Real Estate Tax Services
A brief tax guide for non-resident investors

Leading business advisers

A tax brief for non-resident investors in Irish Real Estate.

This briefing outlines broadly the Irish tax implications of investing in Irish property.

Income Tax

Non-resident individuals and companies investing in Irish property are charged Irish Income Tax on taxable rental profits, on a 'fiscal year basis'. The fiscal year operates on a calendar year basis from 1 January to 31 December.

Summary of current tax position

	Non-resident individual or partnership (%)	Non-resident company (%)	Irish resident company (%)
Rental income	20-41*	20	25
Capital Gains	33	33	33

There can be Social Insurance and Universal Social charge in addition to this (up to 10% Universal Social Charge and 4% PRSI)

Tax residence - individual

An individual is regarded as a tax resident in Ireland if they have been in the State for 183 days or more in a given tax year, or a total of 280 days or more in the current tax year and the prior year and with at least 30 days in the current tax year.

An individual who is a non-tax resident under the 183 days or 280 days tests may, if he/she so wishes, elect to be Irish resident for tax purposes in a given year if he/she satisfies the Revenue that he/she is in the State with the intention and in such circumstances that he will be resident in the following year of assessment.

Irish tax law also includes a concept of ordinary residence. Ordinary residence applies if an individual is resident in Ireland for at least 3 years. Ordinary residence continues to apply until an individual ceases to be resident for three continuous tax years. Certain Irish tax liabilities can arise for individuals who are ordinarily resident (but not tax resident).

Self-assessment for individuals

Foreign investors who invest in Irish property will come within the self-assessment rules. The investors will for instance be subject to Irish tax on the total aggregate taxable rental profits from their Irish property interests. Profits are calculated on an accruals basis, i.e. after deducting qualifying expenses from rents received in the fiscal year. Individuals are required to make specified preliminary tax payments by 31 October in the year of assessment and to file returns no later than 31 October in the year following the year of assessment. Where the Preliminary Tax requirements have been met, the balance of tax for the relevant year must be paid on the return-filing deadline. Failure to pay the correct amount of tax, at any of the given stages or to make an adequate timely return may result in penalties and surcharges.

Corporation Tax

A company resident in the State for tax purposes is subject to Corporation Tax on worldwide profits (credits may be utilised on tax paid in another country if Ireland has a double taxation treaty with the corresponding country). Corporation Tax is currently charged at a rate of 12.5% on trading income and 25% on all other income i.e. rental income. Non-resident companies are also subject to tax on trading profits attributed to a branch or agency operating in the State.

Company residence

Companies that are incorporated in Ireland or are centrally managed and controlled in Ireland are regarded as resident in the State for corporation tax purposes. The Irish tax authorities will look to the facts of each case and it may be necessary to review a Double Tax Treaty to be definitive.

Tax deadlines – Corporation Tax

For taxation purposes a company cannot have an accounting period of longer than twelve months. If accounts are made up for a period of longer than twelve months they are apportioned into periods of twelve months and a shorter subsequent period for taxation purposes.

Payment of tax

If a company has a corporation tax liability of over €200,000 it is considered a 'large company' for corporation tax purposes, the first instalment of preliminary corporation tax is due 6 months before the end of an accounting period with the second instalment being due one month before the end of the accounting period. If a company is considered a 'small company' for corporation tax purposes, the preliminary tax payment is due 1 month before the end of the accounting period.

The final corporation tax payment is due 9 months after the end of the accounting period.

Tax return

The tax return must be submitted to the Revenue for each period not later than 9 months after the accounting period end in order to avoid surcharges or restrictions on various reliefs being claimed.

Alternative investment vehicles

REITs – Real Estate Investment Trusts

Ireland recently introduced a REIT regime for Publically Listed Companies. This means gains and rents may be exempt from tax so long as certain conditions are met.

More information visit
www.deloitte.com/ie/reits 2013

Gross roll up funds

In addition, Ireland has a gross roll up structure in place for Qualifying Investment Funds Scheme which may be of interest to foreign investors who require a regulated vehicle or scale giving significant tax efficiencies.

Tax depreciation

Tax depreciation in Ireland is available on certain types of "industrial buildings". The Irish legislation specifically sets out what types of building fit into this category.

Broadly, where tax depreciation is available, the rates vary depending on the type of building, i.e. hotels and factories are depreciated over a 25-year period whereas convalescent homes are depreciated over 7 years. The rate of depreciation is on a straight-line basis.

Plant and machinery

Plant and machinery can be written off over an 8-year period on a straight-line basis. In contrast to Industrial Building Allowances, the sale of plant and machinery may result in a balancing allowance or a balancing charge depending on the tax written down value of the assets. In the case of Industrial Building Allowances, there will be no balancing allowance or charge if the sale takes place after the "tax life" of the building has expired.

Financing

Under current law a deduction for interest used in funding the acquisition of an Irish investment property is available for both commercial and residential properties. The interest deduction accrued on money borrowed, employed in the purchase, improvement or repair of premises after 7 April 2009 in respect of residential properties (not commercial properties) is limited to 75%.

