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Contact

Colm Kelly

colm.r.kelly@ie.pwc.com

+353 1 792 6383

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Colm Kelly

Head of Tax & Legal Services
PwC Ireland

Introduction

The long anticipated Commission on Taxation Report 2009 (Report) was published today, 7 September 2009.

The 550 page report covers a huge range of areas, and the over 240 recommendations made by the Commission have a potential impact on every single taxpayer in Ireland, personal or business, individual or corporate. There are major sections dealing with recommendations for the introduction of a new Carbon Tax, a new regime for Personal Pensions, and a Property Tax. Every incentive or relief in the tax code has been reviewed and considered, with a huge number of proposed changes.

Some key elements of our existing tax framework, however, are not only unchanged, but re-inforced. The Commission confirms Ireland's commitment to the 12.5% corporation tax rate, and the report also asserts that any new taxes "should be available to reduce the existing tax burden, particularly the burden on labour". The overall intention is "to propose a new structure for the tax system that can be implemented in a revenue neutral manner" - not an insignificant challenge.

The key issue of course is the extent to which the recommendations get implemented. The Minister has already ruled out the introduction of a Property Tax.

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There are other measures which are likely to be politically sensitive. And it is important to remember that the recommendations are not legislative proposals from Government, as would be the case for example with a Finance Bill. These are recommendations from the Commission for consideration by Government. And this is where the greatest risks lie. There is an expectation that many of the proposals will be accepted and implemented - perhaps as early as in the December Budget and in the 2010 Finance Act. However, it is already inevitable that there will be a piecemeal approach to implementation, and there is a risk that the net effect could result in a system with higher taxes (particularly on labour), higher costs (due to new or increased indirect

taxes or service charges), and a less competitive international position (especially if the remittance basis is abolished, as recommended) without any compensating proposals being introduced.

It will be key therefore to ensure that the possible impact of the recommendations is fully considered and understood, and that any concerns are clearly articulated. There is a narrow window of opportunity to stimulate and influence a discussion.

The Report is an exceptional piece of work, supported by a significant depth of research and analysis. It makes a valuable contribution to the debate about Ireland's tax policies - and there are a number of topics which need to be debated.

We have highlighted overleaf some key recommendations which will have a significant impact on business and individual taxpayers.

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Key recommendations

Business and employment

- Reiteration of commitment to low tax rates on both company profits and labour
- Reform of capital allowance regime with an emphasis on following accounting policies
- Extension of type of buildings qualifying for capital allowances to include modern buildings such as Call Centers
- Zero-rating stamp duty on share transfers
- Lowering rate of taxation of dividends to DIRT rate
- Extension of unilateral credit relief to all companies and allowance of unused credits against Irish tax on other foreign income

- Extension of ability to base current year preliminary tax payments on prior year liability extended to all companies
- Reform of close company surcharge provisions
- Abolition of patent income exemption

Income Tax, Social Welfare & PRSI

- Abolition of remittance basis
- Amendment of tax residence rules to include a permanent home and centre of vital interest test
- Extension of taxation to social welfare payments and child benefit
- Limit of €200,000 on tax free ex gratia termination payment
- Reform of income tax and levy system and introduction of third income tax rate

- Merger of health levy into income tax
- Removal of employee PRSI ceiling and exemption from PRSI on investment income
- Extension of PRSI and health levy to share based remuneration
- Extension of SAYE treatment to ESPPs
- Single rate of PRSI for both employee and self-employed contributions

Pension and retirement planning

- Introduction of SSIA-type pension schemes for people who are not members of a Defined Benefit scheme
- Link between personal pension contributions and tax relief broken, replaced with State contribution

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- Relief for pension contributions to be granted at source (similar to medical insurance) rather than as a reduction in taxable income
- Limit of €200,000 on tax free lump sum receivable on retirement
- Extension of availability of Annual Retirement Funds to all Defined Contribution members

Environmental Tax

- Introduction of carbon tax on fossil fuels
- Carbon tax would not apply to companies which already operate under EU Emissions Trading Scheme
- The carbon tax would be based on consumption with burden falling on end consumer
- The carbon tax would be at a single rate based on emission levels and priced by reference to EU Emissions Trading Scheme

- Introduction of water charges to the domestic sector, and increase in rates charged to non-domestic sector
- All consumers should pay the full cost of disposal of their waste

Property Tax

- Introduction of annual property tax for residential property
- Abolition of stamp duty on acquisition of principal private residence
- Imposition of a higher capital gains tax charge on windfall gains arising from increases in land value due to rezoning decisions
- Introduction of a recurring tax on land zoned for development where the land is not subsequently developed

Other

- Reintroduction of indexation relief for chargeable gains
- Review of general anti-avoidance provisions
- Introduction of specific anti-avoidance measures where a specific avoidance is identified
- Review of relevant contracts tax regime to reduce rate and to provide for flexibility in bona fide cases where tax was not operated and no loss of tax resulted

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Colm Kelly
Head of Tax & Legal Services
PwC Ireland

Commitment to low taxes

There is a clear theme which emerges from the report that, broadly speaking, low tax on enterprise works for Ireland. This applies to both sides of the equation in a strong commitment to a “low stable rate” of corporation tax as a core aspect of Irish tax policy to support economic activity in the long term, but also recognising “the need to keep taxation on labour low and marginal rates competitive”. The commitment to corporation tax does send out yet another strong message to the foreign direct investment and indigenous sectors that the 12.5% rate of tax is here to stay.

Research and development (R&D) tax credit

In its review of the R&D credit regime, the Commission recognised that a competitive system for attracting R&D is an integral part of the development of the knowledge based economy. The Commission considered whether further enhancements to the R&D regime were warranted. Their recommendation is to allow companies, at their option, to offset their R&D credit against their employer PRSI costs. If introduced, this facility would enable companies to take account of the total R&D tax credit ‘above the line’, thereby immediately impacting on the unit cost of R&D. This is particularly relevant in a multinational context, where investment decisions are often made on a plant by plant basis by reference to the pre-tax cost comparisons between the investment locations in different jurisdictions.

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Patent income exemption

Section 234 TCA 1997 provides for an exemption from tax on certain income derived from patent royalties. Section 141 TCA 1997 extends that exemption from tax to certain distributions from exempted patent income. While the patent income exemption has been enshrined in legislation since 1976, its end has been much anticipated since the introduction of the R&D tax credit as the preferred fiscal tool to encourage innovation in the knowledge economy. The end of the exemption is now almost certain with the Commission's recommendation that the patent income exemption be discontinued. While the Report is not prescriptive as to how the exemption should be withdrawn, it would be prudent for those companies who avail of the exemption to accelerate any 2009 payments to ensure they are made before the next Budget date.

