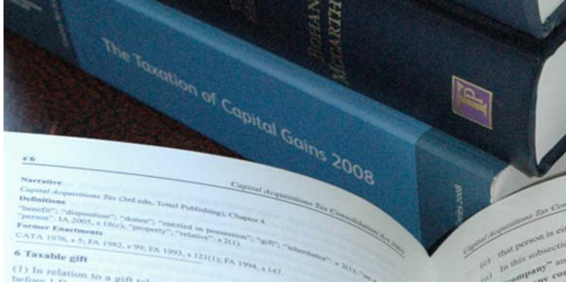

O'HANLON TAX LIMITED

Finance Act 2008

The Finance Act 2008, signed on 13 March 2008, contained provisions for the introduction of the new "VAT on Property Regime".

It also contained legislation intended to strengthen the existing tax anti-avoidance measures, including adjustments to the terms of the General Anti-avoidance Provision contained in S.811 TCA. Some of the main provisions are reviewed below.

Stamp Duty: Residential Property

New stamp duty rates were introduced for residential properties.

Value	*Rate*
First €125,000*	0%
Next €875,000	7%
Balance	9%

⇒ *First time purchasers are exempt from stamp duty from 31 March 2007.*

⇒ *Purchases up to €127,000 remain exempt post-FA 08.*

The Act also states that the value of contents can be excluded in determining the stamp duty rate for residential property.

Stamp Duty: Residential Leases

The threshold for stamp duty exemptions on the grant of a lease for an indefinite term, or for a term which does not exceed 35 years, is being increased to annual rent of €30,000 (previously €19,050).

Stamp Duty: E-Stamping

The Finance Act provides for the introduction of a system of e-stamping of instruments, allowing on-line stamping (subject to Ministerial Order).

Revenue envisages that the service will allow 24/7 access to stamping, with an instant stamp in up to 90% of cases.

This service is scheduled to be introduced in the second quarter of 2009.

Stamp Duty: First Time Buyers

The 5 year occupation condition for first time buyer relief has been reduced to 2 years, as indicated in the Budget. The reduced time limit applies to deeds executed on or after 05 December 2007.

In addition to this, if the deed was signed before 05 December 2007, but the property is not rented out until 05 December 2007 or later, no clawback of the relief will arise if the owner is in the third, fourth or fifth year of ownership.

The Act has new anti-avoidance provisions intended to restrict relief to genuine first time purchasers.

The relief is available to first time purchasers who use their "own means", which may include an "unconditional gift" or "bona fide loan evidenced in writing" made for the purposes of the purchase.

If the donor of a gift, or lender of a loan, is not a party to the purchase deed, but occupies (or intends to occupy) the property, or if there is an agreement that he can have the dwelling house (or part of it) transferred to him after the purchase, then the benefit will not be regarded as an unconditional gift or bona fide loan.

The new provisions do not extend to gifts or loans from parents. They apply to instruments executed on or after 31 January 2008.

Stamp Duty: Transfer Of Site To Child

The stamp duty exemption for the transfer of a site to a child for the purpose of constructing a principal private residence will apply to sites worth €500,000 or less (previously €254,000).

The relief applies to instruments that are executed on or after 05 December 2007.

CGT: Transfer Of Site To Child

The stamp duty exemption for the transfer of a site to a child for the purpose of constructing a principal private residence will apply to sites worth €500,000 or less, for instruments executed on or after 05 December 2007. Previously this relief was only available for sites worth €254,000 or less.

The Act also has a provision, backdated to 06 December 2000, clarifying that the threshold applies where parents who own land jointly transfer a site to a child.

CGT: Retirement Relief

Retirement relief is now available on the decommissioning of fishing vehicles under the EU Decommissioning Scheme, although this legislation was subject to a Ministerial Order (which has now been introduced).

Certain conditions of the relief are relaxed, i.e. the age requirement is 45 (generally 55), and the period of ownership and use is 6 years (generally 10 years).

A bona fide test was introduced for retirement relief. A disposal on or after 31 January 2008 must be for bona fide commercial reasons, and must not be part of an arrangement the main purpose, or one of the main purposes, of which is to avoid tax.

CGT: Dissolution Of Farming Partnership

The CGT relief mentioned in Budget 2008 on the dissolution of farming partnerships has been introduced.

No gain will arise on the partition of an asset that has been owned and used for 10 years in the farming partnership.

On a subsequent taxable disposal of the asset, the acquiring former partner will take the original base cost and date of acquisition of the asset.

The relief has a window period running from the date of passing of the Act to 31 December 2013.

CAT: Time Limit for Applying for Refunds

The Act provides that from 31 January 2008 the 4 year time limit for repayment of overpaid CAT will start to run from the date of payment of tax (provided that the tax has been paid on time, i.e. within 4 months of the valuation date).

