OHT Guide: Finance (No. 2) Act 2013

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The Finance (No 2) Act 2013 was signed on 18 December 2013 and the key provisions of the legislation are set out below.

Property Incentives

Home Renovation Incentive (HRI)

Tax relief has been introduced for renovation work carried out from 25 October 2013 to 31 December 2015 on a taxpayer's principal residence. Qualifying work includes extensions, renovations, fitting windows, plumbing, tiling, plastering and similar activities which are subject to VAT at the 13.5% rate. The taxpayer must spend at least €5,000 and the credit is capped at €30,000 and can be claimed over the two years following the year in which the work is carried out. The first claim will be made in 2015 for 2013 work. If the cost is reimbursed (e.g. by receipt of a grant) the credit will be restricted accordingly.

The HRI scheme effectively passes on the VAT to the taxpayer by allowing a tax credit of 13.5% of the expenditure incurred. The home owners must be up to date on paying LPT and Household Charge and the builder must be tax compliant to qualify, so the scheme will encourage activity in the building sector and tax compliance for builders and tradesmen.

From April 2014, an electronic claims system will be operated by Revenue.

Revenue have published a guide to the terms of the scheme (click here).

Living City Initiative

The Living City Initiative was announced in Budget 2013 providing tax relief on the renovation of Georgian buildings in Waterford and Limerick. It is now being extended to include Cork, Galway, Kilkenny and Dublin and to cover all buildings built prior to 1915 in "special regeneration areas" in the relevant cities. The special regeneration areas have not yet been identified and are to be selected by the Minister. The wider scheme will come in when the original Living City Initiative is brought into effect by Ministerial Order.

CGT Property Purchase Incentive

In Finance Act 2012, CGT relief was introduced for gains arising on properties bought between 07 December 2011 and 31 December 2013 and held for at least 7 years. The Finance Act extends the relief to properties purchased before 31 December 2014.

Business Incentives

CGT Entrepreneurial Relief

A new CGT relief provides a tax credit where a taxpayer invests funds from CGT disposals made on or after 01 January 2010 in new business assets (subject to EU approval). The investment window will run from 01 January 2014 to 31 December 2018 and the investor must retain the new assets for at least 3 years. The credit available will be the lower of:

- the CGT paid on the disposal of assets, and
- 50% of the CGT on the new investment.

CGT Retirement Relief

Retirement relief was recently amended to encourage the early transfer of business assets. From 01 January 2014 a restricted level of relief will apply if the claimant is aged 66 years or older. Budget 2014 extends retirement relief to cover certain lands that are leased for 5 years or more, and disposed of to a person other than a child of the taxpayer. The amendment applies to disposals made on or after 01 January 2014, should encourage the early transfer of land first (by way of and long lease and then by sale).

Employment & Investments Incentive Scheme (EIIS)

The Employment and Investments Incentive Scheme (EIIS) replaced the Business Expansion Scheme (BES) following Finance Act 2011. The EIIS was listed

as a specified relief for the purposes of the High Earners Restriction (HER) but is now to be removed from the list of specified reliefs from 16 October 2013 to 31 December 2016. This means that high earning investors can claim tax relief on the maximum investment of €150,000.

Income Tax Exemption

An exemption from income tax (for income up to €40,000) will be available for individuals who have been unemployed for at least 15 months and set up a qualifying, unincorporated business. The relief will apply for the first two years of the new business but USC and PRSI will continue to apply so some tax will be payable on profits.

Film Relief

The amended film relief scheme announced in Budget 2013 is being brought forward from 2016 to 2015 . The new scheme gives production companies a tax credit based on the investment instead of providing an income tax deduction for investors. The scheme will now include "non EU talent" in the definition of "eligible individual".

A new 20% withholding tax has been introduced for payments made by film relief companies to performing artistes who are resident outside of EU and EEA Member States. A deduction certificate is to be issued by the company and returns must be filed electronically. The tax deducted will not be refunded. Allowable expenses incurred by the performing artiste will not be subject to the withholding tax and the provision is subject to Ministerial Order.

R & D Incentives

The limit on the amount of expenditure on qualifying R&D which can be outsourced to third parties is being increased from 10% to 15%, with a view to helping smaller companies engage in R&D.

Finance Act 2012 provided that the first €100,000 of qualifying R&D expenditure would benefit from the tax credit without reference to the 2003 base year and Finance Act 2013 increased this amount to €200,000. This amount is now being increased from €200,000 to €300,000.