Reform of capital allowances

The Report makes a number of recommendations to amend the legislation relating to capital

allowances. The most radical recommendation would see the alignment of the tax treatment of capital expenditure with the accounting treatment. The Commission points to a key difficulty with the current capital allowance regime in that it generally does not apply allowances to a time period which fits with the economic life of the business asset. If this recommendation is adopted it would certainly represent a simplification of the capital allowance rules which would be welcomed. It would mean that companies would need to carefully consider the accounts classification of some high value capital items. However, there are likely to be a number of sectors which would be negatively impacted by the proposed changes, aircraft leasing immediately comes to mind as a sector which would require a particular carve-out.

As part of the above recommendation, the Commission were conscious that because capital allowances are not available on many buildings, permitting a deduction for depreciation on all buildings would significantly reduce

the tax base on business income. To reflect that point, the Report is clear that the accounts depreciation should only replace capital allowances for buildings that qualify under the existing system, but depreciation should not be deductible for other buildings. As a separate recommendation, the Commission suggests that the definition of 'industrial buildings' be reviewed with a view to extending the classes of building that qualify. The example given is that of call centres, which are 'modern industrial buildings'. This in itself would be a significant change if implemented.

The other recommendations relating to capital allowances are summarised below:

- It is recommended that balancing charges should apply on industrial buildings regardless of the life of the building. This would be the case for any future acquisitions.
- Capital allowances for childcare facilities should be discontinued.
- The arrangements for the scheme of accelerated capital allowances

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for palliative care units should be modified by the introduction of a termination date for the scheme.

- The accelerated capital allowances for energy efficient equipment should continue.
- The investment allowance for machinery and plant and for exploration expenditure should be discontinued.

Zero-rating stamp duty on shares

The Report recommends the reduction of stamp duty on transfers of shares from 1% to 0%. The Commission found that the 1% stamp duty on share transfers increases the cost of capital for Irish companies and has a negative impact on competitiveness and economic activity. The Report highlights the disadvantage that purchasers of Irish shares face compared to the UK where the rate is 0.5% and France, Germany, Italy, the Netherlands and Luxembourg, where duty on share transfers has been abolished.

The Commission initially considered reducing the rate of duty to 0.5% but decided a 0% rate would be more appropriate as:

- Due to current market conditions the cost of removal of the duty would be low.
- If the rate is reduced to 0.5% there may be temptation extend the charge to stamp duty to securities that are currently not stampable, e.g. unit trusts, investment undertakings, etc.
- The removal of the duty should encourage internationally mobile capital to locate and incorporate in Ireland

As the key rationale for the removal of this duty is to stimulate trading in quoted shares, the Report states that the retention of the duty on transfers of unquoted shares could be considered. Stamp duty on transfers of unquoted shares currently accounts for 12% of total stamp duty revenues on shares.

Taxation of dividends

In the context of supporting economic activity, the Commission recommends that it is not appropriate for Irish-resident individuals to be paying a higher rate of tax on dividends than on deposit interest. Currently Irish-resident individuals pay tax at the marginal rate on dividend income, while the rate of tax on deposit interest income is 25%. The contention is that equalising the tax rate on dividend income and deposit interest would encourage investment in the productive sectors of the economy. Combined with proposals to eliminate stamp duty on shares, the recommendation would make this form of capital much more attractive to investors.

Taxation of gains on the disposal of trading assets

The Report recommends that capital gains on the disposal of trading assets by companies should be taxed at the applicable corporation tax rate rather than, as is currently the case, at the capital gains tax rate of 25%. This

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would be a welcome move which would encourage companies to invest in their business for future growth.

Preliminary tax for companies

'Large' companies, defined as companies with a corporation tax liability exceeding €200,000 in the preceding year, must pay preliminary tax based on an estimate of their current year's liability. The conclusion of the Commission is that the preliminary tax rules for 'large' companies impose a disproportionate compliance burden and cause significant uncertainty to business. The recommendation is to allow 'large' companies to base their preliminary tax payment on 100% of the previous year's figure rather than 90% of the estimated current year's liability.

Unilateral credit relief (UCR)

The Report recommends that UCR be extended to all companies. UCR is a mechanism for Irish companies to get some credit against Irish tax for withholding taxes suffered in non-treaty countries. However, under

existing rules the relief is only available to companies subject to the 10% corporate tax rate (i.e. manufacturing companies). The issue is particularly relevant to the Irish software sector where many Irish companies face an incremental tax cost through the inability to relieve withholding taxes on royalty income deducted in non-treaty countries.

Extending the relief will improve the position of Irish companies expanding into foreign markets which are not yet covered by our treaty network. However, the Commission recognises that this measure alone will have limited impact. Typically the withholding tax is calculated on the gross amount of the payment, yet a credit would only be available against the Irish tax on the relevant profit. Accordingly, the Report also recommends that an overall foreign pooling system be introduced to allow any 'unused' credits to be offset against Irish tax on other foreign royalty income. Pooling arrangements for foreign tax paid on profits of overseas branches and on interest and dividend payments coming

into Ireland are already in place so this recommendation could be easily implemented, and would be welcome.

Start-up businesses

Finance (No. 2) Act 2008 introduced a relief from corporation tax for companies commencing a new trade in 2009. Full relief from tax is granted where the total amount of corporation tax payable by a company for an accounting period does not exceed €40,000 (marginal relief is available where the tax payable does not exceed €60,000). The exemption is available for a period of three years from the commencement of the new trade.

The Commission recommends that this relief be extended within the existing three year timeframe to companies starting a trade in 2010 (for a two year period) and 2011 (for a one year period). In addition to this extension, the Commission recommends that the exclusion currently contained in the legislation in relation to service companies availing of the relief should be removed.

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The Commission has further recommended that a new scheme similar to that introduced for companies should be introduced for unincorporated businesses.

Close company provisions

The Commission recommends that the close company surcharge which currently applies on the undistributed income of professional services companies be abolished.

The report also suggests that the surcharge which applies to undistributed investment and estate income be retained but that the current de minimis amount of €635 should be increased substantially to ease the regulatory burden on companies in such cases.

