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Tax News

A word from the editor

Welcome to this special issue of Tax News that focuses on the important tax issues for our clients contained in Finance Bill 2010. The more significant changes for our clients include the introduction of the EUR200,000 domicile levy, changes to the restriction on tax reliefs for higher income earners and the abolition of the remittance basis for Irish citizens who are not ordinarily resident in Ireland.

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

Finance Bill 2010 contains many provisions to counter tax planning. However, there are still many tax planning opportunities and we look forward to continuing to provide unique tax plans to our clients in the future.

There is a significant amount of detail in Finance Bill 2010 in relation to the items highlighted that cannot be summarised in this Tax News. If you are potentially affected by any provisions in the Bill please call any member of our team.

The Finance Bill is going through amendment stages over the next few weeks so some of the detail set out in this Tax News may change between now and early April when we expect it be signed into law.

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New domicile levy of EUR200,000

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.

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

"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."

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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Restriction on tax reliefs for higher income earners

"If you are claiming significant charitable donations, capital allowances or other tax reliefs you should contact us."

Finance Act 2007 introduced a restriction on the use of various tax reliefs for individuals with annual income of more than EUR250,000. Finance Bill 2010 further restricts how tax reliefs can be used.

In general, from 2010 any individual with income of more than EUR125,000 will have their tax reliefs limited to 20% of total income or EUR80,000, whichever is the greater. However, this is just the general rule and there are a number of caveats and potential complications. If you are claiming significant charitable donations, capital allowances or other tax reliefs you should contact us to consider the impact of these restrictions and consider the best way to structure your tax reliefs in the future.

Key provisions relating to administration of gift tax and inheritance tax

There are a number of provisions in Finance Bill 2010 that are intended to bring the administration of gift tax and inheritance tax into line with other taxes such as income tax and capital gains tax. The most important changes are as follows.

1. Gift tax and inheritance tax payment dates and tax return filing dates have been changed. For gifts or inheritances between 1 January and 31 August, the payment/filing date is 31 October in that year. Where the gift or inheritance is between 1 September and 31 December, gift and inheritance tax must be paid and tax returns filed by 31 October in the following year. There is also provision for mandatory electronic filing of gift and inheritance tax returns in a broad range of circumstances. All of these changes will only apply when the Revenue Commissioners have signed an Order for their commencement.

2. Gift tax, inheritance tax and discretionary trust tax are no longer a charge on property that was previously gifted/inherited. This change has retrospective effect.

3. Previously certain individuals, such as donors, trustees and personal representatives, were secondarily accountable for gift tax and inheritance tax. In most cases secondary accountability has now been abolished with retrospective effect, so that generally the only person now responsible for paying gift and inheritance tax is the person who receives the gift or inheritance.

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New anti avoidance law for CGT loss planning

Finance Bill 2010 has closed off artificial capital gains tax loss creation schemes from 4 February 2010. The measures are very widely drafted and disallow any CGT loss resulting from transactions where one of the main purposes of the transactions was to secure a tax advantage.

We have a concern that the section is too widely drafted and may catch situations where a client sells shares to realise a loss and buys back those same shares at a later date.

Other Finance Bill 2010 tax changes

- In 2008 a three year corporation tax exemption for certain companies commencing to trade in 2009 was introduced where the company's corporation tax liability does not exceed EUR40,000 in each year. Finance Bill 2010 extends this exemption to companies commencing to trade in 2010. This is a generous exemption as it allows new companies carrying on new business ventures to make tax-free profits of up to EUR320,000 each year for 3 years.

- The following changes have been made to tax relief for medical expenses:

  - nursing home expenses will only qualify for tax relief if the nursing home provides 24 hour nursing care on site

  - tax relief is available for treatment in all foreign hospitals (previously the hospital would only qualify if it was on Revenue's list of approved hospitals)

  - cosmetic procedures (with certain exceptions) will not qualify for relief.

- A new anti avoidance provision has been introduced which charges certain buybacks of shares in publicly quoted companies to income tax rather than capital gains tax.

- The 1% stamp duty introduced last year on life insurance premiums will not apply to pensions business carried on by a life insurance company. This means that pension contributions made by a taxpayer or an employer will not generally be subject to this 1% charge.

- The refuse charges relief is to be terminated from 2011. As the relief is granted one year in arrears, you will be able to claim relief in 2011 for refuse charges paid in 2010.

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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