KPMG

Taxing Times

Budget 2009 & Current Tax Developments

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AUDIT ▪ TAX ▪ ADVISORY

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Introduction

Mike Farrell
Partner

Minister Brian Lenihan delivered his first Budget statement today. He did so in circumstances that he described as "the most challenging fiscal and economic position in a generation".

The minister was faced with an unavoidable budget deficit and a need to resort to substantial new borrowing. He indicated that he plans to bring order to the public finances over a three year period. Some expenditure cuts were announced but these fell well short of expectations.

The tax raising measures announced today are targeted to generate over €2 billion additional revenue next year. Of this amount, €550 million is the result of an accelerated collection of corporation tax and capital gains tax in 2009. This will be a one-off gain to the Exchequer and will place additional strain on cash flow for business.

The minister reaffirmed the Government's commitment to the 12.5% corporation tax rate, a central plank of Ireland's economic development in recent years. This confirmation will be welcomed by Irish business and will assist in maintaining and attracting foreign investment. Business will also welcome the increase in the research and development tax credit from 20% to 25% and the potential improvements in our tax regime for intellectual property.

For the first time in many years, several increases in tax rates have been announced. Capital gains tax has been increased from 20% to 22%, DIRT from 20% to 23% and VAT from 21% to 21.5%. It was inevitable that rate increases would be announced in this Budget.

The minister has introduced a new income levy which will apply at 1% of gross income up to €100,100 and at 2% on income in excess of that amount. This brings the effective highest marginal rate on income to 48.5%.

The reduction in stamp duty on commercial property from 9% to 6% is a welcome development, although the reduced rate is still high by international standards. The minister made clear that there will be no further reduction in this rate during the lifetime of this Government.

The minister proposed a number of other measures to increase the tax yield. These include the standard rating of medical expense relief, restrictions on pension contributions, a new air travel tax, a new levy on car parking facilities, increased betting duties and a new levy on non-principal private residences. These will add further layers to our already complex tax system and demonstrate the variety of areas that were examined by the minister in raising additional taxes. The minister has also referred a number of other issues to the Commission on Taxation.

The minister made no mention in his speech of the revenue that will arise from the guarantee scheme for banks.

This Budget edition of Taxing Times provides a summary of the key changes announced today in all areas, including personal and business taxes, capital and indirect taxes. The substantive changes that will give effect to the Budget will be contained in Finance Bill 2009. This is due for publication in late November this year.

This publication seeks only to summarise the minister's Budget measures. Your KPMG tax contact is best placed to discuss with you the impact of these changes on your business and personal affairs.

Mike Farrell
Head of Tax and Legal Services

Budget 2009

Personal Tax: Levy Will Hit Hard 2

Incentive for Electronic Payments 3

Taxes on Property: Commercial Stamp Duty Rate Cut 4

Business Tax Changes 5

Taxes Up for Bookies, Air Travellers, Drivers and Drinkers 6

Boost for Research & Innovation 7

VAT Rate Up from 21% to 21.5% 8

Ireland Follows Global Tax Trends - the Shift to Indirect Taxes 9

Vodafone 2 May Spell Death Knell for UK CFC Rules 10

Tax Rates and Credits 2009 11

Personal Tax Scenarios 12

Personal Tax: Levy Will Hit Hard

Robert Dowley
Partner

Income levy

Unlike more recent Budgets, where personal tax changes resulted in net improvements in take-home pay for taxpayers, this year's Budget will result in a reasonably substantial reduction, particularly for those on middle to high incomes. Indeed, in certain circumstances, an individual's effective rate could increase by over 6%.

Perhaps the most significant change is the income levy for individuals. The levy will be charged at a rate of 1% of gross income up to €100,100. Income in excess of €100,100 will be subjected to a levy of 2%.

It is interesting to note that, unlike PRSI, the levy will apply to gross income, i.e. before any deductions for capital allowances, relief for certain interest payments or pension contributions. The levy also applies to certain income which is otherwise exempt from income tax (e.g. patent income, income earned by certain artists, etc.), but does not apply to Irish deposit interest. Accordingly, the levy will have a far greater impact on a taxpayer's net income than if the minister had simply raised the income tax or PRSI rates by the same amount.

