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Finance Act 2012:

A SUMMARY OF THE MAIN ISSUES



Finance Act 2012 (“FA 12”) contains a number of measures designed, as Minister Noonan said, “to support the creation of jobs...while reducing the deficit to support a sustainable economy.” There are, he said, “targeted employment supports for the Foreign Direct Investment and the SME sectors.” In this note, we focus mainly on the SME sector.

INCOME TAX

For 2012, DIRT increased by 3% to 30% (or 33% in some cases).

This rate also applies to deposit interest earned from EU-based financial institutions if the tax return is filed on time (41% if filed late).

A 3% tax rate increase applies to personal investment profits from most life assurance policies and funds, with rates of 30%, 33%, 50% or 53% applying (depends on fund).

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Mortgage interest relief was amended with a 30% rate applying for first-time buyer mortgages taken out between 2004 and 2008. To encourage home purchases, the previous policy of phasing out mortgage interest relief was amended to allow relief at rates of 25% (reducing to 20% over seven years) for first-time buyers, and 15% for other buyers, in 2012.

There are new incentives for globetrotting or inventive employees. For inbound employees attracted here, the new Special Assignee Relief Programme means that, for up to three years from 2012, they can claim tax relief against their salary. An outbound employee sent abroad to generate business in certain new markets (Brazil, Russia, India, China, South Africa – “BRICS”) can qualify for a Foreign Earnings Deduction of up to €35,000 per annum (€14,350 tax relief) where, for up to three years from 2012, he/she has 60 “qualifying days” per year working outside Ireland in a BRICS country. Key employees engaged in R&D activities may reduce their income tax liability where the employer surrenders R&D tax credits to them.

Minor changes were made to the Enterprise Investment Scheme, the “new” BES.

PENSIONS

The “deemed distribution” rate from ARFs has been increased from 5% to 6% where the aggregate annual asset value exceeds €2 million and the ARF rules have also been extended to PRSAs that have vested. The deemed distribution applies to the total fund (i.e. not just the excess over €2 million) and is taxed like any annual pension.

Employer PRSI relief for employee pension contributions has been fully removed.

CORPORATION TAX

The startup company exemption is extended to 31 December 2014; the amount of relief remains linked to employer PRSI contributions.

The R&D tax credit has been amended and should now be easier to claim. This will be covered in a later issue.

PROPERTY

Stamp duty on all non-residential property was reduced from 6% to 2%, and the 50% reduction on transfers to blood relations continues until 2014. In virtually all cases, stamp duty cannot now exceed 2%.

After the furore caused over the announced withdrawal of legacy property reliefs last year, FA 12 has a more targeted approach. A 5% surcharge, collected as additional USC, applies from 2012 to investors with over €100,000 annual income and using property tax shelters. A guillotine comes down after 2014 for investors in accelerated capital allowance schemes where the tax life ends in 2015 or later, or where there are unused reliefs carried forward (other than those affected by the “high earner” capping rules) at 31 December 2014. Those unused allowances are “lost”.

A new CGT relief applies for properties purchased between 7 December 2011 and 31 December 2013. A property purchased in this period and held for seven years or more before being sold will be exempt from CGT on the gain during the seven years.

CAPITAL TAXES

The CGT and the CAT rate both increased from 25% to 30% on 7 December 2011.

The normal retirement relief rules for CGT (i.e. must be aged 55 to qualify etc.) are amended to encourage handing over the family business or farm earlier. Relief where the transferor is 66 from 2014 is capped at €3 million on parent/child transfers; for third party transfers, the current €750,000 limit is reduced to €500,000.

The CAT thresholds changed, with the parent/child threshold slashed from €332,084 to €250,000. The agricultural relief “farmer” definition changed, which should make it easier to meet the test. The annual CAT “pay and file” date is now 31 October.

OTHER

The standard VAT rate is now 23%.

As in prior years, Revenue powers have been strengthened in certain areas, which is important to consider if, for example, you are selected for Revenue audit.

THINKING OF CHANGING YOUR CAR?

