

# Tax matters

Irish tax guide 2011



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## Section 1 Human Capital

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# Human Capital

## 1. Personal tax

### Personal income tax rates

|                             | €               | €                  |
|-----------------------------|-----------------|--------------------|
| Single                      | 20% 0 - 32,800  | 41% 32,801 upwards |
| Single parent               | 20% 0 - 36,800  | 41% 36,801 upwards |
| Married - one income couple | 20% 0 - 41,800  | 41% 41,801 upwards |
| Married - two income couple | 20% 0 - 65,600* | 41% 65,601 upwards |

\*Assumes the second spouse has an income of at least €23,800 per annum. If the second spouse's income is less than €23,800, the €41,800 band (Married - one income couple) is increased by €1 for each €1 of income up to a maximum of €23,800.

### Tax credits

|   |       |
|---|-------|
| Single person                               | 1,650 |
| Married person                              | 3,300 |
| Single parent (additional)                  | 1,650 |
| PAYE  | 1,650 |
| Home carers credit (maximum)                | 810   |
| Incapacitated child (maximum)               | 3,300 |
| Dependent relative (maximum)                | 70    |
| <b>Widowed</b>                              |       |
| Year of bereavement                         | 3,300 |
| Subsequent years (no dependent children)    | 2,190 |
| Subsequent years (with dependent children)* | 1,650 |
| <b>Age (65 or over in the tax year)</b>     |       |
| Single                                      | 245   |
| Married                                     | 490   |

|  |       |
|--|-------|
| <b>Blind person</b>                            |       |
| Single/widowed                                 | 1,650 |
| Both spouses                                   | 3,300 |
| <b>Rent relief (for private accommodation)</b> |       |
| Single - under 55                              | 320   |
| Single - 55 or over                            | 640   |
| Married/widowed - under 55                     | 640   |
| Married/widowed - 55 or over                   | 1,280 |
| <b>Medical insurance</b>                       |       |
| Medical insurance (relief granted at source)   | @ 20% |
| Age related credit (ARC)**                     |       |
| Aged 50 - 59                                   | Nil   |
| Aged 60 - 69                                   | 625   |
| Aged 70 - 79                                   | 1,275 |
| Aged 80 or over                                | 1,725 |

\*Qualifying for single parent credit.

Also, additional credit due (reducing from €3,600 in the first year of bereavement to €1,800 in the fifth year) for widowed individuals with dependent children for the 5 years after bereavement.

\*\*Age related credits increased from 1 January 2011 for health insurance premiums paid to authorised insurers for individuals aged 60 or over. Tax relief is granted at source by authorised insurers. For example, the net amount payable on a gross premium of €2,000 by an individual aged 65 is €1,100 ( $€2,000 - €625 = €1,375 - (€1,375 \times 20\%)$ ). However, insurers normally increase the gross premium by the amount of the ARC so the benefit of the ARC is received by the insurer.

|   |          |
|---|----------|
| Dental insurance  | @ 20%    |
| Permanent health insurance (on premiums of up to 10% of total income)                                   | @ 41%*   |
| Medical expenses incurred (since 1 January 2007, there is no de minimis in qualifying medical expenses) | @ 20%**  |
| Waste charges paid in previous year (on service charges up to €400 per annum)                           | @ 20%*** |

|   |          |
|---|----------|
| Educational fees (relief is per course per annum in respect of qualifying courses for academic year). From 1 January 2011 the first €2,000 of fees per annum (€1,000 for part-time courses) is disregarded. | @ 20%    |
| Business expansion relief (maximum relief per annum @ 41%****)  | €150,000 |
| Film investment (@ 41% – maximum relief per annum €50,000 x 100%)   | € 50,000 |

\*Assuming individual pays tax @ 41%; otherwise 20%.

\*\*An individual may claim a deduction against total income in respect of medical expenses incurred for maintenance or treatment in a nursing home provided the nursing home provides qualified nursing care on-site on a 24 hour per day basis.

\*\*\*Tax credit available for charges paid in previous tax year, will be abolished in respect of service charges paid in the 2011 tax year.

\*\*\*\*Business Expansion Relief is to be replaced by the Employment and Investment Incentive (subject to commencement order from the Minister for Finance).

### Small income exemption thresholds

|                                     | €      |
|-------------------------------------|--------|
| Over 65 - Single/widowed            | 18,000 |
| Over 65 - Married, jointly assessed | 36,000 |
| <b>Increase per dependent child</b> |        |
| For each of the first two children  | 575    |
| For each subsequent child           | 830    |

### Universal Social Charge (USC)

From 1 January 2011 a new Universal Social Charge (USC) applies. This replaces the health levy and the income levy. The charge applies to total income before reliefs and allowances, with the exception of capital allowances arising in the active trade or profession of the taxpayer. Personal pension contributions are not deductible when calculating the income on which the USC is payable. In addition, the USC will be charged on all employee share scheme compensation. The USC will not be charged on Social Welfare payments or tax free termination payments.

The USC rates are as follows:

| <b>Employees</b>                                     |             |
|--|-------------|
| <b>Earnings (€)</b>                                  | <b>2011</b> |
| 0 to 10,036*   | 2%          |
| 10,037 - 16,016                                      | 4%          |
| >16,016 (aged under 70 years)                        | 7%          |
| >16,016 (aged 70 and above and medical card holders) | 4%          |

\*Exempt if income does not exceed €4,004

| <b>Self-employed</b>  |             |
|---|-------------|
| <b>Income (€)</b>   | <b>2011</b> |
| 0 to 10,036*  | 2%          |
| 10,037 - 16,016   | 4%          |
| 16,017 - 100,000 (aged 70 and above and medical card holders) | 4%          |
| 16,017 - 100,000 (aged under 70)                              | 7%          |
| >100,000 (aged 70 and above)                                  | 7%          |
| >100,000 (aged under 70)                                      | 10%         |

\*Exempt if income does not exceed €4,004

### **Mortgage interest**

For the tax years 2010 to 2017 tax relief is available at the levels set out below in respect of interest paid on qualifying home loans taken out on or after 1 January 2004 and on or before 31 December 2011.

Since 1 January 2009, tax relief for first time buyers is given at a rate of 25% for years 1 and 2. For years 3, 4 and 5, relief is allowed at 22.5% and at the standard rate (currently 20%) for years 6 and 7. This applies to first time buyers who bought properties on or after 1 January 2004. The maximum tax relief available is shown in the tables opposite. A first time buyer is an individual who first purchased a residence up to 7 years preceding the current tax year.

| First time buyer | €     | Maximum interest on which relief is granted |
|------------------|-------|---|
| Single           | 2,500 | (10,000 x 25%) - Year 1                     |
| Married/widowed  | 5,000 | (20,000 x 25%) - Year 1                     |

For non first time buyers the rate of mortgage interest relief is 15% (with effect from 1 January 2009).

| Non first time buyer | €   | Maximum interest on which relief is granted |
|----------------------|-----|---|
| Single               | 450 | (3,000 x 15%)                               |
| Married/widowed      | 900 | (6,000 x 15%)                               |

The mortgage provider should grant this relief at source, if in doubt contact your bank or building society.

### Mortgage interest - transitional measures

Mortgage interest relief is to be abolished for qualifying home loans taken out on or after 1 January 2013. Transitional measures will apply for qualifying home loans taken out during 2012. For loans taken out in 2012 tax relief will be reduced to 15% for first-time buyers and 10% for others and the relief can be claimed until 31 December 2017. The maximum amount of qualifying interest will also be reduced to €6,000 for married/widowed individuals and €3,000 for others.

### Interest on loans to invest in a business

In certain circumstances, interest paid on loans taken out prior to 7 December 2010 on money borrowed to acquire shares in, or to lend to, a private trading or holding company, may be allowed in whole or in part as a deduction from total income. Interest on loans taken out with an EU-based financial institution is also allowable for tax relief purposes.

Relief for interest on loans taken out from 7 December 2010 has been abolished.

From 1 January 2011 the relief granted for interest on loans taken out up to 7 December 2010 is to be reduced as follows:

| Tax year | % of interest paid |
|----------|--------------------|
| 2011     | 75%                |
| 2012     | 50%                |
| 2013     | 25%                |
| 2014     | 0%                 |

These provisions do not affect loans taken out to invest in a partnership in which the borrower is an active partner. 100% relief will continue to be available.

### **Employment and Investment Incentive and Seed Capital Scheme**

The existing Business Expansion Scheme (BES) and Seed Capital Scheme (SCS) are being reformed and replaced by the Employment and Investment Incentive (EII). It is subject to both European Commission approval and a commencement order to be signed into law by the Minister for Finance. The current BES and SCS will remain in place until such time as the commencement order gives effect to the EII. Details of the current schemes are set out below.

#### **Business expansion relief**

This relief gives individuals a tax deduction for the cost of acquiring shares in certain Irish companies. Maximum relief of €150,000 per annum is available at the individual's top tax rate. Where the full amount of the investment cannot be granted in the year, the excess may be carried forward and must be used in priority to relief for amounts subscribed in the particular year. See EII above.

#### **Seed capital scheme**

This relief provides that an individual who leaves employment (or an unemployed person) to start their own business may claim a refund of tax on previous income for up to 6 tax years in respect of investment in the new business. An individual can select the tax years for which they may claim refunds from any or all of the 6 years prior to the year of investment. Maximum relief is €100,000 per annum at the individual's top tax rate. See EII above.

#### **Film investment**

An individual who invests in a qualifying film may claim a tax deduction at their top rate of tax. For 2011 the deduction is capped at €50,000. Any unused deduction can be carried forward. The cut off deadline for tax relief has been extended to 31 December 2015.

#### **Donations to charities and other approved bodies**

There is a uniform scheme of tax relief for donations (including publicly quoted securities) to approved Irish charities and other approved Irish bodies. Both individuals and companies may claim relief. The minimum donation in any year is €250. If an individual is associated with an approved body, relief is restricted to 10% of the individual's total income for that tax year. From 2010 a charity established in an EEA or EFTA country can apply to the Irish Revenue for determination that the Charity would qualify for tax exempt status.

### **Donations of heritage items in lieu of payments**

Heritage items donated by an individual or company to a body approved by the State may be used to discharge income, capital gains, gift/inheritance or corporate tax liabilities arising in the year in which the gift is made.

To claim this relief, the items donated must have a minimum value of €150,000.

A scheme also exists for the donation of heritage property to the Irish Heritage Trust and Office of Public Works. The scheme provides for up to 80% of the total market value of the heritage properties donated to the Trust to be offset against the tax liabilities of the donor. There is a ceiling on the aggregate value of property (not per individual) qualifying for the scheme in any one year of €6m.

### **Childminding relief**

Where an individual minds up to three children (excluding their own children) in the minder's own home, no tax will be payable on the childminding earnings received, provided the amount is not more than €15,000 per annum. If childminding income exceeds this, the total amount will be taxable, as normal, under self-assessment.

### **Principles of tax residence, ordinary residence and domicile**

An individual who is resident, ordinarily resident and domiciled in Ireland is subject to Irish tax on their worldwide income and gains, subject to any relief under a relevant Double Tax Treaty. An individual who is resident in Ireland, but who is not domiciled may be entitled to the remittance basis of assessment on investment income and capital gains arising outside Ireland. The remittance basis ceased to apply to foreign employment income to the extent that duties were performed in the State since 1 January 2006. It was reintroduced in a limited form from 1 January 2009 and the conditions for this relief have been relaxed with effect from 1 January 2010.

### **Tax resident**

An individual is tax resident for a tax year if present in Ireland for:

- ▶ A total of 183 days or more in the tax year; or
- ▶ A total of 280 days or more in aggregate in the current tax year and the preceding year. This test only applies where an individual has spent more than 30 days in Ireland in each year.

From 1 January 2009, an individual is considered as present for a day if he or she is present in the State at any time during that day.

### **Ordinarily resident**

An individual becomes ordinarily tax resident in Ireland after being tax resident in Ireland for 3 consecutive tax years. An individual who is ordinarily tax resident and who ceases

to be tax resident in Ireland will be treated as continuing to be ordinarily tax resident for 3 tax years after the tax year of departure and can therefore remain taxable in Ireland.

Where an individual is ordinarily tax resident, but not tax resident in Ireland, they are liable to Irish income tax on worldwide income with the exception of profits of a trade or profession or remuneration from employment where all the duties are exercised abroad (incidental duties performed in Ireland will not be taxable). However, foreign investment income, if it exceeds €3,810, and capital gains in the tax year will continue to be liable to Irish tax while they remain ordinarily tax resident, subject to double tax treaty relief.

### **Domicile**

An individual is domiciled in Ireland if their habitual ties are with the Republic of Ireland or their father was domiciled in the Republic of Ireland. Domicile of origin is retained unless the individual takes steps to acquire a domicile of choice elsewhere.

### **Domicile levy**

Since 1 January 2010 a €200,000 domicile levy applies to Irish domiciled individuals who are Irish citizens where their worldwide income exceeds €1m, who own Irish assets worth more than €5m on 31 December in the relevant tax year and their Irish income tax liability is less than €200,000. The due date for payment of this levy is 31 October in the year following the relevant tax year. Credit is available against the levy for any income tax paid in Ireland for the tax year but a credit is not allowed for foreign tax paid.

### **Remittance basis of assessment**

Individuals domiciled outside Ireland are entitled to a remittance basis of assessment in Ireland on investment income arising outside Ireland and income from employment duties exercised outside Ireland, to the extent the employment income is paid outside Ireland under a foreign contract.

From 1 January 2010 the remittance basis of assessment will no longer be available to Irish citizens who are not ordinarily resident in Ireland.

### **Cross border relief**

This relief is available to an individual who is tax resident in Ireland, but required to perform employment duties outside Ireland. In order to avail of the relief, the individual must exercise an employment outside Ireland in a country with which Ireland has a Double Tax Treaty for a continuous period of at least 13 weeks in a tax year. For every week during which the individual works outside Ireland in a qualifying employment, the individual must be present in Ireland for at least one day in that week. From 1 January 2011 cross border relief also provides relief from the USC introduced in 2011. The relief does not apply to a State employment or semi-State employment.

## Professional services withholding tax

Individuals who are paid for professional services rendered to certain bodies (such as government departments, local authorities, semi-State companies, health boards) are paid net of tax at the standard rate of 20%. A Form F45 is issued as evidence of the tax withheld and this document should be submitted by the individual when filing their tax return. Professional advice should be sought in this regard.

## Self-assessment

### Tax returns

Proprietary directors, individuals who have been granted or exercised share options, and individuals with non-Pay As You Earn (PAYE) income are obliged to file their annual tax returns by 31 October following the end of the tax year (i.e. the tax return for the year 31 December 2010 must be filed by 31 October 2011). If a completed tax return is not filed by the due date, a surcharge liability will arise. The surcharge is 5% of the tax liability if the tax return is submitted by 31 December (maximum €12,700) and 10% thereafter (maximum €63,500). The surcharge is calculated on the full tax liability even if the correct amount of tax has been paid.