Medical expenses

For years up to and including 2008, relief for medical expenses has been given at the taxpayer's marginal rate of tax, unlike most other tax reliefs which have been standard rated. From 1 January 2009 relief for health expenses other than nursing home expenses, will be granted at the standard rate of tax. Relief for nursing home expenses will be granted at the standard rate of tax from 1 January 2010. Relief for employing an individual to look after an incapacitated relative in your home appears to remain unaffected, perhaps because the amount of expenses on which this relief can be claimed is capped at €50,000.

Pension contributions

Relief for pension contributions remains available at an individual's marginal rate of tax. However, the annual earnings limit for determining the maximum tax relief for pension contributions has been reduced from €275,239 in 2008 to €150,000 for 2009. This means that the maximum pension contribution for which an individual aged between 40 and 49 can obtain relief is €37,500. Previously the maximum contribution for such an individual was €68,810. Amounts differ for different age groups, but all age groups suffer significantly.

The standard fund threshold remains at €5,418,085 and an individual's Personal Fund Threshold for a pension fund on retirement will not be adjusted for 2009.

Changes to the standard rate bands

The standard rate bands have been increased from €35,400 to €36,400 for a single person, from €44,400 to €45,400 for a married couple with one income, and from €70,800 to €72,800 for a married couple with two incomes.

Mortgage interest relief

The minister introduced changes to the tax relief available on mortgage interest payments in order to help "those buyers with the biggest financial exposure and those facing falling property values". He has essentially increased the rate at which relief will be available for first-time buyers. Previously it was at 20% on interest paid by certain first-time buyers for the first five years of ownership of the property. Relief will now be available at 25% of mortgage interest in years one and two, at 22.5% in years three, four and five, and at the standard rate of income tax in years six and seven. The minister made no mention of the limit which will be set on the amount of interest which qualifies for this relief. The limit is currently set at €20,000 for married couples and €10,000 for single taxpayers.

In order to finance this increase in tax credit relief for first-time buyers, the relief for non-first-time buyers has been reduced from 20% to 15% from 1 January 2009.

Benefits in kind

A benefit in kind charge arises where an employee is in receipt of a loan at a preferential rate from his or her employer. The specified rate in respect of loans (other than home loans) is being increased from 13% to 15% with effect from 1 January 2009. The tax on these benefits in kind is payable through the payroll system.

The benefit in kind charge on a company car will be changed in order

Paul McGowan
Partner

to reflect the car's level of CO_2 emissions.

(An employer will also be able to provide a bicycle to an employee up to the value of €1,000 in any five year period without a benefit in kind charge arising).

Employee car parking levy

The Budget introduces a measure whereby a flat rate levy of €200 per annum will be charged on employees who are provided with car parking facilities by virtue of their employment. The levy will only apply to car parking facilities situated in the main urban centres and the minister stated environmental concerns and traffic congestion as being the reasons behind this charge.

Heritage items

Under current legislation, it is permissible for a taxpayer to donate certain heritage items to certain approved State institutions with the result that the value of that donation is treated as a tax payment on account. Under measures announced in the Budget, the tax relief in respect of said donations will be restricted to 80% of the market value of the heritage item donated.

PRSI

From 1 January 2009, the PRSI contribution ceiling for employees will increase from €50,700 to €52,000.

Capital gains tax

Currently the tax year is split into two periods to determine the due date for payments on account for capital gains tax. The two periods run from 1 January to 30 September and 1 October to 31 December. The minister announced changes which will result in the first period being altered to run from 1 January to 30 November, with a payment date in mid December. The second period will be from 1 December to 31 December, with a payment date of 31 October in the following year.

The capital gains tax rate has been increased from 20% to 22% in respect of disposals made from midnight, 14 October 2008.

Savings incentive eroded

The minister has in this year's Budget eroded the incentive to save. Currently deposit interest is taxed at 20% and income and gains from life policies and regulated funds are taxed at 23% (the 20% rate applies to income from certain distributing funds).

These taxes are applied at source and are the final tax. All rates are to increase by 3%, to 23% (deposit interest) and 26% (life policies and regulated funds) and will apply to payments made on or after 1 January 2009. Pre-2001 life policies taken out under the 'old basis' regime should not be impacted.