If you are thinking of changing your car before the onset of the 2013 registration plate, bear in mind that a partial reclaim of VAT can be obtained where the following criteria are satisfied:

- The vehicle is registered after 1 January 2009;
- At least 60% of the vehicle's use must be for business purposes;
- The vehicle must have a level of CO2 emissions of less than 156g/km (i.e. CO2 emission bands A, B and C);
- Only a maximum of 20% of the VAT incurred can be reclaimed. In the case of hire or leasing charges, a maximum of 20% of the VAT on the monthly leasing charges may be reclaimed;
- If the business is exempt from VAT (e.g. taxi, limousine and other passenger transport) then no VAT can be reclaimed. Partly exempt businesses can reclaim some, but not all, of the 20%;
- If VAT is reclaimed on a vehicle purchased under this provision, some or all of the VAT must be repaid to Revenue if the vehicle is disposed of (by sale or otherwise) within two years;
- There is no need to charge VAT on the disposal of the vehicle, even though VAT was reclaimed under this provision;
- If the vehicle is sold or traded-in to a motor-dealer, the special scheme for second-hand vehicles will apply, and the dealer can reclaim any residual VAT.



RCT DEDUCTION RATES

Transitional arrangements for the implementation of the on-line RCT system ended on 31 March 2012. Subcontractors should be aware that deduction rates may change from 1 April 2012. Revenue has reiterated that subcontractors who are at the zero and 20% rate are advised to maintain their compliance record to ensure that their deduction rate remains unchanged.

REVENUE ATTACHMENTS

Finance Act 2011 extended Revenue's powers by allowing the attachment of a Revenue liability to a taxpayer's wages/salary. Where a taxpayer owes a liability to Revenue, Revenue can write to the taxpayer's employer and instruct them to make payments directly to the Revenue from the employee's wages/salaries. Given the hardship that such an attachment could cause, Revenue has issued further guidelines on the use of such attachments.

Revenue has detailed that an attachment of wage or salary should only be considered where:

- Total tax, interest and penalties due exceed €10,000, and
- The amount due is overdue for a period of at least six months, and
- The defaulting taxpayer is currently earning in excess of €50,000 gross annually.

Revenue will issue a demand notice prior to such an action being taken. Taxpayers who are experiencing difficulties paying outstanding tax liabilities are urged to contact their advisors or Revenue in order to work out an acceptable payment arrangement.



Revenue



PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

| | | |
|---|--|------------------|
| Income Tax | | |
| Filing date of 2011 return of income (self-assessed individuals) | | 31 October 2012 |
| Pay preliminary income tax for 2011 (self-assessed individuals) | | 31 October 2012 |
| Capital Gains Tax | | |
| Payment of Capital Gains Tax for the disposal of assets made from 01 January 2012 to 30 November 2012 | | 15 December 2012 |
| Corporation Tax | | |
| Filing date for Corporation Tax returns for accounting periods ending in July 2011 | | 21 April 2012 |
| Payment of Corporation Tax for accounting periods ending in July 2011 | | 21 April 2012 |

The Importance of **LinkedIn** FOR IRISH BUSINESS

In a recent newsletter, we covered the importance of Facebook in a business environment. Another website that is also part of this social media revolution is LinkedIn. LinkedIn is a networking tool that enables you to find suitable job candidates, industry experts and potential business partners. The importance of LinkedIn can be gauged from the fact that all 500 of the fortune 500 list of companies are represented on LinkedIn. Needless to say, it is definitely worth the trouble to create a presence on this network of over 150 million users.

Since every business is built on relationships, LinkedIn helps to nurture their development. The best thing about LinkedIn is that it is a great forum for introductions. It is an ideal place for managers to do business with other companies through people. From a numbers point of view, let's take a typical user as an example. Assume you currently have 240 first degree connections which means that you have nearly 35,000 potential contacts (one degree of separation) and an incredible 3.2 million who are just two degrees away from you. Questioning the importance of LinkedIn appears not to be a good business strategy... Just look at all those potential sales leads and potential opportunities!

You can use LinkedIn to find a job... or have a job find you. To start using this free resource, simply visit www.Linkedin.com and begin creating your profile. Remember to include a good photo and to carefully pick important keywords and skills from your CV. From there, you can begin building your network. It's important to only connect with people you know and trust or have a business relationship with at the start. It's a good idea to get recommendations from people you have worked with in the past for posting on your own profile. This facility is right there on the homepage for you to use. Don't forget to use the LinkedIn Mobile app on your smart phone to stay in touch with your new contacts.

