



**Irish Tax  
Institute**

*Leaders in Tax*

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## **Finance Bill 2012**

Dear Minister

We would like to take this opportunity to acknowledge the positive proposals presented in Budget 2012.

We welcome in particular the commitment to maintain income tax rates at their current levels, the property market initiatives and the measures intended to promote employment, principally in the export sector.

The Institute looks forward to reviewing the legislative provisions for these measures, to be published in the Finance Bill.

We would also make the following comments on the forthcoming Finance Bill.

### **1. Legacy Property Reliefs**

The Institute's key concern on the new property relief legislation is to ensure that there is clarity on the calculation of any liabilities that arise and that the new provisions tie in seamlessly with the High Earners' Restriction.

We fully appreciate that the legislation in this area is complex, and we would be happy to provide any comments or feedback which may be of assistance in the drafting process.

\*\*\* Member of the Confederation  
\*CFE\* Fiscale Européenne  
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## **2. SARP**

The introduction of a new Special Assignee Relief Programme (SARP) is very positive news for indigenous and foreign-owned businesses wanting to relocate key employees to Ireland. With a view to ensuring that this strategic goal is achieved, there are several key features that the Institute would like to see in any new SARP:

- We would emphasise that the scheme needs to be simple to administer if it is to be attractive to business. Feedback from our members in relation to the current Special Assignment Relief Programme is that the end-of-year refund mechanism is causing delay and administrative difficulty for employees wishing to avail of the scheme. Therefore, we would urge that relief under the new SARP be applied at source.
- We would hope that the regime would apply to individuals who have previously been resident in Ireland and Irish-domiciled individuals who wish to repatriate to Ireland.

## **3. Foreign Earnings Deduction**

We believe that the introduction of a Foreign Earnings Deduction (FED) for temporary assignments to BRICS countries will help boost exports. We understand that the relief will apply where an individual spends 60 days a year developing markets for Ireland in those territories.

Feedback from our members would indicate that there is currently a lot of activity among Irish companies in the Middle East and Africa, and we propose that the programme be extended to assignments in those regions. We understand that this would also be in line with national enterprise policy.

Again, for ease of administration and in order to avoid cash-flow difficulties for businesses and key employees, we would recommend a system of relief applied at source, through the PAYE system, rather than an end-of year refund mechanism.

## **4. Employee PRSI on unearned income**

The Financial Statement delivered on 6 December referred to a proposal for "*further broadening of the base for PRSI to cover rental, investment and other forms of income from 2013*".

We would hope that there will be an opportunity for engagement during 2012 in respect of this measure, in particular on issues relating to its scope and the associated administrative procedures.

## **5. Pensions**

The Institute is in favour of the decision not to amend the current marginal rate tax relief on pension contributions.

We believe that tax relief on pension contributions plays a vital role in encouraging taxpayers to make adequate provision for their pension. This provides a dual benefit in ensuring that taxpayers provide for their old age and reducing their dependence on the State. According to the latest CSO figures available<sup>1</sup>, just over half (51%) of workers aged between 20 and 69 years had a pension in Quarter 4 2009.

We note Government's proposal to reform the incentive regime for supplementary pension provision in order to make the system sustainable and more equitable over the long term.

The Institute is of the view that any further reform of the tax treatment of pension contributions should achieve equality of treatment between unfunded pensions and funded pensions.

## **6. Capital gains tax retirement relief**

We are in favour of the proposal to allow for a 2 year transitional period in which individuals currently aged 66 years (and those who reach that age before 31 December 2013) can avail of the capital gains tax retirement relief available now.

We note that the transitional measures will not provide any opportunity for other conditions to be satisfied during that time, for example the period of ownership of the assets, the period spent as a full-time working director, and the working period for a favoured niece/nephew. This issue is best illustrated by way of an example – please refer to Appendix 1 for details.

We would be grateful if some consideration could be given to allowing an appropriate transitional period for these conditions to be satisfied.

## **7. R&D**

The proposal to allow companies in receipt of the R&D tax credit to use a portion of the credit to reward key employees who have been involved in the R&D process is a positive development.

In order to encourage companies to avail of this relief and to promote involvement in valuable R&D, we would recommend that the relief for employees not be included in the list of specified reliefs for the purposes of the High Earners' Restriction.

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<sup>1</sup> Quarterly National Household Survey – Pension Provision, CSO, 21 April 2011

## **8. Capital gains tax incentive**

We welcome the introduction of the new capital gains tax incentive and are hopeful that the operation of the relief will be as simple as possible, in order to encourage uptake of the scheme.