Since 2012, a company with an entitlement to the R&D tax credit can surrender a portion of the credit to an employee who meets the definition of a 'key employee'. The key employee provision is in place in order to assist companies to attract key talent, by allowing a company to transfer the R&D tax credit to employees who meet certain conditions. The Finance Act removes the claw back of relief for an employee where the company made an incorrect claim for R&D relief and surrendered the tax credit to a key employee. This claw back exposure was seen as a barrier to the uptake of the relief by key employees, so the Act provides that the company will suffer the claw back instead.

VAT Business Measures

To assist the cash-flow of SMEs, the annual VAT cash receipts basis threshold for small to medium businesses is being increased from €1.25m to €2m with effect from 01 May 2014.

The 9% VAT rate for the hospitality sector has been retained, and the Finance Act removes the time limit so it is no longer a temporary measure.

Interest Relief for Investments in Partnerships

Tax relief was available for interest paid on loans to invest in partnerships, provided the purchaser was actively engaged in the partnership business. The Act abolishes this relief for new loans with effect from 15 October 2013. Relief on loans taken out prior to 15 October 2013 will be available on a reducing scale until 01 January 2017. The changes will not apply to a farming partnership loan.

International Companies

Exit Tax

Companies ceasing to be resident in Ireland face a tax on the deemed disposal of capital assets at market value when they leave. There have been a number of EU cases on exit taxes, and in response to recent ECJ decisions and infringement proceedings initiated by the Commission against Ireland the Minister is introducing a delayed payment regime from 01 January 2014.

A company can opt to pay exit tax in 6 equal annual instalments or to defer the tax until the assets are sold (or the 10 year anniversary of the exit if that comes first). Interest will arise on the deferred tax and a migrating company which defers tax will be required to file annual returns with Irish Revenue.

Stateless Companies

The Minister followed up on the Budget announcement that Irish incorporated companies will no longer be able to be "stateless" due to a mismatch between Irish rules and those of a treaty partner. The default position is that if an Irish incorporated company is not regarded as tax resident in a treaty partner jurisdiction because it is not incorporated there it will be tax resident in Ireland notwithstanding that it may not be managed and controlled here.

In his address to a Global Tax Policy Conference in Dublin Castle. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration said that Ireland's 12.5% rate was '*not an issue*' for the OECD. He confirmed that '*Ireland is a very open economy which plays by the rules*'.

Proposals Announced by the Minister

Pay and File Deadlines

Budget Day has been brought forward from December to October because of EU Regulations on Eurozone budgets. This is likely to involve a change in the tax pay & file dates but although the Minister launched a consultation process with a view to including a change in dates in the Finance (No.2) Act 2013, the Minister ultimately opted to defer any legislation to 2014 with effect in 2015.

The CGT filing date is tied to income tax, and will move with it. A third payment date has been suggested for CGT, so that tax would be paid in September, December and January each year. There is currently no proposal to change the CAT pay & file deadline.

Appeal Commissioners Reform

Michael Noonan announced a reform of the Appeal Commissioners in his budget speech but no detail has been provided at this stage. The Minister has engaged in a consultation process and the consultation document is available here.

Increased Taxation on Income

DIRT - Tax on Savings

The rate of DIRT has been increased by 8% (from 33% to 41%) and the exit tax that applies to certain life assurance policies and investment funds has also been increased to 41%. The increase applies to deposit interest paid or credited on or after 01 January 2014.

This measure is aimed at encouraging spending rather than saving but will impact those on low income such as pensioners whose other income is taxed at 20%.

One-Parent Family

The One-Parent Family tax credit which was available to both parents has been replaced with a new Single Person Child Carer tax credit from 01 January 2014, which will only be available to one parent (the principal carer of the child).

The child must reside with the claimant for the whole or the greater part of the relevant tax year.

Medical Insurance Premiums

Tax relief at 20% will only be available in respect of the first €1,000 of insurance premium paid per adult and the first €500 per child for polices renewed or entered into on or after 16 October 2013.

The Minister indicated in his Budget speech that this amendment is targeting "gold plated" insurance policies and the majority of policies holders will not be affected. However, Revenue have stated that 577,000 of Ireland's 1.09m health insurance policy holders (circa 52%) will be affected by the change.

The Department of Finance has published a factsheet (available here).

Top Slicing Relief

Top slicing relief reduces the effective rate of tax on income received in the form of an ex-gratia lump sum payment made on the termination of employment. In Finance Act 2013 the relief was capped at €200,000 and the Minister has now abolished it completely from 01 January 2014.

