Mason Hayes+Curran

Private Client Update: Finance (No. 2) Bill 2008.

The Finance (No. 2) Bill 2008 (the Bill) was presented by Finance Minister Brian Lenihan to the Dáil on the 20 November, 2008. The following details the main changes to capital taxes proposed by the Bill as presented.

1. Capital Acquisitions Tax:

a) Rate of Tax:

Section 83 of the Bill provides that the rate of tax on gifts and inheritances taken on or after the 20 November, 2008 has been increased from 20% to 22%.

b) Agricultural Relief:

Where agricultural relief applies the taxable value of a gift or inheritance of qualifying 'agricultural property' by a person who comes within the definition of a 'farmer' is reduced by 90%. To qualify as a 'farmer' at least 80% of one's assets must comprise 'agricultural property'. The test is purely mathematical and one does not actually have to be a farmer in the traditional sense to qualify. With effect from the 20 November, 2008 section 82 ensures that the relief will apply to agricultural property situated in a Member State of the EU.

c) Class Threshold:

The relationship between a person who provides a gift/inheritance (disponer) and the person who receives the gift/inheritance (donee) determines the maximum tax free amount (group threshold) the donee can receive from the disponer. Normally class thresholds are increased annually roughly in line with inflation. The Bill has made no provision for any increase this year. Depending on asset values this may result in increased amounts of tax payable. The table below shows the current class threshold amounts.

Group	Relationship to Disponer	Group Threshold 2009
(a)	Child	€521,208.
(b)	Parent/brother/sister niece/nephew/grandchild	€52,121.
(c)	None of the above including niece/nephew to uncle/aunt	€26,060.

d) Heritage Property:

Sections 1003 and 1003A of the Taxes Consolidation Act 1997 provide for tax relief in respect of donations of heritage items and property to approved State institutions and the Irish Heritage Trust. Tax relief is available on 100% of the market value of the heritage items and property. Section 87 of the Bill reduces the amount of relief available to 80% of that market value.

e) Trusts/Settlements:

Section 86 of the Bill states that any person who, in the course of a trade or profession (e.g. solicitor, accountant), has been involved in the making of a trust settlement where the settlor (person creating the trust settlement) was resident or ordinarily resident in the State and where the trustees (persons who will administer the trust settlement fund during the trust period for the benefit of the specified beneficiaries) are not resident in the State, must, within 4 months of the date of making the settlement, furnish to Revenue specific details regarding the settlement.

A trust settlement will not be regarded as resident in Ireland unless the general administration of the settlement is ordinarily carried out in the State.

f) Recovering penalties from a deceased person's estate:

Schedule 5 to the Bill seeks to introduce a new section 1077D into the Taxes Consolidation Act 1997 which puts the Revenue practice of recovering penalties from the estates of deceased persons on a statutory basis. With effect from the passing of the Act penalties will only be recovered from a deceased person's estate where the person either agreed in writing to pay the penalty or a court has determined that the person was liable to pay a penalty during the person's life.

2. Stamp Duty:

Stamp duty is a tax on documents. In order to transfer/convey legal title to real property a document called 'a deed' is required. This deed attracts stamp duty and one cannot be registered as the new owner of property unless the deed is stamped first. Different rates apply to residential and non-residential property. Residential stamp duty rates are as follows: the first €125,000. is not taxed, the next €875,000. is taxed at 7% and the balance over €1,000,000. is taxed at 9%.

a) Non-Residential Property:

Section 80 of the Bill provides that with effect from the 15 October, 2008 the highest stamp duty rate has been reduced from 9% to 6% for transactions where the aggregate consideration exceeds €80,000. During his Budget, 2009 speech in the Dáil Minister Linehan said that that rate would not be reduced further during the lifetime of the present government. The following table sets out the rates applicable from the 15 October, 2008.

Aggregate Consideration	Rate from 15/10/08
Up to €10,000.	Exempt
€10,001. to €20,000.	1%
€20,001 to €30,000.	2%
€30,001. to €40,000.	3%
€40,001 to €70,000	4%
€70,001. to €80,000.	5%
Over €80,000.	6%

b) Resting on Contract:

Resting on contract enables a purchaser of land to avoid paying stamp duty i.e. a purchaser enters into a contract with a vendor to purchase the land and the entire purchase price passes to the vendor. No deed transferring the legal title to the purchaser is executed by the Vendor. Instead, the contract essentially requires the vendor to execute a deed, or a number of deeds in respect of residential development land, directly to the ultimate purchasers from the initial purchaser. The ultimate purchasers may then be liable for the payment of any duty provided they are not entitled to any reliefs i.e. owner occupier relief, first time buyer relief.

Finance Act 2007 provides for the abolition of this type of transaction by way of ministerial order. To date no such order has been executed. The Bill amends Finance Act 2007 such that if a ministerial order was implemented certain transactions would be excluded from the change. These include; public private partnerships and certain incentive schemes for capital allowance purposes such as nursing homes, qualifying hospitals, certain holiday camps and child care facilities.

c) Transfers to young trained farmers:

Section 81 of the Stamp Duties Consolidation Act 1999 provides that the transfer by one person to a 'young trained farmer' of land is exempt from stamp duty. A 'young trained farmer' is a person who proves to Revenue that he/she is aged under 35 years at the date of the transfer and holds a certain type of agricultural 'qualification' from a specified body. Land means agricultural land and includes farm buildings, farm houses and mansion houses and lands ancillary thereto. Section 77 of the Bill extends the period for exempt transfers of such land to the 31 December, 2012.

3. Capital Gains Tax:

a) Rate change:

Section 39 provides that with effect from the 15 October, 2008 the rate at which capital gains tax is levied has been increased from 20% to 22%.

b) Payment date:

A payment date of 15 December (for next year and subsequent tax years) will apply for CGT disposals (which include gifts of assets/property) between 1 January, 2009 to 30 November, 2009. A payment date of 31 January will apply for disposals during December, 2009. This 'bringing forward' of payment dates may have significant cash flow implications.

c) Remittance Basis:

Section 29 of the Taxes Consolidation Act 1997 provides that any gain arising from the disposal of assets situated outside the State and the United Kingdom to a person who is resident or ordinarily resident but not domiciled in the State will be based on the actual amount received in the State. Section 37 of the Bill deletes any reference to the 'United Kingdom' with the result that the remittance basis of taxation will apply to gains arising to all non-Irish domiciled persons in respect of non-Irish sited assets after the 20 November, 2008.

(An individual is resident in the State if he/she spends 183 days or more in the State in a year or spend up to 280 days in the State during a current tax year and the previous year. Present means physically in the State at midnight (this is known as the ‘midnight rule’). Any period of 30 days is ignored. One becomes ordinarily resident in the State if resident for 3 consecutive tax years.

Domicile is a legal concept. Everybody must have one. Normally, on birth, one acquires the domicile of their father if both parents are married. This is called a domicile of dependency and becomes a domicile of origin when one reaches the age of 18 years. Upon attaining the age of 18 years one can obtain a domicile of choice in another country with a combination of physical presence in that country and an intention to permanently reside in that country.

Coincidentally, Section 13 of the Bill amends the ‘midnight rule’ and provides that for the purposes of determining whether an individual is present in the State for a day he/she will be deemed present if in the State at any time during that day).

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