If the CAT is paid late then the time limit will run from the valuation date.

CAT: Double Taxation Relief

S.106 CATCA 03, which provides for CAT Double Taxation Agreements, has been amended so that a DTA only has force of law once it has been approved by the Dáil.

The Agreement must also be included in a new DTA Table in the CATCA 03.

VAT: VAT on Property

The Finance Act sets out the new VAT treatment of immovable property, with some key amendments to the proposals set out in Annex E of the Budget proposals.

The new rules came into effect on 01 July 2008 and the main points are-

⇒ Residential property will continue to be subject to VAT at 13.5% on a first sale by a builder or developer.

⇒ Commercial property will be subject to VAT at 13.5% on a first sale when “new” by a builder or developer.

⇒ A building may be a “new” building for up to 5 years after completion.

⇒ A first supply of a “new building” will be taxable.

⇒ A subsequent supply of a “new “ building within the 5 year VAT window will be subject to VAT unless the building has been occupied for at least 2 years at the time of supply.

⇒ A commercial property will be subject to VAT at 13.5% on a first sale when “new” by a builder or developer. A building can re-qualify as a “new” building if it is refurbished or adapted for a materially altered use.

⇒ The supply of an old building will not be subject to VAT. However a landlord/vendor will have the right to “opt to tax” leases to parties (and the proposed restriction to those with a right to not less than 90% VAT recovery has not been introduced).

⇒ A capital goods scheme has been introduced, which allows a deduction for input VAT by reference to the use of the property for the first 12 months of full use.

⇒ There will be an annual review by the owner of the use to which a property is put, for the following 19 years, and if there is a change in use (to a VAT exempt use) a VAT adjustment may be required.

  This should result in a level of VAT being recovered that reflects the period during the 20 years when the property was used for making a VAT supply.

⇒ Most leases will be exempt from VAT (unless they are the equivalent of ownership of the property in which case they will be taxed in the same way as freeholds).

⇒ There will be an option to tax rents on commercial buildings at 21% where the landlord and tenant are not connected.

If the building is within the capital goods scheme, cancellation of the option to charge VAT may result in a capital goods readjustment .

⇒ Transitional measures will facilitate the changeover from the old VAT rules to the 2008 regime.

Income Tax: Preferential Loans

The rate for a BIK of a preferential loan from an employer has increased from 4.5% to 5.5% for home loans.

The deemed interest rate for other BIK loans has increased from 12% to 13%.

Income Tax: Salary Sacrifice Agreements

The Act provides a legislative basis for two existing salary sacrifice arrangements, which were allowed by concession.

Under the Travel Pass Scheme employees can sacrifice salary to purchase certain travel passes without a BIK charge.

Under the Approved Profit Sharing Scheme employees can allocate a percentage of salary towards the purchase of employer shares.

The amount sacrificed must be earned in the tax year in which the sacrifice is made.

Energy Efficiency

Provision is made for an immediate write-off of capital expenditure on certain energy-efficient equipment.

The allowances are available on equipment such as electric motors, lighting, and building energy management systems (replacing the normal 8 year write off period). Leasing companies are excluded from claiming this relief.

The Finance Act also included two provisions aimed at accommodating the securitization of greenhouse gas emissions allowances in Ireland.

Electricity Tax

The Minister introduced an excise duty on electricity as required under the EU Energy Tax Directive (No.2003/96/EC), which will apply to supplies on or after 01 October 2008.

CT: Preliminary Tax Thresholds

The preliminary corporation tax threshold for small and start-up companies was amended for payment dates arising after 05 December 2007.

The small and start-up company threshold was increased form €150,000 to €200,000. Small companies can pay preliminary tax of 90% of their expected final tax liability, or 100% of the previous year's tax liability.

Start up companies that do not expect their tax liability for the first year to exceed €200,000 do not have to pay preliminary tax in the first year.CT:

Close Company Surcharge

The Finance Act introduces an election allowing dividends paid by one Irish close company to another Irish close company after 31 January 2008 to be disregarded for company surcharge purposes.

Vehicle Registration Tax

The rate of VRT has been linked to the level of CO2 emissions of motor vehicles, as announced in the Budget, with a sliding scale being introduced. The new rates apply from 01 July 2008.

The rebate available to buyers of hybrid vehicles will change from the current amount of 50% of VRT to a maximum of €2,500, again with effect from 01 July 2008 (making it potentially more economical to buy before this date).

Business Expansion Scheme (BES) & Seed Capital Scheme (SCS)

The qualification requirements for BES & SCS recycling companies have been relaxed. From 01 January 2008, a recycling company will also be able to qualify for the BES or SCS where it has received approval for a grant or financial assistance, or written confirmation that a qualifying environmental services proposal has been received.

Some amendments were made to the BES and SCS schemes following on from the issue of EU approval for the extension of the schemes.

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