

FINANCE BILL 2008

– Property Related Measures

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The following is a brief overview of the property related measures proposed in Finance Bill 2008 (hereafter “the Bill”). The measures proposed in the Bill are subject to amendment before being enacted into law. The Bill is expected to be enacted early in 2009 although some of the changes take effect immediately.

During one of the most painful contractions in the property industry for a long number of years, the Bill does not include any significant relieving measures.

The Bill has made changes across all of the major tax heads including capital gains tax, stamp duty, income tax, corporation tax, VAT and capital acquisitions tax details of which are outlined below. Further detail in relation to the changes outlined below is available from www.deloittefinancebill.ie.

Capital Gains Tax

The Bill confirmed the Budget day announcement of the increase in the rate of capital gains tax to 22% in respect of disposals made on or after 15 October 2008. This has been the first such change to the rate of capital gains tax since 1998. It remains to be seen what effect this increase will have on the overall capital gains tax take.

The payment dates for CGT have also changed with effect from 1 January 2009 such that CGT arising on disposals occurring between January and November will be payable on or before 15 December and CGT arising on disposals in December will be payable by the end of the following January.

Non-Residential Stamp Duty Changes

The Bill confirms the Budget announcement of a reduction in the top rate of Stamp Duty for non-residential property from 9% to 6% for instruments in excess of €80,000 executed on or after 15 October 2008. Any incentive to generate investment in commercial property is to be welcomed, however the reduced rate of 6% is still well in excess of the average rate in other European jurisdictions. Interestingly, the Minister stated during his Budget speech that no further reduction will occur during the lifetime of the current Government.

Stamp Duty – Resting on Contract and license agreements

Surprisingly, the Minister chose to introduce exemptions from the ‘Resting on Contract’ anti – avoidance provisions which were introduced in Finance Act 2007 despite the fact that a Commencement Order has not yet been passed for these provisions. The anti-avoidance provisions seek to charge licence arrangements, agreements for lease and contracts for the sale of land to stamp duty as actual conveyances where 25% or more of the total consideration passes.

The exemptions ensure that Public Private Partnership arrangements and certain tax-incentive buildings (e.g. nursing homes, convalescent homes, hospitals, mental health centres, palliative care units, holiday camps, and crèches) will be exempt from the anti-avoidance provisions subject to a number of conditions.

It is expected that the Ministerial Order giving effect to these provisions will issue in early 2009.

VAT on property

There are several amendments to the sections that govern VAT on property. Most of these changes are technical amendments and are designed as a tidy up of the new VAT on property regime that was introduced on 1 July 2008. Given the extent of the changes to the VAT on property regime in the Finance Act 2008 it was to be expected that there would be housekeeping issues that needed to be addressed in this Finance Bill.

Notwithstanding that many of the amendments are technical in nature, there are a few noteworthy changes:-

The definition of when a property transaction will be a supply of goods has been amended and in future only the sale of the freehold or the creation or transfer of very long “ownership type” leases will be a supply of goods.

A sale of property will not be taxable if it has not been developed in the last 20 years. Under the existing legislation the sale of developed property could be taxable regardless of when that development had occurred.

There has been a significant change to the amount of VAT that will arise on the assignment or surrender of a legacy lease. Under the current provisions the VAT charge on the assignment/

surrender of a legacy lease could be based either on the VAT you paid on acquiring the lease or on the VAT you paid on the most recent development of the property (if any). As a result of the change it appears that the VAT paid on the assignment/surrender of a legacy lease will be based on the VAT paid on acquiring the lease.

Mortgage Interest Relief

The current rate of mortgage interest relief for first-time buyers is 20% for the first 7 years of ownership of the property. From 1 January 2009, the relief is being increased to 25% of the interest paid in year 1 to year 2 and to 22.5% in years 3, 4 and 5, subject to an annual maximum of €10,000 for single persons and €20,000 for married couples.

The relief will be 20% for year 6 and 7. The additional relief is available to new first-time buyers and first-time buyers who bought a home on or after 1 January 2005.

To finance this measure, relief for non first-time buyers is being reduced from 20% to 15%, subject to an annual maximum of €3,000 for single persons and €6,000 for married couples.

Industrial Building Allowances

The Bill includes a technical amendment relating to the calculation of industrial building allowances. In general terms, the calculation of capital allowances on the purchase of an industrial building depends on whether the building being purchased is new or used.

The existing rules treat a building which has been used for less than one year as being new for the purposes of calculating the allowances due. The Bill includes a proposed change which will provide that buildings sold on or after 14 October 2008 will be treated as new if they have been used for less than two years. This amendment is aimed at assisting property developers in selling industrial buildings in a difficult market.

Approval for Hotel Allowances

The Bill amends provision relating to administrative matters for obtaining Fáilte Ireland approval for hotel allowances. The measure applies where the Industrial Buildings Allowances (IBAs) are in excess of €50M and the person entitled to the allowances has not received confirmation from Fáilte Ireland, due to delays in the process, at the time that they file their tax return claiming the allowances. It provides that allowances are available at 15% from the date the hotel was first used, irrespective of when confirmation is obtained. It is envisaged that this amendment is only likely to impact a relatively small number of taxpayers.

Relief for Removal and Relocation of Certain Industrial facilities

The Bill confirmed the budgetary measures providing incentives for the relocation of hazardous urban dockland operations. The

legislation is introduced on foot of the EU Seveso Directive which seeks to enforce public safety measures near locations where dangerous substances are handled.

The Bill provides for accelerated capital allowances and additional relocation allowances to encourage the redevelopment of urban docklands. The new measures will undoubtedly be of relevance to the long-term redevelopment of the Dublin and Cork Docklands areas.

The reliefs will need to be approved by the European Commission under State-aid rules before becoming effective by means of a Ministerial Order.

OTHER ITEMS OF INTEREST

E-Stamping

The Bill develops on last years amendments in the area of e-stamping. A fixed penalty of €3,000 will apply where a person knowingly delivers a return, either in paper or electronic format, which does not reflect the facts and circumstances which affect the duty payable.

It should be noted that this penalty is not confined to the tax payer and can have consequences for solicitors and other agents who deliver misleading Stamp Duty returns. This provision will not come into effect until the passing of a Ministerial Order.

Income Levy

Of relevance to all taxpayers, the Bill has introduced an income levy applicable to "aggregate income" – effectively income from all sources with no relief for deductions from total income. A tapered rate of 1% applies to the first €100,100, 2% on the next €150,150 and 3% thereafter. The levy does not apply to deposit interest or credit union dividends, and there are exceptions for low earners and the elderly.

For landlords it is important to note that the income levy is calculated on rental income after the deduction of allowable rental expenses but before any allowance is given for capital allowances.

Capital Acquisitions Tax

The increase in the rate of Capital Acquisitions Tax (gift tax/inheritance) to 22% has mirrored the increase in rate of CGT for gifts or inheritances taken after 20 November 2008.

VAT

The standard rate of VAT has increased to 21.5% with effect from 1 December 2008.