



O'Connell Court,
64 O'Connell Street,
Waterford.

5 Mary Street,
New Ross
Co. Wexford.

T. 051 872 039
F. 051 874 504
E. mkbadmin@mkbrazil.com

T. 051 421 495
F. 051 425 003
E. tonybrazil@mkbrazil.com

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Finance Bill 2007

The Finance Bill 2007 directs some of its attention towards some of the areas of electoral importance, most notably by reducing the top rate of tax from 42% to 41% (with the implication being that if still in Government next year a reduction to 40% is on the cards). The Bill provides only a token response to the pressing childcare issue while at the same time dodging the bullet which stamp duty for first-time-buyers had become before the Budget. It also carries through some welcome relief from inflation by increasing the income tax credits and rate bands and comes through with the promised extension and expansion of the BES (Business Expansion Scheme) and Seed Capital reliefs. Overall, from a tax perspective, the thrust of this Bill is to:

- largely leave in place the stealth measures from previous years (such as indexation relief from CGT (Capital Gains Tax))
- increase income tax bands and selected credits
- leave extremely high rates of stamp duty in place
- make some minor changes directed at the farming community
- address the childcare issue, albeit in a very minor way
- reduce the top rate of tax to 41%
- close off some loopholes
- tinker with the administration of income tax, VAT and corporation tax

Income Tax

Childcare

The childminding relief introduced last year which allowed a person minding up to three children in their own home to earn up to €10,000 tax free, has been increased to €15,000 in

the 2007 Bill. It is important to note that if the €15,000 is exceeded, the total amount will be taxable.

Mortgage Interest Relief

To ease pressure on first-time buyers, the Bill doubles the ceiling on mortgage interest relief for first-time buyers to €8,000 (single) and €16,000 (married). The increases will be available to persons in the first seven years of their mortgage. The ceiling for non-first-time buyers has also been increased to €3,000 (single) and €6,000 (married).

Benefit In Kind

An employee in receipt of preferential loans from an employer is subject to income tax on the difference between the interest actually paid and the notional amount which should have been paid. To reflect increases in interest rates the rates specified in the tax legislation are to be increased to 4.5% on home loans and 12% on other loans.

PRSI and Health Levy

This Bill has raised the exemption threshold for the health levy. Where an individual earns less than €480 per week, no health levy is payable on those earnings (previous threshold €440). This has the potential to increase take home pay by up to €41.60 per annum for an employee earning less than €480 per week by taking him out of the health levy net.

It is worth noting that the Bill alters the calculation of the health levy on earnings over €100,000 per annum, increasing the rate from 2% to 2.5% on the excess.

The PRSI ceiling for employees has been increased again. Therefore, employees are now subject to PRSI on earnings up to €48,800 potentially increasing the cost to the employee by up to €88 per annum.

continued...



→ Finance Bill 2007 - continued

Rate Bands and Tax Credits

The effective rate of income tax has been increased over previous years by allowing inflation to erode the tax credits and allowances. However, this year the Minister has reduced the top rate of income tax to 41% and has again increased the rate bands as follows:

Rate Bands	2006	2007	Increase	Value in Cash
Single	32,000	34,000	2,000	820
Married One Income	41,000	43,000	2,000	820
Married Two Incomes	64,000	68,000	4,000	1640
Lone Parent/Widowed Parent	36,000	38,000	2,000	820

In addition the Bill has also increased some of the tax credits as follows:

Tax Credits	2006	2007	Increase	Value in Cash
PAYE Credit	1,490	1,760	270	270
Single Personal Credit	1,630	1,760	130	130
Married Personal Credit	3,260	3,520	260	260
Rent Relief - single	1,650	1,800	150	30
Rent Relief - married	3,300	3,600	300	60
Rent relief - single → 55	3,300	3,600	300	60
Rent relief - married → 55	6,600	7,200	600	120
Third Level Fees	5,000	5,000	0	0
Incapacitated Child	1,500	3,000	1,500	1,500
Blind Persons - single	1,500	1,760	260	260
Blind Persons - married	3,000	3,520	520	520
Widowed Parent				
Year 1	3,100	3,750	650	650
Year 2	2,600	3,250	650	650
Year 3	2,100	2,750	650	650
Year 4	1,600	2,250	650	650
Year 5	1,100	1,750	650	650