### Payments

Income tax for those governed by the self-assessment regime, apart from share options, is due for payment by 31 October in the following tax year. Final income tax for 2010 is due by 31 October 2011. In addition, preliminary tax (a prepayment of the current year's tax liability) is due for payment by 31 October for the relevant tax year, i.e. 31 October 2011 in respect of 2011. For "e-filers" who pay and file their tax return online via ROS the Revenue may extend the filing and payment date to mid-November. This is announced on an annual basis. For the 2010 tax year the extended filing date is 15 November 2011.

Three options are available when calculating the amount of preliminary tax payable:

- ▶ 100% of the preceding year's final income tax liability;
- ▶ 90% of the current year's final income tax liability; or
- ▶ 105% of the pre-preceding year's final income tax liability. This option is only available to those who wish to pay preliminary tax by direct debit instalments and where they had a liability in the pre-preceding year.

For 2011, where an individual wishes to pay preliminary tax based on 100% of the previous year's liability, his or her liability is to be based on the final liability for 2010 as if the USC had been payable and as if the income and health levies had not been payable for that year.

An individual calculating his or her 2011 preliminary tax on the basis of 90% of the 2011 liability should incorporate the USC that will be payable for 2011.

Where the correct amount of preliminary tax is paid, any balance of income tax payable is due for payment no later than the due date for filing the tax return (i.e. 31 October following the tax year). The due date for any balance of tax payable for the 2010 tax year is 31 October 2011. If the amount of preliminary tax paid is incorrect, the shortfall will attract interest at a rate of 0.0219% per day from 31 October to the date of payment, subject to the 'Margin of Error'.

### **Margin of error**

When a taxpayer miscalculates their own liability in the absence of a Revenue assessment, the following margin of error is allowed where the taxpayer has otherwise made a correct return. The margin of error allowed is up to 5% of the actual liability, subject to a maximum of €3,175. For example, if the taxpayer's actual liability for a year is €12,700 or less, then the margin of error permitted is €635. In certain circumstances, interest and penalties will not apply where there is a small margin of error in the individual's own calculation which results in too little tax being paid and the shortfall is paid on or before 31 December in that year (i.e. within two months of the tax return filing date).

### **Taxation of married couples**

There are three methods of taxation available to married couples:

**Joint assessment:** Joint incomes are treated as belonging to the spouse nominated by the couple. If neither spouse is nominated, the spouse with the greater income in the previous tax year is treated as being the nominated spouse. The nominated spouse is given all the credits and the rate bands applicable to married couples, and assessed on the income and gains of both spouses.

**Separate assessment:** Each spouse is treated as a single person. However, an application can be made to apply to have the unused tax credits of one spouse allocated to the other spouse. An application for separate assessment must be made before 1 April in the relevant tax year or before 1 April in the tax year following the year of marriage.

**Single assessment:** Each spouse has the option to be treated as a single person. However, excess income tax credits or allowances of one spouse cannot be transferred and set against the income of the other. A married couple must elect to be assessed on a single basis by the end of the relevant tax year.

### **Taxation of separated/divorced couples**

#### **Maintenance payments**

Income tax and the USC is not to be deducted at source from legally enforceable maintenance payments. Maintenance payments are deductible for income tax and USC purposes in the hands of the payer, but chargeable to income tax and USC in the hands of the recipient. In such cases, both spouses are assessed to income tax as single persons.

In the case of a separated person who makes an enforceable maintenance payment, PRSI is levied at the point at which it is earned as part of the person's earnings/income and also as income in the hands of the receiving spouse. However, a refund of PRSI paid by the maintenance payer can be claimed by submitting a claim to the PRSI refunds section.

Separated spouses (i.e. a marriage that has not been dissolved or annulled) may elect for joint assessment, provided that both spouses are tax resident in Ireland. This election for joint assessment also applies to divorced couples who remain unmarried and tax resident in Ireland. If an election is made, the spouse making the maintenance payments is assessed to income tax without regard to the maintenance payments and is granted the relevant married person's tax credit. If both spouses have income in their own right, their respective income tax liabilities are calculated by the separate assessment procedures (see 'Taxation of married couples'), ignoring any maintenance payments. These procedures apply in respect of maintenance arrangements entered into on or after 8 June 1983.

Where payments are made to a spouse for the maintenance or benefit of a child, the payment is to be made to the spouse without deduction of income tax and USC and the payer's taxation liability is calculated without granting any deduction for the payment. The payment is not treated as income in the hands of the recipient.

## **Investment income**

### **Rental income**

Rental income is taxed on the basis of the amount receivable in a tax year less allowable expenses. Allowable expenses include mortgage interest, rates, repairs, insurance, mortgage protection, maintenance, wear and tear, and management charges.

From 8 April 2009, mortgage interest relief is no longer allowable in full against rental income from residential premises. This relief is restricted to 75% of the interest paid.

In order to claim tax relief for interest paid on money borrowed for the purchase, improvement or repair of rented residential accommodation, owners are obliged to meet the registration requirements contained in Part 7 of the Residential Tenancies Act 2004 (registration of landlords with the Private Residential Tenancies Board).

Interest relief will be denied if these registration requirements are not met in respect of each tenancy in the rental property during the tax year.

### **Rent-a-room scheme**

Rent received by an individual renting out a room for residential purposes in their principal private residence is exempt from income tax if the gross rental income does not exceed €10,000 per annum.

If the rental income from this source exceeds €10,000, the entire amount will be liable to income tax, subject to the deduction of allowable expenses (see above). The exemption does not apply where a child pays rent to a parent or where the person in receipt of the income is an office holder, or employee of the person making the payment.

### **Credit union savings accounts**

Tax exemptions are available for certain medium and long-term savings accounts held in credit unions and other financial institutions. When the account holder is an individual, a tax exemption will apply for the first €480 per annum of interest/dividends paid on the account when the funds are invested for a period of 3 years. The limit increases to €635 per annum when invested for 5 years in a special term account. Any interest/dividends in excess of this amount is liable to DIRT at 27%.

### **Deposit interest**

The rate of DIRT on interest paid or credited is 27%. No additional tax is payable on interest received. However, liabilities to PRSI may arise. Deposit interest which is subject to deposit interest retention tax is exempt from the USC.

Exit tax in respect of life assurance policies and investment funds is 30%.

### **Irish dividend income**

Irish dividends are subject to withholding tax of 20% (unless considered as 'Exempt Income'). Individuals are liable to income tax on the gross dividend (i.e. the amount received plus the tax withheld). A credit will be granted for the tax withheld. Thus, an additional liability to income tax will only arise where the individual is liable to income tax at 41%. Irish dividend income is liable to the USC. A liability to PRSI may also arise.

### **Foreign investment income**

This includes foreign interest, dividends and rents. The source of income must be declared on an individual's Irish tax return. In certain cases, tax paid in the source country will be refunded to Irish tax resident taxpayers or may be claimed as a credit against Irish income tax payable on the same income. UK dividends are taxed in Ireland on the net amount received, with no relief available in respect of the tax credit attaching to the dividend. From the 2005 tax year onwards, Irish resident individuals in receipt of deposit interest from EU financial institutions are liable, under self-assessment, to Irish income tax at a rate of 27% provided the income is disclosed in the annual tax return and submitted to Revenue by the relevant 31 October.

### **Exempt income**

The sources of income in Ireland that are exempt from income tax have been reduced. The exemption from income tax still remains for income arising from woodlands, subject to any restriction imposed by the high income earners restriction detailed opposite. Dividends paid from exempt sources are not subject to withholding tax of 20%. The recipient of profits or gains from exempt sources is required to report details to the Revenue on their annual tax return. It should be noted that there are quite stringent conditions to be met for these sources of income to qualify for an exemption from income tax. From 1 January 2011, the tax exemption for certain artists is subject to a limit of

€40,000 per annum. Income arising from a qualifying patent which is paid on or after 24 November 2010 is no longer exempt from income tax. The tax exemption for stallion services and stud greyhound services ended on 31 July 2008.

## High net worth individuals

### Restrictions on reliefs

Since 1 January 2007, certain high income individuals who utilised specified tax reliefs (e.g. property based tax incentives, artist's exemption, BES etc.) available to them have been restricted in the amount of tax relief which they can claim. The specified tax reliefs are restricted to €80,000 or 20% of the reliefs due before the restriction, whichever is the greater. An individual effectively pays income tax at approximately 30% (while the top rate is 41%) where total income exceeds €400,000 and there are sufficient specified tax reliefs. The effective tax rate for individuals with total income between €125,000 and €400,000 is less as the restriction applies on an incremental basis.

For individuals whose total income is less than €125,000 the restrictions to the tax relief do not apply.

For married couples, the threshold of €125,000 is due independently to each spouse, irrespective of how they are assessed for tax purposes. It is not possible to aggregate the threshold against aggregate income.

All individuals to whom restrictions apply to tax relief are subjected to self assessment provisions. In addition, those affected by restrictions must supply a statement to Revenue setting out details of reliefs and restrictions applied.

There are rules relating to the apportionment of relief between specified reliefs and other tax reliefs where relief is carried forward to the following year. These rules apply where the carried forward relief consists of restricted and unrestricted reliefs.

## Residential property tax

For sales of residential property completed on or after 1 February 2007 a residential property tax clearance certificate in respect of past liabilities will no longer be required.

## Annual charge on non-principal private residences (NPPR)

A €200 annual charge is imposed on any dwellings which are not the owner's principal private residence, subject to a number of limited exemptions. This charge is due to the local authority and payment can be made online at [www.nppr.ie](http://www.nppr.ie). The charge is due on properties owned as at 31 March. The charge is due on 30 June each year.

## 2. Social welfare taxes

### PRSI contributions

Employees aged between 16-66 years who are in insurable employment must contribute to Pay Related Social Insurance (PRSI). In addition, their employer is also liable to PRSI. 'Insurable employment' means employment in Ireland under a contract of service. The normal rate at which contributions are made is Class A1.

PRSI applies to benefits-in-kind and from 1 January 2011 is also charged on equity compensation and share incentive schemes. See share incentive scheme section in Chapter 3 for further details.

From 1 January 2011 both employed and self-employed individuals aged between 16-66 years are liable to PRSI on total income. The earnings cap for employees has been abolished.

The rates effective from 1 January 2011 are shown in the table below.

#### Social Insurance contribution rates for the 2011 tax year

|  | Contribution rate | Annual earnings ceiling |
|--|-------------------|-------------------------|
| <b>Employer Class A1</b>                             |                   |                         |
| Employer contribution (including training fund levy) | 10.75%*           | <i>no ceiling</i>       |
| <b>Employee Class A1</b>                             |                   |                         |
| PRSI (first €127 of weekly earnings exempt)          | 4%*               | <i>no ceiling</i>       |
| <b>Self-employed contributions</b>                   |                   |                         |
| PRSI   | 4%**              | <i>no ceiling</i>       |

\*Where weekly earnings are €352 or less employee contribution is nil and where weekly earnings are €356 or less, employer's PRSI is 8.5%.

\*\*Minimum annual PRSI contribution of €253

### Health levy and income levy

The health levy and income levy have been abolished from 1 January 2011 and are replaced by the Universal Social Charge (USC). See Chapter 1 for details of the USC.

### 3. Employee remuneration

#### Employment-related income

Employment-related income, such as salary, bonuses, expense allowances, benefits and other compensation payments are taxed through the Pay As You Earn (PAYE) system.

Since 1 January 2009 a new form of tax relief has been available to certain non domiciled expatriate employees who are seconded to work in Ireland. The rules for this relief were relaxed for employees who commenced assignments in Ireland on or after 1 January 2010 and who had never previously been tax resident in Ireland. The relief takes the form of a partial rebate of PAYE tax paid, and is subject to a number of conditions. PAYE will continue to operate on income related to Irish work days, however, the assignee may be entitled to apply for a partial refund of the tax paid at the year end. The assignee will effectively be taxed on the **greater of**:

- a. The actual amount of foreign employment income remitted to Ireland during that year, and
- b. an amount equal to €100,000 plus 50% of any earnings over this amount

If tax has been paid on an amount greater than (a) or (b), the excess tax will be refunded.

#### *Assignments commencing prior to 1 January 2010:*

For assignments commencing prior to 1 January 2010 this relief only applies to an assignee seconded by a relevant employer i.e. a company incorporated and resident in a country outside of the European Economic Area with which Ireland has a double taxation agreement. The employee must be employed and paid by a relevant employer and must have worked for that same relevant employer, or an associated company of the relevant employer, prior to being seconded to Ireland. The assignment must be for a minimum period of 3 years and the assignee must be tax resident in Ireland in the year in respect of which the claim is made.

#### *Assignments commencing on or after 1 January 2010:*

For assignments commencing on or after 1 January 2010 the relief is extended to include employees seconded into Ireland from EU or EEA countries who are employed under an EEA contract.

The assignment period must be for a minimum of one year (previously three years). In addition, the assignee must be resident in Ireland for the first time and working in Ireland for the first time on or after 1 January 2010.

#### Benefits-in-kind (BIK)

The tax due on BIK is also collected through the PAYE system, together with the appropriate social insurance (PRSI) charge and the USC. From 1 January 2011 employer withholding has been introduced for share based remuneration. See share incentive scheme section on page 28 for further details.

The employer must account for the PAYE by the 14<sup>th</sup> of the month following the month in which the benefit is provided (e.g. bonus bond) or the expense is borne by the employer (e.g. medical insurance). Where the total PAYE, PRSI and USC are €30,000 or less the employer may apply for a quarterly remittance basis. The payments would then be due by the 14<sup>th</sup> of the month following the end of the quarter.

There are specific rules for calculating the value of the benefit (notional pay) where the benefit is in the form of a company vehicle, preferential loan, employer-provided accommodation or the use of an employer's asset. The PAYE on notional pay is accounted for monthly throughout the period in which the benefit is enjoyed.

The employer must account for the PAYE as above irrespective of whether the PAYE has been withheld from the employee. Where the PAYE has not been recouped from the employee by the end of the tax year, the tax becomes part of the individual's notional pay in April following the end of the tax year and assessable to PAYE and PRSI accordingly.

