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APPENDICES

A.1 Freedom of Information requests

The following requests for access to records under the Freedom of Information Act, 1997 as amended by the Freedom of Information act 2003 were made to the Revenue Commissioners and to the Department of Finance:

A.1(a) Request 1 – Revenue Commissioners (CRMS 1688/2012)

All briefing material prepared for the chairperson of the Revenue, Josephine Feehily, for her appearance before the Dail Public accounts Committee on 22 and/or 23 September 2011.

A.1(b) Request 2 – Revenue Commissioners (CRMS 5770/2013) and Department of Finance (FOI/005/2014)

Documents requested relating to the following legislative provisions:

Section 69 of the Finance Act 2003,
Section 75(1) of the Finance Act 2006,
Sections 29A, 1028(6A) and 1030(4A) of the Taxes Consolidation Act 1997

1. Background to the provisions

All documents, including:

Reports, memoranda, notes or minutes of meetings or discussions in relation to the provisions,

Reports, memoranda and/or correspondence received from or provided to, or notes or minutes of meetings or discussions with other

government departments or officials thereof in relation to the provisions,

Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to the provisions prior to or during the passage through the Houses of Oireachtas of the relevant Finance Bills,

Submissions from, correspondence with or notes or minutes of meetings or discussions with representative bodies or other non-governmental groups or individuals in relation to the provisions,

External reports commissioned, and/or any advice or reports received in relation to the provisions,

which relate to the perceived need for these provisions, the purpose or aim of these provisions and the reasons for the particular approach taken and any other possible approaches considered.

2. Operation of the provisions

Any documents which contain the following information:

The number of cases, if any, where each of the provisions has applied,
The amount of tax collected pursuant to each of the provisions,
The number of audits or investigations into the possible application of the provisions,

for each year from 1 January 2003 to date.

A.1(c) Request 3 - Revenue Commissioners (CRMS 5771/2013) and Department of Finance (FOI/003/2014)

Documents requested relating to the following:

1. Background to the "tax exile" issue

   All documents, including the following:

   Reports, memoranda, notes or minutes of meetings or discussions in relation to "tax exiles",

   Reports, memoranda and/or correspondence received from or provided to, or notes or minutes of meetings or discussions with other government departments or officials thereof in relation to "tax exiles",

   Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to Parliamentary Questions or proposed amendments to Finance Bills in the period from 1 January 2000 to date, in relation to the number of, or the taxation of, non-residents or of "tax exiles", or in relation to the taxation of individuals on the basis of their Irish citizenship or possession of an Irish passport,

   Submissions from, correspondence with or notes or minutes of meetings or discussions with representative bodies or other non-governmental groups or individuals in relation to the "tax exiles" issue,

   External reports commissioned, and/or any advice or reports received,

   in relation to the tax exile issue,

2. Number of "tax exiles"

Any documents which contain the following information:

The number of non-Irish residents filing tax returns (Group 1),
The number of such non-residents who are Irish domiciled (Group 2),
The number of such non-residents who were previously resident or ordinarily resident in Ireland (Group 3)
The number of such non-residents whose affairs are dealt with by Revenue Large Cases Division (Group 4), and the number of those individuals who are Irish domiciled and/or were previously resident or ordinarily resident in Ireland (Group 5),
The amount of income tax and capital gains tax paid by the each of the Groups 1 to 5 described above,
The number of audits or investigations into individuals in Groups 1 to 5 described above, and the amount, if any, of additional taxation recovered,
The number of investigations into the residence or domicile status of individuals in Groups 1 to 5 described above, and the results of any such investigations,
The number of appeals by individuals regarding their residence, ordinary residence or domicile in Ireland for tax purposes,

for each year from 1 January 2000 to date.

A.1(d) Request 4 - Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

Documents requested relating to the following legislative provisions:

Section 150 of the Finance Act 2010
Section 136 of the Finance Act 2012
Sections 531AA to 531AK of the Taxes Consolidation Act 1997

1. Background to the provisions

All documents, including:

Reports, memoranda, notes or minutes of meetings or discussions in relation to the provisions,

Reports, memoranda and/or correspondence received from or provided to, or notes or minutes of meetings or discussions with other government departments or officials thereof in relation to the provisions,

Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to the provisions prior to or during the passage through the Houses of Oireachtas of the relevant Finance Bills,

Submissions from, correspondence with or notes or minutes of meetings or discussions with representative bodies or other non-governmental groups or individuals in relation to the provisions,

External reports commissioned, and/or any advice or reports received in relation to the provisions,

which relate to the perceived need for these provisions, the purpose or aim of these provisions and the reasons for the particular approach taken and any other possible approaches considered.

2. Operation of the provisions

Any documents which contain the following information:

The number of cases, if any, where the domicile levy has applied,

The number of such cases, if any, where the individual(s) subject to the levy has been resident in Ireland in the relevant year

The amount of tax collected pursuant to the provisions,

The number of audits or investigations into the possible application of the provisions,

for each year from 1 January 2010 to date.

A.1(e) Request 5 – Revenue Commissioners (CRMS 2011/14)

A Revenue document from 1999, possibly previously released pursuant to a previous Freedom of Information request made in 2004 or 2005 by Matt Cooper, or by another journalist working for RTE's Prime Time television programme.

The references I have found to this document are:

Paul O'Brien, 'Identifying tax exile numbers "impossible"' *Irish Examiner* (Cork, 3 October 2005)

> Earlier this year, RTÉ's Prime Time programme revealed how the Revenue Commissioners suspected in the late 1990s that some of the wealthiest Irish people could have been abusing the residency rules.
>
> An internal Revenue document warned of "the risk that some of the richest 100 may be officially non-resident for tax purposes and yet in reality live here". Despite this, it was only late last year that Revenue began audits of such individuals - and it has no idea how much tax has been lost to the Exchequer because of people claiming non-resident status.

Matt Coooper, *Who Really Runs Ireland?: The Story of the Elite Who Led Ireland from Bust to Boom ... and Back Again* (Penguin Ireland 2010) 115

> A 1999 Revenue Commissioners document casts serious doubts on the workability of the residency rules. The document warned of 'the risk that some of the richest 100 may be officially non-resident for tax purposes and yet in reality live here'.

A.1(f) Request 6 – Revenue Commissioners (CRMS 2019/14)

A report requested by the Minister for Finance from the then chairman of the Revenue Commissioners Frank Daly in relation to the application of the tax residency rules to individuals dealt with by the HWI business unit of the Large Cases Division.

The references I have found to the document are:

During Leader's Questions on 25 May 2005, the Taoiseach Bertie Ahern said that an:

> appraisal is being undertaken by the Revenue Commissioners on residency. That report will also be given to the Minister for Finance this year.
>
> Dáil Deb 25 May 2005, vol 603, col 8-9
> http://debates.oireachtas.ie/dail/2005/05/25/00003.asp#N65

On 20 October 2005 Revenue Commissioners chairman Frank Daly told the Public Accounts Committee that the HWI unit was:

> undertaking a number of audits of individuals who have claimed non-residence. We are using this process to test our ability to verify claims of non-residence and qualification for such status. Members may be aware that I have been asked by the Minister to report to him on our ability to monitor claims to non-residence. I expect to do so before the end of the year when the audit programme has been evaluated.
>
> Committee of Public Accounts Deb 20 October 2005
> http://debates.oireachtas.ie/ACC/2005/10/20/00003.asp

In February 2008 Minister for Finance Brian Cowan said during the Committee Stage debate of the Finance Bill, that such a report had been prepared by the chairman of the Revenue Commissioners and provided to him:

> Non-residency provisions in our tax code were determined in 1994 and I do not see any reason to change them as they are in line with international practice. I asked the chairman of the Revenue Commissioners to look at this issue again and he did so and reported his findings.
>
> > Select Committee on Finance and the Public Service Deb 19 February 2008
> > http://debates.oireachtas.ie/FIS/2008/02/19/00003.asp

A.1(g) Request 7 – Revenue Commissioners (CRMS 2022/14)

The following figures, or, if such data are not available, if you could confirm that Revenue does not have this information:

In relation to the 'High Wealth' or 'High Worth' business unit ('HWI unit') of Revenue's Large Cases Division:

1) The number of individuals whose tax affairs have been dealt with by the HWI unit, broken down by year for each year from 2003,
2) The criteria for an individual's tax affairs being dealt with by the HWI unit – whether based on net worth, annual income, Irish tax liability, ownership of Irish assets or otherwise – and any changes that have been made to these criteria since 2003,
3) The total amount of Irish income tax and capital gains tax (CGT) paid by individuals whose affairs are dealt with by the HWI unit for the three most recent years that such figures are available,

In relation to non-resident individuals whose tax affairs are dealt with by the HWI unit:

4) The number of individuals whose affairs are dealt with by the HWI unit who are not resident in Ireland, broken down by year for each year from 2003,
5) The amount of Irish income tax and CGT paid by such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland, for the three most recent years that such figures are available,
6) The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland, but who were previously resident in Ireland for tax purposes, broken down by year for each year from 2003,
7) The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland but who are Irish domiciled, broken down by year for each year from 2003,
8) The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland who filed a domicile levy return, broken down by year for each year from 2010,
9) The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland who had paid the domicile levy, broken down by year for each year from 2010

A.2 Records appended

A.2(a) Request 1 – Revenue Commissioners (CRMS 1688/2012)

Letter from Gerry Brennan, Freedom of Information Unit, Revenue to the author dated 16 April 2012. Briefing material prepared for the chairwoman of the Revenue, Josephine Feehily, for her appearance before the Dail Public accounts Committee on 22 and 23 September 2011 attached.

A.2(b) Request 2 - Revenue Commissioners (CRMS 5770/2013) and Department of Finance (FOI/003/2014)

Letter from Michael Buckley, Assistant Principal, Capital Taxes Branch, Revenue to the author dated 5 December 2013. Letters, emails, notes and submissions relating to Section 69 of the Finance Act 2003, and Section 75(1) of the Finance Act 2006 attached.

Letter from Donal Murtagh, Deciding Officer, Department of Finance to the author dated 14 February 2014. Letters, emails, notes and submissions relating to Section 69 of the Finance Act 2003, and Section 75(1) of the Finance Act 2006 attached. [Note: these are duplicates of the documents released by Revenue and already appended, and so are not included in appendix A.2(b)].

A.2(c) Request 3 – Revenue Commissioners (CRMS 5771/2013) and Department of Finance (FOI/003/2014)

Letter from Martina Mulligan, Decision Maker, Large Cases Division to the author dated 4 December 2013.
Letter from Michael Buckley, Assistant Principal, Capital Taxes Branch, Revenue to the author dated 5 December 2013.
Letter from Donal Murtagh, Deciding Officer, Department of Finance to the author dated 3 March 2014. Emails with attachments, notes, submissions, and briefings relating to the taxation of tax exiles attached

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

Letter from Martina Mulligan, Decision Maker, Large Cases Division, Revenue to the author dated 4 December 2013.
Letter from Michael Buckley, Assistant Principal, Capital Taxes Branch, Revenue to the author dated 5 December 2013. Emails with attachments, summaries and speaking notes relating to the domicile levy attached. [Note:

the documents marked '10' and '11' by Revenue are not appended as they are identical to those marked '8' and '9' respectively].

Letter from Donal Murtagh, Deciding Officer, Department of Finance to the author dated 14 February 2014. Emails with attachments, and notes relating to the domicile levy attached. [Note: the documents marked '2' to '5', '11', '12', '14' and '15' by the Department of Finance are not appended as they are identical, or substantially so, to those already released by Revenue and appended above. The document marked '23' and parts of the documents marked '24' and '25' are not appended as they contain copies of emails already appended].

A.2(e) Requests 5, 6 and 7 – Revenue Commissioners (CRMS 2011/14, CRMS 2019/14 and CRMS 2022/14)

Letter from Lorayne Ellison, Decision Maker, Large Cases Division to the author dated 14 May 2014.

Letter from Frank M Daly, chairman of the Revenue Commissioners to Brian Cowan, Minister for Finance, dated 15 February 2005.

A.2(a) Request 1 – Revenue Commissioners (CRMS 1688/2012)

Revenue

Cáin agus Custaim na hÉireann
Irish Tax and Customs

www.revenue.ie

Oifig na gCoimisinéirí Ioncaim
An Rannán Seirbhísí Corparáideacha
Iniúchadh Inmheánach & An Bhrainse
Bainistíochta Faisnéise
Brainse Bainistíochta Faisnéise
Urlár Talún, Cros Bloc
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2, Éire

Office of the Revenue Commissioners
Corporate Services Division
Internal Audit & Information
Management Branch
Information Management Branch
Ground Floor, Cross Block
Dublin Castle
Dublin 2, Ireland

Mr. Charles Garavan

16 April 2012

Re: Freedom of Information request
Our Ref: CRMS 1688/2012

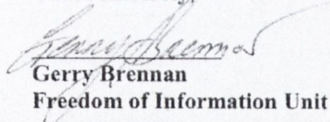
Dear Mr. Garavan,

I refer to your recent Freedom of Information request concerning access to certain records prepared for the Chairman of Revenue in connection with her appearance before the Dáil Public Accounts Committee. In our telephone conversations of 5 April I advised that a similar request had previously been dealt with and that the records released in that case would be available for release to you without the need to go through the formal Freedom of Information process. We also discussed the areas of immediate interest to you and I agreed to retrieve the records from storage with a view to identifying what if any, records contained in the released papers might fit those criteria.

As discussed in our telephone conversation of today I have had an opportunity to examine the records and have identified Record number 1 from the Chairman's Supplementary briefing papers as being within the parameters of your area of interest. A copy of the record as issued in the earlier request is enclosed together with copies of the schedules of records that issued in the previous request for your information.

As a consequence of not requiring a formal freedom of Information decision to be made in respect of your request I have pleasure in returning your cheque in the amount of €15.00.

Yours sincerely,



Gerry Brennan
Freedom of Information Unit

Tel: (01) 7020850 E-mail: foi@revenue.ie Fax; (01) 7024203

High Earners Restriction

A report on the operation of the restriction, as prepared by Revenue, was published on the tax policy website of the Department of Finance on 28 July 2011. The report is available at the link http://taxpolicy.gov.ie/restriction-of-reliefs/

A comparison of the figures for 2009 with the figures for 2008 and 2007 is as follows:

	Number of Individuals			Extra Tax €m			Effective Rates - before restriction		Effective Rates - after restriction	
Year	Over 500K	Up to 500K	Total	Over 500K	Up to 500K	Total	Over 500K	Up to 500K	Over 500K	Up to 500K
2009	183	269	452	32.21	6.65	38.86	8.06	5.82	20.05	12.32
2008	189	234	423	33.12	6.56	39.68	7.89	7.50	19.86	13.82
2007	214	225	439	34.15	5.84	39.99	8.79	7.24	20.08	13.63

2009 Outturn

- Objective to ensure 20% effective rate for individuals with adjusted income of > €500,000 i.e. where restriction applied in full – was achieved.
- Graduated application of the restriction, with the effective income tax rate rising towards 20%, applied between adjusted income levels of €250,000 (income threshold) and €500,000.
- The restriction generated an additional €38.86m in 2009 (€39.68m in 2008; €39.99m in 2007).
- The number of individuals who were subject to the restriction increased to 452 in 2009 (423 in 2008; 439 in 2007).

Finance Act 2010 Changes – apply for tax year 2010 and later years

- Threshold at which the restriction applied in full ↓ from €500,000 to €400,000.
- Effective rate ↑ from 20% to 30%.
- Graduated application of the restriction, with the effective income tax rate rising towards 30%, applies between adjusted income levels of €125,000 and €400,000.

Implications of Finance Act Changes for 2010 and later years

- Originally estimated that changes would bring an additional 500 individuals within the restriction for 2010 and an additional yield of €55m.
- However, due to changes in economic circumstances these estimates may not be achieved.