CGT (Capital Gains Tax)

An exemption from CGT applies to disposals of business assets (including farmland) for persons over 55 years of age. The limit of €500,000 on the proceeds in respect of disposals outside the family has been increased to €750,000 from 1 January 2007.

A disposal of assets to a child or a niece/nephew* continues to be exempt from tax irrespective of the value of the proceeds. In addition, where farmland has been owned and worked by a farmer for over 10 years and is leased for less than 5 years and is subsequently disposed of to the person leasing the land, the relief is to apply.

*A niece or nephew who has worked in the business on a full-time basis for a period of five years.

Stamp Duty

Mortgages

Stamp duty on mortgages has been abolished by the Bill.

Sporting Bodies

The Minister proposes to exempt sporting bodies purchasing land for the purposes of promoting sports from stamp duty.

Contracts, Licences and Agreements for Leases

The Bill, as amended, now includes provisions which render contracts for the sale of land subject to stamp duty where

more than 25% of the consideration has been paid and a conveyance has not been presented within 30 days. This new and additional tax cost is likely to be passed directly onto the first-time buyer further increasing the cost of housing. Even if the first-time buyer is fully exempt from stamp duty they would still have to bear the burden of this additional cost.

There are similar provisions relating to licence agreements and agreements for leases.

VAT

VAT registration thresholds for small businesses are to be increased from €27,500 to €35,000 for services and from €55,000 to €70,000 for goods with effect from 1 March 2007.

Tax Shelters

Last year, the Finance Act introduced a raft of measures to curb the use of tax shelters by high earners. In the 2007 Bill, BES and Seed Capital schemes have been extended for a further seven years, subject to EU approval. The ceiling for investment in any one company has been doubled to €2m and the annual limit on BES investment per investor has increased to €150,000. In the case of the Seed Capital Scheme the annual investor limit has been increased to €100,000.



Finally the Bill introduces a new tax relief for tourist projects in the Shannon area. However the Bill does not clarify to what projects the relief applies, although there is some indication that restaurants may qualify.

Other Comments on the Finance Bill 2007

From a stamp duty perspective it was hoped that the Bill would introduce some measure of relief for elderly persons downsizing from large houses which they no longer require. It was also hoped that the Bill would finally abolish the 1% duty on Irish shares and perhaps increase the threshold at which the 9% rate is imposed on commercial property to a more realistic level, or at least to change the structure of stamp duty so that the higher rates apply only to values in excess of the various thresholds rather than applying to all of the consideration once the threshold is exceeded. None of these things were done. Business is pushing hard for new Research and Development credits and tax reliefs for investment in start-up technology companies along the lines of the BES relief. Again no provision was made for this in the Bill.

Abolition of Capital Duty

Following Ireland's abolition of capital duty, the European Commission is proposing to abolish capital duty on the raising of capital by 2010. The European Commission is of the opinion that such a move will aid the development of EU Companies. Currently only Greece, Spain, Cyprus, Luxembourg, Austria, Poland and Portugal continue to charge the levy on contributions to companies. Capital Duty has been abolished on share transactions in Ireland since 7 December 2005.

Care of Incapacitated Individuals

Where an individual who is totally incapacitated either by physical or mental infirmity employs an individual to take care of him, a 'Housekeepers' allowance can be claimed from Revenue. An individual who pays for such services on behalf of a dependent relative can also claim this allowance. The allowance is calculated as the lower of the actual costs incurred or €30,000 (time apportioned where an individual becomes incapacitated within a year). No individual can claim more than one allowance within a tax year. Should the 'Housekeepers' allowance be claimed the individual cannot claim an incapacitated child credit or a dependant relative credit.

