Irish Tax Institute – Post-Finance Bill 2014 Submission (Part 2)

Please see below details of issues which we would ask are considered for Committee Stage Amendment of the Finance Bill 2014.

1. CAT and gifts for support or maintenance of a child

Section 73(2) of the Bill restricts the definition of 'child' in section 82 of the Capital Acquisitions Tax Consolidation Act 2003. This amendment could have far reaching ramifications for situations where a child is (i) over 18 years of age but not in full time education or (ii) over 25 years of age whether in full time education or not. Below are some examples of scenarios where a taxable benefit could arise as a result of the amendment:

- If an adult (not in full time education or over 25) finds themselves living with their parents in the family home, the provision of the home could constitute a gift from parent to child each year of the 'free use of property'. This is increasingly common as a result of a lack of suitable accommodation and the difficulty for first time buyers in securing a mortgage.
- If a parent supports a child over the age of 25 to return to education whether paying fees, buying books, providing accommodation or other financial assistance, this could constitute a gift for CAT purposes.
- If a person finds themselves in financial difficulty, due to losing a job for example, any assistance provided by their parents would constitute a gift for CAT purposes. This category could cover a number of issues such as assisting with mortgage payments or private health insurance costs.

In all of these scenarios, the €3,000 CAT annual exemption would likely not be sufficient to prevent the support provided from constituting taxable benefits. The amendment will make the operation and administration of CAT more onerous and complex as a result. In many cases, particularly if an adult child lives at home with their parents, the parent/child Group A threshold would be significantly eroded as a result.

2. CAT Agricultural Relief changes

Section 74 of the Finance Bill restricts CAT Agricultural Relief to situations where agricultural land is inherited by, or ultimately let to, an active farmer. The Bill requires the beneficiary, or a lessee, to spend 50% of their working time farming in order to be considered an active farmer. The Agri-Tax Review published with the Budget outlines that the intention of the change is to limit the availability of the relief to situations where land is actually farmed. The 50% test however is very restrictive and will impact individuals who actively farm their land with a view to making a profit but also have to engage in work outside of the farm out of financial necessity. We would ask that further consideration is given to this section to prevent hardship and wide ranging consequences for many small farmers.

3. Tax treatment of travel expenses

The Corporate Tax Roadmap published on Budget Day is very welcome and outlined an ambitious vision for Ireland as the destination for the best and most successful companies in the world. However one very practical difficulty which has not been addressed to date in the Bill is the existing tax treatment of non-executive directors who travel to Ireland to serve on Irish Boards in both the indigenous and FDI sectors. This enables Irish companies benefit from "best-

in-class” international experience and underpins good governance which is critical to Ireland’s international reputation. Revenue’s interpretation of the current legislation and case-law on travel expenses for these non-executive directors is articulated in Revenue eBrief 61/14 and requires these expenses to be subject to PAYE/USC. This interpretation is creating significant additional costs for companies seeking to attract very skilled individuals and has the potential to impact on the quality of governance on Irish boards.

In addition to supporting inbound expertise it is essential that indigenous companies looking to expand their businesses abroad are also supported by tax policy and practice. When an Irish company is seeking to expand into foreign markets its staff spend considerable time traveling to and from foreign markets building on business opportunities. Revenue guidance in Tax Briefing No.3 and No.4 of 2014 has cast doubt over whether these expenses of travel and subsistence where paid by the company are allowable without deduction of PAYE/USC, in particular where the employee does not operate from a fixed base in Ireland. This can be often arise where the nature of a business means that employees are highly mobile and do not have a fixed office where they work on a day-to-day basis.

Clear legislation in relation to travel and subsistence which supports the policy objective of bringing top talent to Ireland and assisting domestic businesses expand internationally would be very welcome to address these difficulties.

4. Film relief

As you will be aware, the amended film relief scheme is due to come into effect in 2015. A number of concerns with the legislation for the amended relief have been raised by our members at TALC Technical. These issues are:

- The restriction on producers being connected to broadcasters which can result in the relief being unavailable to many large non-Irish film producers. For example, many of the major US film studios are connected to broadcasters and would therefore be ineligible for the relief. This restriction will significantly impact the ability of the relief to attract international productions to Ireland.
- The definition of “qualifying period” for the purposes of the relief, which places restrictions on newly created companies availing of the relief. As the credit will be claimed by reference to the annual returns of producers, any new producer incorporating after the credit is introduced could be significantly disadvantaged in claiming the relief as the “qualifying period” would not commence until the annual return was due to be filed.

These issues will be discussed further at TALC Technical this week but legislative changes in the Finance Bill would be required to alleviate these concerns.

5. Double tax credit

We have previously raised concerns through TALC Technical about the availability of unilateral foreign tax credit relief for branches in treaty jurisdictions under Para 9FA of Schedule 24 TCA 1997. Our concern arises due to the interaction of Para 9FA with Para 7(3)(c) of the same Schedule. Para 7(3)(c) was designed to restrict a deduction for excess creditable taxes on treaty source income to the Irish measure of that income. It operates effectively in circumstances where the relief for foreign tax on the income is designed to be confined to that source of treaty income (through a combination of credit relief or expense deduction from that source of

income). However, when the expense deduction measures in Para 7(3)(c) interact with the unilateral credit relief measures for branch corporate tax at Para 9FA, they have the inadvertent effect of denying the additional unilateral relief intended for excess creditable taxes on branch profits under the branch credit pooling relief provisions in Para 9FA and also deny the entitlement to carry forward excess unrelieved branch taxes to future periods.

Legislative change in the Finance Bill would be required to alleviate this concern. We have attached proposed amendments which could be made to Para 9FA to achieve this.

We are available for further discussions on any of the above issues.

We will also be making a submission under separate cover on the changes to general anti-avoidance rules in section 79 and 80 of the Finance Bill.