1.1

Report on the Restriction of Reliefs Measure for the 2009 Tax Year

Q & A Briefing

2009 REPORT

Q. 1 How much did the restriction yield in respect of the 2009 tax year?

A. The restriction yielded an additional €39 million approximately in respect of the 2009 tax year. It represents a slight drop, of €0.82 million, on the additional yield for 2008.

Q. 2. Objective of Measure

A. The overall objective was to ensure that, from 2007[1], individuals with an adjusted income[2] of €500,000 or more (i.e. where the full restriction applied) would pay an effective rate of approximately 20 per cent on a combination of adjusted income and ring-fenced income. That objective was achieved in 2007, 2008 and 2009.

Where adjusted income is less than €500,000, a tapering approach ensures that there is a graduated introduction of the restriction, with the effective rate of tax increasing towards 20 per cent as adjusted income increases towards €500,000.

Q. 3 What tax reliefs are covered by the restriction?

A. Broadly speaking, the reliefs that are restricted include:

- the various sectoral and area-based property tax incentives e.g. accelerated capital allowances for nursing homes/private hospitals, industrial/commercial buildings in Urban, Rural and Town Renewal areas and "section 23" type relief in relation to rented residential accommodation located in such areas,
- certain exemptions e.g. relating to artists' income, patent royalties etc.,
- certain investment incentive reliefs such as BES relief and film relief,
- relief for interest paid on loans used to acquire an interest in a company or in a partnership.

[1] The 2010 Finance Act introduced further restrictions in this area which come into effect in the tax year 2010 – see questions 8 to 11.

[2] ***Adjusted income*** is the taxable income of an individual before the restriction is applied, to which is added the amount of income sheltered in the year through the use of specified reliefs. It excludes "ring-fenced income" (e.g. DIRT) which is normally liable to tax at specific rates regardless of the amounts involved or the marginal rate of tax at which the individual is liable.

1.2

The normal deductible items available to the broad range of taxpayers such as medical expenses, trade union subscriptions, the personal tax credits and exemptions such as that for child benefit are not restricted. Similarly, normal business expenses and deductions for capital allowances on plant and machinery, as well as genuine business related trading losses are not restricted.

Q. 4 Is it acceptable that some taxpayers pay little or no tax?

A. The restriction of reliefs measure was introduced to limit the extent to which taxpayers could reduce their tax liability through the use of certain tax reliefs and exemptions. For the years 2007 to 2009, the effective tax rate for those subject to the full restriction was approximately 20%.

Tax incentives are a valid and useful policy instrument, which can be effective in influencing economic behaviour. However, they have to be used judiciously and with an eye to their cost effectiveness and impact on the overall fairness of the tax system. The restriction of reliefs measure sought to enhance fairness within the tax system and is working as intended.

Q. 5 Is Deposit Interest Retention Tax included in calculating effective tax rates of taxpayers who are subject to the restriction?

A. As DIRT is income tax collected at source, the deposit interest involved and the retention tax deducted are included for the purposes of calculating the effective tax rates of those subject to the restriction of reliefs. To exclude DIRT could give rise to a situation where an individual with mainly deposit interest income would be recorded as having a nil or negligible effective rate of tax whereas in fact, due to DIRT, he or she may have had an effective rate of tax of 23% or 25% in 2009. The current rate of DIRT is 27%.

Q. 6 It would appear from the latest report from the Revenue Commissioners that the average effective tax rate of those with adjusted incomes of below €250,000 is higher than the average effective tax rates of those with adjusted incomes of between €250,000 and €425,000. How could this occur?

A. Those taxpayers included in the 2009 report with adjusted incomes of less than €250,000 generally have ring-fenced income, which is income from certain savings or investments that is subject to DIRT or other specific taxation measures. In 2009, the standard rate of DIRT was either 23% or 25% (depending on when the interest was paid). The higher the proportion of ring-fenced income within the total income of a taxpayer, the higher the effective tax rate for that taxpayer.

1.3

Q. 7 What is the difference between this report and the 'Top 400' report that the Revenue Commissioners used to produce?

A. The 'Top 400' reports that were issued a number of years ago, were a simple statistical analysis that looked at the incomes of the 400 individuals with the highest earnings in a particular tax year and analysed the effective rates of tax of those individuals, including taking account of any tax reliefs and incentives claimed by the individuals concerned.

This new report is a targeted analysis of the effective tax rates of those individuals that have claimed significant amounts of specified tax reliefs and incentives, and consequently are subject to the restriction of reliefs measure.

In general, high income individuals that are not subject to the restriction of reliefs measure are paying tax at the marginal rate. In this regard, the vast majority of those with high incomes pay tax at, or close to, the top rate. It is estimated that in 2010 the top 2% of income earners, i.e. those with incomes above €150,000 per annum, paid approximately a third of all income tax collected in the State.

2010 Changes to the Restriction of Reliefs Measure

Q. 8 What changes were made to the Restriction of Reliefs Measure for the 2010 tax year and subsequent years?

A. The effective rate of income tax payable by those subject to the full restriction was increased from 20% to 30% from the 2010 tax year. The full restriction now applies at adjusted income levels of €400,000 and above and the entrylevel threshold to the restriction applies at adjusted income of €125,000. These thresholds were reduced from €500,000 and €250,000 respectively. This will lead to an increase the number of taxpayers affected by the restriction.

In order to achieve the higher effective income tax rate of 30% at adjusted income levels of €400,000 or above, a new relief threshold was introduced at €80,000. Therefore, where individuals claim more than this amount in specified reliefs and have adjusted income of €125,000 or greater, they are now subject to the restriction. Previously, individuals did not become subject to the restriction until they had claimed €250,000 or more in specified reliefs.

Q. 9 What is the estimated additional yield arising from the 2010 changes?

A. It is estimated that the changes introduced with effect from 2010 will yield an additional €55 million per annum approximately.

14

Q. 10 How many more income earners will be affected by the 2010 changes?

A. It is estimated that the changes will make an additional 500 taxpayers, approximately, subject to the restriction.

Q. 11 How do the 2010 Changes Compare with the Commission on Taxation's Proposal?

A. The proposal of the Commission on Taxation was to have the full restriction, at an effective rate of 20%, apply at adjusted income levels of €250,000 with a graduated introduction of the restriction at adjusted income levels between €200,000 and €250,000. To amend the measure in this manner would have only increased the yield from the restriction by approximately €6 million, compared to the estimated annual additional yield of €55 million from the 2010 changes. It would also have the additional drawback of introducing significant step effects for those individuals with adjusted incomes between €200,000 and €250,000 i.e. the effective tax rate would start to increase significantly as soon as the adjusted income level exceeded €200,000.

1.5

Tax Exiles

Residence and tax treatment

The taxation of individuals in the State is in line with that prevailing in most other OECD jurisdictions, that is to say -

(a) Individuals who are resident in the State for tax purposes (based on the number of days presence in the State) are taxable here on their worldwide income; and
(b) Individuals who are not resident here for tax purposes pay tax here only on income arising in the State and on income derived from working here.

Returns made by non-residents

- 2009 tax year - 8,493 non-residents filed Irish tax returns re Irish source income or income derived from working here.
- 46 of these in case base of the High Wealth Individuals Unit
- 2008 tax year - 8,019 non-resident filed Irish tax returns re Irish source income or income derived from working here.
- 41 of these in the case base of the High Wealth Individuals

Tax Exiles

- Many of these are foreign nationals/have a foreign domicile
- Many of the non-resident Irish citizens/Irish domiciliaries may have become non-resident for reasons unrelated to taxation, but retained Irish investments
- These individuals could not be categorised as 'tax exiles', under any reasonable definition of that term.
- There is nothing in Irish tax law that makes reference to 'tax exile' status.

Activities in ~~2010~~2011

- Residence status actively monitored
- ~~8~~ 7 cases under enquiry - audit enquiries into filed returns involving res - related issue ~~Notices under section 811 issued in 5 of these cases~~
- ~~Notice of assessment raised in one of the other cases under enquiry.~~ 5 of these cases involve challenges under S811.
- 1 case involves challenge under S806.
- All of these cases are being progressed through the appeals system.

Domicile Levy

- Charge on Irish-Domiciled individuals who are Irish citizens – applies if have Irish located capital greater than €5 million, worldwide income in excess of €1 million and an Irish income tax liability less than €200,000.

1.6

- Returns due for 2010 on 31 October 2011 (first year). None filed yet.

1.7

I 107 g:\stats\itmain\residimi.doc

From: Molloy, Paddy
Sent: 12 July 2011 13:04
To: Ni Rabhartaigh, Triona
Cc: O'Brien, Mark; Ryan, Fionnuala (PD_FcStat_10); Hennessy, Mairead
Subject: FW: Remittances to Ireland - query

Triona,
Material I received from Alan Brien to reply to ; enquiry is as follows in inverted commas.

Paddy

"I refer to your query in relation to remittances sent to Ireland by overseas Irish citizens in the last few years. Generally, Irish citizens who reside outside the State are not chargeable to tax in the State except to the extent that they have income which arises in the State. In certain circumstances such individuals are chargeable in the State in respect of worldwide Capital Gains and Gains on certain specified assets. However, there is no statutory requirement on such individuals to make a return of remittances to the State for tax purposes whether such remittances are out of income which arises in the State or outside the State.

Additionally and for your information, please see the following table which sets out a summary of the technical position in the various circumstances in 2008 in this State. As you can see from the rows which I have emphasised, Irish domiciled individuals (generally Irish citizens) who are not resident in the State are not chargeable on remittances so Revenue would have no information captured on tax return Form11 re remittances from such individuals.

Implications for Income Tax and Capital Gains Tax

Status of individual: is she/he Irish ...			Irish income tax implications: taxable on ...	Irish Capital Gains Tax implications: taxable on ...
Resident?	Ordinarily resident?	Domiciled?		
Yes	Yes	Yes	Worldwide income	Worldwide gains
Yes	No	Yes	All Irish income (**see note 1**); most foreign income only if remitted (but **see note 2**); offshore fund and offshore trust income taxable whether remitted or not	Worldwide gains
Yes	Yes	No	All Irish income; other foreign income only if remitted (but **see notes 2 & 3**)	All Irish gains; foreign gains only if remitted (see note 1)
Yes	No	No	All Irish income; foreign income only if remitted (but **see notes 2 & 3**)	All Irish gains; foreign gains only if remitted (see note 1)
No	**Yes**	**Yes**	**All Irish sourced income; all foreign investment income, other than modest amounts (below €3,810 in total); income from a foreign trade, profession, office or employment if any part of it is carried out/performed in the State (see note 2).**	**Worldwide gains**
No	Yes	No	All Irish sourced income; all foreign investment income, other than modest amounts (below €3,810 in total) but non-UK foreign investment income **only taxable if remitted**; income from a foreign trade, profession, office or employment if any part of it is carried out/performed in the State (**see notes 2 & 3**).	All Irish gains; **foreign gains only if remitted (see note 1)**
No	**No**	**Yes**	**Irish source income; income from foreign trades/professions carried on in the State; and certain foreign employment income (see note2)**	**Gains on Irish specified assets only (land, buildings and**

A.2(a)(ix)

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				minerals in the State; assets of a trade carried on in the State; certain unquoted shares)
No	No	No	Irish source income; income from foreign trades/professions carried on in the State; and certain foreign employment income **(see note 2)**	Gains on Irish specified assets only (as above)

It may be appropriate to rise the question with CSO in view of that body's role has in monitoring money movements in and out of the State."

1.9

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20/9/2011

Non-resident individuals who filed Irish tax returns

Figures on non-resident individuals who filed Irish income tax returns in respect of their Irish-source income or income derived from working here and paid income tax to the Irish Revenue are as follows.

For the **2007** tax year

Some **7,228** non-resident individuals filed Irish tax returns in respect of their Irish-source income or income derived from working here and paid tax of **€43**m.

For the **2008** tax year

Some **8,091** non-residents filed Irish tax returns and paid tax of **€44.8**m.

For the 2009 tax year

Some **8,493** non-residents filed Irish tax returns and paid tax of **€41.2**m.

The figures for 2009 may be subject to some revision.

Comment from PQ 1023/2010

The taxation of individuals in the State is in line with that prevailing in most other OECD jurisdictions, that is to say (a) individuals who are resident in the State for tax purposes (based on the number of days presence in the State) are taxable here on their worldwide income; and (b) individuals who are not resident here for tax purposes pay tax here only on income arising in the State and on income derived from working here.

Many of the individuals that show on their tax return that they are non-resident in the State do not have an Irish address. It should be noted that many of these non-residents are foreign nationals or have a foreign domicile; and many of the non-resident Irish citizens or Irish domiciliaries may have become non-resident for reasons unrelated to taxation, but who may have retained Irish investments (such as rental property). **These individuals could not be categorised as 'tax exiles' under any reasonable definition of that term.**

p.molloy

1.10

OFFICIAL REPLY
DÁIL QUESTION
NO

To ask the Minister for Finance the amount of revenue that was raised by the new levy imposed on tax exiles by the previous Government; and if that figure is not yet available, when same will be available.

- Aengus Ó Snodaigh.

* For WRITTEN answer on Wednesday, 14th September, 2011.

Ref No: 23392/11

REPLY

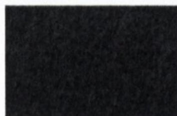
Minister for Finance (Mr Noonan) :

I assume that the measure to which the Deputy refers is the Domicile Levy which was announced in Budget 2010 and introduced in Finance Act 2010. The Domicile Levy of €200,000 is charged on an individual who is Irish-domiciled and an Irish citizen whose world-wide income exceeds €1m, whose Irish-located property is greater than €5m, and whose liability to Irish income tax was less than €200,000.

The Levy will be charged for 2010 and subsequent years, but the payment for each year can be made at any time up to 31 October in the year following the valuation date, which is 31 December of each year. The first valuation date for the Domicile Levy will be 31 December 2010 and the tax return and payment of the Levy for 2010 will not be due until 31 October 2011. The figure will, therefore, not be available until after that date.

Revenue

Mr. Charles Garavan



Office of the Revenue Commissioners
Capital Taxes Division
Stamping Building
Dublin Castle
Dublin 2
Ireland

Oifig na gCoimisinéirí Ioncaim
Rannán Cánacha Caipitiúla
Áras Stampála
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
Éire

5 December 2013

5 December 2013

Re: Freedom of Information Request CRMS 5770/2013

Dear Mr. Garavan

I refer to your request under the Freedom of Information Act 1997, as amended, for access to documents relating to the following legislative provisions:

Section 69 of the Finance Act 2003

Section 75(1) of the Finance Act 2006

Sections 29A, 1028(6A) and 1030(4A) of the Taxes Consolidation Act 1997

Reports, memoranda and or correspondence received from or provided to, or notes or minutes of meetings or discussions with other government departments or officials thereof in relation to the provisions,

Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to the provisions prior to or during the passage through the Houses of the Oireachtas of the relevant Finance Bills,

I have examined all the records held by this Division in relation to your request. I have identified 6 records, which I am releasing in full. I attach a schedule of records, which provides details of the records being released.

Should you wish to have this decision reviewed, an application for review must be made not later than 4 weeks after notification of this decision. A copy of the review procedures is enclosed for your information.

