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# Tax Booklet 2009

a guide to your tax affairs
for the year 2009

**INCOME TAX** .... 4
Income Tax Rates .... 4
Income Exemption Limits .... 4
Tax Credits .... 4
Relief for the Long Term Unemployed .... 5
Residence .... 5
Split Year Treatment .... 5
Cross Border Workers .... 6
Remittance Basis of Assessment .... 6
Special Assignment Relief Program .... 6
Seafarer Allowance .... 7
Income Tax Relief's Quick Reference Guide .... 7
Tax Exemptions .... 7
Childminding Relief .... 8
Mortgage Interest Relief .... 8
Rented Residential Property .... 9
Home Carer's Credit .... 9
Carer's Allowance .... 9
Covenants .... 9
Medical Insurance .... 9
Dental Insurance .... 9
Medical Expenses .... 9
Permanent Health Insurance .... 9
Trade Union Subscriptions .... 9
Third Level College Fees .... 10
Training Course Fees .... 10
Service Charges .... 10
Rent-a-room Scheme .... 10
Rent Relief for Private Accommodation .... 10
Donations .... 11
High Earners .... 11
Artists Exemption .... 11
**INCOME TAX ADMINISTRATION** .... 12
Self Assessment - Pay and File .... 12
Payment and Compliance .... 12
Joint Assessment .... 13
Pay and File Summary .... 13
Information Included in Return .... 13
Late Filing of PAYE Returns .... 13
Registration of Foreign Employers .... 13
**INTEREST RELIEF FOR INDIVIDUALS** .... 14
Relief on Profits and Rental Income .... 14
Limited Partnerships .... 14
Interest Relief for Rents .... 14
**INVESTMENT INCOME** .... 15
Standard Rate DIRT Accounts .... 15
26% DIRT Accounts .... 15
Incapacitated Individuals and over 65's .... 15
Post Office Saving Certificates .... 15
Investment Undertakings .... 15
Credit Unions .... 16
Special Share Account .... 16
Special Term Share Account .... 16
Regular Share Accounts .... 16
Post SSIA Maturity Schemes .... 16
Non-Residents .... 16
European Savings Directive .... 16
Reporting of Deposit Interest .... 16
**SPECIAL INVESTMENT SCHEMES** .... 17
Business Expansion Scheme (BES) .... 17
Seed Capital Relief .... 17
Film Scheme – Companies and Individuals .... 17
**RETIREMENT & PENSIONS** .... 18
Company Pension Schemes (Employees and Directors) .... 18
Level of Allowable Contributions .... 18
Refund of Contributions .... 18
Retirement Annuities .... 18
Directors Contributions .... 19
Entitlements on Retirement .... 19
Income Tax Charge on Pension Funds .... 20
Approved Retirement Funds (ARFs) .... 20
Relief on Retirement for Sports Persons .... 20
PRSA .... 20
Self Administered Pension Funds .... 21
Lump Sum Payments .... 21
Retirement – Termination Lump Sum Payments .... 21
Top Slicing Relief .... 21
Lump-Sum Payment to Employees on Company Restructuring .... 22
Retraining Exemption .... 22

Reporting Requirements ....22
**EMPLOYEE SHARE SCHEMES ....23**
Approved Share Option Schemes ....23
Unapproved Share Option Schemes ....23
Share Purchase Schemes ....23
Profit Sharing Schemes ....23
Save As You Earn Scheme (SAYE) ....24
Returns ....24
Restricted Shares ....24
**BENEFIT IN KIND ....25**
Bicycles ....25
Company Cars ....25
Company Vans ....26
Preferential Loans ....26
Accommodation ....26
Travel Passes ....27
Childcare Facilities ....27
Other Exemptions ....27
Anti Avoidance ....27
**MOTOR EXPENSES ....28**
Expenses Allowance and Motor Mileage for Employees ....28
Mileage ....28
Civil Service Mileage Rates ....28
Subsitance Allowances ....28
Civil Service Subsistence Rates ....28
**CORPORATION TAX ....29**
Rates ....29
Residential Development Land ....29
10% Corporation Tax - Manufacturing Relief ....29
Corporate Group Relief ....29
Close Companies ....29
Corporate donations to Charities and other Approved Bodies ....29
R & D Credit ....30
New Company Start Ups ....30
Payment and Compliance ....31
Group Companies ....31
Filing ....31
Information Included in Return ....32
Exemption for Disposal of Shareholdings ....32
Payment Dates for Capital Gains Tax ....32
**TAXATION OF DIVIDENDS ....33**
Dividend Withholding Tax (DWT) ....33
Encashment Tax ....33
Scrip Dividends (Shares in lieu of dividends) ....33
**CAPITAL ALLOWANCES ....34**
Annual Allowance - Plant and Machinery ....34
Energy Efficient Equipment ....34
Intellectual Property Incentives ....34
Lessors ....34
Motor Vehicles ....34
Taxis ....35
Sea Fishing Boats ....35
Industrial Buildings ....35
Expenditure qualifying for Capital Allowances ....35
Transitional Provisions for Property Incentive Schemes ....36
Conditions for Transitional Relief ....38
Tax Life of a Building ....38
Deemed Balancing Event ....38
Hotels ....38
Camping and Caravan Sites ....39
Multi-Storey Car Parks ....39
Nursing and Convalescent Homes ....39
Palliative Care Units ....39
Childcare Facilities ....40
Student Accommodation ....40
College Buildings ....40
Private Hospitals/Psychiatric Hospitals & Sports Injury Clinics ....40
**Designated Areas ....40**
Tax Designated Areas ....40
Urban Renewal Scheme ....40
Residential Reliefs ....41
“Section 23” (S23) ....41
Owner/Occupier Relief ....41
Industrial and Commercial Allowances ....41
Commercial Buildings/Multi Storey Car Parks ....41
Seaside Resort Areas ....41
Rural Renewal Relief ....41
Town Renewal Scheme ....42
Living Over The Shop (LOTS) ....42
Park & Ride ....42
Refurbishment of Certain Rented Accommodation ....42
Mid Shannon Corridor Tourism Infrastructure Investment Scheme ....42
Property Developers ....43

**CAPITAL GAINS TAX** .....44
Rates .....44
Inflation Relief .....44
Roll-over Relief - Business Assets .....45
Roll-over Relief - Property .....45
Roll-Over Relief for Individuals – Shares .....45
Retirement Relief .....46
Exemptions and Relief .....46
Payment and Compliance .....47
Payment Dates for Capital Gains Tax .....47
Anti-Avoidance .....47
Clearance Certificate .....47
**CAPITAL ACQUISITIONS TAX** .....48
Taxable Inheritance .....48
Taxable Gift .....48
Thresholds for CAT .....48
Rates .....48
Main Exemptions and Reliefs .....49
Private Residence Relief .....49
Business Relief .....49
Payment and Compliance .....50
Surcharge for Understatement .....50
Joint Account Limits .....50
**DISCRETIONARY TRUST TAX** .....50
**STAMP DUTY** .....51
Trade-In Scheme .....51
Non Residential Property .....51
Residential Property .....51
Exemptions & Relief's .....51
Clawback of First Time Buyers Relief .....52
Anti-Avoidance .....52
Other Rates .....52
Capital Duty .....52
**RESIDENTIAL PROPERTY TAX** .....52
**VEHICLE REGISTRATION TAX** .....52
**VALUE ADDED TAX** .....53
Registration .....53
Foreign Traders .....53
Rates .....53
Section 13A .....54
Foreign Visitors .....54
Holiday Homes .....54
Travel Agents Margin Scheme .....54
Payment and Compliance .....54
Cash Receipts .....55
Margin Scheme for Second-Hand Car Dealers .....55
Anti Avoidance .....55
New VAT on Property Rules .....55
Reverse charge mechanism in the Construction Sector .....55
Partial VAT Rebate for Certain Company Cars .....55
**PAY RELATED SOCIAL INSURANCE** .....56
Rates 2009 .....56
Employees PRSI .....56
Self-Employed .....57
Employers PRSI .....57
**LEVIES** .....57
Income Levy .....57
Car Parking Levy .....58
**FARMERS TAXATION** .....59
Income Tax .....59
Leasing of farm land .....59
Sugar Beet Diversification .....59
Capital Acquisitions Tax .....59
Agricultural Relief .....59
Capital Gains Tax .....60
Retirement Relief .....60
Dissolution of Farming Partnerships .....60
Roll-over Relief .....60
VAT .....61
Stock Relief .....61
Compulsory Disposal of Livestock .....61
Capital Allowances .....62
Milk Quotas .....62
Stamp Duty .....62
Farm Consolidation Relief .....62
EU Single Farm Payment Entitlement .....63
**MARITAL BREAKDOWN** .....64
Legally Enforceable Maintenance Payments .....64
Transfer of Assets - Divorced Persons .....64
Transfer of Assets - Separated Spouses .....64
Capital Acquisitions Tax .....64
Disclaimer .....64

# INCOME TAX

## Income Tax Rates

| Bands of Taxable income | 2009 | 2008 |
|---|---|---|
| Single/Widowed *(Without dependent Children)* | €36,400 @ 20% Balance @ 41% | €35,400 @ 20% Balance @ 41% |
| Single Parent / Widowed Parent (With dependent children) | €40,400 @ 20% Balance @ 41% | €39,400 @ 20% Balance @ 41% |
| Married couple (one income) | €45,400 @ 20% Balance @ 41% | €44,400 @ 20% Balance @ 41% |
| Married couple (two incomes) | €72,800 @ 20% Balance @ 41% | *€70,800@ 20% Balance @ 41% |

*In the case of a married couple with two incomes the standard rate band is transferable between them up to €72,800 (the band for two income married couples). In effect this means that up to €27,400 may be transferred between them, if one spouse earns less than €27,400 there is a loss of some of the benefit of the higher band.

| Income Exemption Limits | 2009 € | 2008 € |
|---|---|---|
| **Single/Widowed** | | |
| 65 years of age and over | 20,000 | 20,000 |
| **Married Couples** | | |
| 65 years and over | 40,000 | 40,000 |

The relevant exemption limits are increased by €575 for each of the first two dependent children and by €830 for the third and any subsequent dependent children.

| Tax Credits @ 20% | | 2009 € | 2008 € |
|---|---|---|---|
| Single | | 1,830 | 1,830 |
| Married (Jointly assessed) | | 3,660 | 3,660 |
| Widowed Person in year of bereavement | | 3,360 | 3,360 |
| Widowed person no children | | 2,430 | 2,430 |
| Widowed person/single person with dependent child | | 3,660 | 3,660 |
| *Additional Allowances in years following bereavement* | | | |
| Year 1 | | 4,000 | 4,000 |
| Year 2 | | 3,500 | 3,500 |
| Year 3 | | 3,000 | 3,000 |
| Year 4 | | 2,500 | 2,500 |
| Year 5 | | 2,000 | 2,000 |
| Home carer's credit* | max | 900 | 900 |
| Incapacitated child | max | 3,660 | 3,660 |
| Dependent relative | max | 80 | 80 |
| Age credit | single | 325 | 325 |
| | married | 650 | 650 |
| Blind person | single | 1,830 | 1,830 |
| | married | 1,830 | 1,830 |
| | both spouces | 3,660 | 3,660 |
| PAYE | | 1,830 | 1,830 |
| **Allowances @ 41%** | | | |
| Guide dog | | 825 | 825 |
| Allowance to employ a carer for an incapacitated person | max | 50,000 | 50,000 |

*A reduced tax credit applies where the carer's income exceeds €6,880, the tax credit is reduced by one half of the amount of the excess. (see page 9)

### Relief for the Long Term Unemployed

Tax incentives were introduced to benefit employees and employers. The employee is entitled to two separate allowances, as follows:

| | Personal Tax Allowance | Child Tax Allowance |
|---|---|---|
| | € | |
| Year 1 | 3,810 | |
| Year 2 | 2,540 | |
| Year 3 | 1,270 | |

The definition of a qualifying individual is an individual who have been continuously unemployed for a minimum period of twelve months.

The employer is entitled to a double deduction for qualifying employees in respect of:
- Emoluments paid to those employees in the first 36 months of employment and
- PRSI contributions on those emoluments.

### Residence

An individual is liable to Irish Income Tax on his worldwide income provided he/she is resident and domiciled for the tax year, subject to any specific relief under the relevant Double Taxation Agreement. To be resident an individual must be present in the state for:

- 183 days or more in that tax year, or
- 280 days in that tax year and the preceding tax year, subject to a minimum of 30 days in each year.

**Prior to 1 January the residence test applied to presence in the State at midnight, with effect from 1 January 2009 presence in the State at any time during the day will count towards residency. For 2009 if counting 280 days for two consecutive years the test for 2008 will count the no of days in the State where the individual is present at midnight and the test for 2009 will apply to number of days present in the State.**

Domicile can be a difficult concept but broadly means the country that an individual considers as his/her natural home.

An individual is "ordinarily resident" if he is resident for three consecutive tax years and remains ordinarily resident for three years after the tax year of departure. An ordinarily resident individual is chargeable to Irish income tax on Irish source income and also on foreign investment income exceeding €3,810 in the tax year. An Irish resident or ordinarily resident and domiciled individual will also be liable to Irish Capital Gains Tax on their worldwide gains. This leaves individuals ceasing to be Irish resident exposed to Irish tax on investment income and Capital Gains Tax for three years after the tax year of departure.

Despite the reference to three years in the paragraph above, an anti avoidance provision imposes Capital Gains Tax on individuals who dispose of shareholdings during a period of temporary non-residence, described as absences of less than 5 years.

### Split Year Treatment

An individual who arrives in Ireland with the intention of becoming resident in the following tax year is liable to income tax on employment income only from the date of arrival to the following 31 December. Similarly, a resident individual who leaves Ireland other than for a temporary purpose is liable to income tax on employment income up to the date of departure only. This "split year treatment" applies to employment income only.

Relief from a liability to Irish Income Tax may also arise under provisions of Double Taxation Agreements between Ireland and other states.

### Cross Border Workers

Irish resident individuals employed abroad in a jurisdiction with which Ireland has a double taxation agreement can exclude income on employment earned abroad from Irish tax. The employment abroad must be for a minimum period of 13 weeks and foreign tax must be paid on that income, and the duties must be performed wholly abroad. The individual must be present in Ireland for a minimum of one day a week during the period of qualifying employment. The relief does not apply to state or semi state employments.

### Remittance Basis of Assessment

Individuals domiciled outside Ireland and Irish citizens who are not ordinarily tax resident in the State are entitled to a "remittance basis" of assessment in Ireland on investment income i.e. they are only subject to tax on income brought into the country. The remittance basis does not apply to employment income except in the case of a special assignment relief program (see below) **UK investment income had been excluded up to 1 January 2008 and UK capital gains had been excluded up to 20 November 2008, both are now included in the remittance basis. The remittance basis is summarised below.**
**For Non-domiciled and non-ordinarily resident irish citizens**

**Income:**

**Fully Taxable:**

- All Irish source income, including the Irish workdays of a foreign employment and capital gains are taxable in Ireland regardless of whether they are remitted or not.

**Not Taxable:**

- Foreign employment income (non Irish workdays) and investment income are taxed only where remitted.

**Capital:**

- Irish citizens who are not ordinarily resident but who are resident are taxed on foreign capital gains
- Non-Irish domiciled are taxable on foreign capital gains only to the extent that they are remitted to the country.

### Special Assignment Relief Program

This relief applies from 1 January 2009 to individuals who are assigned to work in Ireland from abroad for a period of at least 3 years. The relief will apply to reduce taxable earnings in excess of €100,000 by 50%.

The relief is only available to non domiciled individuals who take up residence in Ireland and they must be:

- An employee of a company incorporated and resident outside the European Economic Area but with which Ireland has a double tax treaty.
- Have been employed by an associated company of the Irish entity to which they are assigned prior to arrival in Ireland and continue to be paid by the overseas employer
- Previously have been tax resident and exercised the greater part of their employment in the relevant overseas jurisdiction.

The overseas employer must operate Irish PAYE (and PRSI where appropriate) on the employment income. The relief will operate by way of a repayment of taxes otherwise payable after the year end.

### Seafarer Allowance

An allowance of €6,350 from employment income is available to seafarers provided they are on an international voyage(s) i.e. a voyage beginning or ending in a port outside the State for at least 161 days in a tax year. This allowance cannot be claimed in conjunction with the split year treatment. The allowance is also available to crews of vessels servicing drilling rigs in Irish waters.

### Income Tax Relief's Quick reference guide


| Income Tax Relief | Page |
|---|---|
| Business Expansion Scheme | |
| Investment in Films | 17 |
| Employee Share Schemes | |
| Medical Insurance e.g. V.H.I. & Quinn | 9 |
| Medical Expenses | 9 |
| Dental Insurance for Non Routine Dental Treatment | 9 |
| Mortgage Interest Relief | 8 |
| Service Charges | 10 |
| Trade Union Subscriptions | 9 |
| Rent Allowance | 10 |
| Retirement Annuities | 18 |
| Permanent Health Insurance | 9 |
| College Fees | 10 |
| Donations | 11 |


### Tax Exemptions

The following are exempt from Income Tax provided specific conditions are satisfied:

- Artists resident in Ireland who produce original work that has cultural and artistic merit subject to certain limits from 2007 onwards (see page 11)
- Charities - investment and certain trade income
- Awards made by the Hepatitis C Tribunal
- Income arising on monies received from settlement of a civil action by a totally incapacitated individual. Income arising on monies received by permanently incapacitated individuals for damages following assessment by the Personal Injuries Board, from 2007 the return arising from the investment of these monies where the return is greater than 50% of the individuals total income and gains is also exempt.
- Income arising from compensation payments made under an employment law enacted, in accordance with a decision of one of the relevant bodies listed below or made in accordance under a mediation process;
  - The Rights Commissioner
  - The Director of Equality Investigations
  - The Employment Appeals Tribunal
  - The Labour Court
  - The Circuit Court
- Patent royalties accruing to the inventor from inventions devised in Ireland (subject to certain restrictions)
- Sports organisations
- Income from stallion services (no longer applies after 31 July 2008)
- Greyhound fees (no longer applies after 31 July 2008)
- Income from woodlands
- Income received by Mna Tí in the Gaeltacht (Sceim na bhFoghlaimeoirí)
- Income received by foster parents from the Health Service Executive or from another body where the payment is in accordance with similar law from another EU Member State (including educational fees, certain medical expenses and other exceptional payments where complex special needs arise). In addition payments for foster children 18 or over until the age of 21 or until they complete their full time education who suffer from a disability are also exempted.

- Certain social welfare payments including payments to systematic short term workers i.e. people who do 3 days on and 2 days off work, or who work one week on and one week off.

The exemption for Income Tax for the categories of income described below was extended to Capital Gains Tax. However, it is a requirement that the aggregate of the person's income and gains must exceed 50% of their total income and gains in order to be exempted. The relevant categories of income and now gains are as follows:

- Income and Gains derived from the investment of certain compensation payments received by permanently incapacitated individuals or a trust established for the benefit of one or more individuals.
- Income and Gains derived from the investment of payments made to Hepatitis C and HIV victims
- Income and Gains from compensation payments made to thalidomide children and the income derived from the investment of such payments

## Childminding relief

Childminding relief is, available where an individual minds up to three children (excluding their own children) in their own home. No tax will be payable on the childminding earnings received, provided the amount is not more than €15,000 per annum. If the childminding income exceeds this, the total amount will be taxable as normal under self-assessment. Minimum PRSI contribution of €253 per annum is payable.

