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Tax News

A word from the editor

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Welcome to this special issue of Tax News. The much anticipated Commission on Taxation Report 2009 was published on 7 September. The Commission was set up to review the structure of the existing tax system with a view to assisting in the framing of tax policy for the next decade. The report is a very impressive document (550 pages and over 240 recommendations) which covers a whole range of taxes.

Since (and even before) publication there has been significant media attention on the more radical recommendations of the Commission, such as the introduction of a property tax, water charges and a carbon tax. However, many other recommendations that could be very relevant to you have received far less scrutiny.

It is important to remember that the report contains recommendations not draft legislation. It is impossible to say with certainty which recommendations the Government will decide to implement and the timeframe for implementation. However, the Minister for Finance will undoubtedly take into consideration the report when framing the next Budget, expected on 2 December 2009.

The Commission has recommended the removal or restriction of numerous tax reliefs and the Minister has given notice of his intention to target tax reliefs. In his last Budget speech he stated "it is the intention of the Government to continue to remove unnecessary reliefs and shelters from the tax system in successive Budgets".

In this issue we have highlighted what we believe are the most relevant recommendations for our clients and possible opportunities to take action before any changes are introduced in the December Budget.

If you wish to discuss any matter relating to the report or any other tax matter please do not hesitate to contact any member of our team.

Patrick Kinnane

Patrick Kinnane | *Associate Director*

e-mail. patrick@kennelly-twomey.ie | **Tel.** 01 660 8000

Savings and pensions

The report makes a number of important recommendations in the area of pensions and retirement savings. While the Commission recommends the introduction of a "matching contribution" system (i.e. the State would contribute EUR1 for each EUR1.60 pension contribution by a taxpayer) to replace the current system of tax relief on pensions, the Commission recognises that such a system may be more appropriate to a more stable economic environment and thus likely to be a more medium to long term measure.

The other key pension recommendations are:

A change to the current rules allowing 25% of a pension fund (or 1.5 times final salary) to be taken as a tax free lump sum. The recommendation is that:

- the first EUR200,000 of that lump sum should be tax free
- the excess of that lump sum over EUR200,000 should be liable to tax at the standard rate of income tax.

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If possible take your pension lump sum before the December Budget.

Pension fund cap

With effect from 1 January 2009 the annual earnings limit on which tax relief for pension payments can be claimed has been reduced from EUR275,239 to EUR150,000. Currently, pension funds can reach a threshold of EUR5.4 million and still be tax efficient. The Commission recommends that this threshold should be reduced in line with the reduction in the annual earnings limit. This suggests that the current pension fund threshold could be reduced below EUR3m.

Action

If possible take your pension lump sum before the December Budget.

If the EUR3m pension fund threshold will affect you, top up your fund while the threshold is still EUR5.4m.

Estate planning and transfer of assets

The Commission has recommended that business relief and agricultural relief on gifts and inheritances of businesses (including trading companies) and farms should be reduced from 90% to 75% and that the amount of relief that can be claimed should be capped at EUR3m. This would have the following effect on a gift or inheritance of a business or farm worth EUR10m:

	Current Position	Commission recommendation
	EUR	EUR
Market value of business/farm	10m	10m
Relief	(9m)	(3m)
Taxable	1m	7m
Gift/inheritance tax	0.25m	1.75m

At present retirement relief allows individuals over 55 to gift qualifying trading businesses (including farms) and shares in qualifying trading companies to children free of capital gains tax (CGT), subject to certain conditions. There is currently no limit on this relief. The Commission has recommended that this relief is capped at EUR3m and that the remaining value of the business should be subject to CGT at a rate of 25%.

You should give serious consideration to transferring any interest you have in a trading or farming business to your children before the December Budget.

The Commission has recommended the abolition of capital gains tax relief and stamp duty relief on the transfer by a parent to a child of a site which is used by the child to build their main home.

Action

You should give serious consideration to transferring any interest you have in a trading or farming business to your children before the December Budget.

Property

One of the more radical recommendations by the Commission is the introduction of an annual property tax (APT). This is highly controversial and already the indications are that it will not be introduced in the foreseeable future.

Some of the other recommendations in the report relating to property were made in the context of the introduction of an APT. For example the commission recommended abolishing stamp duty on the purchase of a principal private residence (PPR). However, if APT is not introduced for homeowners, it is unlikely that stamp duty will be abolished for purchases of PPR's.

