

Educating, Developing & Representing



Irish Taxation
Institute

TaxFax

[Finance Bill 2010 Special TaxFax](#)  [Buy a book](#)  [Book a Seminar](#)  [Members Area](#)  [Print All](#)

Irish News

ITI welcomes Finance Bill 2010 to help Ireland keep its competitive positioning on the global tax table

“Mark Redmond, CEO of the Irish Taxation Institute said the Finance Bill provided a combination of key tax measures which together were vital in ensuring Ireland could compete ambitiously for investment and jobs in an increasingly competitive global environment”.

ITI will be holding a series of nationwide seminars on the Finance Bill which begin on Monday 15 February. For details of locations and to book your place click [here](#).

A summary of the main measures follows.

Business Tax

Transfer pricing

Section 38 of the Bill introduces new transfer pricing provisions. These are intended to consolidate and expand on existing legislation and to align Ireland with international standards by adopting the OECD arms length principles. The provisions apply to transactions between associated trading companies. They apply to large businesses, small and medium size enterprises are excluded. Those larger entities to whom transfer pricing applies must maintain sufficient documentation to show compliance and must ensure that this documentation is available on request. The provisions have a number of important exclusions, including land dealing transactions and for capital allowances. It is understood that Revenue will issue guidelines to further clarify how the system is to operate.

R&D Credit

The Bill has introduced a new definition – “an R&D development centre”. Amendments have also been made to a number of definitions for the purposes of R&D tax credits. The definition of “qualified company” has been amended as regards record keeping obligations of group companies carrying our R&D in separate locations. The definition of “threshold amount” has

been amended so that where a group ceases to use an R&D centre for trading purposes, the expenditure may be ignored in computing the "threshold amount" for relief purposes. The Bill provides for a clawback of relief in certain circumstances.

Section 50 also clarifies how expenditure incurred on R&D activities before a company commenced to trade is treated in computing the tax credit. The amount of expenditure on which the credit is based is the amount the company would have been entitled to claim had it been trading when the expenditure was incurred. A 12 month time limit for claiming relief applies, as is currently the case for making R&D tax credit claims.

Intangible Assets

Section 39 of the Bill proposes a number of enhancements to the intangible assets scheme introduced in FA 2009. It reduces to 10 years the period for which a specified asset must be used in the trade to avoid a clawback of allowances. The types of computer software qualifying for relief under section 291 TCA would be restricted to "end-use" type software. The types of intangible assets covered by the scheme have been enhanced to include a broader definition of know-how. A further amendment ensures that capital expenditure on intangible assets for the trade incurred before commencement to trade will qualify for relief.

Foreign Dividends Liable at 12.5%

The scope for taxing foreign dividends at 12.5% has been extended to dividends paid out of the underlying trading profits of a company resident in a non-treaty country where the company is owned by a publicly quoted company. Rules for identifying the underlying profits are also being simplified.

Cross Border Mergers Relief

Section 47 inserts a new section, Section 308A which provides that a transfer of trade and assets in a cross border merger will not give rise to a balancing charge. The company acquiring the trade will step into the shoes of the transferor for capital allowances purposes. This change, which is consistent with the EU Mergers Directive, was sought by the ITI through our representations at TALC. The legislation takes effect from 1 January 2010.

Unilateral Credit Relief/ Royalty Income

Section 42 proposes the extension of unilateral credit relief in respect of withholding taxes on royalty income from non-treaty countries to all trading companies. The ITI had sought this change in our representations.

Royalty Payments

Section 51 proposes an exemption from Irish withholding tax in respect of certain royalty payments paid to residents or permanent establishments in EU or tax treaty countries (except Ireland) where the recipient is liable to tax in that territory in respect of the payment.

