Finance Bill 2012
A Fair Deal?

Introduction

The Minister for Finance published the Finance Bill 2012 on 08 February 2012. The Bill implements the provisions announced in Budget 2012, but there were a number of additional measures introduced.

The Minister indicated that his aim is to achieve economic recovery, and job creation, and many of the measures introduced are directed towards developing businesses and creating economic growth.

"This Finance Bill is a further step towards economic recovery and regaining our fiscal autonomy. The achievement of these objectives will take time but we are making good progress in implementing our Programme for Government."

Michael Noonan

Stamp Duty

As announced by the Minister in Budget 2012:-

- The rate of stamp duty on non-residential property has been replaced by a flat rate of 2% from 07 December 2011.
- Consanguinity relief will not be available on the transfer of non-residential property from 31 December 2014.
- Transitional relief applies to deeds signed before 01 July 2012 if there was a pre-Budget contract.

Capital Gains Tax

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 Bill 2012 follows through on the Budget provision dividing taxpayers into two categories for retirement relief purposes (those under 66 and those aged 66 and over) and reducing the relief for disposals made by taxpayers aged 66 and over, to encourage taxpayers to pass on their business assets earlier.

The ceiling for the relief will remain at €750,000 (with some provision for marginal relief) for those aged between 55 years and 65 years. However for disposals made on or after 01 January 2014 by taxpayers who have attained the age of 66 years the ceiling for relief will be reduced to €500,000 (with some provision for marginal relief).

Section 599 TCA 97 provides a CGT retirement relief with no financial restrictions where the assets are passed on to a child or a qualifying niece or nephew. The Finance Bill 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.

The draft legislation (as initiated) appears to have removed relief for those aged 66 or over until 01 January 2014, but this may not be the intention behind the legislation, in which case the provision is likely to be amended as the Bill progresses.

CGT New Property Relief

The new relief promised in the Budget for gains on the disposal of properties acquired between 07 December 2011 and 31 December 2013 has been introduced.

The relief applies to land or buildings in the EEA (which includes Ireland) where the property is owned by the purchaser for at least 7 years from the date of acquisition.

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. The section provides that 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 Property Relief will not be available.

The Bill also strengthens an existing anti-avoidance provision by closing off a loophole whereby a beneficiary of a foreign trust could avoid a CGT charge by temporarily arranging not to be resident or ordinarily resident in Ireland, or by arranging to be temporarily removed as a beneficiary of the trust.

Capital Acquisitions Tax

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

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

The Minister reduced the class (a) CAT threshold from €332,084 to €250,000 in the Budget. He has gone on to increase the class (b) and (c) thresholds slightly and has abolished indexation for CAT from 2012. The current thresholds are set out in a table above.

From 08 February 2012 where a discretionary trust is provided for in a Will, the trust is to be treated as constituted from the date of the disponer's death. This effectively reverses the judgment in the Irvine case which pushed the trigger for discretionary trust tax back to the date on which the assets of the trusts could be identified, often the date of Grant for a trust over the residue of an estate.

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

Where an individual who is claiming agricultural relief on a benefit also holds an "off-farm" property which is his only or main residence, then any loan in respect of that property may be deducted when doing the "farmer test" to establish if agricultural relief will be available. A new subsection has been included so that only loans which were taken out to purchase, improve or repair the property will be deductible from the off-farm residence in the future.

A clawback of agricultural relief will no longer be triggered if the beneficiary ceases to be resident in Ireland.

The CAT filing date has been changed back to 31 October each year with interest accruing from 01 November.

The section providing for the secondary liability for solicitors where there is a non resident beneficiary, and a CAT charge arises, has been amended. Previously there was an anomaly in the legislation as a solicitor was appointed under S. 48(10) CATCA 03 (which required that none of the personal representatives was resident in Ireland) but the secondary liability provision was only triggered where there was a personal representative who was resident in Ireland (so the two provisions were mutually exclusive).

The new amendment resolves the anomaly to allow for secondary liability for solicitors who have been appointed under S. 48(10) CATCA 03.

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

Student Fees

Tax relief for fees paid for third-level education has been reduced in the Bill which provides for an increase in the amount of fees which are to be disregarded as follows:-

- disregard €2,250 per claim for fees in respect of a full-time course (increased from €2,000),
- disregard €1,125 per claim for fees in respect of a part-time course (increased from €1,000).

