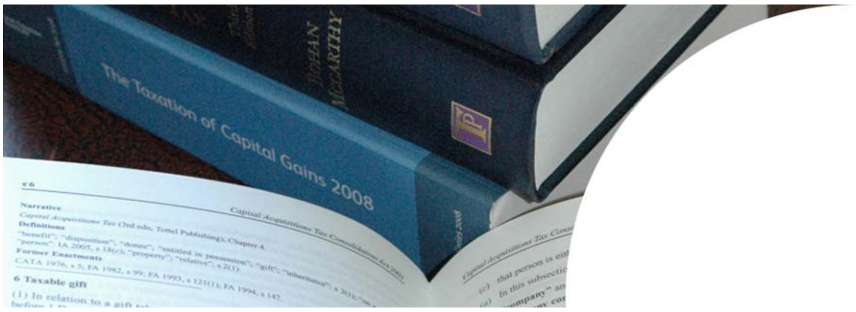

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<u>Domicile Levy</u>

Finance Act 2010 introduced a new levy known as the "Domicile Levy", which is a charge of €200,000 payable by individuals who are domiciled in and citizens of Ireland.

Budget 2012 indicated that an individual will no longer be required to hold citizenship for the levy to apply.

The purpose of the levy is to ensure that individuals with substantial income and assets located in the State make some sort of contribution to the exchequer.

It is proposed in Budget 2012 an individual who is domiciled in Ireland (regardless of citizenship) will be subject to the levy if:-

1. his worldwide income in the relevant year of assessment is in excess of €1,000,000

   and

2. the value of his Irish property is in excess of €5,000,000.

The levy will apply irrespective of where the taxpayer lives or is tax resident.

<u>Worldwide Income:</u>

For the purposes of the levy an individual's income is calculated without any deductions provided for in the Taxes Consolidation Act which would deem;

> *"income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purpose of income tax".*

The term "total income" which is used when referring to the worldwide income includes all income before any deductions are allowed. The legislation provides as follows:

> *"world-wide income', in relation to an individual, means the individual's income, without regard to any amount deductible from or deductible in computing total income, from all sources ....as if any provision....providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted"*

This is a very wide definition and could result in an individual who has income which is substantially lower than €1,000,000 annually when calculated for income tax purposes, being deemed to have earned in excess of €1,000,000 in a given year of assessment for domicile levy purposes.

For example an individual who can claim patent royalties exemption is exempt from income tax but he will still have an exposure to the domicile levy if his worldwide income exceeds €1,000,000.

<u>Irish Property:</u>

Irish property is defined for domicile levy purposes as property in the State which the individual is beneficially entitled in possession to at the valuation date.

The valuation date is **31 December** in the relevant year of assessment.

The term "Irish property" does not include shares in a trading company or shares in a holding company which derives the greater part of its value from trading subsidiaries.

An interesting point to note in relation to property valuations for the purposes of the levy is that no allowance is made for any debts or encumbrances charged on the property.

Therefore an individual who has a number of investment properties on which there are large mortgages, so he has very little equity and does not think of himself as a mulit-millionaire in property terms, may have an unexpected exposure to the levy (depending on the level of his income).

If the Revenue Commissioners are not satisfied with the taxpayer's estimate of the value of property they may appoint a qualified person to inspect and value the property.

Credit for Income Tax Paid:

Where an individual pays income tax in a year of assessment in Ireland he will be allowed a levy deduction for the income tax paid. The income tax credit can only be set off against the domicile levy if the income tax is paid before or at the same time as the domicile levy.

Anti-avoidance:

There are a number of anti-avoidance measures in the legislation geared to ensuring that high net worth individuals cannot take steps to bring themselves outside the scope of the levy. For example where a relevant individual transfers property to a spouse or minor child on or after 18 February 2010 the transfer will be ignored for the purposes of the levy, and the value of the property will be included when valuing the Irish property.

Transfers which are made to discretionary trusts and foundations will also be ignored for the purposes of the levy if the transfer took place after 18 February 2010.

Pay & File:

If an individual is subject to the domicile levy in a tax year he has to file a full and true return with the Revenue Commissioners by 31 October in the year following the valuation date (i.e. 31 December of the previous tax year). The levy also has to be paid by 31 October in the following year.

Points to Note:

An individual who is calculating the value of his Irish property must include any property transferred to a spouse after 18 February 2010. However the legislation does not remove the value of the transferred property from the total value of the transferee spouse's Irish property so technically the Irish property appear to count twice.

> *Example:*
>
> *John transfers Irish property to Mary worth €2,500,000 in March 2010. John still has Irish property worth €4,000,000 in his own name and Mary had property worth €3,000,000 in her own name prior to the transfer. If the legislation is applied to this example both John and Mary would satisfy the €5,000,000 Irish property value test for the purpose of the income levy even though John now holds Irish property with a value of less than €5,000,000.*

Another point to note in relation to the legislation is that there is no provision to remove a property from the calculation of property value if it is transferred to a spouse and subsequently sold.
Technically a married couple could have a double charge to domicile levy hit even though they do not each own the required €5,000,000 in Irish property.

Double Taxation Agreements:

Revenue indicated at a TALC Committee Meeting in February 2010 that they do not consider the Domicile Levy to be tax on income, capital gains tax or to be a similar tax. Currently most double taxation agreements ("DTAs") deal with income tax, CGT or similar taxes. If the new Domicile Levy is not a tax which comes within the ambit of the current DTA network then no credit for the levy would be available if an individual pays tax in Ireland, as well as paying tax in another jurisdiction, e.g. the United Kingdom.

This Revenue view would result in the levy posing a significant disincentive to a person with a high income who may consider travelling abroad to work. If he pays income tax on income in another jurisdiction and he is subject to Domicile Levy in Ireland, he will not be entitled to a credit for the income tax paid in another jurisdiction, so he will pay a higher level of tax than a person earning the same level of income who stayed in Ireland.

The new provisions are far-ranging and seem likely to be controversial and it is unclear what level of tax is likely to result for the Exchequer. In a written response to a Parliamentary Question in the Dáil in early June 2010 the Minister for Finance said that "*having regard to the lack of available data, it is not possible to estimate the number of individuals, including individuals who filed Irish income tax returns for the tax year 2008, that this measure will affect; hence it is not possible to estimate the yield."*

The first payments of Domicile Levy were due by 31 October 2011.

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