Withholding tax on rents

Tenants of non-resident owners of Irish property are obliged to withhold tax at the standard income tax rate of 20% from rental income prior to remitting overseas. This can be avoided if the landlord has employed an Irish agent to collect the rents.

Capital Gains Tax

Capital Gains Tax is applicable at a rate of 33% on the gains made on a disposal of property in Ireland. If the seller is non-resident, this will only relate to the sale of specified assets. Specified assets are set out as follows:

(a) Lands and buildings in the State.

(b) Minerals or any rights, interests or other assets in relation to mining in the State. This also includes exploration and exploitation rights within the Irish Continental Shelf.

(c) Assets situated in the State which were used or were acquired to be used for the purpose of a trade carried on through a branch or agency, or

(d) Unquoted shares deriving the greater part of their value from either (a) or (b) above.

It should also be considered when dealing in property that an individual may be subject to income tax or a corporation may be subject to corporation tax if the transactions are deemed to be of a "trading nature". Whether the particular transaction is trading or investment in nature is a question of fact and is generally determined by the extent to which it exhibits any or all of the so-called "badges" of a trade. There are a number of factors that may indicate trading and include the following:

- Motive for the sale.
- Frequency of transaction.
- Circumstance of the acquisition.
- Period of holding.
- Resemblance to an existing trade.
- Length of financing period.

A Capital Gains Tax holiday was introduced by Finance Act 2012. The relief means effectively, any land or buildings situated in Ireland or a member of the European Economic Area which is acquired between 7 December 2011 and 31 December 2013 which is owned by the same person for a period of at least 7 years will be exempt from capital gains tax on any gain arising in the seven year period following the date of acquisition.

If the property is held for more than 7 years then partial relief is available, e.g. if a property is owned for 10 years then 70% of the gain would be exempt from Capital Gains Tax. To avail of the exemption the land and buildings must be acquired at market value.

Capital Acquisitions Tax

Capital Acquisitions Tax affects both gifts and inheritances and is calculated on the basis of the relationship between the disponer (giver) and the beneficiary. The rate of CAT is 33%.

Since 1 December 1999, benefits comprising of foreign property or non-Irish located assets may now come within the charge to Capital Acquisitions Tax if:

- The disponer is resident or ordinarily resident in Ireland and, or
- The beneficiary is resident or ordinarily resident in Ireland

It is important to bear in mind that Irish situated assets, which are the subject of the gift, or inheritance will always come within the charge to Capital Acquisitions Tax regardless of the domicile/residency of the individual.

A non–domiciliary will only be taxable if the gift or inheritance occurs after 1 December 2004 and the individual has been continuously resident in Ireland for a period of five years, provided the benefit does not consist of Irish assets.

A gift or inheritance made by a company or received by a company may be liable to a Capital Acquisitions Tax charge. The liability to CAT is determined by looking through the company to the ultimate shareholders in respect of a private company to determine the relationship between the donor and beneficiary. A Group III (see below) threshold may apply in respect of gift/inheritance made or received by a public company.

Capital Acquisitions Tax is payable by the beneficiary and the tax is payable on the taxable value of the benefit reduced by the relevant tax free threshold (as indexed for 2002) which are as follows:

Group I €225,000 - child/minor child of deceased

Group II €30,150 - brother, sister, aunt, uncle, nephew, niece, grandchild.

Group III €15,075 - all others

There is a small gift exemption of €3,000 per annum allowable for each disponer in a calendar year. This does not apply in the case of an inheritance.

Value Added Tax

Irish Value Added Tax ("VAT") law relating to property and construction projects is a complex and challenging discipline. The VAT rules were completely overhauled with effect from 1st July 2008, and since then there are essentially two sets of rules, one to deal with property acquired since that date and another to deal with property held on that date, known as the transitional rules.

Construction contracts are normally chargeable to VAT at 13.5% but certain fittings can be liable to VAT at 23%. Relevant Contracts Tax (RCT – see below) may also be a consideration for construction contracts and there are specific VAT 'reverse charge' rules which apply on contracts which are subject to RCT provisions.

Depending on the circumstances, the supply/purchase of property may be entirely VAT free, chargeable to VAT at 13.5% or chargeable to VAT at 23%. Furthermore, depending on the nature of the transaction the vendor may charge VAT or the purchaser may be obliged to self-assess VAT.

In cases where a property is chargeable to VAT, the vendor/purchaser, as the case may be, should register for VAT, and account for VAT chargeable. VAT will be deductible where the property is used for vatable business purposes.