While these increases will not be welcomed, these tax rates, compared to the marginal income tax rate or the newly increased capital gains tax rate, should continue to attract savers. In the case of deposit interest, perhaps a 3% tax increase is a small price to pay for a government guarantee.

Incentive for Electronic Payments

Following on from the measures introduced in the previous Budget, the minister has taken more steps to entice people away from the old paper-based payments system by further reducing the stamp duty on debit cards. The duty on these cards has been halved.

However, on this occasion he has left the stamp duty on charge and credit cards unchanged at €30. To leave the stamp duty on these cards at such a high rate would seem to be illogical given their importance in the electronic-based system. Perhaps the minister did not want to be accused of encouraging further credit.

As was the case last year, the cost of this measure will be in part financed by a further increase in the stamp duty on cheques and other bill of exchange.

Description	Current	New
Charge and credit cards	€30	€30
ATM cards	€5	€2.5
Debit cards	€5	€2.5
Combined ATM/ Debit cards	€10	€5.0
Cheques/Bills of Exchange	€0.30	€0.50

Taxes on Property: Commercial Stamp Duty Rate Cut

Mike Gaffney
Partner

Stamp duty on commercial property

One of the most significant changes in the Budget for the property sector is the change to the stamp duty rates applying to non–residential property. For instruments executed on or after 15 October 2008, the top rate of duty is being reduced from 9% to 6%.

The minister stressed that this rate would not fall below 6% in the lifetime of the current Government.

Local authority charge on non-principal private residences

In his speech, the minister advised that a new charge will be introduced to help finance local authorities.

The new charge will be set at €200 per non-principal private residence and will come into effect in 2009. It will be payable by the owners of private rented accommodation, holiday homes and other non-principal private residences but will not be applied to new dwellings as yet unsold.

The Minister for the Environment, Heritage & Local Government will bring forward legislation at an early date to give effect to these arrangements.

This new charge does not appear to be restricted to individuals. It may therefore apply to institutional owners of residential units such as universities, investment funds, etc.

Given that this change will be administered by local authorities, it is assumed that it applies to Irish properties only.

Capital allowances for new commercial buildings

Currently, where newly constructed commercial buildings are used before being sold and the sale does not take place within one year of first use, the purchaser gets the value of capital allowances for construction expenditure, where available, on a more restrictive basis. This makes the purchase of such buildings a less attractive option. Accordingly, the one-year time limit for disposals is being extended to two years.

This measure has been introduced to provide flexibility to developers who have been unable to sell commercial property within the current one-year time frame.

Hazardous industrial facilities

A new ring-fenced tax incentive scheme will be introduced to facilitate the removal and relocation of certain potentially hazardous industrial facilities (technically referred to as 'Seveso'-listed industrial facilities) which hinder the residential and commercial regeneration of docklands in urban brownfield areas.

The EU Seveso Directive seeks to protect public safety by placing land-use restrictions on new residential and commercial development near locations where potentially dangerous activities, such as the storage or processing of certain dangerous chemicals and explosive materials, are undertaken.

Further details of the incentive will be outlined in the Finance Bill. The introduction of this incentive is subject to EU approval.

Business Tax Changes

In his speech, the minister recognised the central importance that the country's corporation tax regime plays in promoting investment and employment in key economic sectors.

Colm Rogers
Partner

In addition to confirming that the 12.5% rate "is not for changing upwards", he announced a number of other measures which are directed towards enhancing the corporation tax regime. However, these positive changes were balanced by a number of other measures which will not be welcomed by business.

Three-year tax holiday for small start-ups

New start-up companies which commence to trade in 2009 will be exempted from both corporation tax and capital gains, in each of the first three years to the extent that their tax liability for the year does not exceed €40,000. This measure is being examined to ensure it is in compliance with EU rules on state aid.

Preliminary tax

Currently, companies with an annual corporation tax liability of more than €200,000 in their previous accounting period are obliged to make a preliminary corporation tax payment, amounting to 90% of the liability for the current accounting period, one month before the end of the current accounting period (and not later than the 21st of the relevant month).

