

TAX
**FINANCE BILL
2012**

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Business Taxes

Research and Development Tax Credit

Positive improvements to the R&D tax credit regime which are of particular benefit to the SME sector were announced in the Budget. The Bill intends to give effect to the following amendments:

Volume Basis

The first €100,000 of qualifying R&D expenditure of all companies will now benefit from the 25% R&D tax credit on a volume basis. The tax credit regime will continue to apply to balance of R&D expenditure, in excess of €100,000, as compared with expenditure in the base year 2003.

Outsourcing/Sub-Contracting

At present sub-contracted R&D costs are eligible where they do not exceed 10% of total costs or 5% in the case of sub-contracting to third level institutions. The outsourcing arrangements for R&D purposes are to be improved in a targeted manner to allow the greater of the existing percentages 5% or 10% as appropriate or €100,000.

Reward R&D Employees

Companies will have the option to use a portion of the R&D credit to reward 'key employees' who have been involved in the development of R&D on a tax free basis.

A 'key employee' means an individual who:

- Is not or has not been, a director of the company or an associated company or is connected to such a director.
- Does not or did not have, a material interest in the company or an associated company or is connected to a person who has a material interest.
- Has performed 75% or more of the duties of their employment in the conception or creation of new knowledge, products, processes, methods and systems; and,
- 75% of the cost of the emoluments that arise from their employment qualify as expenditure on R&D.

Such employees may only benefit from the relief to the extent that the amount of income tax payable on their total income for the tax year in which the claim relates is not less than 23%.

The Bill also provides for the following amendments to the R&D tax credit scheme which were not announced in the Budget.

EU Grant Aid

Expenditure which is met directly or indirectly by EU grant aid will not qualify for the R&D tax credit.

Deemed Corporation Tax

Any R&D tax credit paid as a payable credit will be deemed corporation tax for the relevant sections of the legislation dealing with raising assessments, charging interest and imposing penalties.

Claw-back of Credits

A claw-back of credits relating to qualifying buildings will not arise where a company which carried on R&D activity is dissolved but the R&D activity continues to be carried on for the remainder of the 10 year period in the same building by another company within the group.

This amendment also provides that unused R&D tax credits could be used by the successor company.

“Carrying on R&D Activities”

The definition of “carrying on R&D activities” in the legislation is being amended to rule out a situation where a claimant company does not itself carry out the R&D activities but merely manages the R&D activities carried out by others.

Start up Companies

The Budget announced the Government’s intention to extend the corporation tax exemption for new start up companies for new trades commenced in 2012, 2013 and 2014.

The Bill confirms this extension.

Renewable Energy Tax Incentive Scheme

The Minister, in his Budget speech, announced the qualifying period for the scheme of tax relief for corporate investment in certain renewable energy projects is being extended from 31 December 2011 to 31 December 2014. An investor company can avail of a tax deduction of up to €12.7 million per year for funds invested in shares of qualifying renewable energy companies.

The Bill confirms this announcement.

International Financial Services Industry

As announced in the Ministers Budget speech, The Bill introduces a package of measures to support the continued success of the international funds industry, the corporate treasury sector and the aircraft leasing industry.

These measures are detailed below:

Cash Pooling

The Bill introduces changes to the interest deductibility rules to facilitate cash-pooling business in the corporate treasury sector. Deductibility is currently confined to payments to jurisdictions with which Ireland has a tax treaty. It is proposed to allow a deduction for interest payments to group companies in non-treaty jurisdictions by reference to the tax charged on the receipt in such jurisdictions.

Unilateral Credit Relief for Inbound Leasing Royalties

The Bill will extend the existing unilateral credit relief, which currently applies to royalty payments. This measure will be of particular benefit to the aircraft leasing industry.

Technical Exposure to Irish Tax Liability On Interest Payments to Non-Residents

The Bill will amend the legislation to remove a technical liability to Irish tax arising in respect of certain interest payments to non-residents. The measure aims to improve the competitiveness of the Irish debt market.

Section 110 Measures - Green IFSC Initiative

The Bill contains two technical amendments to ensure that amendments, made in Finance Act 2011, to the provisions of Section 110 TCA97 work as intended.

The Bill will also extend the range of "carbon offsets" that a Section 110 company can acquire to forest carbon credits. A consequential amendment to the Stamp Duty Consolidation Act is required to accommodate this measure.

Taxation of Short Term Leases

The Bill contains a technical amendment to ensure that amendments, made in Finance Act 2010, to the provisions of Section 80A - which effectively allows for accelerated capital allowances for lessors of short-life assets - operate as originally intended.

Extension of Group Relief For Losses To Companies With Non-EU/EEA Parent

The Bill will extend the current group relief rules so that losses can be transferred between two Irish resident companies where those companies are part of a 75% group involving companies who are:

- a) Resident in a jurisdiction with whom Ireland has a treaty, or
- b) "Quoted" on a recognised stock exchange.

Islamic Finance

The Bill will make two minor amendments to improve the functioning of measures introduced in Finance Act 2010 to facilitate Islamic Finance in Ireland.