## Mortgage Interest Relief

Interest relief can be claimed in respect of loans for the purchase, repair or improvement of a taxpayer's main residence. Mortgage interest relief is allowed at source by the lending institution and is confined to relief at the standard rate of 15% for people who are not first time buyers (20% in 2008) i.e. the relief is worth up to €37.50 to a single person and €75 per month to a married couple (previously €50 per month to a single person and €100 per month to a married person) The relief is granted by reducing monthly repayments, or by directly crediting the individuals account.

Relief is given subject to the following maximum limits, where the actual payment is less full relief will apply to the paid amount:

| | First Time Buyers (1st seven years of mortgage) | Others |
|---|---|---|
| Single | €10,000 | €3,000 |
| Married/Widowed | €20,000 | €6,000 |

The seven year time limit for first time buyers applies for seven years starting with the year in which mortgage interest relief is first claimed i.e. to qualify for relief in the tax year 2009 the mortgage must be taken out no later than 1 January 2003. The relief for first time buyers has been increased in 2009 to 25% for the first 2 years of the mortgage, 22.5% in years 3-5 and 20% in years 6-7.

| Year | Rate | Max Relief - Single | Max Relief - Married |
|---|---|---|---|
| 1 | 25% | €2,500 | €5,000 |
| 2 | 25% | €2,500 | €5,000 |
| 3 | 22.5% | €2,250 | €4,500 |
| 4 | 22.5% | €2,250 | €4,500 |
| 5 | 22.5% | €2,250 | €4,500 |
| 6 | 20% | €2,000 | €4,000 |
| 7 | 20% | €2,000 | €4,000 |

- Mortgage interest restriction on rented residential property.

**Tax Tip:** **If you are a first time buyer buy your home early in the tax year to maximise your credits**

### Rented Residential Property

Mortgage interest relief for rented residential properties has been curtailed to 75% from 01 May 2009. This measure will apply to both new and existing mortgages.

### Home Carer's Credit

A credit of €900 is available for married couples jointly assessed, where only one spouse is working and the other cares for children, individuals over the age of 65, or incapacitated individuals in their home. No credit is available where the income of the carer exceeds €6,880. A reduced credit applies if the carer's income is between €5,080 and €6,880 for a tax year.

### Carer's allowance

An individual can claim an allowance where he/she has to employ a person to take care of an incapacitated family member. The carer may be employed on an individual basis, or through an employment agency. The maximum allowance is €50,000 per annum for each incapacitated individual. The allowance is available at the marginal rate of tax. The allowance will be granted in the first year that the individual becomes incapacitated.

### Covenants

Covenants to permanently incapacitated adults are fully tax deductible. Covenants to a permanently incapacitated minor child are fully tax deductible if paid by a person other than a parent. Covenants to individuals aged 65 or over who are not incapacitated are deductible subject to a 5% limit of the covenanter's total income.

### Medical Insurance

Tax relief on medical insurance premiums is granted at source and is given as a direct reduction in premiums. Relief is based on a standard rate (20%) deduction, and is granted on a current year basis.

### Dental Insurance

Tax relief at the standard rate (20%) is available in respect of dental insurance premiums taken out for non-routine dental treatment.

### Medical Expenses

Un-reimbursed medical expenses incurred on behalf of a taxpayer or another person may be set-off against their income tax liability.

Medical expenses include:

- Doctor/Hospital care and prescription medicines
- Payments to Revenue approved nursing homes for dependents
- Physiotherapy
- Non-routine dental and ophthalmic expenses
- Routine maternity care including Caesarean sections

Relief is granted by way of a tax credit at the standard rate of tax, except in the case of nursing home expenses which will be granted by way of an allowances at the taxpayers marginal rate of tax. Prior to 1 January 2009 relief was given for all medical expenses as an allowance or a deduction against total income and is allowed at the marginal rate of tax. A form MED2 should be completed in respect of non-routine dental expenses (this can be obtained from the dentist).

### Permanent Health Insurance

Premiums paid under approved permanent health insurance (PHI) schemes are tax deductible. The deduction cannot exceed 10% of the individual's total income. Relief is granted as a deduction against total income and is effectively relieved at the marginal rate of tax. Any benefits received are taxable and therefore subject to PAYE.

### Trade Union Subscriptions

A tax credit of €70 is available in respect of subscriptions paid for members of trade unions for 2009 . To facilitate this credit, employers may provide details of PPS numbers to trade unions to allow them return the information to Revenue.

### Third Level College Fees

Tax relief is available at the standard rate for the cost of fees paid for approved courses in approved colleges. In addition to full time courses it includes fees paid for part time courses on behalf of students who do not have a third level qualification. The relief also applies to post graduate fees paid for third level education in private and public funded third level colleges in non-EU Member States. Tax relief for undergraduate fees is also allowable for accredited private third level colleges in EU Member States.

Tax relief is available for repeat years, on individuals taking more than one course and for individuals already holding a third level qualification. Courses such as medicine, dentistry, veterinary medicine and teacher training which were previously excluded from the relief are now included.

The maximum relief available is €5,000.

### Training Course Fees

Relief is available for fees between €317 and €1,270 paid in respect of Information Technology and Foreign Language courses, which are approved by FAS. The course must at least 2 years duration and must not be a postgraduate course. Relief can be obtained for course paid by the taxpayer for himself or another person.

### Service Charges

Credit is available for service charges paid up to a maximum limit of €400 per annum, i.e. value €80. The relief is given by way of credit at the standard rate of income tax, where Local Authority service charges are paid in full and on time, by the person liable for them, or by another person who resides on the premises to which the service charge relates. The relief is available in respect of charges paid for the preceding calendar year, on production of a receipt from the local authority.

### Rent-a-room scheme

Where a room in a persons' principle private residence is let as residential accommodation and the gross annual rental income is less than €10,000 per annum this rental income is exempt from tax. Where it exceeds €10,000 the rent is taxable in full.

Qualifying room rentals will not affect entitlements to claim mortgage interest relief. It will also not effect CGT relief on Principle Private Residence on the disposal of the dwelling, and will not lead to a stamp duty claw-back. The relief will not apply where the letting is between connected parties and rent relief is being claimed.

*Tip: Consider keeping rental income below the €10,000 threshold.*

### Rent Relief for Private Accommodation

Rent paid in a tax year for private residential accommodation will qualify for tax relief in that year. The relief will be granted by way of a tax credit at the standard rate of income tax i.e. 20% subject to certain limits. The credit is worth a maximum of €800 per annum to single/widowed persons and €1,600 to married/widowed persons who are aged 55 or over. The credit is worth €400 to a single person and €800 to a married couple under the age of 55.
The maximum available is as follows:

| | 55 or Over | Others |
|---|---|---|
| | € | € |
| Single/Widowed | 4,000 | 2,000 |
| Married/Widowed | 8,000 | 4,000 |

The credit does not cover rent paid to certain public authorities or rent in respect of a letting for a period of 50 years or more.

## Donations

Relief is available to individuals and companies in respect of donations to approved Charities/Educational Establishments (minimum €250). These include

- certain disadvantaged schools and donations to the state.
- charities, both domestic and third world
- first and second level schools and third level institutions both domestic and International
- donations to an approved sporting body used to fund expenditure on an approved project

There is a restriction on the amount of tax relief available to an individual, this caps the amount of the contribution at 10% of the individuals total income for the year of assessment.

Gifts may comprise of public quoted shares and securities.

A tax credit may be available for a gift of a heritage item to an approved body.

The availability of a tax credit has been extended to include property which has been approved by the Minister for the Environment, Heritage and Local government. The maximum credit available is capped at €6m in any one year with a minimum donation of €150,000 (or where there is a collection a single item of €50,000).

With effect from 1 January 2009 relief will be restricted to 80% of the market value of the heritage item.

## High Earners

Certain tax breaks available to high income earners are restricted with a tapering restriction applying to individuals with income in excess of €250,000. The amount of relief's that an individual may claim in any year is limited to a greater of 50% of certain relief's including all property incentive schemes or €250,000 whichever is greater. Any relief denied in a particular tax year may be carried forward. The impact of this is to ensure a minimum payment of tax at c.20%.

In the case of married couples each spouse is treated separately when calculating this relief and therefore the threshold of €250,000 applies to each spouse.

The following items specifically need to be considered:

- Calculation of double taxation relief and top slicing relief is applied before the relief to be claimed.
- Credit for any relief's or deductions are given before the application of the restriction (but after the carry forward of excess relief's from prior periods).
- The effect of the restriction is to disapply the age limit for income tax.

## Artists Exemption

Artist's exemption is also limited to €250,000 in accordance with the rules outlined above for high earners.

## INCOME TAX ADMINISTRATION

### Self Assessment - Pay and File

On the 31 October each year, a self-employed individual/company director, PAYE worker with untaxed non PAYE income will be required to:

1. Make his/her Income Tax Return for the previous calendar year;
2. Pay the Balance of Tax for the previous calendar year; and
3. Make a Preliminary Tax payment for the current calendar year.

### Payment and Compliance

The self-assessment system applies to individuals with non-PAYE income and to all directors controlling 15% or more of the share capital of a company (even if their entire income is subject to PAYE).

The definition of a chargeable person for self assessment purposes includes PAYE taxpayers with non PAYE income where the non PAYE income is not taken into account under the PAYE system.

The system places an obligation on the individual to file a return, calculate the tax liability, and pay the tax due. Returns for income arising in the year ended 31 December 2009 must be filed on or before 31 October 2010 to avoid a surcharge. The surcharge amounts to 5% of the amount of tax payable for the period subject to a maximum surcharge of €12,695, where the return is filed within two months of the deadline. Otherwise if the return is filed more than 2 months after the deadline, a surcharge of 10% is imposed subject to a maximum of €63,485.

Preliminary tax due for the tax year 2009 must be paid by 31 October 2009 if interest charges of .0273%* are to be avoided. The tax paid must represent 90% of the individual's actual liability for 2008 or 100% of the final liability for 2009 (excluding BES relief and relief for investments in films)

** From 01 July 2009 the rate of interest will decrease from .0273% to .0219%. Similarly for VAT and PAYE the rate of interest will fall from .0322% to .0274%.*

Individuals making a preliminary tax payment in 2009 based on 100% of their 2008 liability will be obliged to include in that payment the amount which would have been payable had the income levy applied in 2008, see **pg 57** for details of the income levy.

Alternatively, for the tax year 2009, a taxpayer can elect to make a preliminary tax payment equal to 105% of the ultimate liability for 2007 (the pre-preceding year), provided a liability arose in that year. This option is only available to taxpayers that pay by direct debit in equal monthly instalments. The final instalment is payable in December 2009. Where a taxpayer is paying by direct debit for the first time, payment can be made by way of a minimum of three equal instalments, and during the following year by way of eight equal instalments.

Any balance of tax due for 2009 must be paid by 31 October 2010 (2008 balance falling due by 31 October 2009).

Refunds of overpayments of preliminary tax carry interest of 0.011% per day .Interest applies for a period starting 6 months after the date on which a claim was made by the taxpayer and ending on the date the repayment is made. Where the repayment is made due to a Revenue error in applying the legislation interest will be repaid from the date the tax was paid to the date of repayment otherwise no repayment is due.

***Tip:** The 2008 tax return is due to be filed by 31 October 2009, where your total income for 2009 is less than that in 2008, consider basing your preliminary tax payment on your 2009 estimated liability.*

## Joint Assessment

Revenue may recover tax not paid within 28 days from the spouse who was not assessed. This is limited to the amount of unpaid tax referable to that spouse's income.

## Pay and File Summary

The following is a summary of pay and file dates for the year 2009

- ➢ File tax return for 2009
- ➢ Pay capital gains tax for
  - – 1 October 2008 -
  - – 1 January 2009 -
  - – 1 December 2009 - 31 December 2009 — 31 January 2010
- ➢ Pay balance of tax for 2008 — 31 October 2009
- ➢ Pay preliminary tax for 2009 — 31 October 2009

## Information included in Return

Taxpayers are required to disclose information in relation to any relief's claimed in their annual tax return, the relief's to be detailed are highlighted on the return forms. This will apply to individuals, both self-employed and employees and also to companies.

Failure to provide the relevant information may result in a penalty of €950, as well as a surcharge of 5% of the tax due subject to a maximum of €12,695.

## Late Filing of P.A.Y.E. Returns

The penalty for late filing of the employer's end of year return (P.35) is an initial €630 with further monthly penalties of €630 up to a maximum of €4,000.

Where PAYE is paid later than 14 days after the end of the year of assessment, interest will be payable and calculated as follows:

- Where the balance due does not exceed 10% of the total liability, interest will be due as if the date for payment was the 14th day after the end of the tax year; or
- Where the balance exceeds 10% of the total liability, interest will be due on 31st of July (in the year of assessment).

## Registration of Foreign Employers

PAYE must be operated by non-resident employers and intermediaries in certain circumstances. Where an employee works for a person other than his/her employer, and a payment is made by the foreign employer in respect of that work, then Irish PAYE must be operated on the payment. The obligation to register for PAYE covers foreign and domestic employment and mobile workers.

PAYE may also be required to be operated by foreign employers or Irish affiliated employers where an employee of a foreign company spends time (generally more than 60 days) working in the State. However there are certain concessions where the individual does not become tax resident and specified conditions are satisfied.

## INTEREST RELIEF FOR INDIVIDUALS

### Relief on Profits and Rental Income

Relief is available for interest on money borrowed for business purposes without restriction where the money is used: -

- for the purposes of a trade or profession carried on by the individual
- for the purchase of, or expenditure on, a rented property
- to invest in or lend to a trading partnership in which the individual is an active partner
- to acquire an interest in or lend to a company which is a trading or a holding company. This relief will be unrestricted where:
  - (a) the company is unquoted (if quoted, the investment should be made when the company was unquoted)
  - (b) the individual has a material interest (minimum 5% of equity) and
  - (c) the individual is a full-time or part-time director or employee.

Directors and employees (full-time and part-time) of a private trading or rental company, whether or not they have a material interest in the company (more than 5%) are entitled to unrestricted interest relief.

Certain anti-avoidance measures deny relief for non-business interest.

Anti avoidance provisions provide for a restriction of interest relief where funds are invested in certain companies which use the funds to acquire industrial or commercial property from another company, in such cases the interest is restricted to the individual's return from the company only.

*Tip: There is no restriction on the amount invested and relief is given at the marginal rate of tax where employees/Directors have a material interest in the company i.e. greater than 5%. An individual should therefore minimize borrowings for investments where little or no interest relief is available e.g. an investment in quoted shares.*

*Interest relief (post 7 December 2005) no longer applies where loans are taken out to acquire an interest in a company whose income arises wholly or mainly from rents or from income from property.*

### Limited Partnerships

There are restrictions on non-active partners in respect of the set-off of losses, interest and capital allowances against non-partnership income. Relief will be available to non-active partners for set-off against income arising to the partnership only and will be limited to each partner's capital contribution to the partnership. The restrictions apply to interest paid, capital allowances in respect of expenditure and losses arising in a trade. The restriction is €31,750, which is the maximum that may be offset against other sources of income outside the partnership. There is an exception for certain hotels in North-Western counties and certain tax incentive areas, see designated areas relief ***page 40.***

### Interest Relief for Rents

An individual is required to register any properties let with the residential tenancies board in order to qualify for interest relief on rented residential properties.

## INVESTMENT INCOME

### Standard Rate DIRT Accounts

Income tax at 25%, (from 7 April 2009) 23% (from 1 Jan to 6 April 2009) is deducted at source by banks, building societies, Post Office Savings Banks, Credit Unions, Agricultural Credit Corporation and Industrial Credit Corporation from interest paid or credited on deposit accounts in the beneficial ownership of individuals resident in the State.

The tax deducted satisfies the individual's full liability to income tax but this income must be disclosed in the individual's return. However, the health levy of 2%/2.5% is payable on interest income.

### 26% DIRT Accounts

For interest paid or credited on certain deposit accounts where interest is credited at maturity e.g. tracker bonds, income at the standard rate plus 6% (i.e. 26%/previously 23%) is deducted at source.

DIRT will not be repaid except to the following:

- individuals or their spouses aged 65 or over who are not liable to income tax
- incapacitated individuals
- charities
- companies that do not have a corporation tax liability

### Incapacitated Individuals and over 65s

DIRT will not be deducted at source from individuals who are incapacitated or who are over 65 (self or spouse), where an appropriate declaration is made to the deposit taker. This means that such individuals no longer needs to file a tax return in order to get a repayment of DIRT deducted at source.

### Post Office Saving Certificates

These are exempt from tax, with the maximum investment being €80,000.

*Tip: As well as the income tax exemption there is no CGT on the disposal of Government Savings Certificates.*

### Investment Undertakings

The income from certain life assurance products and collective funds is not taxed as it arises and grows tax free within that fund (Gross Roll-Up). The increase in value of the investment is subject to income tax on encashment at the standard rate i.e. 20% plus a further exit tax of 6% (previously 3%). It should be noted however that a 20% surcharge applies to funds, which are under the personal control of the investor.

Anti-avoidance measures provide for exit tax to apply, from 7 April 2009 this rate has been increased to 28%, if the policy is not encashed within eight years of its inception. This is to prevent the avoidance of tax by continuously rolling over a policy. A repayment will be available if the policy is disposed of, this is to ensure that the total tax paid does not exceed the tax that would have been payable had the deemed disposal rules not applied (an election not to have the excess tax repaid may be made where the investment by Irish investors in the fund <15% of the value of the fund, in effect tax refunds may be claimed from the Revenue instead of the fund). Similar provisions apply to foreign policies, however there are relieving provisions where Irish investors account < 10% of the fund's overall investment whereby it is not necessary for the fund to calculate the deemed disposal amount.

*Tip: As the income is taxed on exit or after eight years you have the benefit of reinvesting the gross value of the funds thereby earning income on amounts that would otherwise be subject to tax.*

## Credit Unions
These offer two special form of share accounts, as follows:

### Special Share Account
Shares in a special share account are liable to 23% DIRT on dividends (previously 20%).

### Special Term Share Account
A special term share account for a term of either three or five years is available whereby the first €480 per annum of dividends in the case of the three year fund and €635 per annum in the case of the 5 year fund is exempt from DIRT and Income Tax. Any dividends received in excess of these amounts are liable to DIRT at 23% (previously 20%). Equivalent tax exemptions will apply in relation to interest on deposits held in special three and five year term accounts with other deposit taking financial institutions.

### Regular Share Accounts
Tax at the marginal rate will continue to apply to interest on regular share accounts.

### Post SSIA Maturity Schemes
Special savings incentive accounts expired on 30 April 2007, however a post SSIA scheme incentivises contributions to pension schemes. It is targeted at those earning under €50,000 a year. The scheme allows monies from SSIA accounts to be transferred to a pension without triggering exit tax of 26% (previously 23%), and also provides for an additional bonus contribution of €1 for every €3 contributed to a pension scheme subject to a maximum of €2,500. The contribution must have been made within 3 months of the SSIA maturing.