The minister announced that for accounting periods commencing on or after 14 October 2008, large companies will be required to pay preliminary corporation tax in two instalments, as follows:

- The first instalment will be payable in the sixth month of the accounting period (e.g. 21 June for a company with a 31 December year end) and the amount payable will be the lower of 50% of corporation tax liability in the preceding accounting period or 45% of the corporation tax liability for the current accounting period.
- The second instalment will be payable in the eleventh month of the accounting period (e.g. 21 November for a company with a 31 December year end) and the amount payable must bring the total preliminary tax paid to 90% of the corporation tax liability for the current accounting period.

Capital gains tax changes

The minister announced that the rate of capital gains tax applicable to disposals made on or after 15 October 2008 will increase from 20% to 22%. This increase will apply both to capital gains which are liable to capital gains tax and to chargeable gains which are liable to corporation tax.

In the case of gains which are liable to capital gains tax (for example gains arising on the disposal of development land), the payment date for disposals in the period between January to November will be in mid-December while the payment date for disposals occurring in December will be the following 31 October.

Electronic filing

Earlier this year, the minister signed an order for mandatory electronic filing and payment of tax. The order will initially apply to cases dealt with by Revenue's Large Cases Division and thereafter to other taxpayers on a phased basis. As an incentive to encourage take-up of Revenue's online services ('ROS'), the minister confirmed his intention to provide a general extension to existing deadlines where tax returns and payments are made using ROS.

Blow to life assurance business

The life assurance business will not be happy with this year's Budget. Not only will they have to make systems changes to accommodate the changing tax rate for life policies; more importantly, the reduced threshold for pension contributions will significantly impact on their ability to write new business.

Taxes Up for Bookies, Air Travellers, Drivers and Drinkers

Johnny Hanna
Partner

The Finance Act 2006 reduced the rate of betting duty from 2% to 1% but compelled bookmakers to absorb the duty directly (rather than collect the duty from the punters as had previously been the case).

It also prohibited bookmakers from taking a tax deduction for the betting duty borne.

In his speech, the minister announced that the rate of betting duty will return to the 2% rate with effect from 1 January 2009 but has not indicated that he will reverse the requirement for bookmakers to absorb this cost or allow bookmakers to take a tax deduction for the betting duty suffered.

The changes represents a significant cost to the Irish betting industry which is already under significant pressure from foreign bookmakers operating in far more favourable betting duty regimes who are able to access the Irish marketplace through online and telephone betting services.

At a time when the minister has said he is trying to promote foreign direct investment, the additional burden will leave bookmakers with one of the highest effective tax rates in Ireland and may create a significant competitive disadvantage for the Irish bookmaking industry.

New air travel tax

In line with recent speculation, the minister has announced the introduction of an air travel tax for all departures from Irish airports on or after 30 March 2009. The airport tax will be a flat €10 for all flights to destinations over 300kms from the airport concerned. Flights to destinations under 300kms (referred to as "shorter air journeys") will be subject to a lower tax of €2.

Exemptions will apply for certain passengers such as the disabled, those under two years, transit passengers and those flying to and from Irish offshore islands. An exemption also applies for departures from airports with less than 10,000 passengers in the preceding year and for aircraft with less than 20 passenger seats.

Taxation of motor vehicles

Motor tax

The minister announced increases in motor tax rates for periods beginning on or after 1 January 2009, depending on the size of the car and the CO2 band into which the car falls:

- Motor tax for cars below 2.5 litres and in CO2 bands A to D will increase by 4%;
- Motor tax for cars above 2.5 litres and in CO2 bands E to G will increase by 5%;
- Motor tax for electric vehicles will not increase.

Motor tax on goods and all other vehicles will increase by 4%. Trade plate licences will also increase by 4%.

Other

A flat-rate levy of €200 will be payable by employees whose employer provides them with car parking facilities. This will only apply in major urban areas.

Excises

The minister announced that with effect from midnight on 14 October there will be an additional 8 cent per litre mineral oil tax on petrol; a 50 cent increase on a packet of 20 cigarettes and a 50 cent increase in excise duty on a standard bottle of wine. A reduced excise duty rate will apply to low-alcohol beer and cider, with effect from midnight on 14 October 2008.

