OHT Guide: Finance Act 2013

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Finance Act 2013

Finance Act 2013 was signed into law on 27 March 2013. When the draft legislation was first published it did not generate the same public interest as the publication (and emergency enactment) of the Irish Bank Resolution Corporation (IBRC) Act 2013 a week earlier, but the legislation contained in Finance Act 2013 should have a more direct impact on the day to day finances of the general public.

In the Finance Act the Minister developed the 10 Point Plan announced in the Budget to support Small and Medium Enterprises and introduced some new anti-avoidance measures. The key provisions of the Finance Act 2013 are discussed below.

Resting in Contract

There was existing stamp duty legislation to counteract tax avoidance arrangements which leave land resting in contract, but these provisions were subject to a Ministerial Order, which was never made. Finance Act 2013 removed these dormant provisions and introduced new legislation for instruments executed on or after 13 February 2013. Stamp duty (on the full value of the contract) will arise when there is: -

- a contract for the sale of Irish land if 25% or more of the consideration has been paid.
- any agreement or licence to carry out development work on land, if at least 25% of the value of the land is paid to the landowner, and
- any agreement for a lease for more than 35 years if 25 % or more of the agreed consideration has been paid.

The stamp duty is due within 30 days of the payment under the agreement. Transitional provisions prevent the stamp duty arising if there was a binding contract entered into before 13 February 2013.

Stamp Duty

The relief for young trained farmers has been extended to 31 December 2015.

A claim for associated companies' relief, or relief on reconstructions or amalgamation no longer needs to be supported by a statutory declaration or statement. S. 131 Stamp Duties Consolidation Act 1999 has been deleted to allow a vendor to give an indemnity to a purchaser in relation to stamp duty.

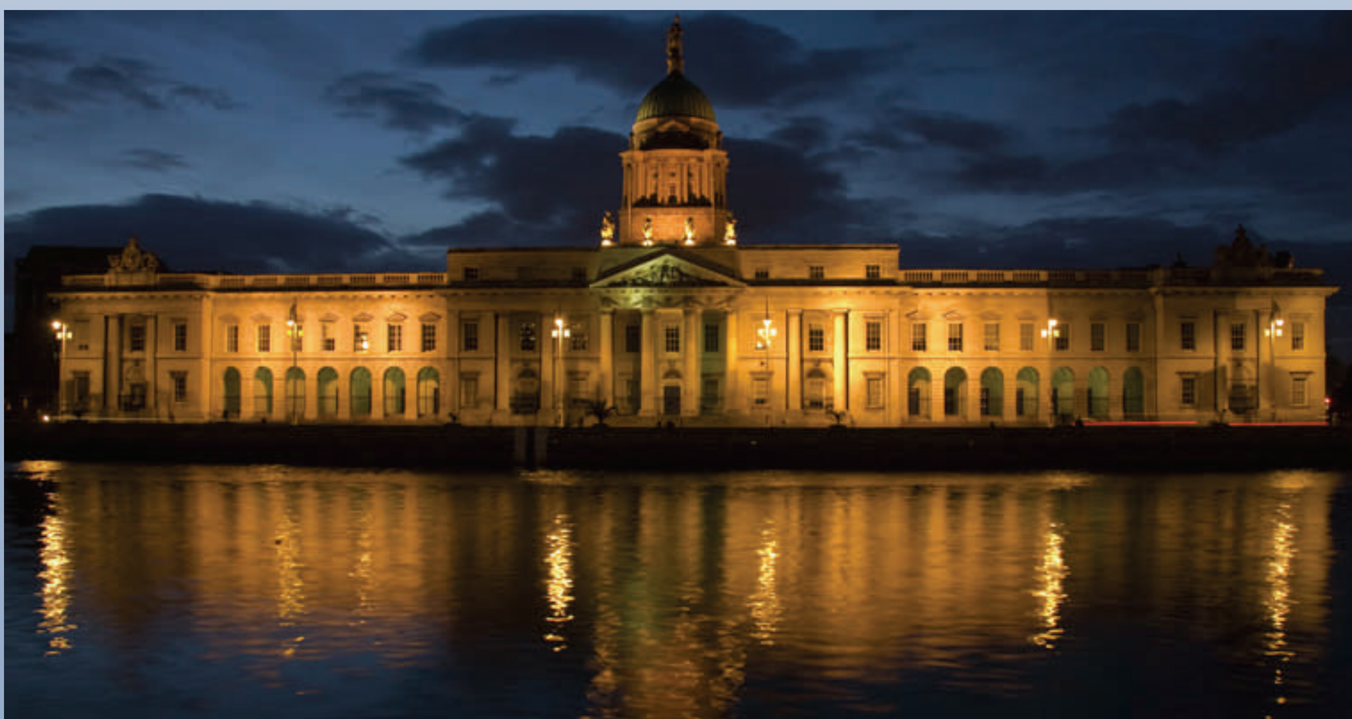
Capital Acquisitions Tax

The rate of CAT was increased to 33% and the CAT thresholds were reduced as set out in Budget 2013 (for detail on CAT rates click here).

