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The Tax Issue

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Russell
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Keane



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Welcome

I would like to welcome you to the first edition of our quarterly Tax Issue. In this publication members of our tax team will highlight recent tax developments they feel are of particular interest to you. In this issue we focus on the following topical issues:

- High Earners Restriction
- Spanish CGT Refunds
- Non Principal Private Residence (NPPR) Levy
- NAMA Windfall Tax
- Approved Retirement Fund (ARF)

If you are concerned about how the below will impact you or your business please contact our team.



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Personal Tax

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High Earners Restriction

The high income earners restriction has impacted certain higher earners since 2007. However, it is of interest again because from 1st January 2010 the amount of Income Tax payable by 'High Income Earners' may increase. That is because the maximum deduction that can be claimed for certain specified tax reliefs is being reduced for 2010. The limit is the higher of:

- €80,000 or
- 20% of gross income before relief.

Depending on the individual's personal circumstances, i.e. their income levels and amounts and types of tax reliefs available, this may mean a significant reduction in the amount of tax reliefs they are entitled to claim from 2010 onwards. Those impacted may be those who:

- Earn exempt income, such as patent dividends or royalties or under the artist's exemption
- Claim capital allowances, other than ordinary wear & tear allowances, such as 'Section 23' relief and allowances under urban/rural/town renewal relief schemes
- Claim other reliefs such as Business Expansion Scheme or Film Relief Scheme reliefs

A husband and wife's income is viewed separately for the purposes of this relief and it may be worthwhile reviewing whether assets should be transferred between spouses to minimise the impact of this restriction.

Restriction on Interest Relief on Rented Residential Property

Owners of rented residential property should note that the amount of interest qualifying for tax relief has been reduced to 75% of the actual interest incurred with effect from 8th April 2009.

Due to the impact of both of the above restrictions (High Earners Restriction and Restriction on Interest Relief on Rented Residential Property), it is advisable to prepare tax returns early this year to quantify tax liabilities for cashflow planning purposes and to assess if the after tax position can be improved in the future.

Taxation of Locums as Employees versus Self Employed

The taxation of Locums has been topical for the past year. A Circuit Court case last Spring ruled in Revenue's favour by deciding that a locum pharmacist was an employee. Since then Revenue are focusing on the issue of whether individuals that are described as "locums" who are engaged in the fields of healthcare and pharmacy, are employees or self employed for tax purposes. A recent tax briefing from Revenue outlined that the issue will continue to be an area of focus for them.

The facts and circumstances in respect of each engagement must be reviewed. This is done in the context of a Code of Practice for Determining Employment or Self employment Status of Individuals and case law which is constantly evolving.

This continues to be a topical issue for doctors, pharmacists and medical consultants due to the potential exposure to PAYE/PRSI liabilities and the rights and obligations of employees over self-employed. Businesses who engage Locums should examine this immediately.

Property Taxation

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Refunds of Spanish CGT on Sale of Property

On 6 October 2009 the European Court of Justice held that Spain's pre-2007 capital gains tax rules for non-residents and residents are contrary to EU law. Prior to January 2007 non-residents were liable to Spanish capital gains tax at 35% on the sale of properties when the rate for Spanish nationals was as low as 15%.

Arising from the EU ruling it is now possible to make a claim for a refund of Spanish Capital Gains tax paid on disposals of property made between 1 January 1997 and 31 December 2006 provided that a claim is made on or before 6 October 2010. Any refunds of Spanish capital gains tax overpaid will carry interest at 6%. To qualify for relief the following conditions must be satisfied:

- When you sold your property you were not a Spanish resident
- You have a copy of the purchase and sale deeds of the property
- You have the relevant Spanish tax forms (Modelo 211 and/or Modelo 212)

It should be noted that any claim for refund of Spanish CGT may give rise to additional taxes in Ireland and should be examined.

NAMA – New 80% Windfall Tax

The National Asset Management Agency ('NAMA') Act 2009 introduced an 80% windfall tax on profits made from the rezoning of land after 30th October 2009. It applies to trading profits and capital gains. It applies where land is rezoned and where planning authorities grant planning permission for development which materially contravenes a development plan for a particular area.

There is an exemption for the sale of sites where the market value of the site does not exceed €250k and the size of the site is not greater than 1 acre. Lands sold under Compulsory Purchase Order are also exempt.



Non Principal Private Residence (NPPR) Levy

Landlords and developers with residential properties on hand at 31st March 2010 must make a second NPPR (non-principal private residence) levy payment of €200 per property on or before 30th June 2010. The levy applies to all private rented properties, including holiday homes, situated in Ireland.

The NPPR levy was introduced in 2009 and the deadline for payment of the first charge - for properties on hand at 31st March 2009 - was 30th September last. The new levy contributed €62 million to local authorities in 2009 and the annual take is expected to increase with greater awareness and policing of the charge.

Property owners will be interested to know that there are a number of exemptions from the levy:

- New unsold properties which are not let and continue to be held as trading stock of the business
- Where properties are not complete at 31st March 2010
- Properties with rooms let under the 'rent a room' scheme
- Properties let by charities
- Joint ownership of a property by divorcees
- For individuals that own two properties in the course of moving house
- For individuals that suffer from a long-term physical or mental illness

Where no exemption is available the levy must be paid on or before 30th June next. Payments made after this date are subject to an additional penalty of €20 per month or part of month.

VAT Treatment of Deeds of Variation to Leases

A deed of variation is a deed under which the substance of an existing agreement is varied, normally in a fundamental manner. A deed of variation in relation to a lease agreement may have the following effects; variation in the property (e.g. an increase in the amount of the property that is subject to the letting), a variation in the length of the term of the lease, a variation in the rent payable under the lease, or a variation in the parties to the lease.

Deeds of Variation in relation to property are more common especially in the retail and food sectors. The VAT consequence of executing a DOV differ depending on the VAT history of the property concerned and advice should be taken at the negotiation stage and before agreements are executed to ensure that there are no adverse VAT implications.

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Approved Retirement Fund (ARF)



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Receiver Appointed To Pension Fund

It is interesting to note that Mr. Justice Peter Kelly recently appointed a receiver to an Approved Retirement Fund (ARF). An ARF is effectively a post retirement personal investment account from which income can be drawn during retirement. The appointment followed a failed attempt to retain funds within the ARF to meet living expenses and effectively the decision permits access to the funds.

If the Court ruling establishes a precedent, it may serve to open the door for banks, creditors and perhaps NAMA to seek to recover monies owed from an individuals post retirement fund. The ruling reportedly prompted the Pension Ombudsman Paul Kenny to warn that an ARF, by virtue of the fact that it is a personal investment account, may be pursued by creditors.

Pre-retirement occupational pension funds held in trust and covered under trust law cannot be accessed or at the very least access to them can conceivably be deferred until 70 years of age. Whether or not pre-retirement personal pension plans and PRSA's, which are not covered under trust law and can generally be accessed from 60 years of age, could be pursued from age 60 or earlier remains to be seen.

In the current banking environment, the ruling is likely to impact on the number of self-employed company directors availing of early retirement to access pension funds.



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