Farmer reliefs extended

The minister announced a number of extensions to existing reliefs for farmers. These include:

- Extending the relief from stamp duty on land acquired by young trained farmers who are under 35 for a further four years, to 31 December 2012.
- Extending the relief from stamp duty for farmers consolidating their holdings for a further two years, to 30 June 2011.
- Extending the provisions for claiming a deduction for increases in stock relief for a further two years, to 31 December 2010. Farmers can generally claim a trading deduction for 25% of the increase in stocks and young trained farmers can generally avail of a deduction for 100% of the increase in their stocks.
- Extending the scheme for capital allowances on expenditure on certain pollution control measures for a further years, to 31 December 2010.
- The farmer's VAT flat rate addition is being retained at 5.2% for 2009.

Boost for Research & Innovation

Ken Hardy
Partner

Anna Scally
Partner

R&D Tax Credit

The Research and Development ('R&D') tax credit, introduced by Finance Act 2004, has been improved in each subsequent Finance Act. This year is no exception.

The minister has announced that the R&D tax credit is to increase from 20% to 25% of the incremental qualifying expenditure incurred by the company which is in excess of the amount spent in the base year.

This new measure is effective for all accounting periods commencing on or after 1 January 2009.

While this is a welcome improvement to the credit, and will be well received both by companies involved in R&D in Ireland, and companies considering Ireland as an R&D location, it still leaves Ireland vulnerable to competition from other jurisdictions competing for R&D investment.

Other improvements required

The minister also stated that he would consider making further enhancements to the existing regime in the forthcoming Finance Bill. Enhancements worthy of consideration for inclusion in the Finance Bill include:

(i) PSRI set-off

The ability to surrender the R&D tax credit against employer PRSI/other tax heads in the year the credit is available would ensure a benefit for both start-ups and established companies.

In the start-up phase, the capacity to use the R&D tax credit might not be available for a number of years as the company may have no, or insufficient taxable profits.

The ability to offset the credit against other tax heads could serve as a healthy stimulus to encourage and sustain innovative start-ups in their early years.

To enable Ireland to remain competitive in terms of labour costs, the ability to offset the R&D tax credit against above-the-line costs such as PRSI could be essential.

This move could be hugely attractive to foreign multinationals who are currently suffering from increased costs and foreign currency fluctuations and could also serve as an incentive to encourage the creation of more jobs within companies carrying on R&D activities.

(ii) Volume-based rather than incremental

Currently the R&D tax credit is an incremental tax credit, i.e. in order to avail of the credit, there must be an increase in qualifying R&D expenditure in comparison with a 'base year'. Typically, companies which have established intensive R&D activities which were ongoing during 2003 are penalised due to the incremental basis of the credit. The credit would prove a stronger incentive for continued R&D if it was volume-based.

Innovation

In a welcome move the minister has recognised the importance of competing for intellectual property-rich investment, and has confirmed that our tax system should reflect this. Unfortunately, no concrete provisions have been signalled at this stage apart from asking the Commission on Taxation to investigate options in this area.

VAT Rate Up from 21% to 21.5%

John McGlone
Partner

The minister has announced that the standard rate of VAT will increase from 21% to 21.5% with effect from 1 December 2008. The 21% rate of VAT has been in place since 1991 (apart from 2001 when the rate was reduced to 20% for 15 months).

The standard rate of VAT applies to a wide range of goods and services including motor vehicles, petrol, electrical goods, alcohol, adult clothing and footwear, household goods and telecommunication services.

The zero-rate of VAT, which applies to many food items and to children's clothing and footwear, will remain unchanged. Similarly, the 13.5% rate of VAT, which applies to new houses, electricity and gas, construction, hotel and restaurant services, remains unaltered.

Retail businesses will need to consider whether to pass on the additional 0.5% VAT cost by increasing prices on 1 December or to bear the additional VAT cost and hold prices steady.

For non-retail sales, where a contract is entered into before 1 December 2008 but is not completed until after that date, VAT law would normally entitle the supplier to increase the contract price to take account of the increase in the VAT rate. However, this can depend on the precise terms of the contract.

Businesses need to consider the IT systems and other changes necessary to cope with the new rate of VAT. It should be noted that the introduction date of 1 December falls in the middle of the normal bi-monthly VAT period cycle.

Businesses operating in sectors that typically cannot reclaim VAT (e.g. financial services, insurance, bookmaking, education and healthcare services) should consider the timing impact in terms of the additional cost arising after 1 December 2008. These businesses should encourage suppliers to invoice on time to ensure that additional unnecessary VAT cost is avoided.