A CAT exemption applies where ARF pension funds are inherited by a child of the deceased who is 21 years or over (as the funds are subject to income tax). This CAT exemption is being extended to PRSAs (Personal Retirement Savings Accounts).

Discretionary Trust Tax (DTT)

When the filing deadline was amended for mainstream CAT in Finance Act 2010, the interest provisions were



also amended so that interest starts to run on the day after the CAT pay & file deadline (01 November in 2012). The interest provisions are common to CAT and DTT so interest did not accrue on unpaid DTT until 01 November, regardless of when the DTT fell due. This anomaly has been removed so that interest arises on unpaid DTT from the DTT valuation date if the tax is not paid within four months. The DTT overpayments section provides that a taxpayer has four years from the valuation date to claim a refund of DTT, and this is extended to four years from the date on which the DTT was paid if the tax was paid when due (within 4 months).

Income Tax – Land Dealing Losses

The use of losses arising from a trade of dealing in or developing land has been reviewed with effect from 13 February 2013. If any part of a loan that has been taken out to acquire land as trading stock is written off by the bank the amount written off will be treated as trading income (eliminating any benefit of any trading deduction for the cost of land, or drop in value of land).

In addition some restrictions have been introduced for any individual who is not very active in the land dealing trade, i.e. any individual who did not derive more than 50% of his total income (for USC purposes) for that year and the 2 previous years from the trade of dealing in and developing land. The restrictions are that a loss claim can only be made for interest if the interest has actually been paid. In addition if a trading loss results from a fall in the value of land held as trading stock a loss claim can only be made on the disposal of the land.

Income Tax - Employee Benefit Trusts

Payments (including loans of cash or assets) to an employee from a trust funded by an employer will be deemed to be income for income tax and USC purposes. Revenue approved schemes are not affected.

Tax Free Termination Payments

A cap of €200,000 will apply to ex-gratia payments on the termination of an office or employment due to the death or disability of an employee or officer, bringing such payments into line with other termination payments. The excess over the cap of €200,000 is to be taxable in full, but may benefit from retraining relief. Foreign Service Relief (which gave relief where an employee worked abroad) is being abolished and top slicing relief is no longer available in respect of any payment in excess of the cap of €200,000.

Remittance Basis – Anti Avoidance

If income or gains are transferred to a spouse or civil partner, they become capital in the hands of the recipient. This opened up an opportunity for a non-domiciled individual (who is subject to tax on a remittance basis as income or gains are brought into Ireland) to transfer funds to a spouse or civil partner who could bring them into Ireland without a tax charge arising. This loophole was closed by providing that any such remittances of foreign income by the spouse or civil partner will be treated as a remittance by the non-domiciled individual. A similar provision has been introduced for gains.

Foreign Rents

The long accepted Revenue practice of not allowing an offset of foreign rental losses against other foreign income has been given a statutory basis.

Film Relief

Film relief has been extended for 5 years to 31 December 2020, but the basis of the relief has changed. Instead of providing relief for individual investors, the Minister has provided a tax credit of 32% for the producing company. If the tax credit exceeds the tax due the company will receive a payment for the tax credit.

Personal Insolvency

Tax provisions have been introduced to deal with the new Personal Insolvency Act 2012. The transfer of assets to a trustee for the benefit of creditors under Debt Settlement Arrangements (DSA) or Personal Insolvency Arrangements (PIA) will not trigger a balancing event or a claw back. The debtor remains subject to tax on income generated by assets that have been transferred to the trustee under the Act. Any transfer of assets to a personal insolvency practitioner will not trigger a CGT charge and the debtor will be liable to CGT if gains are made on disposal of those assets. Any write off of debt under a Debt Relief Notice (DRN), DSA or PIA will not be treated as a gift for CAT.