Stamp Duty

Stamp Duty Exemption for Shares

An exemption has been introduced for share transfers on the Enterprise Securities Market of the Irish Stock Exchange. Stamp Duty will continue to apply to other share transfers at a rate of 1%.

The Enterprise Securities Market (ESM) is one of the 3 markets operated by the Irish Stock Exchange and is designed for smaller companies at earlier stages in their development. This amendment is subject to a commencement order by the Minister for Finance.

Young Trained Farmers

The list of qualifications for Young Trained Farmers has been extended to include three new qualifications. Young Farmers with these specified qualifications will qualify for stamp duty relief on the acquisition of agricultural property.

Domestic Banks

Financial Institution Levy

A new banking levy is being introduced for 2014 for domestic banks. The contribution will amount to 35% of the DIRT paid by each institution in 2011. The levy will be in place for three years from 2014 to 2016.

Use of Losses

In 2009, a restriction was placed on the right of banks to use past losses (a “deferred tax asset”) to reduce tax. This restriction applied to banks that were partially re-capitalised by transferring property loans to the National Asset Management Agency (NAMA). The section which provides that this restriction will no longer apply for accounting periods commencing on or after 01 January 2014.

VAT

Anti-Fraud Measures

The Minister has taken steps to target the “shadow economy” operators and protect tax compliant businesses from unfair competition. Businesses which have not paid for supplies within six months will not be allowed an input credit and will have to repay any VAT recovered on those supplies. This could result in double collection of tax in that the supplier may have paid VAT to Revenue if he is on an invoice basis.

Revenue have been given a “quick reaction mechanism” allowing them to apply an emergency and temporary reverse-charge measure to certain goods or services to address sudden and “massive” VAT fraud. Revenue will also have a power to secure information from a business to assist in identifying VAT fraud.

Farmers’ Flat Rate Addition

The flat-rate scheme allows unregistered farmers (who cannot recover VAT on their expenses) to charge and retain a VAT flat rate sum when they make supplies. The farmers flat-rate addition is increasing from 4.8% to 5% on 01 January 2014.

The EU Commission objected to Ireland’s use of the farmer’s flat rate for animals supplied for a purpose which was not related to food so the Act provides that the VAT rate for transactions involving horses (which are not livestock intended for eating) and greyhounds will be 9% from 01 May 2014.

Pension

Pension Levy

The Minister is to abolish the 0.6% Pension Levy introduced in 2011 from 31 December 2014 and replace it with a levy of 0.15% on pension funds in 2014 and 2015. Both levies will apply in the tax year 2014, resulting in a total cost of 0.75%.

Contributions to pension schemes will continue to attract income tax relief at the marginal rate of tax.

Reduction in the Standard Fund Threshold

A limit or ceiling is imposed on the total capital value of pension funds, known as the Standard Fund Threshold (SFT). The SFT affects the level of benefits that an individual can draw in his lifetime from tax-relieved pension products and the level of pension contributions in respect of which tax relief is granted. This ceiling has been reduced from €2.3m to €2m from 01 January 2014.

Other Measures

Excise Duty

With effect from midnight on Budget night (15 October 2013) excise duty on a packet of 20 cigarettes was increased by 10 cent (with a pro-rata increase on other tobacco products).

Alcohol

Excise duty on a pint of beer or cider, and a standard measure of spirits has increased by 10 cent, and the duty on a 75cl bottle of wine is being increased by 50 cent.

Air Travel Tax

Air Travel Tax is a €3 tax charged on every departure of a passenger from an Irish airport (since 30 March 2009). The Act confirmed that the tax rate will fall to zero with effect from 01 April 2014 to support tourism.

Conclusion

The Finance (No. 2) Act 2013 was produced in the lead up to Ireland’s exit from the bailout on 15 December 2013, and the Minister for Finance indicated that the Government must continue with the policies contained in the last few Budget’s as Ireland's deficit is still too high. He said that the Government's focus now is to see how taxation measures can be used as an instrument of economic growth and job creation. He noted that there are currently no proposals to bring in tax changes in advance of next year's budget, but there will be an examination of the point at which single earners begin to pay the 41% rate of tax as this point is lower in Ireland than in many other countries.

The Minister warned that above all *"we can't go mad again"*, which would seem to signal that this Government will continue to take a conservative approach to taxation measures in the future.

Caveat: *These notes are intended as a general guide to Finance (No. 2) Act 2013 only. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*