TAX UPDATE AND PLANNING

2019

Speaker: David Clancy

www.clancytax.ie  01-8454044
AGENDA

✓ The Tax Landscape
  ▪ Income Tax, CGT, CAT, Stamp Duty

✓ Operating Structures – Self Employed/Partnership v Limited Company

✓ Tax Efficient Remuneration

✓ Minding Your Own Business

✓ Tax Hand-down and Exit
The Tax Landscape

- **Income Tax**
  - $40\% + 4\% + \text{USC} = 52\% \text{ or } 55\% \text{ or } 60\%$
  - Tax Shelters scarce and restricted

- **Corporation Tax**
  - $0\% \text{ or } 12.5\% \text{ or } 25\% \text{ or } 19.06\% \text{ or } 40\%$
Income Tax 2019

**Single** €35,300 @ 20%
Balance @ 40%

**One-Parent Family** €39,300 @ 20%
Balance @ 40%

**Married** €44,300 or €70,600* @ 20%
Balance @ 40%

*Restrictions apply (€26,300)
## Income Tax 2019

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>€1,650</td>
</tr>
<tr>
<td>Married</td>
<td>€3,300</td>
</tr>
<tr>
<td>PAYE</td>
<td>€1,650</td>
</tr>
<tr>
<td>Earned Income Tax Credit</td>
<td>€1,350</td>
</tr>
<tr>
<td>Single Parent Child Carer Credit</td>
<td>€1,650</td>
</tr>
<tr>
<td>Home Carer</td>
<td>€1,500</td>
</tr>
<tr>
<td>Incapacitated Child</td>
<td>€3,300</td>
</tr>
<tr>
<td>Age – Single</td>
<td>€245</td>
</tr>
<tr>
<td>Age – Married</td>
<td>€490</td>
</tr>
</tbody>
</table>
Earned Tax Credit

✓ F.A. 2015 Introduced Earned Income Tax Credit
✓ €550, €950, €1,150 €1,350
✓ Available to self-employed individuals and proprietary directors
✓ PAYE tax credit and Earned Income Credit can be claimed but a maximum combined of €1,650
PRSI

✓ 4% on all income for self-employed
✓ 4% on gross salary & BIK before pension deductions for Employees
✓ Typically 10.95% for Employers
✓ Applies to investment income from 1st Jan 2014
✓ 16 to 66 years of age
Universal Social Charge

2019

First €12,012 0.5%
Income between €12,013 - €19,874 2%
Income between €19,874 - €70,044 4.5%
Income above €70,044 8%

USC surcharge of 3% on non-PAYE – income above €100,000

Exemptions
- All Department of Social Protection payments
- Deposit interest already subject to DIRT
- Redundancy payments to the same extent as they are exempt from income tax.
## Taxation

<table>
<thead>
<tr>
<th>Rates</th>
<th>CGT</th>
<th>CAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Dec 2012</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>8-12-2011 to 5-12-12</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>8-4-2009 to 7-12-2011</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>15-10-2008 to 7-4-2009</td>
<td>22%</td>
<td>22%</td>
</tr>
<tr>
<td>1-12-1999 to 14-10-2008</td>
<td>20%</td>
<td>20%</td>
</tr>
</tbody>
</table>
## Tax Free Thresholds

<table>
<thead>
<tr>
<th>Category</th>
<th>From 8/4/09 to 31/12/09</th>
<th>From 1/1/10 to 7/12/10</th>
<th>From 8/12/10 to 6/12/2011</th>
<th>From 7/12/11 to 5/12/12</th>
<th>From 6/12/12 to 13/10/15</th>
<th>From 14/10/15 to 11/10/16</th>
<th>From 12/10/16 to 9/10/18</th>
<th>From 10 Oct 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent – Child</td>
<td>€ 434,000</td>
<td>€ 414,799</td>
<td>€ 332,084</td>
<td>€ 250,000</td>
<td>€ 225,000</td>
<td>€ 280,000</td>
<td>€ 310,000</td>
<td>€ 320,000</td>
</tr>
<tr>
<td>Blood Relatives</td>
<td>€ 43,400</td>
<td>€ 41,481</td>
<td>€ 33,208</td>
<td>€ 33,500</td>
<td>€ 30,150</td>
<td>€ 30,150</td>
<td>€ 32,500</td>
<td>€ 32,500</td>
</tr>
<tr>
<td>Strangers</td>
<td>€ 21,700</td>
<td>€ 20,740</td>
<td>€ 16,604</td>
<td>€ 16,750</td>
<td>€ 15,075</td>
<td>€ 15,075</td>
<td>€ 16,250</td>
<td>€ 16,250</td>
</tr>
</tbody>
</table>