Business expansion scheme (BES) and Seed capital scheme (SCS) reliefs

The current BES and SCS reliefs are due to expire at the end of 2013. The Commission recommends that these reliefs should remain in place until the expiry date of 31 December 2013, but that they should be reviewed to evaluate their effectiveness. In addition

it is suggested that the administrative burden on companies in relation to these schemes is onerous and should be reviewed.

Transfers of business and farming assets

The Report recommends that capital gains tax (CGT) relief on transfers to family members should be continued but should be limited to transfers of assets with a value of up to €3m. CGT would apply as normal to any excess over €3m.

The Commission recommends that the current CGT retirement relief for disposal of a business or farm to non-family members be retained.

The Commission suggests that for gift and inheritance the tax purposes (CAT), the reduction applied to the market value to determine the taxable value of business or agricultural assets should be reduced to 75% (currently 90%) and that the total value eligible for the reduction should be capped at €3m.

Venture fund managers

Finance (No. 2) Act 2008 provided a new incentive for venture fund

managers that invest in businesses that carry on research, development or innovation activities. The relief provides that the carried interest or return is taxed as a chargeable gain. The Report suggests that this should be amended as follows:

- Where the investment return on the carried interest represents income, it should be taxed at the marginal rate of income tax
- Where the investment return on the carried interest represents capital, it should be taxed as a chargeable gain

Professional services withholding tax (PSWT)

The Commission recommends that in the case of compliant taxpayers who have the appropriate certification from Revenue, no professional services withholding tax should be deducted on payments made to those taxpayers by the various Government Departments, State Bodies, local authorities etc.

This would be a very welcome measure to improve cashflow for those businesses supplying the relevant professional services.

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Mary O'Hara

mary.ohara@ie.pwc.com

+353 1 792 6215

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Mary O'Hara

Tax & Legal Services
PwC Ireland

Income tax system

The Report strongly recommends a move towards a single system which collects tax on income. Overall the Report seems to favour a flat income tax structure, with few allowances and tax credits as evidenced by the number of tax credits and exemptions recommended to be discontinued. Such a system is usually easier to administer and generally gives rise to fewer tax induced distortions and unclaimed tax credits than other systems.

The Report recognises the merits of a three rate income tax structure, provided

taxes on labour are kept low and marginal rates remain competitive. The report envisages the third rate being used to adjust the tax rates upward as well as downward, as required.

While most employers are likely to welcome a simplified system, which combines the four current systems (PAYE, PRSI, health levy and income levy) and cuts down on payroll administration costs, they will obviously have concerns that such a move is likely to give rise to an increase in the standard rate of income tax, particularly if the main personal tax credits remain at the current levels.

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Reform of the PRSI contribution system

The Commission are proposing significant changes to the PRSI contribution system. Their proposals include:

- Removal of the salary cap (currently €75,037) on employee PRSI contributions.
- Moving to a single rate of PRSI for both employee and self-employed personal contributions.
- Extending PRSI and the health levy to share based remuneration such as unapproved stock options and share awards, which could result in an incremental cost of up to 9% for employees, and 10.75% for employers.
- Extending PRSI, health levy and the income levy to appropriation under an approved profit sharing scheme (APSS) and gains arising under approved Save As You Earn (SAYE) option schemes.
- Removal of the exemption from PRSI on investment income for employees, which again could result in an incremental cost of up to 8%.

- The abolition of the National Training Fund Levy.
- Allowing relief for trading losses in calculating PRSI liability (subject to a minimum contribution being payable).

The general thrust of these proposals will add significant additional PRSI costs to both individual taxpayers and employers. The Commission, however also recommends that the menu of proposals be seen as a package and any increase in PRSI be matched by a reduction in taxes on labour.

Given the financial costs associated with these proposed reforms, individual taxpayers should consider the following:

- Ensure that any income earned prior to these proposals becoming effective (potentially 1 January 2010) is paid in advance of that date.
- Review how these changes will affect any unexercised stock options, and consider if there is any financial merit in exercising in advance of any changes.

Employers should also:

- Consider how these proposed changes will effect the cost of operating share based remuneration schemes; and
- Review their internal systems in order to ensure that they will be capable of extracting the relevant information required to calculate any future PRSI liability.

If the proposed changes were to apply to all unexercised share options and unvested share awards from the effective date, employers could find that they have significant additional employer PRSI costs which they have not accrued for to date. As such, these changes could have significant implications on their current year profit and loss account.

Tax relief for re-training and up-skilling

While the Report recommends discontinuing or restricting a number of tax credits and reliefs it specifically recommends introducing a measure of tax relief for unemployed persons. Currently an employer may meet costs of up to €5,000, where an employee

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who has been made redundant re-trains or up-skills, without triggering a tax charge. The Commission recommends that individuals who are unemployed should be entitled to off-set any re-training costs they incur against income, subject to an annual limit, for the previous six years. This relief is likely to be similar to the seed capital scheme available to unemployed individuals who start up their own companies.

Residence rules

There has been much speculation in relation to Ireland's tax residence rules over the past year or so. Under current rules an individual is regarded as tax resident in Ireland if present in the State for 183 days or more in that year, or 280 days or more in that year and the preceding year combined. Since 1 January 2009 an individual is regarded as present in the State for a day if present at any time during that day (previously it was presence at midnight). Therefore it is possible to spend up to 139 days per annum in

Ireland without triggering tax residence, provided the aggregate limit of 280 days over two years is not breached.

In seeking to ensure consistency with other jurisdictions and taking account of the OECD model tax treaty, the report recommends that the current rules for determining tax residence of Irish citizens is supplemented by a permanent home and centre of vital interest test. This is likely to have a significant impact on certain individuals who could fall to be regarded as resident under the new rules, or who may have to make significant changes to their links to Ireland to continue to be regarded as non-resident.

Arising from the suggested changes to the residence rules, the Report recommends that the rule that allows an individual, who has made a gift of property to Ireland, to be regarded as neither resident nor ordinarily resident in Ireland despite being present in Ireland for significant periods of time to be discontinued.

Remittance basis & attracting key skills to Ireland

The remittance basis of taxation currently provides favourable tax treatment to individuals resident in Ireland who are not domiciled in Ireland or are Irish citizens not ordinarily resident in Ireland, in respect of income and capital gains arising outside Ireland.