Businesses need to take account of different rules that apply in relation to determining the VAT 'tax point' for sales to private individuals and VAT-registered persons. The 'tax point' is the date on which the VAT charge arises and can therefore impact on the rate of VAT applicable when rates change.

Additionally, the change in the VAT rate will operate differently depending on whether a business operates the 'invoice basis' or 'cash receipts' basis of VAT accounting. Businesses also need to be aware of other issues: for example, ensuring that the correct rate of VAT is applied to credit notes issued after 1 December, and the correct treatment of pre-payments received in the changeover period.

Although the standard rate of VAT does not apply to construction services and property sales, the change may impact on certain arrangements where property has been let to tenants under a 'waiver of exemption' or an 'option to tax'. Rents arising will now be subject to the new 21.5% rate of VAT. Also, for a small category of businesses, there may be further implications where a waiver of exemption is in place on lettings between group companies.

The Exchequer yield from this measure is expected to be €208 million in 2009.

Ireland Follows Global Tax Trends - the Shift to Indirect Taxes

Niall Campbell
Partner

Ireland remains the OECD country with the lowest headline rate of corporate tax following the Minister for Finance's confirmation that Ireland's 12.5% rate will not be increased. However, for the first time since 1994, none of the other 105 countries covered by the recently published KPMG International annual tax-rate survey has raised its main corporate tax rate in the past year.

KPMG's Corporate and Indirect Tax Rate Survey 2008 shows that global tax-rate competition has caused headline corporate tax rates to continue their steady decline:

- The global average corporate tax rate now stands at 25.9%, down 1% year-on-year.
- By region, the lowest average corporate tax rates are still found in the European Union (EU), where the average rate has also fallen by 1%, since 2007, to 23.2%.

Globally, however, the average indirect tax rate has remained at 15.7%, with little movement over the past five years. Average indirect taxes in the EU are the highest in the world. The average VAT rate is currently reported at 19.5% and rising.

Governments to target indirect taxes

As major shifts occur in the financial markets and global economy, one of the emerging questions is what impact these events will have on tax policy globally. Amidst all the current global uncertainty, one thing is clear: government tax revenues are at risk like never before.

Inevitably, governments will respond in a variety of ways. However, the KPMG survey demonstrates that traditional responses – such as increasing tax on corporate profits, income or labour – are increasingly difficult in view of their negative impact on inward investment and domestic competitiveness.

One likely response is that governments will turn increasingly to indirect taxes, including VAT, to raise the additional revenues they require. This has been quietly occurring in recent years but is likely to accelerate as national exchequers come under significant pressure when the full impact of the credit crisis and deteriorating global economic conditions start to bite. What the Minister for Finance has done in Budget 2009 by increasing the standard rate of VAT to 21.5%, coupled with a range of other indirect tax rises, is a perfect example of Ireland following this global trend.

Indirect taxes are increasingly attractive to national governments for a number of reasons:

- First, they are levied on domestic sales of goods and services, which are not as mobile or variable as corporate profits or labour.
- Secondly, VAT is a 'real-time' tax which is effectively collected and remitted to the tax authorities as transactions occur.
- Thirdly, VAT is an efficient and less costly tax to collect than other taxes on profits and labour.

The key issue facing businesses

Anticipating the global shift towards indirect taxes, KPMG also commissioned a survey on the views of over 500 senior global finance executives: Indirect Taxation and Business – A Global Perspective.

The clear messages which emerge from the survey are:

- VAT is increasing in scale and importance, to businesses and to governments.
- Finance and tax directors are very concerned about the level of VAT risk within their organisations. Global VAT compliance is now rated as their No 1 global tax risk.
- Very significant opportunities for cash-flow and bottom-line savings are being missed through lack of effective management of VAT.

As evidence mounts regarding global trends in corporate and indirect tax, the key question for global businesses to address is how effectively they are managing the emerging tax challenges.

For a copy of KPMG's Corporate and Indirect Tax Rate Survey 2008, please visit www.kpmg.ie; for KPMG's Indirect Taxation and Business – A Global Perspective, visit http://www.kpmgtax.com/GO/globalvat

Vodafone 2 May Spell Death Knell for UK CFC Rules

Liam Lynch
Partner

The highly significant ruling by the UK High Court in the Vodafone 2 case effectively renders inapplicable UK controlled foreign company (CFC) rules – at least before the 2007 UK Finance Act amendments

As such, UK multinationals with EU-resident subsidiaries can contemplate making claims for repayments of tax levied under these CFC rules over the years.