Non-Resident Investors Irish Funds

In Finance Act 2010, the requirement for non-resident individuals who have invested in Irish investment funds to submit written non-resident declarations (in order to obtain an exemption from exit tax) was supplemented by an alternative regime whereby the investment fund itself could put in place "equivalent measures" to ensure that its unit-holders are not Irish resident. The Bill will extend the "equivalent measures" regime to include situations where:

- a) Investments are made through intermediaries, and
- b) Where a fund migrates to Ireland.

Exchange Traded Funds

The Bill will remove a technical liability to Irish tax arising from the exchange of units in an Irish Exchange Traded Fund.

UCITS IV Issues - Cross Border Mergers and Reconstructions Of Investment Funds

The Bill contains further amendments to the UCITS IV Directive to ensure that Ireland will remain as one of the leading domiciles of choice for UCITS Funds.

1. An amendment to the legislation is being made to accommodate master/feeder structures. This amendment is required to allow for the issue of units in a master fund directly to a foreign feeder fund in exchange for the assets of that fund.
2. The legislation will be amended to ensure that an Irish investor does not suffer a charge to tax on either inbound (foreign fund merges into an Irish fund) or outbound (Irish fund merges into a foreign fund) mergers.

3. The definition of a “scheme of reconstruction or amalgamation” in the legislation will be amended to apply to exchanges of a material interest within the same offshore fund as well as between offshore funds.

Extension of Stamp Duty Reliefs To Accommodate A Range Of Financial Transactions

The Bill contains nine separate technical stamp duty amendments which extend the range and scope of stamp duty exemptions applying to certain financial transactions and confirm the stamp duty treatment of options over shares.

1. Extension of stamp duty exemption to cover cross-border mergers of investment funds.
2. Exemption for the transfer of Irish assets between two offshore funds (in EU/Treaty countries) in cases of reconstructions or amalgamations.
3. Extension of the existing stamp duty exemption for the transfer of a lease (other than a lease of real property) to cover the transfer of an ‘interest in a lease’.
4. Clarification of existing stamp duty exemption for foreign land.
5. Extension of stamp duty for shares/securities of foreign companies to cover a wider range of foreign legal entities.
6. Clarification in legislation that options over Irish shares are subject to the same level of duty that applies to share transfers.
7. Extension of stamp duty exemption to cover in specie transfer of pension and charity scheme assets between certain investment vehicles including unit trusts and investment companies.
8. Extension of stamp duty exemption to cover transfer of units in an exempt unit trust.
9. Exemption for the transfer of assets between an exempt unit trust and a corporate fund.

Employment Taxation

Special Assignee Relief Programme (SARP)

The Bill confirms the introduction of a special assignee relief programme (SARP), announced by the Minister in Budget 2012, which is designed to help multinational and indigenous companies attract key talent to Ireland from abroad.

SARP provides for an exemption from income tax on 30% of salary between €75,000 and €500,000 for employees that are assigned to Ireland for a minimum of 1 year and a maximum of 5 years. However, the exemption does not apply in respect of the USC or PRSI.

SARP only applies to employees that, prior to their relocation to Ireland, were not tax resident in Ireland for the five years immediately preceding the year of arrival.

The employee must also have been an employee of the assigning employer for a continuous period of at least 12 months prior to his/her relocation to Ireland and must not have been working in Ireland during those 12 months.

For the purposes of SARP, the employer must be a company incorporated and tax resident in a country with which Ireland has a Double Tax Agreement. However, the employee can be assigned to work for an Irish company which is associated with the foreign employer.

The scheme will be introduced for a three-year period ending on 31 December 2014. Any assignee that avails of the scheme during this time will have access to the relief for the full duration of their assignment or five years, depending on the length of the assignment.

Foreign Earnings Deduction (FED)

The Bill also confirms the re-introduction of a foreign earnings deduction to support efforts by companies to expand into certain key emerging markets.

The FED will apply where an individual spends at least 60 days in any given year developing markets for Ireland in Brazil, Russia, India, China or South Africa. In order for a day to count towards the 60 day minimum, it must be one of at least 10 consecutive working days spent in the countries in question.

The maximum amount of income that can be deducted under the scheme will be €35,000 per annum. The deduction will operate for three years (ending in the 2014 tax year).

As a consequence of the introduction of the FED, the scheme providing for a repayment of tax on the unremitted earnings of certain non-domiciled individuals working in Ireland has been repealed.

It is understood that the extension of this scheme to other emerging countries will not be considered for the foreseeable future.

Share Based Remuneration

Given that share awards issued to employees are now being taxed at source through the PAYE system, the Bill has introduced an amendment to allow an employer to withhold or sell sufficient shares, where they have been awarded to employees, to fund the income tax charge on that award of shares, before transferring the balance of the shares to the employee.

However, an employer is only entitled to withhold or sell shares where the employee does not otherwise provide the employer with sufficient cash to pay the income tax charge.