As touched on above, the primary reason LinkedIn is ideal for business is because people ask to connect with you. They have, do, or likely want to engage in business with you. Unlike Facebook and Twitter, when you contact someone in LinkedIn via a group, or they contact you, the intentions are obvious – to discuss the possibility of doing business together.

LinkedIn is a business oriented network of decision makers, buyers, movers and shakers. The information that you can glean from competitive analysis, polls, and researching tools can improve your entire social media marketing strategy. Also, your social marketing portfolio will be enhanced greatly via LinkedIn's integration tools. LinkedIn IS one of the most important social networks for businesses.

NEW PROGRAMMES FOR INVESTORS AND ENTREPRENEURS

The Minister for Justice, Equality and Defence, recently announced the date of commencement of the two new immigration programmes aimed at stimulating investment and job creation in Ireland. The new initiatives will be known as:

- 1) The Immigrant Investor Programme
- 2) The Start-up Entrepreneur Programme

The programmes will be open for applications from 15 April 2012. Application forms will be available for download from 30 March 2012 together with detailed guidelines on the application process, including a comprehensive collection of "Frequently Asked Questions".

www.justice.ie

NEW FRONTIERS ENTREPRENEUR DEVELOPMENT PROGRAMME

The Minister for Research and Innovation has launched the New Frontiers entrepreneur development programme, which aims to support the creation of 100 high-value, knowledge-based, Irish-owned businesses each year. The programme will run over six months and aims to provide individuals with the skills they require to set up and run a business.

The benefits of taking part in the programme include business training and mentoring, office space and business incubation facilities, together with €15,000 from Enterprise Ireland.

Enterprise Ireland are encouraging applications from individuals whose businesses are "growth-orientated" – which means they are planning to achieve a turnover greater than €500,000 and to create more than five jobs within three to five years.

The three-phase programme, which was outlined in the Government's Action Plan for Jobs, will be rolled out at 13 Institutes of Technology.

250 applicants will be accepted in the first phase, which will be part-time over an eight-to-ten week period and will help entrants to establish the feasibility of their idea's. Of those candidates, 150 will qualify for a six-month programme, the aim of which is to support participants in the development of an investor-ready business plan.

Potential applicants should contact their nearest participating Institute of Technology directly to discuss their proposed project.

Contact details for participating Institutes are available at the Institutes of Technology Ireland.

www.ioti.ie

MAJOR FUNDING BOOST FOR IRISH TECHNOLOGY INNOVATION

The Irish Government is to inject more than €6.5 million in funding into 58 research projects as part of Science Foundation Ireland's Technology Innovation Development Award programme.

The funding, provided by the Department of Jobs, Enterprise and Innovation, is being made as part of Science Foundation Ireland's (SFI) Technology Innovation Development Award (TIDA) programme.

The TIDA programme focuses on the first stages of an applied research project. In addition, it provides financial support to research teams to enable them to move from concept to market.

Science Foundation Ireland website: www.sfi.ie

www.j4bgrants.ie

FOOD ENTREPRENEUR INITIATIVE

Bord Bia, Enterprise Ireland and Teagasc have combined resources to develop an in-depth process aimed at finding and fostering global food entrepreneurs.

Food Works is a new comprehensive training and development programme that gives successful participants a range of practical business supports designed to develop an initial concept into a winning food product with international appeal.

Supports will include:

- consumer market research;
- business plan development;
- technical advice;
- commercial viability testing;
- access to incubation units;
- research and development (R&D) facilities; and possible investors.

Food Works is open to all determined and energetic individuals with an interest in building an international food business in Ireland.

www.foodworksireland.ie



BUSINESS OWNERSHIP PROTECTION

If you lose your business partner or a key shareholder, you could also lose control over your company. Business Protection Insurance can prevent this from happening

As a company director, shareholder or partner your business is often one of your major assets. It is therefore, particularly important to safeguard the ownership of the company in the event of the death of you or one of your business partners.

Ask yourself the question, what would happen if one of you were to die or become seriously ill?