The investment in a pension product can be by way of: -
- An AVC (additional voluntary contribution to an occupational pension scheme),
- A contribution to an standard PRSA or
- A premium in respect of an RAC (a retirement annuity contract).

*Tip: The provisions may apply to a stay at home spouse with income of less than €50,000.*

Anti avoidance legislation provides for a clawback of tax credits where a person availing of the credits withdraw any funds from the pension product within one year. This clawback is by way of a deduction from the payment from the pension administrator. The clawback is calculated by reference to the withdrawal and is proportionate to the amount of the total pension subscription.

## Non-Residents
Non-resident individuals who complete a declaration of non-residence may receive interest without deduction of DIRT.

## European Savings Directive
Deposit takers are required to capture information relating to foreign residents who earn deposit interest in Ireland, this information is returned to Foreign Revenue authorities annually (in respect of interest payments made on or after 1 July 2005).

## Reporting of Deposit Interest
Revenue powers exist to allow Revenue to make regulations obliging Financial Institutions including credit unions to return details of all interest and other like payments made to customers. On making appropriate regulations the Financial Institution are obliged to get details of the person's tax reference number and provide this together with the customer's name and address to Revenue.

## SPECIAL INVESTMENT SCHEMES

### Business Expansion Scheme (BES)

Investments in qualifying companies and approved funds under the Business Expansion Scheme, to a maximum of €150,000 are tax deductible. The maximum limit applies separately to both spouses, provided that they both have sufficient income in their own right. Where full relief cannot be availed of in a tax year, the excess can be carried forward to subsequent years. A claw-back of relief will arise if shares are disposed of within 5 years. There is an option to claim the relief in 2006 or 2007 where the investment is made in qualifying companies prior to 31 December 2007 in the case of monies raised through a designated fund or where shares are issued before 31 January 2007 in the case of a direct investment. If a claim is made in 2006 the €31,750 limit applies. The time limit for carry forward of unused relief is 31 December 2007.

The limit on the amount of money a company may raise from BES funds is €2,000,000 (subject to a maximum of €1,500,000 being raised in any 12 month period.

The scheme is due to end on 31 December 2013.

### Seed Capital Relief

This relief was introduced to encourage individuals who cease employment to start up their own businesses using a company structure. The relief is given by way of a deduction against total income for the six years preceding the cessation of employment. The maximum available is €100,000 per annum (previous maximum €31,750 per annum).

This relief is given by way of a refund of PAYE paid by the individual over the six years preceding the year of investment. There is a minimum shareholding requirement of 15% for one year in order to qualify for the relief (previously two years).

The scheme is due to end on 31 December 2013.

The limit on the amount of money a company may raise from seed capital relief is €2,000,000 subject to a limit of €1,500,000 in any twelve month period.

*Tip: The investment may be made in two stages*

### Film Scheme – Companies and Individuals

This relief is given by way of deduction against total income and is confined to a maximum of 100% of €50,000) (2008 - 80% of €31,750) for any tax year. As with the Business Expansion Scheme, relief is available to both spouses and relief may be claimed under both schemes, giving a potential maximum tax saving of €164,000 if both schemes are availed of by both spouses. Any unrelieved amount can be carried forward to the next tax year. For companies, the maximum amount deductible is 80% of €3,810,000 to enable the production of a single film.

The cap on the maximum amount of funding per film is €50,000,000 (previously €35,000,000).

The new cap is subject to a Ministerial Order.

The scheme will end on 31 December 2012.

*Tip: Film schemes may be structured to favour small investors where a financial institution provides both the funding for the €50,000 contribution required by the individual and the balance of the loan amount, this reduces the return on the investment but can make the investment more affordable.*

## RETIREMENT & PENSIONS

### Company Pension Schemes (Employees and Directors)

Annual contributions paid by an employee to a Revenue approved company pension scheme are tax-deductible. The relevant contribution must be made from the employee's total remuneration for the year from the employment. Relief from Health Levies and PRSI is also available on contributions, which are deducted from salary at source. For 2009 onwards the relief available by reference too the allowable contribution limits laid out below is subject to a salary cap of €150,000 (2008-€275,239)

From the employer's point of view, they must fund at least 1/6 of the cost of the pension benefits and cannot fund for tax approved benefits in excess of Revenue limits. Annual employer contributions are allowable for tax purposes in the accounts year in which they are paid. Special contributions in excess of set limits may need to be spread forward over a period of up to five years.

### Level of Allowable Contributions

Allowance for contributions for employees of company schemes and Retirement Annuities is subject to certain limits depending on age:

| Age | Limit | Actual |
|---|---|---|
| Less than 30 years | 15% | €22,500 |
| Between 30 and 39 | 20% | €30,000 |
| Between 40 and 49 | 25% | €37,500 |
| Between 50 and 54* | 30% | €45,000 |
| Between 55 and 59 | 35% | €52,500 |
| Over 60 | 40% | €60,000 |

(*The 30% rate also applies to specific individuals under 50 years old who are involved in occupations with a relatively short life span e.g. golfers, athletes).

*Tip: It may be worthwhile for an individual to make an additional voluntary contribution (AVC) if his or her individual contributions through the company are below the allowable limits.*

*Contributions by employees should be encouraged as the deductions from salary reduce employers PRSI as well as employees PAYE & PRSI.*

*Occupational pension schemes may permit greater overall pension funding than personal pension plans*

*Contributions paid between 1 January 2009 and the tax return filing date may, if an election is made, be treated as paid in 2008.*

### Refund of Contributions

Any refund of pension contributions during the lifetime of an employee including interest on those contributions, which have been made to an approved scheme will be subject to tax at 20%.

### Retirement Annuities

An individual who has relevant earnings from a trade, profession or non-pensionable office or employment is entitled to a deduction in respect of any premiums paid under a retirement annuity contract. The tax-deductible amount is limited to a percentage of Net Relevant Earnings (NRE). NRE includes income from trade, professions and non-pensionable employment less certain deductions e.g. qualifying interest on loans. Individuals can claim tax relief on contributions on their NRE subject to an earnings cap of €150,000 for 2009 (€275,239 for 2008). The cap does not apply to employer's contributions. The earnings of husband and wife are treated separately for the purpose of determining net relative earnings. The relief is available for each spouse with non-pensionable earnings. Personal contributions may be made through payroll and relief from PRSI and Health Levies may also be available.

The limit applies to the amount of relief available and not to the amount that may be contributed to/invested in a pension fund.

There is a facility to carry back annuities where agreements were already in place pre 6 February 2003 under which members had been offered an option to purchase additional years service in respect of actual service in the employment before the individual entered the pension scheme.

### Directors Contributions

More generous benefits can be availed of where a business is carried on through a company and the company pays the pension contributions. If the director controls more than 5% of the voting rights of the company, the director can avail of the wider benefits on retirement, which are not available to self-employed contributors. A company can provide for the director's pension via a Self-Administered Pension Scheme with the director being a Trustee of the scheme and can influence its' investment policy.

### Entitlements on Retirement

**Annual pension**: 2/3rds the final remuneration, provided a minimum of 10 years service at retirement.

**Tax free Lump Sum**: 1½ times final remuneration where twenty years service has been completed at normal retirement age. This interacts with the pension to reduce the maximum amount of pension available. The tax free lump sum is subject to a cap of €1,354,521 after accounting for any pension adjustment orders (to be adjusted annually in line with inflation).

*For self employed individuals, 5% directors and employee's pension fund which has been accumulated by Additional Voluntary Contributions (AVC's). The following options on retirement are available:*

- A maximum of 25% of the fund (subject to a limit of €1,354,521 but taking into account the provisions of any pension adjustment orders) may be taken tax free, alternatively;
- An individual may decide to put his accumulated pension fund into an Approved Retirement Fund' (ARF) or purchase a life annuity.
- At least €63,500 must be put into an 'Approved Minimum Retirement Fund' (AMRF) and must remain there until the individual reaches 75 years unless the individual has a guaranteed income of €12,700 per year.
- The individual may decide to take the balance of the fund as a taxable lump sum (excluding the aforementioned €63,500) or invest it in an 'Approved Retirement Fund' (ARF).
- An individual may choose to continue making contributions or to let the fund accumulate until he reaches 75 years. He cannot, however, take a lump sum and let the pension fund remain.
- Income and gains arising on an AMF/AMRF are exempt from tax so long as they are held within the fund. Any payments out will be taxable under PAYE as if it were a normal pension payments (see restrictions outlined below).
- Funds may be transferred from one insurer to another.
- Benefits may be accessed from age 60 but must be accessed before age 75 (it is not necessary to retire to access benefits).
- An individual may opt for the old or the new arrangements. The new provisions entitle an individual to own his own fund which forms part of his estate.
- Payments to a child over the age of 21 at the date of death are charged to Income Tax at the standard rate. Full distribution is exempt from Inheritance Tax if taken under Will or Intestacy.
- Payments to a child under the age of 21 at the date of death are exempt from Income Tax and Capital Gains Tax, but liable to Capital Acquisitions Tax.
- Transfer to a spouse's ARF on death is exempt.

### Income Tax Charge on Pension Funds

The maximum allowable pension fund on retirement for tax purposes will be €5,418,085 or, if higher, the value of the indexed fund on 7 December 2005. For the higher fund figure to apply, written notification must have been made to the Revenue by 6 June 2006. Both sums will be adjusted annually in line with average industrial earnings. The relevant maximum will apply to the aggregate value of all pension provisions held by an individual.

Where a fund exceeds the relevant limit, the excess will be liable to a once-off income tax charge 41% when the individual becomes entitled to draw down (irrespective of whether or not the fund is drawn down at that point in time), this is referred to as a benefit crystallisation event.

The tax operates in practice by applying a factor of 20 times the annual pension entitlement plus the lump sum, a defined contribution scheme may rely on an actuarial valuation; for example:

**Example 1**

On retirement an individual is entitled to a lump sum of €500k plus an annual pension of €200k. This fund is valued at €4.5m (€200k x 20 + €500k). Tax on benefit crystallisation event is nil as the fund is valued at < €5.418m.

**Example 2**

On retirement an individual is entitled to a lump sum of €750k plus an annual pension of €300k. This fund is valued at €6.75m (€300k x 20 + €750k). Tax on benefit crystallisation event €1.33m x 41% = €546k, (as the fund value exceeds €5.418m by €1.33m).

The annual pension amount will also be subject to income tax so in effect a double charge to tax arises.

### Approved Retirement Funds (ARFs)

In order to discourage ARFs being treated as a savings vehicle, an annual 3% imputed distribution (with a deduction for actual distributions) will apply to the value of assets in an ARF at 31 December each year and will be taxable at the individual's marginal income tax rate. The charge will apply to ARFs created on or after 6 April 2000. This provision does not apply to AMRF's or ARF's held by individuals under 60. It applies as follows:

- 1% in 2007
- 2% in 2008
- 3% from 2009 onwards.

### Relief on Retirement for Sports Persons

An additional relief applies for certain sports persons on retirement. It operates as a deduction of 40% against gross receipts from actual participation in the sport, (excluding income from sponsorship & advertising) for any 10 tax years of assessment for which he was tax resident in, and paid tax in Ireland In respect of that sporting activity since 6 April 1990. Relief is by way of repayment only and cannot be used to create or augment a loss. Repayments will not carry interest. It only applies to "sports" earnings and will be clawed back if the sports activity recommences.

### PRSA

Employers are required to provide employees with access to a Personal Retirement Savings Account where they do not provide an occupational pension scheme. This involves an employer providing the facility to have pension contributions deducted from an employees' salary and transferred to the PRSA provider. Employees may elect to pay PRSA contributions in lieu of AVCs. The retirement benefits are the same as those for RACs with the same overall contributions applying (these include contributions by the employer where applicable).

*Tip: There is no requirement for an employer to contribute to the PRSA, however any contribution will be deductible from income tax/corporation tax. Employers contributions will not be subject to employers or employees PRSI.*

*Tax relief is available for individuals at their marginal rate of tax subject to a limit of €150,000 for 2009 (€275,239 for 2008)of salary- maximise your tax relief by backdating up to €275,239 worth of pension contributions to 2008.*

***Tip:** It is not necessary for an individual to retire in order to access benefits from RACs and PRSAs.*

*Benefits are generally accessed from age 60 and must be accessed before age 75.*

*Employees with PRSAs may retire as early as 50*

### Self Administered Pension Funds

A company may provide for a director's pension via a self-administered pension scheme with the director as trustee of the scheme. The director can influence the investment policy, for example the scheme could make an investment solely in property.

*Tip: Self-administered pensions are a means by which a pension investment may be managed personally as opposed to through an insurance company and can offer greater flexibility in the type of asset that are invested in e.g. property.*

### Lump Sum Payments

### Retirement – Termination Lump Sum Payments

Individuals leaving employment may receive tax free payments. There are three methods of calculating the tax-free amounts:

1) €10,160 plus €765 for each complete year of service with the employer.
2) TThe amount calculated at 1) above may be increased by an additional **€10,000**, provided no claim for relief for increased exemption has been made in the previous 10 years.

<u>or</u>

3) Average salary for previous three years multiplied by the number of year's services and divided by fifteen. This is known as Standard Capital Superannuation Benefit (S.C.S.B)

The tax-free amounts under (2) and (3) above are reduced by tax-free amounts received/receivable from the employer's pension fund. There are other exempt payment which can be made on ceasing employment, including statutory redundancy payments payable in accordance with the Redundancy payments Acts 1967-2003, injury or disability payments for persons who may have to terminate employment early due to their medical condition, and also lump sums paid under approved pension schemes. Certain lump sum payments paid to employees in respect of pay restructuring schemes are also tax exempt (see below).

Employers are entitled to a 60% rebate of statutory redundancy payments.

Termination payments are subject to the levy at 1%,2% or 3% depending on the taxable income in the month in which the termination occurs(see income levy pg. for details of the income levy)

### Top Slicing Relief

In addition to the above, Top Slicing Relief may apply. This seeks to tax the lump sum at the average rate of tax over the preceding 3 years if it is more beneficial than the rate applying in year of termination.

Where the PAYE deducted on the termination payment exceeds this amount, a refund should be claimed from the tax office after the end of the year in which the employment terminates.

### Lump-Sum Payment to Employees on Company Restructuring

An exemption in respect of a lump-sum payment not exceeding €7,620 plus €255 for each full year of service applies to employees who undergo a pay restructuring where the emoluments of the employees are reduced by at least 10%. For pay reductions higher than 15% the maximum amount is increased.

*The relief applies where:*

- the restructuring scheme is necessary to ensure the current or future viability of the company and
- at least 50% of the total number of employees are involved in the restructuring scheme or more than 75% of a class of employees provided the number of participating employees in that class comprises 25% of the total number of employees in the company.

### Retraining Exemption

An exemption is available where retraining (in the form of a course as opposed to cash) is provided to employees as part of a redundancy package. An exemption of up to €5,000 for each eligible employee is available where an employee has more than two years continuous service. The course must be designed to improve skills in obtaining employment or setting up a business, and it must be completed within six months of the employee being made redundant. The exemption does not apply to the spouse or dependents of the employer.

### Reporting Requirement

There is a requirement to report to the Revenue Commissioners any payment made on death, or on account of injury or disability.

## EMPLOYEE SHARE SCHEMES

*Tip: Rewarding employees with equity in the company will give staff a focus on increasing the value of the company while providing a very tax efficient method of rewarding staff, as well as providing substantial PRSI savings to employers.*

### Approved Share Option Schemes

Revenue Approved Share Option Schemes afford favourable tax treatment for certain share option schemes. Approved schemes have the effect of eliminating income tax at either grant or exercise of an option and provides instead for capital gains tax on disposal. The gain will be the excess of the net sales proceeds over the price paid for the shares. The favourable tax treatment is not available where the option shares are sold within three years from the date of grant.

The following are some of the requirements for Revenue approval.

- All employees with three years service must be eligible to participate.
- Generally, options must be granted to all employees and on similar terms.
- All Grants must be at market value.

The Revenue Commissioners must approve the scheme.

*Tip: It is possible to award options on a discretionary basis to "key employees" so long as such awards do not exceed 30% of total approved grants in the relevant tax year.*

### Unapproved Share Option Schemes

Where an employee is granted unapproved share options by reason of an employment, a charge to income tax will arise on the actual exercise of the option, irrespective of whether the employee retains or sells the shares. The charge to income tax will be the excess of the market value of the share on exercise over the option price and this share option gain will be taxable at the employee's marginal rate of tax.

The charge to income tax also applies where the recipient of the option was not resident in Ireland when the option was granted.

The tax must be paid by the employee within 30 days of the date of exercise of the option, a Form RTSO1 must be filed at the time the payment is made.

*Tip: Where possible, all schemes ought to be Revenue approved in order to avoid an income tax exposure where unapproved. The exercise of the option and the subsequent disposal of the shares should be timed to ensure that there are sufficient funds available in order to meet the tax liability.*

### Share Purchase Schemes

Employees/directors are entitled to a deduction for part of the cost of acquiring new ordinary shares in their employing company. The lifetime limit on the amount deductible is €6,350. The relief is available to part-time employees and part-time directors. The shares must be held for 3 years to avoid a claw back of the relief. There is no allowable base cost in calculating a capital gains tax liability where shares are disposed.

### Profit Sharing Schemes

A full-time employee or director, or a part-time employee, can be given up to €12,700 (€38,100 in the case of an Employee Ownership Trust where the shares are held for a period of at least ten years) worth of shares, tax free, each year under a Revenue approved profit sharing scheme (APSS). The scheme must be available to all employees on similar terms. To avoid an income tax penalty, the shares must be held in trust for a

total of 3 years. If the shares are sold within 3 years, income tax is charged on 100% of the value of the shares. A disposal of the shares may give rise to a Capital Gains Tax liability on the difference between the sales proceeds and the market value of the shares on the day that they are awarded. The scheme must have prior approval from the Revenue Commissioners and the cost of administering the scheme is tax deductible for the company.

*Tip: An employee profit sharing allocation may be a substitute for salary if certain conditions are met.*

### Save As You Earn Scheme (SAYE)

Companies may set up a Save as You Earn share option scheme (SAYE) which must be Revenue approved. A company may grant options under a SAYE scheme at a discount of up to 25% of the market value of the shares at the beginning of the saving period. Employees must make a commitment to monthly savings of between €12 and €500 from after tax income for a period of 3 years at the end of which the employee can use the savings to purchase shares. Any interest paid on the savings at maturity will be exempt from DIRT. The cost of setting up the SAYE scheme may be claimed by the company as a deduction against trading profits. No charge to income tax arises where the shares are purchased at the discounted price. The shares are liable to capital gains tax when disposed of, the base cost for Capital Gains Tax purposes being the amount the employee paid for the shares.

*Tip: As there is no obligation on the employee to use their savings to purchase the shares at the end of the designated savings period, an employee with an option to avail of this scheme ought to do so as they cannot suffer from a fall in the value of their shareholding during the life of the scheme.*

### Returns:

For share option schemes, approved SAYE schemes and approved profit sharing schemes a return of information outlining details of beneficiaries must be provided to Revenue by 31 March after the end of the relevant tax year i.e. 31 March 2009 for 2008. Where a company or trustee fails to make the return relief may be withdrawn.