While Irish tax (PAYE) applies to the earnings from a foreign employment exercised in Ireland, under the remittance basis non-Irish income and gains have not heretofore been liable to Irish tax; and this has been a significant benefit in attracting senior executives, and specialists with key skills, to Ireland.

The Report proposes the withdrawal of the remittance basis of assessment. It acknowledges that this is a significant change in the tax system, and recommends that there should be a lead time of three to five years before any changes takes effect.

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The removal of the remittance basis would bring both income from foreign employment duties carried on abroad, and non-employment income and capital gains of such non-domiciled individuals working in Ireland within the Irish tax net. This would make Ireland significantly less attractive as an investment location as senior international executives and other key skilled individuals would be less inclined to work here.

The Commission acknowledges the need for incentives to attract individuals with key skills to Ireland, and proposes that a rather restricted existing scheme be discontinued and replaced with a targeted skills based scheme, under which a tax deduction of 25% of the individual's total income (subject to a maximum deduction of €62,500) would be available.

As a standalone measure, this is likely to be inadequate in attracting such key talent to Ireland in the absence of the remittance basis, and is unlikely to be a substitute for the retention of same.

Refundable tax credits

A number of countries, including the US and Canada, operate a system which refunds tax credits where the individual does not have sufficient income liable to tax to use all his/her tax credits.

Currently in Ireland only mortgage interest relief and medical insurance relief, where relief is provided at source, are available where the individual is not liable to Irish tax.

The Commission did not recommend a move to refundable credits at this stage, and suggests that such a move should only be considered as a policy option if there is not an appropriate level of uptake of direct expenditure supports e.g. Family Income Supplement over a 5 year period.

Cap on tax-free ex-gratia termination payments

Following on from their proposal to cap the maximum tax-free lump sum which an individual can claim from a pension fund, the Commission have also recommended that a cap of €200,000

should apply to the maximum tax-free ex-gratia termination payment an individual can receive.

Taxation of social welfare

The report recognises that all income should be taxed equally and on this basis social welfare payments should be subject to tax. In addition the fact that some social welfare payments are not taxable is seen as a disincentive to work. However the report recommends that specific exemption from income tax should be available for Family Income Supplement, Domiciliary Care Allowance and the Respite Care Grant, while the taxation status of maternity benefit, adoptive benefit and health and safety benefit should remain unchanged.

Health levy

The Report contains some interesting comments and recommendations regarding the health levy. The Commission have recognised that the health levy, which applies at rates of between 4% and 5%, now equates to a tax and have recommended that it

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Contact

Mary O'Hara

mary.ohara@ie.pwc.com
+353 1 792 6215

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be merged into the tax system when economic conditions improve.

Should this proposal be enacted, it would greatly simplify the current PRSI system as it would eliminate the need for sub classes, meaning the system would be streamlined and much easier to understand. It would however mean that the current exemption from the health levy for specific groups of individuals (persons age 70 or over, low paid employees, medical card holds etc) would be lost.

Approved Share Option Schemes (ASOS)

The Commission have recommended the removal of the current income tax exemption on option gains realised on share options granted under an ASOS.

Save As You Earn (SAYE) share option schemes

The Commission have recommended that the current SAYE provisions be amended in order to allow Employee Stock Purchase Plans (ESPP) to benefit from the income tax exemption available under the SAYE provisions.

Employee tax credit

Whilst recognising the significant cost implications of their proposal, the Commission have recommended the reconstitution of the current employee tax credit as an earned income tax credit, which should be made available to propriety directors and self-employed individuals on a phased basis.

Tax relief for charitable donations

The Commission are proposing that all tax relief on charitable donations will be made directly to charities and be restricted to the standard rate of tax. They have also proposed that the minimum donation which qualifies should be reduced from €250 to €100, and a cap of €500,000 be introduced for both individuals and corporates, from which the charity can benefit.

Child benefit

Currently child benefit is exempt from tax which means that the payment is worth more to individuals liable to tax at the higher rate than those liable at the standard rate or indeed outside the tax net. In order to address this anomaly the Commission suggest

that child benefit should be taxable; however the Report also recommends that this should be benchmarked against alternatives such as means testing.

The report concludes that if a decision is made to tax child benefit then a child tax credit should be introduced to ensure those liable to tax at the standard rate or those currently outside the tax net are not adversely impacted.

Artists' exemption

The report recommends that the artists' exemption should be discontinued and that income averaging should be introduced as the method of taxing creative work. This is to take account of the time an artist might spend in creating an original work.

It is interesting to note that the Report recommends that sportperson's relief be retained, albeit subject to review and amendment. This is based on the economic activity generated by sporting events, and the relatively modest costs involved.

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mary.ohara@ie.pwc.com

+353 1 792 6215

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Appendix - Schedule of reliefs/credits considered

Tax credit/relief	Recommendation to discontinue	Recommendation to continue	Recommendation to amend/restrict
Single persons tax credit		○	
Married persons tax credit		○	
Single parents tax credit			○
Dependent relative tax credit	○		
Blind persons tax credit	○		
Age tax credit		○	
Age tax low income exemptions		○	
Incapacitated persons – employment of a carer allowance			○
Employee tax credit			○
Relief of union subscriptions	○		
Film investment scheme		○	
Business expansion scheme		○	
BIK exemption of certain employer provided personal security			○
BIK exemption on travel Passes		○	
Exemption on scholarships		○	
Income tax artists exemption	○		
Income tax sports persons exemption			○
Seafarers tax credit	○		
Tax exemption on certain allowances to members of the Oireachtas	○		
Income tax exemption on payments under Scéim na Bhfaghlaimeóirí Gaeilge	○		
Tax exemption for credit unions		○	
Annual exemption for credit union dividends on special term accounts		○	
Income tax relief on certain deeds of covenant		○	
Income tax exemption on certain war pensions		○	
Income tax relief for certain long term unemployed and double corporation tax deduction in respect of the payroll costs associated with employing such individuals		○	
Relief for certain third level fees		○	
Tax exemption of statutory redundancy payments		○	
Relief on certain ex-gratia termination payments			○