- Do the surviving partners or shareholders have sufficient funds to buy your shares?
- Would your dependents want to sell your share or become involved in the business?
- If you become seriously ill, could somebody else purchase your shareholding?

Through the implementation of a Business Protection Plan you can ensure that the future of your business is safeguarded. The process involves a legal agreement regarding future ownership of the business in the event of the death or illness of the shareholder and can easily be implemented.

SHAREHOLDER PROTECTION

This type of arrangement can ensure that, if a shareholder dies, the company will receive a lump sum pay-out to enable the surviving shareholders to purchase the deceased's share of the business. This type of arrangement is accompanied by a legal agreement, stipulating that if a shareholder dies, the other shareholders will be able to purchase his/her shares in the business. The proceeds of the business protection plan is paid to the company who in turn use the proceeds to enable them to keep the company running.

The procedure is as follows:

- The company sets up a life assurance policy for each director with a sum insured equal to the value of their shareholding.
- Ensure that legal and tax requirements are fulfilled to permit a company to buy its own shares and get favourable tax treatment.
- Set up a legal agreement which will facilitate the purchase of the deceased person's shareholding by the remaining company directors.

ADVANTAGES OF BUSINESS PROTECTION:

- If the deceased's family do not wish to become involved in the business, they can receive a lump sum instead as payment in lieu of their shareholding.
- The policy will provide sufficient funds to enable the remaining directors or shareholders to purchase the deceased's share of the business
- It can prevent shares passing to an outside party, possibly a competitor, or someone lacking sufficient experience and knowledge of the business.

CASE STUDY

Gertrude is a director of a recruitment company and has a 33% shareholding worth €250,000. The company in total is valued at €750,000 with two other directors also controlling 33% shareholding each. Gertrude becomes ill and dies.

With Business Protection

The company effected a life assurance policy on each shareholder for €250,000. They had arranged for the appropriate legal requirements to permit the purchase of shares from her estate.

When Gertrude died the insurance company paid out €250,000 to the company. This amount enables the surviving directors to purchase Gertrude's shares from her family. This allowed the directors to keep control of the company, with each now owning 50%.

Without Business Protection

The company may have to take out a loan to finance the share purchase. The company may not be able to afford the loan resulting in financial difficulties for the business. If they were unable to take out a loan Gertrude's family would retain her 33% shareholding and participate in the business. This may lead to disputes with the surviving shareholders as the next of kin may not have any experience in running the business.

If you require any further help or advice please contact us.



COMPENSATION FOR FLIGHT CANCELLATION

EU Regulation provides for standardised measures that airline companies must put into effect for passengers in the event of a flight cancellation or long delay. This Regulation applies without prejudice to any other rights which passengers may have for further compensation. The Regulation provides that in the event of cancellation, passengers may have their ticket reimbursed or be re-routed. During the waiting time for a later flight the passengers must be offered adequate care i.e. accommodation, meals and a facility to make telephone calls. In circumstances where a flight is cancelled without notice or with very short notice and there are no extraordinary circumstances for the cancellation, passengers have a right to compensation, the amount of which depends on the distance of the scheduled flight. The Court of Justice recently considered the meaning of "cancellation" and held that it does not refer exclusively to a situation where an aeroplane fails to take off. It held that the concept also covers a situation where an aeroplane took off but for some reason was forced to return to the airport from where it departed and the passengers were transferred to other flights. The Court held that in those circumstances the flight could not be considered as having been operated. The Court also considered the concept of further compensation. The Court held that further compensation is intended to supplement the standard measures provided by the regulation

MCKILLEN CASE

NAMA – Delway Investment Limited & Ors v. NAMA, Ireland and the Attorney General (referred to as McKillen Case)

In this case, the High Court considered the general powers of NAMA (Section 12) as well as the specific powers. The High Court held that the "clear underlying imperative urgency" of the Act suggested that the acquisition of loans needed to be carried out in a speedy order. The fact that there is no provision for consultation with the Borrower suggests that there is no entitlement on the part of the Borrower to be heard. The Supreme Court however did not agree with this and held that the Act "did not preclude NAMA from receiving and taking into account representations made by or on behalf of Borrowers having regard to their particular circumstances". The Supreme Court held that the Act required that NAMA afford people the right to make representations concerning any decision that it proposed to take concerning the acquisition of performing or non performing eligible Bank Assets. The Court declared that the Appellants were entitled to be informed by NAMA of any intention to consider making a