This is in addition to the Budget change in relation to an increased student contribution.

Legacy Property Reliefs

As announced in the Budget a 5% charge has been introduced for large scale investors (those with aggregate income of €100,000 or more in a tax year), with effect from 01 January 2012. The charge is in the form of an additional USC payment of 5% which will be charged on the amount of the aggregate income which has been sheltered by a ''specified property relief'' (as defined for the purposes of the high earner restriction).

New capital allowance provisions apply to passive investors (i.e. not active partners or active traders). Where the tax life has already ended capital allowances can be claimed up to the end of 2014 and will then be lost from 01 January 2015. If the tax life ends in 2015 or later years the capital allowances cannot be claimed after the year in which the tax life ends. If there is a balancing charge at the end of the tax life any capital allowances which would otherwise be lost can be set against the balancing charge.

The dormant restrictions on S. 23-type relief have been repealed, so investors revert back to the pre FA11 position with unrestricted reliefs.

Mortgage Interest Relief

Budget 2012 proposed a new rate of mortgage interest relief of 30% in respect of first time buyers who purchased their homes in the period from 2004 to 2008 (inclusive). The relief can be claimed even if the property has been replaced by a second home.

Business Development Initiatives

Research and Development (R&D)

As announced in the Budget an R&D credit will now be available on the first €100,000 of relevant expenditure without reference to a 2003 base year.

Relief on expenditure over €100,000, on which a credit is being claimed, will continue to be calculated by reference to the 2003 base year. The Bill also provides for a change in the definition of

expenditure on R&D to ensure that the activities are carried on by the company itself.

Where a company which was claiming an R&D credit ceases to trade and another company in the same group takes over the trade (and R&D activities) the successor company can now claim any previously unclaimed R&D credits.

BRICS Foreign Earnings Deduction

Where an individual is carrying out duties of an office or employment in one of the BRICS countries (Brazil, Russia, India, China or South Africa) and is present for a total of 60 days in any 12 month period (counting only days which form part of a visit of 10 days or more to that country) he can claim an income tax deduction of a proportion of his income from the office or employment (up to a maximum deduction of €35,000). The amount deductible will be restricted where a DTA claim is also made.

Special Assignee Relief (SARP)

The Minister introduced a Special Assignee Relief Programme to reduce income tax paid by key executives relocating to Ireland between 2012 and 2014 (inclusive). Relief is to be given for employees who are assigned to work in Ireland by an employer company located in a State which has a DTA with Ireland. The relief operates by allowing the employee to deduct up to €127,500 (30% of €425,000) from the remuneration from his employer.

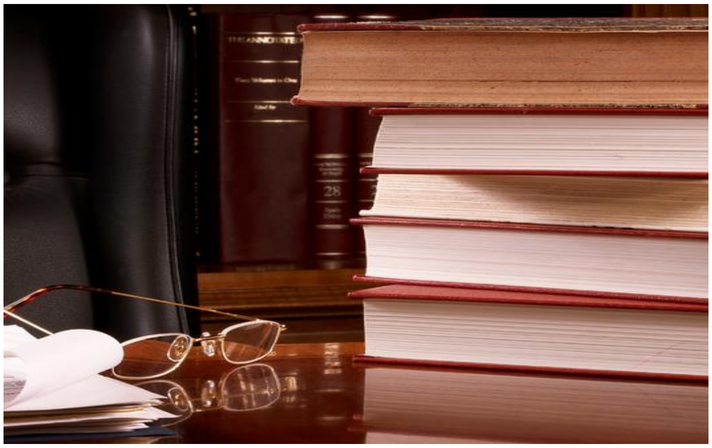
The employee must have worked outside Ireland for the foreign employer for at least 12 months, must not have been resident in Ireland in the previous 5 years, and the assignment to Ireland must be for a minimum period of 12 months.

Key R&D Employees' Relief

As announced in the Budget key employees may receive income tax relief where they are engaged in research and development work. The employer company must surrender its right to claim the equivalent level of R&D credit. The employee can then claim an income tax deduction, which is capped to ensure that the employee pays a minimum rate of income tax of 23%.

VAT

With regard to the construction sector, a provision has been made for the reverse charge basis to



apply where construction services are provided between connected persons who are also accountable persons for VAT. From 01 May 2012 the person in receipt of the construction services will account for the VAT.