Yours sincerely,

Michael Buckley

Assistant Principal

Capital Taxes Branch

A.2(b) Request 2 – Revenue Commissioners (5770/2013) and Department of Finance (FOI/005/2014)

Schedule of Records: FOI Request CRMS 5770/2013

Record no	Brief description	Comments	Allow/ refuse release of document.	Basis of refusal	Record edited
1.	Letter dated 12/11/2002 from Joe Stone to Liam Murphy.	Proposals to deal with temporary non-residents.	Allow.	Not applicable (N/A).	No.
2.	Copy submission to Minister and covering fax dated 13/11/2002 from Dónal McNally to Frank Daly.	Submission to the Minister outlines how issue to be dealt with in Finance Bill 2003.	Allow.	N/A.	No.
3.	Email dated 13/2/2003 from Joe Stone to Liam Murphy and attachment	Attachment proposes a Committee Stage amendment to section 65 of the Finance Bill 2003, as initiated.	Allow.	N/A.	No.
4.	Notes for Minister re relevant provision in Finance Bill 2003.	These are speaking/detailed notes for debates in Houses of the Oireachtas.	Allow.	N/A.	No.
5.	Letter dated 11/11/2005 from Joe Stone to Liam Murphy.	Outlines measures to deal with circumvention of section 29A TCA 1997.	Allow.	N/A.	No.
6	Note for Minister relevant provision in Finance Bill 2006.	This is a speaking note for the Minister for debates in Houses of the Oireachtas.	Allow.	N/A.	No.

(1)

Mr. Liam Murphy
Budget Section
Department of Finance
Upper Merrion Square
Dublin 2

Tax avoidance through temporary "emigration"

Dear Liam,

The Annex attached hereto contains suggested proposals to address temporary emigration by individuals seeking to avoid capital gains tax. It is considered that they should take effect in respect of individuals ceasing to be Irish resident in the year of assessment 2003. If that is accepted, it is suggested that the measure should be included in the Budget – perhaps in the principal features – and that there is no need for a Budget day Financial Resolution. A detailed outline of the measure could be included in the "early list" pending the publication of the Finance Bill 2003.

Yours sincerely

Joe Stone
12 November 2002

Avoidance of Capital Gains Tax through Temporary "Emigration"

Background

1. A method of capital gains tax avoidance that, in recent times has received some publicity, is temporarily changing one's country of tax residence for the purposes of realising a significant capital gain while abroad. Irish domestic law extends the charge to capital gains tax to those who, while no longer resident in the State, continue to be "ordinarily resident". Ordinary residence "sticks" to an individual until he/she has been non-resident for three consecutive tax years.

2. However there are two difficulties with this. *Firstly*, the administrative reality is that if an individual makes a capital gain while non-resident, but still ordinarily resident, collection of the Irish CGT may be difficult unless the individual still has assets in the State or subsequently returns to the State. *Secondly*, the right to charge a non-resident to CGT while still ordinarily resident can be effectively removed by the terms of a double taxation agreement (DTA) between Ireland and the country to which the individual has emigrated. This is particularly so in the case of treaties that were negotiated between the start of CGT in 1975 and the introduction of the new residence/ordinary residence rules in Finance Act, 1994. Some of these treaties are with countries which have no CGT regime or a much more favourable regime than Ireland.

3. For example, the Irish tax treaty with Portugal falls into this category. Because Portugal has a very favourable CGT regime, there have been a number of recent instances of emigration from Ireland to Portugal - apparently for the main purpose of avoiding Irish CGT on the disposal of substantial holdings of shares. All that the tax avoider needs to achieve is that in the year that the capital gain is made, he or she is resident in Portugal and not resident in Ireland. The year in question could be the year during which the avoider left Ireland. After that year he/she can re-establish residence in Ireland. [See example annexed]. While Revenue has requested Portugal to amend the CGT Article in the DTA with Ireland, negotiations on this are proceeding slowly and other DTAs present similar opportunities for tax avoiders.

Options for dealing with this problem

4 The UK addressed the problem of tax avoidance through temporary emigration by imposing a charge to capital tax when an individual, having disposed of assets while abroad, again takes up residence in the UK before the elapse of 5 tax years of non-residence. However, the terms of the UK DTAs allowed this approach. Many Irish DTAs do not. These DTAs give the sole taxing rights in respect of disposals to the foreign jurisdiction concerned. The approach open to us is to introduce a tax charge (an "exit charge") triggered by emigration. This would have the advantage over the current charging rights in that a charge would be established while the individual concerned was still Irish resident. Two possible options for an exit charge are as follows—

(a) *A deemed disposal of assets on emigration*: A number of countries with residence-based CGT regimes have introduced a CGT exit tax – designed to protect against loss of revenue through emigration (temporary or permanent). In

the case of Canada and Australia their exit tax is charged on a wide range of assets; in the case of many European countries (Germany, Denmark, Austria, Netherlands and France) it is charged only on certain holdings of shares and securities. A general exit tax, whether on all assets or specific assets, however, would not appear to be a proportionate response. The objective is to deter or defeat significant tax avoidance trough temporary emigration without imposing a tax on genuine migration. .

(b) An exit charge on significant shareholdings – but liability deferred until re-entry within a limited time period: This option would involve an exit charge (i.e. deemed disposal for CGT purposes of a significant shareholding) at the point of emigration that only kicks in if there is a subsequent re-entry to Ireland within a limited period and where a capital gain has been actually realised during the period of temporary emigration from the disposal of the shareholding.

Option 4(b): Exit tax – liability triggered on re-entry

5. A possible scheme for option 4(b) might be as follows:

(a) An individual who has been a long term resident In Ireland (e.g. an Irish domiciled individual) who owns a substantial holding (5%) of shares or securities in a company will be deemed, for CGT purposes, to have disposed of and reacquired that holding in the year of assessment immediately before that in which the individual became non-resident.

(b) However, this resulting charge to CGT is contingent on the individual again becoming tax resident in Ireland in the following circumstances:

(i) the individual has been non-resident for less than a continuous period consisting of 5 complete tax years, and
(ii) the individual has, during the period of temporary emigration, disposed of the shares/securities in question (with apportionment for part disposals).

(c) If the individual returns to Ireland without having disposed of the shares/securities, or if the individual returns to Ireland after the fifth full tax year of being non-resident, the charge to the exit tax lapses.

(d) This provision would be without prejudice to situations where the "normal" ordinary residence rule applies, i.e. where the ordinary residence rule – which gives Ireland a potential CGT charge on disposals up to three years after emigration – is not overridden by a tax treaty.

Specific Issues

6. Further elaboration on a number of issues relating to this outline proposal is as follows:

(a) Significant Shareholdings Limiting the imposition of the exit tax to significant shareholdings focuses the measure on assets that can appreciate very rapidly thereby producing very significant capital gains which shareholders then seek to protect from tax.. Shares in all companies would be included, whether Irish or foreign companies, or public or private companies. The level of

shareholding that triggers an exit tax ranges from 1% to 25% in the other European countries that limit their exit tax to significant shareholdings. A level of 5% is suggested as being an appropriate for this anti-avoidance measure. However a 5% shareholding on one company could be of relatively little value and in another it could be worth millions. It is suggested, therefore that the exit charge also apply where the shareholding, while lower than 5%, has a market value at emigration of say, €500,000 or greater. (This figure is the same as the figure below which disposals of real Irish property by non-residents fall out of the cgt withholding tax regime.)

(b) Restricting the exit charge to "long term residents"
As the proposed measure is to address tax avoidance by Irish residents through temporary emigration, it would seem inappropriate that it should apply to those who are temporarily resident in Ireland. To achieve this, one approach would be to exclude those who are not domiciled in the State – such persons already have a favourable tax regime in that capital gains tax chargeable on assets situated outside the State and the UK is limited to amounts remitted to the State. An alternative approach might be restrict the exit tax to "long-term" residents – defined along the lines of an individual who was resident in the State for, say, at least any 10 of the 15 years ending with "emigration".

(c) The 5-year limit
A period of time abroad is required in order to focus the measure on those who go abroad temporarily in order to realise a capital gain. While going abroad temporarily to avoid tax is an inconvenience, the current residence rules limit the inconvenience by allowing the individual to be in Ireland for 182 days in each tax year. It is considered that requiring a 5-year period abroad in order to successfully avoid capital gains tax, will be sufficient to distinguish between those who genuinely change their centre of personal and commercial interests by emigrating, from those who might temporarily emigrate mainly to avoid tax.

Example of tax avoidance through establishing residence in Portugal

Current Position

1. An Irish resident individual has developed a very successful business carried on through a company, with share capital of €100, set up in 1994. As at March 2003 the shares are worth €100m and if the individual disposed of the shares, at that time, he/she would have a capital gains tax liability of some €20m. (€100m @ 20%).

2. The individual ~~becomes~~ takes up residence in Portugal in March 2003. If the individual does not return to Ireland in 2003 then he/she will not be resident in Ireland for 2003. While, under domestic legislation, the individual will remain ordinarily resident in Ireland in 2003, the DTA with Portugal provides that the individual will not be liable to Irish capital gains tax on disposals made in that year.

3. In December 2003 the individual sells the shares for €110m. Under Portuguese domestic law, the disposal of shares acquired prior to 1 January 2001, is exempt from capital gains tax.

4. The individual will, therefore, successfully avoid both Irish and Portuguese tax on the disposal of the shares and makes a tax free gains of some €110m.

5. The individual can re-re-establish Irish residence in 2004 without any tax consequences in respect of the disposal of the shareholding.

Position under proposed Exit Tax Regime

1. When the individual goes abroad in March 2003 an Irish capital gains tax charge (€100m @20%) arises, but it is contingent on the individual again taking up residence in Ireland before 2009 (i.e. the passing of 5 years after the year of emigration.)

2. When in December 2003 the individual sells the shares for €110m, an Irish capital gains tax liability is not triggered and under Portuguese domestic law, the disposal of is exempt from capital gains tax.

3. If the individual re-establishes Irish residence before 2009 the liability on emigration "kicks in" and is payable in the year of return viz. €100m@20%

13/11 2002 12:50 FAX 001/006

C.C. Eamonn O'Hea
Joe Stone

(2)

An Roinn Airgeadais " Sráid Mhuirfean Uacht " Baile Átha Cliath 2
Department of Finance " Upper Merrion Street " Dublin 2

FAX MESSAGE

CONFIDENTIAL

To: **Mr Frank Daly** Fax: **01 6794145**
From: Donal McNally
Budget & Economic Division

Pages: 6Including this one)

Date: 13 November, 2002 - 11:42

PRIVATE & CONFIDENTIAL

Message:

Donal McNally asked me to fax this to you.

Kind regards
Sinead Murphy

USE (+353 1) 6613685 FOR RETURN FAX MESSAGES (Alternatively 6789936 or 6767335)

If there are any problems with this transmission contact (+ 353 1) 6045602 or e-mail at Donal_McNally@finance.irlgov.ie

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002/006

Budget 2003

Avoidance of Capital Gains Tax through Temporary Emigration

Ms McManus
Mr McNally
Minister
From L Murphy

This loophole should be closed off. The issue will raise questions about the residence rules and how they operate. Owen 13/11

Background

1. A method of capital gains tax avoidance that, in recent times has received some publicity, is temporarily changing one's country of tax residence for the purposes of realising a significant capital gain on certain assets while abroad. This runs counter to the aim behind certain provisions of Irish domestic law which extend the charge to capital gains tax to those who, while no longer resident in the State, continue to be "ordinarily resident". Under the changes introduced in the general reform of the tax residences rules in the 1994 Finance Act, ordinary residence "sticks" to an individual until he/she has been non-resident for three consecutive tax years. It should of course be stated that the Irish CGT charge always remains in the case of Irish land and buildings irrespective of other factors, and there is a withholding mechanism to implement this in case the person disposing of the asset is non-resident.

2. There are two difficulties with the present position. *Firstly*, the administrative reality is that if an individual makes a capital gain while non-resident, but still ordinarily resident, collection of the Irish CGT may be difficult unless the individual still has assets in the State or subsequently returns to the State. *Secondly*, the right to charge a non-resident to CGT while still ordinarily resident can be effectively removed by the terms of a double taxation agreement (DTA) between Ireland and the country to which the individual has emigrated. This is particularly so in the case of treaties that were negotiated between the start of CGT in 1975 and the introduction of the new residence/ordinary residence rules in Finance Act, 1994. Some of these treaties are with countries which have no CGT regime or a much more favourable CGT regime than Ireland.

3. For example, the Irish tax treaty with Portugal falls into this category. Because Portugal has a very favourable CGT regime, there have been a number of recent instances of emigration from Ireland to Portugal - apparently for the main purpose of avoiding Irish CGT on the disposal of substantial holdings of shares. All that the tax avoider needs to achieve is that in the year that the capital gain is made, he or she is resident in Portugal and not resident in Ireland. The year in question could be the year during which the individual left Ireland. After that year he/she can re-establish residence in Ireland. [See

example annexed]. While Revenue has requested Portugal to amend the CGT Article in the DTA with Ireland, negotiations on this are proceeding slowly and other DTAs present similar opportunities for tax avoidance.

Options for dealing with this problem

4. The UK addressed the problem of tax avoidance through temporary emigration by imposing a charge to capital tax when an individual, having disposed of assets while abroad, again takes up residence in the UK before the elapse of 5 tax years of non-residence. However, the terms of the UK DTAs allowed this approach. Many Irish DTAs do not. These DTAs give the sole taxing rights in respect of disposals to the foreign jurisdiction concerned. The approach open to us is to introduce a tax charge (an "exit charge") triggered by emigration. This would have the advantage over the current charging rights in that a charge would be established while the individual concerned was still Irish resident. Two possible options for an exit charge are as follows—

   a. *A deemed disposal of assets on emigration*: A number of countries with residence-based CGT regimes have introduced a CGT exit tax – designed to protect against loss of revenue through emigration (temporary or permanent). In the case of Canada and Australia their exit tax is charged on a wide range of assets; in the case of many European countries (Germany, Denmark, Austria, Netherlands and France) it is charged only on certain holdings of shares and securities. A general exit tax, whether on all assets or specific assets, however, would not appear to be a proportionate response. The objective is to deter or defeat significant tax avoidance trough temporary emigration without imposing a tax on genuine migration.

   b. *An exit charge on significant shareholdings – but liability deferred until re-entry within a limited time period:* This option would involve an exit charge (i.e. deemed disposal for CGT purposes of a significant shareholding) at the point of emigration that only kicks in if there is a subsequent re-entry to Ireland within a limited period and where a capital gain has been actually realised during the period of temporary emigration from the disposal of the shareholding.

X

Option (b): Exit tax – liability triggered on re-entry

4. Option (b) would be preferable in the circumstances and a possible scheme for implementing it might be as follows:

   a. An individual who has been a long term resident In Ireland (e.g. an Irish domiciled individual) who owns a substantial holding (5%) of shares or securities in a company will be deemed, for CGT purposes, to have disposed of and reacquired that holding in the year of assessment immediately before that in which the individual became non-resident.

   b. However, this resulting charge to CGT is contingent on the individual again becoming tax resident in Ireland in the following circumstances:

i. the individual has been non-resident for less than a continuous period consisting of 5 complete tax years; and

ii. the individual has, during the period of temporary emigration, disposed of the shares/securities in question (with apportionment for part disposal i.e. where only part of the shares are disposed of while the individual is abroad).

c If the individual returns to Ireland without having disposed of the shares/securities, or if the individual returns to Ireland after the fifth full tax year of being non-resident, the charge to the exit tax lapses.

d This provision would be without prejudice to situations where the "normal" ordinary residence rule applies, i.e. where the ordinary residence rule – which gives Ireland a potential CGT charge on disposals up to three years after emigration – is not overridden by a tax treaty.

Specific Issues

6. Further elaboration on a number of issues relating to this outline proposal is as follows:

a *Significant Shareholdings*
Limiting the imposition of the exit tax to significant shareholdings focuses the measure on assets that can appreciate very rapidly thereby producing very significant capital gains which shareholders then seek to protect from tax.. Shares in all companies would be included, whether Irish or foreign companies, or public or private companies. The reason for including foreign companies is that if the disposal of the shares were to take place while the individual is an Irish resident, the CGT would apply to gains on the world-wide assets of the individual. The level of shareholding that triggers an exit tax ranges from 1% to 25% in the other European countries that limit their exit tax to significant shareholdings. A level of 5% is suggested as being an appropriate for this anti-avoidance measure. However a 5% shareholding on one company could be of relatively little value and in another it could be worth millions. It is suggested, therefore that the exit charge also apply where the shareholding, while lower than 5%, has a market value at emigration of say, €500,000 or greater. (This figure is the same as the figure below which disposals of real Irish property by non-residents fall out of our present CGT withholding tax regime.)