SSIA Appeals

Revenue has recently announced that an individual can lodge an appeal to Revenue where the lump sum arising from the Special Savings Incentive Account (SSIA) was taxed in its entirety. The appeal will only be allowed in the event that the lump sum was taxed because the SSIA 4 form was not lodged with Revenue within three months prior to the maturity date of the SSIA for reasons outside the individual's control.

Capital Gains Tax Exemption

Principal Private Residence Relief can be extended to a second residence in an individual's ownership for any period during which a dependant relative occupies the residence rent free. Therefore for the period that such a relative occupies a residence other than the individual's main residence, a capital gains tax (CGT) exemption can be claimed for both properties.

A dependent relative includes a relative of the individual or of his/her wife/husband. The relative must be incapacitated by old age or infirmity from maintaining himself or herself in order to be deemed dependent. A dependent relative can also include the widowed mother or father, whether or not incapacitated, of the individual or of his/her wife/husband, who is maintained by the individual. There is no income test for this relief.

The principal private residence exemption from CGT can only be extended to include one additional residence irrespective of whether or not the individual is married.

Changes to Spanish Tax Law

The Spanish parliament recently passed two bills designed to harmonise the treatment of non-resident taxpayers in Spain with other EU countries.

The main effect of the *Income Tax Act* is that from 01 January 2007, the Capital Gains Tax Rate (CGT) applicable to gains made by Non-Resident individuals has decreased from 35% to 18%. The changes will bring the CGT rate in line with that charged on gains made by resident taxpayers. Also prior to 2007, where a non resident person sold a property, the purchaser was obliged to pay 5% of the sales price to the

Spanish tax authority as a payment on account for the CGT liability. Following the above bill, the purchaser can pay the lower of the CGT on the sale or 3% of the sales proceeds.

The second act, the Tax Fraud Prevention Act, will require Spanish landlords to obtain a special fiscal identification number. This number must be quoted in order to obtain many services such as registering land transactions and organising water and electricity. It is hoped that this measure will avoid future money laundering through property transactions.

PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

Income Tax

Filing date of 2006 return of income	31 October 2007
Pay preliminary (income tax) for 2007	31 October 2007

Capital Gains Tax

Payment of Capital Gains Tax for the disposal of assets made from 01 January 2007 to 30 September 2007.	31 October 2007
Payment of Capital Gains Tax for the disposal of assets made from 01 October 2007 to 31 December 2007	31 January 2008

IRISH EQUITIES

EARNINGS TO DRIVE 2007 GAINS

Irish equities rallied strongly in the second half of 2006, recording a gain of c.25% and taking the full year increase to c.28%. This placed Ireland among the leading equity market performers for the year. Mid-year wobbles were overcome as lower oil and commodity prices eased inflation concerns and countered calls for further rate hikes.

At a macroeconomic level, Ireland continued to record strong growth, European economies continued to improve and US economic activity moderated but did not grind to a halt. Importantly, the slowdown in US residential activity has to date had only a limited effect on other areas of the economy.

Strong earnings growth in Ireland led to continued upgrade momentum during 2006. This was true of all segments of the market, from small to large capitalisation stocks. It reflected a positive economic backdrop as well as

- i) effective market communication with a record (in most cases) of under promising and over delivering and
- ii) continued implementation of proven acquisition strategies to create value and augment earnings in many cases.

Despite the strong second half market performance in 2006, the market re-rating has been less than perceived. While a range of mid cap stocks including Kingspan, C&C, IAWS, Grafton and DCC were re-rated during the year, the largest market constituents ended 2006 on broadly unchanged one-year forward multiples. Looking at two-year prospective multiples, the Irish banks, CRH and Ryanair are on generally lower ratings than in early 2006. The re-rating of the mid cap sector has been a trend seen in other markets. We see current multiples for this market segment as justified by superior earnings prospects but expect future stock price performance to be primarily earnings driven.

