# OHT Guide: Finance Act 2015

Finance Act 2015 was signed into law on 21 December and gave effect to the measures included in the Finance Bill.

The Minister for Finance had stated that *"people all over the country will see increases in their net pay"* and declared that *"every worker and pensioner who pays income tax and/or USC will benefit from the changes announced in Budget 2016"* when details of the Finance Bill were originally released.

**Topical Measures**

*Vouchers*

The Finance Act provides for an exemption where employers give a qualifying voucher to an employee in a year of assessment. That voucher cannot exceed €500 in value, and it cannot be exchanged for cash or be part of any salary sacrifice arrangement. Previously, the maximum value was €250 and the benefit of the exemption was concessional.

*CAT Thresholds*

The Group (a) threshold which generally applies to benefits taken from parents has increased from €225,000 to €280,000. The increased Group (a) threshold applies in respect of gifts or inheritances taken on or after 14 October 2015.

The increase in the Group (a) threshold is €55,000, which at the current rate of CAT of 33%, results in a potential tax saving of up to €18,150. There is no change to the Group (b) or Group (c) thresholds.

*Withholding Tax on Sale of Property*

S. 980(3) TCA 97 previously provided that if a property was sold for a consideration which exceeded €500,000 and the vendor did not provide a certificate of clearance from CGT, the purchaser had to withhold 15% of the consideration and pay it to Revenue.

S. 42 Finance Act 2015 increases the threshold for CGT withholding tax to €1m, but only in respect of houses. The existing threshold of €500,000 remains in place for all other property.

The term *"house"* is defined to include *"any building or part of a building used or suitable for use as a dwelling and any out office, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building"*.

*Local Property Tax Number*

S. 76 of the Finance Act requires property agents or

Government bodies paying rent or rent supplement to include the LPT number for each residential property in any return of information.

**Entrepreneurial Incentives**

*Entrepreneur Relief*

Finance Act 2015 introduced a new entrepreneur relief. A reduced rate of CGT (20%) took effect on 01 January 2016 in respect of chargeable gains arising on the disposal of chargeable business assets. There is a lifetime chargeable gains limit of €1m and the standard rate of CGT (33%) applies to gains in excess of this amount.

The asset must be owned by an individual for a minimum of 3 years prior to the disposal. If the asset disposed of is a company, the taxpayer must own at least 15% of the shares and have been a full-time working director of the company for at least 3 years. The relief does not apply to disposals of development land or investments.

*Employment and Investment Incentive (EII)*

The Employment Investment Incentive (EII) provides tax relief for investment in certain corporate trades.

The Act provides for companies which already own and operate nursing homes to raise EII funding in order to extend the nursing home or residential care units.

The definition of qualifying employee has been amended. In 2015, a qualifying employee was defined as an employee (other than a director) who was employed by the company for not less than 4 days a week. The new provision deems a person to be a qualifying employee where he works at least 30 hours a week and his employment is capable of lasting at least 12 months.

*Tax Exemption for New Start-Up Companies*

As announced in the Budget, the 3 year tax relief for start-up companies under S. 486C of the Taxes Consolidation Act 1997 has been extended to start-up companies which commence a new trade in 2016, 2017 or 2018 under S. 30 of the Act.

**Personal Taxes**

*Travel and Subsistence Expenses*

Revenue and the Department of Finance have been engaged in a consultation process on the tax treatment of employees' expenses and Revenue have issued updated manuals and guidance clarifying the case law and their practice (see eBrief 63/2015).

The Finance Act provides for an exemption from income tax and USC for certain vouched expenses of travel and subsistence of a non-resident, non-executive director of a company, incurred solely for the purpose of attending a relevant meeting as a non-executive director.

*Chargeable Person*

The amount of non-PAYE income which can be earned before a taxpayer is considered a chargeable person has increased from €3,174 to €5,000.

*Restrictive Covenants*

S. 541B TCA 97 provides that if the consideration for a restrictive covenant is not income it will be liable to CGT. S. 37 closes a loophole by specifying that the gain is deemed to arise to the person giving the covenant (not the person receiving the payment who might not be subject to Irish CGT if non-resident.).

*Standard Life Shares*

Irish shareholders in Standard Life, who had elected to take the return of value as a capital payment but who would have been liable to income tax on those payments as a result of postal delays will be liable to CGT rather than income tax on those payments under S. 69 of the Finance Act.