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mary.ohara@ie.pwc.com

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Tax credit/relief	Recommendation to discontinue	Recommendation to continue	Recommendation to amend/restrict
Relief for certain retraining costs on redundancy		○	
Tax exemption on job seekers benefit paid to systematic short term workers	○		
Income tax relief for compensation payments for loss of future earnings		○	
PRSI and health levy exemption on option gains	○		
PRSI, health levy and income levy relief on approved SAYE & APSS schemes	○		
Income tax relief under the ESOT provisions		○	
Income tax relief under the approved share option provisions	○		
Income tax relief for the purchase of new shares in their employer company by an employee	○		
Relief for certain training courses		○	
Home carers tax credit		○	
Income tax exemption on certain social welfare benefits including child benefit	○		
Income tax exemption on foster care payments		○	
BIK exemption on employer provided childcare	○		
Income tax relief under the rent a room scheme	○		
Income tax relief on local authority service charges	○		
Income tax relief on rent paid for private rented accommodation	○		
Mortgage interest relief			○
Medical expenses relief for nursing home expenses	○		
Relief for PHI contributions		○	
Relief for private medical insurance			○
Relief for long-term care policies	○		
Incapacitated child tax credit	○		
Payment of tax by donations of certain heritage items			○
CGT exemption for certain works of art on public display			○
Income tax relief for expenditure on certain heritage properties and gardens	○		
BIK exemption on employer provided art objects displayed in a heritage building or garden	○		
Income tax relief on certain charitable donations			○
Income tax relief on certain donations to sports bodies			○
Tax exemption on lotteries		○	

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Contact

Timothy O’Rahilly

timothy.orahtilly@ie.pwc.com

+353 1 792 6862

Pension & retirement planning

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- The tax free retirement lump sum restricted to €200,000
- Approved Retirement Funds should be more widely available
- Lifetime pensions cap to be reduced
- Corporate pensions regime unchanged
- Miscellaneous other matters to be considered



Timothy O’Rahilly
Tax & Legal Services
PwC Ireland

Introduction of SSIA-type pension scheme

The Commission proposes that an SSIA-type plan would run alongside traditional pension plans whereby the Exchequer would pay €1 for every €2 paid by the individual. An annual limit of €3,300 would apply to the combined contributions. Investment growth would be liable to tax at the standard rate (or some slightly higher rate) and, at retirement, there will be no tax payable. In limited circumstances the funds could be accessed before retirement.

While the intention of the proposal seems to be to target unemployed persons, individuals on career breaks etc., the scheme as proposed only excludes individuals who are members of defined benefit pension schemes. If the scheme is introduced in this way it could lead to a significant take up as self employed

persons and members of defined contribution schemes are likely to regard the arrangement as very attractive.

Link between personal pension contributions and tax relief broken, replaced with State contribution

The proposal would mean that all pension contributions would attract the same effective tax benefit. This means a reduction in benefit for top rate taxpayers but an increase in benefit for persons on the standard rate of tax and those individuals who do not pay tax. It is proposed that for every €1.60 of personal pension contribution the State would top-up the pension by a further €1 (38% of the combined fund). This is the equivalent of an income tax deduction at an income tax rate of 30% and relief for PRSI/levies etc of around 8%. To encourage new pension savers there would be a ‘kick-start’ phase

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Timothy O’Rahilly

timothy.oraahilly@ie.pwc.com
+353 1 792 6862

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within the first 5 years where the rate of State contribution would be €1: €1.

This proposed system would operate under the ‘relief at source’ approach as currently applies for mortgage interest and healthcare costs.

Tax relief on employee pension contributions is generally operated through the payroll system which means that the contributions are not subject to PRSI. A move to a “relief at source” approach will mean that the amount of the pension contribution will be subject employer PRSI (10.75%) and may also be liable to employee PRSI. This could result in significant costs to employees/employers.

Employees paying tax at the marginal rate might consider reviewing their pension scheme arrangements to move away from personal contributions (‘relieved’ at an equivalent rate of 30%) to employer pension contributions (still exempt from income tax at the 41% rate).

It might also make sense for top rate taxpayers to consider optimising their pension contributions now for 2008 and 2009 before any reduced rates are announced. Standard rate taxpayers may be inclined to postpone any such payments.

Tax free retirement lump sums restricted to €200,000

The Report proposes that the current lump sum rules (up to 25% of the fund or 1.5 times final salary) should remain but the tax free portion should be capped at €200,000. The excess lump sum above €200,000 would be taxed at the standard rate. The current lump sum limit is €1.35m

Individuals with large pension sums where the tax free lump sum entitlement currently exceeds €200,000 should review their own circumstances to consider an early exit from their pension plan in advance of any possible restrictions.

Approved Retirement Funds (ARFs) should be more widely available

ARF options are currently available to the holders of personal pension plans, AVC funds and to proprietary directors. ARFs provide an alternative to the purchase of an annuity on retirement and provide the holder with great flexibility in accessing their funds. Any remaining funds may pass to the holder’s family after the individual dies.

The Commission suggests offering ARF options to all Defined Contribution pension members (therefore excluding Defined Benefit members).

Whilst Defined Benefit members are outside the ARF regime there may be planning possible around the transfer near retirement to a Defined Contribution scheme. Professional advice should be taken before electing to give up a Defined Benefit promise in favour of the flexibility of an ARF.

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Timothy O’Rahilly

timothy.oraahilly@ie.pwc.com
+353 1 792 6862

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Lifetime pension cap to be reduced

The Commission suggests the reduction of an individual’s lifetime cap on pension fund size. The suggestion is that there should be a correlation between the size of the fund and the income amount on which an individual may base annual pension contributions (currently €150,000). If this proposal is introduced the lifetime cap would be reduced from its current level of €5.4m to approximately €3m.

Corporate pensions regime unchanged

There is no proposed change to the practice of employers funding for an employees’ retirement fund, death in service or long-term illness benefits. The tax free roll-up of investment and capital returns is still intact within pension schemes.

Employers will continue to obtain full corporation tax relief for payments made to an employees’ pension scheme having regard to their salary and service. The scope and timing of employer pension contributions is

generally more flexible than personal contributions and are not subject to the age related or annual earnings limits that apply to individuals. Corporate contributions remain exempt from marginal rate income tax for employees.

Miscellaneous other matters considered

The Commission suggested a tightening up of the practice whereby certain individuals – owner/managers in particular – maximise their corporate pension funding as they approach retirement.

Having reviewed the current age related contribution limits, the Commission suggested that, on balance, they should be retained. The annual earnings limit of €150,000 for individuals also remains unaltered.

To simplify pensions the Commission suggests a harmonisation of different pension products concerning retirement age, contribution and benefit limits, so we may see more movement on this area over the next year or so.