Dividend growth, although less of a focus at a time of rising equity markets, also continued to at least keep pace with earnings in 2006. Comfortable levels of cover and favourable earnings prospects underpin our view that dividend growth is likely to remain healthy.

An equity market gain of 26.3% in 2006, following 23.2%, 26.0% and 18.8% advances in 2003, 2004 and 2005 respectively, represents a high benchmark entering 2007. In our opinion, 2007 equity market gains may not match those of 2004-2006 but the corporate earnings outlook remains positive, supported by an economic backdrop that is buoyant in Ireland, encouraging in Mainland Europe, stable in the UK and on track for a soft landing in the US.

This forms a positive backdrop for Irish equities, which remain attractive relative to other asset classes such as property, bonds and cash. We expect earnings growth to be the main driver of stock prices in 2007, with scope for some re-rating among the larger caps.

Risks centre on a global economic slowdown, with the deceleration in US activity the primary concern. It is worth noting however, that the evidence of 2002, when the global economy slowed sharply, was that the Irish economy continued to expand, albeit a reduced rate of circa 3%. This testified to the internal dynamic which we believe remains the primary driver of Irish economic activity. This enhances the defensive attributes of the financials in particular.

Merger and acquisition activity has been a further support for valuations during 2006. Given healthy corporate balance sheets and the record inflows into private equity and hedge funds in recent times, we expect it to remain so.

Looking to 2007, we see a favourable earnings backdrop remaining in place. We anticipate that earnings delivery and related upgrades will be the primary drivers of stock price performance in 2007, in place of the re-rating seen in recent years.

NCB Stockbrokers



A Closer Look at Interest Rates

The main Euro zone economy, Germany, continues to enjoy a long-awaited economic recovery. The German unemployment rate is at its lowest since 1991 while business confidence is at its highest since then.

On the back of this German recovery, the markets expect the ECB (European Central Bank) to raise its key re-financing rate, currently 3.50%, at least twice during 2007.

Two risks to this euro interest rate expectation are

- the sustainability of the German recovery and
- the EUR/USD exchange rate.

The main German VAT rate was increased by 3% this January and some of its recent economic performance may be due to accelerated consumption ahead of the planned tax rise. There is a risk that domestic consumption in 2007 may be weaker than expected as a result.

The consensus market forecast for the EUR/USD rate throughout 2007 sees it remaining in the EUR=USD1.30s. Any material depreciation of the USD to EUR=USD1.40 or worse will put Euro zone exports under pressure and curb the ECB's desire for higher interest rates.

Directors Loans

Latest figures released by the Office of the Director of Corporate Enforcement show that almost 900 company directors were cautioned for using excessive amounts of company money for their personal use in 2006.

Over €160m has been repaid to the firms involved following these findings. Under Company law, directors' loans cannot be more than 10% of the companies' net assets.

Also for the first time the Office of the Director of Corporate Enforcement contacted the Revenue Commissioners to inform them that 86 of the above cases involved loans totalling €48m.

National Minimum Wage

The National Minimum Wage Act 2000 provides that the minimum wage rate for an experienced adult employee from 1 January 2007 is 8.30 euro per hour (was 7.65 euro). This will be increased to 8.65 euro per hour from 1 July 2007. An experienced adult employee for the purposes of the National Minimum Wage Act is an employee who has an employment of any kind in any two years over the age of 18. Of course the national minimum wage does not stop an employer from offering a higher wage.

Making Pension Rules Work for You

Using current pension rules a simple Executive Pension Plan can be an extremely powerful wealth management tool for owner directors. If you own more than 5% of a company you can transfer a multiple of your salary from pre tax profits into a tax-free trust for your beneficial ownership.

Some key points here:

- There is no income tax liability on your contributions.
- There is full Corporation Tax relief on contributions.
- The fund grows tax-free. This applies to rental income, dividend income and capital appreciation.
- Once you retire you can take 25% of the fund tax-free
- The balance can be invested in an Approved Retirement Fund (ARF) which also grows tax free.
- In the event of your death the proceeds of the ARF passes tax efficiently to your spouse and/or children.

