Finance Act 2012
Capital Taxes

The Finance Act 2012 was signed on 31 March 2012 and the main capital taxes provisions are outlined below.

Capital Gains Tax

CGT Rate

As announced by the Minister in the Budget, the standard rate of CGT has been increased from 25% to 30% for disposals made on or after 07 December 2011.

CGT Retirement Relief

Section 598 TCA 97 provides retirement relief from CGT on disposals of business or agricultural assets. The relief applies to disposals by taxpayers who have reached the age of 55 years. Finance Act 2012 divided taxpayers into two categories for retirement relief purposes (i) those 55 – 65 (inclusive), and (ii) those aged 66 and over. For taxpayers 55 to 65, full relief is given on a gain if the amount or value of the consideration for the disposal does not exceed €750,000 (with some allowance for marginal relief if the consideration is just over this limit). For taxpayers aged 66 and over who dispose of qualifying assets on or after 01 January 2014 the ceiling for the relief is €500,000 (again with some provision for marginal relief).

There is a transitional provision so that if an individual who has attained the age of 66 years disposes of qualifying assets over the next 2 years (on or before 31 December 2013) the existing ceiling of €750,000 will continue to apply.

Section 599 TCA 97 previously provided a CGT retirement relief with no financial restrictions where the assets were passed on to a child or a qualifying niece or nephew. The Finance Act 2012 introduces a ceiling of €3m for this relief if the taxpayer is aged 66 or over and the disposal is made after 01 January 2014. If the market value of the qualifying assets exceeds €3m then relief shall be given as if the consideration for the disposal had been €3m. In effect the excess value over the ceiling will be subject to CGT.

Again, there is provision for full relief for individuals 66 and over who make a disposal by 31 December 2013.

CGT New 7 Year Property Relief

A new 7 year relief has been introduced for the disposal of land or buildings in the EEA (including Ireland). The relief applies to land or buildings acquired for a consideration equal to their market value (or not less than 75 per cent of their market value if they were acquired from a relative) in the period commencing on 07 December 2011 and ending on 31 December 2013. The property must have been held by the owner for at least 7 years after the date of purchase to qualify for the relief. In addition any income or gains derived from the land or buildings in the 7 years from date of acquisition must have been within the charge to income tax or CGT.

The section provides relief for 7 years of ownership by exempting the relevant portion of any gain on the eventual sale. If the taxpayer owns the land for 10 years then 7/10 of the gain will not be a chargeable gain. In addition, if any arrangements have been entered into in order to secure a tax advantage, and there is an arrangement which falls within the anti avoidance provisions for artificial losses in S. 546A, then the new 7 year relief will not be available.

Anti-avoidance Offshore Trusts

Section 579 TCA 97 attributes gains made by non resident trusts to Irish resident individuals. The Act strengthens the existing anti-avoidance by providing that where a beneficiary is neither resident nor ordinarily resident in Ireland in a year of assessment during which a gain accrued to the trustees, but was resident or ordinarily resident in an earlier year, and becomes resident or ordinarily resident in a subsequent year of assessment, the

gain will be assessed as if it arises in the year when the beneficiary returns to Ireland. The Act also closes off a loophole whereby a beneficiary of a foreign trust could avoid a CGT charge by arranging to be temporarily removed as a beneficiary of the trust, by providing that the gain will be deemed to arise when the taxpayer is reinstated as a beneficiary.

CGT Relief for Sporting Bodies

The Act introduced a "roll-over" type relief for Sporting Bodies by providing that the proceeds of a disposal by such a body will not be subject to CGT if the proceeds of the disposal (or the consideration for CGT purposes if that is greater) have been applied, within 5 years of receipt by the body, for the sole purpose of promoting athletic or amateur games or sports. Relief will also apply if the proceeds are donated for charitable purposes to a person or body of persons approved by the Minister.

Stamp Duty Rates

The Finance Act reduced the rate of stamp duty on non-residential property to a flat rate of 2% for instruments executed on or after 07 December 2011, with some provision for transitional relief if deeds were signed before 01 July 2012 and there was a pre-Budget contract.

Stamp Duty Reliefs

The Act provides for the abolition of consanguinity relief on the transfer of non-residential property from 31 December 2014.

A new Stamp Duty exemption has been introduced for company mergers including cross-border mergers and SE merger (a SE is a *Societas Europaea, i.e. a* European public limited-liability company).

Stamp Duty Full Self Assessment Regime

A number of measures have been introduced as part of the "modernisation of Stamp Duty" putting Stamp Duty on a self-assessment basis. The amendments (to be introduced on a date to be specified by the Minister) include the following:

The adjudication process is to be abolished.
A taxpayer will have the option of making an Expression of Doubt where genuine doubt exists.

A penalty of €3,000 is to apply for failure to make a return.

A surcharge of 5%/10% of tax is to apply for late filing of a return.