The Commission favours a ‘soft mandatory’ approach to pension scheme membership whereby individuals are automatically enrolled in employer pension schemes with a deliberate action needed to withdraw.

The Report also recommends that tax breaks on pension contributions should be displayed prominently on monthly payslips to improve the transparency and appreciation of the State support.

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Ronan MacNioclais

ronan.macnioclais@ie.pwc.com

+353 1 792 6006

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Ronan MacNioclais
Tax & Legal Services
PwC Ireland

Carbon tax

Background

In recent years, the Irish Government has announced a number of environmental-based initiatives including tax, grants, and energy efficiency incentives. Ireland has committed to reducing its greenhouse gas (GHG) emissions by 20% of 2005 levels by 2020 under the terms of the EU Climate Action and Renewable Energy Package 2008. Ireland has also committed to sourcing 40% of energy requirements from renewable sources by 2020 under the Government's White Paper on Renewable Energy Targets. Policy initiatives are required if we are to meet this target. The idea of introducing a carbon tax in Ireland was noted in the Programme for Government 2007 – 2012, and has received much media coverage since.

Ireland has an annual average GHG emissions target of 62.8m tonnes up to 2012. The Report comments that we are producing approximately 25% in excess of this. The source of Irish GHG emissions levels in 2007 were:

Carbon dioxide	68.13%
Methane	19.00%
Nitrous oxide	11.84%
F gases	1.03% combined

The combustion of fossil fuels remains the largest source of carbon dioxide emissions. Fossil fuels include peat, coal, gas and oil. Ireland is heavily dependent on fossil fuels, accounting for 96% of all energy use in Ireland in 2007. Once developed, energy generated from wind, wave and solar technology is carbon neutral. This has led to a number of tax based incentives to promote these as alternative energy sources.

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Ronan MacNioclais

ronan.macnioclais@ie.pwc.com
+353 1 792 6006

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Commission recommendation to introduce a carbon tax

It is against this background that the Commission was asked to consider “fiscal measures to protect and enhance the environment including the introduction of a carbon tax.” A number of other EU member states have already introduced carbon tax type regimes, including Denmark and Sweden.

Adopting the “polluter pays” principle, the Report recommends the introduction of a carbon tax based on the carbon content of fossil fuels consumed within Ireland. One of the primary aims of the tax will be to incentivise a move to alternative energy sources and hence act as a tool in driving climate change. While liberalisation of the electricity retail market will facilitate moves to carbon free neutral sources, a full market transition is not feasible.

What will the tax apply to?

The Report recommends that a carbon tax should apply to peat, coal, oil, auto fuel, LPG and natural gas consumed

within Ireland, for example oil that is burnt or used in a manufacturing process in Ireland. The collection mechanism is to mirror that applying to excise duties on mineral oils.

New arrangements would need to be introduced for those fuels which are currently not subject to excise duties (peat and natural gas) and for fuels for which there is a specific exemption from excise duties, for example diesel used on international air-routes.

The Report recommends that the tax would apply to imports of fossil fuels, which are then consumed in Ireland. The tax would not apply to exports of fossil fuels from Ireland.

Interaction with EU Emissions Trading Scheme (ETS)

It is recommended that the carbon tax would not apply to Irish companies which already operate within the ETS. Under the EU ETS each Member State has been given a limit on carbon dioxide emissions for the industries covered by the scheme. Each installation gets a carbon allowance

which must be compared to the actual emissions for a period. If the installation’s actual emissions exceed those permitted, additional allowances must be purchased from those operators who have excess allowances remaining. There are approximately 70 companies in Ireland operating with the EU ETS system in industries such as power generation and pharmaceuticals. If these companies are excluded from the carbon tax regime, on perhaps an initial basis until the current ETS regime expires in 2012, the initial impact on consumers will be reduced.

Single rate

The Report states that one single rate of carbon tax should apply across all sectors of the economy. However, it recommends that companies with binding emissions reduction targets with Sustainable Energy Ireland are accommodated.

Calculation of carbon tax

The tax would be based on the estimated amounts of carbon dioxide emitted from these energy sources

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Ronan MacNioclais

ronan.macnioclais@ie.pwc.com
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when they are consumed. It will be necessary to convert each fuel source to a comparable measure of carbon dioxide emission before the tax can be levied. The Report states that the internationally agreed standard for comparing the amounts of carbon dioxide emitted by different fuels is the ton of oil equivalent (TOE). When the fuel sources are converted to this TOE, a uniform carbon price can then be applied. For example, peat and coal have the highest TOE and hence will attract a higher level of carbon tax. Natural gas has the lowest TOE.

In terms of pricing, it is recommended that the tax be calculated by reference to the carbon price for trading under the EU ETS. A floor price is also advised with a suggestion of €20 per tonne. As the carbon price fluctuates on a daily basis under the ETS regime, it is advised that the carbon price for the purposes of calculating carbon tax be set at the price in the futures market for the next calendar year. This is currently €15.33.

The report estimates that, at a price of €20 per tonne, the following carbon tax levels would apply:

Petrol (per litre)	€0.047
Auto diesel (per litre)	€0.054
Natural gas (kwh)	€0.004
Light Fuel Oil (per litre)	€0.05367
Briquettes (per bale)	€0.48
Coal (per tonne)	€56.32

It is projected that a carbon tax, if imposed at this level, would raise additional tax revenues in the region of €480m in 2010.

How will the tax be collected?

The Report proposes that the tax be collected at the earliest point of supply in Ireland. It is envisaged that this will be the only revenue collection point so that the cost of the tax will be subsumed into the cost of supply/production in a manner mirroring the excise duty system. The tax will then be passed down through the supply chain to the final consumer. The Report does not prescribe any reporting obligations along the various stages of production.

One would, however, assume that there will be an onus on the supplier

to determine whether or not carbon tax is to be charged, for example if the purchaser is an ETS company. Documentary evidence to support this will probably be required, perhaps similar to the VAT Section 13A procedure.

The Report recommends using the existing mineral oils excise duty system for collecting the tax. Currently, excise duties on fuels are paid on a daily basis. As there is currently no deferred payment mechanism for excise duties on mineral oils, if this were to apply to carbon tax it would further increase cash flow difficulties for administrators of the regime and represent challenges for businesses which are not familiar with this scheme.

A visible tax

The Report recommends that the tax should be visible to the final consumer if the tax is to achieve its desired “behavioural change” objectives. While the Report does not detail how this would be achieved, what is probably envisaged is something akin to the plastic bag levy where the amount charged by the retail outlet is shown as

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Ronan MacNioclais

ronan.macnioclais@ie.pwc.com
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a separate item on the till receipt given to the customer.