### Restricted Shares

Where shares are restricted there has been a long established practice to allow an abatement of income tax to reflect the period of the restriction. Where shares are held in a trust for employees (or some other approved vehicle), and where there is a genuine commercial restriction on the disposal of the shares, and where there is a valid written contract in place imposing the restriction on the sale. The abatement amounts are outlined below by reference to the period of restriction:

| Years of Restriction | Abatement |
|---|---|
| 1 | 10% |
| 2 | 20% |
| 3 | 30% |
| 4 | 40% |
| 5 | 50% |
| 6+ | 60% |

Where the value of the shares are abated the base cost for capital gains tax is also reduced. Where shares are forfeited the employee will be entitled to a rebate of tax paid.

## BENEFIT IN KIND

All Benefits in Kind are subject to PAYE and PRSI (including the health contribution) and taxed as notional pay. Benefits are taxable when the benefit is provided or when the payment is made. Where the benefit provided to the employee does not exceed €250 in value there is no BIK, the amount is not cumulative over a number of benefits and only one such benefit may be provided annually.

Consequently there is an obligation to report and pay any tax due from the employee. In certain exceptional circumstances the employer may pay the tax on behalf of the employee, these situations are as follows:

1. Where the employee has insufficient income, in such cases the payment on behalf of the employee will be treated as a simultaneous deduction from the employee's liability to income tax.
2. Employers may make arrangements with the Revenue Commissioners to account directly to the Revenue Commissioners rather than through the normal PAYE system for the tax payable in respect of benefits provided to employees which are minor and irregular. Where the employer so accounts for the tax, the benefits will not form part of the total income of the employees and they will not be entitled to credit for or repayment of the tax accounted for.

### Bicycles

The provision of a bicycle to a staff member for a cost not exceeding €1,000 is tax free and is not subject to BIK rules. This relief can be only claimed once by an employee in 5 consecutive years.

### Company Cars

**Old cars:** The assessable annual cash benefit for the use of a company car is calculated at 30% of the original market value of the car. This percentage is reduced for high business mileage as follows:

| Exceeding | Not Exceeding | % |
|---|---|---|
| 0 | 24,000 Km | 30 |
| 24,001 Km | 32,000 Km | 24 |
| 32,001 Km | 40,000 Km | 18 |
| 40,001 Km | 48,000 Km | 12 |
| 48,001 Km + | | 6 |

For 2009 and subsequent periods emission allowances will be the basis for assessing benefit in kind on new company cars.

**New cars:** For 2009 and subsequent periods emission allowances will be the basis for assessing benefit in kind on company cars.

| Vehicle Emission Category | $CO_2$ Emissions ($CO_2$ g/KM) | OMV % |
|---|---|---|
| A | 0G/Km-120g/Km | 30% |
| B | >120G/Km-140g/Km | 30% |
| C | >140G/Km-155g/Km | 30% |
| D | >155G/Km-170g/Km | 35% |
| E | >170G/Km-190g/Km | 35% |
| F | >190G/Km-225g/Km | 40% |
| G | >225G/Km | 40% |

Tapering relief is available for high levels of business travel

| Lower km | Upper Km | A,B.C OMV% | D,E OMV% | F,G OMV% |
|---|---|---|---|---|
| 0 | 24,000 | 30 | 35 | 40 |
| 24,001 | 32,000 | 24 | 28 | 32 |
| 32,001 | 40,000 | 18 | 21 | 24 |
| 40,001 | 48,000 | 12 | 14 | 16 |
| 48,001 | + | 6 | 7 | 8 |

The revised rates will come into effect by Ministerial Order

**Employee Contributions:** A reduction is available where an employee meets some of the running costs of the car, i.e. motor tax, insurance etc.

**Foreign Travel:** Where an employee is required to work abroad the notional pay is reduced by reference to the number of days spent working abroad. This is conditional on the employee's working a minimum of 30 days abroad and the car not being available for use by family members during the period of absence.

**Further reduction:** A 20% relief from BIK on cars applies to employees who work at least 20 hours per week, and whose annual business mileage exceeds 8,000 Kilometres. The employees must spend 70% or more of their time away from their place of work or business, and work a minimum of 20 hours per week on average. Revenue will require each employee to submit a logbook, which must be retained for up to six years.

***Tip:*** *It is more beneficial to use the tapering relief outlined above when business miles exceed 32,001.*

***Tip:*** *Structure any employee contributions to maximise a reduction in BIK*

***Tip:*** *It will be more beneficial for employees to make a general lump sum contribution to the cost of the car, instead of say meeting the cost of insurance, tax etc. as BIK is reduced euro for euro on any general contribution made by the employee for the use of the car.*

*Pooled cars do not attract BIK provided the car is available for the use of more than one employee and provided the car is not kept overnight at the employees home.*

## Company Vans

Where an employee has the private use of a van, the benefits, the cash equivalent of the private use of an employer's van set at 5% of the original market value of the van, which is the VAT inclusive cost of the van.

There is an exemption from Benefit in Kind on the private use of a company van where all of the following conditions are satisfied:

- The van is essentially used for the purposes of the employee's work
- The employer requires the van to be brought home
- The employee spends most of his/her working time away from the office

## Preferential Loans

- The specified rate for home loans is 5% (5%-2008)
- The specified rate for all other loans is 12.5% (13%-2008)

## Accommodation

The benefit in kind is the amount, which could reasonably be expected to be obtained on a yearly letting. Where the living accommodation is owned by the employer, the amount referred to is as a rule of thumb calculated as 8% of the current market value of the accommodation.

### Travel Passes

The provision by an employer of monthly or annual bus, train or LUAS passes to directors and employees is exempt from income tax. It is also possible to structure the reduction of an employees salary to cater for the provision of this benefit.

This exemption also includes passes for travel on commuter ferries which operate within the State.

*Tip:Tax savings arising from the provision of travel passes may also reduce the cost of providing car parking spaces where employees can be encouraged to use public transport.The employee tax and PRSI saving on a €700 annual pass is c. €300 and employers PRSI saving of c. €75.*

*The provision of a travel pass is an acceptable form of salary sacrifice.*

### Childcare Facilities

There is an exemption from Benefit in Kind (BIK) where the employer provides childcare facilities. The exemption applies where:

- The premises is made available solely by the employer; or
- Are made available by the employer jointly with third parties and the employer is responsible for financing and managing the childcare service; or
- Where the service is made available by other persons and the employer is wholly or partly responsible for financing and managing the childcare service.

Where the employer is not involved in the management of the childcare service, the BIK exemption is restricted to the amount expended by the employer on capital expenditure on the construction or refurbishment of the premises.

### Other Exemptions

- Where private use is incidental to business use, the following will not be subject to benefit in kind:
  - Mobile Phones
  - Computers and related equipment including high speed internet connections
- Professional subscriptions where membership is relevant to the business of the employer.
- Certain costs and expenses in respect the provision of personal security assets and services to an employee will not be subject to benefit in kind where there is a credible and serious threat to a persons physical security resulting from their employment.
- From 1 January 2009 the provision of a new bicycle and/or related safety equipment up to a maximum of €1,000, where the bicycle is used to travel between home and the normal place of work. The exemption can only be claimed once in every five years. If certain conditions are met it is possible to provide the benefit by reducing salary.

### Anti Avoidance

Anti avoidance measures exist to restrict the exclusion of PAYE to shares given to an employee in an employers company or a company controlled by an employer only. As well as applying to existing employees the measures also apply to previous employees who retain their benefits.

## MOTOR EXPENSES

A self-employed person can set off the motor expenses in respect of the use of a private car for business purposes.

### Expenses Allowance and Motor Mileage for Employees

### Mileage

No tax liability is incurred where there is reimbursement by the employer of vouched expenses incurred for the purposes of the trade.

If a round sum expense allowance is given to an employee, it is regarded as income and taxed accordingly under PAYE. Subsequently, a claim for refund of income tax can be made based on allowable business expenditure incurred.

An employee may claim a mileage allowance, where they use their own private cars for business purposes and pay all expenses including petrol/diesel, insurance and other overheads. Provided the reimbursement is in accordance with Revenue guidelines at rates not in excess of Civil Service Mileage Rates, no prior agreement with the Inspector of Taxes is required.

## CIVIL SERVICE MILEAGE RATES

*From 5 March 2009 (Rate per Km)*

| Official Mileage in a calendar year | Engine capacity up to 1,200cc (cent) | Engine capacity 1,200cc to 1,500cc (cent) | Engine capacity 1,501 cc and over (cent) |
|---|---|---|---|
| Up to 6,437 Km | 39.12 | 46.25 | 59.07 |
| 6,438 Km and over | 21.22 | 23.62 | 28.46 |
| *From 1July 2008 to 4 March 2009 (Rate per Km)* | | | |
| Up to 6,437 Km | 52.16 | 61.67 | 78.76 |
| 6,438 Km and over | 28.29 | 31.49 | 37.94 |

Travel between home and work is not regarded as being for business purposes.

## SUBSISTENCE ALLOWANCES

Subsistence allowance can be paid to staff, who work away from base in carrying out their duties of employment.

## CIVIL SERVICE SUBSISTENCE RATES

*From 5 March 2009*

| Over Night Allowance | | | Day Allowance | | |
|---|---|---|---|---|---|
| Class of Allowance | Normal Rate € | Reduced Rate € | Detention € | 10 hours or more € | 5 to 10 Hours € |
| A | 108.99 | 100.48 | 54.48 | 33.61 | 13.71 |
| B | 107.69 | 92.11 | 53.87 | 33.61 | 13.71 |

| Class | Salary |
|---|---|
| A | €69,659 |
| B | €37,536 |

*From 1 July 2008 to 4 March 2009*

| Over Night Allowance | | | Day Allowance | | |
|---|---|---|---|---|---|
| Class of Allowance | Normal Rate € | Reduced Rate € | Detention € | 10 hours or more € | 5 to 10 Hours € |
| A | 145.32 | 133.97 | 72.64 | 44.81 | 18.28 |
| B | 143.58 | 122.81 | 71.82 | 44.81 | 18.28 |

| Class | Salary | | |
|---|---|---|---|
| A | Excess €67,960 | Normal Rate: | Up to 14 nights |
| B | < €67,960 | Reduced Rate : | Next 14 nights |
| | | Detention Rate: | Absence over 28 nights. |

Special rules apply to absences over 56 nights.

The day and night allowance cannot be paid in respect of the same period.

There are detailed rules and conditions governing the payment of subsistence allowances. Advice should be taken before proceeding with any payments.

## CORPORATION TAX

Companies resident in Ireland are liable to corporation tax on profits wherever arising.

### Rates:

The standard rates of corporation tax may be summarised as follows:

| | Trading Income | Non-Trading Income |
|---|---|---|
| 2009 | [illegible] | [illegible] |

### Residential Development Land

The 25% rate applies to trading income from dealing in and developing land other than fully developed land. A 20% rate can apply to trading income from dealing in residential land. Trading losses and charges subject to the lower rate of tax may be offset against income other than that which is taxed at the lower rate on a "value and credit basis". The effect of this is basically to give a credit against corporation tax payable for the value of the losses or charges.

### 10% Corporation Tax - Manufacturing Relief

A 10% rate of corporation tax applies to manufacturing activities carried on in Ireland until 31 December 2010 where the manufacturing trade was carried on prior to July 1998 or where the manufacturing trade was approved for grant assistance by the I.D.A. on/before 23 July 1998.

The term manufacture is not defined although the legislation provides that certain activities are excluded e.g. preservation, pasteurisation, cutting, mixing etc.

### Corporate Group Relief

Losses may be surrendered within a group or consortium subject to certain restrictions, which apply to losses in general. This applies to both Ireland and EU/EEA resident participants and to non EU residents in certain circumstances.

### Close Companies

A surcharge of 20% is payable on the undistributed investment and rental income of a close company. Professional service companies are liable to a surcharge of 15% on one-half of its undistributed trading income and a surcharge of 20% on the undistributed rental and investment income.

The close company surcharge does not apply in situations where a company is the recipient of a dividend from a foreign subsidiary, and the company would be exempt from capital gains tax on the disposal of the shares in that subsidiary provided it is located in an EU or tax treaty country.

A close company that pays a dividend to another close company may jointly elect for the dividend "not" to be treated as a distribution. In effect this provides relief where a trading company pays a dividend to an investment/holding company as the income will not be treated as investment income in the holding company which will eliminate the close company surcharge.

*Tip: Care needs to be exercised when making a payment from one investment company to another as this simply transfers the close company problem from one company to another.*

### Corporate Donations to Charities and other Approved Bodies

Companies are allowed deduct, as a trading expense, donations made to charities and other approved bodies. The minimum amount of donation in any year is €250. The following are some of bodies in which payments to will qualify for corporation tax relief:

- A body approved for education in the arts;
- A body approved as an eligible charity;

- An institute of higher education, or a body established for the sole purpose of raising funds for such an institution;
- Certain secondary level institutions;
- The Equine Foundation;
- An approved sports body for an approved project;

### R & D Credit

Incremental research and development expenditure qualifies for a tax credit of 25% (20% up to 31 December 2008), this is in addition to a tax deduction at 10%/12.5 %, giving an effective write off for R&D expenditure of 35%/37.5%. Claims must be made within 12 months of the end of the period in which the expenditure is incurred.
A repayment of excess R&D tax credits is available over a three year period. The repayment is limited to the higher of the total corporation tax payable by the company in the previous ten years or the payroll tax liabilities of the company for the period in which the R&D is incurred.

R&D expenditure may be carried back to the prior period to generate a cash refund.

The credit will be available for incremental expenditure incurred in any EU country, where the expenditure is not tax deductible in any other EU country.

The reference year for determining the incremental expenditure for all years up to 2014 is 2003, for years after 2014 the reference year it is ten years before the end of the year of the claim i.e. for 2014 the base year is 2004.

Expenditure on R&D carried out by a third level college on behalf of the company or group also qualifies if it does not exceed 5% of the company or group's own R&D spend. Subcontracted costs, to a maximum of 10% of total qualifying expenditure, are also eligible for the tax credit.

A tax credit is also available for construction or refurbishment work carried out on a building used for qualifying research and development activities. The credit is equivalent to 25% of the qualifying cost of construction or refurbishment, may be claimed in full in the year in which the expenditure is incurred.

### New Company Start ups

An exemption from corporation Tax for the first three years of trading applies to certain new start up companies.

Where a company is incorporated after 14 October 2008 and commences to trade in 2009 it will be exempt from Corporation Tax and capital gains tax on the disposal of assets used for the purposes of the new trade. The exemption is subject to a liability threshold, and no relief will be available where profits exceed €60,000.

| Corporation tax Liability for the period | Availability of Relief |
|---|---|
| < €40,000 | Full exemption |
| €40,000 to €60,000 | Marginal relief |
| > €60,000 | Fully taxable |

The relief is restricted to new trades and does not apply where the trade was previously carried on by another person.

The relief does not apply to companies carrying on professional services, nor does it apply to companies which carry on a trade of land dealing, petroleum and mineral activities. The provision currently does not extend to companies who commence to trade after 2009. The provisions are subject to Ministerial Order.

## Payment and Compliance

### Large Companies:

(a company with a corporation tax liability of €200,000 or more in the preceeding year)

For accounting periods commencing on or after 14 October 2008

6 months before the end of the accounting period (day 21 of the 6th month)
- 50% of the previous years final liability
- 45% of the current years final liability

One month before the end of the Accounting period (day 21 of the 11the month)
- 90% of the final liability (after taking into account the payment five months earlier)

Filing Date (21st day of the 9th moth following the accounting period end)
- Balance of any tax due

Prior to 2009 the date of payment for Preliminary Corporation Tax is one month before the end of the accounting period, 90% of the final liability must be paid in order to satisfy a company's obligations.

A company's preliminary tax liability includes the corporation tax, close company surcharge and income tax liabilities for the accounting period, it also includes tax on chargeable gains, except for those arising from disposals of development land. To ensure interest charges will be avoided, the preliminary tax payment (the aggregate of the first and second instalment) must represent at least 90% of the final tax liability for the accounting period.

Special arrangements exist to take account of chargeable gains arising in the last month of an accounting period and for accounting periods of one month's duration.

### Small Companies

A small company i.e. where last years Corporation tax liability was less than **€200,000**, may base its first instalment on 100% of the previous years' liability.

### New Companies

Where a company is a new company with a corporation tax liability of less than €200,000, for the first accounting period it will not be required to pay preliminary tax for that period. A new company may pay tax for the first year when filing it's tax return.

## Group Companies

Where companies are large companies and members of the same Group , where one company has satisfied it's preliminary tax obligations and paid in excess of 90% of the final corporation tax liability, and another company has not paid sufficient preliminary tax, then the excess paid by one company may be transferred to the other company to limit any exposure to interest. These provisions are effective from 1 February 2007.

## Filing

The corporation tax return must be filed within eight months and 21 days of the Accounting period end, for returns filed after 1 January 2003, (previously nine months), otherwise a surcharge will arise and certain relief's will be restricted as follows:

| Date of Filing | Surcharge | Restriction |
|---|---|---|
| Return filed within two months of expiry of deadline | 5% of tax payable maximum €12,695 | 25% of loss or relief maximum €31,740 |
| Return filed 2 months or more after expiry of deadline | 10% of tax payable maximum €63,485 | 50% of loss or relief maximum €158,715 |

From 1 January 2009, the payment and filing deadlines may be extended to the 23rd of the month where the return is filed electronically.

### Information Included in Return

With effect from 1 January 2004 taxpayers will be required to disclose information in relation to those relief's in their annual tax return, the relief's to be detailed will be highlighted on the return forms.

Failure to provide the relevant information may result in a penalty of €950, as well as a surcharge of 5% of the tax due subject to a maximum of €12,695.

### Exemption for Disposal of Shareholdings

An exemption for Irish based companies from Capital Gains Tax on the disposal of shares in a subsidiary company. To qualify for the exemption, a 5% holding of ordinary shares must be held within a two year period of disposing of the shares. The shares must be held for a period of at least twelve months and must be held in a company located in an EU or treaty country.

The company being disposed of must be a trading company, or the holding company of a trading group (i.e. the holding company together with all other companies in which it has a 5% interest must consist wholly or mainly of trading activities).

This relief no longer applies to companies dealing with exploration or exploration rights.

### Payment Dates for Capital Gains Tax

Payment of capital gains tax relating to a disposal of development land are treated in the same way as a disposal for an individual, see **page 44**

For disposals of assets other than development land, the payment and filing dates are as outlined above.

Special rules apply where a gain is made in the last month of the accounting period, this allows for top up payments to be made without an exposure to interest.

## TAXATION OF DIVIDENDS

### Dividend Withholding Tax (DWT)

A withholding tax, at the standard rate of income tax i.e. 20% applies to dividend payments and other profit distributions, including cash and scrip dividends, made by an Irish resident company.

DWT does not apply where the distribution is made to a 51% Irish tax resident holding company.

Exemption from withholding tax is available where certain declarations are made in the case of payments to certain shareholders, including:

- An Irish tax resident company,
- Charities, pension funds, certain retirement funds and certain sporting bodies,
- Companies resident in EU member states or tax treaty countries, not under the control of Irish residents,
- Listed companies and their 75% subsidiaries,
- Non-resident companies ultimately controlled by residents of EU Member States or tax treaty countries,
- Certain individuals entitled to receive tax free income,
- Certain employee share ownership trusts,
- Approved Retirement Funds (ARF) and Approved Minimum Retirement Funds (AMRF),
- PRSAs and certain Exempt Unit Trusts,
- Brokers in receipt of dividends for special portfolio investment accounts,
- Collective investment funds.