Therefore an Executive Pension Plan can form part of an overall wealth management plan and can help in the following areas:

- Personal Tax Planning
- Company Tax Planning
- Succession Planning

Number in Employment Continues To Show Strong Growth

The number of persons in employment grew by over 83,000 or 4.2% in the year to the third quarter of 2006 bringing the total in employment to 2,073,300. This compares with an annual growth rate of 4.6% in the previous quarter and to a rate of 5.1% in the third quarter of 2005.



Postage Rates To Rise

Communications regulator ComReg has authorised An Post to increase the price of a basic stamp from March 1 2007. Prices for domestic standard letters up to 50g will now be 55c, an increase of 7c. ComReg said that a further concession was reached regarding business customers. Users of An Post's Ceadúnas services or meter franking machines, which would include SME's will receive a discount of 1c per item, therefore paying no more than 54c for a basic letter. This increase for domestic standard letters will have a significant impact on SME's (Small to Medium Sized Enterprise).

The REIT Way to Invest?

Real Estate Investment Trusts (REITs) were introduced in the UK on 1 January 2007 this year. They have existed in the US for over 45 years. Many other countries such as Australia, France, Japan, Holland and Belgium also have versions of this type of property investment. The global market capitalisation of all REITs is estimated to be over \$700 billion, of which 50 per cent is in the US.

So what is a REIT?

REITs are similar to mutual funds for stocks: investors gain exposure to real estate in a lower-risk, diversified and liquid form. When you buy a share in a REIT you are essentially buying a physical asset with a long expected life span and potential for income and capital growth through rent and property appreciation. This contrasts with common stocks where investors are buying the right to participate in the profitability of the company through ownership. When purchasing a REIT, one is not only taking a real stake in the ownership of property via increases and decreases in value, but one is also participating in the income generated by the property. This creates a safety net for investors as they will always have rights to the property underlying the trust while enjoying the benefits of their income.

One of the advantages that this product provides to the average investor is the ability to invest in real estate without the normally associated large capital investment and labour requirements. Investors can buy REITs through stockbrokers with relatively modest capital amounts as is the case when buying company shares. Once the investment is made, the investor is not actively involved in the labour intensive business of managing the properties involved or collecting rents.



Another advantage of REITs is the instant diversification that investors will enjoy. As the capital invested by all of the holders of REITs are pooled together, a greater amount of diversification is generated as the trust companies are able to buy numerous properties in all real estate sectors

(residential, office, retail, warehousing etc.) and reduce the sometime negative problems and concentrated risk associated with a single property asset.

REITs are required to distribute a high proportion of the income (nearly 90% in the US) created by income producing real estate to their shareholders. This amount is deductible on a corporate level and generally taxed at the personal level. So, unlike the dividends on normal company shares, there is only one level of taxation for the distributions paid to investors. For example shareholders in listed UK property company shares (which are not REITs) are in effect taxed twice - companies pay tax on dividends and capital gains, while investors are taxed on dividends and share sales.

The last advantage of REITs is liquidity. An investor in a REIT can normally expect to be able to sell his holding in a particular REIT quickly at the market value for that REIT. The time associated with selling physical properties and the restrictions associated with some Property Funds do not typically apply to REIT investors, who can expect to exit their investments as they would in the case of a company share they wish to sell.

REITs do have some disadvantages. REITs are typically less leveraged than other forms of property investing. REITs typically involve leverage of between 30 and 50 per cent which can stunt their capital return potential relative to more highly geared structures. Investing in real estate via a REIT is a lot less tangible than purchasing "bricks and mortar" physically and being able to visit your asset(s). In addition, because many REITs are listed on stock exchanges, they can be more closely correlated to stock markets than direct property investment or property funds.