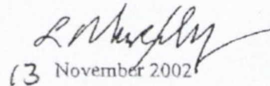
b *Restricting the exit charge to "long term residents"*
As the proposed measure is to address tax avoidance by Irish residents through temporary emigration, it would seem inappropriate that it should apply to those who are temporarily resident in Ireland. To achieve this, one approach would be to exclude those who are not domiciled in the State – such persons already have a favourable tax

regime in that capital gains tax chargeable on assets situated outside the State and the UK is limited to amounts remitted to the State. An alternative approach might be restrict the exit tax to "long-term" residents – defined along the lines of an individual who was resident in the State for, say, at least any 10 of the 15 years ending with "emigration".

c *The 5-year limit*
A period of time abroad is required in order to focus the measure on those who go abroad temporarily in order to realise a capital gain. Though going abroad temporarily to avoid tax is an inconvenience, the current residence rules limit that inconvenience by allowing the individual to be in Ireland for 139 days in each tax year while still remaining non-Irish resident. It is considered that requiring a 5-year period abroad in order to successfully avoid capital gains tax, will be sufficient to distinguish between those who genuinely change their centre of personal and commercial interests by emigrating, from those who might temporarily emigrate mainly to avoid tax.

d *Possible Exchequer Gain from this measure*
It would obviously be difficult to estimate the Exchequer gain. However, it could be readily presented as closing a tax loophole that has received some considerable publicity recently and is in line with similar measures in other countries. It would obviously prevent future Exchequer losses from such arrangements.

7. You may wish to discuss with officials



13 November 2002

2002 12:51 FAX 006/006

Example of tax avoidance through establishing residence in Portugal

Current Position

1. An Irish resident individual has developed a very successful business carried on through a company, with share capital of €100, set up in 1994. As at March 2003 the shares are worth €100m and if the individual disposed of the shares, at that time, he/she would have a capital gains tax liability of some €20m. (€100m @ 20%).

2. The individual ~~becomes~~ takes up residence in Portugal in March 2003. If the individual does not return to Ireland in 2003 then he/she will not be resident in Ireland for 2003. While, under domestic legislation, the individual will remain ordinarily resident in Ireland in 2003, the DTA with Portugal provides that the individual will not be liable to Irish capital gains tax on disposals made in that year.

3. In December 2003 the individual sells the shares for €110m. Under Portuguese domestic law, the disposal of shares acquired prior to 1 January 2001, is exempt from capital gains tax.

4. The individual will, therefore, successfully avoid both Irish and Portuguese tax on the disposal of the shares and makes a tax free gains of some €110m.

5. The individual can re-re-establish Irish residence in 2004 without any tax consequences in respect of the disposal of the shareholding.

Position under proposed Exit Tax Regime

1. When the individual goes abroad in March 2003 an Irish capital gains tax charge (€100m @20%) arises, but it is contingent on the individual again taking up residence in Ireland before 2009 (i.e. the passing of 5 years after the year of emigration.)

2. When in December 2003 the individual sells the shares for €110m, an Irish capital gains tax liability is not triggered and under Portuguese domestic law, the disposal of is exempt from capital gains tax.

3. If the individual re-establishes Irish residence before 2009 the liability on emigration "kicks in" and is payable in the year of return viz. €100m@20%

(3)

Stone, Joe

From:	Stone, Joe
Sent:	13 February 2003 19:38
To:	Liam Murphy (E-mail)
Subject:	CSA proposals for emigration tax
Importance:	High

1

Finance Bill 2003 – Proposed Committee Stage Amendments to Section 65

1. Background

Section 65 of the Bill will insert a new section, section 29A, into the Taxes Consolidation Act 1997. This new section seeks to counter an individual seeking to avoid capital gains tax on a disposal of valuable share, by means of temporary emigration from the State.

The section, as drafted achieves this in situations where such emigration results in the individual falling out of the charge to Irish capital gains tax by reason of the individual ceasing to be resident in the State.

However, it is also possible to fall outside the charge to capital gains tax where an individual, while still resident (for tax purposes) in the State also becomes resident (for tax purposes) in a foreign jurisdiction. If the foreign jurisdiction is one with which Ireland has a double taxation agreement, that agreement will, depending of the facts in each case, allocate to one State or the other (but not both) the right to charge tax on capital gains, even if the foreign jurisdiction does not actually, under its domestic law, tax capital gains.

2. The Issue

A concern is that Revenue have discovered at least one case where the person seeking to avoid a charge to Irish capital gains tax has not left Ireland as such, but rather while accepting that he/she is resident in Ireland claims that he/she is also resident in a foreign jurisdiction and under the double taxation treaty with that jurisdiction the right to tax capital gains, in his/her case, is with the foreign jurisdiction – which not surprisingly does not tax capital gains.

It is important therefore that the issue of dual-residence is also addressed in the legislation and it is proposed that this be done with by way of a Committee Stage amendment.

3 A Technical Issue

Certain assets (land in the State etc.) and shares deriving their value from such land are always chargeable to tax in the State irrespective of the residence of their owner. To ensure the ownership of such shares does not rule out the application of the section in respect other shares, simultaneous owned, f to which the section is meant to apply a technical drafting amendment is being suggested for Committee Stage.

(4)

SECTION 69

AMENDMENT OF CHAPTER 3 (CAPITAL GAINS TAX) OF PART 2 OF PRINCIPAL ACT

SPEAKING NOTE

This section inserts a new section, section 29A, into the Taxes Consolidation Act 1997 to counter the avoidance of capital gains tax by means of going off-shore temporarily, or by becoming dual-resident.

Whereas the provisions of the section are somewhat technical, an overview of what it seeks to achieve is as follows

First of all, it only seeks to impose a tax charge on an Irish domiciled person who disposes of certain assets while outside the current capital gains tax net. An individual could fall outside the capital gains tax net—

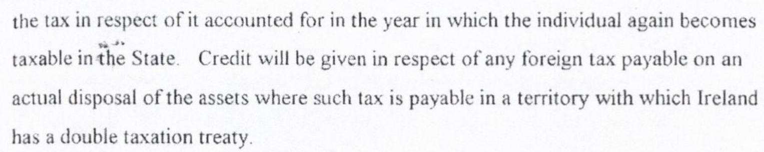
- either by leaving the State to take up tax residence elsewhere, or
- by arranging his or her affairs so that, while continuing to be resident in the State, he or she is also resident in another jurisdiction and that jurisdiction has sole taxing rights under the relevant Double Taxation Agreement.

Secondly, if the person is, for more than 5 years, not, under normal rules, within the charge to capital gains tax, then a tax charge cannot arise under this section.

The assets concerned are a holding in a company which, when the person ceases to be chargeable in the State, is 5% or more by value of the issued share capital of the company or has a value in excess of €500,000.

If a person disposes of all or part of such assets during a period of less than 5 years during which he or she is outside the charge to tax under normal rules, the person will be liable to capital gains tax on this disposal as if the person had disposed of those assets, or that part of those assets, before he or she ceased to be chargeable in the State.

Whereas the gain on the deemed disposal arises before the individual ceases to be resident in the State, the gain is required to be included in the individual's return and


the tax in respect of it accounted for in the year in which the individual again becomes taxable in the State. Credit will be given in respect of any foreign tax payable on an actual disposal of the assets where such tax is payable in a territory with which Ireland has a double taxation treaty.

SECTION 68

DETAILED NOTE

Subsection (1) of section 69 inserts a new section, section 29A, into the Taxes Consolidation Act 1997. That new section provides as follows. Section 29A, in subsection (1)(a), sets out the definition of "intervening year", "relevant assets" year of departure and "year of return". These definitions have to be read in the context of subsections (1)(b) and (1)(c). Therefore, ***"year of departure"*** in relation to an individual" means the last year of assessment for which the individual is both—

- resident in the State, and
- liable to tax in the State on a disposal of relevant assets on each day of that year

before the year when the individual cease to come within either or both of those criteria.

Under normal capital gains tax rules, an individual is liable to capital gains tax on gains accruing on the disposal of assets if the individual is resident or ordinarily resident in the State. However, this right to tax can be negated by the terms of a Double Taxation Agreement. What the definition of year of departure seeks to identify is the last year for which individual by reason of his or her being resident for the year is taxable on disposals throughout the year notwithstanding any provisions of a Double Taxation Agreement. The definition of ***"year of return"*** in respect of an individual is described within subsection (2) and is essentially the first year of assessment for which the individual is both—

- resident in the State, and
- liable to tax in the State in respect of a disposal, on each day of that year of relevant assets,

immediately after a year of assessment for which the individual could not be taxed in the State on a disposal of relevant assets, or part of those assets, in that year of part of that year.

What the definition of year of return seeks to define is the first year for

which an individual is again, by reason of his or her being resident is taxable on disposals throughout the year notwithstanding any provisions of a Double Taxation Agreement after one or more years of assessment for which the individual could not be taxed in the State on a disposal of relevant assets, or part of those assets, in that year, of part of that year.
The definition of ***"intervening year"*** in relation to an individual is any year of assessment falling within the period commencing on the first day of the year immediately following the year of departure and ending on the last day of the year of assessment immediately preceding the year of return.
An individual's ***"relevant assets"*** are shares in a company, or rights to acquire shares in a company being shares or rights which the individual beneficially owned on the last day of the year of the individual's departure the market value of which on that day—

- is equal to , or greater than 5% of the value of the issued share capital of the company, or
- exceeds €500,000.

Under *subsection (2)* the charging provisions of the section apply to an individual who has relevant assets and who—

- was domiciled and resident in the State and could be taxed on a disposal of relevant assets, and
- ceases for a period (the intervening years) of not more than 5 years to be taxable in the State on a disposal of relevant assets before again (in the year of return) becoming resident and taxable on a disposal of relevant assets.

Subsection (3) deems, the relevant assets or any part of them that were disposed of in the intervening years, to have been disposed of and reacquired at their market value on the last day of the year of departure. Under subsection (4) credit for foreign tax (if any) paid in respect of the actual disposal of the relevant assets or a part of them is allowable against the capital gains tax liability on the deemed disposal if there is a Double Tax Agreement with the foreign jurisdiction concerned. Furthermore the gain

capital gains tax liability on the deemed disposal is to be treated, for self-assessment purposes, as if they arose in the year of return.

Subsection (2) of section 68 provides for the commencement of the new section 29A. In general section 29A applies to an individual who ceases to be resident and taxable on a disposal of relevant assets for the year of assessment 2003 or any subsequent year. However the section does not apply to an individual who before 24 February 2003 who while still resident ceased to be taxable on a disposal of relevant assets.

Budget item (5)

Mr. Liam Murphy
Budget Section
Department of Finance
Upper Merrion Street
Dublin 2

Re: Budget 2006
Circumvention of section 29A (*temporary non-residents*) TCA 1997

Dear Liam

You will recall that in Finance Act 2003, an amendment (insertion of section 29A) was made to the Taxes Consolidation Act 1997, to prevent the avoidance of capital gains tax on the disposal of valuable shares by arranging to be tax non-resident, at the time of disposal of the shares, in a jurisdiction which either did not tax capital gains or taxed them at a rate lower than 20%. Section 29A was not targeted at those who intended to emigrate, but rather those who sought to avoid Irish tax by arranging to be temporarily non-resident for that purpose. However, we have come across two instances (5 individuals involved) where it would appear that attempts are being made to circumvent the provisions of section 29A. It is considered that this should be countered by legislation.

Outline how section 29A works

Year 1 is a year, immediately prior to *year 2*, in which the individual concerned is liable to Irish capital gains tax in respect of a disposal of valuable shares made at any time in the year.

Year 2 is a year in which the individual would not be liable to Irish capital gains tax on a disposal of valuable shares made at any time of the year. In other words, at some time during this year the individual, because of the terms of a double taxation agreement, ceases to be liable to Irish tax on capital gains on such disposals in that year.

Year X is the first year subsequent to *year 2* for which the individual is again liable to capital gains tax in respect of a disposal of assets made at any time in the year.

The years between *year 1* and *year X* are termed the "intervening years".

Where X is not more than 7 (i.e. there are not more than 5 intervening years) and the individual concerned disposes of valuable shares (which he/she owned in year 1) in an intervening year then under section 29A the individual is deemed to have disposed of and reacquired those shares on the last day of year 1 – thus rendering himself/herself liable to Irish capital gains tax.

Circumvention of section 29A

In the cases that have come to light, it appears that the attempt to circumvent section 29A is being done as follows. An individual has valuable shares in year 1. In year 2 the individual transfers the shares to his/her spouse who in that year goes abroad (Italy in both the present cases) and under the Ireland/Italy DTA agreement is not liable to Irish capital gains tax on disposals in that year. That spouse sells the shares to a third party in year 2 while resident in Italy and we believe will return to Ireland in year 3.

Under section 1028 TCA 1997 the transfer of assets between spouses does not give rise to a capital gains tax liability. Furthermore, since the spouse who went abroad

and sold the shares to a third party returned to Ireland within 5 years, *prima facie* section 29A should apply. However, that spouse did not own the shares at the end of year 1 so it is not possible to deem a disposal and reacquisition by them at that time. Thus Irish capital gains tax on the disposal of the shares is avoided

Proposal to Counter circumvention of section 29A
What has facilitated the circumvention of section 29A in these cases is the availability of relief under section 1028 – tax-free transfer between spouses. This relief has been in existence since the inception of Capital Gains Tax (1975) – a time when the possibility of making substantial gains on shares was more remote, the residence rules were more strict (e.g. the place of abode test) and foreign travel was more inconvenient.
Therefore the relief afforded by section 1028 (and indeed the similar sections 1030 (transfers between separated spouses) and 1031 (transfers between divorced persons)) is vulnerable to use as a tax avoidance mechanism and not only in relation to valuable shares.
The proposal is, therefore, that the relief afforded by section 1028 not apply where assets are transferred in a year in which the transferee is not liable to Irish capital gains tax on disposals of such assets in that year.
In the scenario outlined above this would means that the individual transferring the valuable shares in year 2 to his/her spouse would be liable to capital gains tax in that year on that transfer (irrespective of the provisions of section 29A). In addition, since there seems to be no good reason why capital gains tax should be foregone in a situation where an individual transfers assets to a separated spouse (of in the case of divorce, a former spouse) who is living in and liable to tax in another jurisdiction *it is proposed* that a similar restriction apply to the relief afforded by sections 1030 and 1031.

If these proposals are acceptable it is considered that they should take effect from Budget day in order to prevent any similar avoidance attempts early in 2006.

A suggested wording for the Principal Features is as follows:

> *"The deferral of capital gains tax on a disposal of an asset to a spouse, a separated spouse or a former spouse (i.e. following a divorce) will not apply to disposals on or after today (7 December 2005) where the spouse acquiring the asset would not be liable to Irish capital gains tax if he/she disposed of that asset in the year in which he/she acquired it."*

Please let me know if you require any further information.

Yours sincerely

Joe Stone
Direct Taxes Policy & Legislation Division
Office of the Revenue Commissioners
11 November 2005.

(6)

SECTION 75

AMENDMENT OF CHAPTER 2 (CAPITAL GAINST TAX) OF PART 44 OF PRINCIPAL ACT

SPEAKING NOTE

Section 75 implements a measure that was announced in the Budget. Under the capital gains tax code, assets can be transferred between spouses, even where they permanently separated and in certain circumstances where they are divorced, without triggering a capital gains tax liability. This is achieved by treating the spouse who acquires the asset as acquiring it at whatever the spouse disposing of the asset paid for it originally. The intention is that capital gains tax is deferred until neither spouse owns the asset concerned. This relief has been abused in recent years by certain persons affected contriving a situation where the spouse who acquires an asset from the other spouse sells it on when he or she is resident abroad in that year and is outside the capital gains tax net by virtue of the provisions of a Double Taxation Treaty.