DWT does not apply to distributions not subject to tax in the recipient's hands (i.e. dividends from patent companies to qualifying shareholders).

Detailed conditions including the making of appropriate declarations, where necessary, must be met to avail of the above exemptions.

Irish individual shareholders will be taxable on the gross dividend at marginal rates, but will be entitled to a tax credit for the tax withheld by the company. The tax withheld by the company will be payable to Revenue by the 14th day of the month following the month in which a distribution is made, regardless of whether DWT applies to the distributions.

Withholding tax on intra-EU dividends, royalty payments and interest payments between associated companies is eliminated where a company owns 25% of another company or a third company owns 25% of each company.

### Encashment Tax

Foreign dividends cashed by Irish Financial Institutions is subject to encashment tax @ 20%. This does not apply to non-resident individuals or charities. It also does not apply to cheques cashed in a retail branch of a bank.

### Scrip Dividends (Shares in lieu of dividends)

When a scrip dividend is given to a shareholder, the amount of the dividend to be converted to shares will be reduced by the standard rate of income tax i.e. 20% and the company shall pay to Revenue an amount equal to the tax withheld. The recipient is assessed tor tax on the value received and that withheld i.e. the gross dividend and is given a credit for the amount withheld.

## CAPITAL ALLOWANCES

Capital Allowances are granted for tax purposes in lieu of depreciation.

### Annual Allowance - Plant and Machinery

An annual allowance known as Wear & Tear allowance is granted for plant and machinery used in the trade in an accounting period. The write off period for annual wear and tear allowances is eight years for expenditure incurred after 4 December 2002, i.e. 12.5 % per annum on a straight line basis.

Balancing allowances or charges may arise where assets which have qualified for capital allowances are disposed of. Where the proceeds of the sale are greater than the tax written down value, a balancing charge arises or where the proceeds of disposal are less than the tax written down value of the asset then a balancing allowance arises.

Balancing charges will not arise where the proceeds on the disposal of an individual asset are less than €2,000.This will not apply to disposals between connected persons

### Energy Efficient Equipment

Accelerated allowances of 100% in year 1 will be available for the purchase (as opposed to leased, let or hired) by companies only of certain new energy efficient equipment approved by the Minister for communications, Energy and Natural resources.

The list of approved expenditure has certain classes of minimum spend as follows:

| | |
|---|---|
| Motors and drivers | €1,000 |
| Lighting | €3,000 |
| Building energy management systems | €5,000 |
| Information and Communication Technology | €1,000 |
| Heating & Electricity Provision | €1,000 |
| Ventilation & Air Conditioning Controls | €1,000 |
| Electrical & Alternative Fuel Vehicles | €1,500 |

This measure is effective for expenditure incurred after 31 January 2008, and is subject to commencement order, and is being introduced for a three year period.

### Intellectual Property Incentives

Tax relief on capital expenditure incurred in the acquisition of intellectual property will be introduced in this years Finance Act.

### Lessors

Lessors of plant and machinery are also entitled to the allowance if the burden of Wear & Tear on the asset is borne by them.

### Motor Vehicles

The annual allowance for motor vehicles (other than taxi and short term hire vehicles- see below) is 12.5% on a straight line basis subject to a maximum qualifying cost of €24,000 for motor vehicles (both new and second hand) purchased on or after 1 January 2007 (€23,000 for 2006).

Post 1 July 2008 the availability of capital allowances will depend on the level of carbon emissions of cars. The capital allowance or lease deduction and proportionate balancing allowance or charge depends on the categories of emissions as follows:

| Carbon dioxide Emisssion Level | Category/ Classification | Capital Allowance value threshold | Leasing Restriction Limit |
|---|---|---|---|
| Up to 155g/Km | A/B/C | €24,000* | €24,000* |
| 156g-190g/Km | D/E | Lower of 50% | Lower of 50% of |
| >190g/Km | F/G | | |

**The €24,000 limit applies irrespective of cost of the vehicle*

### Taxis

A taxi or short-term hire car is given an unrestricted write off of the purchase price at 40% per annum on a reducing balance basis. From 1 November 2001, existing taxi licence owners are able to write off the cost of their licence as a capital allowance against trading income. The taxi licence is treated as plant and machinery and the rates applicable above apply.

### Sea Fishing Boats

A Special regime of allowances applies to expenditure on polyvalent and beam trawl fishing boats where the expenditure is certified by BIM. The allowances are available at the rate of 50% in year 1 and 20% of the balance for 5 years.

If a balancing allowance arises as a result of a compensation for the decommissioning of white fishing vessels, the balancing charge will be spread equally over five years commencing in the year in which the compensation is paid.

### Industrial Buildings

The annual allowance for Industrial Buildings is 4% (available on a straight-line basis) on the net cost of the building. It is available to whoever holds the "relevant interest" in relation to the construction expenditure. Both owner-occupiers and lessors of Industrial Buildings are entitled to claim this allowance. Accelerated allowances are available in certain circumstances.

For an investor, any capital allowances unutilised against rental income of passive investors may be offset against non-rental income, this is subject to a maximum of €31,750.

There are anti-avoidance provisions which restrict capital allowances available to a subsequent purchaser of an industrial building on the disposal of industrial buildings from a company to an individual.

Anti-avoidance provisions also disallow interest relief on money lent to, or invested in, a company to acquire a premises from another company where tax relief has not been fully utilised.The provision restricts the interest relief to the individuals return from the company.

A new scheme to allow accelerated capital allowances of up to 150% for the removal costs of certain industrial facilities and the qualifying cost of building relocated facilities, including land costs to avoid hindrance to the regeneration of urban dockland is due to come in to operation by way of commencement order following EU clearance.

### Expenditure qualifying for Capital Allowances

- Enhancement and relocation capital expenditure deduction including net expenditure on replacement land: 150%
- Replacement plant and Machinery : 100%
- Replacement installations: 100%

The relief covers expenditure to 2014 only.Time Limits:

The Finance Act 2009 extends from 12 months to two years the period in which a developer must sell a building which qualifies for capital allowances for the purchaser to be entitled to base their capital allowances claim on the purchase price (rather than the developer's original construction cost).

## Transitional Provisions for Property Incentive Schemes

The transitional rules that apply to certain tax incentive schemes until 2008 are summarised below.

| Type of Property | Allowance/Relief | Transitional Relief | Conditions |
|---|---|---|---|
| Hotels | • 15% pe<br>• 10% (y<br>met<br>• Otherw<br>register | • Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief | Certific<br>registra<br>15% wo<br>by 31/1<br>Contra<br>31/7/06<br>circums |
| Holiday Cottages | • 10% p.a<br>conditio<br>• Otherw<br>register | • Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief | Plannin<br>must b<br>31/12/0<br>15% wo<br>by 31/1<br>Contra<br>31/7/06<br>circums |
| Student Accommodation | • 100% y<br>against<br>first let | • Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief | Plannin<br>must b<br>31/12/0<br>15% wo<br>by 31/1 |
| Third Level education | • 15% pe<br>• 10% (y | • Full relief to 31/12/2006<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/ 2009 no relief | 15% of<br>comple<br>Only e<br>date of<br>comme<br>can qua |
| Nursing Home residential Units | • 15% pe<br>• 10% (y | • Full relief to 24/3/07<br>• 75% relief 25/5/07-25/3/07<br>• 50% relief 26/3/07-31/7/08<br>• Post 31/7/08 see further extension conditions outlined below. | |
| Sports Injury Clinics | • 15% pe<br>• 10% (y | • Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief | Certific<br>Minimu<br>of 15 y<br>after 1/<br>10 year |
| *Urban renewal 1999<br>Rural Renewal 1999<br>Town Renewal 2000 | • 50% ye<br>• 4% p.a.<br>• s23 typ<br>propert | Non-Residential schemes:<br>• Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief<br>Residential schemes:<br>• Full relief to 24/3/07<br>• 75% in 9 months to 31/12/07<br>• 50% in 7 months to 31/7/08<br>• Post 31/7/08 no relief | For full<br>to 31/1<br>applicat<br>been re<br>31/12/0<br>15% of<br>comple<br>Contra<br>31/7/06<br>circums<br>Some i<br>project<br>restrict<br>Double<br>does no |

| Type of Property | Allowance/Relief | Transitional Relief | Conditions |
|---|---|---|---|
| Living over the Shop | • s23 typ<br>proper<br>• Owner<br>availabl<br>propert | Non-Residential schemes:<br>• Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief<br>Residential schemes:<br>• Full relief to 24/3/07<br>• 75% in 9 months to 31/12/07<br>• 50% in 7 months to 31/7/08<br>• Post 31/7/08 no relief | The sc<br>reintro<br>more f<br>For full<br>to 31/I<br>applica<br>been re<br>31/12/0<br>Exclusi<br>proper |
| Multi-Storey Car Parks | • 100% c<br>leases p | • Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief | For full<br>to 31/I<br>(Dublin<br>plannin<br>must h<br>receive<br>15% of<br>comple<br>No do<br>allowar<br>30/9/99 |
| Park and Ride | Owner occupiers:<br>• 100% c<br>Others:<br>• 50% ye<br>• 4% p.a. | Non-Residential schemes:<br>• Full relief to 31/12/06<br>• 75% relief 1/1/07-31/12/07<br>• 50% relief 1/1/08-31/7/08<br>• Post 31/7/08 no relief<br>Residential schemes:<br>• Full relief to 24/3/07<br>• 75% in 9 months to 31/12/07<br>• 50% in 7 months to 31/7/08<br>• Post 31/7/08 no relief | For full<br>to 31/I<br>plannin<br>must h<br>receive<br>15% of<br>comple<br>Only e<br>from th<br>comme<br>qualifie<br>Exclusi<br>proper |
| Rental Refurbishment Scheme | 15% per a<br>10% year | Residential schemes:<br>• Full relief to 24/3/07<br>• 75% in 9 months to 31/12/07<br>• 50% in 7 months to 31/7/08<br>• Post 31/7/08 no relief | Compl<br>Resider<br>Act 20 |

* Urban Renewal/Rural renewal/Town Renewal:
- Double rent relief is specifically denied.
- Certain non-residential allowances are denied to property developers.
- For certain large projects and certain industries allowances do not apply.
- For rural renewal schemes, certain commercial and industrial allowances are denied for properties used in trades where 250 people or more are employed.
- For urban renewal schemes, allowances for office development and multi-storey car parks may be denied at the discretion of the Minister.

### Conditions for Transitional Relief

For transitional relief to apply it is important that at least 15% of qualifying construction costs (not including site costs) be incurred by the end of December 2006. Also other existing scheme conditions must be complied with, see details of individual schemes below.

Applications for certificates must have been made by 31 January 2007 and certification issued from the local authority by 31 March 2007. Applications were required to state the amount of expenditure incurred to 31 December 2006, and the amount of expenditure to be incurred post 31 December 2006. Only expenditure included in the application for the period post 31 December 2006 will be eligible for capital allowances in the extended period to 31 July 2008, therefore if there is an increase in the size of the project the expenditure qualifying for relief will be limited to the total project cost on which the original 15% test was based and not on the increased project cost.

Tax relief is granted only on expenditure incurred in the respective period which is properly attributable to work actually done in the period, i.e. tax relief will not be available for any work that is prepaid.

In the case of holiday cottages, hotels and holiday camps, and commercial properties under the Urban, Rural and Town Renewal schemes there must be a binding contract in writing in place on or before 31 July 2006 under which the relevant expenditure is incurred.

### Tax Life of a Building

The retention period for certain facilities listed below has been extended from ten years to fifteen years, i.e. tax relief availed of will now be clawed back if a property is disposed of within fifteen years where the property was first used after 1 February 2007. This will also impact on the tax life for a subsequent purchaser who will now be entitled to write the expenditure off over a fifteen-year period. This provision impacts the following properties:

- Qualifying Hospitals
- Nursing Homes
- Childcare Facilities
- Convalescent Homes
- Qualifying Residential Units
- Qualifying Mental Health Facilities

### Deemed Balancing Event:

Where any of the facilities listed above cease to be used as described and are put to some other use a balancing event will be deemed to have arisen, unless the properties are reinstated to their intended use within a period of six months.

### Hotels

The maximum Capital Allowances available for offset against non-rental income by passive individual investors is €31,750 except in the case of hotels, where no offset against non-rental income applies. Hotels located in counties Cavan, Donegal, Leitrim, Mayo, Monaghan, Roscommon and Sligo are not subject to any capital allowance restriction.

Capital allowances are not available in respect of capital expenditure incurred on or after 20 March 2001 on the construction or refurbishment of hotels where any part of that expenditure is met by way of grant assistance.

Hotels must be officially registered with the register of hotels, the registers must be kept under the Tourist Traffic Act, if the registration is not in place then there will be no entitlement to capital allowances. Allowances once approved, operate from the date of first use as a hotel. *See transitional provisions outlined above.*

### Camping and Caravan sites

For expenditure incurred after 1 January 2008 on buildings and structures (including toilets, showes, laundry rooms, canteens etc.) comprised in, and in use as part of, premises which are included in the register of caravan sites and camping sites allowances of 4% per annum will be available i.e. the tax life is 25 years.

**This measure effectively applies the same relief to camping facilities as it does to hotels, holiday camps, guest houses and holiday hostels which are registered with Failte Ireland. See transitional measures outlined above.**

### Multi-Storey Car parks

Defined as a building of three or more storeys for use as a car park to the general public for which a fee is payable. The annual allowance, which may be claimed, is 4% on a straight-line basis. Accelerated allowances are also available in certain designated areas for owner-occupiers. Allowances no longer apply to car parks in the Cork and Dublin areas.*See transitional provisions outlined above.*

### Nursing and Convalescent Homes

Capital expenditure incurred on the construction, extension or refurbishment of a private nursing home or convalescent home qualifies for capital allowances as follows:

| | |
|---|---|
| Years 1-6 | 15% |
| Year 7 | 10% |

These capital allowances are subject to the overall annual limit of €31,750, which an individual passive investor can claim against non-rental income.

The building must remain a nursing/convalescent home for 15 years: if it does not, the allowances will be lost.

Residential units may be comprised in a larger building consisting of one or more storey's provided certain fire safety standards are complied with. In addition the number of qualifying residential units associated with a registered nursing home is reduced from 20 to 10

The deadline for incurring qualifying expenditure on nursing home residential units is extended from 31 July 2008 to 30 April 2010 where the expenditure is incurred under a contract entered into on or after 1 May 2007, however a restriction applies, this restriction is 75% in the case of a company and 50% in the case of an individual. Certification will be required from the Health Services Executive in order to qualify for relief with an annual confirmation that the requirements of the HSE have been met. If the 2010 extension applies the tax life of the building is extended to twenty years.

Units may be leased to a person certified as requiring accommodation or his/her spouse, however the lessor and the lessee cannot be connected.
*See transitional provisions outlined above.*

### Palliative Care Units

A new scheme of Capital allowances will be available for expenditure on facilities with a minimum of 8 (previously 20) in-patient pallitaive care beds which have been approved by the Health Service Executive. The allowances will be available at a rate of 15% per annum for the first 6 years and 10% in year 7 (net of any grant or other financial assistance)with a clawback where the facility ceases to be used for the purposes of palliative care within 15 years of its first use.

Subject to approval by the European Commission.

### Childcare Facilities

Capital expenditure incurred on the construction or conversion of a building used for childcare qualifies for capital allowances as follows:

| | |
|---|---|
| Years 1-6 | 15% |
| Year 7 | 10% |

Accelerated capital allowances of 100% are available to owners and investors. For investors, the allowance that may be offset against other income is limited to €31,750. There is also an exclusion for property developers.

A minimum 15 year holding period applies where the childcare facility is first used on or after 1 February 2007, otherwise a 10 year minimum holding period applies.

*See restrictions for property developers outlined below.*
*See transitional provisions outlined above.*

### Student Accommodation

100% relief is available on the provision of student accommodation. The relief operates to allow the offset of the capital expenditure against all Irish rental income of the owner. The accommodation must meet certain conditions and conform to guidelines drafted by the Department of Education. The accommodation must be immediately accessible to the college.

*See transitional provisions outlined above.*

### College buildings

Construction expenditure on college buildings may also qualify for an annual (deemed) industrial building allowance of 15% in each of the first six years and 10% in year 7.

*See transitional provisions outlined above.*

### Private Hospitals/Psychiatric Hospitals & Sports Injury Clinics

An allowance, similar to hotel capital allowances is available for certain hospital buildings and private sports injury clinics. The allowances are granted at a rate of 15% per annum for 6 years and 10% in year 7.

Relief may not be claimed by corporate investors, trusts, property developers, individuals involved in the operation or management of the facility.

Where an individual investor falls into any of the categories of investors listed above then relief will be denied to that person only, and not any other investor simply by way of being part of a group of investors.

*See transitional provisions for sports injury clinics.*

### Designated Areas

### Tax Designated Areas

Tax incentive schemes have developed over the years to encourage development in derelict areas in Dublin and a number of other urban centres. In addition, allowances are/were available for Seaside Resort Areas, Islands and Rural & Town Renewal areas. The special incentives are available in respect of certain properties in what are termed designated areas (and certain designated streets) in Dublin and in specified areas outside Dublin. There are a number of different designated schemes. The original scheme was introduced in 1986. A new scheme was introduced in 1994, with a further revised scheme in 1998.

### Urban Renewal Scheme

The areas were selected based on submissions by local authorities. Double rent relief is not available under this scheme.

## Residential Reliefs

The type of relief's are:

**"Section 23" (S23)** - Cost of construction, refurbishment or conversion of rented residential accommodation can be offset against all rental income.

**Owner/Occupier Relief -** Allowance of 50% of cost of construction (100% on refurbishment) will be deducted from the individual's total income by an annual deduction of 5% (10% for refurbishment) for 10 years.

## Industrial and Commercial Allowances

| Industrial Buildings | Owner Occupiers | Lessors |
|---|---|---|
| Free Depreciation | 50% | Nil |
| Initial Allowance | 50% | 50% |
| Annual Allowance | 4% | 4% |
| Maximum Allowance | 100% | 100% |

## Commercial Buildings/Multi Storey Car Parks

| | Owner Occupiers | Lessors |
|---|---|---|
| Free Depreciation | 50% | Nil |
| Max 1st Year Allowance | 50% | 50% |
| Annual Allowance | 4% | 4% |
| Maximum Allowance | 100% | 100% |

Capital allowances are denied to property developers and in respect of properties used in certain specified industries and large projects. Allowances may also be denied in respect of office developments and multi-storey car parks at the discretion of the Minister. *See transitional provisions outlined above.*

## Seaside Resort Areas

Capital allowances were available in respect of capital expenditure incurred on the construction or refurbishment of tourism buildings in the period from 1 July 1995 to 31 December 1999 subject to certain conditions.

*Tip: While the original scheme has lapsed, relief may still be available on the purchase of one of the units where the tax life has not yet expired. The relief will be the original amount allowed over the remaining tax life of the building.*

## Rural Renewal Relief

This scheme introduced tax incentives in counties Leitrim, Longford and parts of Cavan, Roscommon and Sligo.