The following is a high level summary of the relevant VAT rules:

- **Purchasing a property** - If you are charged VAT when purchasing a property, you will be able to claim back that VAT to the extent that you use the property for vatable supplies.
- **Use of a property/20 year watch on VAT recovered** - All properties that you purchase will be subject to what is known as the capital goods scheme. Under the capital goods scheme the VAT recovered initially will be under the microscope for 20 years. In essence if a property is used for fully vatable purposes there will be no VAT recovery issues, whereas if the property is used for VAT exempt purposes, there will be a claw back or uplift of VAT recovered based on such use.
- **Letting a property/exempt with option** - Post 1 July 2008 the letting of property, under occupational type leases, is exempt from VAT. That has two consequences, being (a) you cannot charge VAT on the rent, and (b) you are not entitled to recover input VAT on the cost of purchasing, developing and maintaining the property. However, see last paragraph below regarding an option to tax so as to protect input credit recoverability.
- **Sale of property/VAT on sale of new property/no VAT on the sale of old property** – Post 1 July 2008 you have to charge VAT on the sale of a new property. You do not charge VAT on the sale of an old property. A property is old if you have not done any significant development work to it in the 5 years before you sell it or in some cases if it has been occupied for two years or more before sale. If the sale of an old property is exempt, you may have to pay back some of the input VAT originally recovered.
- **Properties on hand on 1 July 2008/Transitional rules** – These are quite complex rules. In essence, the core of the transitional rules is that if you recovered VAT on acquisition you charge VAT on the sale, and that if you did not recover VAT on acquisition you do not charge VAT on the sale.
- **Minimising potential VAT costs** – Letting is exempt from VAT, with attendant VAT costs. To avoid such a cost a landlord can, in certain circumstances, exercise an option to charge VAT on the rent payable. Furthermore, as outlined, there are many instances where the sale of a property is exempt from VAT. If the sale of a property is exempt, you may have to pay back some of the VAT originally recovered on acquisition. To avoid such a cost you can agree with the purchaser that an otherwise VAT exempt sale is chargeable to VAT under a joint option to tax.
- **Maximising VAT recovery** – There are also instances where a sale is exempt from VAT because you did not recover VAT on acquisition. Again, you can agree with the purchaser that an otherwise VAT exempt sale is chargeable to VAT under a joint option to tax. If you did not recover all the VAT charged when you bought the property, you can recover some of the disallowed VAT if you sell the property subject to VAT.

Relevant Contracts Tax

Relevant Contracts Tax is a withholding tax mechanism to ensure those involved in construction and other industries are tax compliant. The legislation obliges a person (principal) to obtain specific Revenue authorisation prior to making every payment to each contractor. The authorisation will indicate the applicable tax rate 0%, 20% or 35% and the amount of tax to be withheld from the payment. The rate will depend on the contractor's own tax compliance status.

RCT applies where a 'principal contractor' engages a subcontractor to carry out certain services. Broadly speaking a principal contractor may include property developers, building companies and all associated building trades as well as individuals who are connected with these businesses. All Government bodies, local authorities, public utilities, boards and bodies established under statute are deemed to be principal contractors under current legislation. It also includes all gas, water, electric/hydraulic power, dock, canal and railway undertakings. A person or company is also deemed to be a principal contractor where they sub-contract all or part of a relevant contract under which they are a subcontractor for RCT purposes.

Services subject to RCT are extensively defined and Revenue practice is to apply a broad interpretation of these definitions and sometimes it may not be obvious whether a particular contract/project includes services which are within the scope of RCT. Difficulties can often arise through the incorrect treatment of services. The range of services included in the scope of RCT is very broad and can bring some service providers into the realm of RCT unexpectedly. For example, telecommunication companies, hauliers, offshore exploration/exploitation support services. Other services subject to RCT include;

- Construction services
- Design & build contracts
- Supply and install contracts, e.g. power supply (e.g. wind farms), telecommunications, heat, light, air-con, water supply, alarms, sanitation, etc
- Repair, demolition, site prep & clearance services, including skip hire
- Haulage services, crane hire, scaffolding
- Agency services related to the provision of labour
- Operations which are preparatory to, integral or for rendering complete the exploration, extraction or exploitation of natural resources (minerals, oil, gas)

RCT is essentially a compliance issue which is dealt with online through the Revenue Online Service (ROS). That said, there is significant risk as tax exposures can be very substantial where RCT is not operated correctly, e.g. on a payment of €1 million a potential tax liability of €350k plus interest and penalties can arise.

Stamp duty

Stamp duty is charged on the price paid (or the market value where the price paid is less than market value) of the property. Stamp duty on commercial property is charged at a flat rate of 2%. The rate of stamp duty on residential property is 1% on the first €1,000,000 of the consideration and any consideration in excess of €1,000,000 is charged at 2%.

With regard to leases, stamp duty is chargeable on rent payable under the lease. The stamp duty payable on the rent is a one off duty (of between 1% and 12%) payable by the lessee on the average annual rent of leased property depending on the length of the leasehold. Short leaseholds (i.e. less than 35 years) attract stamp duty at broadly 1% of the average annual rent. Stamp duty would also arise on any premium payable under the lease. The duty chargeable on the premium is at the rate for residential or non-residential property as appropriate.

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