- In relation to the tax free thresholds above, it is important to note that all gifts and inheritances within the 3 categories are aggregated from 5 December 1991.
- Consideration should be given individuals to utilising the small gift exemption in each calendar year and the lifetime tax free threshold amounts for all family and extended family.
Stamp Duty

- Non-Residential - 6% rate applies for all instruments from 12th October 2017.
- Residential - First €1,000,000 1%
  Excess over €1,000,000 2%
- Shares – 1% of market value
- No Stamp Duty applies on death
Self-Employed/Partnership v Limited Company

- Some of the issues involved in the decision as to the appropriate operating structure
- Watch cessation rules
- Section 600 TCA 1997 – CGT relief on incorporation
Tax Efficient remuneration – Extraction of Funds from Company

- Important to consider the implications for the individual and the company
  - Salary
  - Benefit-in-Kind
  - Pension Contributions
  - Dividends
  - Loans
  - Termination payments
  - Expenses
  - Civil Service Mileage & Subsistence
Benefits-in-Kind

- **Company Car**
  - 30% of the *original* market value (OMV)
  - This can be reduced for high business mileage and/or where the car is available for only part of the year
  - Annual Business mileage:
    - 24,000km or less 30%
    - 24,000km to 32,000km 24%
    - 32,000km to 40,000km 18%
    - 30,000km to 48,000km 12%
    - 48,000km or over 6%
**Benefits-in-Kind**

- **Company Car**
  - Travel to and from work considered private use. A minimum amount of private usage is assumed by Revenue to be 8,047km unless it can be proved otherwise.
  - Electric Vehicles
    BIK exemption on electric vehicles until 2021
    From 2019 cap on €50,000 OMV. If OMV exceeds €50,000, BIK on the excess
- Salary increase versus Company Car
Accommodation

- Revenue manual BIK on:
  - 8% market value of the property
  - The market value of the annual rent which could be obtained by the property on a yearly basis
  - 5% market value of any furniture
Preferential Loan

- 4% home loan
- 13.5% other

**WATCH** tax impact of loans from the company’s viewpoint
Other Benefits

- Travel passes
- Cycle to work scheme
- Meals in a canteen
- Small benefits
- Mobile phone
- High speed internet/broadband
- Computer Equipment
- Professional Subscriptions
- Sports and recreational facilities
- Medical check-ups

- Christmas parties and other inclusive events
- Car parking
- Newspapers and periodicals
- Staff discounts
- Private health insurance
- e-working

The Cycle To Work Scheme

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LIA
Educatng and Developing Financial Professionals
## Mileage

<table>
<thead>
<tr>
<th>Distance Bands</th>
<th>Engine Capacity up to 1200 cc</th>
<th>Engine Capacity 1201cc to 1500cc</th>
<th>Engine Capacity 1501cc and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band 1 0 – 1,500 km</td>
<td>37.95 cent</td>
<td>39.86 cent</td>
<td>44.79 cent</td>
</tr>
<tr>
<td>Band 2 1,501 – 5,500 km</td>
<td>70.00 cent</td>
<td>73.21 cent</td>
<td>83.53 cent</td>
</tr>
<tr>
<td>Band 3 5,501 – 25,000 km</td>
<td>27.55 cent</td>
<td>29.03 cent</td>
<td>32.21 cent</td>
</tr>
<tr>
<td>Band 4 25,001 km and over</td>
<td>21.36 cent</td>
<td>22.23 cent</td>
<td>25.85 cent</td>
</tr>
</tbody>
</table>
# Subsistence