The Report also does not consider the interaction between carbon tax and VAT. Bearing in mind that the carbon tax will be included in the cost of supply from the point of first consumption, it is likely for ease of administration that VAT will be levied on the carbon tax inclusive price thereby increasing the VAT burden for final consumers.

Additional cost?

The major issue for business will be to assess the potential impact on their costs arising from the introduction of the carbon tax, and its interaction with the ETS.

Funding of local government

The Commission was asked to consider the financing of local government, and considered commercial rates (dealt with under Property tax below), and water and waste charges.

Water charges

The cost of providing water services is increasing. The Report states that there was a gap of €394m between water charge income and water expenditure in 2007. Local Authorities currently levy water charges on business and commercial operators. Domestic homes are exempt. The Report states that the non-domestic sector cost recovery rate is only 73%.

The Report recommends:

- that non-domestic sector charges be increased to full cost recovery.
- the introduction of water charges for domestic homes. While it is recommended that this would initially be on a flat rate basis, a move to a volume based charge is envisaged over time. Ultimately full cost recovery for the domestic sector is recommended. Meters would need to be placed in homes. The Report recommends some level of incentivisation to encourage consumers to install meters in existing homes.

The introduction of water charges for domestic homes will be a very sensitive issue and in this regard the Report refers to a possible waiver for low income households.

Waste charges

The Report notes that cost recovery for local authorities on provision of waste facilities is in the region of 80%.

The Report recommends that:

- all consumers should pay for their own waste and that full cost recovery should be achieved.
- the current landfill levy of €20 per tonne be increased to divert waste away from landfill sites.
- income tax relief on service charges be abolished on the basis that it dilutes the “polluter pays” principle.
- waivers should be made available by all waste service providers, including private operators, for consumers who lack an ability to pay.

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ronan.macnioclais@ie.pwc.com

+353 1 792 6006

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Existing tax reliefs

Notwithstanding the increases in costs and administration which will arise on the introduction of the above measures, companies should bear in mind that there are a number of existing tax reliefs which could be availed of to mitigate the cost of these environmental charges.

These include:

- the Energy Efficient Capital Allowance Scheme, where companies can avail of 100% capital allowances in the year in which the expenditure is incurred on approved energy efficient plant and equipment.
- the capital allowance scheme for motor cars has been modified to favour cars with lower energy consumption and emissions.

- the allowance of leasing charges on business cars has also been linked to the carbon emissions levels of cars.
- tax relief is available for investment into renewable energy generation in the areas of solar, wind, and hydro power as well as biomass.
- the BES and SCS schemes have been extended to include investment in recycling companies which have IDA grant aid.
- the VRT system has been changed to link VRT rates to the emissions levels of cars.

The Report recommends that these measures be continued and that the accelerated capital allowances regime be extended to incentivise innovation.

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Timothy O’Rahilly
timothy.orahtilly@ie.pwc.com
+353 1 792 6862

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- Abolish stamp duty on the purchase of principal private residence
- Broaden the commercial rate base
- No change to stamp duty on commercial property
- CGT on windfall gains
- Recurrent tax on zoned development land
- Abolition of stamp duty relief on transfer of site to child



Timothy O’Rahilly
Tax & Legal Services
PwC Ireland

Introduce an annual property tax (APT) for residential property

One of the more controversial recommendations of the report which has attracted much media coverage relates to the introduction of an annual tax on residential property. This is one of the Commission’s key recommendations in relation to property as it regards APT as a more stable form of revenue for the Exchequer than property related transaction taxes, such as Stamp Duty. The Reports points to the volatility of transaction based taxes being demonstrated by the significant drop in Exchequer tax receipts since 2007 as a result of the collapse of the property market. The Commission also regards APT as an important part of the future financing of local government.

While the Minister for Finance has already indicated his unwillingness to introduce the APT, it is interesting to consider the Commission’s proposals. APT would impact on all home owners if introduced as proposed by the Commission. It would apply to all residential housing units (principal private residences and rented accommodation) with the exception of local authority and social housing and some other limited exceptions.

APT would be payable by the owner and would be calculated by reference to the open market value of the property using valuation bands. House owners under low income thresholds would be exempted from the tax.

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Contact

Timothy O’Rahilly

timothy.orahtilly@ie.pwc.com
+353 1 792 6862

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- Introduce an annual property tax (APT) for residential property
- Abolish stamp duty on the purchase of principal private residence
- Broaden the commercial rate base
- No change to stamp duty on commercial property
- CGT on windfall gains
- Recurrent tax on zoned development land
- Abolition of stamp duty relief on transfer of site to child

While the Commission does not make any suggestions regarding the rate at which APT would be calculated, the Report suggests that the rate should not seek to replace the windfall receipts from stamp duty which arose in the property market in the years 2003 to 2007, but should provide the Exchequer with long term stable receipts.

Notwithstanding the fact that no APT rates are suggested, the Report does contain illustrative calculations for the *tax yield* which uses APT rates of 0.25% and 0.30% - please see details opposite for indicative liabilities.

As APT would apply to second homes and rented residential property, the Commission recommends the abolition of the €200 annual charge on non-principal private residences.

Abolish stamp duty on the purchase of principal private residence

In conjunction with the introduction of APT, the Commission recommends that stamp duty on residential housing units acquired as the purchaser’s principal residence be zero rated. Stamp duty would continue to apply to investors.

Illustrative APT liabilities based on yield calculations

	Valuation band	Charge per property 0.25%	Charge per property 0.30%
	€	€	€
A	0 - 150,000	188	225
B	150,001 - 300,000	563	675
C	300,001 - 450,000	938	1,125
D	450,001 - 600,000	1,313	1,575
E	600,001 - 750,000	1,688	2,025
F	750,001 - 1,000,000	2,188	2,625
G	1,000,001 - 1,500,000	3,125	3,750

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Broaden the commercial rate base

The Commission recommends the introduction of measures aimed at broadening the commercial rate base. These measures would include rating State properties, amending the relief provisions for vacant properties, and part rating of third level and professional institutions.

No change to stamp duty on commercial property

The Commission decided that it was not in favour of narrowing the existing tax base by reducing stamp duty on commercial property and there was no scope to finance a reduction by increasing commercial rates. The Commission also found that Irish stamp duty rates on commercial property are not much higher than in the EU and that leaving the rates unchanged would provide some certainty to the commercial property market for the longer term.