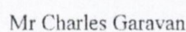
Section 75 counters this contrivance by not allowing the relief to be availed of in such circumstances.

A.2(b) Request 2 – Revenue Commissioners (5770/2013) and Department of Finance (FOI/005/2014)

An Roinn Airgeadais
Department of Finance

Request Ref: FOI/005/2014

14 February 2014



Mr Charles Garavan

Re – Freedom of Information Request – Taxation of Temporary Non Residents

Dear Mr. Garavan,

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for access to records in relation the taxation of temporary non residents. Telephone conversations with Mr Liam Smith and Ms Anita Kelly of this office, refer.

In response to your request, I have decided to grant your request for all records. Please find attached copies of the records released to you under this request, including a copy of a schedule listing all documents relating to the search.

If you have any queries Ms Anita Kelly may be contacted by direct telephone at number (01) 6696310. Anita will endeavour to answer any questions you may have, and to assist you generally in this matter.

In any correspondence with this Department regarding your FOI request please quote the above Request Reference.

Yours sincerely,

D. Murtagh

Donal Murtagh
Deciding Officer

Tithe an Rialtais
Sráid Mhuirfean Uacht
Baile Átha Cliath 2
Éire

Fón / Tel: 353 1 676 7571
Facs / Fax: 353 1 678 9936
Glao Áitiúil / LoCall:1890 66 10 10
http://www.finance.gov.ie

Government Buildings
Upper Merrion Street
Dublin 2
Ireland

Name: Mr Charles Garavan

Ref No: 005/2014

Request Documents relating to the taxation of Temporary Non Residents

Schedule of Records: Summary of decision making

Record No.	Brief Description and Date of Record	File Ref.	No. of Pages	Decision: Grant/ Part Grant/Refuse	Basis of Refusal Section of Act	Reason for Decision	Public Interest Considerations if applicable (for and against release)	Identify deletions where record is part refused
1	Memo to Minister - November 2005 - Circumvention of S 29A TCA 1997	F49/32/06	3	Grant				
2	Letter - 11 November 2005 - Re Budget 2006 - Circumvention of S 29A	F 49/32/06	2	Grant				
3	Speaking Note - on Committee Stage Amendments to Finance Bill 2003 = S 29A	F49/127/03	2	Grant				
4	Memo to Minister - 14 February 2003 - Section 65 CGT anti avoidance	F 49/127/03	2	Grant				
5	Memo to Minister - 13 November 2002 - Avoidance of GCT through temporary emigration	F 49/182/02	5	Grant				
6	Letter - 12 November 2002 - Tax avoidance through temporary emigration	F49/182/02	5	Grant				

A.2(c) Request 3 – Revenue Commissioners (CRMS 5771/2013) and Department of Finance (FOI/003/2014)

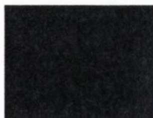
Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

www.revenue.ie

Oifig na gCoimisinéirí Ioncaim
Rannán na gCásanna Móra
Teach Ballaugh
73/79 Sráid an Mhóta Íocht
Baile Átha Cliath 2
Éire

Office of the Revenue Commissioners
Large Cases Division
Ballaugh House
73/79 Lower Mount Street
Dublin 2
Ireland

Charles Garavan



4th December 2013

RE: FOI Request CRMS 5771/2013

Dear Mr. Garavan,

I refer to your request received 8th November 2013 under the Freedom of Information Acts 1997 and 2003 (FOI Acts) seeking documents relating to the background to the "tax exile" issue and number of "tax exiles".

As FOI decision-maker for Large Cases Division in Revenue Commissioners, please find below information which has been extrapolated or deduced from documents which is relevant to your specific requests with regard to:

- The number of such non-residents whose affairs are dealt with by Revenue Large Cases Division (Group 4), and the number of those individuals who are Irish domiciled and/or were previously resident or were previously resident or ordinarily resident in Ireland (Group 5)
- The amount of income tax and capital gains tax paid by each of the Groups (4 & 5 only)
- The number of audits or investigations into individuals in Groups 4 & 5 only as described above, and the amount, if any, of additional taxation recovered
- The number of investigations into residence or domicile status of individuals in Groups 4 & 5 only described above, and the results of any such investigations
- The number of appeals by individuals regarding their residence, ordinary residence or domicile in Ireland for tax purposes

For each year from 1 January 2000 to date.

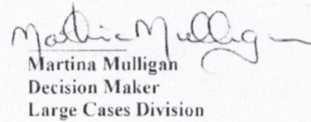
The information provided below is the only relevant information found in documents relating to Groups 4 and 5 that were not created for the specific purpose of answering PQs or for the Revenue Annual Report that is already freely available to the public in Revenue Annual Report on www.revenue.ie or in PQs on www.oireachtas.ie.

50 of the cases dealt with in High Wealth Individuals (HWI) unit of Revenue Large Cases Division for the tax year 2005 were non-resident
27 Interventions which appeared to have a residence issue were undertaken in 2009 by the High Wealth Individuals (HWI) unit , 21 closed, 1 at appeal and rest on-going as at January 2012

It is my understanding you will also be receiving a reply from another section of revenue relating to other aspects of this request.

Please note that should you wish to have this decision reviewed an application for review must be made not later than 4 weeks after notification of this decision. (A copy of the review procedures is attached.)

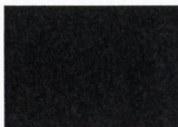
Yours sincerely,



Martina Mulligan
Decision Maker
Large Cases Division

Revenue

Mr. Charles Garavan



Office of the Revenue Commissioners
Capital Taxes Division
Stamping Building
Dublin Castle
Dublin 2
Ireland

Oifig na gCoimisinéirí Ioncaim
Rannán Cánacha Caipitiúla
Áras Stampála
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
Éire

5 December 2013

Re: Freedom of Information Request CRMS 5771/2013

Dear Mr. Garavan

I refer to your request under the Freedom of Information Act 1997, as amended, for access to documents relating to the taxation of non-residents.

> *Reports, memoranda and/or correspondence received from or provided to, or notes or minutes of meetings or discussions with other government departments or officials thereof in relation to "tax exiles",*
>
> *Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to Parliamentary Questions or proposed amendments to Finance Bills in the period from 1 January 2000 to date, in relation to the number of, or the taxation of non-residents or of "tax exiles", or in relation to the taxation of individuals on the basis of their Irish citizenship or possession of an Irish passport.*

I have not identified any records in relation to your request. However, it is my understanding that you will be receiving information from another section of Revenue which may assist you.

Should you wish to have this decision reviewed, an application for review must be made not later than 4 weeks after notification of this decision. A copy of the review procedures is enclosed for your information.

Yours sincerely,

Michael Buckley

Assistant Principal

Capital Taxes Branch

A.2(c) Request 3 – Revenue Commissioners (CRMS 5771/2013) and Department of Finance (FOI/003/2014)

Request Ref: FOI/003/2014

3rd March 2014

Mr Charles Garavan

Re – Freedom of Information Request – Taxation of Non Residents and Tax Exiles

Dear Mr. Garavan,

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for access to records in relation the taxation of non residents and the background to the 'tax exile' issue. Telephone conversations with Mr Liam Smith and Ms Anita Kelly of this office refer.

Please find attached copies of the records released to you under this request, together with a schedule listing all documents released. Parts of some documents have not been released. The purpose of this letter is to explain that decision. This explanation has the following parts:

1) a schedule of all of the records covered by your request;
2) a statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these parts in turn.

1. Schedule of Records

A schedule of records is attached to this letter which shows the records that this Department considers relevant to your request. It also gives you a summary and overview of the decision as a whole.

The schedule describes each record, and indicates whether the record is released in full, or released with deletions. Where records are part granted, the schedule refers to the relevant sections of the FOI Acts which apply. The schedule also provides brief reasons for the decision to exempt these records.

2. Rights of appeal

You may appeal this decision. Please note, however, that a fee applies for an appeal, with the exception of an appeal against the imposition of a fee. The level of this has been set at €75. In the event that you need to make such an appeal, you can do so by writing to the *DFOI Unit, Department of Finance, Upper Merrion St, Dublin 2,* enclosing the appropriate fee or in the case where no fee is required you can send your appeal by e-mail to pat.hickson@finance.gov.ie . Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to the Accountant, Department of

Tithe an Rialtais
Sráid Mhuirfean Uacht
Baile Átha Cliath 2
Éire

Fón / Tel: 353 1 676 7571
Facs / Fax: 353 1 678 9936
Glao Áitiúil / LoCall: 1890 66 10 10
http://www.finance.gov.ie

Government Buildings
Upper Merrion Street
Dublin 2
Ireland

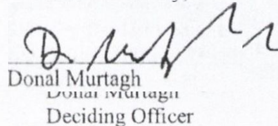
Finance. You should make your appeal **within 4 weeks** (20 working days) from the date of this notification; however, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department/Body.

If you have any queries, Ms Anita Kelly may be contacted by direct telephone at (01) 6696310. Anita will endeavour to answer any questions you may have, and to assist you generally in this matter.

Finally, I wish to draw your attention to published Tax Strategy Group papers which are already in the public domain which may contain material of relevance to your areas of interest. Published papers from 2006 to 2012 are available at www.taxpolicy.gov.ie.

In any correspondence with this Department regarding your FOI request please quote the above Request Reference.

Yours sincerely,



Donal Murtagh
Deciding Officer

Name: Mr Charles Garavan

Ref No: 003-2014

Request Records relating to the taxation of non residents and tax exiles

Schedule of Records: Summary of decision making

Record No.	Brief Description and Date of Record	File Ref.	No. of Pages	Decision: Grant/ Part Grant/Refuse	Basis of Refusal - Section of Act	Reason for Decision	Public Interest Considerations if applicable (for and against release)	Identify deletions where record is part refused
1	Note - Budget 2006 - Abolition of Remittance Basis for Employment Income	F 49	1	Grant				
2	Submission - Budget 2009 - Tax Residency Rules	F 49	2	Grant				
3	Citizen Based Taxation: Information Note	F 49	2	Grant				
4	Submission - Finance Bill 2009 - Changes to residence and ordinary residence rules	F 49	3	Grant				
5	Speaking Note - Financial Emergency Measures in the Public Interest Bill 2009	F 49	2	Grant				
6	Submission - Budget 2010 - Changes to Residentce and Ordinary Residence Rules	F 49	4	Grant				
7	Email L Smith 03.10.2010	F 49	2	Grant				
8	Briefing - Select Committee - 15.12.2011- CGT Temporary non resident changes in Finance Act 2003	F 49	1	Grant				
9	Briefing - Select Committee - 15.12.2010 - Residence changes Finance (No 2) Act 2008	F 49	1	Grant				

A.2(c) Request 3 – Revenue Commissioners (CRMS 5771/2013) and Department of Finance (FOI/003/2014)

10	Briefing - Select Committee - 15.12.2010 - Tax Exiles generally	F 49	1	Grant				
11	Email D O Leary 07.10.2011	F 49	3	Grant				
12	Submission to Minister - Budget 2012 - Changes to Tax Resident Rules	F 49	10	Part Grant	s. 20	Deliberative Process		p1; p7, p8-10
13	Email D Cunniffee 01.12.2011	F 49	5	Grant				
14	Email Des O Leary 24.12.2012	F 49	7	Grant				
15	Email S Reynolds 25.04.2012	F 49	2	Grant				
16	Submission to Minister - Residence for Tax Purposes 29.11.2012	F 49	16	Part Grant	s. 20	Deliberative Process		p1; 3, 4-10.
17	Information Note on item 16	F 49	2	Grant				
18	Email M Shaughnessy 04.01.2013	F 49	2	Grant				
19	Email S Ryan 09.01.2013	F 49	2	Grant				
20	Submission to Minister Sept 2013	F 49	2	Grant				

1

Abolition of Remittance Basis for Employment Income in Budget 2006

Background

There is a long standing provision that persons who are resident, but not domiciled, in the UK or Ireland may avail of the remittance basis of taxation whereby they are taxed only on the amount of foreign income remitted to them in the State.

The Remittance basis was utilised by multi-national companies operating here as an incentive to foreign domiciled executives who take up management posts with these companies but keep most of their income offshore. It was popular in the IFSC area and was well marketed by the IDA in attracting inward investment.

The remittance basis was confined to a small number of persons who might not otherwise come here or whose skills and presence were vital to attracting and keeping foreign firms in the State. However, the large scale influx of foreign (non UK) workers here in recent years led to a concerted use of the remittance scheme on a tax planning basis to employ such nationals here while paying little by way of income tax, as was used in the Gama case.

The use of the remittance basis became widespread in the construction sector and in other areas including tourism, pharmacy, mining, fishing and certain professional services. There were reports of tax planners offering the scheme on a package basis to firms employing foreign nationals. Complaints of the unfair competition with Irish firms and workers were made.

Budget Change

In Budget 2006, the remittance basis was abolished outright in respect of employment income in so far as the employment is exercised in the State. This took effect from 1 January 2006. The measure was aimed at ensuring that income tax relating to employees could not be avoided by having arrangements in place whereby the income of the employees was paid by non-resident firms into a bank account abroad. This ensured equality of treatment for tax purposes for all Irish resident employees regardless of nationality. The yield from this measure was estimated at over €50m in 2006, €75m in 2007 and €100m in a subsequent full year.

Position post Budget 2006 Change

Although the remittance basis was abolished on employment income, it continues to apply with regard to investment income, and income from employments exercised outside the State.

In the aftermath of the abolition of the remittance basis there was pressure from some affected sectors, most notably IFSC companies, to reintroduce the provision. They argued this would affect their ability to attract highly skilled workers. A reintroduction of the remittance basis on employment income is not considered necessary at this time.

2

Budget 2009 – Tax Residency Rules

Derek Moran
Kevin Cardiff, to see please

Minister, from Paul Ryan

Decision Sought
Approval is sought to consider the possibility of reducing the number of days in which an individual must be resident in the State before becoming resident for tax purposes. The current rules, set out below, are consistent with most other developed countries and it is proposed that there is no change.

Background and analysis
An individual is resident in the State for tax purposes for a particular year in either of the following circumstances:

- if he/she spends 183 days or more in Ireland for any purpose in that tax year; or
- if he/she spends 280 days or more in Ireland for any purpose over a period of two consecutive tax years he/she will be regarded as resident in Ireland for the second tax year.

As regards the term 'ordinarily resident', an individual will become 'Irish ordinarily resident' for tax purposes if he/she remains Irish resident for the 3 consecutive years after his/her return or coming here to live.

A day is only counted where the individual is present in the State at midnight. This means that the following are not counted:

1. days of departure, and
2. days in which individuals arrive early in the morning and depart before midnight.

There has been much criticism of wealthy individuals who organise their affairs to ensure that they are not resident here to avoid paying tax on their world wide income, particularly, those who have access to private jets.

Accordingly, a reduction may be possible in the current amounts of 183 days (single tax year) and 280 days (two tax years) by 30 days to 153 days and by 45 days to 234 days, respectively.

However, it can be argued that a reduction in the number of days that an individual must be resident here to become tax resident will have minimal impact on those individuals as they can organise their affairs within the parameters of any prevailing legislation.

(2)

In this regard, such a move would have wider consequences on migrants and others who spend time occasionally in the state. The existing 183 day rule is consistent with other jurisdictions, particularly those with whom we have close trade and double taxation agreements. In many cases, individuals will satisfy the residency rules in both countries to a double taxation agreement and this will necessitate the use of tie-breaker rules (i.e. an arrangement which is used to decide where an individual resides for tax purposes between the two States to an agreement), which are not generally required at present.

This outcome will complicate the tax system and Ireland's double taxation agreements, undermining our efforts to expand our network of such agreements and adversely impacting upon the potential benefits in the areas of economic activity, employment growth and extra tax revenue which flow from an extensive network.