There are a number of rules surrounding REITs which differ from country to country. For example, in the UK at least 75 per cent of the portfolio must be income producing investment property and the portfolio must have a minimum of three properties. No more than 40 per cent of the portfolio value can be held in one asset and the maximum income from one tenant is 20 per cent. Development property must be held for a minimum of three years and 90 per cent of profits must be distributed. To limit gearing, the interest cover test is 1.25 times income and the conversion charge from a listed property company to a REIT is 2 per cent of gross assets or 3 to 4 per cent of the net asset value.

If the property loving Irish investor would like to consider REITs as an option, where

should he look? JPMorgan has selected Japan as its favoured real estate region. In its research report "Global Property" released on 26 October 2006, JPMorgan's Global Property Research Team picked Japan as the likely top performer in the global real estate universe. Japan enacted new laws creating REITs, known as J-REITs, in 2001. Now there are more than 30 J-REITs in operation with assets of \$30 billion.

Recently, after dropping by as much as 70 per cent post bubble, real estate prices are picking up. The pick-up in land prices in big cities, led by commercial property, is gaining momentum while price falls are abating in other areas. The semi-annual urban land price survey conducted by the Japan Real Estate Institute showed that the rate of increase in the average price of commercial land in the six major cities picked up from 10.5 per cent year on year in March 2006 to 17.3 per cent in September 2006.

Residential land prices are also picking up in large cities. In the six major cities, average residential land prices rose 4.2 per cent year on year in September 2006, compared with 1.5 per cent in March 2006. Notably, in the Tokyo-23 ward area, residential land prices picked up by a solid 9.5 per cent year on year.

A major restructuring of the nation's financial system, along with an injection of foreign capital, acceleration of migration into urban center areas and the introduction of publicly traded real estate investment trusts, are driving the Japanese real estate revival.

Conclusion

The big disadvantage with holding property company shares at the moment is double taxation. The company is subject to corporation tax on rental income and CGT (Capital Gains Tax) on disposals, while the investor is further subject to income tax on dividend income and CGT on share disposal.

It will be interesting to see if the changes in Britain will encourage Ireland to follow suit and offer a tax-transparent vehicle to Irish property companies to encourage them to list their assets and offer shares on the Irish stock exchange.

In the meantime Irish Investors will need to look further a field to countries like the UK, US or Japan to get access to real estate opportunities via REITs.

The Dangers of Under Pricing Overseas Property

Individuals purchasing property overseas are now frequently finding themselves confronted with a problem. They are now being given the option of including the full purchase price of the property in the final purchase deed or including a reduced value on the final purchase deed. The reasoning behind this practice is that by including a reduced value on the final deed, you can reduce the property transfer tax/stamp duty in that foreign jurisdiction on your purchase. While the full price for the property is included in the sales contract, individuals are being encouraged to include a reduced value on the purchase deed, on which the transfer tax will be paid. The purchaser would then pay the vendor the balance of the value of the property. This would seem to benefit the purchaser (as they pay less transfer tax) and the vendor (who receives cash and may choose not to declare the full proceeds for the purposes of income/corporate tax). In many areas this practice is commonplace, and a blind eye has been turned to it in many countries by lawyers and notaries.

While this practice may reduce the property transfer tax payable at the time of purchase, it brings with it the inherent risk of higher capital gains tax at the time of sale. The official record of your purchase will show a reduced price, which may lead to you gaining a higher "paper" gain on the sale of your property than you have actually gained. Obviously this practice is also illegal and should therefore be discouraged.

Proposed Legislation on Property Services

The Minister for Justice Equality and Law Reform has published an outline Bill to establish a Property Services Regulatory Authority (PSRA) and to reform the law relating to the sale of property.

The PSRA will operate a licensing system covering all providers of property services including auctioneers, estate agents and property management agents. The PSRA will also set and enforce standards for the grant of licences including education, training and professional indemnity requirements as well as setting standards to be observed in the provision of services by licensees. It will also investigate and adjudicate on complaints and provide certain services relating to consumer protection and public awareness.

