Irish Tax Institute

Leaders in Tax

Registered Office
South Block
Longboat Quay
Grand Canal Harbour
Dublin 2

Tel.: +353 1 663 1700
Fax: +353 1 668 8387
E-mail: info@taxinstitute.ie
Web: www.taxinstitute.ie

Minister Michael Noonan T.D.
Minister for Finance
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

28 January 2013

Finance Bill 2013

Dear Minister

We welcome the Government's decision in Budget 2013, not to increase marginal income tax rates beyond their current levels. In our view this is a crucial tax policy decision in an environment where the priority is job creation and retention. Other positive tax measures announced in the Budget included the 10-Point Tax Reform Plan To Help Small Business.

In advance of the forthcoming Finance Bill, we would be grateful if you would consider the following additional matters, further details on which are provided in the body of this letter:

1. **Local Property Tax (LPT):** We are seeking an urgent review of the tax appeals system, particularly in light of the extension of the remit of the Appeal Commissioners to include the LPT. We also request clarity on the meaning of the term "suitable for use as a dwelling" and confirmation that the LPT will be deductible in computing taxable rental profits.
2. **Special Assignee Relief Programme (SARP):** The SARP is a key element of Ireland's FDI offering, and we believe that a number of key reforms could improve its attractiveness and boost uptake.
3. **Employment and Investment Incentive Scheme (EIIS):** We have a number of suggestions for ways in which the EIIS could best achieve its aims. We would particularly urge that the incentive be removed from the list of "specified reliefs" for the purposes of the High Earners' Restriction.
4. **Film relief:** We welcome the Budget announcement on the extension of the film relief scheme and we hope that the proposed reforms in 2016 will achieve greater investment in the industry.
5. **Pensions:** In order to ensure equity among taxpayers regardless of employment status, we suggest that the pre-retirement access initiative be extended to ensure that the self-employed are also allowed limited access to non-core personal

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Martin Phelan – *President*, Mark Barrett, Marie Bradley, Peter Brennan, Dermot Byrne, Sandra Clarke, Ciaran Desmond, David Fennell, Ronan Furlong, Andrew Gallagher, Lorraine Griffin, Johnny Hanna, Mary Honohan, Jim Kelly, Sonya Manzor, Jackie Masterson, Tom McCarthy, Frank Mitchell, Helen O'Sullivan, Mark Redmond *(Chief Executive)*, Tom Reynolds. *Immediate Past President – Bernard Doherty.*

pension funds. We also hope to engage constructively on the amendments to be introduced in 2014 with regard to the €60,000 limit on pension incomes.

6. **Receiverships:** There is a real need for clarity to be brought to the rules surrounding receiverships. We would urge that proposals in this area be drawn up as a matter of urgency, and that a further period of consultation then take place.

1. Local Property Tax

We have a number of comments in relation to the new Local Property Tax (LPT):

Appeals

The Institute has, over the past five years, made considerable representations on areas of reform that are required to the tax appeals system. In particular we carried out a body of research which we published in 2008, together with our suggestions for reform, key extracts from which are included at Appendix I. We also met with Minister Brian Hayes to discuss this issue in December 2011 and we welcome the follow-up correspondence from his office. We remain keen to work with the Department officials to advance the reform process, which has taken on increased urgency due to the extension of the Appeal Commissioners' remit to include the LPT.

Suitable for use as a dwelling

Under the Finance (Local Property Tax) Act 2012, "residential property" means "*any building or structure which is in use as, or is suitable for use as, a dwelling...*".

Some consideration might be given to aligning the required standard with the minimum standards for rental accommodation, which are prescribed by means of regulations made under section 18 of the Housing (Miscellaneous Provisions) Act 1992. These standards are currently set out in the Housing (Standards for Rented Houses) Regulations 2008 and the Housing (Standards for Rented Houses) Regulations 2009.

These regulations specify requirements in relation to a range of matters such as structural repair, absence of damp and rot, sanitary facilities, heating, ventilation, light and safety of gas and electrical supply.

Deductibility

We believe that the LPT should be deductible in computing taxable rental profits and we welcome Minister Noonan's comments that "*it is the intention of Government to introduce such a provision on a phased basis*"[1]. We agree with the rationale outlined in the report of the Inter-Departmental Group, which stated that there is an equity argument for allowing deductibility in the same way as commercial rates are deductible for tax

[1] Dáil Written Answers [56185/12] – 13 December 2012

purposes. This is on the basis that the LPT will be, in the same way that commercial rates are, a genuine expense of the transaction under which the taxable rents are received.