Until this new regime is introduced by Ministerial Order, the current regime will continue to apply.

Capital Acquisitions Tax

CAT Rates & Thresholds

As announced by the Minister in Budget 2012 the CAT rate is 30% from 07 December 2011.

The class (a) CAT threshold has been reduced from €332,084 to €250,000, the class (b) and (c) thresholds have increased slightly (bringing them to €33,500 and €16,750) and the provision for increasing CAT thresholds to allow for inflation has been removed. The current thresholds are set out in a table above and apply from 07 December 2011.

The rate of tax, and the tax free threshold that applies, are set by the date of gift or death, so the new CAT rate and thresholds should only apply if a death or gift occurred on or after 07 December 2011. However, it should be noted that when a benefit is appointed from a discretionary trust set up by a Will, the date of inheritance will be the date on which the appointment is made from the trust, and not the date of death.

CAT Rates & Thresholds

	07 Dec 10 - 06 Dec 11	From 07 Dec 11
CAT rate	25%	30%
Class (a) threshold	€332,084	€250,000
Class (b) threshold	€33,208	€33,500
Class (c) threshold	€16,604	€16,750

CAT Agricultural Relief

In general loans on assets are ignored when doing the "farmer test" to establish if agricultural relief will be available. However where an individual also holds an "off-farm" property which is his principal residence, any loan on the property may be deducted when carrying out the "farmer test". A new anti-avoidance provision has been introduced so that only loans which were taken out to purchase, improve or repair the property will allowed.

In recognition of the fact that relieving provisions which require residence in a particular EU State may breach EU legislation, the Finance Act provides that agricultural relief will no longer be clawed back if the beneficiary ceases to be resident in Ireland in the 3 years after the year the benefit is received.

CAT Secondary Liability for Solicitors

The section providing for the secondary liability to CAT for solicitors where there is a non resident beneficiary and personal representative has been amended. The new amendment resolves an anomaly in the legislation to copper fasten the secondary liability that will apply when a solicitor has been appointed under S. 48(10) CATCA 03 to act for a non-resident personal representative.

CAT Administration

The CAT pay and filing date has been changed back to 31 October each year with interest accruing from 01 November in that year. For the CAT year 2011/12 (stretching from 01 September 2011 to 31 August 2012) the CAT pay and file deadline is 31 October 2012.

Discretionary Trust Tax ("DTT")

From 08 February 2012, where a discretionary trust is provided for in a Will, the trust is to be treated for DTT purposes as constituted from the date of the disponer's death. This effectively reverses the judgment in the Irvine case (Revenue Commissioners v Cedric Christie & Others) which pushed the trigger for discretionary trust tax back to the date on which the trust could be constituted, which was normally the date of Grant for a trust over the residue of an estate on the basis that this was the date on which the assets passing to the trust could be identified.

The initial charge to DTT (6%) arises on the valuation date, and this provision has not been amended, so the 6% charge will arise on the death but will not fall due for payment until the level of the residue can be established.

The trigger date for the 1% annual charge has also been linked to the date of death, so the 1% charge will arise each year in the course of administration, but the valuation date provisions have been amended so that the 1% annual charges should not be payable until the valuation date for the initial 6% charge is payable. This is best illustrated by way of an example:

> *Sam Adams died on 09 February 2012 and by Will he leaves his 30 year old son, Nathan, a number of properties and some cash type assets. These assets are to be held in a discretionary trust set up by the Will. The Grant of Probate is extracted on 03 September 2012. A S. 117 case is brought by the deceased's daughter on 01 February 2013 and settled on 13 March 2015. The residue is not established until 31 March 2015.*
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> *Based on the above facts the trigger date for the initial charge to DTT is the date of death, 09 February 2012. The first annual DTT charge is triggered on 31 December 2013 and another annual DTT charge arises on 31 December 2014. The valuation date for the initial charge and the two annual charges that arise before that date will be 31 March 2015. Therefore, on 31 March 2015, when the trust can first be constituted, DTT at 8% of the value on that date will be payable.*

There is a 50% refund of the initial DTT paid, where the trust is fully distributed within 5 years of a relevant date. Prior to Finance Act 2012, this period ran from the date the trust was constituted in the case of a trust set up a Will. Post FA 12, this period runs from the date of death and if the period of administration is lengthy for some reason (for example if the administration is delayed by litigation) this could give rise to a scenario where the refund is not attainable as the relevant period has run out by the time the trust is constituted.

Discretionary Trust Tax (DTT) has been extended to cover "foundations" (the European equivalent of trusts).

The four month pay and file deadline for DTT has been reinstated, but interest will not accrue until the following 01 November.

Caveat: *These notes are intended as a general guide to the Finance Act 2012 changes, and formal tax advice should be obtained before any steps are taken that may have a tax effect.*

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