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Tax News

A word from the editor

There have recently been some important Irish tax changes affecting the Irish remittance basis of tax and also affecting Irish domiciled citizens who are not tax resident in Ireland. This Tax News summarises these issues and other related issues as follows:

1. The remittance basis for UK income and gains.
2. The remittance basis for those holding fund investments.
3. The abolition of the remittance basis for Irish domiciled citizens.
4. The new EUR200,000 domicile levy for non residents.
5. Tax issues for non residents who receive rent from an Irish property.

If you have any queries in relation to any Irish tax issues please contact us.

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"There have recently been some important Irish tax changes affecting the Irish remittance basis of tax and also affecting Irish domiciled citizens who are not tax resident in Ireland."

The remittance basis for UK income and gains

Irish tax resident individuals who are not domiciled in Ireland do not pay Irish tax on non Irish income and gains provided they do not bring the income or gains to Ireland (the remittance basis of tax).

Prior to 2008, UK income and gains did not benefit from the remittance basis. However, in order to bring the remittance basis into line with EU law, during 2008 the remittance basis was extended to UK income and gains, although the legislation to change this was not retrospective.

The Irish Revenue Commissioners have now stated that they are prepared to examine, on a case by case basis, claims for repayment of tax in respect of UK income (excluding employment income) and UK gains arising from 2006 to 2008. Claims for repayment in respect of 2006 income and gains must be made by the end of 2010.

If the UK income or gains have since been remitted to Ireland then the circumstances of the case would need to be examined, but it is unlikely that any refund will be available.

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Are you entitled to the Irish remittance basis and also hold fund investments?

Irish tax resident individuals who are not domiciled in Ireland generally ensure that all of their investments are kept outside of Ireland so that they qualify for the remittance basis (i.e. there is no Irish tax on the investment income or growth unless it is brought into Ireland).

However, many people do not realise that if they have investment funds in the EU or certain other countries, the remittance basis is not available and any income or gains on those funds would be taxable in Ireland (although the maximum tax rate on gains on these funds is 28%).

Our experience is that most high net worth clients relocating to Ireland from the UK will hold investments such as PEPs, ISAs, OEICs and ETFs among others. In most cases these types of investments are made through investment funds that do not qualify for the remittance basis. There is an opportunity to switch into a more suitable investment or to rebase these investments before becoming tax resident in Ireland.

On an ongoing basis, non-domiciled individuals need to ensure that their brokers and portfolio managers are aware of the types of investment that they should avoid if they want to potentially achieve a 0% tax rate by qualifying for the remittance basis.

The following is a sample of countries where investment funds do not qualify for the remittance basis:

- All EU countries and many other European countries including Iceland, Norway, Liechtenstein and Switzerland
- Japan and Korea
- Australia and New Zealand
- Canada, the USA and Mexico.

Funds located in jurisdictions that qualify for the remittance basis would include funds in all the traditional offshore locations such as Jersey, the Cayman Islands, the Bahamas, the Isle of Man and Bermuda. One caveat is that if you make a gain on investment funds in these countries and then bring the money to Ireland, the tax rate on the gain could be as high as 55%.

“If you have returned to Ireland in the past 3 years then this change may be relevant to you and you may need to take action now to minimise your income tax in 2010.”

Have you become resident in Ireland in the last 3 years?

Under current rules Irish citizens returning to Ireland after being resident outside of Ireland for 3 or more years can avail of certain income tax advantages, but this relief has now been abolished.

Such individuals were able to avail of a tax holiday known as the “remittance basis” until they became ordinarily resident in Ireland. In most cases people returning to Ireland would have the remittance basis for the first 3 years after their return. The tax holiday meant that during these 3 years they were not taxed on income from sources outside Ireland unless the income was actually brought into Ireland.

From 1 January 2010 Finance Bill 2010 abolishes the remittance basis for Irish domiciled citizens who are not ordinarily resident.

If you have returned to Ireland in the past 3 years then this change may be relevant to you and you may need to take action now to minimise your income tax in 2010.

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New domicile levy of EUR200,000

"It is important to note that both resident and non-resident Irish citizens can be liable to the EUR200,000 domicile levy."

A new EUR200,000 annual "domicile levy" has been introduced for an individual who satisfies all of the following criteria:

1. **The individual must be domiciled in Ireland and be an Irish citizen**

   It is important to note that both resident and non-resident Irish citizens can be liable to the EUR200,000 domicile levy. However, where Irish income tax is paid for a tax year a credit will be available for that Irish income tax against the domicile levy for that tax year.

2. **The individual must have worldwide income of more than EUR1m**

   Worldwide income includes all income (even income that might be tax exempt). Matters such as capital allowances and charitable donations are ignored.

3. **The individual must have an income tax liability in Ireland of less than EUR200,000**

   A credit is available for any Irish income tax paid in a tax year against the EUR200,000 domicile levy for that tax year. Importantly, it is only income tax that is available as a credit. PRSI, the health levy and the income levy are not available as a credit.

4. **The individual must have Irish property of more than EUR5m (at 31 December in the relevant year)**

   Irish property is all property that is "situate" in Ireland, subject to the following caveats:

   - shares in an Irish trading company are not included as Irish property
   - where a foreign private company owns Irish property and derives all or most of its value from that Irish property, then the shares in that company are deemed to be Irish property
   - no deduction is made for any debts or encumbrances on Irish property.

When must the domicile levy be paid?

The domicile levy applies for the first time in 2010 and the 2010 domicile levy is payable on 31 October 2011. A domicile levy tax return must be filed.

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Are you not tax resident in Ireland but receive rent from an Irish property?

"If you are not tax resident in Ireland it is possible to structure your Will to significantly reduce Irish inheritance tax on Irish property."

If this is the case you should be aware of the following issues:

- The rate of tax on rental income for non tax resident individuals can be as high as 52%. It may be possible to reduce this rate of tax by holding the property through a company or other structure. In order to assess the net benefits of such a structure a review should be carried out.

- A new income levy has been introduced, which is now at a maximum rate of 6%. This income levy applies to rental income before deduction of any capital allowances, fixtures and fittings allowances and "section 23" type reliefs.

- From 7 April 2009 the tax deduction for interest against rent on residential property is restricted to 75% of the interest payable. When this is coupled with lower interest rates the tax deduction for 2009 and future years may be significantly lower than in previous years.

- The tenant generally has to deduct tax at 20% from the rent and pay it directly to the Irish Revenue. This 20% withholding tax can be avoided if an Irish agent is appointed to collect the rent

- Irish gift tax and inheritance tax are potentially payable on a gift or inheritance of the property. No gift or inheritance tax will be payable if your spouse receives the property and each child can receive Irish property worth EUR414,799 from their parents without paying gift tax or inheritance tax. The excess of the value of the gift or inheritance over EUR414,799 will be taxed at 25%. If you are not tax resident in Ireland it is possible to structure your Will to significantly reduce Irish inheritance tax on Irish property and we can advise you how to achieve this if it is relevant to you.

And finally the disclaimer... Tax News is a forum for sharing ideas and is not a substitute for formal tax advice. If you take, or do not take, action as a result of Tax News without formal advice from us, Kennelly & Twomey Limited can accept no responsibility for any loss, damage or distress.

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