It is, therefore, proposed that there is no change to the existing residency provisions. However, this area can be kept under review to monitor the current arrangements and the arrangements in other jurisdictions, especially those with whom we have close trade and double taxation agreements.

You may wish to discuss with officials.

Capital Taxation and Savings policy
22nd September, 2008

(3)

Citizenship-based Taxation: Information Note

To: Derek Moran, Assistant Secretary, Budget, Taxation and Economic Division

From: Liam Smith, Capital and Savings Taxation Policy

Date: 5 March 2009

In common with most countries, the taxation of individuals in Ireland is based on a combination of the residence of the individual and the location of the source of the income. Broadly speaking, a resident of Ireland is taxed on his or her worldwide income, whereas someone who is non-resident is taxed in Ireland only on income arising in Ireland. [There are variations on this depending on an individual's ordinary residence or domicile status – for example, individuals who are not ordinarily resident or not domiciled in Ireland are only taxed on foreign income to the extent it is remitted to the State.]

The United States has a system of citizenship-based taxation, under which a US citizen is liable to pay US income tax on his or her worldwide income regardless of where he or she is resident. The US system is in place since 1913[1]. This is also combined with a residence based system, in that "resident aliens" - non-US citizens who are resident in the US - are liable to US tax on worldwide income. Very few other countries use citizenship based taxation – as far as I can establish the only other countries who may have a variation on a citizenship based taxation system are the Philippines[2], Eritrea[3], Mexico[4] and Israel[5].

A number of issues would have to be considered if citizenship-based taxation was to be introduced in Ireland:

- **Compliance/Enforcement** – A 1985 report by a US Congressional sub-committee estimated that as many as 61% of US expats do not file US tax returns, and an IRS study in 2001 stated that 300,000 US taxpayers claimed the "foreign earned income credit", which is a low figure in light of estimates that approximately 5 million US citizens live outside the US[6]. While the US passport form requires US citizens to provide their Social Security Number (equivalent of PPSN), and this data is provided to the IRS[7], a US citizen resident abroad will not be refused a passport for not having filed a tax return. The IRS only has offices outside the United States in London, Paris and Frankfurt[8]. It has few sanctions to enforce or improve compliance, as do the Revenue Commissioners if Ireland introduced a "citizenship-based" taxation system in Ireland.

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1 Blum and Singer, "A coherent policy proposal for US residence based taxation of individuals", at http://www.accessmylibrary.com/coms2/summary_0286-35069893_ITM

2 http://www.offshoreinvestment.com/current_issue/langer179.html

3 Ibid.

4 Bhagwati and Wilson, "Income Taxation in the Presence of International Personal Mobility: An Overview" at http://books.google.com/books?hl=en&lr=&id=RXCGTdlGE5kC&oi=fnd&pg=PA3&dq=%22Bhagwati%22+%22Income+Taxation+in+the+Presence+of+International+...%22+&ots=J10z7DanNg&sig=5y4nE37ry_xLxABktTz7GV7xWE4

5 http://www.canadianbusiness.com/columnists/jack_mintz/article.jsp?content=20060814_79915_79915

6 As note 2

7 US passport application form at http://www.state.gov/documents/organization/79955.pdf

8 As note 1

3

- **Double Taxation Agreements** – All Ireland's double taxation agreements (other than the DTA with the US) would have to be modified to provide that one contracting state reserves the right to tax its citizens wherever they are resident. The introduction of a citizenship-based taxation system might lead to difficulties in negotiating new DTAs, or even to the cancellation of existing DTAs. The US has a network of over 60 DTAs[9], which might be seen as low in the light of its importance to the world economy – by comparison the UK, which has a residence/source based taxation system, has over 100 DTAs[10]. Given that Ireland is much less central to the world economy than either the US or the UK, the introduction of citizenship-based taxation could weaken our tax treaty network and thereby damage our competitiveness.
- **Additional yield –** The main income of most Irish citizens resident abroad would be their employment/trade/professional income, and their country of residence would have the primary taxing rights on such income. The additional yield to Ireland from such cases would be small. The US system provides for a "foreign earned income exclusion" ($87,600 in 2008[11]) whereby employment, trade and professional income up to that amount is not taxed. If citizenship-based taxation was introduced, it would be wise to consider a similar exclusion to put most potential non-resident taxpayers out of the tax net. In most cases a DTA would provide that certain sources of income (for instance, deposit interest income) is only taxable where an individual is resident, so the additional yield to Ireland from such cases would be nil.
- **Potential Complications -** If Ireland introduced citizenship-based taxation, an Irish citizen resident in France who had an investment property in Spain might have a tax liability in all three countries, and again the potential yield to Ireland would be small.
- **Opposition to citizenship-based taxation** – The Association of Americans Resident Abroad opposes citizenship-based taxation, and some US tax academics have suggested abolishing it. Similar opposition could be expected from Irish diaspora groups if citizenship-based taxation was introduced in Ireland. In theory, everyone born in Northern Ireland would be required to file an Irish tax return, and substantial numbers in Great Britain and the USA also. In the current climate, when individuals might feel compelled to emigrate to find work, it would not be well received if the Irish Government continued to seek tax from the income of people who were unable to obtain work in our economy.

The introduction of citizenship-based taxation has been mooted as a possible way of challenging public unhappiness at the "tax exile" phenomenon – individuals who have most of their interests in Ireland but who arrange their affairs so as not be resident here and are perceived to pay little tax here. This has been tackled to some extent in the last Finance Bill by removing the "Cinderella rule" so that presence in the State for a day (for the 183 day or 280 day rule) means presence at any part of the day. If it is decided that the tax exile issue is to be tackled, it might be better to do it by changing the residence, ordinary residence or domicile rules rather than by adopting citizenship-based taxation.

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9 http://www.irs.gov/businesses/small/article/0,,id=180694,00.html
10 http://www.hmrc.gov.uk/international/treaties1.htm
11 http://www.irs.gov/publications/p54/ch04.html#en_US_publink100047498

Finance Bill 2009
Changes to residence and ordinary residence rules

Derek Moran

Jim O'Brien, to see please

Minister, from Paul Ryan

Decision Sought
It is understood that you wished to see options for changes to the rules for treating an individual as resident or ordinarily resident in the State for tax purposes in the context of the overall so-called 'tax exile' issue. The proposed options will make it more difficult for individuals who are effectively based in Ireland to become non-resident, making them more likely to be chargeable to Irish tax on their worldwide income, rather than simply on income arising within the State. Any changes could take effect from 1 January 2010.

Background
Current residence rules
Currently, an individual is resident in the State for tax purposes for a tax year if they are present in the State:

- for 183 days or more in that year; or
- for 280 days or more in that year and the previous year (although if he or she is present in the State for 30 days or fewer in either year, those days are not counted).

An individual becomes ordinarily resident in the State after three consecutive tax years of residence; conversely, an individual ceases to be ordinarily resident after three consecutive tax years of non-residence.

Abolition of the "Cinderella rule"
Up to 31 December 2008, an individual was only regarded as present in the State on a day if he was present in the State at midnight on that day - colloquially denoted as the 'Cinderella rule'. This was changed in the Finance (No. 2) Act 2008 so that an individual would be treated as present in the State on a day if he or she was present in the State at any time during that day.

Recent controversy concerning "tax exiles"
There has been recent adverse media comment about an individual becoming non-resident to avoid a Capital Gains Tax liability. While the issue which led to the recent controversy was resolved in Finance Act 2006, there may be some scope for further tightening the tax residence rule.

(4)

Proposed changes

183 day rule – no change proposed

It is not proposed to change the "183 day" rule because it is common to many jurisdictions and is also a standard test for residence in most Double Taxation Agreements (DTAs). In any event, reducing the number of days in which an individual becomes resident would mean that many people would become resident in two jurisdictions at once, which could lead to greater use of complex 'tie-breaker' rules in our DTAs. This could complicate our tax system and undermine our efforts to expand our tax treaty network, with adverse effects on economic activity and employment growth.

Proposal No. 1 – change the '280 day' rule to a '250 day' rule

The first proposal is to reduce the '280 day' period of presence over two years to 250 days. This would reduce the average number of days an individual would have to spend in Ireland to become tax resident to 125 per year. In combination with the abolition of the 'Cinderella rule' in last year's Finance Act, this will make it more difficult for individuals based in Ireland to become non-resident.

Proposal No. 2 – re-introduce a 'place of abode' test for residence

The second proposal is to re-introduce a 'place of abode' test so that an individual who has a place of abode available for their use and is present in the State for 90 days or more in the year will be treated as being resident in the State.

Up to 1994 there was a 'place of abode' test for tax residence, which was developed through case law. This test was modified in 1987 to provide that individuals who had a trade, profession, office or employment outside the State, (no part of which was exercised or performed within the State) would not be treated as resident solely because they had a place of abode in the State. The place of abode test was abolished in 1994 when the '183 day' and '280 day' tests were introduced.

A number of jurisdictions (including Australia, Japan and New Zealand) have a combination of a 'day counting' rule for residence (usually 183 days per tax year) and a 'place of abode' test.

The re-introduction of a 'place of abode' test would prevent individuals who are effectively based in Ireland from using the residence 'day counting' rules to declare themselves non-resident and avoid paying tax in Ireland on non-Irish income. Frequently, these individuals are not resident in any country and much of their income and gains go untaxed.[1]

Proposal No. 3 – reduce 'ordinary residence' period on arrival to two years

The third proposal is to reduce the period within which an individual becomes ordinarily resident from 3 tax years to 2 tax years[2].

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[1] Consideration could be given to re-introducing the change made in 1987 to allow individuals moving abroad for work not to be treated as resident simply because they have a place of abode in the State. However, DTAs and income tax relief for cross-Border workers should prevent most individuals in that position from becoming liable for additional tax in Ireland.

[2] For example, currently an individual who was previously non-resident but who was resident in 2006, 2007 and 2008 becomes ordinarily resident in 2009. The proposal is to change the law so that a

(4)

Ordinary residence plays a part in the tax-relieving provision known as the remittance basis of taxation. The remittance basis applies to most foreign income and was also re-applied on a limited basis to certain foreign employment income in last year's Budget[3]. The amendment will reduce the period such an individual can avail of the remittance basis of taxation on their foreign income from 3 years to 2 years.

Ordinary residence is also a key concept for Capital Gains Tax (CGT) purposes in that an individual who is domiciled in the State and either resident or ordinarily resident in the State is liable for CGT on disposals of all assets no matter where they are situated. The amendment will not negate this in any way (as the individual is tax resident in any event and within the full charge to CGT).

It is understood that some individuals are arranging their affairs so that while they are resident in some years they never become ordinarily resident, and thus are only ever taxable in Ireland on Irish-sourced income. Such individuals are usually not resident in any other State in years when they are not resident in Ireland and a large portion of their income would therefore go untaxed. As stated above, in the current climate it does not sit well that some wealthy individuals can arrange their affairs in this manner.

Either or both of the proposed changes to the residence rules would make it more difficult for individuals not to become ordinarily resident, so it may be thought unnecessary to change the ordinary residence rules as well.

Conclusion

Changes to residence and ordinary residence rules could realistically be made in any or all of three ways:

(i) Change the '280 day' rule to a '250 day' rule;
(ii) Re-introduce a 'place of abode' test for residence; and
(iii) Reduce 'ordinary residence' period on arrival to two years.

Submitted for consideration and discussion at Cabinet. You may also wish to discuss with officials, if required.

Capital & Savings Taxation Policy
15 April 2009

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previously non-resident individual who is resident in 2010 and 2011 will become ordinarily resident in 2012, rather than he or she having also to be resident in 2012 in order to become ordinarily resident in 2013. It is not proposed to change "three year" ordinary residence rule for individuals leaving the State.

[3] The remittance basis of taxation seeks to tax only that element of foreign income and/or gains remitted to State and can be availed of by an individual who is Irish tax resident, but is not ordinarily resident in the State (for foreign income only), and by individuals who are resident but not domiciled in the State (for foreign income and capital gains).

FINANCIAL EMERGENCY MEASURES IN THE PUBLIC INTEREST BILL 2009

DÁIL ÉIREANN – SELECT COMMITTEE

AMENDMENT NO. ___

(5)

13. - Section 819 of the Taxes Consolidation Act 1997 is amended by substituting the following for subsection (1) (a):

> **'(a) at any one time or several times in the year of assessment for a period in the whole amounting to 90 days or more, or' ".**

--Deputy Joan Burton

SPEAKING NOTE

Section 819 of the Taxes Consolidation Act provides that an individual is resident in the State if he or she is present in the State for 183 days in a tax year or 280 days between a tax year and the immediately preceding year. However, if an individual is present in the State for 30 days or fewer in either year, those days are not counted for the "280 day" test.

The provision that an individual is resident in a country if he or she is present for 183 days or more in a year is common to most jurisdictions. A "183 day" test is also a feature of most of Ireland's double taxation agreements for determining taxing rights.

I presume the Deputy's intention in moving the amendment is to increase the Revenue to the State from individuals who are currently treated as non-resident. However, under the terms of double taxation agreements between the State and another jurisdiction, that other jurisdiction may have the primary taxing rights on income arising there and there would be no yield to the State on that income. So even if more individuals were treated as resident by virtue of this amendment, it would not necessarily increase the tax revenue to this State.

As the Deputy is aware, there was much criticism of what was known as the tax residence **"Cinderella rule"** under which individuals could be in the State on a given day but not present for that day for tax purposes provided they arrive after midnight and depart before the following midnight.

(5)

In the recent Finance Act, I abolished the "Cinderella rule" so that an individual will be regarded as present in the State on a day if he or she is in the State at any time during the day, not just at midnight.

I don't propose making any further changes to the tax residence rules at this time.

Budget 2010
Changes to residence and ordinary residence rules

Derek Moran

Jim O'Brien, to see please

Minister, from Paul Ryan

(6)

Decision Sought
It is understood that you wished to see options for changes to the rules for treating an individual as resident or ordinarily resident in the State for tax purposes in the context of the overall so-called 'tax exile' issue. The proposed options will make it more difficult for individuals who are effectively based in Ireland to become non-resident, making them more likely to be chargeable to Irish tax on their worldwide income, rather than simply on income arising within the State. Any changes could take effect from 1 January 2010.

Background
Current residence rules
Currently, an individual is resident in the State for tax purposes for a tax year if they are present in the State:

- for 183 days or more in that year; or
- for 280 days or more in that year and the previous year (although if he or she is present in the State for 30 days or fewer in either year, those days are not counted).

An individual becomes ordinarily resident in the State after three consecutive tax years of residence; conversely, an individual ceases to be ordinarily resident after three consecutive tax years of non-residence.

Abolition of the "Cinderella rule"
Up to 31 December 2008, an individual was only regarded as present in the State on a day if he was present in the State at midnight on that day - colloquially denoted as the 'Cinderella rule'. This was changed in the Finance (No. 2) Act 2008 so that an individual would be treated as present in the State on a day if he or she was present in the State at any time during that day.

It should be noted that individual whose foreign income or gains are taxable here can still claim credit, under one of Ireland's Double Taxation Treaties, for foreign tax paid on that income/gain.

Recent controversy concerning "tax exiles"
There has been recent adverse media comment about an individual becoming non-resident to avoid a Capital Gains Tax liability. While the issue which led to the recent controversy was resolved in Finance Act 2006, there may be some scope for further tightening the tax residence rule.

(6)

Proposed changes

183 day rule – no change proposed

It is not proposed to change the "183 day" rule because it is common to many jurisdictions and is also a standard test for residence in most Double Taxation Agreements (DTAs). In any event, reducing the number of days in which an individual becomes resident would mean that many people would become resident in two jurisdictions at once, which could lead to greater use of complex 'tie-breaker' rules in our DTAs. This could complicate our tax system and undermine our efforts to expand our tax treaty network, with adverse effects on economic activity and employment growth.