The proposed Bill is substantial and runs to 73 sections. The Bill also includes the following measures:

- Licensees will be required to use 'advised value' for the purposes of estimating the value of land for the purposes of sale; this will replace the practice of setting a 'guide price'
- The PSRA may require a licensee to present evidence of the reasonableness of the "advised value" in any particular case and impose sanctions if it discovers an unsatisfactory system of "advised values"
- The proposed Bill specifically prohibits the practice of bidding up to the reserve price at an auction
- Where land is sold other than by auction (eg. by private treaty) the licensee will be required to retain a record of all offers received, including conditional acceptances and the PSRA will have the power to inspect such records.

Mobile Phone Offences

Since 21 July 2006, it has been an offence to hold your mobile phone while driving your car. You won't escape the penalty by cradling your mobile phone between your shoulder and head. Cradling or supporting a mobile phone while driving are all now offences.

Holding (including supporting or cradling) your mobile phone while driving may (depending on the circumstances) be permissible if it is being used to call the Gardaí, ambulance, fire or other emergency service in connection with a genuine emergency. Under the recently enacted Road Traffic Act, the Minister has the power to further regulate the use of mobile phones in cars.



The Implications of Illegal Dumping

In recent years, diminishing landfill sites and rising waste disposal costs have encouraged rogue dumpers to amass huge fortunes from dumping waste illegally.

In June 2006 a Meath businessman was jailed for six months after he pleaded guilty to dumping waste without a licence at a site in Co Wicklow. The sentence shows the judicial system is serious about enforcing environmental protection laws.

The owner of the site was fined €150,000. The men were charged as a result of a Garda investigation following a complaint by Wicklow County Council.

The two men pleaded guilty to illegal disposal of waste, which included chemical waste and human blood. One of the men became the first person in the history of the state to be jailed for illegal dumping. Some of the reasons for this included the fact that he profited from his action, and, as a waste disposal professional, he should have been aware of his responsibilities under the law.

It should also be noted that ignorance is no defence to illegally dumping waste. If waste is created by you or your company you are responsible for it and company directors can be held personally responsible for any illegal dumping by their company. Companies and Directors should be aware of the devastating effect a court hearing for illegal dumping charges may have for their reputation.

Relevant Contracts Tax (RCT) – The Intricacies and the Peculiarities

Readers will no doubt be aware of the ongoing Revenue special investigations into the construction industry. One of the main taxes subject to scrutiny by Revenue is Relevant Contracts Tax or RCT.

What is Relevant Contracts Tax (RCT)?

RCT is a tax that requires principal contractors in the construction, meat processing and forestry industries (Relevant Operations) to withhold tax at the rate of 35% from payments made to subcontractors in circumstances where the principal contractor is not in possession of a Relevant Payments Card (RCT 47) for the sub-contractor in question.

The sub-contractor will calculate his profit by including the gross value (net payment plus RCT withheld) of all payments from principals in his sales. He will then calculate his tax liability on the profit as normal. Any RCT withheld from payments received will be available to the sub-contractor as a credit against his tax liability and therefore the sub-contractor will only be required to pay the difference between RCT withheld and the tax liability calculated.

When does the obligation to withhold RCT arise?

For the obligation to withhold the tax to arise four factors must be present:

1. The person(s) making the payment must be a "principal" as defined in law
2. The contract under which the payment is made must be a "relevant contract" as defined in law
3. The services for which payment is made must be in one of the three "relevant operations" outlined above
4. The person receiving the payment must be another contractor, i.e. a sub-contractor, in the same industry sector as the principal contractor.

How can the requirement to withhold the tax be avoided?

There are a few simple steps which can be implemented in order to avoid the requirement to withhold the tax as follows:

1. The sub-contractor should ensure that their tax affairs are up to-date at all times. The sub-contractor will then be entitled to

apply for what is known as a Form C2 (a tax clearance certificate should accompany the application for the C2.). A C2 is an ATM style card issued to the sub-contractor by the Revenue Commissioners.