## Cars

The calculation of the BIK charge on a company car provided to an employee prior to 1 January 2009 is computed as follows:

- ▶ The assessable benefit is 30% of the original market value of the car. There is no reduction in BIK where the employee pays directly for private fuel, road tax, repairs or insurance. The benefit may be reduced by any contribution made by the employee to the employer towards the cost of providing the car.
- ▶ Employees with business mileage of less than 24,000 kilometres per annum who spend at least 70% of their time away from the business premises can claim a 20% reduction in their BIK figure.
- ▶ The BIK may also be reduced where the employee has business mileage in excess of 24,000 kilometres in a year. This relief operates by reducing the taxable benefit based on the table below.

| Annual business kilometric thresholds | Cash equivalent (% of OMV) |
|---------------------------------------|----------------------------|
| 24,000 or less                        | 30%                        |
| 24,001 to 32,000                      | 24%                        |
| 32,001 to 40,000                      | 18%                        |
| 40,001 to 48,000                      | 12%                        |
| 48,001 and over                       | 6%                         |

For new cars provided to employees in the tax year 2009 and subsequent years, the benefit-in-kind charge will be calculated by reference to the car's CO<sub>2</sub> emissions. Cars with emission ratings in excess of 155g/km will attract a higher benefit in kind charge based on the tables below. These provisions, however, have not yet been brought into effect by a Ministerial order.

**BIK calculation by vehicle category**

| <b>Business mileage</b> |             |                                |                             |                             |
|-------------------------|-------------|--------------------------------|-----------------------------|-----------------------------|
| Lower limit             | Upper limit | Vehicles categories A, B and C | Vehicles categories D and E | Vehicles categories F and G |
| Kilometres              | Kilometres  | (percentage)                   | (percentage)                | (percentage)                |
| -                       | 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                           |

**Vehicle category by emission level**

| <b>Vehicle category</b> | <b>CO<sub>2</sub> emissions (CO<sub>2</sub> g/km)</b> |
|-------------------------|---|
| A                       | 0g/km up to and including 120 g/km                    |
| B                       | More than 120g/km up to and including 140g/km         |
| C                       | More than 140g/km up to and including 155g/km         |
| D                       | More than 155g/km up to and including 170g/km         |
| E                       | More than 170g/km up to and including 190g/km         |
| F                       | More than 190g/km up to and including 225g/km         |
| G                       | More than 225g/km                                     |

**Vintage cars**

The taxable benefit of an employer-provided vintage car is 30% of the original market value of the car when it was first registered in Ireland. As such, the taxable benefit will generally be much lower for such a car than for a new car.

**Pooled cars**

No liability to tax will arise for an employee who has use of a car from a company car pool, subject to certain conditions being met.

## Company-provided vans

Where the following conditions are met, BIK will not apply to vans:

- ▶ The van is supplied for the purposes of the employee's work.
- ▶ There is an employer requirement to bring the van home.
- ▶ Any auxiliary private use of the van is prohibited.
- ▶ The employee spends most of their time working away from the employer's workplace.

Where any of the above conditions are not met, a BIK charge of 5% of the original market value applies.

## Preferential loans

An employee or director who has a loan from their employer at a preferential rate of interest is regarded as having a taxable benefit. The value of the benefit is the difference between the rate of interest charged and the specified rate. The specified rate is 5% in the case of qualifying home loans and 12.5% for other loans.

## Employer-provided accommodation

Where an employer provides accommodation for an employee, a BIK arises on the gross amount of the rent paid or on 8% of the current market value of the property where the property is owned by the employer. In addition, a BIK of 5% of the value of furniture arises where this is supplied by the employer. A limited tax credit may be claimed by the employee (as tenant) for rent paid.

## Employer-provided assets

Where an employer provides an asset (other than a car or accommodation) for use by an employee, a BIK will be charged at 5% of the asset's market value at the date first provided by the employer. The loan of certain art objects to employees or directors no longer qualifies for relief from benefit in kind from 1 January 2010.

## Other taxable benefits

- ▶ Medical insurance cover (employee is liable to tax on the gross premium paid and is entitled to a credit of the gross premium at the standard rate of tax).
- ▶ Club subscriptions.
- ▶ Holiday tickets/vouchers.
- ▶ Bonus bonds.
- ▶ Staff suggestion scheme awards.
- ▶ Staff discount (on the difference between the cost to the employer and the price paid by the employee).

- ▶ Professional subscriptions (from 1 January 2011) subject to limited exceptions (see below).
- ▶ Crèche facilities provided or subsidised by an employer (from 1 January 2011).

### Benefits exempt from the BIK provisions

- ▶ Employer contributions to a Revenue-approved Occupational Pension Scheme (OPS).
- ▶ Bus/rail/LUAS/commuter ferry passes provided by the employer subject to certain conditions.
- ▶ Course and exam fees, provided they are specifically required for the employment.
- ▶ Provision of computers where private use is incidental to business use.
- ▶ Provision of mobile phones where private use is incidental to business use.
- ▶ Small benefit exemption of €250 per annum per employee for one-off non cash benefits where the value of the benefit does not exceed this amount.
- ▶ Expenses borne by an employer in connection with an 'asset' or 'service' for the improvement of personal security where there is a threat to the personal physical security of the employee.
- ▶ Housing provided to an individual assigned to Ireland from abroad for the first 12 months of the assignment, subject to conditions.
- ▶ Provision of bicycles and associated safety equipment to employees who agree to use the bicycle to cycle to work, subject to a limit of €1,000 per employee in any five year period.

### Expenses

Expenses incurred by employees are only allowable as deductions for tax purposes where they are incurred wholly, exclusively and necessarily in performing the duties of the employment.

The following expenses are allowable subject to certain conditions:

- ▶ motor;
- ▶ travel and subsistence;
- ▶ removal/relocation;
- ▶ professional subscriptions;
- ▶ protective clothing.

Certain professions are entitled to flat rate expenses, which should be coded onto the employee's tax credit certificate. The list of trades and professions to which this applies is provided annually by the Revenue.

### **Professional subscriptions**

Finance Act 2004 provided that expenses incurred by an employer on behalf of an employee in connection with the payment of annual membership fees of a professional body were exempt from tax where such membership was regarded as 'relevant to the business' of the employer.

Finance Act 2011 removed this statutory exemption meaning that any such payments by employers would, from 1 January 2011, be subject to PAYE, PRSI and Universal Social Charge (USC).

However, the Revenue Commissioners have clarified certain situations where an individual would be entitled to claim the professional membership expense (now taxed under Benefit-in-kind rules) as a deduction 'wholly, exclusively and necessarily' incurred in the course of his or her employment.

Where the employee is entitled to claim the expense as a deduction, for ease of administration, Revenue has advised that employers need not make tax, PRSI and USC deductions. This action precludes the employee making a tax deduction claim.

Tax deduction in respect of annual membership fees of a professional body will be available in the following situations:

- ▶ Where there is a statutory requirement for membership of a professional body before the individual member can carry out the duties of their employment.
- ▶ Where an individual is registered with a professional body and has a right, by virtue of that membership, to plead or be heard in a court or a tribunal on behalf of his or her client.
- ▶ Where there is a requirement for a current practicing certificate or licence, issued by the professional body, for the individual to carry out the duties of their employment.

In addition, the employer need not operate PAYE, PRSI and USC in the following circumstances where the employee would be entitled to claim a deduction, as follows;

- ▶ Where the duties of the employee and the duties of the employment require the exercise or practice of the occupation or profession in respect of which the annual membership fee refers,
- ▶ the employee so exercises or practices the occupation or profession in respect of which the annual membership fee refers, and
- ▶ membership of the professional body is an indispensable condition of the tenure of the employment.

### **Trade union subscriptions**

Tax credit for trade union subscriptions has been abolished with effect from 1 January 2011.

### **Parking levy**

A parking levy is yet to be introduced which will impose a levy of €200 per annum on employees who are provided with car parking facilities by their employer. This levy will apply in certain, as yet unspecified, urban areas of Waterford, Cork, Dublin, Limerick and Galway. The commencement date for this levy and the specific urban areas to which it will apply is yet to be confirmed by ministerial order. The levy will be collected by employers through the PAYE system.

### **Flight crew in international traffic**

From 1 January 2011 PAYE applies in respect of income arising from any employment exercised aboard an aircraft which is operated in international traffic by an enterprise that has its effective management in Ireland. The charge applies regardless of whether the individual is tax resident in Ireland. An aircraft operating solely between places within a single country is excluded from the provisions.

### **Excess Bank Remuneration Charge**

The Excess Bank Remuneration Charge (EBRC) applies to any remuneration, in cash or in kind, that is variable and determined by reference to the individual or the institution's performance. This variable remuneration will be subject to EBRC at a rate of 45% (instead of the USC).

The EBRC applies to employees of institutions that have received financial support under Section 6(1) of the Credit Institutions (Financial Support) Act 2008 or the National Pensions Reserve Fund Act 2000. The EBRC will apply to any employee resident in Ireland or an employee who performs some of their duties in Ireland.

The EBRC will affect all payments made on or after 6 February 2011, except where the employee's variable remuneration does not exceed €20,000 in a tax year.

### **Termination of employment**

#### **Payments exempt from tax**

- ▶ Statutory redundancy.
- ▶ Payments made in connection with the termination of the holding of an office or employment due to the death of the holder or on account of injury or disability of the holder of the office or employment.
- ▶ Payments made where a high proportion of the employee's employment was foreign service.

## Payments on leaving employment

Where a payment is made in connection with the termination of an employment, which falls liable to Irish income tax, exemptions are available to reduce or eliminate the liability. With effect from 1 January 2011 the amount of tax relief on ex-gratia payments is restricted to a lifetime limit of €200,000.

The individual may claim the most favourable of the following (subject to the €200,000 lifetime limit):

- ▶ Basic exemption = €10,160 + €765 for each complete year of service.
- ▶ Increased exemption = basic exemption + €10,000 where no claim for relief for the increased exemption was made in the previous 10 years\*.
- ▶ Standard Capital Superannuation Benefit (SCSB)\*, which is calculated as follows:

average remuneration for last 3 years x no. of complete years' service

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*\*The increased exemption or the SCSB must be reduced by any tax-free lump sum received or the net present value of a future tax-free lump sum receivable under an approved pension scheme, unless the claimant waives their right to the lump sum.*

## Top slicing relief

A tax refund may be due where the rate of income tax suffered on the taxable lump sum is higher than the individual's effective rate of tax for the previous three years.

## Share incentive schemes

From 1 January 2011, PRSI (employer 10.75% and employee 4% on uncapped income) and the USC (up to 7%) will apply to all income gains arising on share awards, irrespective of whether the awards were granted under a Revenue-approved plan or an unapproved plan.

From 1 January 2011 employers may have an obligation to withhold income tax, PRSI and the USC on share based remuneration via the Pay As You Earn (PAYE) system. This is dependent on the type of scheme and is summarised below.

Approved Profit Sharing Scheme (APSS) and Save As You Earn scheme (SAYE) - PRSI and USC must be withheld by the employer via the PAYE system. The amount liable to PRSI and USC, and the due date for payment is explained below in the "Save As You Earn" and "Approved profit sharing" sections.

Stock option scheme - the employee retains the obligation to pay income tax and the USC via the self assessment system. However, the employer must withhold PRSI. It is intended that from 2012, the employee's PRSI will be payable with the RTSO1 form, which is used to account for income tax and USC on share options.

Other non-approved share schemes - Income Tax, PRSI and the USC must be withheld by the employer via the PAYE system.

In all cases where a PRSI charge arises the employer is responsible for withholding. However, an exemption from PRSI applies to share awards that are taxable on or after 1 January 2011 but are derived from a written agreement between the employer and employee before 1 January 2011 (see legacy share awards table below).

The charge to income tax (IT), the USC and PRSI is summarised below.

### Legacy Share Awards

| Awarded pre 1 January 2011 but settled/exercised on or after that date | 2011 and subsequent years |      |      |     |
|--|---------------------------|------|------|-----|
|  | IT                        | PAYE | PRSI | USC |
| SAYE Options   | No                        | No   | No   | Yes |
| Unapproved Share Options   | Yes                       | No   | No   | Yes |
| Approved Share Options (ASOS)*   | Yes                       | No   | No   | Yes |
| Other (e.g. RSUs)  | Yes                       | Yes  | No   | Yes |

\*Includes any grants or exercises of options under an ASOS on or after 24 November 2010.

### New Share Awards (Awarded on or after 1 January 2011)

|                   | 2011 and subsequent years |      |      |     | Reporting** |
|-------------------|---------------------------|------|------|-----|-------------|
|                   | IT                        | PAYE | PRSI | USC | Employer    |
| APSS              | No                        | No   | Yes  | Yes | ESS1        |
| SAYE              | No                        | No   | Yes  | Yes | SRSO1       |
| ASOS*             | Yes                       | No   | Yes  | Yes | RSS1        |
| Other (e.g. RSUs) | Yes                       | Yes  | Yes  | Yes | RSS1        |

\*Includes any grants or exercises of options under an ASOS on or after 24 November 2010.

\*\*The filing deadline for Forms ESS1, SRSO1 and RSS1 is 31 March in the tax year following the tax year in which the taxable event occurs.

## **Transitional arrangements**

Interest and penalties will not be imposed on the payment of payroll taxes arising on share awards in the period 1 January 2011 to 30 June 2011. This is on the basis that the payments are made in full by the due date of the June 2011 P30, i.e. 14 July 2011 (or 23 July for Revenue Online Service filing). Payments beyond that date will attract interest from the original P30 filing date.

Where there is a period between the vesting of a share award and the actual delivery or settlement of the shares, collection and payment of PAYE/PRSI and the USC can be postponed until the date on which the shares are settled, provided that the settlement date is not more than 60 days after the vesting date.

### **USC and income tax**

In all cases, except for share options (both approved and unapproved), the employer is responsible for withholding income tax and USC.

APSS - Approved Profit Sharing Scheme

SAYE - Save As You Earn Scheme

ASOS - Approved Share Option Scheme

Assumed shares in the employer company or a company controlling the employer company

## **Save As You Earn (SAYE)**

SAYE schemes allow employees to save a fixed amount of their salary (after tax), between €12 - €500 per month, over a period of at least three years. At the end of the savings period, the accumulated savings are used to purchase shares in the employer or parent company at a predetermined price. This predetermined price is the market value of the shares at the beginning of the savings period less a discount of up to 25%.

On the occasion of shares being purchased, there is no income tax charge despite the fact that the shares may have been purchased at a price substantially below the market value of the shares on that date. From 1 January 2011 USC and PRSI are due on an amount equal to the difference between the price paid and the market value of the shares at the date of purchase. Both USC and PRSI must be withheld through the PAYE system and accounted for by the employer by the 14<sup>th</sup> day of the month following the month in which the shares are purchased. When the shares are sold or otherwise disposed of, their market value, less the base cost to the shareholder, will be subject to capital gains tax. Please see table on the previous page for a summary of the employee and employer requirements.