## **9. Employment and Investment Incentive**

European Commission approval of the Employment and Investment Incentive (EII) Scheme and its entry into operation in November 2011 were welcome developments.

We note that the portion of the relief available where additional jobs are created or where the capital invested is used for R&D purposes is not subject to the High Earners' Restriction. However, much of the relief remains subject to the restriction.

Feedback from our members suggests that this may be impacting the attractiveness of the scheme for potential investors, contrary to the objective of improving access to early stage development capital for small and start-up companies.

Accordingly, we would recommend that all relief available under the EII Scheme and the Seed Capital Scheme be removed from the list of specified reliefs.

## **10. Reliefs for entrepreneurs**

There have been a number of positive developments to date in the area of encouraging entrepreneurship in this country. As outlined in our pre-Budget submission, there are some other options in this area which may be worthy of consideration.

The UK operates "Enterprise Management Incentives" (EMI) which are share options incentives. They are *"designed to help small, higher risk companies recruit and retain employees who have the skills to help them grow and succeed. They are also a way of rewarding employees for taking a risk by investing their time and skills to help small companies achieve their potential"*<sup>2</sup>.

The UK also offers an "Entrepreneurs' Relief" which allows individuals to claim relief on qualifying gains on the disposal of their business, up to a certain limit.

If you would like any further information on these initiatives, we would be happy to discuss them with your officials.

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<sup>2</sup> *Enterprise Management Incentives* – HMRC website

### **11. Stamp duty consanguinity relief**

Some drafting details have been raised at Main TALC in relation to Financial Resolution No. 7, which contained the legislative amendments necessary to give effect to the Budget changes to stamp duty consanguinity relief.

We understand that this matter is being reviewed at present. We would be happy to provide further details if required.

### **12. Domicile levy**

The definition of “Irish property” for the purposes of the domicile levy currently appears to include an interest in Irish Government Bonds. We suggest that such bonds should be excluded in order to assist in ensuring an ongoing supply of funds to the State. This would be in line with the Government’s objective of returning to the bond markets later this year.

On a related matter, we would like an opportunity to discuss the exclusion from the definition of “Irish property” of shares in holding companies which derive the greater part of their value from trading subsidiaries, with a view to possibly extending this exclusion in certain circumstances.

### **13. VAT**

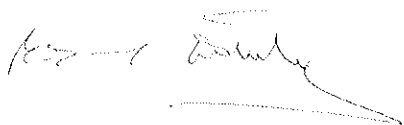
Section 51 of the VAT Consolidation Act 2010 allows a person supplying goods or services to seek a determination from Revenue on the rate of VAT applicable or whether the supply is exempt. Revenue may also issue a determination themselves. The supplier may appeal the decision to the Appeal Commissioners.

The consumer of these goods or services will also be impacted by this determination and the VAT treatment decided upon. However, they have no rights under the section to apply for or appeal against a determination in respect of supplies they receive. The Institute would like to see the provisions of section 51 VAT Consolidation Act 2010 amended accordingly, in line with European law and recent recommendations of the Law Reform Commission.

We are available to you and your officials for further discussions or consultations on any of the matters raised in this letter.

Yours truly

Bernard Doherty

A handwritten signature in black ink, appearing to read "Bernard Doherty", with a long horizontal flourish extending to the right.

**President**

**Irish Tax Institute**

## Appendix 1: Capital gains tax retirement relief

Scenario:

- Company worth €4m
- Owner currently aged 66 years
- Has owned the shares for 10 years
- Has been a full-time working director for 2 of those years
- Owner wants to gift the shares to his child at some point

### **BEFORE Budget 2012**

Owner just needs to work in the company on a full-time basis for another 3 years (so that he satisfies the 5 year full-time working director requirement).

He can then transfer the shares to his child and avail of full CGT retirement relief because:

- He will be over 55 years, and
- He will have owned the shares for at least 10 years,
- He will have been a full-time working director of the company for at least 5 years, and
- The disposal will be to his child.

### **AFTER Budget 2012**

Owner will never be able to avail of full relief from CGT on the transfer of the shares to his child. He can get partial relief, subject to the new €3m cap.

(a) If he transfers the shares now?

No relief because he has not been a full-time working director for at least 5 years.

(b) If he holds on to the shares for another 3 years (as in the position above)?

Relief will be subject to the new €3m cap because, although he will then have satisfied the full-time working director requirement, he will be aged 69 by then. Full relief is now restricted to those between the ages of 55 to 66.

(c) What about the 2-year “window”?

This is of no benefit in this scenario – the owner will not be able to satisfy the full-time working director requirement in that period.