The relief's are similar to those for industrial and commercial buildings under the Urban Renewal Scheme. Double rent relief is not available.

Residential relief's are available in the form of Section 23 relief on the cost of construction, refurbishment or conversion of rented residential accommodation.

Owner-occupier relief on the construction or refurbishment of private residential accommodation is also available.

Capital allowances will be denied to property developers and in respect of properties used in certain specified industries, including industries employing more than 250 people. *See transitional provisions outlined above.*

### Town Renewal Scheme

An Urban Renewal Relief for 101 towns across Ireland was introduced in 2000. It provides for the usual relief's – Industrial Building Allowance, Commercial Buildings, Capital Allowances, Section 23 Relief and Owner-Occupier Allowances. The relief's are similar to those for industrial and commercial buildings under the Urban Renewal Scheme 1998 (see above).

Residential relief's are available in the form of Section 23 relief on the cost of construction, refurbishment or conversion of rented residential accommodation.
Capital allowances will be denied to property developers and in respect of offices and properties used in certain specifies industries and in large projects.

### Living Over The Shop (LOTS)

Tax incentives are available for the use of space over commercial property for residential purposes. The incentives apply in Dublin, Cork, Galway, Limerick and Waterford. S.23 relief and owner-occupier residential relief's will be available. In some circumstances, accelerated capital allowances will be available for associated commercial development. The qualifying period runs from 6 April 2001 to 31 December 2004.

The Finance Act 2004 extended to 31 July 2006 the deadline date for this scheme where full planning permission has been applied for before 31 December 2004.
Certain exclusions apply to property developers.
A new more focused relief is to be introduced.
*See transitional provisions outlined above.*

### Park & Ride

Owner occupiers qualify for 100% accelerated allowances on park and ride and related commercial premises in the period ended 31 December 2004. Passive investors are entitled to claim 50% allowances in year one and 4% p.a. thereafter. Residential property reliefs' associated with the park and ride facility are also available, these take the form of S23 type relief.

Certain exclusions apply to property developers.
See transitional provisions outlined above.

### Refurbishment of Certain Rented Accommodation

A tax deduction is granted for refurbishment of certain residential properties. The premises must, both before and after the refurbishment, contain one or more residential units to qualify for this relief. Such refurbishment is available for offset at 15% p.a. for years 1 – 6 and 10% in year 7. The deduction is available against all rental income. This refurbishment relief is available in respect of all qualifying premises, irrespective of where they are located.

*Tip: This relief used in conjunction with interest relief can be very valuable*

### Mid Shannon Corridor Tourism Infrastructure Investment Scheme

This is a scheme introduced for a three year period in 2007, now extented until 2013, to encourage the development of tourist facilities in the mid-Shannon area. The scheme is aimed at encouraging the development of new tourism facilities or developing existing infrastructure in the qualifying areas. These areas are:

- Clare (80%)
- Galway
- Tipperary (80%)
- Offaly
- Westmeath
- Roscommon

As Clare and Tipperary are not part of the Border Midlands West region (BMW) they only qualify for 80% relief, other areas are entitled to 100% relief.

The allowances are spread over 7 years 15% pa.. in years 1-6 and 10% in year 7. The allowances are for the construction or refurbishment of holiday camps and associated tourism infrastructure facilities in qualifying areas along the Shannon. Accommodation facilities provided as part of a project may qualify for relief provided the expenditure represents less than 50% of the overall cost.

There will be a 15 year holding period in order to avoid a clawback of the relief.

The maximum Capital Allowances available for offset against non-rental income by passive individual investors is €31,750.

Certain minimum spends and restrictions apply. There are also certain exclusions from the scheme.

Projects wishing to avail of this relief must get advance approval. The deadline for the new applications is 31 May 2010. The Scheme has been extended to 31 May 2013.

*Property Tax Tips:*

- *In general in addition to any incentives available, relief is also available for interest on monies borrowed to purchase property.*
- *The general restriction of €31,750 allowed against non-rental income (that applies to passive investments) is available for both husbands and wives, where there is sufficient taxable income spouses ought to invest in a property jointly.*
- *As the €31,750 limit does not apply to rental income, convert as much as possible to rental income.*
- *Where possible e.g. in the case of crèches and nursing homes consider becoming an active partner in the property investment as the €31,750 limit does not apply.*
- *Consider structuring a partnership with a company where low tax rates may be availed of for income generated, and part of the capital growth in the property may be retained personally.*
- *Always be careful when purchasing a tax incentivised property as the relief's available are generally built into the price.*
- *Be aware of the high earners €250,000 cap that applies to individuals.*

## Property Developers

Property developers or persons connected with property developers are excluded from claiming capital allowances where either the property developer or the connected person holds a relevant interest in the property and either party incurred expenditure on the construction of certain properties. This wider definition (to include connected persons applies from 1 January 2008).

Specific exclusions apply to:

- Qualifying hospitals
- Qualifying mental health facilities
- Certain childcare facilities
- Buildings within a qualifying Mid Shannon area in use as a holiday camp/other tourist facility.

Care should be exercised where advising developers in claiming capital allowances.

## CAPITAL GAINS TAX

Individuals resident or ordinarily resident in Ireland are liable to capital gains tax on disposals.

Individuals resident or ordinarily resident but not domiciled in Ireland are liable on gains arising on the disposal of assets situated in Ireland and on all foreign gains to the extent that those gains are remitted to Ireland.

Individuals neither resident nor ordinarily resident are liable on gains made on the disposal of certain specified assets, viz:

- Land and buildings in Ireland.
- Minerals in Ireland including related rights, and exploration or exploitation rights in a designated area of the continental shelf.
- Unquoted shares deriving their value, or the greater part of their value, from such assets as mentioned above.
- Assets of a business carried on in Ireland through a branch or agency.

An anti avoidance section imposes CGT on individuals who dispose of shareholdings after 4 December 2002 during a period of temporary non-residence, a temporary period of non-residence is described as absences of less than 5 years.

### Rates

The standard rate of Capital Gains Tax arising on disposals is 25% (for disposals on or after 8 April 2009), 22% (disposals from 15 October 2008 to 7 April 2008) 20% (pre 15th October 2008).

### Inflation Relief

In arriving at the chargeable gain on the disposal of an asset held for over twelve months, the allowable cost is to be adjusted for inflation based on the Consumer Price Index (Indexation).

Indexation relief will only be available in respect of ownership of assets up to 31 December 2002. Expenditure incurred in 2003 and subsequent years of assessment will not qualify for indexation relief.

| Year expenditure incurred | Factor for disposal for year ended 5 April/31December: | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 93/94 | 94/95 | 95/96 | 96/97 | 97/98 | 98/99 | 99/00 | 00/01 | 2001 | 2002 | 2003 |
| 1974/75 | 5.656 | 5.754 | 5.899 | 6.017 | 6.112 | 6.215 | 6.313 | 6.582 | 6.930 | 7.180 | 7.528 |
| 1975/76 | 4.568 | 4.647 | 4.764 | 4.860 | 4.936 | 5.020 | 5.099 | 5.316 | 5.597 | 5.799 | 6.080 |
| 1976/77 | 3.935 | 4.003 | 4.104 | 4.187 | 4.253 | 4.325 | 4.393 | 4.580 | 4.822 | 4.996 | 5.238 |
| 1977/78 | 3.373 | 3.432 | 3.518 | 3.589 | 3.646 | 3.707 | 3.766 | 3.926 | 4.133 | 4.283 | 4.490 |
| 1978/79 | 3.117 | 3.171 | 3.250 | 3.316 | 3.368 | 3.425 | 3.479 | 3.627 | 3.819 | 3.956 | 4.148 |
| 1979/80 | 2.812 | 2.861 | 2.933 | 2.992 | 3.039 | 3.090 | 3.139 | 3.272 | 3.445 | 3.570 | 3.742 |
| 1980/81 | 2.434 | 2.477 | 2.539 | 2.590 | 2.631 | 2.675 | 2.718 | 2.833 | 2.983 | 3.091 | 3.240 |
| 1981/82 | 2.012 | 2.047 | 2.099 | 2.141 | 2.174 | 2.211 | 2.246 | 2.342 | 2.465 | 2.554 | 2.678 |
| 1982/83 | 1.693 | 1.722 | 1.765 | 1.801 | 1.829 | 1.860 | 1.890 | 1.970 | 2.074 | 2.149 | 2.253 |
| 1983/84 | 1.505 | 1.531 | 1.570 | 1.601 | 1.627 | 1.654 | 1.680 | 1.752 | 1.844 | 1.911 | 2.003 |
| 1984/85 | 1.366 | 1.390 | 1.425 | 1.454 | 1.477 | 1.502 | 1.525 | 1.590 | 1.674 | 1.735 | 1.819 |
| 1985/86 | 1.287 | 1.309 | 1.342 | 1.369 | 1.390 | 1.414 | 1.436 | 1.497 | 1.577 | 1.633 | 1.713 |
| 1986/87 | 1.230 | 1.252 | 1.283 | 1.309 | 1.330 | 1.352 | 1.373 | 1.432 | 1.507 | 1.562 | 1.637 |
| 1987/88 | 1.190 | 1.210 | 1.241 | 1.266 | 1.285 | 1.307 | 1.328 | 1.384 | 1.457 | 1.510 | 1.583 |
| 1988/89 | 1.167 | 1.187 | 1.217 | 1.242 | 1.261 | 1.282 | 1.303 | 1.358 | 1.430 | 1.481 | 1.553 |
| 1989/90 | 1.130 | 1.149 | 1.178 | 1.202 | 1.221 | 1.241 | 1.261 | 1.314 | 1.384 | 1.434 | 1.503 |
| 1990/91 | 1.084 | 1.102 | 1.130 | 1.153 | 1.171 | 1.191 | 1.210 | 1.261 | 1.328 | 1.376 | 1.442 |
| 1991/92 | 1.056 | 1.075 | 1.102 | 1.124 | 1.142 | 1.161 | 1.179 | 1.229 | 1.294 | 1.341 | 1.406 |

| Year expenditure incurred | Factor for disposal for year ended 5 April/31December: | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 93/94 | 94/95 | 95/96 | 96/97 | 97/98 | 98/99 | 99/00 | 00/01 | 2001 | 2002 | 2003 |
| 1992/93 | 1.019 | 1.037 | 1.063 | 1.084 | 1.101 | 1.120 | 1.138 | 1.186 | 1.249 | 1.294 | 1.356 |
| 1993/94 | - | 1.018 | 1.043 | 1.064 | 1.081 | 1.099 | 1.117 | 1.164 | 1.226 | 1.270 | 1.331 |
| 1994/95 | - | - | 1.026 | 1.046 | 1.063 | 1.081 | 1.098 | 1.144 | 1.205 | 1.248 | 1.309 |
| 1995/96 | - | - | - | 1.021 | 1.037 | 1.054 | 1.071 | 1.116 | 1.175 | 1.218 | 1.277 |
| 1996/97 | - | - | - | - | 1.016 | 1.033 | 1.050 | 1.094 | 1.152 | 1.194 | 1.251 |
| 1997/98 | - | - | - | - | - | 1.017 | 1.033 | 1.077 | 1.134 | 1.175 | 1.232 |
| 1998/99 | - | - | - | - | - | - | 1.016 | 1.059 | 1.115 | 1.156 | 1.212 |
| 1999/00 | - | - | - | - | - | - | - | 1.043 | 1.098 | 1.138 | 1.193 |
| 2000/01 | - | - | - | - | - | - | - | - | 1.053 | 1.091 | 1.144 |
| 2001 | | | | | | | | | | 1.037 | 1.087 |
| 2002 | | | | | | | | | | | 1.049 |
| 2003 | | | | | | | | | | | 1.000 |

### Roll-over Relief - Business Assets

Prior to 4 December 2002 tax on gains on the disposal of certain assets could be deferred, provided the assets were used solely for business purposes and the entire proceeds are invested in new business assets. The relief, otherwise known as rollover relief, could be claimed on plant and machinery, buildings, land (other than development land or land held as stock in trade) and goodwill. New assets were required to be purchased within the period 1-year prior to and 3 years after the disposal of the original assets. Any liability arising on the initial disposal was deferred until the new assets are sold without subsequent re-investment.

### Roll-over Relief - Property

Where the property being disposed of has more than three units it has to be replaced by a property with an equal number of units it also qualified for roll over relief prior to its abolition.

### Roll-Over Relief for Individuals – Shares

Subject to certain conditions, rollover relief was also available to defer the tax on gains on disposal of shares in a trading company in which the shareholder had been a full-time/part-time director or employee during a period of three years up to the date of disposal. The relief applied where the proceeds are reinvested in new ordinary shares in an Irish unquoted, trading company provided:

- the individual acquires 5% of the ordinary share capital within 1 year and 15% within 3 years and must commence employment within 3 years after the date of the original disposal and remain with the new company for 2 years.
- becomes a full time director or employee of the new company within the period of 1 year and remains until 3 years after the original disposal.
- Full-time working director for 5 years.

With effect from 4 December 2002 rollover relief has been abolished. Certain transitional arrangements apply as follows:

- Gains, which had already been rolled over prior to 4 December 2002 into replacement assets will not crystallise where these assets are disposed of after 4 December 2002, provided the proceeds are reinvested in full in further assets.
- Where assets were acquired before 4 December 2002 in the belief that there would be an entitlement to claim roll over relief on any gains arising where the assets were disposed of after 4 December 2002 will still be allowed to claim roll over relief (except in the case of shares).
- In effect assets acquired in the period 5 December 2001 to 4 December 2002 may still avail of roll over relief where assets are purchased within one year of disposal.

## Retirement Relief

A retirement relief is available for an individual aged 55 years or more on disposal of business assets owned and used for 10 or more years ending on the disposal date, it also applies to shares in a family trading company which have been held for at least 10 years. Periods of ownership of a deceased spouse may also be included in the calculation. This relief is limited to proceeds of €750,000 for disposals post 1 January 2007 (previously €500,000) where the disposal is not to a child of the individual. A disposal of a business to a child including a foster child supported by the donor for five years prior to the child turning eighteen years of age is not liable to capital gains tax regardless of the consideration provided the child retains the asset for 6 years. For the purposes of this exemption a child includes a nephew or niece who has worked in the business substantially on a full time basis for the period of five years ending with the disposal. Also, the definition of child has been extended from 1 January 2007 in certain circumstances to include a grandchild.

Assets that are held outside a family company and used by that company also qualify for retirement relief provided that certain conditions are met.

Relief will only apply where the disposal of qualifying assets is for bona fide commercial reasons and not as part of a tax avoidance scheme (effective from 31/1/2008).

Special relief also applies to compensation payments for the de commissioning of fishing vessels.

*Tips:*

- *An individual is not in fact required to retire in order to avail of this relief.*
- *A husband and wife each have a €750,000 individual limit, therefore a split of the business on commencement to trade ought to be considered*
- *A company buyback of shares may be used in conjunction with retirement relief to ensure that no tax exposure arises if the amount received for the shares is €750,000 or less. In the case of a buyout of a retiring couple who both qualify for retirement relief, the amount may be increased to €1,500,000 where all conditions have been met.*
- *A company buyback of shares is a useful way of using company funds as opposed to personal funds to buy out a dissenting or retiring shareholder. It also avoids taking new shareholders in to the company to fund a buyout. In addition the remaining shareholders maintain the same proportional percentage shares.*

## Exemptions and Relief

The following are a number of exemptions available to individuals:

- Annual gains of up to €1,270 for each individual. For married couples the exemption is €1,270 each, which is non-transferable.
- Sale of tangible moveable property not exceeding €2,540 e.g. antiques
- Sale of tangible moveable property, which is a wasting asset and does not qualify for a capital allowances claim
- Sale of principal private residence (except where sale proceeds reflect development value).
- Sale of dwelling house occupied rent-free by a dependent relative.
- Gains or profits on sales of Government Securities or Savings Certificates.
- Transfer of assets between spouses living together.
- Gains on the sale of Irish Government securities, where the security has been held for at least two years.
- Disposals of individual works of art which are valued at not less than €31,740 when loaned to an approved gallery or museum for public display for a minimum period of ten years from 2/2/06 (for loans made prior to 2/2/06 the loan period is six years).
- Transfer of a site from a parent to a child including a foster child supported by the donor for five years prior to the child turning eighteen years of age, provided it is for

the construction of the child's principle private residence. The maximum marketable value of the site is €500,000 (€254,000 pre 5/12/07). The relief is limited to one site per child (for disposals after 1 February 2008, this is limited to 1 acre exclusive of the area where the house is to be built). The threshold applies where both parents make a simultaneous disposal of a site to a child.

- Gains arising from personal injury compensation payments to permanently incapacitated individuals, where the exempt income and gains are greater than 50% of an individual's total income and gains.
- Disposal of certain shares (see corporation tax section).

### Payment and Compliance

Capital Gains tax is a self-assessment tax. In summary, the following is the due payment and compliance dates:

### Payment Dates for Capital Gains Tax

The payment dates for Capital Gains Tax have also been revised, the payment date previously 31 October following the year of assessment in which the gain arose has been revised to bring forward the payment date and provide for two payment dates as follows;

| Period of Disposal | Date of Payment |
|---|---|
| 1 October - 31 December | 31 January following the year of assessment |
| 1 January 2009 - 30 November 2009 | 15 December 2009 |
| 1 December 2009 - 31 December 2009 | 31 January 2010 |

### Anti Avoidance

New anti avoidance measures have been introduced to prevent transactions between connected parties where artificial losses are created to offset against actual capital gains from avoiding capital gains tax. These measures will apply to all disposals made on or after 20 November 2008.

### Clearance Certificate

Where the proceeds of a sale of certain assets such as land and buildings are more than €500,000 a tax clearance certificate is required. In the absence of the certificate, the purchaser is obliged to deduct tax at 15% of the sale proceeds and pay the tax withheld to the Revenue within 30 days of making the deduction. This provision applies irrespective of the method of payment.

A credit will be available for the tax withheld against the purchasers CGT where the consideration for the disposal is in non-monetary format.

An agent may apply for a tax clearance certificate on behalf of a client.

## CAPITAL ACQUISITIONS TAX

Capital Acquisitions Tax (CAT) is a tax on gifts and inheritances.
The following is a summary of the method of assessment to CAT:

### Taxable Inheritance

A taxable inheritance arises in any of the following situations:

- The disponer is resident or ordinarily resident in Ireland at the date of the disposition
- The successor is Irish resident or ordinarily resident at the date of the inheritance
- The property is located in Ireland at the date of the inheritance

### Taxable Gift

A taxable gift arises in any of the following situations:

- The disponer is resident or ordinarily resident in Ireland at the date of the disposition (not applicable to gifts under a Discretionary Trust)
- Where a gift is taken under a Discretionary Trust, the disponer is resident or ordinarily resident in Ireland at the date of the disposition or the date of death (if the gift is taken after the death of the disponer)
- The beneficiary is resident or ordinarily resident in Ireland at the date of the gift.
- Provided the settlor or beneficiary is not Irish domiciled, he is not deemed to be resident until after 1 December 2004 and then only if he has been resident in Ireland for 5 consecutive years of assessment immediately before the year of assessment in which the gift is received and is also resident at the date of the gift.