S. 111 of the Finance Bill provides that a security deposit may be needed for fiduciary taxes to protect the Exchequer where a person had a previous business which ceased to trade, owing taxes. It will be an offence for a taxpayer to carry on the business until the security required has been provided to the Collector General.

Stamp Duty

As announced in Budget 2012, the rate of Stamp Duty applicable to non–residential property is to be a flat 2% rate on all transactions and consanguinity relief is only to continue to apply until 31 December 2014.

A new Stamp Duty exemption has been introduced for company mergers including cross-border mergers.

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, the current regime will continue to apply.

Pension - Annual Imputed Distribution

The annual imputed distribution applying to the assets in an Approved Retirement Fund (ARF) has increased from 5% to 6% in respect of ARFs with asset values in excess of €2 million. The imputed distribution regime will now also apply to assets in vested PRSAs and the assets held in an ARF and in a PRSA are to be aggregated for the purpose of the application of the higher 6% rate of imputed distribution.

As with the old regime actual distributions made can be deducted in arriving at the imputed distribution. Therefore, where actual distributions are in excess of 5% or 6% (depending on the value) there will not be an imputed distribution.

The legislation is to be amended to allow for the increase in the rate of income tax applying to a ''post-death'' distribution from an ARF to a child. The rate is to be increased from 20% to 30% which will bring the rate in line with the current rate of CAT.

Amendments have been made to the payment of tax on the chargeable excess over the Standard Fund Threshold (SFT) or the Personal Fund Threshold (PFT). An upfront tax charge (of 41%) is due on retirement and the burden of this has been mitigated so that the tax payment can be made over a longer period.

"Economic circumstances mean we must target support where it is most needed. I am confident that the measures contained in this Finance Bill provide balanced, targeted and effective support to business to encourage job creation which will be the cornerstone of our economic recovery"

Michael Noonan

The following provisions will apply:

- No more than 50% of the lump sum payment due can be appropriated to this tax payment (unless agreed between the administrator and the taxpayer).

- The balance of the tax payment can be paid from gross annual pension payments over a maximum period of ten years (to be agreed between the administrator and the taxpayer) or by a payment made by the individual or a combination of the two.

Provision has been made for the offset of tax on the lump sum against the tax due on the chargeable excess to reverse an unintended double taxation anomaly which exists under current legislation.

DIRT

The rate of DIRT increased to 30% (33% for long term savings) from 01 January 2012.

The Finance Bill also provides that deposit interest from EU countries will be taxed at 30% if the income is returned on time or at 41% if returned late.

A taxpayer earning deposit interest from non-EU countries will pay tax at 41% unless he is a standard rate taxpayer and returns the interest on time, in which case a 30% rate will apply.

Corporation Tax

Finance Bill 2012 extends an existing exemption to cover certain interest payments such as interest paid on Eurobonds, wholesale debt instruments and similar securities.

The exemption applies where interest payments are made to a company resident in a non-Treaty country, which is controlled by persons resident in a Treaty country, or which has an ultimate parent which is quoted on a stock exchange in a Treaty country.

Dividends received by an Irish resident company from privately held companies located in countries with which Ireland does not have a double taxation agreement will now be taxed at the 12.5% rate if the country in which the company is located has signed up to the OECD Convention on Mutual Administrative Assistance in Tax Matters.

This is a reduction from the standard 25% rate, and the change is effective from 01 January 2012.

Health Insurance

An increased levy applies to all health insurance contracts from 01 January 2012, at a rate of €95 for those under 18 and €285 for adults.

Further Measures Contained in Budget 2012

The Finance Bill (as initiated) includes the following Budget 2012 measures:-

- **Exit tax:** The rate for investment funds and similar products has been increased by 3%.

- **USC:** The level at which Universal Social Charge applies increased from €4,004 to €10,036 in 2012.

- **PRSI:** Employers' PRSI relief of 50% on employee pension payments has been abolished.

- **PRSI:** PRSI is to be charged on unearned income (e.g. rent, investment income etc.) in 2013.

- **Domicile Levy:** The Levy is to apply to all tax exiles, not just Irish citizens.

- **CT Relief for Start Up Companies:** The relief has been extended to the end of 2014.

- **VAT:** The Bill provides for the increase in VAT standard rate from 21% to 23%. The change was effective from 01 January 2012.

Caveat: *These notes are intended as a preliminary guide to some provisions of the Finance Bill 2012 as initiated. The legislation is draft and the provisions may change substantially before enactment. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*

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