



Society of Trust and
Estate Practitioners Ireland

Finance Bill 2012

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Finance Bill 2012

- Capital acquisitions tax
- Stamp duty
- Capital gains tax
- Self assessment changes
- EU Commission recommendations re cross border inheritance tax

Finance Bill 2012- CAT

- Budget day changes confirmed
- Tax free threshold reduction for Group A
- Rounding of Groups B and C thresholds
- Indexation abolished
- Group A has more than halved since April 2009
- CAT 30% - 7/12/11 & later gifts & inheritances

	Pre 7/12/11	7/12/11 & later
Group A	€332,084	€250,000
Group B	€ 33,208	€ 33,500
Group C	€ 16,604	€ 16,750

Finance Bill 2012- CAT

- Definition of discretionary trust extended
 - Any entity similar in effect to DT
 - Regardless of how described in country of origin
 - Aimed at foundations
 - Collection of 6% once-off and 1% annual DTT
 - Anecdotal reports of foundations in Liechtenstein, Jersey & Panama
 - No application of DTT
 - Revenue keen not to loose DTT

Finance Bill 2012- CAT

- Post High Court case *J.H.Irvine decd*
 - DT created under will
 - Assets became subject to DT when passed to trustees
- On & from 8 February 2012 deemed to become subject to DT at date of death

Finance Bill 2012 - CAT

Example

- Testator dies 20 February 2012 – residuary estate to DWT
- Deemed to become subject to DWT on 20 Feb 2012
- Grant of Probate issues 1 April 2014
- Residue ascertained 30 Sep 2014 & passed to trustees
- Initial levy 6% VD 30/9/14 for 20/2/12
- Annual levy 1% VD 30/9/14 for 31/12/13
- No annual levy for 31/12/12

Finance Bill 2012- CAT

- CATCA 2003 Section 36 – person with general power of appointment is the disponent where beneficiary takes a benefit
- On & from 8 Feb 2012 where GPoA is part of an arrangement to avoid tax
 - tax will be charged
 - as if disposition under power created and
 - disponent is person who created the power
- Perhaps aimed at
 - Settlor settles DT
 - Pre settlor's death GPoA given to young nephew
 - Settlor dies – no DTT, disponent not dead

Finance Bill 2012- CAT

- Farmer 80% test – no deduction for debts/encumbrances except those on non-agricultural only or main residence
- Restriction on & from 8/2/12
- A loan not used to purchase, repair or improve that residence will not be deductible
- 3 year residence requirement deleted for APR (EU compliance)

Finance Bill 2012- CAT

- Change to s45AA to make it clear solicitor appointed is assessable & chargeable for CAT for non-resident beneficiary
- FA 2010 amendment deleted due dates for DTT returns – now reinstated to within 4 months of VD
- 4 years valid claim for refund to run from 31 October in year tax was due
- Deletion of apportionment of tax-free threshold for benefits taken on same day
- Filing deadline back to 31 October

Finance Bill 2012 – stamp duty

- Confirms Budget Day reduction for non-residential property to 2%
 - Consanguinity relief up to 31 Dec 2014
- Exemption from SD on company mergers incl cross border

Finance Bill 2012 – stamp duty

- Modernisation of SD (subject to Ministerial order)
 - Self assessment for SD
 - Removal of adjudication process
 - Power to make assessments
 - Fine of €3,000 if return not lodged within 30 days
 - Audit & appeal procedures
 - Expression of doubt facility
 - Penalty surcharge for late filing – 5% (€12,695 max)/10% (€63,485 max) of SD
 - Refund claim within 4 years of stamping
 - Retain records for 6 years
 - Revenue powers extended

Finance Bill 2012 – Capital gains tax

- Rate change confirmed at 30% for disposals on or after 7/12/11
- Situs for Irish incorporated company shares is Irish – even if bearer shares
- Contingent liability ignored for calculating gain or loss. If enforced redo CGT

Finance Bill 2012 – Capital gains tax

- CGT Retirement relief on business or farm
 - Pre FA 2012 – full CGT relief if disposal when aged over 55 and consideration less than €750,000 (+ other conditions)
 - From 1 Jan 2014 reduction from €750,000 to €500,000 for 66 or older
 - Pre FA 2012 - full CGT relief is disposal when aged over 55 and no limit on disposal to child (+ other conditions)
 - From 1 Jan 2014 cap of €3m for those aged 66 or older
 - Nearly 2 years to transfer if nearly 66 or older

Finance Bill 2012 – Capital gains tax

- Turf cutter compensation exempt from CGT
- Changes to CGT exemption on disposal by sports bodies – 5 years to apply funds or donate to charity
- Incentive for land or buildings bought between 7 Dec 2011 and 31 Dec 2013
 - In any EEA State including Ireland
 - Held for 7 years
 - No CGT
 - Pro-rata if held more than 7 years
 - Not trading assets

Finance Bill 2012 – Capital gains tax

- Amends CGT anti-avoidance in s579 TCA 1997 on non-resident trusts
- Section 579 can attribute gains by non-resident trust to Irish resident beneficiary
- Applied only if settlor domiciled & resident/ordinarily resident
- Domicile requirement deleted on & from 8/2/12
- Gains accruing while beneficiary temporarily non-resident – can be taxed on his/her return to Ireland
- Gains accruing while beneficiary temporarily excluded – can be taxed in year of his/her reinstatement

Finance Bill 2012 – Self assessment & section 811 time limit

- 2013 tax return (due 31 Oct 2014) for individuals/trusts etc fully self assessment
- Collector General can request a statement of affairs from persons who owe taxes to include assets
 - Of spouse, civil partner, minor child, trustee
- HC ruling re s811 time limit (Droog case)
- Law change to exclude 4 year time limit on assessments under s811

EU Commission recommendations - relief for double taxation of inheritances

- Issued 15 December 2011
- No new EU law or network of treaties
- Only 33 treaties: possible total of 351
- Encourage national measures
- Double taxation is not contrary to EU law
- Main principle is that tax in a cross-border situation should be no higher than it would be in the country with the highest tax of the countries concerned

EU Commission recommendations - relief for double taxation of inheritances

Recommendations

- Member States grant unilateral relief more broadly
- A Member State where no personal links should not apply inheritance tax on movable property taxed in another
- Where deceased and heirs have links with different Member States – heirs' Member State should give relief
- Mutual agreement for determination of Member State with closer personal links – similar to tax treaties and OECD estate tax Model Convention
- Time-frame for claiming relief should be longer – 10 years
- Mutual agreement procedure for dealing with disputes between Member States

EU Commission publication of principles for non-discriminatory estate tax systems

- Drawn from cases in Court of Justice – 10 since 2003
- Member States' inheritance tax rules may not discriminate based on:
 - Location of assets
 - The residence of the deceased or the heirs
 - Connection of business with a Member State
 - Favourable treatment for legacies to a charity resident in the Member State

EU Commission recommendations – what happens next?

■ Commission will

- ❑ Enter into discussions with Member States about following up its Recommendations on double taxation relief
- ❑ Help Member States to bring their inheritance laws into line with EU law
- ❑ Take action against any discriminatory features
- ❑ Review the position in 3 years to see if further measures are required

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