From 5 December 2001, gifts/inheritances taken on or after 5 December 1991 are aggregated with later gifts/inheritances in order to arrive at the current tax payable.

Only gifts/inheritances within the same group are to be aggregated.

### Thresholds for CAT

The following maximum tax-free thresholds apply for gifts and inheritances on or after 1 January.

| | 2006 | 2007 | 2008 | 2009 | 2009 (Post 8 April) |
|---|---|---|---|---|---|
| | € | € | € | € | € |
| Group 1 | 478,155 | 496,824 | 521,208 | 542,544 | 434,000 |
| Group 2 | 47,815 | 49,682 | 52,121 | 54,254 | 43,400 |
| Group 3 | 23,908 | 24,841 | 26,060 | 27,127 | 21,700 |

*Group 1* - This threshold applies where the donee or successor is a child, minor child of a deceased child of the disponer, a foster child of the disponer subject to certain conditions, or a spouse of a deceased child. It also applies to inheritances taken by a parent from a deceased child, subject to certain conditions. Certain inheritances taken by a parent from a child may be totally exempt.

*Group 2* **-** This threshold applies where a donee or successor is a lineal ancestor, lineal descendant (other than a child or minor child of a deceased child), a brother, sister, or a child of a brother or sister of the disponer.

*Group 3* **-** This applies where the donee or successor is not related as outlined in either of the previous classes.

### Rates

A rate of 25% (post 8 April 2009), 22% (20 Novemebr 2008 - 7 April 2009), 20% (pre 20 November 2008 - 20%) applies to all gifts/inheritances. This rate applies to the amount of gift or inheritance in excess of the tax-free threshold.

| | Inheritances | Gifts |
|---|---|---|
| Threshold amount | 0% | 0% |
| Excess over threshold amount | 25% | 25% |

### Main Exemptions and Reliefs

- Inheritances and gifts between husband and wife are exempt.
- Transfers of property by virtue of an order under the Family Law Acts 1995 or 1996.
- The first €3,000 of gifts from each disponer taken in a calendar year.
- Gifts or legacies applied for public or charitable purposes.
- Normal and reasonable payments received in the disponer's lifetime by family members for support, maintenance or education or by a dependent relative for support or maintenance.
- Life assurance policies (Section 60 policies) designed for the payment of CAT and used for this purpose within one year of the death of the Insured person. Any excess proceeds may be taxable.
- Dwelling houses, which are the only or main residence of the beneficiary (subject to certain conditions).
- Business Relief (see below).
- Agricultural relief (see farmers taxation page 59)

### Private Residence Relief

The gift / inheritance of a private dwelling house is exempt from CAT provided:

- The beneficiary has continuously lived in the house as his only or main residence for 3 years prior to the date of the gift / inheritance.
- At the date of the gift / inheritance, the beneficiary is not beneficially entitled to any other dwelling house or to any interest in another dwelling house.
- If the beneficiary is under 55, he must either continue to live in the house for 6 years after the date of the gift / inheritance or in the event of sale, invest the proceeds of sale in another dwelling which will be his only or main residence, to avoid a clawback.

From 20 February 2007 the relief is restricted in the case of gifts, relief will not be available where the property was the disponer's only or main residence during the three year period prior to the gift, there is an exception in the case where the disponer resides there due to old age or infirmity and relies on the services of the beneficiary.

There is also a restriction to properties owned by the disponer for the three year period prior to making the gift, this avoids situations whereby a parent buys property owned and occupied by a child and then gifts it back to the child.

### Business Relief

The value of business assets is reduced for a gift/inheritance of relevant business property by 90% subject to a number of qualifications. The relevant business property must have been owned by the disponer, or his/her spouse for at least five years prior to the transfer in the case of a gift or two years in the case of an inheritance. The asset must remain in the business for at least six years to avoid a claw-back of the CAT relief. From 15 April 2001, the condition that the business must be carried on in the state, or that business property must be situated in the state no longer applies.

Business relief also applies to a gift or inheritance of shares in a holding company who holds shares in one or more companies controlled by the beneficiary, and his/her relatives, nominees or trustees.

A clawback of the relief will apply where the full proceeds from the disposal or compulsory acquisition are not fully expended within one year in the case of a disposal or within six years in the case of a compulsory acquisition made after 25 March 2002.

With effect from 2 February 2006 where there is a disposal of land which qualified for agricultural relief or business asset relief in the period commencing six years after the date of the gift or inheritance and ending ten years after that date, there will be a clawback of the relief by reference to the development value of the land at the date of the gift or inheritance. Any interest due will be charged from the date of disposal of the land as opposed to the valuation date which was the position prior to 2007.

***Tip:*** *Agricultural property may qualify for Business Relief where it fails to qualify for Agricultural Relief.*

*It is not necessary for the business to be carried out in the State or for the property to be situate in the State for the relief to apply.*

### Payment and Compliance

Self-assessment applies to gift and inheritance tax. Where 80% of the appropriate threshold has been exceeded, a return and any payment due must be made within four months, the return must be filed even where there is no CAT liability. This tax may be paid by instalments.

There is a four year time limit for claiming repayments of overpaid tax, the four year period runs from the date of payment of the tax where the tax has been paid on time or from the valuation date where the tax has been paid late. This applies from 31 January 2008.

### Surcharge for Understatement

A surcharge applies to discourage understatement of asset values in self-assessment returns. The surcharge is:

**(a)** 10% if the declared market value was between 50% and 67% of the true value,
**(b)** 20% if the declared market value was between 40% and 50% of the true value,
**(c)** 30% if the declared market value was less than 40% of the true value.

### Joint Account Limits

The amount that can be held in a joint account, which can be released to the survivor of a deceased person without prior Revenue approval is €31,750.

## DISCRETIONARY TRUST TAX

A discretionary trust set up on or after 11 April 1994 becomes subject to a once-off 6% levy based on the value of the assets in the trust on the latest of the following events:

- The date property is placed in settlement,
- The date of death of the settlor, or
- The date on which the principal beneficiaries of the trust all attain the age of 21.

The 6% charge is reduced to 3% where the trust is created under a will and where all of the assets of a discretionary trust are appointed within 5 years of the assets being transferred to the discretionary trust (effective from 1 February 2007)

Following the trust becoming subject to the 6% levy, a 1% levy is payable on each year (except the year in which the 6% levy is paid) on the market value of the assets in the trust.

## STAMP DUTY

Stamp Duty is a duty levied on documents or instruments, executed in Ireland, relating to conveyances and certain other transactions.

The rate of stamp duty levied depends on the head of charge under which an instrument is classified.

### Trade in Scheme

Where a Second-Hand House is transferred in exchange for a New House, the stamp duty will not be payable until the earlier of the subsequent sale-on of the Second-Hand House or 31 December 2010.

### Non residential property

| Rates from 15 October 2008 onwards | | | | Pre 15 October 2008 Rates | | | |
|---|---|---|---|---|---|---|---|
| €0 | - | €10,000 | Exempt | | | | |
| €10,001 | - | €20,000 | 1% | €80,001 | - | €100,000 | 6% |
| €20,001 | - | €30,000 | 2% | €100,001 | - | €120,000 | 7% |
| €30,001 | - | €40,000 | 3% | €120,001 | - | €150,000 | 8% |
| €40,001 | - | €70,000 | 4% | Over €150,000 | | | 9% |
| €70,001 | - | €80,000 | 5% | | | | |

### Residential Property

**First Time Buyers Relief**

First-time purchasers of new houses/apartments in excess of 125 sq. metres, and first-time purchasers of second-hand houses/apartments, as owner-occupiers, will be eligible for a stamp duty exemption.

There is also a stamp duty exemption for all owner-occupiers who purchase a new house/apartment of 125 sq. metres or less.

**Residential Property - New Rate Structure**

A simplified system, incorporating an exemption of €125,000 with 2 rate bands of 7% and 9%, has been introduced for instruments executed on or after 5 November 2007.

- The 7% rate applies up to €1,000,000 and it is charged on the excess of the consideration over €125,000.
- The 9% rate applies where the consideration exceeds €1,000,000 and it is charged on the excess of the consideration over €1,000,000.

| Consideration (or Aggregate Consideration) exceeds €127,000* | Rate of Duty |
|---|---|
| First €125,000 | Nil |
| Next €875,000 | 7% |
| Excess over €1,000,000 | 9% |

* To fully preserve the existing exemption, transactions, where the consideration (or aggregate consideration) does not exceed €127,000, are exempt from stamp duty.

### Exemptions & Reliefs

- Transfers between husbands and wives are exempt (including certain transfers on divorce).
- Certain transfers on divorce are exempt.
- Wills are exempt.
- Transfers of Irish government stocks are exempt.
- Transfers between associated companies are exempt, subject to certain conditions.
- Covenants to children and charities.
- Transfers on certain takeovers reconstructions and mergers.
- Transfers of assets from a liquidator to a shareholder on liquidation.
- Transfers of foreign land and shares
- Certain financial services instruments

- Transfers of property other than stocks and shares between related persons are charged at half the usual rate of duty.
- For transfers of agricultural land see Farming page 59.
- The transfer of a site from a parent to a child (or a foster child who has been cared for by the donor for a period of at least five years prior to reaching the age of eighteen), for use in the construction of their principle private residence is exempt from stamp duty, where the market value of the property does not exceed €500,000 €254,000 pre 5/12/2007), and the total area not exceeding 1 acre (excluding the proposed property area).
- The sale, or transfer of trademarks and intellectual property.
- The sale or transfer of an EU single farm payment entitlement.

### Clawback of First-Time Buyers Relief

The clawback period for first-time buyers relief and owner –occupier relief is being reduced from five years to two years where the property is let, this applies to for instruments executed post 5 December 2007.

### Anti-Avoidance

Where a person makes a gift or a loan to a first time buyer, they may not reside in the property or the property may not be transferred to the donor/person making the loan except where the donor/lender is the parent of the first time buyer.

### Other Rates

| | |
|---|---|
| 1% | Transfer of Stocks and shares (first €1,000 is exempt) |
| 0%-6% | premiums on leases |
| 1%-12% | Average annual rent (depending on the lease term) |

### Capital Duty

Capital duty has been abolished since 7 December 2005.

## RESIDENTIAL PROPERTY TAX

The requirement to obtain a tax clearance certificate on disposal of residential property has been abolished for contracts entered into after 1 February 2008 or where sales are completed after this date (previously a residential property tax clearance certificate was required if the consideration exceeds €1,389,000).

## VEHICLE REGISTRATION TAX

The rates of Vehicle Registration Tax applicable are set out below. These rates apply to all new cars. Concessions may be allowed to non-residents on the importation of a vehicle at the time of change of residence.

| | |
|---|---|
| Up to 1400cc | 22.5% |
| 1401cc - 1900cc | 25% |
| Over 1900cc | 30% |

From 1 July 2008 the following rules apply to the calculation of VRT . it is based on $CO_2$ emissions (prior to 1 July 2008 it was based on engine size), the aim being to reduce the level of $CO_2$ emissions. The table below sets out seven new VRT bands for cars for the relevant VRT rates:

| $CO_2$ Emisssions ($CO_2$g/km) | Percentage payable of the value of the vehicle |
|---|---|
| 0g/km up to and including 120g/km | 14% or €280 whichever is greater |
| >120g/km up to and including 140g/km | 16% or €320 whichever is greater |
| >140g/km up to and including 155g/km | 20% or €400 whichever is greater |
| >155g/km up to and including 170g/km | 24% or €480 whichever is greater |
| >170g/km up to and including 190g/km | 28% or €560 whichever is greater |
| >190g/km up to and including 225g/km | 32% or €640 whichever is greater |
| >225g/km | 36% or €720 whichever is greater |

Where evidence of the CO2 emission rating is not available, the top rate of 35% will apply. Where a vehicle is not registered by the due date for registration the VRT liability may be increased by .1% per day for each day that the VRT is unpaid, this would equate to an additional VRT liability of 36.5% if the VRT was left unpaid for a year.

The VRT is applied to the open market value of the car.

A relief of 50% of the amount of VRT paid will be granted in respect of motor cars fitted with hybrid electric engines and vehicles capable of using high grade biofuels, this will apply up to 30 June 2008. From 1 July 2008 the relief for such vehicles will be adjusted depending on the age of the vehicle with no repayment for vehicles over 10 years old , and an accelerated repayment of up to €2,500 for cars in their first year of registration. The relief will apply until 2010.

The registration of an electric car or motorcycle is exempt from VRT with effect from 1 January 2008 to 31 December 2010.
There are special reliefs available for cars imported temporarily by non residents (however these vehicles must be placed on a temporary register where they are in the State for 42 days or more) or imported where an individual transfers their residence to Ireland.

## VALUE ADDED TAX

Value Added Tax (VAT) is a tax on consumer expenditure and is charged when a taxable person supplies goods or services in Ireland in the course or furtherance of its taxable business. It is also chargeable on the purchase of specified services from supplier's abroad, on imported goods and on intra-community acquisitions of goods.

### Registration

Registration is compulsory if turnover exceeds the following limits.

| | |
|---|---|
| • Persons supplying services | €37,500 per annum (pre 1/5/08 €35,000) |
| • Persons supplying goods | €75,000 per annum (pre 1/5/08 €70,000) |
| • Intra community acquisitions & fourth schedule services | €41,000 in a 12 month period |

### Foreign Traders

Foreign traders supplying taxable services in Ireland or selling goods from stocks held in Ireland are obliged to register for Irish VAT. Such traders do not have the benefit of the above registration thresholds unless they have a fixed place of business in Ireland. Where a non- resident person provides entertainment/cultural activities in the State, the reverse charge mechanism applies to the recipient.

### Rates

Certain goods and services are exempt from V.A.T. e.g. all pre-school education facilities, promotion of and admission to live theatrical performances.

The rates of VAT and the main categories to which they apply are:

| | Rate % |
|---|---|
| Goods and services not subject to one of the other rates i.e. standard rate. (pre 1 December 2008 21%) | 21.5 |
| Exported goods, fertilisers, books, food and oral medicine, children's clothing and children's footwear. | 0 |
| Livestock, live greyhounds and hire of horses | 4.8 |
| Unregistered farmers | 5.2 |

| | |
|---|---|
| Real property, building services, newspapers, hotel and holiday accommodation, short term car and boat hire, tour guide services and certain agricultural services and sports facilities.* | 13.5 |
| Heating fuel, electricity, restaurant services, cinema and cabaret admission, hot take away foods, waste disposal services, admission to exhibitions, the services of veterinary surgeons, cakes and non-chocolate biscuits. | 13.5 |
| Hairdressing and other similar services, repair and maintenance of movable goods, photographic services, laundry and dry cleaning and driving instruction.* | 13.5 |
| The supply of most banking services, insurance services, education and training, medical services, passenger transport, funeral undertaking, lotteries and services of trade unions. | exempt |

### Section 13A

Taxable persons may be authorised to import and make intra-community acquisitions of goods and to purchase goods and services in the state without having to incur the VAT normally chargeable if at least 75% of their annual turnover is comprised of exports and/or zero rated intra-community supplies.

### Foreign Visitors

Non-EU visitors who purchase goods in Ireland and export them in their personal baggage can claim a VAT refund when they leave the EU.

### Holiday Homes

An individual who elects to become taxable in respect of the letting out of a holiday home will be subject to a partial claw back of the VAT reclaimed on the purchase of the property if he cancels the registration within 10 years of the date of election.

### Travel Agents Margin Scheme

This scheme applies to Tour Operators and travel agents, with effect from 1 January 2010 the profit margin realised on the sale of travel packages will be subject to VAT at 21.5%. Vat will also apply to the profits realised on hotel reservation companies.

### Payment and Compliance

Taxable persons are obliged to register for VAT and submit bi-monthly returns by the 19th of the month following the two month period in respect of supplies and purchases made in the two-month period. Unpaid tax attracts simple interest at the rate of .0322% per day. (.0274% from 1 July 2009)

Certain authorised persons may submit VAT returns on an annual or quarterly basis rather than on the bi-monthly basis, and pay their VAT liability by direct debit, if permitted.

Certain interest penalties arise where insufficient VAT is remitted on the direct debit system. Where the balance of tax remaining to be paid by the authorised person at the end of the accounting period exceeds 20% of the actual liability for that period, simple interest is chargeable from a date six months prior to the date on which the authorised person is requires to furnish the annual return. From 1 January 2009 where returns and payments are submitted electronically the due date will be extended to the 23rd of the month.

### Cash Receipts

Some taxable persons may elect to account for their VAT liability on the basis of cash received in a taxable period rather than on the basis of sales. This is generally available where the primary supply of goods and services is to persons who are not registered for VAT or where the individuals turnover is less than €1,000,000. The cash receipts basis will not be available where a discount is given to a customer after the supplier issues a VAT invoice where no credit note has been issued in respect of the discount, in effect this makes the supplier liable to VAT on the discount.

A VAT return may be submitted by another person authorised to do so by the taxable person. Such a return is treated as if the taxable person supplied it for the purposes of the VAT Acts.

### Margin Scheme for Second-Hand Car Dealers

A new margin scheme was proposed in Mini Budget 2009 for second-hand car dealers. Following consultation with the Motor Industry the scheme has been scraped.

### Anti Avoidance

A site which is transferred as part of the value of a new house or apartment is subject to VAT.

### New VAT on Property Rules

Substantial amendment of how VAT applies to property transactions was introduced, on 1 July 2008. The changes are designed to simplify the rules that apply to VAT on property however they are complex particularly because transitional rules will apply to VAT on property transactions and care should be exercised and specialist advice sought when dealing with such transactions, The new rules will apply to both residential and commercial property supplied in the course of business. The VAT charge on sales of residential property remains unchanged. The key changes being introduced for commercial property transactions are listed below:

- Cessation of VAT charge on the capitalised value of long leases.
- No distinction between short leases and long leases.
- An exemption from tax for all leases with an option to tax.
- The supply of new properties within the first five years is liable to VAT.
- The supply of old properties is exempt from VAT with a joint option to tax.
- A capital goods scheme will apply to properties for up to 20 years to readjust VAT recovery in line with the level of recovery entitlement of the business.

### Reverse charge mechanism in the Construction Sector

A reverse charge mechanism for VAT on supplies made by a subcontractor to a principal contractor in the construction sector is being introduced with effect from 1 September 2008.

A reverse charge means that instead of the subcontractor charging VAT on his supply to a principal and accounting to Revenue for the VAT, the principal contractor will account to Revenue for the VAT. Both the subcontractor and the principal will continue to claim input credits.

### Partial VAT Rebate on certain Company Cars

A business engaged in fully VATable services may claim an input credit of 20% (a reduced amount applying for partially VATable activities) of VAT incurred on the purchase or hire of company cars that are used at least 60% for business purposes. The input credit will only apply to cars within the scope of Bands A,B or C for VRT purposes and which are registered after 1 January 2009. If the car is disposed of or ceases to meet the 60% business test within 2 years, some or all of the VAT reclaimed will be clawed back by Revenue.

## PAY RELATED SOCIAL INSURANCE

Pay Related Social Insurance (PRSI) is payable by employers, employees and Self-employed persons.

Employers and employees pay PRSI on the employee's salary after deduction of any contributions to an approved pension scheme.

