaulter opted to tax a letting or the Receiver had the power to opt to tax the letting. In both scenarios, VAT would be due on the rents and the new legislation provides that the Receiver is accountable for same.

In addition, Receivers will also be accountable for any VAT arising from any Capital Goods Scheme obligations of the loan defaulter for the duration of receivership.

Indirect Tax

Supplies of Property between Connected Persons

As it currently stands, where a property is sold to a connected person and the VAT on the sale is less than the VAT incurred on the purchase, a VAT clawback arises unless the two parties agree that the purchaser will “step into the shoes”, for the purposes of the Capital Goods Scheme, of the vendor.

The Act introduced new legislation that strengthens the purchaser’s obligations, confirms there is no VAT on the sale and that no new capital good is created.

Restricted Deductibility on Fund Management Services

Finance Act 2013 introduced changes concerning the input VAT deductibility for businesses supplying fund management services, including related agency services. The changes bring the Irish VAT legislation into line with the VAT Directive. The wording outlining the VAT deductibility position for these services has been changed in the Act.

On a practical level it is not expected that these changes will have a significant impact.

Resale of Vouchers

The tax point concerning the supply of vouchers (including coupons, stamps, telephone cards etc) for resale (by the redeemer) to non-Irish businesses i.e. cross-border sales, has changed. Finance Act 2013 has introduced legislation stating that the tax point will be triggered when the voucher is redeemed rather than at the time of sale. Vouchers for resale (by the redeemer) supplied to Irish established businesses will continue to be taxable at the time of sale.

This is an anti-avoidance measure to ensure VAT cannot be avoided upon redemption.

E-invoicing and Business Controls

New rules for e-invoicing came into force from 1 January of this year which essentially put e-invoices on an equal footing to that of paper invoices. If a business issues e-invoices, certain conditions must be met. As a consequence to these changes, the Act allows the Revenue Commissioners to make regulations outlining the necessary business controls for businesses that issue and receiving e-invoices. It is not known, at this point, when such regulations will be issued.

Stamp Duty

Land transactions anti-avoidance provisions

The Finance Act finally activates some stamp duty anti-avoidance provisions which have been on the statute books in various iterations for 6 years but have not, to date, been commenced.

Background

In the past, it has been possible to avoid stamp duty on land purchases by leaving the transaction “resting on contract”, by obtaining a building licence from the landowner or by entering into a long agreement for lease. In 2006, the Revenue Commissioners carried out a review of such transactions and this led to the introduction of the below anti-avoidance provisions, but their commencement was put on hold due to the downturn in the property market. The provisions are now being activated, more or less in the same form as originally proposed in 2007.

Specific provisions

• Resting on Contract

Where a person contracts to purchase land and does not stamp a conveyance or transfer made in conformity with the contract within 30 days of paying 25% or more of the consideration payable under the contract, then that contract will be stampable with the same duty as if it were a conveyance or transfer of the land.

Where stamp duty is paid on the contract, any subsequent conveyance or transfer of the land made in conformity with the stamped contract will not be stampable. In addition, where the contract is rescinded or annulled, a refund of the stamp duty paid on the contract will be available.

While this new provision should not create a stamp duty charge on historic land acquisitions left resting on contract, it may create a previously unanticipated charge on the future unwind of certain tax based investments which used the resting on contract planning.

Indirect Tax

- **Building Licence**

Where a landowner grants a licence to another person to enter onto and develop a piece of land and the licensee pays licence fees amounting to 25% or more of the market value of the land, the licence agreement must be stamped as if it were a conveyance or transfer of an interest in the land within 30 days of that 25% mark being breached. The licence agreement will be stampable based on the market value of the land in question. Where the licence agreement is rescinded or annulled, a refund of the stamp duty paid on the licence will be available. Although this is an anti-avoidance provision targeting certain practices in the construction sector, this new provision has caused some unintended concern in other industries such as telecommunications and oil/gas exploration. The Minister of State at the Department of Finance, Mr Brian Hayes, has clarified that the provision does not apply to payments by telecommunications companies to landowners for the installation of telecommunications equipment on their land, and it is unlikely that the provisions would apply to transfers of interests in exploration licences in the oil and gas industries.

- **Agreement for Lease Exceeding 35 Years**

Where a person enters into an agreement for lease for a term exceeding 35 years and pays 25% or more of the consideration payable under that agreement, the agreement will become stampable as if it were an actual lease for the term and consideration stated in the agreement. Any lease granted subsequently to, and in conformity with, the stamped agreement will be liable to a nominal duty of €12.50. Where the agreement is rescinded or annulled, a refund of the stamp duty paid on the agreement will be available.