Income tax surcharge

Section 38 of the Finance (Local Property Tax) Act 2012 provides that where a chargeable person has not filed their LPT return, paid the LPT, or entered into an arrangement with Revenue for payment of the LPT by the due date, then they will be deemed not to have complied with their obligation to file their income tax or corporation tax return (as the case may be) by the due date, and a late filing surcharge will arise. Where the LPT return is subsequently filed, the surcharge is capped at the amount of the LPT payable.

The application of a surcharge to one tax return based on non-payment of a completely unrelated tax is a new departure which does not seem to be grounded in the principles of best practice, and is a model that could give rise to difficulties and inequities if it is not carefully applied and limited to very specific circumstances.

This will undoubtedly have implications for the ability of self-employed individuals to obtain tax clearance certificates, which may have detrimental commercial and financial consequences for them.

2. Special Assignee Relief Programme

The Institute, in its pre-Budget submission, highlighted the strong competitive challenges currently being presented by the UK across a range of tax areas. Over the past two years, the UK's tax competitiveness has improved the most among 14 major economies examined in a recent study conducted by KPMG International[2]. The UK has been to the fore in creating an attractive environment for both FDI projects and indigenous entrepreneurs. It is our view that Ireland needs to constantly benchmark itself against our competitors and continually build on and improve our competitive position.

The introduction of the new Special Assignee Relief Programme (SARP) in Finance Act 2012 was an important step towards incentivising foreign-based multinationals to relocate key staff members to Ireland.

Like any other tax incentive, its operation and use should be constantly reviewed and benchmarked so that we know it is working effectively to attract key talent and provides value for money for taxpayers.

We would suggest that the incentive as currently structured could be adapted in a number of respects to make it more attractive. Having operated the scheme on the ground for the past 12 months, Appendix II contains details of the practical issues which our members have encountered and which we believe should be included in any review.

[2] *Competitive Alternatives 2012, Special Report: Focus on Tax* – KPMG, September 2012

The new SARP has only been with us for about a year and no doubt its efficacy will be reviewed when the data on its uptake begins to be gathered. However, the initial feedback from our members shows that the relief is perceived as being quite complex, particularly in imposing a number of conditions and not allowing relief from USC and PRSI, which increases the effective tax rate available under the scheme by approximately 11 percentage points.

3. Employment and Investment Incentive Scheme

In our pre-Budget submission, we highlighted a number of issues with the Employment and Investment Incentive Scheme (EIIS) as it pertains to the investee company. These are outlined at Appendix III.

From the perspective of investors in the scheme, feedback from our members indicates that the inclusion of relief under the EIIS in the list of "specified reliefs" for the High Earners' Restriction may be counter-productive. In an effort to increase effective tax rates, the High Earner's Restriction is counter-acting the objectives of the EIIS in the first instance i.e. support for job creation.

It is important to note that relief available to investors under the EIIS is already capped at €150,000 but the impact of the High Earners' Restriction is that the cap is actually €80,000 unless the investor has a significantly high level of "adjusted income". The relief is curtailed further where the investor is availing of other "specified reliefs".

The UK has taken the policy decision not to include business reliefs in their new cap on income tax reliefs, on the basis that business reliefs are already capped and further limitations simply prevent investors from taking business risks. We believe that it would be worth undertaking a cost-benefit analysis to review the merits of a similar approach here.

4. Film relief

We welcome the Budget announcement that the section 481 film relief scheme will be extended to 2020. This was something which the Institute had called for in our response to last year's consultation on the scheme, due to the many multiplier effects in terms of additional employment and tax revenues. We also emphasised the necessity of having a fiscal incentive such as section 481 in order to sustain a viable film industry in Ireland.

We note the intention to move to a tax credit model in 2016, and we hope that this quite fundamental change results in greater investment in the industry rather than making it less attractive. We also welcome the plans to enhance the scheme so as to make Ireland more attractive for foreign film and TV productions.

Ireland is currently facing strong competition for foreign productions and it is instructive to note recent broadening of the UK's strategic approach in this area, as set out in their draft Finance Bill 2013. The UK plans to introduce a targeted relief for the video games

sector, which is currently excluded from Ireland's section 481 relief. Legislation for a new "video games tax relief" will be introduced in the UK's Finance Bill 2013, and it will be based on the existing "film tax relief" system, which has proven very successful. The new relief will allow eligible companies to claim an additional corporation tax deduction, and where that deduction results in a loss, to surrender that loss for a payable tax credit.