Employers and employees PRSI is charged on all earnings from employments, including benefits in kind. The only allowable deductions are contributions paid to an approved employee superannuation scheme and certain permanent health insurance policies.

### Rates 2009

**Class A1 - Most employed persons**

| Earnings | Employer | Employee |
|---|---|---|
| First €52,000* | 10.75% | 6% (Inclusive of 2% health levy) |
| €52,001-€100,100 | 10.75% | 2% (levies only) |
| Balance (no ceiling) | 10.75% | 2.5% (Health Levy)* |

### Rates from 1 May 2009

**Class A1 - Most employed persons**

| Earnings | Employer | Employee |
|---|---|---|
| First €75,036* | 10.75% | 8% (Inclusive of 2% health levy) |
| €75,036+ | 10.75% | 5% (levies only) |

**Class K1 - Persons in receipt of occupational pensions**

| Earnings | Employer | Employee |
|---|---|---|
| Income up to €500 p.w. | Nil | Nil |
| Income in excess of €500 p.w. up to €75,036pa | Nil | 4% |
| Balance (no ceiling) | Nil | 5%* |

**Class S1 - Proprietary and non executive directors, not insurable under Class A (earnings over €480 per week)**

| | Employer | Employee |
|---|---|---|
| First €75,036 | Nil | 7% |
| Balance (no ceiling) | Nil | 8%* |

*The first €127 per week is exempt from employee's PRSI contributions but not from the Health Levy.

**Self-employed Persons, Class S**

| Income | Rate |
|---|---|
| First €75,036 | 7% |
| Balance (no ceiling) | 8%* |

Employees earning €352 or less per week are exempt from PRSI. The first €127 per week is disregarded for an individual liable to PRSI. Emloyees earning €500 per week or less and medical card holders are exempt from health levies.

The minimum PRSI contribution for a self employed individual is €253.

### Employees PRSI

PRSI is charged on all earnings from employment including non-pecuniary income (benefits in kind). Other allowable deductions are contributions paid to an approved superannuation scheme.

In general, persons between 16 and 66 years, in insurable employment, must pay PRSI.

- Employees paying the full rate, have a weekly PRSI free allowance of €127 per week, this does not apply to levies.
- Employees earning €352 or less per week are exempt from both PRSI and health levies in that week.
- Employees earning less than €500 per week are exempt from levies in that week.

### Self-Employed

Self-employed persons are liable for PRSI contributions in respect of income from a trade or profession, or from investment income. If you receive employment income or pension income you are exempt from self-employed PRSI on investment income including deposit interest. The exemption is lost if you have self-employed earnings. The minimum contribution payable for 2008 is €253. Payment must be included with preliminary tax which is payable on or before 31 October each year.

Self employed persons whose income from all sources is less than €3,174 for 2008 before deduction of capital allowances will not be liable to PRSI. This test is applied separately to the income of a husband and wife.

### Employers PRSI

A two-tier system of employers' contributions applies i.e.

- where an employee earns less than €356 in any week a reduced rate of 8.5% applies.
- where earnings exceed €356 in any week the full rate of 10.75% applies to all earnings for that week.

These rates are inclusive of the National Training Fund Levy of 0.7%. There is no ceiling on the level of earnings liable to employers PRSI.

All benefit in kind is subject to both employers and employees PRSI.

## LEVIES

### Income Levy

A new income levy has been introduced with effect from 1 January 2009.

| Rates | Income Level |
|---|---|
| Exempt | Less than €18,304 |
| 1% | Up to €100,100 |
| 2% | €100,101 to €250,120 |
| 3% | €250,120 + |

A new levy rate applies from 1 May 2009.

| Rates | Income Level |
|---|---|
| Exempt | Less than €15,028 |
| 2% | Up to €75,036 |
| 4% | €75,037 to €174,980 |
| 6% | €174,980+ |

### Composite Tax Rates for 2009

| Rates pre 1 May 09 (exempt up to €18,304) | | Rates Post 1 May 09 (exempt up to €15,028) | | Composite 2009 Rate | |
|---|---|---|---|---|---|
| First €100,100 | 1% | First 75,036 | 2% | First 75,036 | 1.67% |
| Next €150,020 | 2% | Next €99,944 | 4% | Next €25,064 | 3% |
| Balance | 3% | Balance | 6% | Next €74,880 | 3.33% |
| | | | | Next €75,140 | 4.67% |
| | | | | Balance | 5% |

The levy will be charged on an individual's income from all sources, including income which is exempt from income tax. The levy is applied before many deductions including any deduction for capital allowances and losses.

Where married couples are jointly assessed each spouse's income is looked at separately for the purposes of calculating an exposure to the levy.

The exceptions to this are:
- EU deposit interest
- Credit Union dividends
- Payments in respect of Irish and foreign life policies
- Certain payments in respect of investment undertakings
- Payments in respect of offshore funds
- Certain social welfare payments

The levy does not apply where:
- Income is less than or equal to €15,028 (€18,304 pre 1 May 2009)
- An individual is entitled to a medical card
- An individual is 65 and has aggregate income of less than €20,000 (€40,000 for a married couple)
- A statutory payment is made which is exempt from income tax.

**Parking Levy**

A parking levy will be charged on employees using car parking facilities provided by their employer in the following areas:

- Dublin
- Cork
- Galway
- Limerick
- Waterford

The levy applies to designated car parking facilities and to those provided on a first come first served basis. In order for the levy not to apply an employee must disclaim their entitlement to use the car parking facility, however occasional use of the car parking facility is permitted i.e. less than 10 days a year.

The levy is €200 per annum, or €100 where parking spaces are shared and the ratio of employees using the spaces to the number of spaces is 2:1 or greater. The levy is to be deducted from net salary by employers.

The levy will be reduced for job sharers, part time employees, people on maternity leave and shift workers. The levy does not apply to disabled drivers.

The levy is to come into effect by way of Ministerial order.

## FARMERS TAXATION

### Income Tax

The Finance Act 2005 allowed for a deferral of FEOGRA income where certain conditions were satisfied as follows:

- The individual must be a farmer in receipt of payments under the EU single payments scheme for farmers and certain terminated FEOGRA scheme payments in 2005.
- The individual must not be availing of farm averaging

The provision allows payments received under terminated FEOGRA schemes to be disregarded for tax purposes in 2005 and instead to be deemed to arise in three equal instalments in 2005, 2006 and 2007. If the individual ceases to farm during the three year period any untaxed payments will fall to be taxed in the year of cessation. Once the instalment arrangement is opted for it cannot be altered during the three year period.

Single Farm Payments received under decoupling arrangements may also be spread where a single payment referred to above and another subsidy both fall to be taxed in 2005. In such circumstances both payments may be spread over the three years 2005, 2006 and 2007 as outlined above.

Where a farmer on income averaging enters into a milk production partnership the clawback that could arise as a result of the prior year revision on a cessation to trade will not apply. The income averaging provisions continue to apply as if the sole trade had continued.

### Leasing of farm land

A lessor of agricultural land, who is aged 40 years or more or who is permanently incapacitated (previously 55), is exempt from income tax in respect of certain leasing income. For any qualifying lease entered into on or after 1 January 2006, the limits are:

- €20,000 for a lease of 10 years or more
- €15,000 for a lease of between 7 and 10 years
- €12,000 for a lease of between 5 and 7 years

The lease income of the husband and wife are treated separately for the purpose of the relief, whether they are jointly assessed or not.

### Sugar Beet Diversification

Provision is being made to allow farmers in receipt of the Diversification Aid element of the Sugar Beet Compensation Package to spread these payments over six years for the purpose of calculating taxable income. An election must be made by 31 October in the year of assessment following the year that the payments are made to the individual.

### Capital Acquisitions Tax

#### Agricultural relief

A gift/inheritance of agricultural property including land, buildings and the new EU single farm payment entitlements (from 1/1/2005), and other agricultural property (i.e. livestock and machinery) may be reduced by 90% of its market value for gift/inheritance tax when received by a qualifying farmer provided, the individual is Irish domiciled (from 2/2/2006 it is no longer a requirement to be Irish domiciled) and 80% of the market value of his property after taking the gift/inheritance consists of agricultural property. With effect from 1 February 2007 borrowing on an off-farm principal private residence may be taken into account in the calculation for the 80% test.

The definition of agricultural property for gifts and inheritances taken after 20 November 2008 has been extended to include agricultural land, pasture and woodlands situated in a member state of the EU.

With effect from 2 February 2006 where there is a disposal of land which qualified for agricultural relief or business asset relief in the period commencing six years after the date of the gift or inheritance and ending ten years after that date, there will be a clawback of the relief by reference to the development value of the land at the date of the gift or inheritance. Any interest arising as a result of this clawback will be calculated by reference to the date the land is sold (as opposed to the date of valuation which was the case pre 2007)

Claims for agricultural relief are submitted on form I.T.41.

Gifts or inheritances of agricultural property qualify for business relief (where the relevant criteria are met) in circumstances where it fails to qualify for agricultural relief. This relief reduces the market value of the gift/inheritance by 90%. Business relief will be clawed back if the assets are disposed of within 6 years, without being replaced within a period of one or six years in the case of a sale or compulsory acquisition on or after the 25th March 2002.

*Tip: Prior to the receipt of a gift of farm assets ensure that 80% of your personal assets after receipt of the gift are agricultural assets.*

## Capital Gains Tax

### Retirement relief

Where a person is over 55 years and has held and used business assets for at least 10 years ending on the disposal date (this can include assets held personally but used in the trade where shares are being disposed of) no capital gains tax arises if the disposal is to a child of the disponer (from 2007 relief is also available for a disposal to a grandchild). From 1/1/2005, the EU single farm payment entitlement also qualifies as an asset for the purposes of retirement relief provided the farmer qualifies for relief on the land being disposed of. Periods of ownership of a deceased spouse may also be included. Child includes a niece/nephew who has worked substantially on a full time basis for 5 years ending with the disposal. Relief is also available where the disposal is to an unconnected person provided the proceeds do not exceed €750,000 (with effect from 1 January 2007, previously €500,000). Marginal relief applies if the proceeds exceed this amount; this applies to restrict the relief to one half of the sale proceeds in excess of €750,000.

In addition, land which has been let for up to five years prior to a Compulsory Purchase Order being made, will qualify for retirement relief if it was used for farming for ten years prior to letting.

*Tip: A farmer who participates in the EU "Early retirement from farming scheme" by leasing the land qualifies for the relief. Whilst called retirement relief an individual does not need to retire in order to qualify for the relief.*

## Dissolution of farming Partnerships

A new relief from Capital Gains Tax is available for five years until 31 December 2013 in the dissolution of a farming partnership where an asset was owned and used by a farming partnership for ten years prior to the dissolution of the partnership. Where one of the partners acquired a share of the partnership by way of an inheritance, the period of ownership and the use of the asset will run from the date the donor entered into the partnership. Where the partnership assets disposal takes place the asset will be treated as being acquired at the same time and for the same consideration as it was originally acquired by the partner who disposed of the asset.

The relief does not apply to trading stock.

## Roll-over Relief

Prior to the Finance Act 2003 it was possible to defer CGT on the sale of assets (or shares in a trading company) where the person making the disposal reinvested the entire proceeds in agricultural assets (not including livestock or other stocks) during the period 1 year before and 3 years after the disposal. Relief does not apply to the sale of land with development value.

Where farm land is disposed of under a compulsory purchase order (CPO) and the land will be used for the purpose of road construction/widening etc, any capital gains tax arising from this type of disposal could historically be deferred where the person making the disposal replaces the land two years before and eight years after the disposal. Finance Act 2002 extended rollover relief to cover a situation where a farmer was letting land at the time of the compulsory purchase but had used the land for farming for a 10 year period prior to the letting if the proceeds are reinvested in land to be used by themselves in a farming trade.

With effect from 4 December 2002 rollover relief has been abolished. Certain transitional arrangements apply as follows:

- Gains which had already been rolled over prior to 4 December 2002 into replacement assets will not crystallise where these assets are disposed of after 4 December 2002, provided the proceeds are reinvested in full in further assets.
- In effect assets acquired in the period 5 December 2001 to 4 December 2002 may still avail of roll over relief where assets are purchased within one year of disposal. Gains on assets disposed of before 4 December 2002 could continue to be rolled into expenditure incurred until 3 December 2005.

## VAT

A flat rate of 5.2% applies to supplies of agricultural goods or services for unregistered farmers. The VAT rate for registered farmers and other businesses on the supply of livestock, live greyhounds and the hire of horses is 4.8%.

If a farmer engages in the supply of any other service and his turnover exceeds €35,000 in a calendar year, all activities including farming become subject to VAT at normal rates.

*Tip: A flat rate farmer may reclaim VAT on expenditure incurred on the construction or improvement of farm buildings, farm structures, fencing, drainage and land reclamation.*

- *A VAT registered farmer can reclaim VAT on farm vehicles such as vans and pick-up trucks but not on passenger vehicles.*
- *VAT on diesel is reclaimable.*

## Stock Relief

The stock relief provisions as outlined below, have been replaced with a new relief.

### Previous relief:

Where there is an increase in the value of closing stock a farmer can claim an allowance equal to 25% of the increase against his trading profit and 100% relief in the case of young-trained farmers. This relief was extended to individuals who become 'qualifying farmers' before 31 December 2002 and will apply for a period of four years post qualification.

Amendments to the 2007 Finance Act brought the list of qualifications in line with the stamp duty legislation and provided that individuals who qualify as young trained farmers at 31 March 2008 having satisfied the Educational requirements will continue to qualify for relief.

The scheme is due to end on 31 December 2008.

## Compulsory Disposal of Livestock

A special relief applies for farmers (both individuals and companies) resident in the state, in respect of profits resulting from the disposal of livestock due to any underlying disease eradication scheme (effective from March 2008, previously the scheme only applies to the eradication or control of brucellosis). There are two separate reliefs:

- A farmer may elect not to have the profits taxed in the year in which it arises and have it taxed in equal instalments in each of the four succeeding accounting periods.
- He may further elect, if it suits him, to have the profits treated as arising in equal instalments in the year in which it actually arises and the following three years.
- Where the receipts from the compulsory purchase of livestock are reinvested in livestock, the farmer may elect to claim stock relief at 100%.
- This relief is extended to all animals and poultry.

## Capital Allowances

Relief is available for farmers who have incurred expenditure on necessary pollution control measures.

Farmers must have a Farm Nutrient Management plan in place.

The maximum allowed is €63,500 which is allowed as follows:

- the writing down period is 7 years
- Year 1 allowance (max 50% i.e. €31,500 (increased to the lesser of €50,000 or 50% of the qualifying expenditure with effect from 1 January 2006) can be taken in whole or in part at any time over the 7-year period.

For expenditure incurred after 1 January 2005 the write off period is three years with an option for an upfront write off.

The scheme is due to end on 31 December 2008.

## Milk Quotas

Persons carrying on the trade of farming will be granted capital allowances for expenditure incurred in purchasing a milk quota. The capital allowances can be claimed by a farmer who leases a milk quota from a connected person (e.g. relative) and later purchases that quota. The period of write off is 7 years i.e. 15% p.a. in years 1-6 and 10% in year 7. Capital allowances also apply to the Milk Quota Trading System.

## Stamp Duty

On a transfer to a related person, duty payable is restricted to half of the duty which would otherwise be payable. Stamp duty on transfers of land to young-trained farmers is reduced by 2/3rds.

The stamp duty relief for young trained farmers has been extended to 30 June 2011.

From 3 February 2005 there will be a clawback of Stamp Duty relief, where within 5 years of receiving a stamp duty relief the proceeds of a disposal of the property are not reinvested within one year in other land. The clawback is equal to the percentage of the proceeds not reinvested.

A similar clawback is provided where an exemption from stamp duty has been claimed on instruments executed after 25 March 2004.

*Tip: Where an individual does not qualify for relief as a young trained farmer, on a transfer to a related person duty payable is restricted to half of the duty that otherwise would be payable.*

## Farm Consolidation Relief

Where there is an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding, stamp duty will not be charged on an exchange of land where the lands exchanged are of equal value. Where lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference n the values of the land concerned. Where consideration is paid for the difference, it must be paid in cash.

There are a number of conditions that must be satisfied as follows:

1. Teagasc must issue a valid consolidation certificate on the market value of the land at the date of exchange, this must be submitted to the Revenue Commissioners.
2. The farmers must be full time farmers i.e. not less than 50% of the persons normal working hours must be spent farming.
3. They must make a declaration to Revenue stating their intention to retain the land and use the land for farming for a period of five years from the date of transfer.

There is a clawback of the relief if the land is disposed of within 5 years of the exchange.

The Finance Act 2007 provides that only one farmer is required to meet the tests outlined above, previously both farmers were required to satisfy the conditions for the relief to be available.

The relief has been extended to 30 June 2011.

**EU Single Farm Payment Entitlement**

There is an exemption from Stamp Duty on the sale or transfer of an EU single farm payment entitlement.

## MARITAL BREAKDOWN

### Legally Enforceable Maintenance Agreements

Separated spouses are taxed as single persons with maintenance payments made to spouses, not for children, being deductible in the hands of the payer and chargeable in the hands of the recipient. Both may elect for joint assessment for income tax purposes if the following applies :-

- Both parties reside in Ireland in year of assessment
- Neither spouse has remarried, if divorced

Consequences of election

- Both parties assessed as a married couple
- No deduction for maintenance payments by paying spouse
- Recipient is not taxed
- Recipient does not pay PRSI or levies on maintenance payments

Social Welfare Benefits may be affected by election.

Where payment is made for the benefit of a child for whom the payer was entitled to child allowance, the payment is to be made without deductions of tax and the payment does not reduce the total income of the payer for income tax purposes.

Where an individual is making maintenance payments to their separated or divorced spouse and is not jointly assessed with that spouse, those maintenance payments are deductible for the purposes of calculating the income levy, see pg 57.

### Transfer of Assets - Divorced Persons

Disposal of assets under a Court Order pursuant to a decree of divorce will not give rise to a gain or a loss. The spouse is deemed to take the asset at the same time and at the same cost to the disponer unless the asset is part of trading stock.

### Transfer of Assets - Separated Spouses

Disposal of assets pursuant to a Grant of Judicial Separation under The Family Law Act 1995 or to a Deed of Separation which takes place after 1 August 1996 will not give rise to a gain or a loss. The spouse acquiring the asset is deemed to take the asset at the same time and at the same cost to the disponer.

### Capital Acquisitions Tax

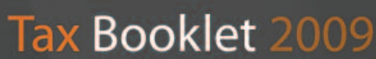
A transfer between spouses as part of a separation agreement, court order or divorce settlement is exempt from CAT. This exemption applies to foreign divorces recognised as valid in Ireland. Subsequent to a decree of divorce, ex-spouses have a Group 3 threshold in relation to each other i.e. stranger threshold €26,060.

### Glossary.

"Ireland" and "Irish" refer, except where otherwise stated, to the Republic of Ireland.

### DISCLAIMER

The objective of this booklet is to provide a useful guide to Irish tax regulations. It provides a summary of the rules applying in the 2009 tax year, within the main categories of current taxation law. Accordingly, it cannot be regarded as a definitive outline and no liability can be accepted in respect of decisions taken in reliance on the information herein contained.




a guide to your tax affairs
for the year 2009