The Commission recommended a higher capital gains tax rate for windfall gains from increases in land values due to rezoning. The Commission recommends that this higher rate should apply to all sale proceeds above "current use value".

Subsequent to the issue of the Commission's report, it has been announced by the Government that the committee stage of the NAMA Bill (expected on 22 September) will include such a windfall tax and that the tax rate will be 80%!

Tax residence and international issues

Over the past 12 months there has been much media attention and speculation regarding the current tax residence rules. The Commission has reviewed the existing rules and recommended that the existing 183/280 day residence test should be supplemented by additional tests which should include a permanent home test and a test based on the individual's centre of vital interests. It is not clear from the report if the recommendation is for the permanent home test and the centre of vital interests test to form a single additional test or two separate additional tests.

If the rules are changed in line with this recommendation an individual could be resident in Ireland even if he/she spends less than 183/280 days in Ireland.

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The recommendation only relates to Irish citizens.

Remittance basis of taxation

At present individuals who are not domiciled in Ireland can avail of the remittance basis of taxation for income and capital gains tax purposes. This means that non Irish source income and gains are only liable to Irish tax if remitted to Ireland. Irish citizens who are not ordinarily resident in Ireland can also avail of the remittance basis for income.

The Commission has recommended that the remittance basis is abolished but have stated that there should be a lead in time of 3 to 5 years before changes take effect.

An abolition of the remittance basis could have a detrimental effect on certain industries which are reliant on attracting skilled foreign employees. There has already been a significant amount of lobbying against this recommendation.

Abolition and restriction of reliefs

The report has recommended that numerous tax exemptions and reliefs should be either restricted or abolished. Set out below are some relevant recommendations that, in our view, have a real possibility of being enacted.

1. High earners restriction on reliefs

A measure to restrict the use of certain reliefs/exemptions for high earners came into effect from 1 January 2007. The Commission has recommended that the restriction on the use of certain reliefs should apply to some degree for all individuals with income above EUR200,000. For individuals with income above EUR250,000 and who are claiming certain reliefs, they will pay tax on their income at an effective rate of at least 20%.

2. Patent income exemption

The abolition of the tax exemption for patent royalties. This would include the abolition of relief for patent royalties received by companies and dividends paid to shareholders from patent royalty income.

Action

You should consider advancing the payment of patent royalties and patent dividends prior to 2 December 2009

3. Tax free termination payments

The maximum tax free amount of a termination payment received from an employer to be restricted to EUR200,000. Currently, there is no restriction other than by reference to years of service and level of employment income.

Action

For anyone with long employment service, there may be an opportunity, with planning, to take advantage of the current rules relating to tax free termination payments.

You should consider making any charitable donations in 2009 when tax relief at the marginal rate is still available to you.

4. Charitable donations

The Commission has recommended a significant change in the way tax relief is given for charitable donations. It recommends that tax relief be given directly to the charity at standard rate rather than by giving tax relief at the marginal rate to the donor through their self assessment.

Action

You should consider making any charitable donations in 2009 when tax relief at the marginal rate is still available to you.

5. Allowance for employing a carer

The allowance of up to EUR50,000 for employing a carer for an incapacitated family member should continue but with the recommendation that relief is restricted to the standard rate. Currently marginal rate tax relief is available.

6. Artists exemption

Recommendation that the artists income exemption is abolished.

PRSI and employees

The Commission made the following recommendations in respect of the charge to PRSI on employees:

- The PRSI ceiling for employee contributions, currently EUR75,036 should be abolished
- PRSI should apply to share based benefits such as share options and share awards
- Employees should be subject to PRSI on investment and rental income

Any good news?

There may be, as there were a number of welcome recommendations. They include the following:

- No introduction of a wealth tax
- Capital gains arising due to inflation should not be taxed
- 0% stamp duty on shares
- Removal of the close company surcharge on professional service companies.
- Reduction in the tax rate on dividends received by Irish residents to the rate applying to Irish deposit interest. The maximum tax rate that will apply to Irish deposit interest in 2010 is 33% including PRSI and health levy.

However, in light of the current state of the public finances it is our view that many of the more positive recommendations are unlikely to be considered at this time.

Kennelly & Twomey Limited, Fleming Court, Fleming Place, Mespil Road, Dublin 4. Telephone: 01 660 8000

Copies of previous editions of Tax News are available on our website: www.kennelly-twomey.ie (password: "planning")