- **Contract for the Sale of a Leasehold**

The current provisions which charge stamp duty on certain contracts for the sale of leasehold interests are to be abolished as such transactions will become stampable under the new legislation.

Effective Date

These provisions apply to all instruments executed on or after 13 February 2013, other than instruments executed solely in pursuance of a binding contract entered into before 13 February 2013. Therefore, any existing arrangements, where a transaction has been left resting on contract, where a licence has been used or a long agreement for lease entered into, will not be subject to these provisions.

Securitisation companies

The stamp duty code contains certain exemptions for transfers of foreign stocks or marketable securities and for certain financial services instruments, but these exemptions do not apply where the transfers / instruments relate to the stocks or marketable securities of an Irish incorporated company. These exemptions have now been amended such that the issue of stocks or marketable securities (which would include a profit-participating loan) by an Irish securitisation company (a “S110 company”) as consideration for certain financial services instruments / foreign stocks or marketable securities will not deny the application of the exemptions.

Aircraft financing

The Finance Act introduces a new exemption from stamp duty on the issue, transfer or redemption of Enhanced Equipment Trust Certificates (“EETCs”). An EETC is a specific form of aircraft financing and the Government has pledged, in the recent Action Plan for Jobs 2013, to review the tax code to establish the feasibility of providing a market for EETCs. This new exemption, which is introduced as an amendment to the existing “loan capital exemption”, is a positive step towards the creation of such a market.

Stamp duty indemnities

A small section in the stamp duty legislation has caused debate for decades over whether or not it is possible for a vendor to give a purchaser an indemnity in relation to a stamp duty liability. This section has now been repealed, stamp duty indemnities are permissible – debate over!

Tax Rates

Corporation Tax Rates	2012	2013
Trading Income (including certain dividends)	12.5%	12.5%
Other Income (excluding capital gains)	25%	25%
R&D Tax Credit	25%	25%
R&D Volume Threshold	€100,000	€200,000
Deposit Interest Retention Tax (DIRT)	30%	33%
Capital Tax Rates	2012	2013
Capital Gains (CGT)	30%	33%
Gifts and Inheritance (CAT)*	30%	33%
Income Tax Rates	2012	2013
Standard	20%	20%
Higher	41%	41%
Income Tax Bands	2012	2013
Income @ 20%		
Single/Widowed (no dependent children)	€32,800	€32,800
Single/Widowed (dependent children)	€36,800	€36,800
Married Couple (one income)	€41,800	€41,800
Married Couple (two incomes)	€65,600	€65,600
Balance at 41%		

* Tax free thresholds for CAT reduced by 10%

Income Tax Credits	2012	2013
Single Person (no dependent children)	€1,650	€1,650
Single Person (dependent children)	€3,300	€3,300
Married	€3,300	€3,300
Employee Tax Credit	€1,650	€1,650
PRSI	2012	2013
Class A1 - most employed persons: (€356 per week or more)		
Employer	10.75%	10.75%
Employee - employment income - weekly tax-free exemption	4% €127	4% nil
Class S1 - proprietary and non executive directors, not insurable under Class A		
Employer	nil	nil
Employee	4%	4%
Universal Social Charge	2012	2013
Income Exemption Threshold	€10,036	€10,036
First €10,036	2%	2%
€10,037 to €16,016	4%	4%
Over €16,016	7%	7%**
Over €100,000 (self-assessed income only)	10%	10%

** Individuals over 70 or in possession of a full medical card now pay at 7% once their income is over €60k, previously capped at 4%. Such individuals whose income is less than €60k continue to benefit from a cap of 4%.

Value Added Tax (VAT)	2012	2013
Standard	23%	23%
Reduced: land and buildings, building services, heating and electricity, waste disposal, car hire	13.5%	13.5%
Hospitality	9%	9%
Exports	0%	0%
Stamp Duty	2012	2013
Certain Stocks and Shares	1%	1%
Private Residential Property: Up to €1,000,000 Any excess over €1,000,000	1% 2%	1% 2%
Non-residential property	2%	2%
Carbon Tax		
No increase to general Carbon Tax rate at €20 per tonne. Carbon Tax introduced on phased basis for solid fuel.		
Local Property Tax		
2012	2013	
Household Charge - €100 per property	0.18% of market value up to €1m 0.25% of any excess over €1m	
Motor Tax		
Low emission bands subdivided with average increase of 12%		

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