The ruling also provides a monumental analysis of the obligation to interpret domestic legislation so as to comply with EU law.

Background

The UK CFC rules are targeted at passive income earned by overseas subsidiaries. Subject to several let-outs, the rules tax such income immediately in the UK where it has been subject to a tax rate of less than 75% of the UK rate.

Cadbury Schweppes case (Cadbury)

The Cadbury case involved Irish IFSC treasury companies. It was found that the UK CFC rules constituted a clear restriction of the EC Treaty's Freedom of Establishment doctrine.

However, it was accepted that this restriction might be justified in certain circumstances, such as where the ability to transfer profits and losses between jurisdictions in a discretionary manner undermined the power of member states to tax economic activities carried out in their territory.

The CFC rules were deemed compatible with European law where their application was restricted to "wholly artificial arrangements".

In Vodafone 2, the UK courts had to decide whether:

1) the UK CFC motive test was limited in application to "artificial arrangements"

or

2) the wording could not be construed as having such limitation and therefore was incompatible with European law

Vodafone 2

Vodafone contended that the limitation to "artificial arrangements" could not be read into the wording of the UK legislation – in which case the UK CFC provisions in place before 2007 would effectively be rendered inoperable in respect of EU subsidiaries.

The UK Special Commissioners disagreed, but the High Court accepted this argument. While the British Revenue & Customs is likely to appeal this case, an extensive and thorough analysis of case law is provided in the judgement.

Implications for EU subsidiaries of UK multinationals

- If the Vodafone 2 decision is not reversed in the higher courts, it seems that Irish and other EU subsidiaries should not have been subject to the UK CFC rules up to 2007 (regardless of genuine substance considerations) as the rules were fundamentally incompatible with European law.
- Following Cadbury, in 2007 the UK introduced new legislation which eliminates the CFC charge where certain conditions are met and which refers specifically to where the CFC has a business establishment in an EU state. Non-binding comments in the Vodafone 2 judgement also cast doubt on whether this new legislation complies with the 'freedom of establishment' principle, but it remains to be seen how the courts would decide on this point, if they specifically examine it.
- The UK has now effectively withdrawn last year's proposals to reform the regime for taxation of foreign profits (encompassing the CFC rules), allowing for further consultation on a new regime.

All of this leaves an uncertain environment for UK multinationals. However, based on the Vodafone 2 ruling, claims for tax repayments should now be considered.

Tax Rates and Credits 2009

Personal income tax rates

	At 20% First	At 41%
Single person	€36,400	Balance
Married couple (*one income*)	€45,400	Balance
Married couple (*two income*)*	€72,800	Balance
One parent / Widowed parent**	€39,400	Balance

*Subject to max. transferable of €45,400
**No change from 2008

Income Levy from 1 January 2009

	%	Income
Income Levy	1.00	up to €100,100
	2.00	Income > €100,100

Calculated on gross income (excluding social welfare payments, contributory and non-contributory pensions

Personal tax credits (No change)

Single person / widowed person	€1,830
Married couple	€3,660
Additional one-parent family credit	€1,830
Employee credit	€1,830
Home Carer credit	€900
Rent - Single and under 55 years	€400

Home loan interest

The relief is granted at source
First Time Buyers (for years 1-2)

Married couple	Lower of €5,000 or 25% of interest paid
Widowed person	Lower of €5,000 or 25% of interest paid
Single	Lower of €2,500 or 25% of interest paid

First Time Buyers (for years 3-5)

Married couple	Lower of €4,500 or 22.5% of interest paid
Widowed person	Lower of €4,500 or 22.5% of interest paid
Single person	Lower of €2,250 or 22.5% of interest paid

First Time Buyers (for years 6-7)

Married couple	Lower of €4,000 or 20% of interest paid
Widowed person	Lower of €4,000 or 20% of interest paid
Single person	Lower of €2,000 or 20% of interest paid

Other Mortgages

Married couple	Lower of €900 or 15% of interest paid
Widowed person	Lower of €900 or 15% of interest paid
Single person	Lower of €900 or 15% of interest paid