Proposal No. 1 – change the '280 day' rule to a '250 day' rule

The first proposal is to reduce the '280 day' period of presence over two years to 250 days. This would reduce the average number of days an individual would have to spend in Ireland to become tax resident to 125 per year. In combination with the abolition of the 'Cinderella rule' in last year's Finance Act, this will make it more difficult for individuals based in Ireland to become non-resident.

Proposal No. 2 – re-introduce a 'place of abode' test for residence

The second proposal is to re-introduce a 'place of abode' test so that an individual who has a place of abode available for their use and is present in the State for 90 days or more in the year will be treated as being resident in the State.

Up to 1994 there was a 'place of abode' test for tax residence, which was developed through case law. This test was modified in 1987 to provide that individuals who had a trade, profession, office or employment outside the State, (no part of which was exercised or performed within the State) would not be treated as resident solely because they had a place of abode in the State. The place of abode test was abolished in 1994 when the '183 day' and '280 day' tests were introduced.

A number of jurisdictions (including Australia, Japan and New Zealand) have a combination of a 'day counting' rule for residence (usually 183 days per tax year) and a 'place of abode' test.

The re-introduction of a 'place of abode' test would prevent individuals who are effectively based in Ireland from using the residence 'day counting' rules to declare themselves non-resident and avoid paying tax in Ireland on non-Irish income. Frequently, these individuals are not resident in any country and much of their income and gains go untaxed.[1]

[1] Consideration could be given to re-introducing the change made in 1987 to allow individuals moving abroad for work not to be treated as resident simply because they have a place of abode in the State. However, DTAs and income tax relief for cross-Border workers should prevent most individuals in that position from becoming liable for additional tax in Ireland.

6

Proposal No. 3 – introduce a "centre of vital interests" test

The Commission on Taxation recommended that a "centre of vital interests" test also be added to the criteria for determining an individual to be resident. In other words, if an individual was not present in the State for 183 days in a tax year or 280 days over two years, s/he could still be regarded as resident if Ireland was her/his centre of vital interests. This term is defined in the OECD Model Tax Convention as the state to which the individual has closest personal and economic relations.

While this test is somewhat vaguer than the "place of abode" test it would be another useful measure to ensure that individuals who are effectively based in the State would be treated as resident here and taxed on worldwide income. There might, however, be instances where people who are popularly regarded as "tax exiles" for whom Ireland is not the State with which they have closest "economic" relations, and therefore they might not be treated as resident under this test.

Proposal No. 4 – reduce 'ordinary residence' period on arrival to two years
The fourth proposal is to reduce the period within which an individual becomes ordinarily resident from 3 tax years to 2 tax years[2].

Ordinary residence plays a part in the tax-relieving provision known as the remittance basis of taxation. The remittance basis applies to most foreign income and was also re-applied on a limited basis to certain foreign employment income in last year's Budget[3]. The amendment will reduce the period such an individual can avail of the remittance basis of taxation on their foreign income from 3 years to 2 years.

Ordinary residence is also a key concept for Capital Gains Tax (CGT) purposes in that an individual who is domiciled in the State and either resident or ordinarily resident in the State is liable for CGT on disposals of all assets no matter where they are situated. The amendment will not negate this in any way (as the individual is tax resident in any event and within the full charge to CGT).

It is understood that some individuals are arranging their affairs so that while they are resident in some years they never become ordinarily resident, and thus are only ever taxable in Ireland on Irish-sourced income. Such individuals are usually not resident in any other State in years when they are not resident in Ireland and a large portion of their income would therefore go untaxed. As stated above, in the current climate it does not sit well that some wealthy individuals can arrange their affairs in this manner.

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[2] For example, currently an individual who was previously non-resident but who was resident in 2006, 2007 and 2008 becomes ordinarily resident in 2009. The proposal is to change the law so that a previously non-resident individual who is resident in 2010 and 2011 will become ordinarily resident in 2012, rather than he or she having also to be resident in 2012 in order to become ordinarily resident in 2013. It is not proposed to change "three year" ordinary residence rule for individuals leaving the State.

[3] The remittance basis of taxation seeks to tax that element of foreign income remitted to State and can be availed of by an individual who is Irish tax resident, but is not ordinarily resident in the State (for foreign income only), and by individuals who are resident but not domiciled in the State (for foreign income and capital gains).

(6)

Either or both of the proposed changes to the residence rules would make it more difficult for individuals not to become ordinarily resident, so it may be thought unnecessary to change the ordinary residence rules as well.

Conclusion

Changes to residence and ordinary residence rules could realistically be made in any or all of four ways:

(i) Change the '280 day' rule to a '250 day' rule;
(ii) Re-introduce a 'place of abode' test for residence;
(iii) Introduce a 'centre of vital interests' test for residence; and
(iii) Reduce 'ordinary residence' period on arrival to two years.

However, given the complexity of this matter and the significant changes suggested in relation to residence in this note, it may be prudent to leave for further consideration and any changes to the Finance Bill.

Submitted for consideration and discussion at Cabinet. You may also wish to discuss with officials, if required.

Capital & Savings Taxation Policy
December 2009

Kelly, Anita

From: Smith, Liam
Sent: 03 March 2010 15:10
To: Weldon, Dave
Cc: Ryan, Paul; Aherne, Deirdre
Subject: Taxation of non resident Irish citizens

(7)

Dave,

The taxation of individuals in the State is in line with that prevailing in most other OECD jurisdictions; that is, broadly speaking -

(a) Individuals who are resident in the State for tax purposes (based on the number of days presence in the State) are taxable here on their worldwide income; and
(b) Individuals who are not resident here for tax purposes pay tax here only on income arising in the State and on income derived from working here.

Citizenship is not normally used in Ireland as a basis for taxation. As indicated above, a non-resident individual, regardless of his or her citizenship, only pays income tax in Ireland on income arising in the State and on income derived from working here.

However, the new domicile levy, being introduced in the Finance Bill, applies to individuals who are both domiciled in Ireland and are citizens of Ireland, regardless of their residence.

Concepts which are more important than citizenship in determining the taxation of individuals are residence (determined by days of presence in the State), ordinary residence (obtained after three consecutive years of residence and retained for three years after ceasing to be resident) and domicile (not defined in legislation but, broadly speaking, an individual is domiciled in the territory which he or she regards as his or her permanent home).

There are a couple of instances where non-residents are liable to Irish tax on non-Irish source income, gains, gifts or inheritances. For example, an individual who is not resident in Ireland, but is ordinarily resident and domiciled in Ireland, would be liable to Irish income tax on Irish source income, foreign investment income if over €3,810, and foreign employment/trade or professional income if any part of the foreign employment/trade/profession is carried out or performed in the State. Such an individual would be liable to Irish capital gains tax on worldwide gains, and would be liable to Irish capital acquisitions tax (gift and inheritance tax) on all bequests wherever situated. [An individual who is Irish domiciled would not necessarily be an Irish citizen.]

If further information or clarification is required please let me know.

Regards,

Liam
X 5581

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhphost seo a chur i gcló.
Please consider the environment; only print this e-mail if you have to.

From: O'Kelly, Rory
Sent: 01 March 2010 13:01
To: Smith, Liam
Cc: Weldon, Dave; Day, John
Subject: FW:

7

Liam

As discussed.

Rory

From: Weldon, Dave
Sent: 01 March 2010 12:55
To: Day, John
Cc: O'Kelly, Rory
Subject:

John

I had a request in for briefing on taxation of non resident Irish citizens from Sen.Paschal Mooney's office. Have you anything on this?

Thanks

Dave

2

(8)

Select Committee on the Finance and Public Service

Meeting on 15 December 2010

Briefing on CGT "temporary non-residence" changes in Finance Act 2003

- Up until 2003, an Irish resident taxpayer could escape liability to Irish Capital Gains Tax on a disposal of assets by going abroad, becoming non-resident in Ireland and resident in a country which did not have Capital Gains Tax, and disposing of the assets while non-resident in Ireland.
- This was counteracted by the enactment of Section 69 Finance Act 2003, which provided that where an Irish resident became non-resident and then disposed of an asset, which would have given rise to Capital Gains Tax had he/she remained in Ireland, the Capital Gains Tax on this disposal would become payable if he/she again became Irish resident again within five years.

(9)

Select Committee on the Finance and Public Service

Meeting on 15 December 2010

Briefing on residence changes in Finance (No. 2) Act 2008
[Abolition of the "Cinderella rule"]

- Until 31 December 2008, an individual was only regarded as present in the State for a day, for tax residence purposes, if s/he was present in the State at midnight on the day.

- There was much criticism of this provision as some wealthy individuals organised their affairs to ensure that they were not resident in Ireland to avoid paying tax on their world-wide income or capital gains, particularly those who have access to private aircraft which enable them to enter and exit the State with some ease. Such individuals can be in the State on a given day but not present for tax purposes provided they arrive after midnight and depart before the following midnight.

- To counteract such activity, Finance (No. 2) Act 2008 amended section 819 of the TCA to provide that an individual is regarded as present in the State on a day if s/he was present in the State at any time during the day, not just at midnight. This will apply as regards the 2009 tax years and subsequent tax years. The previous rule continues to apply when determining an individual's presence in the State on a particular day in tax years up to and including 2008.

(10)

Select Committee on the Finance and Public Service

Meeting on 15 December 2010

Briefing on "Tax Exiles" generally

There is no register or list of so called 'tax exiles' and there is nothing in Irish tax law that makes reference to 'tax exile' status.

The taxation of individuals in the State is in line with that prevailing in most other OECD jurisdictions, that is to say –

(a) Individuals who are resident in the State for tax purposes (based on the number of days presence in the State) are taxable here on their worldwide income; and

(b) Individuals who are not resident here for tax purposes pay tax here only on income arising in the State and on income derived from working here.

I am informed by Revenue that:

- For the 2007 tax year, 7,228 non-resident individuals filed Irish tax returns in respect of their Irish-source income or income derived from working here. The total amount of tax paid by these persons was c€43m.
- For the 2006 tax year, 5,993 non-resident individuals filed Irish tax returns in respect of their Irish-source income or income derived from working here. The total amount of tax paid by these persons was €44.5m.

Many of the individuals who declare on their tax return that they are non-resident in the State do not have an Irish address. Many of these non-residents are foreign nationals or have a foreign domicile; and many of the non-resident Irish citizens or Irish domiciliaries included in this figure may have become non-resident for reasons unrelated to taxation, but have retained Irish investments (such as rental property). These individuals could not be categorised as 'tax exiles' under any reasonable definition of that term. It is therefore incorrect to say that there are 6,000 or 7,000 "tax exiles" or individuals who are non-resident for tax reasons.

Smith, Liam

From: O'Leary, Des
Sent: 07 October 2011 11:59
To: Smith, Liam; Aherne, Deirdre
Cc: Ring, Pat; Tobin, Gary; Kenny, Gerry
Subject: FW: CAT for non domiciled persons

11

At the same time as the Govt for Recovery Programme is aimed at ensuring that wealthy citizens who become non-resident make a "fair" contribution to the Exchequer (and Colm O'Riordan emphasized the need at TSG for "*robust*" measures in the Budget), this request wants us to encourage wealthy non-residents to move here by reducing the amount of tax they might pay.

As regards foreign executives, what was the reasoning behind the 5 year CAT exemption referred to at (iii)?

Des

From: Levey, Kate
Sent: 06 October 2011 18:02
To: Smith, Liam; Aherne, Deirdre
Cc: Tobin, Gary; Milne, Seamus; Reynolds, Sinead; Ring, Pat; O'Leary, Des
Subject: FW: CAT for non domiciled persons

Liam / Deirdre,

Following on from discussions with the IFSC Banking and Treasury Group in early September, please see representation below from that group in relation to the impact of CAT rules on Ireland's ability to attract mobile foreign execs.

The issue was raised in the context of the FDI sector's ongoing lobbying seeking changes in the personal tax regime for such foreign execs. For that reason, I have copied the email to Pat Ring's section also.

Regards,

Kate

From: O'Brien, Conor [mailto:conor.obrien@kpmg.ie]
Sent: 15 September 2011 10:41
To: Tobin, Gary; Levey, Kate
Cc: Byrne, Jim; mhurley@revenue.ie; enda.faughnan@ie.pwc.com; preckx@deloitte.ie; David.Smyth@ie.ey.com
Subject: CAT for non domiciled persons

Gary / Kate,

As discussed on Monday this note is to set out our suggestion on the CAT position for non domiciled persons. Please note that at all times below I am talking only about non Irish assets i.e. Irish assets will always be subject to CAT.

The position in the past (pre 1999 and pre 2004) was that:

(i) One would only be brought within CAT by reference to the location of the donor i.e. if the donor was non Irish domiciled then even an Irish resident, Irish domiciled recipient would not be subject to CAT.

(ii) Where the donor was a non Irish domiciled person there was no Irish CAT.

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Now the position is that:

(i) One can be brought within the net by reference to the status of the donor or the recipient

(ii) The test was changed from domicile to residence i.e. if either the donor or recipient is Irish resident then Irish CAT applies (subject to (iii) below)

(iii) For non Irish domiciled persons they must be Irish resident for 5 years before CAT applies.

This adversely affects the following groups:

1) Foreign executives who remain in Ireland for more than 5 years

2) Wealthy people who might have chosen to settle in Ireland

For such persons the attractiveness of any special income tax regime will be diminished after 5 years by virtue of the imposition of CAT in the unfortunate event of their death while in Ireland or where they make a gift to a family member or themselves receive an inheritance or gift.

We have discussed before the importance of making Ireland attractive for persons described at 1 above. In some cases the companies employing such executives may want them to remain in Ireland for more than 5 years and the CAT regime is a significant disincentive in this case.

We have not discussed the people at 2 above in great detail previously. Many of Ireland's competitors actively pursue this business. For example, the presence of large numbers of such people greatly adds to the economic strength of London. They tend to be high spenders in the local economy and underpin the property market – something which would be very welcome in Ireland. Switzerland, Monaco and other locations also pursue this business. It is no coincidence that London, Switzerland and Monaco are some of the most prosperous places in the world. High net worth individuals tend to contribute large amounts to the economy and typically draw almost nothing from the State.

The UK has been very careful not to allow inheritance tax to discourage such persons from locating in the UK. Their system is far more attractive for such persons than Ireland's i.e.:

- They don't have a gift tax
- If the deceased is not UK domiciled (or deemed domiciled – see below) there is no UK inheritance tax even if the successor is UK domiciled (in Ireland you are caught if either the deceased or the successor is Irish resident)
- A non domiciled person is deemed to be UK domiciled for inheritance tax purposes if they have been UK resident for 17 of the previous 20 years
- UK reliefs such as business property relief are more generous than in Ireland (100% vs 90% exemption)

Mobile wealthy people usually have a preference for London over Ireland as a place to live for lifestyle reasons. Therefore we suggest that we need to undercut the UK offering in order to compete effectively. We recommend therefore that:

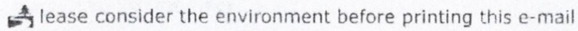
(i) non domiciled persons be excluded from Irish CAT on non Irish assets

11

(ii) clarity be created regarding domicile but with a more generous test than the UK e.g. 27 out of 30 years to be regarded as UK domiciled

Regards

Conor



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Budget 2012

Changes to tax residence rules

(12)

Derek Moran

Ann Nolan, to see please

Minister, from Des O'Leary

Decision Sought

1. Your approval is sought for changes to the current tax residence rules as a means of broadening the tax base and potentially increasing the Income Tax and Capital Gains Tax (CGT) yield, and of meeting the commitment in the Programme for Government to "ensure that tax exiles make a fair contribution to the Exchequer". A measure which ensured individuals who are largely based in Ireland paid tax in Ireland would increase the legitimacy of the tax system by making it more equitable. The specific recommendations are:

- As this is a significant change to the current position, and any change may have unforeseen and potentially significant consequences, a public consultation process is advised, as was recently conducted in the UK on changes to their residence rules.