## **Approved profit sharing**

Employees and full-time directors may be entitled to receive shares in their employer company or employer's parent company without incurring an income tax liability. To achieve this, the employer must seek Revenue approval to implement the Approved

Profit Sharing Scheme and establish a special trust for the purposes of acquiring shares on behalf of employees. An employee or full-time director may then sacrifice an element of their bonus (plus, in certain cases, salary), which is paid into the trust to purchase shares on their behalf. The shares must be retained within the trust for a period of three years to avoid an income tax charge.

The maximum value of shares that can be purchased on behalf of any one employee or full-time director per annum is €12,700.

No income tax arises when the shares are transferred to the employee. From 1 January 2011 USC and PRSI is chargeable on the initial market value of the shares at the time they are placed in the trust on the employee's behalf. In cases where employees have entered into a salary foregoing arrangement to fund the purchase of shares, the USC and PRSI may be deducted from earnings when salary is foregone. Alternatively employers and employees may fund the payment of the USC and PRSI out of other non-share net earnings. These liabilities must be accounted for by either the employer or the trustees in the same manner as PAYE ie, by the 14<sup>th</sup> day of the month following the month in which the shares are placed in the trust on the employee's behalf. For capital gains tax purposes, the allowable cost is the market value of the shares at the date they were purchased by the trust on behalf of the employee or director. Please see table on the previous page for a summary of the employee and employer requirements.

### **Employee share ownership**

A company may claim a deduction for the costs of establishing and making contributions to an Employee Share Ownership Trust. The trust must be established for the purpose of acquiring shares in the founding company for distribution to employees or a charity at a future date. If the shares in the trust are transferred at a future date into an Approved Profit Sharing Scheme, this transfer will not be treated as a disposal for capital gains tax purposes. Please see table on page 28 for a summary of the employee and employer requirements.

### **Share purchase**

Prior to 8 December 2010, subject to certain conditions, an employee could purchase shares up to the value of €6,350 (a lifetime limit) in the employer company and claim a tax allowance for the cost of the shares. Tax relief is no longer available where an employee subscribes for shares in their employer company on or after 8 December 2010. The cost of the shares for capital gains tax purposes is reduced by the amount of income tax relief given for the purchase of the shares.

### **Approved share options**

Income tax relief in respect of gains on the grant and/or exercise of share options under schemes approved by the Revenue Commissioners is terminated. This relief is abolished in respect of share options that are granted and/or exercised on or after 24 November 2010. See below - unapproved share options for tax treatment.

## Unapproved share options

Any differential between the option price and the market value of the shares at the date of exercise is liable to income tax, PRSI and the USC. Gains arising on the exercise of options granted on or after 5 April 2007 will be subject to income tax, PRSI and the USC by reference to the number of work days the option holder spent in the Republic of Ireland between the grant date and vesting date.

Where an option is capable of being exercised more than seven years from the date of grant and the option price is less than the market value of the shares at the date of grant, the taxable event is the date of grant and not the date of exercise.

## Restricted shares

Where employees are granted free or discounted shares which are subject to a restriction on disposal, the taxable value will be reduced in accordance with the table below. During the period of restriction, the shares must be held in a trust or held under such other arrangements as the Revenue Commissioners may allow.

| Period of restriction | Discount |
|-----------------------|----------|
| 1 year                | 10%      |
| 2 years               | 20%      |
| 3 years               | 30%      |
| 4 years               | 40%      |
| 5 years               | 50%      |
| 5 years plus          | 60%      |

From 1 January 2010 the trust in which the shares are held must be established in Ireland or in another EEA member state and the trustees must also be resident in that state.

## Employee in receipt of share options

### Chargeable person for self-assessment purposes

Irish tax legislation treats an employee or director who exercises share options under an unapproved share option scheme as a 'chargeable person'.

This means that the individual is automatically within the self-assessment system and is obliged to file an income tax return by 31 October after the end of the tax year in which the share option is exercised. Where a tax return is not filed by this date, a surcharge of up to 10% of the person's tax liability may be applied (see Chapter 1 under 'Self assessment').

## Share options exercised

### Income tax payments

Relevant Tax on Share Options (RTSO) must be paid within 30 days of the exercise of all share options. A Form RTSO1 must be filed by the individual, together with the relevant RTSO payment. The RTSO payment includes both income tax and the USC. RTSO at the top rate (currently 41%) must be paid in respect of the option gain unless the individual can satisfy the Revenue that they are liable to income tax at the standard rate (20%) on the full amount of the gain.

The onus is on the individual to seek advance clearance from the Revenue for the standard rate of tax to apply. USC at a rate of 7% is also due and payable within the same 30 day period. Failure to pay RTSO by the due date carries an interest exposure of 0.0219% per day, or part thereof, from the due date.

### Valuation of shares in unlisted companies

Revenue has stated a valuation service will not be provided for shares in private companies. The employer should make a 'best estimate' of the amount of notional pay, using the most appropriate valuation method(s) for the circumstances. In the event of a Revenue audit, the employer should be in a position to show how the value of the shares was determined and provide detailed workings.

### Employer filing requirements

The Revenue introduced new reporting requirements for employers in respect of employee share schemes in 2010. A summary of the forms to be used are set out in the table on page 29.



## Section 2 Private Wealth Services

4. Pensions
5. Capital allowances and tax-based property incentives
6. Capital gains tax
7. Capital acquisitions tax
8. Stamp duty

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# Private Wealth Services

## 4. Pensions

### Pension contributions

Tax relief on pension contributions can be claimed by the self-employed and by members of Occupational Pension Schemes (OPS) in any one tax year on the following basis:

| Age         | % of Net Relevant Earnings/Remuneration* |
|-------------|--|
| Under 30    | 15                                       |
| 30-39       | 20                                       |
| 40-49       | 25                                       |
| 50-54       | 30                                       |
| 55-59       | 35                                       |
| 60 and over | 40                                       |

*\*Net Relevant Earnings (NRE) applies to self-employed individuals, while Remuneration applies to members of Occupational Pension Schemes (OPS).*

A single earnings cap of €115,000 remains for all types of pension contributions made by individuals in 2011, but not for employers' contributions to an OPS.

Prior to 1 January 2011, tax relief generally included relief from PRSI. However, with effect from 1 January 2011, contributions made by individuals to pension plans which previously qualified for relief from PRSI will no longer qualify. Relief from the Universal Social Charge (USC) is also not available.

While tax relief is available at 41% on contributions to pension plans in the 2011 tax year, it is expected that this will reduce to:

|      |     |
|------|-----|
| 2012 | 34% |
| 2013 | 27% |
| 2014 | 20% |

For employers, PRSI relief on employee pension contributions has been reduced by 50%. This change is effective from 1 January 2011. In addition, an employer is liable to employer PRSI on employer contributions to a Personal Retirement Savings Account (PRSA).

## Self-employed

For the self-employed, tax relief can be obtained by contributing to a personal pension plan via a Retirement Annuity Contract (RAC) and/or to a PRSA. Net Relevant Earnings (NRE) can be defined as earnings from trades, professions and non pensionable employments, less certain payments and deductions.

In addition to those aged 50 to 54 years, the 30% limit applies to specified individuals whose NRE are derived wholly or mainly from certain listed occupations, such as athletes, boxers, rugby players or swimmers. The earnings of a husband and wife are treated separately for the purpose of determining NRE; the relief is available in respect of each spouse with non-pensionable earnings.

A self-employed individual may avail of tax relief for the immediately preceding year by making a pension contribution by 31 October following that year and subject to the age-related scale and earnings cap outlined above.

## Employees

Contributions may be made by an employee to an Occupational Pension Scheme (OPS) in any tax year for tax relief purposes. These contributions must be made to a Revenue approved OPS.

Remuneration broadly means basic salary, plus any fees, commission, bonuses, taxable share incentive benefits and benefits-in-kind. Relief is currently available at the employee's top tax rate (20% or 41%).

Employees may, subject to guidelines prescribed by the Revenue, make special contributions to an OPS or make Additional Voluntary Contributions (AVCs) to avail of any unused relief between 15% - 40% as per the age-related scale (see table on previous page). For example, under the rules of an OPS, an individual aged 35 may be required to make a personal contribution to the scheme of 5% of their salary. If the scheme rules allow and subject to certain conditions as advised by the Revenue, the individual may also make an AVC of 15% of their remuneration to an AVC Fund to increase pension benefits at retirement.

A member of an OPS may also avail of tax relief for the immediately preceding year by making a pension contribution by 31 October following that year and subject to the age-related scale and earnings cap.

**Note:** Any individual who joins an OPS and who has a personal pension plan (as described under 'Self-employed' above) may continue such contributions, but will not receive tax relief unless they can demonstrate separate earnings for such contributions.

## Options on retirement

### Self-employed individuals can:

- ▶ use all of the retirement fund to purchase a retirement annuity; or
- ▶ withdraw up to 25% of the total retirement fund as a tax-free lump sum and with the balance of the fund, either:
  - ▶ purchase a retirement annuity;
  - ▶ draw down the balance subject to their top income tax rate; or
  - ▶ invest in an ARF, subject to the AMRF provisions.

### Members of an OPS can:

- ▶ use the entire retirement fund to purchase an annuity (subject to a maximum pension of 66.67% of final remuneration); or
- ▶ withdraw up to 150% of final remuneration as a tax-free lump sum and with the balance of the fund purchase a retirement annuity

**Note 1:** For proprietary directors (with more than 5% shareholding), there is the option to withdraw up to 25% of the total fund as a tax-free lump sum and invest the balance in an AMRF or ARF (see below). The 2011 Finance Act has extended the AMRF or ARF option to all members of defined contribution pension schemes.

**Note 2:** For lump sum payments, the maximum tax-free lump sum for an individual retiring has been capped at €200,000 (as reduced by any tax-free lump sums taken on or after 7 December 2005). The next €375,000 is taxed at the standard rate of income tax (currently 20%) and is ring fenced so that no reliefs, allowances or reductions can reduce the taxable amount. Any further excess will be taxed at the taxpayer's marginal income tax rate. PRSI and the USC will also be due on this excess. This change is effective from 1 January 2011.

**Note 3:** With effect from 7 December 2010 the standard fund threshold (i.e. the maximum allowable pension fund for tax purposes) is set at €2.3 million. Higher thresholds apply where the pension fund, as valued on 7 December 2010, is greater than €2.3 million but less than €5,418,085 (the previous standard fund threshold limit). Any excess is subject to a tax charge of currently 41% on drawdown. The excess tax charge applies to the aggregate of all pension products held by the individual. It is important to note that the net, after tax excess is again subject to tax on receipt by the individual.

## Approved Minimum Retirement Fund (AMRF) and Approved Retirement Fund (ARF)

The retirement fund monies of self-employed individuals, AVC contributors, proprietary directors (who own more than 5% shareholding of the company) and members of defined contribution pension schemes may be invested in post-retirement funds (AMRFs or ARFs) after drawing down up to 25% of the total fund as a tax-free lump sum. If people are availing of such funds, certain criteria must be met. Both types of fund are managed by Qualifying Fund Managers.

Funds invested in an ARF can be withdrawn at any stage and in any amount, either by lump sum or by regular income, but subject to the investor's top rate of income tax.

Where a retiree cannot demonstrate that they will have annual guaranteed income in retirement equal to 1.5 times the maximum annual rate of the state pension (contributory) i.e. €18,000 approximately, they must invest a variable amount equal to the lesser of:

- ▶ ten times the maximum annual rate of the contributory state pension payable at the time the ARF option is being availed of (currently €120,000 approximately) or
- ▶ the remainder of the pension fund after taking the tax-free lump sum

in an AMRF.

Income from an AMRF may be drawn (subject to income tax), but the initial full capital amount cannot be withdrawn until 75 years of age (subject to income tax).

If, on death, there are residue funds from an AMRF or ARF, these can be passed on by will to dependents subject to inheritance tax and/or income tax implications.

ARFs are deemed to make an annual imputed (deemed) distribution of 5% (previously 3% at 31 December 2009) of the value of their assets and this amount is taxed at the individual's marginal tax rate. Any actual distributions in the year are deducted from the imputed distribution.

## 5. Capital allowances and tax-based property incentives

### Incentives

#### Capital allowances

Capital allowances are granted to individuals and companies on the purchase of certain assets. These allowances write off, against taxable profits, the cost of the asset over a certain period of time at a predetermined rate.

Capital allowances are given under three main headings:

- ▶ wear and tear allowances;
- ▶ industrial buildings allowances; or
- ▶ special incentives schemes.

#### Wear and tear allowances: Plant and machinery

Expenditure incurred on the purchase of plant and machinery, used for the purposes of the trade, profession, vocation or employment, qualifies for wear and tear allowances. The capital allowance rate will depend on the date the expenditure was incurred, as follows:

| Date expenditure incurred         | Rate   | Basis         |
|-----------------------------------|--------|---------------|
| 1 January 2001 to 3 December 2002 | 20%    | straight line |
| On or after 4 December 2002       | 12.5%* | straight line |

*\*The 20% rate will apply to plant and machinery acquired under the terms of a contract evidenced in writing before 4 December 2002 and in respect of which capital expenditure was incurred on or before 31 January 2003.*

#### Wear and tear allowances: Motor vehicles

The annual rate of wear and tear allowances for motor vehicles (other than taxis and short term hire vehicles) is as follows:

| Date expenditure incurred         | Rate   | Basis         |
|-----------------------------------|--------|---------------|
| 1 January 2001 to 3 December 2002 | 20%    | straight line |
| On or after 4 December 2002       | 12.5%* | straight line |

*\*The 20% rate will apply to motor vehicles acquired under the terms of a contract evidenced in writing before 4 December 2002 and in respect of which capital expenditure was incurred on or before 31 January 2003.*

The maximum qualifying cost of motor vehicles purchased on or after 1 January 2007 is €24,000. This restriction applies to both new and second-hand motor vehicles.

A CO<sub>2</sub> emissions-based scheme of capital allowances applies in respect of mechanically propelled road vehicles, other than vehicles provided or hired wholly or mainly for the purposes of carriage of members of the public, e.g. taxis or hire cars.

The scheme of allowances applies to vehicles purchased or leased on or after 1 July 2008. Allowances are granted based on the following scale:

| <b>CO<sub>2</sub> emissions (CO<sub>2</sub>g/km)</b> | <b>Allowances</b>   |
|--|---|
| 0g/km up to and including 155g/km                    | an amount equal to the specified amount                             |
| More than 155 g/km up to and including 190g/km       | the lower of 50% of the specified amount or 50% of the vehicle cost |
| More than 190 g/km                                   | None  |

The specified amount is €24,000 (regardless of the cost of the car).