CGT on windfall gains

The Commission recommends that windfall gains arising from increases in land values due to rezoning decisions should be subject to an additional capital gains tax charge. The Report is

silent in the level of additional tax and the timing of the tax payment.

Recurrent tax on zoned development land

The Commission also recommends the introduction of a recurrent tax for zoned development land where the zoned land is not developed. This would apply to all development land – residential and non-residential. This tax would apply as soon as the land is capable of being developed. However, the Commission accepts that reasonable allowance should be made for delays in developing the land where those delays are outside of the control of the owner. In addition, there would be certain exclusions, for example, in the case of a farmer who owns land that has been rezoned but who intends to continue farming the land. The method used to calculate this tax and the likely rate of tax are not dealt with in the Report.

Abolition of stamp duty relief on transfer of site to child

The Report recommends the abolition of the stamp duty exemption on a transfer of a site to a child.

There is currently an exemption available for the transfer of a site from parent to child where the child is to build a PPR on the site and the value of the site does not exceed €500,000. The exemption applies to the footprint of the house plus up to 1 acre for enjoyment as gardens.

The Commission regards this exemption as conferring a significant benefit on buyers whose parents have such land to transfer to their children over other buyers who are not in a position to benefit in the same way. On the transferor side, there is also an exemption from CGT for the parent disposing of the site in these circumstances. The Report also recommends the abolition of this exemption on the basis that it is inequitable for a gain on such a disposal to be treated any different to a gain on the disposal of any other asset.

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Colm Kelly

colm.r.kelly@ie.pwc.com

+353 1 792 6383

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- Indexation relief for chargeable gains
- Tax administration and regulatory burden
- Anti-avoidance
- Stamp duty on financial cards
- Excise duties

Indexation relief for chargeable gains

The Report recommends the reintroduction of indexation relief for chargeable gains, thereby excluding gains attributable to inflation from the charge to CGT.

Tax administration and regulatory burden

The Commission has reviewed the regulatory framework of how the tax system operates in practice.

In terms of Tax administration, the Commission has made some specific recommendations, including:

- Entitlement to withholding tax clearance in respect of interest, dividends, and royalties should be self-assessed.
- The 35% rate of Relevant Contracts Tax should be reduced to ensure

that the rate applicable is at a level that should not place taxpayers in a significant overpayment position.

- Introduction of flexibility by Revenue in dealing with the application of interest and penalties in bona fide situations where there is no loss to Revenue.

Anti-avoidance

In the report, the Commission states that it is of the opinion that tax avoidance offends the principal of equity and can undermine the tax base. Two recommendations are made:

- **Specific anti-avoidance:** The Commission recommends that where tax avoidance is identified and demonstrates a weakness in the law, specific legislation should be enacted to prevent any such avoidance.

- **General anti-avoidance:** The Commission comments on the general anti-avoidance provisions that were introduced to Irish tax legislation 20 years ago. It recommends that the effectiveness of these provisions should be reviewed in order to assess their effectiveness as a tool to tackle tax avoidance. In this context, the Report recommends that consideration is given to introducing a time limit in which the Revenue Commissioners are required to make a decision on a specific issue.

Stamp duty on financial cards

The Report recommends the phasing out of stamp duty on credit / charge / debit / ATM / combined cards to promote the move to a cash-free society.

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Excise duties

Alcoholic beverages and tobacco products

The Report makes no recommendations regarding the duties on alcoholic beverages or tobacco products. However, it states that the policy approach in determining the level of excise duty on these products should take account of factors such as the impact on health, public order issues, affect on cross border trade and other social issues.

Mineral oils

The Report recognises that there is an anomaly in the way duty is collected on mineral oils. There is a deferral system in place for other excise products whereby the payment of duty can be postponed for up to a month. However, duty on mineral oils must be paid on the same day the oil leaves the bonded warehouse.

The Commission recommends that the deferral system be introduced for mineral oils. However, it recognises that this would result in cash flow cost to the Exchequer. It further recommends therefore that the change be structured to avoid this cost, for example by a once off advance payment in the year of change.

Vehicle registration tax (VRT)

The Report sees merits in linking pollution costs more closely to the actual creator of pollution. It recommends the phasing out of VRT as part of the restructuring of the tax treatment of Motor Transport.

It recognises the potential impact on the CPI, problems dealing with current fleets, and impact on rural dwellers where they may not be alternative transport options. It recommends therefore that phasing be done over a 10 year period.

The Report's recommendation to restructure the tax treatment of motor transport envisages the phased replacement of VRT by "taxes on usage" which could comprise:

- increased fuel charges
- road pricing

The usage taxes would be phased in over a 10 year period to minimise the impact and allow a more gradual increase in the price of fuel.

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These results are based on the year-ending Q2 2009 figures, with a sample size of 100 primary buyers of tax advice in Ireland.

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Colm Kelly Head of tax & legal services Alan Bigley company administration services, pensions Sean Brodie VAT, revenue audit services Paraic Burke construction, international structuring Mark Carter employment taxes, global mobility Tom Corbett VAT Gearóid Deegan employment taxes Jean Delaney pharmaceuticals, retail, customs & international trade Liam Diamond inward investment, international structuring Enda Faughnan banking, capital markets, securitisation, real estate John Fay VAT Denis Harrington international structuring, inward investment Mary Honohan consumer products, retail John Kelly pharmaceuticals Susan Kilty technology, entertainment & media Ronan MacNioclais international structuring, M&A, energy / sustainability Teresa McColgan business and wealth services Caroline McDonnell VAT Jim McDonnell banking, capital markets, alternative investment management James McNally pharmaceuticals, stamp duty Carmel O'Connor utilities, consumer products Terry O'Driscoll international structuring, M&A, consumer products Mary O'Hara employment taxes, reward, workforce reshaping services John O'Leary banking and insurance Tim O'Rahilly business and wealth services Feargal O'Rourke technology, international structuring, inward investment George Reddin services, public sector Dermot Reilly business and wealth services Gavan Ryle transfer pricing Joe Tynan technology, international structuring Pat Wall inward investment, insurance, investment management Eugene O'Riordan Cork, international structuring, business and wealth services Anita Kissane Limerick/Galway, corporate tax, VAT, business and wealth services Ronan Furlong South East, business and wealth services