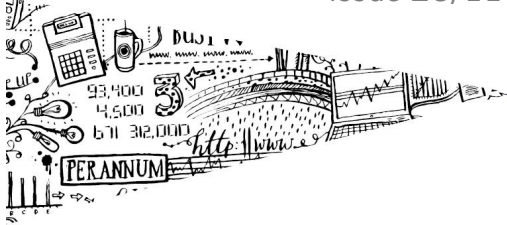


Tax alert Ireland

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Year-end tax considerations before 31 December 2011

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With the tax year end approaching it is time to review tax planning opportunities. Outlined below are a number of personal and employer planning opportunities which may reduce 2011 tax bills:

- pension contributions
- share schemes
- charitable donations
- capital gains tax
- gift tax exemption
- covenants
- service charges
- tuition fees
- time limits for making repayment claims
- loss relief claims
- residential lettings

Individuals/employees

Pension contributions

If the taxpayer is in pensionable employment, an additional voluntary contribution (AVC) can be made on or before 31 December 2011 and tax relief at source claimed (if paid through payroll), thereby saving income tax at the contributor's top rate. There is no pension relief available from the universal social charge (USC) and PRSI.

Contributions made after 31 December 2011, but before 1 November 2012, may also qualify for relief in 2011.

Self-employed individuals and those not in pensionable employments may also obtain tax relief on pension contributions.

Tax relief is available for personal contributions on an aged based percentage of earnings capped at €115,000 for 2011 (including ordinary contributions made during the course of the year and any AVCs already made through payroll).

Age	% of earnings (capped at €115,000 for 2011)
Up to 30	15%
30 but less than 40	20%
40 but less than 50	25%
50 but less than 55	30%
55 but less than 60	35%
60 and over	40%

There is speculation that Budget 2012 may provide for the anticipated reduction of income tax relief to 34% for pension contributions in 2012. If this comes to pass, it may be more attractive for those contributing at the higher rate to maximise their pension contributions before 31 December 2011.

Share Schemes

There have been significant changes to the tax treatment of employer sponsored share schemes, both Revenue approved and unapproved.

Income tax relief was withdrawn, with effect from 24 November 2010, on approved share option schemes (ASOS). While the income tax exemption remains for income gains on Approved Profit Sharing Schemes (APSS) and Approved Save As You Earn Schemes (SAYE), with effect from 1 January 2011, they are subject to employee PRSI and the USC on receipt of shares in the employer's company. All other share awards are subject to income tax, USC and employee PRSI with effect from 1 January 2011.

The table below summarises the current position with regards to the imposition of income tax, PRSI and USC on share awards. As may be noted below, it is worth considering, where possible, the acceleration of exercising/vesting awards which were the subject of a written agreement pre 1 January 2011 in order to maximise the employee PRSI saving available until 31 December 2011.

Irish Tax Treatment of Share Awards for 2011 and 2012 and subsequent years

Scheme	Award date	Income tax	PAYE	EE PRSI	ER PRSI	USC
Stock options	Before 1 Jan. 2011	Yes	No	No - if exercised before 1 Jan. 2012 <i>[Note 1]</i>	No	Yes
	On or after 1 Jan. 2011	Yes	No	Yes	No	Yes
Other share awards (including restricted stock units)	Before 1 Jan. 2011	Yes	Yes	No - if shares received before 1 Jan. 2012 <i>[Note 1]</i>	No	Yes
	On or after 1 Jan. 2011	Yes	Yes	Yes	No	Yes
Save As You Earn (SAYE) <i>[Note 2]</i>	Before 1 Jan. 2011	No	No	No - if exercised before 1 Jan. 2012 <i>[Note 1]</i>	No	Yes
	On or after 1 Jan. 2011	No	No	Yes	No	Yes
Approved profit sharing scheme (APSS) <i>[Note 2]</i>	On or after 1 Jan. 2011 (appropriation of shares)	No	No	Yes	No	Yes

Note 1

Share awards which were witnessed in writing prior to 1 January 2011 are exempt from employees PRSI contributions. In a statement dated 23 August 2011, the Minister for Social Protection clarified that the exemption will however only apply if the shares which are the subject of the award are received before 1 January 2012. With the exception of shares already held in an Employee Share Ownership Trust before 1 January 2011, all share based remuneration received on or after 1 January 2012 will be liable to employee PRSI contributions (currently 4%), regardless of the date of the original award.

Note 2

Awards under APSS and SAYE are exempt from income tax, but are liable to USC and employee PRSI contributions.

Charitable donations

Donations of €250 or more made by a PAYE taxpayer to a registered charity are treated as being made out of after-tax income. The Revenue Commissioners will make a tax refund to the charity of an amount equal to the tax paid on the regrossed value of the donation. This will be at a rate of 20% or 41%, depending on the tax rate of the donor.