Interest Payments

Section 198 TCA 1997 grants exemption to a company resident in a relevant territory from income tax on interest payments made by an Irish company or investment undertaking in the course of business. Section 246 provides relief from withholding tax on the payments. The Bill in Section 36 amends the sections to ensure relief will only apply where the interest payment is liable to tax in the relevant territory. In these cases the rate of tax for interest payments as set out in the relevant treaty will apply.

Section 847 Relief for Certain Branch Profits

Section 847 provides tax relief for certain branch profits. As this relief expires in 2011, provisions have been made regarding the carry forward of losses.

Carry Forward of Unrelieved Foreign Tax on Branch Profits

Where an Irish company has foreign branches it is generally taxable on the profits of the branches and a credit is available for foreign tax suffered on those profits. A unilateral form of foreign tax credit relief was introduced in 2007 for taxes paid by foreign branches in non-treaty countries; credits could also be "pooled". The amendment in Section 43 will allow unused credits to be carried forward against corporation tax in succeeding accounting periods. This affords similar treatment to branches as to income from foreign subsidiaries.

Start-up Companies

As announced in the Budget the relief from corporation tax for start-up companies under Section 486C TCA 1997 has been extended to those companies commencing to trade in 2010. The exemption currently applies in respect of trading profits and gains of companies incorporated after 14 October 2008 and which commenced to trade in 2009. It applies for 3 years from the commencement of the trade.

Childcare Capital Allowances Scheme

Section 25 of the Bill proposes to terminate the scheme of capital allowances for expenditure incurred on the construction, conversion or refurbishment of buildings used as childcare facilities. Transitional measures will apply to projects in the pipeline. A termination date of 30 September 2010 will apply unless certain qualifying conditions are met.

Capital Allowances on Energy Efficient Equipment

As noted in the Budget speech, the categories of energy-efficient equipment qualifying for 100% capital allowances in the year of purchase, where purchased for trading purposes, are being extended. The new categories include refrigeration and cooling systems and catering and hospitality equipment.

Financial Services/Funds

Following the Minister's Budget announcement the Bill contains significant measures which should assist Ireland "to become the European hub for the international funds industry". The proposed measures will provide clarity regarding the tax treatment that will apply to foreign funds that are managed from Ireland under the recently adopted UCITS IV arrangements. It provides certainty that the trading activities of the Irish UCITS management company should not result in the non-Irish domiciled funds coming within the charge to Irish tax. The provisions also include proposals to exempt the need for non-resident declarations for non-resident investors in Irish funds which should reduce the regulatory burden for the industry.

Section 131 of the Bill proposes an exemption from stamp duty for transfers of assets between certain unit trusts. It also proposes extending the exemption from stamp duty for funds in cases of reconstruction or amalgamation to cover situations where the units issued by the Irish fund in exchange for the assets transferred are issued directly to the foreign fund rather than to its unit holders

Section 35 of the Bill facilitates Islamic financing arrangements.

Income Tax

Restriction of Reliefs for High Earners

Section 22 of the Finance Bill outlines the means of increasing the effective rate of income tax for 'high income' individual taxpayers to 30% (previously 20%) applying greater restrictions on the use of certain income tax reliefs.

- The full restriction will apply where adjusted income is over €400,000 (previously €500,000).
- The entry level to which the restriction will apply is reduced from €250,000 to €125,000.
- The formula for calculating the restriction in section 485E TCA 1997 is amended so that the amount of specified reliefs allowed is the greater of €80,000 (previously €125,000) and 20% (previously 50%) of the individual's adjusted income for the tax year. This should give an effective rate of income tax of at least 30% where adjusted income is over €400,000.
- There is no change to the list of specified reliefs as contained in Schedule 25B TCA 1997.
- The changes do not appear to simplify the legislation or clarify an anomaly in relation to the new reduced entry point of €125k and the current permitted annual income tax relief of €150k for BES investments, both of which were addressed in our pre Finance Bill submission.
- The changes apply from 2010 and subsequent tax years.