2. A Form RCT 1, which states that both parties agree that the contract is a "relevant contract", for the purposes of RCT, should be completed at the start of the contract by both parties and be retained by the principal contractor. Following the publication of the 2007 Finance Bill the principal contractor may be required to provide a copy of all RCT1 declarations to Revenue.
3. At the outset of a contract a sub-contractor should present the principal contractor with his Form C2. This will allow the principal contractor to apply to the Revenue Commissioners for a Form RCT 47, known as a relevant payments card. The C2 should be returned to the sub-contractor after the application for the RCT 47 has been made.
4. The receipt of the RCT 47 from the Revenue Commissioners permits the principal to make payments to the sub-contractor without deduction of RCT at the rate of 35%.

A principal contractor will be required to withhold tax at the rate of 35% from all payments to sub-contractors if the principal contractor is not in possession of a valid RCT 47 for the specific sub-contractor. Forms RCT 47 should be renewed annually and therefore a current C2 should be requested from the sub-contractor when renewing the RCT 47. Note that a C2 is only valid for a specific tax year. Therefore a new RCT 47 will not be issued if the C2 is not valid at the time of making the application. In such situations it might be beneficial to the sub-contractor to delay making the payment until a renewed RCT 47 is issued. This would mean that the tax would not have to be deducted. The question of delaying a payment until a valid RCT 47 has been issued should be discussed with the sub-contractor in question. His cash flows might dictate that he needs to be paid immediately, regardless of the tax costs.

It is recommended that professional advice be sought prior to entering into a contract in the construction, meat processing or forestry industries as it can be relatively easy to unwittingly breach the RCT rules. Such breaches can carry costly penalties.

Problems Facing Apartment Owners When the Management Company is "Dissolved"

The mechanism used by developers to ensure the orderly transfer of what are called the "common" areas of apartment blocks to the new owners, has been to place these common areas in the name of a separate limited company, usually a company limited by guarantee and not having a share capital.

When the last unit in the development has been sold, the developer will then transfer ownership of this Management Company to the new owners. However, the problem with this procedure is the fact that the administration of this management company is passed to a previously un-associated group of people who may not have any experience in the bureaucracy involved in keeping a company up to date. Consequently, things like accounts are not prepared and Annual Returns are not filed in the Companies Registration Office (CRO). If the company fails to file its Annual Returns, the company can be struck off.

When this happens the company ceases to exist as a legal entity. Theoretically, the assets of the company, in this case the common areas of the apartment development, become the property of the State, under the State Property Act, 1954.

This impedes the conveyancing process as it affects the "title" to the individual apartment. Accordingly, the company will have to be restored. To do this, the members of the company must arrange for all outstanding accounts and annual returns to be prepared. If the company has been dissolved for less than one year, it will be possible to apply directly to the Companies Registration Office (CRO) for the company to be restored. This process takes two/three months.

For companies which have been struck off for more than twelve months the process of being restored is more complicated. The Applicant Companies must obtain a "letter of no objection" from the Revenue Commissioners who will insist on all outstanding tax returns being submitted.

The CRO file will need to be brought, fully, up to date by filing all outstanding annual returns and accounts. Once these returns have been registered by the CRO, they will issue a letter stating that they have no objection to the company being restored. A solicitor then prepares an Affidavit setting out the facts surrounding the dissolution of the company and a Petition which seeks restoration of the company. A letter from the Chief State Solicitors Office, on behalf of the Minister for Enterprise and Employment, and the Revenue Commissioners, stating that they too have no objection to the restoration is also obtained and attached to the petition. A date for the hearing in the High Court is sought.

Legal Representatives attend the High Court and present the Affidavit and Petition. If the Judge is satisfied that everything is in order he grants the petition for the restoration of the company. Two weeks later, the High Court Office issues the Order restoring the company, which must be delivered to the CRO. They amend their records a day later and the company is finally restored. Typically, the timescale involved in restoring a company through the High Court is two to six months.

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