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**Department of Finance**

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Mr. Jim Ryan,  
President,  
Irish Taxation Institute,  
South Block, Longboat Quay,  
Grand Canal Harbour,  
Dublin 2.

Dear Mr. Ryan,

The Minister for Finance, Mr. Brian Lenihan T.D., has asked me to reply to your Finance Bill Committee Stage submission dated 18<sup>th</sup> May 2009.

### **Interest on Certain Overdue Tax – Section 25**

Finance Act 2009 modified the rates at which interest is charged and the new values selected were based on the need to ensure that the rates will remain at a level which will act as a deterrent while also addressing concerns that they were somewhat punitive. It is expected that the reduction will reduce financial pressures on taxpayers as it is designed to do.

Revenue are determined to maintain the current high levels of compliance, notwithstanding the more difficult economic circumstances in which businesses and taxpayers are now operating. Therefore, Revenue expects that taxpayers and businesses organise their financial affairs to ensure that they pay their tax debts by the due date. This is necessary to maintain an ongoing flow of taxation into the Exchequer at a time of severe pressure on the public finances. The application of interest to late payments acts as a deterrent to late payment.

However, where particular difficulties arise, Revenue is prepared to work with a business towards restoring timely payment of its tax debts. Crucial to Revenue's ability to work with a business in such circumstances is the quality and timeliness of engagement by the business with Revenue.



## **The Income Levy – Section 2**

It was necessary to devise a “composite rate” for the year as a whole. The composite rate is essentially an anti-avoidance measure and will apply to all taxpayers. It was necessary to ensure that those with control over their income paid their fair share. For the vast majority of PAYE workers, whose income is evenly distributed, the composite rate will have no impact. However, it will apply directly to those on self assessment and to PAYE workers who make a return to Revenue.

The Minister does not accept that this is retrospective taxation. An individual’s tax liability as set out in the law is not finally determined until the end of the year. If taxes rates change mid-year then the individual’s liability for the year has increased.

It is accepted that there will be some increased administrative burden on certain taxpayers and employers in certain cases. This is an unfortunate but unavoidable consequence of having to increase income levy rates mid-year.

## **Deductibility of Mortgage Interest on Borrowed Money used to Purchase, Improve or Repair Residential Premises – Section 5**

Section 5 of the Finance Act 2009 gives effect to the Budget announcement whereby the level of tax relief investors can claim on the interest for mortgages and loans on residential rental properties is reduced to 75% of the interest accrued from 7th April 2009. This measure is being introduced at a time when mortgage interest rates are at historical lows and the repayment burden on investors has been reduced significantly. The fact that rents are falling, after a number of years of strong growth was taken into consideration in framing the supplementary Budget and on this basis it was decided to reduce rather than abolish this relief. It should be borne in mind that ordinary workers on relatively modest incomes are being asked to make additional contributions to help with the recovery in public finances and it is felt that it is fair and equitable that residential investors contribute a proportionate share of the burden of adjustment needed in this economy.

While the decision to restrict this relief in Finance (No. 2) Act 1998 was confined to new loans, the decision to apply the 25% reduction to both new and existing loans in Budget 2009 was made in order to maximise the saving to the Exchequer from this measure. If the measure was confined to new loans taken out after Budget date any potential yield would be insignificant and the savings to the Exchequer this year would be negligible.

## **Dealing in Residential Development Land - Sections 6 and 11**

In the case of an individual subject to taxation under Schedule D in respect of income from dealing in residential development land, that individual is not required to pay preliminary tax on their 2009 taxable income until October / November 2009 while the final liability for the year of assessment 2009 will not be settled until October / November 2010.

In the case of a company, the final corporation tax liability of any company affected by the change in tax rate to 25% announced in the Supplementary Budget will not be settled until after the date of the Budget announcement and, in almost all cases, not until the end of 2009 at the earliest for companies with accounting periods ending in March 2009. In these situations, the tax changes announced are not retrospective in effect.

### **The Intangible Asset Regime – Section 13**

#### *1. The annual cap & the inclusion of interest-related expenses*

The restriction on the amount of interest deductions is required in view of the impact of potentially large borrowings that may be undertaken to fund the acquisition of high-value intangible assets. It also takes account of the fact that interest costs on inter-company loans could be significant, notwithstanding the generally low level of interest rates currently prevailing. Without a restriction on interest, the amount of interest claimed could be such as to completely offset income of the trade so that no tax is payable for the period.

#### *2. Definition of Intangible Asset*

The scheme applies to a broad range of intangible assets which are recognised as such under generally accepted accounting standards. This includes patents, designs, inventions, trade marks, brands, copyright, know-how and related rights or licences, including any goodwill attributed to such assets.

Under current accounting practice, for an asset to be regarded as an intangible asset it must be

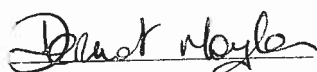
- an identifiable non-monetary asset without physical substance;
- controlled by an enterprise as a result of past events (e.g. purchase or self-creation) and
- an asset from which future economic benefits (e.g. revenues or reduced costs) are expected.

The scope of the definition can be examined as the scheme develops.

#### *3. Ring fencing of software*

Section 13 of Finance Act 2009 was amended at Committee stage to clarify that the assets referred to in the section are specified intangible assets only and would not include software.

Yours sincerely,



Dermot Moylan,  
Private Secretary to the Minister for Finance.