Rental Income

The Bill amends the order in which capital allowances and losses are deducted when computing taxable rental income. Capital allowances arising in the year are to be deducted in priority to losses carried forward from a prior year.

Remittance Basis

The Bill proposes to abolish the existing remittance basis of taxation for Irish domiciled individuals who are not ordinarily resident in Ireland. Furthermore, Revenue must be satisfied of an individual's non Irish domicile status for the remittance basis to apply.

This change applies with effect from 1 January 2010.

Special Assignment Relief

- A special assignment relief was introduced in Finance Act (No.2) 2008 to attract key talent from overseas.
- The relief applied to non Irish domiciled individuals who are nationals of non EEA countries and with whom Ireland has a tax treaty.
- As sought by ITI in our pre Finance Bill submission, the Bill extends the relief to include EU and EEA nationals who are non Irish domiciled. In addition the Bill reduces the period of assignment to Ireland to one year from three years.
- The changes will apply to individuals who come to live and work in Ireland on or after 1 January 2010.

Cross Border Workers Relief

The Bill amends the relief in relation to the definition of a day to bring it in line with the definition of a day for residence purposes. The Cinderella rule (i.e. presence at midnight) still applied in relation to this relief. This change applies from 2010 onwards.

Domicile Levy

Section 141 of the Bill introduces the legislation for the new annual domicile levy of €200,000 for individuals whose liability to Irish income tax is less than €200,000, whose worldwide income for a tax year is over €1m and whose Irish situated property is valued at over €5m on a valuation date.

Some further clarification is provided following the announcement of the levy in December's Budget:

The levy applies to individuals who are Irish domiciled and Irish citizens regardless of residence.

- Irish income tax will be allowed as a credit against the domicile levy. It seems that to get the credit the income tax must have been paid before the due date for the levy.
- In calculating the value of Irish property no deduction is given for borrowings.
- The valuation date is 31 December for the year in question.
- The new levy applies from 2010 and is payable on a self-assessment basis, so for 2010, the levy will be payable on or before 31 October 2011.
- Reassuringly, shares in trading companies (or holding companies whose main value derives from subsidiary trading companies) are excluded from the definition of Irish situated property for the purposes of the €5m test. This clarification was sought in our pre Finance Bill submission on the basis that the levy should be designed in a manner that protects Irish jobs and retains capital in Ireland.

Income levy

The Bill provides broadly an extension of relief from the income levy with regard to earnings from foreign employments as follows:

- Application of cross border workers relief to the income levy.
- Exclusion from the levy for certain employment earnings of an individual who is resident in a country with which Ireland has a double tax agreement and where those earnings are not subject to PAYE, as a result of a notification issued by Revenue under section 984(1) TCA 1997. Revenue may issue such a notice where there are of the view that to operate PAYE would be impracticable because of the circumstances of the employment or because of the amount of earnings involved.

Mortgage Interest Relief

The Finance Bill provides for measures announced in the Budget, the main intention behind which was to offer support to homeowners who bought at the peak of the property boom and now find themselves in negative equity and separately to encourage others who want to buy a house over the next three years.

The following are the main provisions in the Bill:

- Mortgage interest relief is extended to 2017 for qualifying loans taken out on or before 31 December 2011. Current rates and levels of relief will apply to these loans.
- Extended relief at reduced levels will apply for those taking out qualifying loans during 2012.
- Mortgage interest relief will be abolished from 2018 onwards.

Relief for Health Expenses

- The Minister may deem certain treatments ineligible for tax relief where those treatments would be considered to be contrary to public policy.
- Disallowance of general cosmetic surgery costs.
- Hospitals subject to some conditions, no longer need the approval of the Minister for Finance before a claim for expenses can be made. Nursing Home fees will qualify for relief provided 24 hour on site qualified nursing care is available.

PAYE Credit for Proprietary Directors

The Bill provides that the credit can only be given to the extent that PAYE has been deducted.