### **Capital allowances for certain energy efficient equipment**

Finance Act 2008 provided for accelerated capital allowances in respect of expenditure by companies on certain energy efficient equipment bought for the purposes of the trade. The scheme was originally set to run for three years, but this was extended in Finance Act 2011 so that it will now run until 31 December 2014. Equipment eligible under the scheme is published in a list established by the Minister for Communications, Energy and Natural Resources and maintained by the Sustainable Energy Authority of Ireland. Capital allowances at the accelerated rate of 100% are available in the first year in which the expenditure is incurred. It does not apply to equipment that is leased, or hired.

### **Capital allowances on provision or acquisition of intangible assets**

Capital allowances are available on a broad range of specified intangible assets acquired on or after 8 May 2009. For further details refer to Chapter 9 Corporation Tax.

### **Industrial buildings allowances**

These allowances are granted to people who hold the 'relevant interest' in an industrial building. Several types of buildings or structures qualify. The annual allowance for a qualifying building is 4%, with accelerated allowances being available in certain circumstances, these are dealt with below.

### **Special incentive schemes**

A number of special incentive property schemes have been available over recent years, most of which have now terminated. The incentive schemes provided for capital allowances or Section 23 type relief in respect of the development of certain types of

building (in some cases restricted to certain areas). The main schemes are set out below with the latest date for incurring qualifying expenditure on their construction or refurbishment. In order to qualify for the expenditure deadlines listed below, in most cases it is necessary to fall within transitional provisions. The specifics of these transitional provisions differ depending on the particular scheme.

In some cases allowances are available in respect of 50%/75% of expenditure incurred after 1 January 2007.

| <b>Scheme</b>  | <b>Latest Expenditure Deadline</b>                                      |
|--|---|
| Urban Renewal  | 31 July 2008  |
| Town Renewal   | 31 July 2008  |
| Rural Renewal  | 31 July 2008  |
| Living over the Shop                                   | 31 July 2008  |
| Accelerated Capital Allowances for Hotels              | 31 July 2008  |
| Holiday Camps  | 31 July 2008  |
| Holiday Cottages                                       | 31 July 2008  |
| Student Accommodation                                  | 31 July 2008  |
| Multi-Story Car parks                                  | 31 July 2008  |
| Park and Ride Facilities                               | 31 July 2008  |
| General Rent Refurbishment Schemes ("Section 23 type") | 31 July 2008  |
| Third Level Educational Buildings                      | 31 July 2008  |
| Sports Injury Clinics                                  | 31 July 2008  |
| Residential Units associated with Nursing Homes        | 30 April 2010   |
| Nursing Homes  | 30 June 2011  |
| Mental Health Centres                                  | 30 June 2011  |
| Convalescent Homes                                     | 30 June 2011  |
| Childcare Facilities                                   | 31 March 2012   |
| Mid-Shannon Corridor                                   | 31 May 2013<br>Extension to 31 May 2015<br>subject to Ministerial Order |
| Private Hospitals                                      | 31 December 2013  |
| Specialist Palliative Care Units                       | Ministerial Order required<br>for commencement                          |

The expenditure deadlines set out above refer to the deadlines for construction, refurbishment etc. of the property. A purchaser of a property on a date later than the above date may qualify for allowances or reliefs. However, Finance Act 2011 provisions as detailed below may change this position.

## Restrictions on use of allowances

### 1. Use against total income

In many cases the ability of passive investors in buildings qualifying for allowances under one of the above special incentive schemes to offset the allowances against total income is restricted. Instead in many cases the allowances can be offset against rental income only.

Where Section 23 type relief is available this is allowed only against rental income.

### 2. Restriction of relief for high earners

There is a limit on the use of specified tax reliefs by individuals with 'adjusted income' over €125,000. The specified tax reliefs are restricted to €80,000 or 20% of the reliefs due before the restriction, whichever is the greater. Tapering relief applies to individuals with income between €125,000 and €400,000. For a married couple each spouse has an independent cap of €125,000. All individuals with specified tax reliefs must file an annual tax return. For tax years 2007 through to 2009 a 50% restriction applied to individuals with 'adjusted income' above €250,000.

### 3. Finance Act 2011

Finance Act 2011 includes provisions which will have a significant impact on investors in special incentive scheme properties. These provisions will only take effect on the issue of a commencement order following publication of an economic impact assessment of the proposals. Therefore, until this commencement order is made the position with regard to allowances and reliefs under special incentive schemes is unchanged.

The Finance Act 2011 provisions are as follows:

1. Section 23 type reliefs and capital allowances under special incentive schemes will be restricted to offset against rental income from that property and will no longer be available for offset against rental income from other properties.
2. Where the tax life of a property has expired all unused allowances will be extinguished and not available for future use.
3. Where the tax life of a property has not expired a cut-off point will be introduced following which allowances may no longer be claimed.
4. The sale of a Section 23 property will continue to give rise to a clawback of allowances for the vendor, but the purchaser would not be entitled to relief.

## Balancing adjustments

If an asset on which capital allowances have been claimed is disposed of before the end of the tax life a balancing adjustment must be calculated, resulting in either a balancing allowance or balancing charge.

## 6. Capital gains tax

### Scope of tax

The following individuals are liable to capital gains tax (CGT):

- ▶ Individuals resident or ordinarily resident and domiciled in Ireland – on the disposal of worldwide assets.
- ▶ Individuals who are resident or ordinarily resident in Ireland, but non-domiciled – on Irish gains and on all other gains to the extent that the proceeds are remitted to Ireland.
- ▶ Non-resident, non-domiciled individuals – on the disposal of Irish-specified assets (e.g. Irish land or shares deriving the greater part of their value from Irish land).

### Calculation of gains

The gain is calculated by deducting the acquisition costs from the sales proceeds. Costs of disposal are also deductible. If the asset has been owned for more than 12 months and was acquired prior to 31 December 2002, the acquisition cost may be indexed to account for inflation up to 2003.

Indexation factors for disposals in 2011 are outlined in the table below.

| Year expenditure incurred | Indexation factor | Year expenditure incurred | Indexation factor |
|---------------------------|-------------------|---------------------------|-------------------|
| 1974/75                   | 7.528             | 1989/90                   | 1.503             |
| 1975/76                   | 6.080             | 1990/91                   | 1.442             |
| 1976/77                   | 5.238             | 1991/92                   | 1.406             |
| 1977/78                   | 4.490             | 1992/93                   | 1.356             |
| 1978/79                   | 4.418             | 1993/94                   | 1.331             |
| 1979/80                   | 3.742             | 1994/95                   | 1.309             |
| 1980/81                   | 3.240             | 1995/96                   | 1.277             |
| 1981/82                   | 2.678             | 1996/97                   | 1.251             |
| 1982/83                   | 2.253             | 1997/98                   | 1.232             |
| 1983/84                   | 2.003             | 1998/99                   | 1.212             |
| 1984/85                   | 1.819             | 1999/00                   | 1.193             |
| 1985/86                   | 1.713             | 2000/01                   | 1.144             |
| 1986/87                   | 1.637             | 2001                      | 1.087             |
| 1987/88                   | 1.583             | 2002                      | 1.049             |
| 1988/89                   | 1.553             | 2003 <i>et seq</i>        | 1.000             |

## Exemptions and reliefs

- ▶ Annual exemption of €1,270.
- ▶ Gains made on tangible moveable assets sold for €2,540 or less.
- ▶ Gains made on wasting tangible moveable assets.
- ▶ Gains on the disposal of a principal private residence (or a dwelling house occupied rent free by a dependent relative), provided the proceeds of sale do not reflect any development value.
- ▶ Prize bonds and lottery winnings.
- ▶ Gains from the sale of Irish Government securities.
- ▶ Gains arising to a sporting body where the gain is applied solely for the promotion of games and sports.
- ▶ Gains arising to a registered trade union or approved body where the gain is applied solely towards the objectives of the body in question.
- ▶ Gains made by a superannuation fund.
- ▶ Gains on the transfer of a site from parent to child to enable the child to construct a principal private residence, provided the market value of the site does not exceed €500,000 and the site area transferred does not exceed 1 acre exclusive of the site on which the residence is to be built. The relief will be clawed back if the child disposes of the site without having constructed a dwelling house on the site and occupied it as a principal private residence for a period of at least 3 years.
- ▶ Gains made by Irish companies on the disposal of substantial shareholdings in trading subsidiaries where the subsidiaries are located in EU countries or countries with which Ireland has signed a tax treaty.
- ▶ Retirement relief on the disposal of chargeable business assets or farming assets owned for 10 years or more by an individual aged at least 55 years. The relief is restricted to proceeds of €750,000 where the sale is to a third party. However, there is no restriction on a disposal to a child, including a niece or nephew, who has worked full-time in the business or farm for 5 years prior to the transfer. Relief will be clawed back if the assets are disposed of by the child within 6 years of the original transfer. Payments under a buyback or redemption of shares which are not treated as a distribution and which meet the conditions to qualify for CGT treatment are within the scope of retirement relief. An individual does not have to retire to avail of this relief.
- ▶ Gains on the disposal of certain fine art objects where the object has been on loan to and on public display in a gallery or museum in the State for the previous 10 years. In order to qualify, the object must have had a market value of not less than €31,740 when it was loaned to the approved body.
- ▶ Gains on the disposal of small sites are exempt from the 80% tax rate applicable to windfall gains on rezoned land (see below). A small site is one that does

not exceed 0.4037 hectares (one acre) in size and whose market value at the time of disposal does not exceed €250,000. This exemption applies to disposals made on or after 30 October 2009.

### **Windfall tax - Rezoning**

Gains on land that are attributable to a “material contravention” decision by a planning authority are subject to a 80% windfall tax rate. This applies to land disposals by individuals or companies which take place following a “material contravention” decision that is made on or after 4 February 2010.

A material contravention decision refers to the granting of planning permission by a planning authority which contravenes, in a significant way, the Development Plan for a particular area (i.e. rezoning).

### **Losses**

Losses that arise on the sale of assets can be offset against chargeable gains arising in the same year. Unused losses may be carried forward and offset against future gains. Losses arising on a disposal of development land may only be offset against gains made on the disposal of development land.

Indexation cannot be used to:

- ▶ Convert an actual gain into an allowable loss or
- ▶ Increase an actual loss

Any losses that arise from arrangements where the main purpose or one of the main purposes is to secure a tax advantage are disallowed i.e. no real economic loss has occurred. This applies to disposals made on or after 4 February 2010.

### **Rate of tax**

The rate of CGT for disposals on or after 8 April 2009 is 25%. Certain foreign life assurance policies are taxable at 40%.

### **Clearance certificates**

A clearance certificate is required where sales proceeds from certain assets, such as land, exceed €500,000. Otherwise, the purchaser (or his agent) must deduct CGT at 15% from the sales proceeds and pay this to the Collector-General. This must be paid within 30 days of sale and will be allocated as a credit against the CGT payable by the vendor.

## Companies and chargeable gains

Chargeable gains realised by resident companies are subject to corporation tax at an effective rate of 25% for disposals on or after 8 April 2009. For details of preliminary tax and filing dates, see Chapter 9: Corporation Tax. However, gains deriving from disposals of development land (assuming such a gain is not taxable as part of a trade of dealing in developing land) are subject to CGT, as are chargeable gains made by non-resident companies on disposal of Irish-specified assets.

## Payment of CGT

| Disposal of asset                  | Payment of CGT                   |
|------------------------------------|----------------------------------|
| Between 1 January and 30 November  | Due 15 December in that tax year |
| Between 1 December and 31 December | Due by the following 31 January  |

## CGT returns

Capital gains for a year of assessment must be included in the tax return due for filing by 31 October in the year following the year of assessment.

## 7. Capital acquisitions tax

### Scope of tax

Capital acquisitions tax (CAT) is a tax levied on the recipient of gifts and inheritances.

In respect of gifts and inheritances received on or after 1 December 1999, a charge to CAT arises where:

- ▶ the donor is resident or ordinarily resident in Ireland; or
- ▶ the beneficiary is resident or ordinarily resident in Ireland; or
- ▶ the gift or inheritance consists of Irish situate property.

From 1 December 2004, if a donor or beneficiary is non Irish domiciled, they will not be treated as resident or ordinarily resident unless they have been resident in Ireland for the 5 consecutive years immediately preceding the year of the gift or inheritance and are also resident or ordinarily resident in that year.

In respect of gifts or inheritances received prior to 1 December 1999, a charge to CAT arose where either:

- ▶ the donor was domiciled in Ireland at the date of the gift or the date of the inheritance; or
- ▶ the gift or inheritance consisted of Irish situate property.

Specific rules apply to trusts and appointments from certain trusts settled prior to 1 December 1999 which remain chargeable under the pre-December 1999 charging provisions.

### Tax-free thresholds

The beneficiary is allocated a tax-free threshold depending on their relationship with the donor. There are three tax-free threshold groups and the table below shows the group threshold amounts applying to gifts and inheritances taken on or after 8 December 2010.

| Group | Relationship to donor   | Group threshold from 8 December 2010 to 31 December 2011 |
|-------|---|--|
| A     | Applies where the beneficiary is a child (including adopted child, step-child and certain foster children) or minor child of a predeceased child of the donor. Parents also fall within this threshold where they take an inheritance of an absolute interest from a child. | €332,084   |
| B     | Applies where the beneficiary is a brother, sister, a child of a brother or a child of a sister, or lineal ancestor or lineal descendant of the donor   | €33,208  |
| C     | Applies in all other cases  | €16,604  |

## Calculation of tax

Any prior benefit (gift/inheritance) received since 5 December 1991 within the same group threshold is aggregated with the current benefit for the purposes of determining whether any tax is payable on the current benefit.

CAT is charged on the excess of the aggregate current and prior benefits after deducting the relevant threshold amount at the following rates for gifts and inheritances taken between:

|   |     |
|---|-----|
| <b>1 December 1999 and 19 November 2008</b> | 20% |
| <b>20 November 2008 and 7 April 2009</b>    | 22% |
| <b>8 April 2009 and forward</b>             | 25% |

## Exemptions

- ▶ A gift or inheritance received from a spouse.
- ▶ First €3,000 of all gifts taken from each disponent in any one calendar year.
- ▶ An inheritance taken by a parent on the death of a child to whom either parent had made a taxable gift or inheritance in the previous 5 years.
- ▶ A gift or inheritance for public or charitable purposes.
- ▶ A gift or inheritance of a dwelling house where the beneficiary had occupied the house as his/her main residence for 3 years prior to the gift or inheritance, and continues to occupy it as his/her main residence for a further 6 years may be exempt.

## Reliefs

- ▶ Where a gift or inheritance consists of agricultural property, the market value of the agricultural property may be reduced by 90% provided certain conditions are met.
- ▶ Where a gift or inheritance consists of business property, the value of the business may be reduced by 90% provided certain conditions are met.
- ▶ Where capital gains tax (CGT) and capital acquisitions tax (CAT) arise on the same event, the CGT paid can be credited against the CAT liability arising provided the property is not disposed of within 2 years commencing on the date of the gift/inheritance.