Self-employed individuals may make a contribution of €250 or more to a registered charity and deduct the contribution from income for tax purposes. Tax relief is available at the donor's top rate of tax.

Capital gains tax (CGT)

The first €1,270 of capital gains made in a tax year by an individual is exempt from tax. This exemption is not transferable between spouses. Unused exemptions cannot be carried forward to the next tax year. In addition, capital losses arising on or before 31 December 2011 may be offset against capital gains arising in 2011. While unused losses may be carried forward, there is no provision to carry capital losses backwards (except in the case of death). Therefore, if a taxpayer has capital gains in 2011, it may be more advantageous to crystallise losses in 2011 rather than in 2012. Losses are absorbed before deducting the annual exemption of €1,270 referred to above.

Taxpayers engaging in 'bed & breakfast' transactions in order to realise losses in the 2011 tax year, should take note that such losses are restricted to the shares reacquired and cannot offset other gains if the shares are reacquired within 4 weeks of the sale.

Tax arising on the disposal of any property, including shares, in the period 1 January to 30 November 2011 is payable by 15 December 2011.

In the case of gains realised in the period 1 December 2011 to 31 December 2011, the due date is 31 January 2012. Therefore, if an individual is thinking about disposing of assets in the near future, they may wish to consider the following:

- disposing of sufficient assets in 2011 to absorb losses and utilise the annual exemption of €1,270;
- disposing of the balance early in 2012, so that the tax does not become payable until 15 December 2012.

This is of course subject to normal commercial considerations.

Where a disposal/transaction is currently under consideration, it is worth noting that there has been much speculation of a radical overhaul of the CGT regime in the forthcoming Budget 2012 which could have some impact on the current 25% CGT rate, CGT reliefs and the ability to carry forward capital losses indefinitely.

Gift tax exemption

The first €3,000 of the total value of gifts received by an individual from any one individual in any year is exempt from gift tax. For example, if an individual has two surviving parents, both parents could gift €3,000 to the individual each year without the individual incurring a tax charge. Any amount up to the exemption limit will not affect the individual's lifetime gift/inheritance tax exemption threshold.

Covenants

Individuals can qualify for income tax relief in the current tax year on amounts given under covenant to the following:

- individuals of 65 years or over;*
- permanently incapacitated individuals irrespective of their age (other than the taxpayer's own children).

**Relief restricted to lower of covenant or 5% of payers total income*

It is necessary to execute a formal deed of covenant for a period exceeding six years. The effective tax relief for the payer is the difference between their top rate of tax (up to 41%) and the standard rate (currently 20%). The beneficiary of the covenant is entitled to a tax credit at the standard rate. Covenants may not be tax effective if both the payer and recipient pay tax at 20% or both pay at 41%.

Service Charges

Subject to an overall limit, of €400, service charges paid before 31 December 2010 will qualify for tax relief in 2011. With effect from 1 January 2012, tax relief will no longer be available for service charges.

Tuition fees

Tax relief may be claimed in respect of certain third level fees paid to approved colleges for an approved course, which can be a full-time or part-time undergraduate course or a postgraduate course. The relief is granted by way of a tax credit at the standard rate. The maximum limit for qualifying fees is €5,000. For 2011, the amount of the qualifying fees for which tax relief may be claimed has been reduced. When qualifying fees relate to a full-time course, the first €2,000 of the fees, or if the fees are less than €2,000, the full amount, is disregarded for tax purposes. Where the fees relate to a part-time course, the first €1,000, or if less than €1,000, the full amount, will be disregarded.

Fees for an approved training course in the area of information technology and foreign languages will also attract tax relief at the standard rate of tax. The amount of qualifying fees range from a minimum of €315 to a maximum of €1,270.

The relief may be claimed in respect of fees paid by the taxpayer on their own behalf or on behalf of a spouse or dependents. Therefore, if a taxpayer has two dependents attending a qualifying course in the same academic year, the taxpayer can claim a credit up to the maximum amount in respect of each dependent.

Tax relief is only available for tuition fees and does not apply to registration fees.

Time limits for making repayment claims

The time limit for claiming a repayment of tax is four years. For example, a medical expense claim for repayment of tax for the tax year 2007 must be lodged with the Revenue by 31 December 2011.

Loss relief claims

Many income tax loss relief claims are required to be made not later than two years from the end of the year in which the losses arose. Claims in respect of the year ended 31 December 2009 may need to be made by 31 December 2011.

Investments in BES, EII, SCS and film

Business Expansion Scheme (BES) relief of up to €150,000 is available annually. The annual ceiling for the Seed Capital Scheme (SCS) is €100,000.

The current BES and SCS have been replaced with the Employment and Investment Incentive (EII) and a new Seed Capital Investment Scheme. The commencement of these schemes was announced by the Minister for Finance on 25 November 2011 and it is intended that both the existing BES and the new schemes will run concurrently until 31 December 2011. The qualifying conditions and reliefs differ under BES and EII. Therefore, if BES relief is to be availed of it is imperative that eligible shares are issued on or before 31 December 2011.

