



## GES NewsFlash

### Ireland – Finance Bill 2010

February 25, 2010

#### Summary

The Finance Bill was published on 4 February 2010. While there have been no increases in tax rates, or significant abolition of tax reliefs, a number of changes have been introduced which impact a wide range of individuals. The important changes are outlined below.

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#### Extension of the Remittance Basis to EU Countries

The tax repayment available for unremitted employment income, designed to compensate for the removal of the so-called “remittance basis”, has been extended to nationals of EU/EEA countries and to individuals who have an EU/EEA employer. Previously, this repayment claim was available only in very limited circumstances where Ireland had a Double Taxation Agreement with a country outside the EU/EEA. The amendment, which applies to non Irish domiciled individuals who become resident in and working in Ireland for first time during 2010 or thereafter, makes a repayment claim more widely available.

Specifically, the amendment provides that being an EU/EEA national or having an EU/EEA employer, no longer excludes an employee from making a repayment claim. Additionally, a claim can be made in respect of 2010 and future years where an employee has only been working in Ireland for one year, whereas for 2009 an employee has to work in Ireland for 3 years.

Where all conditions are satisfied, an employee may make a claim on their tax return for the appropriate year for their taxable income to be determined based on the higher of:

- The actual amount attributable to Irish duties that was remitted in that year; or
- €100,000 plus 50% of the balance attributable to Irish duties

#### Deloitte's View

This is welcome news for non-Irish domiciles with foreign employments, and

ultimately good news for Ireland in general. While the repayment claim is not available to Irish domiciliaries, even if they have a foreign employment, this measure is likely to increase Ireland's attractiveness to foreign multinational companies considering investing into Ireland.

## Remittance Basis Removal for Irish Citizens Not Ordinarily Resident in the State

The remittance basis of income tax for Irish citizens for non Irish income is being removed with effect from 1 January 2010. For the last number of years the remittance basis had been restricted specifically in respect to foreign employment income where the duties were performed in the State. It was however still available to:

- Non Irish domiciles OR
- Irish Citizens who were not ordinarily resident in the State

in respect of their:

- Foreign Employment income relating to non-Irish duties AND
- Other foreign (non employment) income.

As from 1 January 2010 this beneficial tax regime has been removed for Irish citizens irrespective of their ordinary residence status in the State.

### Deloitte's View

Full removal of the remittance basis was recommended in the Commission of Tax report but it was considered unlikely that any changes would be introduced in the December 2009 budget and subsequent Finance Bill. The removal of this attractive option for Irish individuals wishing to return home is both disappointing and somewhat unexpected. The benefit of this relief would typically only be available for a period of 3 years following an individual's return to Ireland, until ordinary residence was regained and, as such, it is unfortunate that such a short term benefit has been removed.

## Domicile Levy

The "domicile levy" is introduced as indicated in the Minister for Finance's budget speech. The domicile levy itself is a maximum annual amount per tax year of €200,000 which can be reduced to the extent that income taxes which are due for that tax year and have been paid before the due date of the domicile levy.

The domicile levy will be due in respect of:

1. An individual who is domiciled in, and is a citizen of, the State AND
2. Whose worldwide income for that tax year is more than €1,000,000 AND
3. Whose liability to income tax in the State for that tax year is less than €200,000 AND
4. The market value of whose Irish property on the valuation date in the tax

year is in excess of €5,000,000

Irish property relates to all property situate in the State at the 31 December of the year in question and specifically excludes;

1. Shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades and
2. Shares in a holding company which derives the greater part of its value from subsidiaries which wholly or mainly carry on a trade or trades.

#### **Deloitte's View**

As currently drafted it appears that Revenue will be taking a strict line with the new levy, in that they must be satisfied with the valuation of the property on the return otherwise they can use their own estimate which would then have to be appealed by the tax payer if disputed.

### **Income Levy**

Following the introduction of and subsequent increase in the income levy in 2009, the Bill looks to clarify a number of issues previously discussed in the Revenue's Income Levy Guide. The amendments primarily relate to the clarification of certain exemptions from the income levy in relation to payments provided on cessation of an employment and also the interaction of the income levy and the various double taxation agreements Ireland has in place.

The extension of relief from the income levy with regard to earnings from foreign employments is 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 they are of the view that to operate PAYE would be impracticable because of the circumstances of the employment.

#### **Deloitte's View**

Although these issues were previously dealt with in the Revenue's Income Levy Guide, the clarification and inclusion in Irish tax legislation is to be welcomed.

### **High Earners Income Restriction**

Finance Act 2006 introduced a High Earners Income Restriction (HEIR) which took effect from 2007. The aim of the restriction was to limit the amount of certain reliefs the "high net worth" individuals could claim to broadly the greater of €250,000 or half of their income, ensuring that they paid minimum effective tax rate of circa 20%.

The Finance Bill outlines the means of increasing the effective rate of income tax for these “high net worth” individuals to 30%, 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 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.

The changes apply from 2010 and subsequent tax years.

