OHT Guide

Finance (No 2) Bill 2011

Finance (No 2) Bill 2011

Michael Noonan introduced his first Finance Bill on 19 May 2011 to bring in the provisions announced in the Jobs Initiative which was published on 10 May 2011.

The Bill is quite short, with only six sections. There were some PRSI changes announced, involving the removal of the new employers' PRSI charge on share based remuneration and a reduction in the employers' PRSI rate for certain employees, and these will be included in a new Social Welfare Bill. The other Jobs Initiative tax measures are contained in this Finance Bill.

Research & Development (R&D) Credits

The Minister announced that in order to encourage investment and employment in R&D he would amend the legislation to allow companies more flexibility in *"how they account for the credit, giving the option to account for it above or below the line".*

A company which has an R&D credit which it cannot use against tax can claim a cash refund from the Revenue, and the legislation provides for a 'cap' on the refund.

Previously the 'cap' was calculated by reference to total corporation tax paid by the company in the accounting periods ending in the previous 10 years, or the total payroll liabilities (largely PAYE and PRSI) paid in the period in which the R&D expenditure was incurred.

Finance (No 2) Bill 2011 includes new charges (such as the income and parking levies and USC) in the definition of "*payroll liabilities*". In addition the *"payroll liabilities"* part of the 'cap' calculation has been amended to take account of historic R&D refund claims.

In some circumstances (e.g. where a company which has never claimed a R&D refund) the new calculation of the 'cap' may allow a higher refund claim, putting the company in a better position.

> *The Minister indicated that the change is intended to increase the flexibility in claiming R&D tax credits. Any enhancement of the R&D credits will be welcome in a business environment in which many businesses will be feeling the impact of the withdrawal of the patent dividends and patent royalties exemptions.*

Air Travel Tax (ATT)

S. 55 Finance (No. 2) Act 2008 introduced an excise duty called Air Travel Tax, on departures of passengers on flights from Irish airports on or after 30 March 2009.

ATT was originally charged at €2 for local destinations (within 300km of Dublin Airport) and €10 for all other destinations, but it was changed to a flat rate of €3 from 01 March 2011. S.2 of the Bill provides that the Minister for Finance may pass an Order removing Air Travel Tax.

> *The Minister indicated in the Jobs Initiative that this measure was more of a suspension of the tax than an abolition and it is intended to encourage overseas visitor numbers. A possible implementation date of 01 July 2011 has been mentioned.*
>
> *However he also said that the removal of the tax was subject to agreement being reached with the airlines on bringing in additional passenger numbers and that a review would occur before the end of 2012 to evaluate the success of the measure in terms of its impact on passenger numbers.*

The Minister is also introducing common visa treatment with the UK to provide an opportunity for the tourist industry to *"capitalise on the hundreds of thousands of visitors who will be travelling to the London Olympics next year".*

VAT Rate

S. 3 of the Bill brings in a new 9% rate of VAT which will apply from 01 July 2011 to 31 December 2013 in relation to certain goods and services.

Again this provision is intended to support the tourism industry and the 9% rate applies to restaurant and catering services; hotel and holiday accommodation; and admissions to entertainment such as cinemas, theatres,

and museums. It also applies to more ancillary services such as the use of sporting facilities; hairdressing services; and printed matter such as maps, programmes, and newspapers.

A Revenue Guide sets out details on how to implement the new rate where supplies occur across the effective date of 01 July 2011. The Guide is available here.

While the reduced rate of VAT is very welcome in the tourism industry It is not clear to what extent the benefit will pass on to the ultimate consumer.

New Pension Levy

The Minister indicated that the cost of the new Jobs Initiative measures could largely be met by a temporary levy on pensions, which the Minister indicated would raise about €470 million per year for 4 years (total of €1.88 billion). The Department of Finance has issued some FAQs which are available here.

The pensions affected are occupational pension schemes, Retirement Annuity Contracts and Personal Retirement Savings Accounts. The levy will not apply to assets of pension funds which relate to non-resident members, and it will not apply to pension funds which were wound up before 10 May 2011, or where the taxpayer's employer is insolvent.

The levy is being introduced as a bi-annual stamp duty of 0.3% on a Statement of the "*chargeable amount"* which needs to be delivered to Revenue by the administrator of the fund.

The *"chargeable amount"* is the market value of the

The Minister indicated in the Jobs Initiative that

"*I am conscious of the concerns of the pensions industry about the impact of a levy…..however, the imposition of the levy is for a relatively short period and its purpose is to improve [the current economic] environment by providing the means to encourage job creation in areas of our economy most likely to deliver ….. employment quickly."*

fund's assets on 19 May 2011 (for 2011) and on 01 January each year (for 2012—2014 inclusive), or alternatively the last day of the relevant accounting period. Certain benefits are excluded, largely assets relating to members who have exercised the whole of their employment outside the State.

The statement is due on 25 July and 25 October in 2011, and on 25 March and 25 September for 2012—2014 (inclusive).

The duty is to be paid when the Statement is delivered, and the usual stamp duty rule of allowing 30 days for payment does not apply. If the Statement is delivered late there will be interest on the late payment of the duty and also a penalty charged at a punitive rate of €380 per day (which would amount to €138,700 over a year).

The Statement is to be delivered to the Revenue in the specified format, and as mandatory e-stamping is being introduced for all documents from 01 June 2011 presumably the Revenue will be providing an e-Statement, and a facility on ROS.

Conclusion

Many of the provisions introduced are temporary measures, as the pensions levy is for 4 years only, the reduced VAT rate is due to end in 2013 and the removal of Air Travel Tax was described by the Minister as a *"suspension"* of the tax.

Revenue indicated that the Civil Partnership legislation might form part of the Finance (No 2) Bill 2011, or could issue separately. The Minister opted to use the second 2011 Finance Bill to implement the Jobs Initiative and the Civil Partnership legislation will issue separately and should be published in the near future. There is also a Social Welfare Bill due and a Budget scheduled for December.

© O'Hanlon Tax Limited 2011

Caveat: *These notes are intended as a general guide to the Finance (No 2) Bill 2011. OHT has endeavoured to give an accurate commentary but the notes cannot cover all circumstances. OHT recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

O'Hanlon Tax Limited
6 City Gate, Lower Bridge St., Dublin 8
T: 01 6040280 F: 01 6040281 E: info@ohanlontax.ie W: www.ohanlontax.ie