## Standard Domestic Subsistence Rates

**Effective from 1st October 2018**

<table>
<thead>
<tr>
<th></th>
<th>Overnight Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal Rate</td>
<td>€147.00</td>
</tr>
<tr>
<td>Reduced Rate</td>
<td>€132.30</td>
</tr>
<tr>
<td>Detention Rate</td>
<td>€73.50</td>
</tr>
</tbody>
</table>

## Day Rates

<table>
<thead>
<tr>
<th>Duration</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 hours or more</td>
<td>€33.61</td>
</tr>
<tr>
<td>5 hours but less than 10 hours</td>
<td>€14.01</td>
</tr>
</tbody>
</table>

## Overseas per diems

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Foreign Earnings Deduction

Foreign Earnings Deduction (FED)

- Individual carrying out duties in qualifying countries: Algeria, Bahrain, Brazil, Chile, China, Colombia, Democratic Rep. Congo, Egypt, Ghana, India, Indonesia, Japan, Kenya, Kuwait, Malaysia, Mexico, Nigeria, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Senegal, Singapore, South Africa, South Korea, Tanzania, Thailand, UAE and Vietnam
- 30 days in 12 month period
- A qualifying day is one of at least 3 consecutive days throughout the whole of which the individual is performing their duties in any qualifying country
- Formula:
  \[
  \text{No. of qualifying days} \times \text{Qualifying Income} \div 365
  \]
- A maximum deduction of €35,000
Severance Payments

- Statutory Redundancy Rules – 2 weeks pay for each years completed service and bonus week (€600 cap on earnings) – tax free
- In addition, highest of Basic Exemption, Increased Exemption and SCSB.

Basic Exemption
€10,160 + €765 for every year completed service

Increased Exemption
Additional €10,000 if two conditions are met:-
  i. First claim for relief in previous 10 years
  ii. Present value of tax free lump sum from pension scheme is less than €10,000
Severance Payments

- Standard Capital Superannuation Benefit

<table>
<thead>
<tr>
<th>Average remuneration for 3 years before departure</th>
<th>X</th>
<th>Number of years completed service</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Less Present Value of pension commutation</td>
</tr>
</tbody>
</table>

- Tax Free Lump Sum subject to cap of €200,000
Minding Your Own Business!

- Personal Tax Returns
- PAYE Modernisation
- VAT
- Corporation Tax
- Don’t file your Tax Returns late!
- Revenue Audits
Tax Issues in relation to Hand-down and/or Exit
Wealth Transfer / Exit

Asset Values

Taxation

Reliefs

Risks
Tax Issues in relation to Wealth Transfer

- Retirement relief
- CGT/CAT offset
- Trusts
- Business Asset Relief
- Dwelling House Relief
- Charity
- Agricultural Relief
- Thresholds & SGE
- Risks
- Entrepreneur Relief
- Termination Payments
- Commercial & Personal

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## Death v Gift

<table>
<thead>
<tr>
<th></th>
<th>Capital Gains Tax</th>
<th>Capital Acquisitions Tax</th>
<th>Stamp Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gift</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Death</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
</tr>
</tbody>
</table>
Gift v Inheritance

- As a gift brings forward CAT and also potentially gives rise to CGT and Stamp Duty, gifts are only efficient where:
  - ✓ tax costs are minimised (avail of reliefs or assume reliefs are going to be restricted or abolished),
  - and/or
  - ✓ significant increase in value is expected
Wealth Transfer

• Three taxes to be considered when transferring wealth from one generation to the next

1. Capital Gains Tax
2. Capital Acquisitions Tax
3. Stamp Duty
Capital Gains Tax

- Applies on transfers of assets (i.e. shares, property etc.)
- Rate currently 33%
- No indexation increases post-2003
- Small annual exemption €1,270 per tax year
- Principal Private Residence relief
- No CGT on death
Capital Gains Tax

- Gift = Disposal for CGT at market value
- Important relief referred to as Retirement Relief needs to be considered
Retirement Relief

- Qualifying assets are business assets which are owned for 10 years and shares in a family company
- A family company is one which:
  ✓ At least 25% voting rights held by individual
  ✓ At least 10% voting rights held by individual where family controls at least 75%
- Applies to trading companies
- Applies to property let to company where shares and property transferred at the same time
Retirement Relief

Conditions:

- Age over 55
- Assets owned for 10 years
- In a case of family company, an individual must be a director for 10 years up to the date of disposal
- Full-time working director for at least 5 years
- Watch 2017 anti-avoidance provisions involving connection and not meeting non bona fide commercial test
Retirement Relief

- Claw-back of relief where a child disposes of an asset within six years of transfer from parent

<table>
<thead>
<tr>
<th></th>
<th>NOT to Child</th>
<th>To Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit on Proceeds</td>
<td>Limit on Proceeds</td>
<td></td>
</tr>
<tr>
<td>€750k*</td>
<td>Exempt</td>
<td></td>
</tr>
<tr>
<td>For 55-65 year olds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>€500k*</td>
<td>€3 m</td>
<td></td>
</tr>
<tr>
<td>For 66 or over</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Marginal Relief /lifetime limit
Entrepreneur Relief

- Reduced rate of 10% on gains on disposals by individuals that satisfy various conditions
- Lifetime limit of first €1m of such gains. Any gains in excess of this limit is to be taxed at the full rate.
- With a standard rate of 33% this represents a €230,000 tax reduction.

- **Conditions:**
  - Assets disposed must be "chargeable business assets"
  - The person making the disposal must be a "relevant individual"
  - If that person is disposing of a shareholding that person must also be considered a "qualifying person"
Entrepreneur Relief

“Chargeable Business Assets”

• Assets owned by a sole trader/partnership and used in their trade including goodwill once the business operated is a “qualifying business”. A qualifying business is a business other than:
  – The holding of securities or other assets as investments
  – The holding of development land
  – The development or letting of land

• Shares held by an individual in a trading company that operates wholly or mainly a qualifying business or a holding company of a qualifying group, once the shareholding held is 5% or more of the company

*Qualifying Group cannot have 51% subsidiaries carrying on a business that is not a qualifying business (e.g. investment company or dormant company).

*Watch property holding company in the Group!
Entreprenuer Relief

“Relevant Individual”

• The chargeable business asset must have been owned by the individual for a continuous period of 3 years in the 5 years immediately prior to the sale of those chargeable business assets.

*WATCH: - any periods of ownership of the assets by a spouse is not aggregated in determining the continuous period of three years nor does any period of ownership as a sole trader prior to the incorporation of a business. Any periods during which the individual owned shares in or was a director or employee of a company that qualified for CGT reliefs under restructuring provisions, may be considered for the purpose of the 3 year ownership and director or employee requirements.
Entrepreneur Relief

“Qualifying Person”

• Individual must be a director or employee of the qualifying company or group who is or was required to spend not less than 50% of his/her time in the service of the company or companies in a marginal or technical capacity for 3 years in the 5 years immediately prior to the sale of the chargeable business assets.
Entrepreneur Relief

• Points to Note:
  – Liquidations
  – Anti-avoidance Section 30 Finance Act 2017
  – Interaction with CGT Retirement Relief
  – Share buybacks

[Source Irish Revenue Tax and Duty Manual (19-06-02b para 8)]
### Interaction of Retirement Relief and Entrepreneur Relief

<table>
<thead>
<tr>
<th></th>
<th>Retirement Relief</th>
<th>Entrepreneur Relief</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age Requirement</strong></td>
<td>Over 55 years of age</td>
<td>None</td>
</tr>
<tr>
<td><strong>Minimum holding period</strong></td>
<td>10 years</td>
<td>3 years</td>
</tr>
<tr>
<td><strong>Aggregation of qualifying periods of spouse/civil partners</strong></td>
<td>Yes for periods of ownership. Only on death for periods of directorship</td>
<td>No</td>
</tr>
<tr>
<td><strong>Assets held personally and used by a company for the purpose of trade</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Group structures – trading subsidiaries</strong></td>
<td>All companies in a group must be 75% subsidiaries. The business of the subsidiaries together consists wholly or mainly of trading.</td>
<td>All companies in a Group must be 51% subsidiaries. A non-qualifying subsidiary (investment or dormant) will deny relief</td>
</tr>
</tbody>
</table>

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Educating and Developing Financial Professionals
## Interaction of Retirement Relief and Entrepreneur Relief