INTELLECTUAL PROPERTY

During 2011 the High Court considered a number of passing-off cases including *McCambridge Limited v. Joseph Brennan Bakeries*. The case, heard by Judge Peart, considers the main "themes" of passing-off including an emphasis on the protection of goodwill rather than consumer protection. The decision confirms that proving an intention to deceive is not necessary to succeed in a passing-off action. Both the Plaintiff and the Defendant are well known bread makers – *McCambridges* having 30% of the market share of the "tradition" bread market and *Brennans* having approximately 13%.

In 2011 *Brennans* changed the packaging of its traditional brown bread to a re-sealable plastic bag style packaging and with a dark green panel on the front. *McCambridges* claimed that they introduced this type of packaging and that theirs also had a dark green panel on the front for many years. *Brennans* however argued that the packaging was adequately distinctive because of its distinctive red and yellow coloured logo to differentiate it from *McCambridges*. Judge Peart said that while the packaging was different in a literal sense that on "the overall appearance" on a first impression as it is viewed by the "average and reasonably observant consumer" which is the standard that the Case Law in passing-off requires, he did not believe that the *Brennans* packaging eliminated the risk of consumers being confused by the breads "get-up". Passing-off is distinguished from Trade Mark Law protection in that passing-off is wider than Trade Mark protection as it can be used to protect not only distinctive names but also distinctive advertising styles, colours and "get-up" as was the case in the *McCambridge Case*. In order to reason a claim for passing-off the Plaintiff must prove: -

1. "Goodwill" that the Plaintiff possesses in a good or service
2. Misrepresentation by the Defendant that it likely to deceive the public
3. Resultant damage to Goodwill

decision to acquire eligible Bank Assets related to their credit facilities and to afford them an opportunity of making representation concerning this proposed decision. It should be noted that the time limit within which an application for leave to challenge NAMA must be made within 30 days. This is a welcome decision by the Supreme Court, guaranteeing the Borrower the right to fair procedure.

Better cashflow management: SOME VAT IDEAS

In these troubled times, legitimate ways of improving cashflow are very welcome. Some VAT possibilities for consideration are:

While VAT returns are normally filed bi-monthly, less frequent filing options are also possible, from every four months to annually, if certain criteria are met. (e.g. annual VAT liability within certain ranges; certain monthly direct debit payments etc.)

The obligatory registration thresholds are €75,000 for goods and €37,500 for services. If turnover falls below these levels, consider whether deregistration makes sense.

Can the "cash receipts" basis apply? Even if it has not before, it applies if either more than 90% of sales are to unregistered persons or annual turnover is less than €1 million. As falling sales and rising debtor days are more common having to account for VAT on sales invoices issued when payment is received is welcome, particularly as VAT inputs on purchase invoices received can be claimed before payment is made.

If "cash receipts" cannot apply, consider whether there is a continuous supply (i.e. where progress payments are sought during the course of a project). If so, issuing a request for payment (instead of a VAT invoice) means that VAT is only due when payment is received. This will not suit all businesses.

If VAT was returned on invoices issued and a debtor is unlikely to pay, bad debt relief can apply and a refund claimed provided certain conditions are met.

If possible, issue invoices in the early days of a "new" VAT period rather than the last few days of an "old" one.

Can the VAT 13B authorisation apply (i.e. over 75% of turnover is from export sales)? Consider also the reverse charge rules for cross-border supplies and domestic property/construction supplies. In such cases, typically neither purchase nor sales VAT need be paid over.

Refunds of VAT incurred in other EU Member States can now be made through ROS ("8th Directive" reclaims), which is much faster than before.

Property developers that rent out residential property typically trigger an input VAT clawback but that can usually be spread over a number of years.

Have all VAT input credits and refunds due been claimed fully? There is a four-year time limit for old claims so consider any VAT law changes since 2008. Property is a complex area and refunds due are often overlooked in this area and in the farming sector.