In light of this competitive challenge, we are asking for a broader approach in relation to incentives for the creative sector. Forfás[3] has found that employment in the games sector increased five-fold in the period from 2004 to 2011, with over 2,000 people directly employed in the sector. Gaming is one of the fastest-growing segments within the wider entertainment and media sector globally and Forfás reports that Ireland has the potential to increase employment in core games companies to 4,500 by 2014.

5. Pensions

We note the plans announced in the Budget Speech to introduce changes from 1 January 2014 to ensure that tax relief on pension contributions will only serve to support pension schemes that deliver income of up to €60,000 per annum. The Institute hopes to engage in the consultation on the specific changes required to bring this about. Due to the high tax rates which apply to pension funds in excess of the Standard Fund Threshold, it will be important to ensure that taxpayers have clarity on the limits up to which they can fund their pensions in a tax-efficient manner. Ways should also be examined of achieving fairness by introducing a measure for public sector pensions that would have a similar effect to the Standard Fund Threshold.

In relation to the plans to allow pre-retirement access to funded Additional Voluntary Contributions (AVCs), we would highlight that AVCs generally relate to employees, rather than the self-employed. In order to ensure equity of treatment regardless of employment status, we would suggest that consideration be given to allowing similar limited access to non-core personal pension funds held by the self-employed.

6. Receiverships

There is a real need for clarity to be brought to the tax rules surrounding receiverships so that each party involved understands their obligations and is in a position to fulfil them. The Institute made a comprehensive response to last year's consultation on this issue.

As a next stage in this process, we would recommend that a set of proposals now be drawn up, having regard to the submissions made as part of last year's consultation. Given the complexities associated with this area and the wide range of stakeholders involved, we believe that those proposals should then be made the subject of a further period of consultation.

[3] *The Games Sector in Ireland: An Action Plan for Growth,* October 2011

The priority is to establish a robust framework for the longer term, and it is our view that the best way of achieving this is to subject any reforms to a process of careful and rigorous analysis before they are introduced.

In addition, any reformed system must be as commercially viable as possible for all the parties involved and it must ensure that the costs of government administration and taxpayer compliance be reasonable.

We are available to you or your officials for further discussions on any of the matters raised in this submission.

Yours truly

Martin Phelan
President
Irish Tax Institute

Appendix I

Extracts from *The Irish Appeals System – The Rules and Procedures Governing Tax Appeals* (Irish Tax Institute, March 2008)

Top 5 Administrative Recommendations

A common theme runs through all of the above recommendations, namely the necessity that the Office of the Appeal Commissioners be adequately funded.

1. Procedures Manual for the Office – the Appeal Commissioners should be responsible for drawing up a procedures manual for all aspects of the appeals system, including timing issues. This manual should be published on the Appeal Commissioners' website.

2. Process of Appointment of the Appeal Commissioners - the process could be made more transparent through the use of an appointments system similar to that of the "Top Level Appointments Committee" (TLAC).

3. Minimum of 3 Appeal Commissioners - a minimum of three Appeal Commissioners should be appointed to deal with the number and complexity of cases involved.

4. Independence of the Appeal Commissioners – the actual and perceived independence of the Appeal Commissioners from Revenue, and others, must be enforced. Independence could be reinforced by, for example:

   - Direct submission of the Form AH1 (notification of an appeal) by the taxpayer to the Appeal Commissioners;
   - Independent recruitment of adequately qualified staff to manage the office and caseload and to document proceedings. This could include recruitment of a stenographer.

5. Re-design and re-launch of Appeal Commissioners' website – The current website is hosted by the Irish Tax Institute. Perhaps this arrangement should be reviewed in order to enhance the office's independence. The Institute believes the website should be redesigned into a comprehensive information source for all stakeholders in the appeals system. The website could include background information on the office, the procedures manual, published determinations, password protected case progress reports and other useful tools.

Top 5 Legislative Recommendations

1. Time limits for all aspects of an appeal – there should be a comprehensive review of all time limits relating to an appeal with a view to drawing up legislative limits

at all stages. These time limits should be comparable and practical across all tax heads and all stages of an appeal.

2. Legislative requirement to publish an Annual Report - An Annual Report should be produced by the Office of the Appeal Commissioners covering, amongst other issues:

    - The number of cases heard in the year
    - Tax heads covered
    - Successful parties i.e. number won by Revenue and number won by the taxpayer

3. Harmonisation of legislation – harmonisation of legislation regarding appeals under all tax heads is required.

4. Legislative requirement for Written Decision - The receipt of a written decision from the Appeal Commissioners is obviously critical to both parties. Legislation should provide that a written decision must issue in all dispute cases.