## Administration and payment

### 1. Mandatory e-filing

Electronic filing of CAT returns through Revenue's online service (ROS) is mandatory as and from 14 June 2010. A paper return may only be filed where no relief/exemption/credit is being claimed (other than the small gift exemption) and the benefit taken is an absolute benefit without conditions or restrictions.

## 2. Compliance - Fixed pay and file date

For gifts and inheritances with a valuation date in the 12 month period ending on the previous 31 August a return must be delivered and the CAT liability paid by:

| Valuation date            | Pay and file date                  |
|---------------------------|------------------------------------|
| 1 January - 31 August     | 30 September of the same year      |
| 1 September - 31 December | 30 September of the following year |

## 3. Failure to pay and file

Failure to deliver a return and discharge a CAT liability by the specified pay and file date will give rise to interest and a surcharge also being charged.

## 4. Payment of CAT

Payment of CAT and approved retirement fund tax may be facilitated by the use of certain approved insurance policies, the proceeds of which are exempt from CAT provided they are used to pay the tax liability.

A beneficiary may opt when completing their return to pay their CAT liability by monthly instalments over a period not exceeding 5 years in certain circumstances. Where the instalment option is availed of interest on the outstanding tax accrues.

## Discretionary trust tax

A once-off charge to discretionary trust tax arises at a rate of 6% on the value of the assets held in a discretionary trust on the latest of the following dates:

- ▶ the date on which the property becomes subject to the trust;
- ▶ the date of death of the settlor;
- ▶ the date on which there are no principal beneficiaries of the trust aged under 21 years.

(The principal beneficiaries are the spouse, the children and children of a predeceased child of the settlor). A refund of 3% of the tax may apply where trust assets are appointed out of the trust within 5 years. A 1% annual charge applies to property held in a chargeable discretionary trust on 31 December each year (the "chargeable date").

A return must be delivered and the annual charge paid within four months of the chargeable date.

## 8. Stamp duty

### Rate of tax

The stamp duty rate depends on the property being transferred.

### Stocks and marketable securities

The rate applicable is 1%.

### Non-residential property

Non-residential property is any property other than residential property, stocks or marketable securities or policies of insurance e.g. non-residential land and buildings, goodwill, book debts, cash on deposit and the benefit of contracts.

The non-residential property rates are:

| Consideration (€) | Rate of stamp duty on non-residential property |
|-------------------|--|
| Up to 10,000      | Exempt   |
| 10,001 - 20,000   | 1%   |
| 20,001 - 30,000   | 2%   |
| 30,001 - 40,000   | 3%   |
| 40,001 - 70,000   | 4%   |
| 70,001 - 80,000   | 5%   |
| Over 80,000       | 6%   |

### Residential property

Residential property includes both new and second hand dwellinghouses and apartments and applies to first time purchasers, owner occupiers and investors.

The stamp duty rates applicable from 8 December 2010 are:

| Consideration    | Rate of stamp duty on residential property |
|------------------|--|
| Up to €1,000,000 | 1%   |
| Over €1,000,000  | 2% of the excess over €1,000,000           |

Transitional measures apply to anyone who entered into a contract to acquire residential property prior to 8 December 2010 and who completes a conveyance of that property before 1 July 2011.

## Leases

Stamp duty is paid on (1) the rent and (2) the premium, on the granting of a lease.

(1) The rate of stamp duty paid on the rent depends on the term of the lease.

| Term of lease              | Rate of stamp duty         |
|----------------------------|----------------------------|
| 0 - 35 years or indefinite | 1% of average annual rent  |
| 36 - 100 years             | 6% of average annual rent  |
| Over 100 years             | 12% of average annual rent |

(2) Any premium payable under the lease is assessed to duty under either the residential or non-residential property rates accordingly (see above).

No stamp duty is payable on a lease of residential property for a term of less than 35 years or for an indefinite term, provided the rent is less than €30,000 per annum.

## Cheques, bank cards, policies of insurance

| Type of card   | Stamp duty per annum (€)   |
|--|--|
| Credit card  | 30   |
| ATM card   | 2.50   |
| Laser card   | 2.50   |
| Combined ATM and Laser card  | 5  |
| Cheque   | 0.50 per cheque  |
| Insurance Policy (Non -Life)   | 1.00 per policy  |
| Non-Life Insurance Levy on Premiums  | 3% of premium  |
| Life Assurance levy on Premiums (excludes amounts received in respect of pension business & reinsurance) | 1% of premium  |
| Health Insurance levy  | 66 - insured person < 18 years<br>205 - insured person >= 18 years |

## Exemptions and reliefs

- ▶ Transfers of property between spouses are exempt.
- ▶ Transfers of property between former spouses under any court order of the

Family Law or Family Law Divorce Acts on the dissolution of a marriage are exempt.

- ▶ Transfers of non residential property between certain related persons are subject to stamp duty at half the usual rate.
- ▶ Transfers of land to young trained farmers are exempt where certain conditions are met.
- ▶ Transfers of property between associated companies where certain conditions are satisfied are exempt.
- ▶ Transfers of shares or businesses as part of a reconstruction or amalgamation of companies provided certain conditions are satisfied are exempt.
- ▶ Transfers of intellectual property as defined are exempt.
- ▶ Transfers of shares the value of which does not exceed €1,000 are exempt.
- ▶ Intermediary relief is available on transfers of securities through the CREST system by recognised intermediaries subject to conditions.
- ▶ Transfers of certain financial services instruments are exempt.
- ▶ Transfers of shares in foreign companies provided they do not relate to Irish land or stock are exempt.
- ▶ The issue, transfer or redemption of an investment certificate as defined is exempt.
- ▶ Conveyance or transfer of units in investment undertakings and units in certain unit trusts as defined are exempt.
- ▶ Transfer of assets within an investment undertaking as defined are exempt.
- ▶ Instruments under which a foreign fund transfers its assets to a domestic fund in return for the issue of units in the domestic fund to either the holders of units in the foreign fund or the foreign fund directly are exempt.
- ▶ The transfer of loan capital of a company is exempt provided certain conditions are fulfilled.
- ▶ The transfer of a "greenhouse gas emission allowance" is exempt.

### **Administration and payment**

A stamp duty return must be filed in respect of every stampable instrument.

The stamp duty liability must be paid within 30 days of execution of the instrument (in practice Revenue allow 44 days for payment except in adjudication cases).



## Section 3 Corporate Tax Services

### 9. Corporation tax

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# Corporate Tax Services

## 9. Corporation tax

### Tax residency

Companies, regardless of their place of incorporation, are Irish tax resident if they are managed and controlled in Ireland. In addition, Irish-incorporated companies are treated as being Irish tax resident unless either of the following applies:

- ▶ the company or a related company carries on a trade in Ireland and either of the following conditions is satisfied:
  - ▶ the company is ultimately controlled by persons resident in an EU Member State or in
  - ▶ a country with which Ireland has a double tax treaty; or
  - ▶ the company or related company is traded on a recognised stock exchange in an EU Member State or in a treaty country; or
- ▶ the company is regarded as not resident in Ireland under a double tax treaty.

### Charge to corporation tax

A company resident in Ireland for tax purposes is subject to corporation tax on its worldwide profits (income plus capital gains). A non-resident company trading through a branch or agency in Ireland is subject to corporation tax on trading profits of the branch or agency, other income from property or rights used and chargeable gains on the disposal of Irish assets used or held for the purposes of same. A non-resident company is liable to income tax in Ireland on Irish source income not derived from a branch or agency.

### Rates of tax

The following rates of corporation tax apply:

| Corporation tax   | Rate          |
|---|---------------|
| Standard rate (applies to trading income)                 | 12.5%         |
| Higher rate (applies to income other than trading income) | 25%           |
| Foreign dividends   | 0%/12.5%/25%* |

*\*The 0% rate applies to distributions received from non-resident portfolio investment companies resident in an EU or treaty country, where the distribution is treated as trading income in the hands of the Irish recipient. The 12.5% rate applies in general to dividends out of trading profits earned by companies resident in a treaty partner country or an EU Member State or which are not resident in a treaty or EU country but which are owned directly or indirectly by a company which is publicly quoted.*

### **Start-up companies**

A three-year exemption from taxation on certain trading profits and capital gains (subject to conditions) applies to new companies commencing to trade in 2009, 2010 and 2011. For accounting periods commencing on or after 1 January 2011, the relief is linked to the amount of employers' PRSI paid in the accounting period, subject to a maximum of €5,000 per employee and an overall limit of €40,000.

### **Close companies**

Undistributed investment and rental income of a closely held company is subject to a 20% surcharge if it is not distributed within 18 months of the end of the accounting period in question. A closely held professional services company is additionally subject to a 15% surcharge on 50% of its undistributed trading income.

### **Relief for trading losses**

Subject to restrictions, the general rule is that trading losses may be used to reduce other income and chargeable gains in the current year or the preceding year (provided the same trade was then carried on) or they may be carried forward, without time limit, for offset against future income from the same trade. However, trading losses incurred in a 12.5% activity cannot be set against income taxed at the 25% rate, but may be used to offset corporation tax payable in the current or preceding period on a value basis.

### **Groups of companies**

Group relief for trading losses and excess charges on income is available if all of the companies are in a 75% group and are tax resident in the EU or in European Economic Area states (excluding Liechtenstein).

Loss relief was historically restricted to losses incurred in a business carried on by a company subject to Irish corporation tax. However, group relief is now available for certain 'trapped' trading losses incurred by non-Irish 75% subsidiaries resident in an European Economic Area state (except Liechtenstein). In this regard a 'trapped' loss is basically a loss that cannot theoretically ever be used elsewhere.

In a 75% group, assets can be transferred without generating a chargeable gain. A non-resident company that is resident in an EU Member State, Iceland or Norway may be considered when determining whether a group exists for chargeable gains purposes. Assets transferred to or from Irish branches of EU, Icelandic or Norwegian resident companies can qualify subject to certain conditions.

A 51% subsidiary resident in Ireland may pay dividends free of dividend withholding tax (see below) without the Irish resident parent company making a formal declaration. Withholding tax is not imposed on interest and royalty payments between members of a 51% group.

## Dividend Withholding Tax (DWT)

Dividend Withholding Tax (DWT) applies at a rate of 20% to dividends and other distributions made by Irish resident companies. Exemptions apply to dividends and other distributions to certain shareholders, such as:

- ▶ Irish resident companies;
- ▶ certain residents of EU Member States or tax treaty countries;
- ▶ non-resident companies controlled by residents of EU Member States or tax treaty countries;
- ▶ non-resident companies whose shares are regularly traded on a recognised stock exchange in an EU Member State (including Ireland), in a tax treaty country or in another country approved by the Minister for Finance, or 75% subsidiaries of such companies. Exemptions are also available where the recipient is wholly owned by two or more such quoted companies.

With effect from 1 January 2009, the above 'treaty country' references are extended to any country with which Ireland has signed a double taxation agreement.

Detailed certification procedures currently apply to some exemptions from DWT. However, from 3 April 2010, a self-assessment system applies in respect of distributions to non-resident corporate shareholders. Therefore, audit certificates and certificates of residence are no longer required to be provided by the non-resident to support the position that the DWT exemption applies.

DWT does not apply to dividends covered by the EU Parent-Subsidiary Directive, although anti-avoidance provisions prevent the use of EU holding companies to avoid DWT. Distributions paid out of certain types of exempt income, such as exempt woodland income are not subject to DWT.

Companies must file a DWT return within 14 days after the end of the calendar month of distribution. The return is required regardless of whether DWT applies to the distributions. Any DWT due must be paid to the Collector-General when the return is filed.

## Irish transfer pricing rules

The key features of this regime are as follows:

- ▶ The regulations are effective for accounting periods beginning on or after 1 January 2011.
- ▶ The regulations apply to any 'arrangement' between associated enterprises involving goods, services, money or intangible assets, but only where those transactions meet the definition of being an Irish **trading** transaction for one or both of the parties.
- ▶ The regulations only apply where Irish trading receipts are understated or trading expenses are overstated.

- ▶ 'Grandfathering provisions' apply generally to all existing transactions where the terms are agreed prior to 1 July 2010
- ▶ New arrangements entered into after this time or changes in the agreed pricing terms of existing arrangements are within the scope of the new rules.
- ▶ To establish an arm's length price, the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations is adopted.
- ▶ Records need to be kept sufficient to support the arm's length nature of the price.
- ▶ Transfer pricing documentation where required should be prepared on a timely basis.
- ▶ The rules apply to both domestic and cross-border transactions involving a company carrying on an Irish trade.
- ▶ There are exemptions from the rules for small and medium sized enterprises, specifically companies with fewer than 250 employees and either turnover of less than €50m or assets of less than €43m (on a Group-wide consolidated basis).
- ▶ Auditing of transfer pricing cases is restricted to specifically designated people in the Irish Revenue Commissioners.
- ▶ There is a mechanism to eliminate double taxation in domestic transactions.

### Headquarters and holding companies

An exemption from capital gains tax applies where an Irish holding company disposes of shares in another company (the 'investee' company) where, at the time of disposal, the following tests are met:

- ▶ the investee company is resident for tax purposes in Ireland, in another EU Member State or in a country with which Ireland has a tax treaty;
- ▶ the holding company has held, directly or indirectly, for a period of at least 12 months ending in the previous 24 months, a minimum holding of 5% of the shares in the investee company. This test may be met by including shareholdings held by other members of the same 51% group; and
- ▶ the investee company is wholly or mainly a trading company or, taken together, the holding company and its 5% group and the investee company are wholly or mainly a trading group.

If a loss occurs, where a gain would have been exempt, the loss cannot be used to shelter other gains. The exemption applies automatically. There is no claim, election or ruling required.

Distributions between Irish tax resident companies are treated as Franked Investment Income and not liable to corporation tax. The 12.5% standard rate of corporation tax applies (upon election) to certain "trading" dividends received from companies resident

in the EU member states or tax treaty countries or which is controlled directly or indirectly by a publicly quoted company (see above). Otherwise, the 25% rate applies.

### **Foreign tax relief**

Irish companies in receipt of foreign dividends are taxed at a rate of 25%, 12.5%, or 0% with a credit for any underlying tax. Foreign tax relief is available as either a deduction in calculating taxable income or as a credit against Irish tax. Ireland has implemented the EU Parent - Subsidiary Directive (as amended). These provisions, which overlap to a significant extent with the unilateral credit relief measures (described below), have been extended to Switzerland.