The Personal Insolvency Act 2012 has been amended to provide that any DSA or PIA must include provisions for the repayment of current Revenue debt and these tax liabilities have to be paid in priority to any other creditors. If the payments to Revenue are not made the Collector General may withdraw his agreement to any compromise of debts. For OHT's guide to the Personal Insolvency Act 2012 click here.

Real Estate Investment Trusts (REITs)

Tax provisions have been introduced for the Real Estate Investment Trust companies (REITs) announced in Budget 2013. A REIT is a listed property holding company traded on an Irish exchange, and is entitled to a tax exemption in respect of the income and chargeable gains of its property rental business.

The REIT must hold at least 3 properties, none of which can be worth more than 40% of the total property portfolio value. It must meet certain *"financing cost ratio"* targets and derive 75% of its aggregate income from the property rental business. The company must distribute 85% of its income from property and shareholders will be subject to Dividend

Withholding Tax on dividends. Anti avoidance provisions have been included giving rise to an income tax charge for the REIT if a dividend is paid to a shareholder who is a *"holder of excessive rights"* (i.e. 10% of share capital or voting rights).

Where a company becomes a REIT, the assets of the company will be deemed to have been disposed of and re-acquired at market value for CGT purposes. A company which is becoming a REIT will have to notify Revenue and file an annual electronic return.

CGT Retirement Relief

FA 12 amended the CGT retirement relief provisions to reduce the lifetime limit to €500,000 with effect from 01 January 2014, if the individual disposing of the asset is aged 66 or over. FB13 adjusts the relief to clarify that it will apply to disposals by individuals aged 66 years or over for a consideration of €3m or less, and to bring the consideration for any such disposal within the lifetime limit provisions.

AVCs

For a 3 year period a member of an approved scheme or a statutory scheme who has made AVCs is being given the option to access up to 30% of the AVCs made. The option does not include AVCs made for the purposes of purchasing notional service and employer contributions of any kind are excluded. Any sum transferred is deemed to be an emolument and subject to PAYE but the payments are exempt from USC and a PRSI exemption is to be provided.

AMRFs

The minimum guaranteed pension income threshold for ARMF purposes, and the maximum amount that must be placed into the fund, are being temporarily reduced to €12,700 and €63,500 (from €18,000 and €119,800 respectively). The reduced limits are to be revised back in Finance Act 2016. For individuals who have specified income of at least €12,700, their AMRF will automatically convert to an ARF on the date of passing of FA13. For individuals who have an AMRF in excess of €63,500 on the date of passing of FA13, the excess over €63,500 will become an ARF.

Value Added Tax

Receivers

A receiver or liquidator who takes over a business of supplying taxable goods or services, in the course of carrying on or winding up a business, is required to register, file VAT returns and pay any VAT due and account for any capital goods scheme adjustments. Where a property is transferred to a mortgagee or receiver in possession that mortgagee or receiver is treated as the capital goods owner for the purposes of the VAT CGS provisions.

Heritage Property Relief

Certain tax liabilities can be paid by donating heritage property (buildings, gardens and contents of buildings which are historically significant) to the Irish Heritage Trust or the Commissioners of Public Works. The credit has been reduced from 80% to 50% of the market value of the donated property, and the relief has been extended to cover outbuildings, yards and land with heritage gardens, and property donated to facilitate parking or access to the heritage building.

Withholding tax on Interest Payments

Companies and other parties who pay annual interest to persons who live outside Ireland have to operate withholding tax on interest payments (subject to limited exceptions). A withholding tax exemption has been given if interest is paid to exempt approved pension schemes, and the Act confirms that the exemption will remain in place for certain securities issued by IFSC or Shannon companies.

Balancing Charge on Intellectual Property

Where intellectual property (IP) is acquired by a company and capital allowances are available in respect of the IP, a balancing charge would not accrue to the company on a disposal of the IP for a value greater than the tax written down value where the disposal took place at least 10 years after the beginning of the accounting period in which the IP was acquired. This relief has now been modified so that the IP only needs to be held for 5 years for the relief to apply. As previously provided, the IP cannot be ultimately transferred to a connected company where capital allowances would be available to the connected company in respect of expenditure incurred in acquiring the IP.

Professional Services Withholding Tax (PSWT)

The list of accountable persons for PSWT purposes has been extended and the legislation has been amended to provide that where professional services are supplied by a partnership, PSWT deducted from the relevant payments will be apportioned between the partners, and each partner will be entitled to a credit or interim refund of the PSWT deducted.