PRSI Contribution

	%	
Employer	10.75	no limit*
	8.50	if income is €356 pw or less**
Employee (class A1)		
PRSI	4.00	on first €52,000**
Health	2.00	Income up to €100,100 ***
	2.50	Income > €100,100

* Includes training levy of 0.7%
** Employees earning €352 or less pw are exempt from PRSI. In any week in which an employee is subject to full-rate PRSI, the first €127 of weekly earnings are disregarded
*** Employees earning €500 pw or less and medical cardholders exempt

Self-employed PRSI

	%	
Social insurance	3.0	No limit*
Health	2.00	Income up to €100,100
	2.50	Income > €100,100

* Minimum annual PRSI contribution is €253.

Capital gains tax

Rate	22%*
Annual exemption	€1,270

*Effective 15 October 2008

Corporation tax rates

Standard rate	12.50%
Incentive rate	10%*
Residential land, not fully developed	20%
Non-trading income rate	25%

*Companies entitled to the 10% CT rate retain it until 2010

Value added tax

Standard rate/Lower rate	21.5%* / 13.5%
Flat rate for unregistered farmers	5.20%

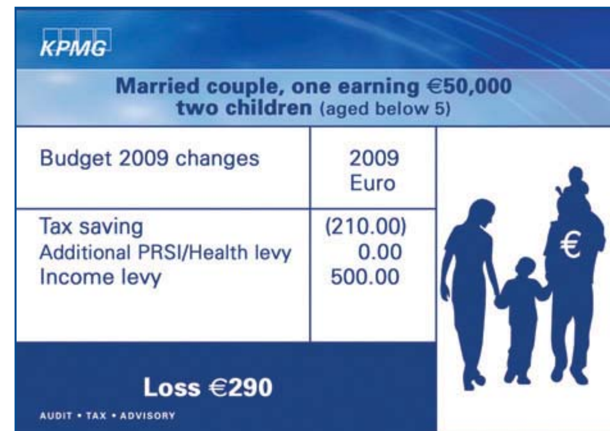
* Effective 1 December 2008

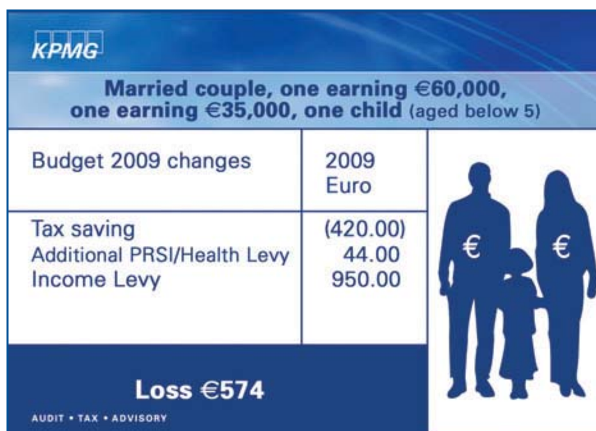
Stamp Duty - Residential Property: No change

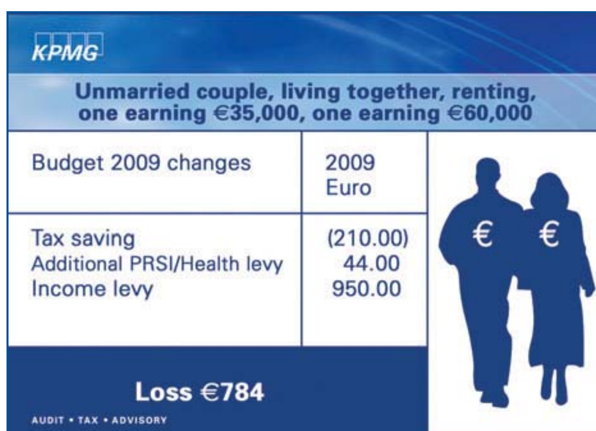
Stamp duty - Commercial Property

Property Value;	Rate
Up to €10,000	exempt
€10,001 to €20,000	1%
€20,001 to €30,000	2%
€30,001 to €40,000	3%
€40,001 to €70,000	4%
€70,001 to €80,000	5%
Over €80,000	6%

Personal Tax Scenarios







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