5. Legislative obligation to Publish Decisions - as well as issuing written decisions in all argument cases, the Institute seeks a change to the existing legislation in Section 944A Taxes Consolidation Act 1997 which provides the Appeal Commissioners with the option to publish written decisions where taxpayer identity is protected. The Institute believes there should be a legislative obligation to publish all decisions of an argument nature on the website of the Appeal Commissioners within a reasonable time limit. This should be possible in an adequately resourced office.

Appendix II

Special Assignee Relief Programme (SARP)

We believe that the implementation of the following suggestions would greatly improve the competitiveness and practical operability of the SARP:

- **Application to new hires:** The relief applies only to existing full-time employees of the relevant employer who have, for the whole of the 12 months immediately before their arrival in Ireland, performed the duties of their employment outside Ireland. As currently structured, therefore, the relief applies to assignments of existing employees only, and newly-hired employees are excluded. This restriction is limiting the attractiveness of the relief and preventing companies from attracting the talent they require.

  Broadening out the scope of the relief could potentially act as an incentive for Irish expatriates who wish to relocate to Ireland, and who may have a longer-term commitment to this country. While we appreciate that the policy is to encourage assignments and not to displace Irish jobs, we believe that, at the salary levels required under the relief, removing the complete ban on new hires is unlikely to cause significant displacement. Furthermore, for assignees from outside the EU, we understand that the work-permit process should ensure that no displacement of Irish jobs should result from the assignment.

  We would welcome some reconsideration of the policy with regard to new hires, and, at least the introduction of some flexibility so that there is no absolute exclusion of such individuals.

- **Thresholds:** The imposition of upper and lower thresholds is problematic in comparison with the reliefs offered in other EU countries. More favourable incentives are already available elsewhere in the EU; for example, the Dutch 30% ruling regime does not impose limits on the relief available.

- **Rate of relief:** When compared with the relief offered under the previous Special Assignment Relief Programme, the new incentive compares unfavourably for higher-paid employees, who are likely to be the kind of value-creating employees that the scheme is intended to attract. This is due to the rate of relief being reduced from 50% to 30% and the introduction of a cap on the amount of income that can qualify for the relief.

- **Relief from USC and PRSI:** Relief is currently available against the employee's income tax liability. No relief is available from USC and PRSI in respect of the "specified amount" This increases the marginal effective rate payable by the highly-skilled individuals at whom the incentive is aimed – see our comments above under "Rate of relief". Consideration should be given to extending the relief to USC and

PRSI, in order to make the incentive more attractive and also easier to communicate and promote.

- **Residence requirement:** The conditions for the relief currently require that the employee be resident in Ireland and not resident elsewhere. It will therefore be important to ensure that the employee does not retain his/her home country residence when they take up residence in Ireland, or regain home country residence in the year of departure from Ireland. While residence for tax purposes in Ireland is generally defined on the basis of physical presence in this country, certain other jurisdictions do not determine residence on that basis. Notwithstanding that an employee relocating to Ireland may spend the requisite number of days here to be considered resident in Ireland, they may continue to be regarded as resident in their home country.

- **Other practical issues:**

    - In the transition between the "old" and "new" SARP, there is a small group of individuals who, despite the grandfathering arrangements put in place in Finance Act 2012, have fallen between the two schemes. These are individuals who arrived in Ireland in late 2011 and who cannot claim SARP for that year as their relevant emoluments are less than €100,000, but are above that level on an annualised basis. Because they may not be eligible to claim SARP for 2011, they cannot avail of the grandfather provision for old SARP. Because they came to Ireland before 2012 they cannot avail of new SARP either.

    - A further issue arises in respect of the ineligibility of individuals for the relief in the year of their arrival in Ireland. Our feedback is that this policy creates uncertainty around the relief and may be acting as a deterrent.

Appendix III

Employment and Investment Incentive Scheme (EIIS)

Some factors which we understand account for the limited take-up of the EIIS to date relate to the conditions to be fulfilled by the investee company.

1. The 3-year investment timeframe is proving quite restrictive and it is quite difficult for companies to invest funds received through the EIIS and generate a return sufficient to pay back the investment within a 3-year period. Numerous companies have cited this to our members as a drawback of the scheme and a reason for not using the EIIS as a source of finance.

2. Although the scope of companies which can avail of funding under the EIIS has been widened, the legislation remains quite restrictive for companies which operate group structures. Subsidiary companies must satisfy certain criteria in order for the holding company/group to qualify. This is preventing some groups from availing of the scheme – we can provide further details if this would be helpful. The restrictions surrounding companies in group structures require review to enable more groups to qualify. The relief could still be subject to the condition that the funds be used by the qualifying company and not used by any non-qualifying companies in the group.