Restricted Shares

Section 16 proposes amendments to the tax treatment of restricted shares acquired by directors or employees. To qualify for

income tax relief, the shares must be held in a trust established in the State or the EEA. The trustees must also be resident in the State or the EEA.

Pensions

No changes were made to tax relief for pensions, taxation of lump sums or to caps on pension funding. The Bill contains clarification on the imputed/notional distribution from ARFs of 3%.

Changes have also been introduced which will bring forward a benefit crystallization event where funds are left in a PRSA rather than transferred to an ARF or used to purchase an annuity.

Other

An exemption from a BIK charge on the provision of qualifying art objects to certain employees or directors by an employer has ceased from 1 January 2010.

- Relief will no longer be available for premiums paid for certain long term care policies.
- Abolition of income tax relief for service charges paid in 2011 and subsequent years

Capital Taxes

CAT

Significant changes have been proposed to the CAT regime in the Bill to simplify and streamline the administration and collection of CAT. These include:

- Removal of the requirement for Revenue certification of the Inland Revenue Affidavit before submission to the Probate Office. This will apply from mid June 2010 where the deceased died on or after 5 December 2001. Revenue will receive data electronically from the Probate Office.
- Introduction of a pay and file regime for CAT. The pay and file deadline will be aligned with the Income Tax Deadline of 31 October. The tax year will be split into 2 periods. Where the valuation date for the gift or inheritance arises between 1 January and 31 August the pay and file deadline will be on 31 October in that year. Where the valuation date arises between 1 September and 31 December the pay and file deadline will be 31 October in the following year. The extended ROS filing deadline will apply where ROS is used.
- E-Filing will be required where certain reliefs are being claimed. This follows from a recommendation by the Commission on Taxation that claims for relief should be claimed through an electronic platform.
- Abolition of CAT as a charge on property, eliminating the need for certificates of discharge.
- Abolition of the concept of secondary accountability for the tax due. This is to be abolished retrospectively.
- Requirement for an Irish resident "agent" to be responsible for pay and file procedures where beneficiaries are non-resident.

Revenue are to include questions on the Form 11/12 and CG50 in relation to gifts or inheritances received in the year. In Revenue's notes on the proposed Finance Bill changes, which is available [here](#) they note that these questions act as

“reminder” to taxpayers. We will be engaging with Revenue to minimise duplication of information required to be returned.

Capital gains tax

Changes have been made to Section 590 TCA 1997

- Certain gains made by a non trading offshore company that is in a group with a trading company will no longer be attributed to the Irish resident participators.
- Section 52 of the Bill proposes changes to the date of disposal and acquisition for CGT purposes in respect of disposals subject to a CPO. The person disposing of the land is treated as making the disposal on the date the consideration is received or immediately prior to death, where the consideration has not been received at the date of death.
- Section 54 proposes amendments to the CGT retirement relief provisions under section 598 TCA by including payments under a buy-back or redemption of shares (which are not treated as a distribution) within the scope of the relief, and thereby within the scope of the €750,000 threshold
- Section 24 of the Bill proposes amendments to the 80% “windfall tax” introduced by the NAMA legislation by providing for an exemption for disposals of small sites of under 1 acre and with a market value below €250,000. It also extends the remit of the tax to profits or gains attributable to planning decisions which may be in contravention of the development plan for the area

Stamp Duty

- A new anti avoidance provision has been proposed to counteract the avoidance of stamp duty on share transactions. This arises through the use of debt which ultimately benefits the shareholder directly or indirectly. Where the debt is paid by someone other than the transferee, it is to be included as part of the consideration for the purposes of stamp duty.
- Section 132 of the Bill proposes amendments to the life assurance levy to exclude pension and reinsurance business. The due date for payment of the levy will be amended.
- The Bill proposes increases to the health insurance levy applicable to all renewals and new contracts with health insurers

Carbon Taxes

The carbon tax provisions are very detailed and introduce, in effect, three different schemes of taxation for; a mineral oil carbon charge, a natural gas carbon tax and a solid fuel carbon tax. The rules differ between the schemes, for example in relation to the payment dates and the dates for making a return, which could arguably lead to practical problems. It is expected that further detail around the administration of these carbon taxes will follow the Finance Bill by way of Regulations. The Bill empowers Revenue to make Regulations relating to the implementation and administration of the carbon taxes.