Pensions

The employer PRSI exemption for employee contributions to all pension schemes was abolished from 1 January 2012.

Illness/Injury Benefits

The Bill confirms the repeal of the tax exemption for the first 36 days of Illness Benefit and Occupational Injury Benefit paid to employees.

Personal Taxes

Tax on Savings

The Bill confirms the increase in the rate of Irish Deposit Interest Retention Tax (DIRT) from 27% to 30% for interest payments arising from 1 January 2012.

The Bill also provides for deposit interest from financial institutions in the EU to be taxed at the higher rate of income tax (currently 41%) where the interest is not included in a recipient's tax return or where the tax return is filed late.

In respect of deposit interest from non-EU financial institutions, a 30% rate will apply where the recipient is a standard rate (currently 20%) taxpayer who includes the interest on his/her tax return and files the return on a timely basis. The higher rate of 41% applies where the recipient is higher rate taxpayer or does not make a timely return of the interest.

Property Based Reliefs

New Property Relief Surcharge

The Bill confirms the introduction of a new property relief surcharge of 5% that is imposed on investors with annual taxable income (before property based reliefs) over €100,000 in 2012 and subsequent years.

The surcharge applies to the amount of income sheltered by property reliefs in a given year.

The surcharge will essentially be a higher rate of USC applying to investors irrespective of whether they invested in Section 23 type property investments or accelerated property capital allowance schemes.

Accelerated Capital Allowances

Again, as was highlighted in the Budget, investors in accelerated property capital allowances schemes will no longer be able to use any of those capital allowances beyond the tax life of the particular scheme where the tax life ends after 1 January 2015.

Where the tax life of a scheme has ended before 1 January 2015, no carry forward of allowances into 2015 and beyond will be permitted.

Clawback of Section 23/Property Based Allowances and High Earners Legislation

A number of important technical amendments have been introduced to remove an anomaly created by the interaction with the High Earners Restriction and certain property based schemes in the event of a disposal of these properties. These amendments remove the unintended effect of classifying an individual as a high earner in a situation where the property was sold but the accelerated capital allowances/Section 23 relief had not been utilised.

Pensions

Approved Retirement Funds

The rate of notional distribution on Approved Retirement Funds with asset values in excess of €2M has increased from 5% to 6%.

The rate of tax now applying to the transfer of an ARF on death to a child over 21 has increased from 20% to 30%.

PRSA's

Vested PRSA's (i.e. PRSA's from which retirement benefits have commenced to be taken) are now treated the same as ARF's for the purposes of the annual imputed distribution and the increase to 6% referred to above also applies to vested PRSA's.

Domicile Levy

The Bill confirms that the citizenship condition, which hereto was a prerequisite for incurring a liability to the Domicile Levy, has been abolished.

Capital Taxation

Capital Gains Tax

Seven-Year Incentive Relief

The Bill confirms the introduction of a new incentive relief from capital gains tax for the first seven years of ownership for properties (situated in an EEA State) bought between 7 December 2011 and 31 December 2013, where the property is held for more than 7 years.

Where such property is held for more than seven years, the gains attributed to the above seven year period will not be subject to capital gains tax.

Retirement Relief

The Bill provides for the modification of capital gains tax retirement relief applying to a transfer by individuals aged over 55 years so as to incentivise the timely transfers of farms and businesses within the family before the current owner reaches 66.

In respect of intra-family transfers, full retirement relief from CGT is maintained for those individuals aged 55 to 66. However, for those over the age of 66, the relief is limited to proceeds of €3M.

For transfers outside the family, the limit of €750,000 remains unchanged for individuals aged between 55 and 66. However, if a transfer occurs where the individual is over 66, the limit is reduced to €500,000.

As a transitional measure, the current upper limit of €750,000 applies for a period of two years for individuals currently aged 66 or who reach that age before 31 December 2013.

Capital Acquisitions Tax

Pay & File Date

The pay and file date has been moved back from 30 September to 31 October to bring it in line with income and capital gains tax pay and file dates.

Rate of Charge

The Bill confirms the increase in the rate of capital acquisitions tax from 25% to 30%. This increase applies in respect of gifts or inheritances taken after 6 December 2011.

Tax-Free Group Thresholds

The Group A tax-free threshold has been reduced from €332,084 to €250,000. This reduction applies in respect of gifts or inheritances taken after 6 December 2011.

The Group B and Group C tax-free thresholds have been rounded up to €33,500 and €16,750 respectively in respect of gifts or inheritances taken after 6 December 2011.

Stamp Duty

Non-Residential Property

The Bill confirms the introduction of a flat rate of 2% for all transactions of non-residential property, including farmland, commercial and industrial buildings.

Transitional measures have been put in place to ensure that a taxpayer is not put at a disadvantage as a result of the new flat rate of 2%.

Consanguinity relief (i.e. relief for transfers between certain blood relatives) on transfers of non-residential properties is to be retained to the end of 2014 and abolished thereafter.

Residential Property

There is no change to the residential property stamp duty rates or exemptions.

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