Living City Initiative

Details of the Living City Initiative announced in Budget 2013 have been released. The scheme focuses on the conversion and refurbishment of dilapidated Georgian houses, and certain commercial retail properties in a "special regeneration area" which are to be specified by the Minister.

Commercial retailers will be entitled to relief in the form of accelerated capital allowances over 7 years in respect of qualifying expenditure incurred on the refurbishment of retail premises in special regeneration areas. The costs of refurbishment must be at least 10% of the pre-works value of the property. The high earners' restriction will apply to these allowances.

Residential relief will be granted in the form of a deduction from total income of the cost of refurbishment over 10 years (10% of the qualifying expenditure each year). The cost of refurbishment must be at least 10% of the pre-works value of the property and the property must be occupied as the sole or main residence of the claimant. The high earners' restriction does not apply to the relief for expenditure on residential premises. The scheme is targeted at owner/occupiers with property developers being specifically excluded from benefiting from the accelerated capital allowances on commercial retail properties.

As announced in Budget 2013

- The rates of CAT and CGT were increased from 30% to 33% from 06 December 2012.
- The rate of DIRT has risen to 33% with effect from 01 January 2013.
- The rate of exit tax on life assurance policies and investment funds increased by 3% to 36%.
- Individuals will no longer benefit from tax relief on charitable donations. From 01 January 2013, tax relief on charitable donations will be granted to the charity itself at a rate of 31%.
- Maternity Benefit is subject to income tax from 01 July 2013; as are adoptive benefit and health and safety benefit.
- Individuals over 70 years of age, and those who hold a medical card, who earn more that €60,000, now pay USC at standard rates.
- A scheme of accelerated industrial buildings allowances for buildings such as hangers used to maintain, or repair, commercial aircraft.

Ten Point Plan (Plus Two)

In Budget 13 the Minister announced a ten point initiative to help encourage a resurgence of business activity, and he added a further two points when the plan was incorporated in the Finance Act. The key provisions are the following:-

1. "Start up company" relief arising in the first 3 years of trading that is not used because of insufficient profits can be carried forward to later years.

2. The de minimus level of estate and investment income that must be retained in the company for the close company surcharge to take effect has been increased from €635 to €2,000.

3. The amount of initial expenditure that can be claimed for R&D tax credit purposes without reference to the 2003 basis period has been increased from €100,000 to €200,000.

4. The VAT "cash receipts" threshold has been increased from €1m to €1.25m.

5. The "BRICS" foreign earnings deduction is extended to Algeria, DR Congo, Egypt, Ghana, Kenya, Nigeria, Senegal & Tanzania.

6. FB 13 extended the EIIS and BES schemes for 7 years to 31 December 2020.

7. The stock relief provisions for all farmers (including young trained farmers) have been extended to 31 December 2015. For new claims made in 2012 and later years a business plan must be provided to Teagasc before the relief applies. Relief is capped at €40,000 per annum (where the first claim is made in 2012 or later) and there is a total cap of €70,000 over the course of the scheme (4 years). A stock relief deduction of 50% applies to qualifying farming partnerships.

8. A new CGT relief has been provided for farm restructuring, which includes the sale, purchase or exchange of agricultural land if Teagasc certify that the transaction was undertaken for qualifying purposes. The first sale, purchase or exchange must occur between 01 January 2013 and 31 December 2015 and the second must be within the following 24 months. Full relief applies if the consideration for the land acquired is equal to (or exceeds) the consideration for the land disposed of, and proportionate relief will be available in other cases.

9. The 'carried interest' provisions in the tax code have been reviewed to help small businesses to access venture capital funding.

10. A joint Revenue and Department of Finance public consultation has been announced to identify ways to ease the administrative burden of businesses.

11. Finance Act 2012 enabled a company to transfer R&D tax credits to a key employee. The definition of key employee is being revised by Finance Act 2013 to reduce the amount of time the employee must devote to R&D from 75% to 50%.

12. EIIS relief is being made available on the operation or management of hotels, guest houses, self-catering accommodation and similar establishments.

Conclusion

The content of the FB13 is largely in line with measures announced in Budget 2013 although there are some unexpected additional measures. The recent IBRC deal has not impacted significantly on the measures introduced in FB13.

We will have to wait until Budget 2014 to learn what impact the deal will have on future austerity Budgets.

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Caveat: *These notes are intended as a preliminary guide to some provisions of the Finance Act 2013 as initiated. The legislation is draft and the provisions may change substantially before Finance Act 2013 is enacted. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*