McCANN FITZGERALD

Proposed Additional Tax Reliefs for Irish Start-Ups

BRIEFING

The Irish Government has committed in its "Programme for Partnership Government" to introduce a number of tax reforms for the purposes of increasing Ireland's competitiveness and maintaining a strong, stable and growing economy. In particular, it intends to introduce additional tax reliefs for start-ups with effect from January 2017. These are expected to further support Ireland's appeal as a location to launch and invest in start-ups.

Entrepreneurs CGT Relief

It is proposed that the current "entrepreneurs CGT relief" which applies a reduced rate of Capital Gains Tax ("**CGT**") of 20% (the standard rate of Irish CGT is 33%) on the disposal by an individual of his/her business assets, up to the lifetime limit of €1 million, be reduced further to 10% on relevant disposals. It is hoped that the enhanced relief will bring the relief available in Ireland further in line with the United Kingdom, where a 10% CGT rate applies to entrepreneurs on gains on disposals of a business up to a lifetime limit of £10 million.

The current Irish entrepreneurs CGT relief was announced in Budget 2016 and became effective from 1 January 2016. To qualify for the relief, the business assets (which include shares in a corporate entity) must have been owned by the individual for a continuous period of at least three years in the five years immediately prior to the date of the disposal.

In order to come within the relief, an individual must dispose of "chargeable business assets". For this purpose, a "chargeable business asset" means an asset, including goodwill, that is:

- a full or partial interest in an asset used for the purposes of a qualifying business carried on by an individual; or
- a holding of 5% or more of the ordinary shares in a company carrying on a qualifying business or a qualifying holding company, provided that the individual is a qualifying person in respect of the company or a group company.

A "qualifying business" is widely defined and generally includes any business other than the holding of securities or other assets as investments, the holding of development land or the development or letting of land.

If an individual is disposing of shares, the individual must also be a "qualifying person" in order to avail of the relief. A "qualifying person" in relation to a company is someone who is or has been a director or employee of the company or a group company who spent 50% or more of his/her working time in the service of that company or group in a managerial or technical capacity for a continuous period of three out of the five years immediately before the disposal of the relevant shares. If the individual acquired the shares as a result of a reconstruction or amalgamation, his/her period of share ownership of the old and new shares and the working time spent with the current and previous company or group will be taken into account in each of the three-year tests where certain conditions are met.

The relief also applies to the disposal of shares in a holding company where each company in the group is a 51% subsidiary and each 51% subsidiary wholly or mainly carries on a qualifying business.

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(continued)

Earned Income Tax Credit

It is anticipated that the earned income tax credit for the self-employed which was introduced in January 2016, will also increase from €550 to €1650 in 2017. This earned income tax credit is available to taxpayers earning self-employed trading or professional income and to business owners/managers who are ineligible for a PAYE credit on their salary income, and is aimed at active rather than passive income.

Other Tax Reforms

The Programme for Partnership Government also indicates that the Irish Government will explore mechanisms through which SMEs can reward key employees with share options in a tax-efficient manner. It is also proposed that a PRSI scheme for the self-employed will be introduced. In addition, the Irish Government has committed working towards raising the Band A capital acquisitions tax threshold (which applies to gifts/inheritances from parents to their children) to €500,000.

Irish start-up companies which have commenced trading, or which are considering commencing to trade in 2016 may wish to consider whether they may be in a position to avail of the proposed new tax reliefs.

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