*Same* Sex *Marriage*

Following the introduction of legislation for same sex marriages (the Marriage Act 2015), S. 70 provides that same sex couples will be taxed in the same way as opposite sex couples.

**VAT**

A new section, S. 108D has been inserted in the VAT Consolidation Act 2010 to provide for Revenue to notify a person's suppliers and publish details of the cancellation of that person's VAT number (in Iris Oifigiúil or publicly available in any form) where it is considered necessary for the protection of the Exchequer.

From 01 January 2016, the VAT reverse charge mechanism has extended to certain supplies in the wholesale gas and electricity sector and to gas and electricity certificates.

## Business Taxes

*Farming*

S. 19 provides for a number of amendments which will affect farmers and particularly farming partnerships. There are a number of tax advantages to Registered Farm Partnerships, such as enhanced stock relief. A requirement that all partners have to be active farmers has been introduced for Registered Farm Partnerships. In addition, the Minister for Agriculture, Food and the Marine is to appoint four Inspectors to ensure that conditions are being met.

Under S. 19 of the Finance Act, an annual tax credit of €5,000 is available in the year that a Succession Farm Partnership is set up, and in each of the following 4 years, to encourage older farmers to form partnerships with young trained farmers. The tax credit is split between the partners in line with the profit sharing ratio, and the older farmer will need to transfer ownership of at least 80% of the farm to the young trained farmer within a 7 year period (beginning 3 years after the partnership is registered and ending 10 years after the registration).

Stock relief for all farmers has been extended until 31 December 2018.

*Knowledge Development Box (KDB)*

Details of the Knowledge Development Box (KDB) measures announced in the Budget have been provided in the Finance Act. The KDB provides that profits of companies arising from qualifying assets (royalties, patent income etc.) and relating to Research and Development activities undertaken, will be taxed at an effective rate of 6.25% for accounting periods beginning on or after 01 January 2016 and before 31 December 2020.

*Country by Country Reporting*

The OECD published a plan on Base Erosion and Profit Shifting (BEPS) on 05 October 2015 and this has been incorporated into the Finance Act. From 01 January 2016, an Irish resident parent company of a Multinational Enterprise ("MNE") must provide a "country-by-country" report to the Revenue Commissioners for each tax jurisdiction in which the MNE does business. The report should include the group's revenue, income tax, and number of employees, and set out where each entity's business is located and details of its activities.

## Anti-Avoidance

*CGT on Specified Assets*

A person who is neither resident nor ordinarily resident in Ireland is only subject to Irish CGT on the disposal of specified assets which include shares in a company deriving the greater part of its value from specified assets. If enough cash is injected into a company before the sale, it may no longer be a specified asset bringing the disposal out of the charge to Irish CGT.

The Finance Act provides that from 22 October 2015 if there is a transfer of money from a person connected with the company before a sale and the purpose is the avoidance of tax, then the cash will be ignored when valuing the assets of the company.

*Transfer of Assets Abroad*

S. 21 of the Finance Act amends the provisions in relation to the "transfer of assets abroad" legislation which is an anti-avoidance provision that attributes the income of a non-resident entity to a resident individual who has the power to enjoy that income.

The legislation is widely drafted and Finance Act 2015 reviews the terms of the legislation to ensure that it is not in conflict with the EU treaties and removes the exception for non-domiciled persons.

*Attribution of Gains to Participators*

S. 590 TCA 97 is a broad ranging anti avoidance provision that treats a foreign company as transparent for CGT purposes. There have been concerns that the section might be incompatible with EU law and S. 39 Finance Act 2015 restricts the ambit of the section by providing that it will not apply to a gain where Revenue can be satisfied that the disposal was for bona fide commercial reasons.

*Revenue Powers*

S. 74 extends Revenue's powers so that they can seek information from a third party (or a financial institution) about an unknown taxpayer, who can be identified by some means. In addition the Revenue will be able to request a Court to make an order for the disclosure of information about a taxpayer to provide that the disclosure order should not be made known to the taxpayer.

## Conclusion

In addition to the above, the other measures announced in the Budget are contained in the Finance Act. Key points include:

- Changes to the USC exemption limits and rates
- An earned income credit for the self-employed worth up to €550
- An increase in the Home Carer tax credit
- The extension of Young Trained Farmer stamp duty relief to 31 December 2018

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***Caveat:*** *These notes are intended as a general guide to Finance Act 2015. Formal tax advice should be obtained before any steps are taken that may have a tax effect.*