#### **Deloitte's View**

The workings of the original HEIR formula inadvertently brought certain individuals into its remit who, at first glance, may not appear to have been affected. In particular, individuals with significant amounts of deposit interest were affected, as deposit interest erodes the €250,000 limit. Therefore, the greater the deposit interest, the less reliefs that could be claimed. It is regrettable that the Finance Bill does not rectify this, particularly given the increase in savings levels.

The changes also do not 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 Business Expansion Scheme investments.

#### **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. Until now, the definition of a day for this relief was determined based on the individual's presence in the State at midnight of that day. This has now been amended so that presence in the State for any part of the day is deemed to be a day, as is the case for residency purposes. This change applies from 2010 onwards.

#### **Miscellaneous**

Changes were also announced in the Finance Bill to the following areas:

##### **Preferential Loans**

Certain changes were introduced to ensure that in the cases of preferential loans where the loan no longer qualifies for interest relief, the individual remains liable to

tax on the benefit-in-kind arising on the difference between 5% and the interest rate charged.

### **Mortgage Interest Relief**

The Finance Bill provides for the measures announced in the Budget, as follows:

- An extension until 2017 of mortgage interest relief at current rates and levels of relief for qualifying loans taken out on or before 31 December 2011
- The extension of the relief, albeit at reduced levels and duration, for those who take out qualifying loans between 1 January 2012 and 31 December 2012
- Mortgage interest relief will cease to be available for 2018 and onwards

### **Service Charges**

As was recommended in the Commission on Taxation Report, relief for service charges paid in 2011 and onwards has been discontinued. Relief will be available in 2011 for service charges paid in 2010.

### **Rent-a-Room Relief**

Rent-a-Room is a valuable relief for homeowners looking to supplement income, whereby rental income of up to €10,000 per annum can be earned free of tax. The relief was restricted in previous Finance Acts to counteract parent/child tenancy situations. This Finance Bill further extends the restrictions to cases where in certain circumstances, rents are received by an employee from their employer.

### **Age Related Relief for Health Insurance Premiums**

The Bill provides for a further increase in tax relief for medical insurance premiums entered into or renewed on or after 1 January 2010, for those aged 60 and over. This further enhances the increased relief for the elderly introduced with effect from 2009 onwards.

### **Equity Awards**

#### **Share scheme reporting**

The Finance Bill introduces a new provision which will make it mandatory for employers to automatically file returns of information to the Revenue Commissioners regarding shares and other securities awarded to directors and employees. The filing deadline is 31 March in the year of assessment following the year in which the award was made.

While this new reporting section applies on or from 1 January 2010, employers will need to file a return detailing the shares awarded to employees and directors in the 2009 tax year.

For unapproved employee share schemes, a single return of information form in respect of shares/securities and share options will be made available in April and will incorporate the existing Forms SO2 and CS1.

Due to the late availability of the relevant form, the return filing date for returns of information in respect of the 2009 tax year has been extended to **9 July 2010**.

The relevant forms for returns of information for Revenue approved share schemes are now available on the Revenue website. Due to the delay in the availability of these forms, the return filing date for 2009 tax year has been extended to **15 May 2010**.

The Bill also provides for penalties where employers fail to make the required returns of information and where they fraudulently or negligently make incorrect returns.

#### **Deloitte's View**

This reporting requirement will add more strain to employers whose administrative burden regarding share scheme reporting has increased significantly in recent years. It also remains to be seen how this new reporting obligation will interact with the Form P11D on which employers are required to report employee benefits (including free shares) when notified by Revenue to do so. Broadly, as a result of this provision, employers are now required to report all equity awards to Revenue.

### **Restricted Shares**

The Bill contains two technical amendments to the rules regarding the taxation of restricted shares:

- The first amendment provides that the trust in which the restricted shares are held, must be established in the State or in another EEA State and that the trustees must also be resident in the State or in another EEA State. This amendment applies to restricted shares acquired on or after 4 February 2010
- The second amendment clarifies that it is the amount of income chargeable to tax on the acquisition of the restricted shares that is reduced and not the amount of income tax payable. This definition has been back dated to 20 November 2008.

#### **Deloitte's View**

The clarification in relation to which element is actually reduced is a welcome move as there had been uncertainty due to the language of this section.

## Approved Profit Sharing Schemes

The Bill provides for amendments to the legislation regarding Revenue approved profit sharing schemes which are designed to counteract tax avoidance schemes which have arisen in this area:

- The first amendment provides that with effect from 4 February 2010, the Revenue Commissioners will not approve a profit sharing scheme unless they are satisfied that there are no arrangements in place that provide for loans to be made to employees eligible to participate in the scheme
- The second specifies that shares appropriated to employees on or after 4 February 2010 cannot be shares in certain service companies.

## Multinationals

### Transfer pricing

The Finance Bill introduces new transfer pricing provisions. The provisions apply to transactions between associated trading companies. They apply to large businesses, with small and medium size enterprises being excluded. Those larger entities for which 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.

#### Deloitte's View

Given the focus on tax regulation globally, the introduction of a formal transfer-pricing regime was expected and indeed should be broadly neutral as regards Ireland's attractiveness as a location for inward investment.

## People to Contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

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