<table>
<thead>
<tr>
<th></th>
<th>Retirement Relief</th>
<th>Entrepreneur Relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available on share buyback</td>
<td>Yes</td>
<td>5 Year holding period for CGT treatment on buyback but 3 years for relief</td>
</tr>
<tr>
<td>Available on liquidation</td>
<td>Concession – Yes, provided liquidator appointed 6 months after ceasing to trade</td>
<td>Concessionally yes, provided carrying on the business up to the date liquidator is appointed and liquidation completed within reasonable time (2 years)</td>
</tr>
</tbody>
</table>
Company Buyback

• CGT Treatment rather than Income Tax treatment if all of the following are met:-
  1. Trading Company
  2. Shareholder must be resident and ordinarily resident
  3. Own shares for 5 Years
  4. Must be for benefit of company’s trade
  5. After buyback must not own more than 30% of the company
  6. Shareholding after buyback expressed as a percentage of the company’s share capital must not exceed 75% of what it was pre buyback
  7. Does not form part of scheme/arrangement to extract profits without getting a dividend
Ownership of shares

Blue 5 Limited

Holding Co.

Blue 5 Ltd
Participation Exemption

CGT relief available to holding companies on gains made on disposal of shares in certain subsidiaries, provided:-

• The Holdco owns at least 5% of the ordinary shares in the subsidiary for 12 months at any time within the two years prior to disposal
• The Holdco is beneficially entitled to 5% of the profits of the subsidiary and 5% of the assets on a winding up
• The subsidiary company is tax resident in the EU or a country with which Ireland has a Double Tax Treaty
• The subsidiary is an active trading company or part of a trading Group
• The shares in the subsidiary must not derived their value or the greater part of their value directly or indirectly from Irish land
7 Year Relief

• Relief from CGT for land and buildings in EU and EEA acquired during the period 7th Dec 2011 to 31st Dec 2014
• Must hold property for 7 years and from 1st January 2018 - reduced to 4 years
• More than 7 years is time apportioned (own for 10 years 7/10ths exempt)
• Relief available to companies as well as individuals
• Buildings to be acquired at market value. For related party transactions relief is available if considered paid was not less than 75% of the market value at the date of acquisition
Capital Acquisitions Tax

- Applies on gifts/inheritances
- Applies on all assets
- Recipient liable to tax
- Tax dependent on relationship between person making transfer and the person receiving
Capital Acquisitions Tax

- No tax between spouses in Ireland
- Annual gift exemption €3,000 in calendar year
- Tax Rate 33%
- Private residence
- Offset for CGT against CAT where assets retained by recipient for 2 years after transfer
Watch the Spousal Exemption Internationally

- Gifts and inheritances between spouse exempt from CAT in Ireland
- Spousal exemption doesn’t always apply internationally
- United States
  - Spousal Exemption only applies where spouse receiving a property is a US citizen
  - Tax for on-US citizen = threshold $60,000, top rate 40%
Watch the Spousal Exemption Internationally

• Spain – no exemption

• UK
  – If assets pass from a UK domiciled spouse to a non-UK domiciled spouse, the amount tax free is limited to the Inheritance Tax Threshold of £325,000 and an amount equal to £325,000 = £650,000
Key Issue

- Overseas tax implications should always be considered. Get overseas professional advice.
Capital Acquisitions Tax – Business Assets

- Recipient of business assets has to consider CAT position
- Important to review Business Asset Relief – 90% reduction in taxable value of relevant business property
- Includes sole trade/partnerships, unquoted trading shares
Capital Acquisitions Tax – Business Assets

- In reviewing unquoted shares beneficiary must own after taking gift/inheritance
  - >25% of share capital
  - >10% of share capital and worked full-time in business for previous 5 years
  - Any % if family controls business
- Shares must be owned by individual making transfer for
  - 2 years in case of inheritances
  - 5 years in any other case
- Shares must be retained for 6 years to ensure no claw back
Commission of Taxation (2009) 
Recommendations

• Retirement Relief to family members is limited to €3 million
• Retirement Relief to third parties should continue
• Business Asset Relief reduced from 90% to 75% subject to a cap of €3 million

Business worth €4 million would be reduced by a maximum of €3 million to a taxable value of €1 million