Unilateral credit relief may be available for Irish resident companies, or Irish branches of companies resident in the EU, Iceland or Norway, receiving dividends from foreign subsidiaries. Under the measures, such a company receiving a dividend from a 5% subsidiary is entitled to reduce the Irish tax on the dividend by any direct or withholding tax imposed on the dividend and by an appropriate portion of the foreign tax imposed on the income underlying the dividend. For this purpose, a 5% subsidiary relationship exists if the parent company owns, directly or indirectly, 5% of the voting rights. Unilateral credit relief may be claimed even if a double tax treaty applies. This is useful if the relief provided under a tax treaty is not as beneficial as unilateral tax relief.

A parent company receiving a dividend from its 5% subsidiary (whether resident in a tax treaty country or not) that itself has subsidiaries is entitled to reduce the Irish tax by an appropriate amount of tax (direct or withholding) and by the underlying tax borne by that subsidiary and its subsidiaries, and so on down through the chain of companies.

This relief is subject to the following conditions: the payer of the dividend must be a 5% subsidiary of the recipient of the dividend; and the distributing company must be connected with the ultimate parent company. A company is connected if 5% of its voting rights are held, directly or indirectly, by the ultimate parent company.

The holding company regime allows companies to 'mix' the credits for foreign tax on different dividend streams (from 5% subsidiaries) for the purpose of calculating the overall tax credit in Ireland (this is called 'onshore pooling'). Any excess credit balance unused can be carried forward indefinitely and offset in subsequent periods.

The dividend-paying company can be resident in any country. However, excess tax credits on dividends at 12.5% can only be offset against tax on dividends taxed at this rate. These provisions apply to shareholdings of companies resident anywhere, unlike the rules for capital gains tax relief (see 'Headquarters and holding companies'), which apply only to treaty partners and EU Member States.

An Irish unilateral tax credit for taxes equivalent to corporation tax and capital gains tax paid by a branch in a country with which Ireland does not have a tax treaty, or where the treaty may not provide for relief, is available.

Where an Irish company has branches in more than one country, the Irish company can pool its foreign tax credits between different branches. Excess unilateral credits on branch profits may be carried forward for use in a subsequent period.

Unilateral credit relief is available for tax suffered on royalty flows received from non-treaty countries. This relief is available where such royalty flows are treated as trading income in the hands of the Irish taxpayer.

Unilateral credit relief exists for capital gains arising in countries where the tax treaty between Ireland and that country predates the introduction of capital gains tax in 1975.

### **Research and development credit**

Incremental expenditure on qualifying research and development (R&D) incurred by companies in respect of R&D activities carried on by them in the European Economic Area qualifies for a corporation tax credit of 25% (20% for accounting periods commencing before 1 January 2009). The qualifying incremental expenditure is calculated by reference to the base year spend in 2003.

This credit is in addition to any existing deduction or capital allowances for R&D expenditure and means an effective benefit of up to 37.5% of R&D expenditure.

R&D credits that cannot be utilised in an accounting period can be carried forward indefinitely to future accounting periods. Excess R&D credits can be carried back against corporation tax paid in the immediately preceding accounting period. Any remaining excess credits can be refunded over a three year period. This enhancement of the R&D credit regime represents a significant cash-flow opportunity for loss-making companies. However, a 12 month time limit for submitting R&D claims applies.

### **Tax relief for acquisition of intangible assets**

The intangible assets regime enables Irish companies to claim tax relief in respect of capital expenditure incurred after 7 May 2009 on acquiring (both internally and externally) certain "specified" intangible assets. The definition of specified intangible assets is broad and includes, but is not limited to, brands, trademarks, patents, copyright, designs, know-how, some computer software, pharmaceutical authorisations and related rights, licenses and attributable goodwill.

Relief is available in accordance with the write-off period of the assets for accounting purposes or an election may be made to allow the write off over 15 years. The relief may be used to offset income of the trade of exploiting the intangible assets and this "trade" is ring-fenced for the purposes of this relief. Therefore, excess allowances may be carried forward indefinitely but may only be offset against future trading income of the same trade which is derived from the use of the specified intangible assets.

Allowances and associated interest relief are capped at 80% of taxable profits from the exploitation of the specified intangible assets. On the disposal of a specified intangible asset, a balancing allowance or charge applies where the disposal occurs within 10 years of the beginning of the accounting period in which the asset was first provided (15 years for expenditure incurred before 5 February 2010).

## **International Financial Reporting Standards (IFRS)**

The starting point in preparing a corporation tax computation is the accounts of a company prepared under the ordinary principles of commercial accounting. Therefore, any change to these principles will have a tax impact.

The change in Irish accounting principles to International Financial Reporting Standards (IFRS), or to Irish generally accepted accounting practice (GAAP) embodying IFRS, may result in major changes to the tax treatment of certain items. Detailed rules have been introduced to address this transition.

### **Self-assessment - Pay and file**

A company's corporation tax liability is determined by self-assessment. Preliminary tax is payable in two instalments if the company is not a 'small company' (see below). The first instalment is due on the 21<sup>st</sup> day of the sixth month of the accounting period (assuming the accounting period ends after the 21<sup>st</sup> day of a month). This instalment must be the lower of 50% of the tax liability for the preceding year or 45% of the tax liability for the current year. The second instalment is due 31 days before the end of the accounting period (see below) and must bring the aggregate preliminary tax payments up to 90% of the tax liability for the year. If the due date of this final instalment of preliminary tax falls after the 21<sup>st</sup> day of the month, the 21<sup>st</sup> day of that month becomes the due date.

For 'small companies' (see below), preliminary tax is payable in a single instalment 31 days before the end of the accounting period. If the due date for payment falls after the 21<sup>st</sup> of the month, the 21<sup>st</sup> day becomes the due date.

The preliminary tax payment must normally amount to at least 90% of the tax liability for the year. However, a 'small company' may either follow the above rule or pay preliminary tax equal to 100% of its tax liability for the preceding year. A company qualifies as a 'small company' if its corporation tax liability for the preceding year did not exceed €200,000.

Any balance of corporation tax due is payable by the due date for the filing of the corporation tax return (Form CT1). This is normally nine months after a company's accounting year end. When the nine-month period ends on or after the 21<sup>st</sup> day of a month, the 21<sup>st</sup> day of that month becomes the due date for filing the Form CT1 and the payment of any balance of corporation tax.

In addition, a start-up company with a corporation tax liability of less than €200,000 is relieved from having to make any corporation tax payment until its tax return filing date.

A company that pays more than 90% of its corporation tax liability for a period as preliminary tax can elect jointly with another group company that has not met the 90% test to treat the excess as having been paid by that latter company for interest calculation purposes only. Certain conditions apply.

Similar relieving provisions apply in respect of companies obliged to pay a first instalment of preliminary tax.

Companies that file tax returns and make all tax payments electronically may avail of a maximum two day extension to return filing and payment deadlines.

Companies that do not comply with filing obligations are subject to a surcharge of 5% or 10% of the tax payable, up to a maximum ceiling depending on how late the return is filed. Late filers may also suffer a restriction on offsetting losses against their own profits and those of group companies.

### Chargeable gains

See Chapter 6: Capital gains tax.

### Irish tax treaty network

The following 55 Double Tax Treaties are in force:

|                |             |                    |
|----------------|-------------|--------------------|
| Australia      | Hungary     | Poland             |
| Austria        | Iceland     | Portugal           |
| Bahrain        | India       | Romania            |
| Belarus        | Israel      | Russian Federation |
| Belgium        | Italy       | Serbia             |
| Bulgaria       | Japan       | Singapore          |
| Canada         | Korea       | Slovakia           |
| Chile          | Latvia      | Slovenia           |
| China          | Lithuania   | South Africa       |
| Croatia        | Luxembourg  | Spain              |
| Cyprus         | Macedonia   | Sweden             |
| Czech Republic | Malaysia    | Switzerland        |
| Denmark        | Malta       | Turkey             |
| Estonia        | Mexico      | United Kingdom     |
| Finland        | Moldova     | USA                |
| France         | Netherlands | Vietnam            |
| Georgia        | New Zealand | Zambia             |
| Germany        | Norway      |                    |
| Greece         | Pakistan    |                    |

The agreement with Hong Kong is effective from 1 January 2012. Agreements with Albania, Bosnia Herzegovina, Kuwait, Montenegro, Morocco, Singapore and United Arab Emirates have been signed, but are not yet in force. However, certain Irish domestic tax exemptions available to residents of treaty countries are extended to residents of such countries where a double taxation agreement has been signed but is not yet in force (as and from the date of signature of that agreement). The entry into force provisions in the proposed tax treaties with Bosnia Herzegovina, Kuwait, Morocco and United Arab Emirates provide that each treaty will apply for income tax and corporation purposes from 1 January of the year in which the treaty enters into force. Consequently, if these treaties enter into force in 2011, they will apply retrospectively from 1 January 2011.

A new agreement which will replace the existing agreement with Germany was signed on 30 March 2011. If this treaty enters into force in 2012, it will apply from 1 January 2013.

Ireland is also negotiating new double taxation treaties with Argentina, Armenia, Azerbaijan, Egypt, Panama, Saudi Arabia, Thailand, Tunisia and the Ukraine.

## Section 4 Indirect Tax Services

- 10. VAT
- 11. Customs duty,  
excise duty, vehicle  
registration tax and  
carbon tax

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# Indirect Tax Services

## 10. Value Added Tax (VAT)

### Taxable transactions

Value Added Tax (VAT) is chargeable on the supply of certain goods and services, and applies to each stage of the production and distribution cycle within Ireland.

Goods imported into Ireland from countries outside the EU are subject to VAT at the point of entry at the same rate applicable to the sale of these goods within Ireland.

Irish VAT-registered traders must self-account for VAT on receipt of goods from other EU Member States (known as intra-Community acquisitions). If the goods are used for the purpose of the trader's taxable activities, the trader will be entitled to claim a simultaneous VAT input deduction. Certain services, including advertising and legal services, received from abroad by traders in Ireland are subject to Irish VAT. Traders that obtain such services from abroad must self-account for VAT on the amount charged for those services. They are entitled to claim a simultaneous VAT input deduction depending on the use for which the services are purchased. If they are engaged in exempt activities only, they must register for VAT in order to account for VAT on the receipt of the service and will not be entitled to any input VAT deduction in this regard.

### Taxable persons

Any person, other than an employee, who supplies taxable goods or services within Ireland in the course of business and whose annual turnover exceeds, or is likely to exceed, €37,500 from the supply of services or €75,000 from the supply of goods, must register and account for VAT. Most non-established traders supplying taxable goods or services in Ireland are obliged to register and account for Irish VAT. Such traders not established in Ireland must register regardless of the value of supplies.

A person whose annual taxable turnover is below the appropriate threshold is not required to account for VAT, but may voluntarily elect to do so. The potential advantage in electing to register is that VAT-registered traders may claim a refund or credit for VAT paid on business purchases to the extent that such VAT relates to its taxable activities.

### Exempt transactions

A trader engaged in the provision of an exempt supply (including certain financial and insurance related services and specific medical and educational services) is not required to charge VAT on these supplies and is not entitled to deduct VAT on associated purchases, unless the person incurs VAT in connection with what are termed 'qualifying activities'. In this context, qualifying activities include supplies of certain financial services to non-EU customers and the transport of passengers outside Ireland.

## Rates of tax

VAT rates vary according to the goods or services supplied, as follows:

| Goods or services   | VAT rate |
|---|----------|
| Standard rate (goods or services not specifically categorised as exempt or subject to VAT at any of the rates listed below)   | 21%*     |
| Construction services, hotel accommodation, short-term car rentals, newspapers, magazines, electricity, hotel and restaurant meals, cinema admission, general agricultural and veterinary services, driving tuition, general repair and maintenance services. | 13.5%    |
| Horses, livestock and certain agricultural products   | 4.8%     |
| Items including children's clothing, certain food items excluding confectionary, oral medicines, books, certain medical equipment and appliances, and exported goods  | 0%       |

*\*The National Recovery Plan for Ireland states that the standard rate of VAT will increase from 21% to 22% in 2013 and to 23% in 2014.*

Taxable persons who derive 75% or more of their sales from the intra-community supply of goods from Ireland to VAT-registered traders in the EU and/or from the export of goods from Ireland to outside the EU may be entitled, subject to attaining the necessary authorisation, to receive most goods, services and imports at the zero rate (0%). This facility is known as a Section 13A authorisation and provides a cash flow benefit to qualifying companies which avail of this mechanism.

## Deductible VAT

A taxable person may deduct VAT paid on the purchase of most goods and services, as well as VAT paid on imported goods that are used for the purposes of its taxable activities. No deduction is allowed for tax paid on the purchase of goods and services used for any other purpose, including acquisitions for the provision of exempt supplies or any non-business purpose. VAT incurred on any of the following goods or services is not deductible whether the acquisition of the goods or services is for a taxable or other purpose:

- ▶ food and drink (unless for resale by a VAT registered trader);
- ▶ hotel and other accommodation with the exception of specific VAT incurred in connection with attendance at "qualifying conferences" (which are defined in VAT legislation);
- ▶ personal services for an employee, even if the expense is incurred for business purposes;
- ▶ entertainment expenses;
- ▶ purchase and hire of passenger motor vehicles with the exception of certain low CO2 emission cars used for at least 60% business purposes, on which 20%

of the VAT incurred on the purchase or hiring can, from 1 January 2009, be recovered; and

- ▶ the purchase or importation of petrol (other than as stock in trade).

## **VAT compliance**

### **Periodic VAT returns**

The standard period for making a VAT return is bi-monthly. Returns and payments due must be filed with the Collector-General no later than the 19th of the month following the end of each 2-month period. For example, a January/February VAT return must be filed by 19<sup>th</sup> March. Where returns and payments are made electronically, the deadline is extended by 4 days to the 23<sup>rd</sup> of the month. Many large companies are now required to submit returns electronically. Estimated or preliminary returns are not permitted.

For smaller traders, the frequency with which VAT returns can be filed depends on the annual VAT liability of the business. Traders with a yearly liability of €3,000 or less have the option of filing returns twice a year. For traders with a yearly liability between €3,001 and €14,400, the option of filing returns every 4 months is available.

Authorisation may be obtained to file VAT returns on a monthly basis where a taxpayer is in a permanent VAT repayment position.

Certain traders may be authorised to submit an annual return if they agree to pay a monthly amount by flexible direct debit. If a trader's liability for a year is less than the total of the direct debits, a refund of excess VAT will be paid. If the liability is greater, the excess must be paid with the final VAT return for a 12-month period. If the outstanding liability at year end exceeds 20% of the total liability for the year, the excess will be subject to interest charges of 0.0274% per day on outstanding amounts, backdated to the mid-point of the year.