Relief in respect of a qualifying film investment made in 2011 is available on up to €50,000 of the amount invested. It should be noted that tax relief is only available against the investor's income and therefore, if married, both spouses should make an investment only if they have sufficient income to absorb the relief in their own right. Tax relief is available at the top tax rate.

All the above reliefs are subject to the possible application of the 'high earners restriction', a provision that restricts the utilisation of reliefs (above €80,000) in any one year.

Residential lettings

To qualify for interest relief on residential letting a landlord must ensure they have registered with the Private Residential Tenancy Board (PRTB). Landlords, or any individual with a second property in Ireland which is not occupied as a main residence, must pay a €200 levy to their local authority by 31 March each year.

Where an investor is seeking to claim 'Section 23' type relief in respect of Irish source rental income, they should ensure that a qualifying lease has been entered into by 31 December 2011 in order to ensure that relief is available for the 2011 tax year.

The 2011 Finance Act contained changes to Section 23 relief. The new rules will limit the relief to the property that gives rise to the relief and limit the relief to a ten year period. At the end of the ten year period, any unutilised relief will be lost. However, the new changes are subject to a Ministerial Order and the existing rules continue to apply until the Ministerial Order is passed.

Employers

Universal Social Charge (USC)

The USC applies at rates of between 2% and 7% for 2011. The USC applies to all earnings including certain share awards (see above), bonuses, overtime etc.. The USC currently operates on a week 1/month 1 basis, so where employees have exceeded the thresholds for the higher rate levies in any period during 2011, employers are required to refund any overpayment of the levies to the employee.

Where there has been any underpayment of the USC, Revenue will deal with the taxpayer directly regarding any further collection of the USC.

Employers should note that the Revenue has announced that the USC will move to a cumulative basis with effect from 1 January 2012.

Small benefits exemption

An employer can provide an employee with *one* small benefit tax-free in 2011, provided the value does not exceed €250. The benefit must be in non-cash form, such as a voucher or a hamper. PAYE/PRSI is not required to be operated on the benefit. The exemption is not cumulative. For example, if an employee receives a voucher of €50 five times during the year, the first voucher of €50, which is under the value of €250, may be ignored for PAYE/PRSI purposes. However, the value of all subsequent vouchers must be included as notional pay and taxed accordingly.

Pay As You Earn (PAYE)

An employer is required to pay the PAYE/PRSI due on all employment income (including share award schemes) and taxable benefits paid in Ireland, or if paid abroad relating to Irish work days, on the 14th day of the month following that in which the income is paid or benefit is provided (even where the employer is located in a foreign jurisdiction).

An employer must discharge the full PAYE/PRSI liability by the due date even if the employee has insufficient after-tax weekly/monthly cash salary to cover the PAYE/PRSI due on benefits in kind. Where an employer has not collected from the employee the total PAYE/PRSI in respect of a benefit in kind provided in 2011 by 31 March 2012, the employee will be treated as receiving an additional taxable benefit in kind equal to the un-reimbursed PAYE liability on 1 April 2012.

Pay Related Social Insurance (PRSI)

Accounting for PRSI has become a more complex task since 1 January 2011. Employers will be required to ensure this has been correctly accounted for upon submission of the 2011 P35 in February 2012. In particular, employers will need to ensure PRSI has been correctly operated in respect of the following changes which occurred in the year ending 31 December 2011:

- Since 1 January 2011, an employer is required to account for employer PRSI on 50% of the value of an employee's pension contributions, including contributions to a Personal Retirement Savings Account (PRSA). Employers should note that this charge may be further increased in the forthcoming Budget 2012.
- The charge to employer's PRSI on share awards has been abolished, however, as this change was announced on 10 May 2011, there may be refunds of employer's PRSI recoverable from January 2011 to that date.
- Employee PRSI is not chargeable on share awards granted in 2011 which were the subject of a written agreement entered into between the employer and employee prior to 1 January 2011. This change was announced on 14 March 2011. Employers therefore need to ensure that taxable share awards are recognised correctly for employee PRSI purposes.

Statutory redundancy

Where an employee qualifies for and receives a statutory redundancy payment in respect of greater than two years continuous and reckonable service, their employer is currently entitled to a rebate equivalent to 60% of the statutory redundancy payment from the Department of Jobs, Enterprise and Innovation. This rebate is currently under review and it has been strongly suggested that it will be reduced in Budget 2012 to half of the current rate, that is, to 30%. Employers contemplating redundancies will need to note carefully the effective date of any change to assess its potential impact on the costs associated with the redundancy program.

Budget 2012

The above does not take account of any changes that may be announced in Budget 2012 which is scheduled to be announced on 5 and 6 December.

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