ETS participants are not entirely exempt from carbon taxes as was indicated in the Budget as this could potentially have contravened the EU Energies Directive. Where an exemption from a carbon tax applies, it is unclear whether the tax should

be paid upfront and a refund claimed from the Revenue or whether the tax will not be applied at the point of supply.

VAT

- The Bill outlines legislation to support the changes for treatment of 2nd hand means of transport announced in the Budget and is aimed at alleviating difficulties in the motor trade
- Changes to the VAT treatment of public bodies are outlined, on foot of successful EU Commission proceedings. As a result of these amendments, Local Authorities in particular will be subject to VAT at the underlying rates on services where there could be a distortion of competition (e.g. waste disposal, leisure facilities etc) and on certain other activities listed in the Directive e.g. port and airport services. Where appropriate, input VAT on these supplies will be recoverable.
- Also lurking in Schedule 3 of the Bill is an amendment to s25 VATA, which sets out the matters that must be included in a notice of appeal against an assessment for VAT. Any matters not set out in the notice of appeal cannot be relied on before the Appeal Commissioners/Circuit Court unless it would have been unreasonable to include them in the notice.

Anti-avoidance

A number of anti-avoidance provisions have been proposed within the Finance Bill, including:

- Restrictions will apply on allowable CGT losses in cases where arrangements were in place to secure a tax advantage
- Rent-a-room relief will not be available where the recipient is an employee or office-holder of the person making the payment
- Revenue will not approve a profit sharing scheme where certain service companies are used or where arrangements are in place for loans to eligible employees.
- Arrangements whereby a lessor and lessee can claim capital allowances on the same assets will be prevented.
- The exemption for dividends received by an Irish tax resident company from an Irish tax resident subsidiary will be denied in respect of dividends related to profits earned while the subsidiary was tax resident outside Ireland. This applies where the dividend is paid within 10 years of the subsidiary becoming Irish tax resident.

Tax Administration

- Section 29 of the Bill proposes removal of the requirement for non-resident companies receiving dividends from Irish resident companies to provide a tax residence or auditors certificate to avoid deduction of DWT at source. A self-assessment system will apply for claiming exemption. ITI sought this change in our pre Finance Bill submission.
- A number of changes to RCT administration have been made. These include the possibility for a reduced return/payment frequency for principal contractors and they enable Revenue issue certificates of authorisation (C2s) to cover 2 tax years, rather than the current legislative limit of 1 year. Revenue can also increase the limit on a relevant payments card (C47) unilaterally.
- Section 1094 and 1095 TCA 1997 which relate to the issue of Tax Clearance Certificates have been amended so that a taxpayer must be compliant with Customs and Excise obligations before certificates will issue.
- The Bill proposes provisions regarding information on awards of shares. These proposals would oblige employers to

file a return in respect of shares or securities awarded to directors and employees. This will only apply to any share awards, where legislation does not already require the employer to make such returns.

Useful Links

[Privacy Policy](#)

[Visit our Website](#)

[Print](#)

[Archive](#)

About Us

Irish Taxation Institute

Tel: 01-6631700 01-6631700

F: 01-6688387

E-mail

Website

Registered in Ireland No: 53699 (Company limited by guarantee not having a share capital)

[View Company Directors](#)

Submit Comments

Comments are welcome and should be submitted to the editor, Cora O'Brien at cobrien@taxireland.ie

© 2010 Irish Taxation Institute.

[View Disclaimer »](#)

Created with
Newsweaver