Traders with low VAT liabilities may be permitted to make one annual VAT return without entering into a direct debit arrangement. Participation (not obligatory) is not available on the request of taxable persons, but is at the discretion of the Collector-General.

If a repayment of VAT arises, a registered trader is entitled to a refund. This will be made by the Collector-General and is normally paid directly to the bank account of the trader.

At year end, an Annual Return of Trading Details is also required to be submitted but this is a purely statistical return with no associated VAT liability. This Annual Return of Trading Details is a detailed analysis of the net amounts of supplies, purchases, imports and acquisitions of goods and services for the previous 12 months.

### **EU Sales Listings**

Traders who engage in intra-community supplies of goods to VAT registered recipients must complete periodic EU Sales Listings (known as VIES statements) that provide specific details of their trade (i.e. intra Community supplies of goods and certain transfers of goods) with traders in other Member States.

In general, EU Sales Listings in relation to intra-community supplies of goods are due to be submitted on a monthly basis. However, where the total value of intra-community supplies to VAT registered traders for a calendar quarter or any of the previous 4 calendar quarters does not exceed €100,000, the trader is allowed to submit EU Sales Listings on a quarterly basis. Returns are due by the 23<sup>rd</sup> of the month following the end of the period of return.

With effect from 1 January 2010, traders who supply taxable services to VAT registered customers in other EU Member States are required to complete EU Sales Listings reporting the intra-EU supplies of services falling under the business to business reverse charge procedure. The principle reporting timeframe is quarterly but traders may elect to file monthly and as above, the deadline in relation to these returns is the 23<sup>rd</sup> of the month following the end of the period of return.

EU Sales Listings must be completed electronically through the Revenue On-line System ("ROS"). In the case where there are different filing periods for goods and services i.e. the trader is required to file monthly EU Sales Listings for goods and quarterly EU Sales Listings for services, the details regarding services will be included in the third EU Sales Listing of the quarter.

## INTRASTAT

Traders who engage in intra-Community supplies or acquisitions of goods are obliged, subject to certain thresholds, to submit detailed statistical returns (known as INTRASTAT declarations). These provide information on the movement of goods from VAT-registered traders in EU Member States to other EU Member States.

The INTRASTAT threshold for Arrivals is €191,000 per annum.

The INTRASTAT threshold for Dispatches is €635,000 per annum.

INTRASTAT declarations (Arrivals and Dispatches) must be submitted for every calendar month. The due date for submission is the 10<sup>th</sup> working day immediately following the end of the month to which the return relates. Returns can be submitted electronically through ROS or submitted in paper format.

## Cross border refund applications

With effect from 1 January 2010, a new electronic VAT refund procedure ("EVR") applies in respect of all claims for refunds of VAT by EU established traders where the trader is not VAT registered in the EU Member State in which the VAT is incurred. In respect of Irish established traders, this new procedure means that such traders will be required to submit an electronic application directly to the Revenue Commissioners for a refund of VAT incurred in other EU Member States. The Revenue Commissioners will then forward the claim electronically to the tax authorities in the relevant EU Members States for processing. In respect of EU established but non-Irish VAT registered traders, when seeking a refund of Irish VAT, a claim must be submitted directly to the tax authorities in the Member State in which they are established and this will be forwarded from these tax authorities to the Irish Revenue Commissioners for processing. Applications must

generally be submitted by 30 September in the calendar year following the calendar year in which the expenditure was incurred. However, an extension to 31 March 2011 has been agreed by all EU Member States in respect of VAT incurred in 2009.

In respect of traders established outside the EU, refunds of Irish VAT continue to be made by way of 13<sup>th</sup> Directive refund applications. Applications for a refund in this regard must be submitted within six months after the end of the calendar year in which the relevant invoices were issued i.e. before 1 July each year.

## 11. Customs duty, excise duty, vehicle registration tax and carbon tax

### Customs duty

#### Import/tariff classification

Goods imported into the EU must be declared to the Customs authorities at the time of import. Customs duty is normally paid at the time of import and is calculated on the value of the goods and the duty rate appropriate to the tariff classification of the goods in question. Since the tariff classification of the goods determines the rate of duty, it is important that the correct 10-digit tariff code is used. It is possible to obtain a Binding Tariff Information (BTI) ruling from the Customs authorities in relation to the tariff classification of all imported goods. BTI rulings are legally binding throughout the 27 EU Member States.

#### Origin duty relief

Depending on the origin of the goods, there may be preferential duty rates available for imported goods. For example, the EU has negotiated a series of bilateral agreements with many countries (e.g. Chile, Iceland, Israel, Mexico, Norway, South Africa and Switzerland) whereby goods that meet certain origin criteria qualify for duty-free entry into the EU, with reciprocal treatment for EU goods upon arrival in the respective country. The EU has also agreed to grant preferential treatment to goods that originate in the developing countries of the world (e.g. most African and South American countries). It is necessary to have the relevant 'Certificate of Origin' to avail of this duty relief.

#### Duty relief procedures

The EU operates different procedures whereby manufacturers can benefit from a duty relief on imported raw material. These procedures, which require prior authorisation, are designed to help increase or maintain employment in the EU.

Manufacturers that import raw material and subsequently re-export the manufactured product outside the EU can benefit from these procedures. Duty relief is also available when the duty rate applicable to the manufactured product is less than the duty rate applicable to the imported raw material.

### Excise duty

Excise duty is imposed on a very select range of goods, known as excisable goods. In Ireland, excise duties are the third largest source of taxation, after VAT and income tax. The traditional excisable goods in Ireland are alcoholic beverages, mineral oils and tobacco products.

Excise duty also extends to a number of particular activities requiring a license including:

- ▶ betting;

- ▶ brewing of beer;
- ▶ retailing spirits (both 'on' license and 'off' license);
- ▶ operating as a wine dealer;
- ▶ selling liquefied petroleum gas (lpg);
- ▶ operating gaming machines; and
- ▶ operating amusement machines.

In most cases, excise duty is imposed on the manufacturer of the excisable goods, such as a brewery producing beer or a tobacco manufacturer making cigarettes. The excise duty is then passed on in the price of the goods to the ultimate consumers of the products.

### **Electricity**

The supply of electricity to non residential customers is liable to electricity tax.

### **Coal**

Coal is liable to mineral oil tax in certain circumstances.

### **Vehicle registration tax**

Vehicle registration tax (VRT) applies to new and used vehicles that are registered for the first time in Ireland.

The amount of VRT payable on any particular vehicle depends essentially on the category of the vehicle:

- ▶ Category A - Cars;
- ▶ Category B - Car-derived vans, jeep-derived vans, certain crew cabs and motor caravans;
- ▶ Category C - Commercial trucks;
- ▶ Category D - Special vehicles, such as ambulances, fire engines and refuse carts;
- ▶ Motorcycles.

In relation to categories A and B above, the VRT is calculated on the Open Market Selling Price (OMSP) at the appropriate VRT rate. The OMSP is determined by the Revenue Commissioners.

The rates of VRT are as follows:

### Category A (cars)

With effect from 1 July 2008, the VRT payable is based on the CO<sub>2</sub> (carbon dioxide) emissions of the engine. There are 7 emission bands:

| CO <sub>2</sub> emission band | CO <sub>2</sub> g/km | VRT rate    |
|-------------------------------|----------------------|-------------|
| A                             | 0 up to 120          | 14% of OMSP |
| B                             | Over 120 up to 140   | 16% of OMSP |
| C                             | Over 140 up to 155   | 20% of OMSP |
| D                             | Over 155 up to 170   | 24% of OMSP |
| E                             | Over 170 up to 190   | 28% of OMSP |
| F                             | Over 190 up to 225   | 32% of OMSP |
| G                             | Over 225             | 36% of OMSP |

The minimum amount of VRT payable on a Category A vehicle will be €280.

### Category B (car-derived vans)

The VRT rate is 13.3% of the OMSP or €125, whichever is the greater.

### Category C (commercial trucks)

The current VRT rate is a flat €50, regardless of the value of the vehicle. However, as of 1 May 2011, this will be increased to €200.

### Category D (special vehicles, e.g. ambulances)

These vehicles are exempt from VRT.

### Hybrid electric vehicles

A hybrid electric vehicle is a vehicle that derives its power from a combination of an electric motor and an internal combustion engine, and is capable of being driven on electric propulsion alone for a material part of its normal driving cycle. The vehicles must be series production vehicles. Remission or repayment of VRT up to a maximum of €1,500 applies in respect of certain hybrid electric vehicles until 31 December 2012. Remission or repayment of VRT up to a maximum of €2,500 applies in respect of certain plug-in hybrid electric vehicles until the same date.

### Flexible fuel vehicles

A flexible fuel vehicle is a vehicle that can achieve vehicle propulsion from an engine that is capable of using a blend of ethanol and petrol where such blend contains a minimum of 85% ethanol. The vehicle must be series production vehicle. Remission or repayment of VRT up to a maximum of €1,500 will apply in respect of certain flexible fuel vehicles.

Certain electric vehicles and motorcycles are exempt from VRT until 31 December 2012.

### Energy efficient cars

The use of environmentally friendly motor vehicles was made more attractive by the extension of the existing VRT exemption for certain electric vehicles and the VRT reliefs for plug-in hybrid vehicles by two years up to 31 December 2012, while the new car scrappage scheme introduced for the year 2010 has had its application extended to 30 June 2011. This scheme will provide VRT relief up to €1,250 per new car purchased where a car of 10 years or older is being scrapped, subject to a number of conditions.

### Motorcycles

In respect of motorcycles, scooters and certain all terrain vehicles, VRT is charged by reference to the cubic capacity of the engine as follows:

| Engine capacity | VRT rate  |
|-----------------|---|
| Up to 350cc     | €2 per cc   |
| 351cc upwards   | €2 per cc for the first 350cc, plus €1 per cc for every cc over 350cc |

The VRT chargeable can be reduced dependent on the age of the vehicle i.e. VRT is reduced by 70% for vehicles over 5 years old and less than or equal to 7 years old.

### Carbon tax

A carbon tax at a rate of €15 per tonne has been introduced on fossil fuels. The tax applies to petrol and auto-diesel and to home heating oils and gas. The application of the tax to coal and commercial peat is subject to a Commencement Order. Exemption from the tax will apply only to participants in the EU Emissions Trading Scheme (ETS) in respect of fuels covered, which excludes the supply of electricity from the tax. The National Recovery Plan for Ireland has indicated that that the rate of carbon tax will increase by €10 per tonne in 2012 and a further €5 per tonne in 2014.

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## About Ernst & Young Tax Services

Your business will only achieve its true potential if you build it on strong foundations and grow it in a sustainable way. At Ernst & Young, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our global teams of talented people bring you technical knowledge, business experience and consistent methodologies, all built on our unwavering commitment to quality service – wherever you are and whatever tax services you need.

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Our 25,000 tax people, in over 140 countries, are committed to giving you the quality, consistency and customisation you need to support your tax function. It's how Ernst & Young makes a difference.

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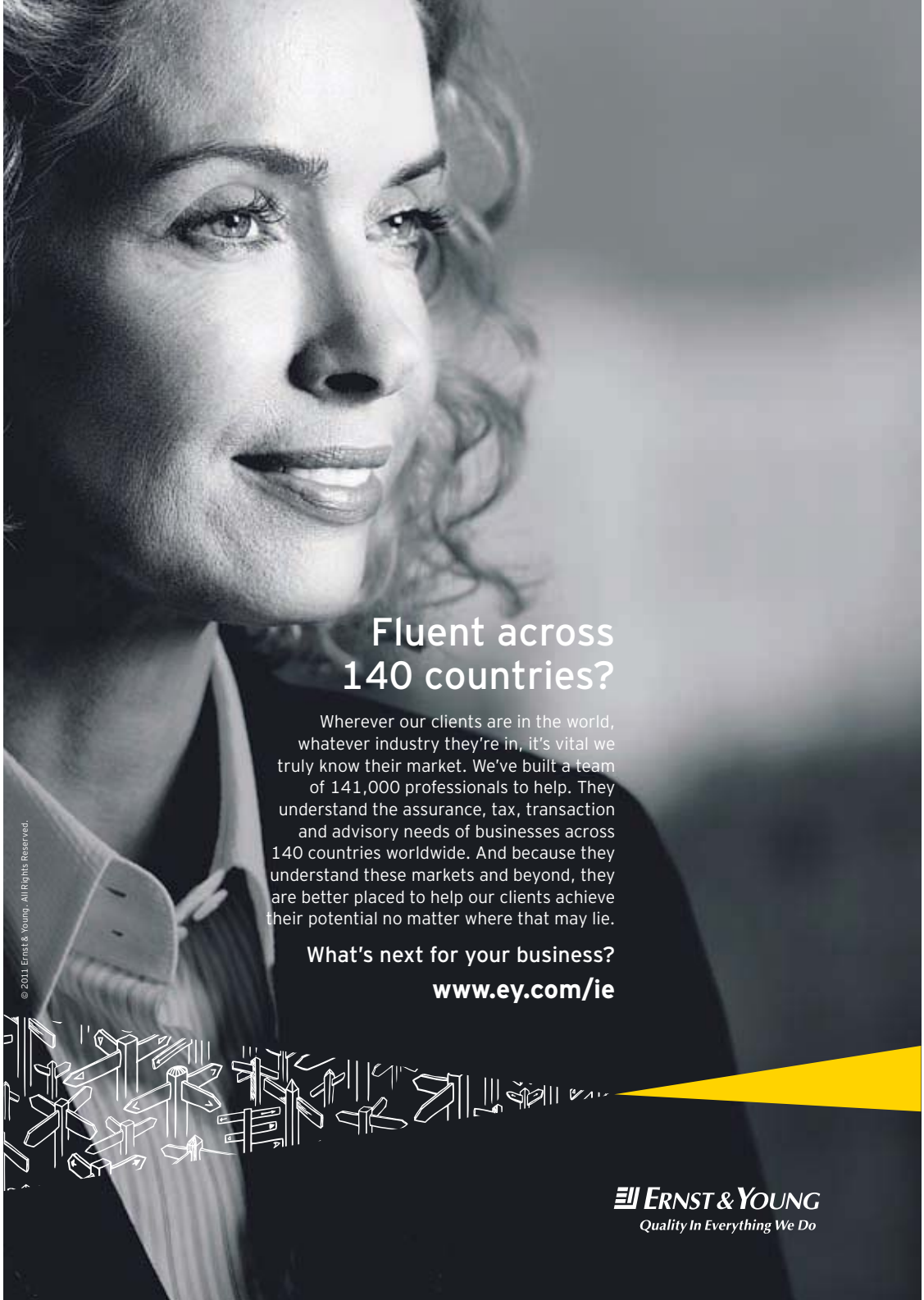
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