"Tax exiles"

2. There is no legal definition of a "tax exile", but in an Irish context, discussion on "tax exiles" focuses on individuals of Irish origin or who are largely based in Ireland but who arrange their affairs so that they are not tax resident in the State and thereby pay less tax than if they were resident. Controversy is further fuelled by the fact that some "tax exiles" maintain a very high public profile in the media while paying little or no tax in Ireland.

3. There is no way of knowing how many people have become non-resident for tax reasons (individuals who leave the State are not required to declare the reasons for leaving, either on a tax return or any other document), but it is likely the majority of non-residents who file Irish tax returns have become non-resident for reasons unrelated to taxation or never were Irish resident but happen to have an Irish source of income. Such individuals include

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- Irish nationals who have moved abroad for work reasons but who retain their home here (their tax return is generally only in respect of rental income on their home here);
- foreign nationals who never resided here but who have investments (including property) here;
- foreign nationals who worked here for a period and who may have acquired Irish tax residence for that period during a relevant tax year (for example, individuals who worked here on a temporary assignment).

4. Equally, some people with strong Irish connections who have become non-resident for tax or other reasons may not be obliged to file an Irish tax return, because they do not have Irish source income or gains. The Revenue Commissioners do not have a "list of tax exiles" and, given the issues outlined, there is no way of establishing such a list.

Double Taxation Agreements and "tax exiles"

5. A charge to Irish tax on income and gains must be found in Irish domestic tax legislation. Such a charge may be relieved by virtue of a Double Taxation Agreement (DTA) between the State and another jurisdiction. A DTA allocates certain taxing rights to both jurisdictions which are party to that agreement and also prevents double taxation by providing either that only one jurisdiction may tax an individual's income or gain; or that both jurisdictions have taxing rights, but one jurisdiction (usually where the individual is resident) gives a credit for the tax paid in the other.

6. Most "tax exiles" are likely to be tax resident in a jurisdiction with low tax rates or no tax at all. They may be resident in a jurisdiction with which the State does not have a double taxation agreement. A widened definition of residence (for example, by supplementing the current day counting rules with other rules, as discussed below) would mean that tax exiles living in non-DTA countries would not have the benefit of the "tie-break" clause, while those living in a DTA county could benefit from the "tie-break" clause. Ireland does have tax treaties with certain countries where "tax exiles" are or have been reported to be resident, including Malta, Portugal and Switzerland (and two of those countries are in the EU).

Programme for Government commitment and measures to meet it

7. As noted above, the Programme for Government contains a commitment to "ensure that tax exiles make a fair contribution to the Exchequer". A number of measures with a view to meeting this commitment are examined below, namely:

   - Citizenship based taxation (sometimes called "passport taxation")
   - Changes to residence rules, either through
     - Revision of the current day counting rules, or
     - Supplementing the day counting rules, as recommended by the Commission on Taxation
   - Amending the definition of "specified assets" for CGT purposes
   - Changes to the Domicile Levy

Citizenship or "passport" taxation

8. It has been suggested that Irish citizens should be taxed on their worldwide income regardless of their tax residence status. The USA has such a system (in addition to a residence based system for non-US citizens resident in the US). US citizens can

(12)

avail of a "foreign earned income exclusion" and a "foreign housing cost exclusion"[1] which can be claimed in addition to normal credits under Double Taxation Agreements (DTAs) for foreign tax paid. Citizenship based taxation is not the OECD norm and is far less common than residence based taxation – the only countries apart from the USA which are known to have some form of citizenship based taxation are the Eritrea, Israel, Mexico and the Philippines.

9. In general Irish taxation is not related to citizenship, with two exceptions: the Domicile Levy is based on citizenship and domicile (it is proposed elsewhere in this submission to remove the citizenship criteria); and the remittance basis for income tax could previously be claimed by Irish citizens who were not ordinarily resident in the State (since 1 January 2010 the remittance basis can only be claimed by non-domiciled individuals).

10. A number of issues would have to be considered if citizenship based taxation was to be introduced:

- **Scope** – it would be prudent to exclude all Irish citizens resident in the EU or the European Economic Area from further tax; otherwise, for example, everyone resident in Northern Ireland would be entitled to Irish citizenship, liable to Irish tax and therefore obliged to file an Irish tax return.
- **Double Taxation Agreements** – all our DTAs (other than the Ireland-USA DTA) would have to be re-negotiated to allow us to tax individuals on the basis of citizenship regardless of their residence. This could lead to the cancelling of some DTAs and would effect our competitiveness (it is notable that the US has fewer DTAs than, for example, the UK).
- **Compliance/enforcement** – there could be difficulties ensuring that Irish citizens resident abroad were filing returns, collecting any tax due, and auditing the returns filed. There have been estimates that over 60% of US expatriates do not file US tax returns. [While the US passport form requires US citizens to supply their Social Security Number, and this information is passed to the Internal Revenue Service (IRS), a US citizen resident abroad will not be refused a passport for failing to file a tax return.] The IRS would probably have greater resources to enforce a citizenship-based system than would the Irish Revenue Commissioners, so if the IRS has difficulties in this area any difficulties the Revenue Commissioners might face are likely to be greater.
- **Additional yield** – The main income of most Irish citizens resident abroad would be their employment/trade/professional income, and their country of residence would have the primary taxing rights on such income. For practical reasons a "foreign earned income exclusion" similar to the US provision would probably have to be included in any citizenship based taxation system to put most foreign resident citizens outside the Irish tax net. This would limit any potential yield from a citizenship taxation measure.
- **Other issues** - A citizenship based tax might be aimed at the well-off but it would apply to all Irish citizens outside the State (subject to possibly excluding EU residents and discounting foreign earned income, as suggested above). When individuals emigrate to find work, it would not be well received if the Irish Government continued to seek tax from their

[1] In 2010 these were US$91,500 and US$27,450, respectively.

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income. The measure might also deter expatriates from returning to or investing in Ireland

11. While citizenship has obligations as well as rights, and taxation should perhaps be one of those obligations, the difficulties highlighted above militate against the introduction of citizenship based taxation. It would be more appropriate to change the residence rules rather than introduce citizenship based taxation in order to meet the Programme for Government commitment. For the reasons given above, a citizenship basis of taxation is not recommended.

12

Capital Gains Tax definition of "specified assets"

35. Individuals who are neither resident nor ordinarily resident in Ireland are liable to Irish CGT on "Irish specified assets" – land, buildings and minerals in the State, and unquoted shares deriving their value from land, buildings and minerals in the State. This is a small range of assets and the exclusion of quoted shares from the charge means that such individuals could invest in Irish assets via a quoted company and pay no CGT on any gain made on such shares. By contrast, such individuals are liable to Irish Income Tax on all Irish source income, and are liable to Capital Acquisitions Tax on gifts or inheritances of all Irish situate property.

[4] http://www.hm-treasury.gov.uk/consult_statutory_residence_test.htm

(12)

36. While consideration could be given to broadening the range of assets on which such individuals are liable, this would have to be balanced by concerns about deterring investment. In previous changes to the CGT regime to deal with individuals who either became non-resident themselves or who transferred assets to non-resident spouses to avoid a CGT liability, the definition of "specified assets" was not changed, but future transfers were made subject to CGT in a different manner[5].

37. Some countries do not charge CGT on gains made by non-residents. However, it is appropriate that the State should benefit from any gain made on the rise in value of a property asset within its territory, given that most of the rise in value is unconnected with anything done by the owner.

[5] The changes were (a) if an individual was temporarily non-resident and disposed of certain assets during that period, s/he was liable to any Irish CGT due on the disposal on her/his return to Ireland; and (b) if an individual transferred an asset to a spouse who became temporarily non-resident, and the spouse disposed of the asset while non-resident and was not liable to Irish CGT on the disposal, the original transfer by the first spouse was treated as taxable (transfers of assets between spouses are not normally liable to CGT).

[6] Domicile is a concept of private international law and is not defined in statute (unlike residence and ordinary residence, which have been defined in statute since 1994). Broadly speaking, it means an individual's permanent home. Everyone has a domicile of origin, which is derived from her/his father's origin and is not necessarily the individual's place of birth. An individual can change her/his domicile by breaking links with the domicile of origin and establishing a domicile of choice in another territory. Everyone has a domicile, and no one has more than one domicile at any time.

Smith, Liam

From:	Cunniffe, Danielle <dcunni01@revenue.ie>
Sent:	01 December 2011 15:40
To:	Smith, Liam
Cc:	Aherne, Deirdre; O'Leary, Des
Subject:	RE: Non-residents for tax purposes
Sensitivity:	Confidential

(13)

Liam

Further to our telephone conversation, I wish to clarify that in 2010, we checked the numbers of persons who claimed to be non resident but resident in another state in the European Community per the 2008 return of income. There were 3,050 cases. This was 43% of the 6,966 non resident filers that had filed returns for 2008 at that time.

We subsequently rechecked the number of non resident filers for 2008 in March 2011. At that stage there were 8,091 non residents filers for 2008. There can be a number of reasons for this such as late filing of returns. We did not recheck what percentage of the 8,091 the number of these that were resident in another state in the European Community.

We have asked for figures on the number of non filers for 2009 that were resident in another state in the European community. We will forward this as soon as it becomes available.

Kind regards

Danielle

From: Cunniffe, Danielle
Sent: 01 December 2011 15:04
To: 'Smith, Liam'
Cc: Aherne, Deirdre; O'Leary, Des
Subject: RE: Non-residents for tax purposes
Sensitivity: Confidential

Liam

We have requested this information in our rerun on the systems. Apologies but this rerun takes some time for our computer branch to run and I will let you know as soon as I have this information.

Danielle

From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 01 December 2011 14:55
To: Cunniffe, Danielle
Cc: Aherne, Deirdre; O'Leary, Des
Subject: RE: Non-residents for tax purposes
Sensitivity: Confidential

Many thanks Danielle.

Re question 1, if it is possible to give a breakdown by official address (including where that official address is in Ireland) that would be appreciated.

Regards,

Liam

(13)

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhphost seo a chur i gcló.
Please consider the environment; only print this e-mail if you have to.

From: Cunniffe, Danielle [mailto:dcunni01@revenue.ie]
Sent: 01 December 2011 14:42
To: Smith, Liam
Cc: Aherne, Deirdre; O'Leary, Des
Subject: FW: Non-residents for tax purposes
Sensitivity: Confidential

Liam

Further to your email of 29 November 2011 in relation to information you are seeking on non-residents our comments are as follows using the same numbering sequence in your email:

1 Breakdown by location of non-resident taxpayers (where available)

There is no obligation for a non-resident individual who file a tax return to state where they are resident. A non resident individual may give details of an official address in another country on their tax return but many taxpayers have official addresses in more than one country but that does not mean that they are resident in those countries.

The tax return does ask individuals who are non-resident if they are resident in another member state of the European Community. In 2008 43% of non residents who filed returns indicated that they were resident in another member state of the European Community. It is not possible to rerun the 2009 figures in the short time frame available.

2 Total of their income (and gains) liable to Irish tax

3 How much Irish tax (IT and CGT) they pay

In relation to questions 2 and 3 I can confirm that the amount of income tax paid by the 8,493 non-residents who filed income tax returns for 2009 was €41.2m. Unfortunately, we do not have figures for their total income and gains liable to Irish tax or CGT paid to hand.

4 How much DTA relief or other relief for foreign tax they claim (and in what territories).

The tax return does record the amount of DTA relief being claimed. We do not have figures for the DTA relief claimed to hand. The return does not record what territories that DTA relates to.

5 If available, how many of these individuals claim to be non-domiciled

There is no information available to Revenue on the number of non-resident persons who are also non-domiciled. The only question relating to Domicile on the return of income relates to persons who are resident and non-domiciled. There is no information available to us on the number of non-resident persons who are also non-domiciled.

We have requested a rerun our systems in relation to the information that we currently do not have on hand and will revert in due course.

Kind regards

Danielle

Danielle Cunniffe
Revenue Commissioners
High Wealth Individuals & Professionals Business Unit
Large Cases Division
Setanta Centre
Nassau St.
Dublin 2

2

(15)

Vpn 70990

Tel. +353 1 6470990
Email dcunni01@revenue.ie

From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 01 December 2011 10:03
To: Cunniffe, Danielle
Cc: Aherne, Deirdre; O'Leary, Des
Subject: RE: Non-residents for tax purposes
Sensitivity: Confidential

Danielle,

Further to this mail and my voicemail message this am, would you be in a position to get this information to me by lunchtime today, please?

If not, could you get items 1 to 4 of the five below? (I didn't number them in the earlier mail but have done so now). If it's easier to leave out the CGT that would be fine.

Please revert to discuss if needed.

Regards,

Liam

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhphost seo a chur i gcló.
Please consider the environment; only print this e-mail if you have to.

From: Smith, Liam
Sent: 29 November 2011 17:57
To: 'Cunniffe, Danielle'
Cc: Aherne, Deirdre; O'Leary, Des; Moran, Derek
Subject: Non-residents for tax purposes
Importance: High
Sensitivity: Confidential

Danielle,

As discussed, the Minister has asked for information about the origin or location of the c. 8,000 individuals who declare on tax returns that they are non-resident, and whether they pay tax (and how much tax they pay) in the other location (to the extent that that information is available, e.g., in respect of income which is taxable in Ireland).

I think that a number of individuals who declare themselves non-resident probably have Irish addresses or agents so it may not be clear what their other country of residence is, if any.

In summary, the information requested is:

1 Breakdown by location of non-resident taxpayers (where available)

2 Total of their income (and gains) liable to Irish tax

3

(13)

3 How much Irish tax (IT and CGT) they pay

4 How much DTA relief or other relief for foreign tax they claim (and in what territories).

5 If available, how many of these individuals claim to be non-domiciled.

Please revert if there are any queries.

Regards,

Liam

LIAM SMITH
DEPARTMENT OF FINANCE
CAPITAL AND SAVINGS TAXATION POLICY
PH 6045581

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****

Kelly, Anita

From:	O'Leary, Des
Sent:	24 April 2012 17:03
To:	Smith, Liam
Cc:	Moran, Derek
Subject:	FW: Draft residence consultation
Attachments:	Draft consultation note v5 240412.doc

(14)

Liam,

Denis rang me to confirm that text is OK from his point of view. When the consultation process is over, we may need to address the issue of minimizing the number of emigrants who retain residence, but it is not necessary to include it in the consultation process itself.

Regards,

Des O'Leary
Taxation Division
01-6045657
087-9290049

From: O'Leary, Des
Sent: 24 April 2012 14:55
To: 'Barry, Denis'; Smith, Liam
Cc: O'Leary, Marie; Ryan, Sinead; Lynch, Joe (ICTx_SDRP); Buckley, Michael
Subject: RE: Draft residence consultation

Denis,

Thanks for the surgery on our document. I have taken many of the points on board.

I've left out the comment on other tests "suggested as ways of counteracting potential abuses of the "number of days" test" The Commission's view appears to have been that other tests were needed, not so much to counteract abuse, as to resolve issues of equity and possible damage done to the integrity of the tax system by the days test itself. Also, while I accept the reasoning, I'm reluctant to use the reference "genuine emigrants" in current economic circumstances. I also consider it appropriate to publish all submissions after the process is completed.

If you've any further suggestions, let me know. We intend to issue this week.

Regards,

Des O'Leary
Taxation Division
01-6045657
087-9290049

From: Barry, Denis [mailto:debarry@revenue.ie]
Sent: 23 April 2012 16:28
To: O'Leary, Des; Smith, Liam
Cc: O'Leary, Marie; Ryan, Sinead; Lynch, Joe (ICTx_SDRP); Buckley, Michael
Subject: RE: Draft residence consultation

Hi Des

Comments incorporated into the attached doc.

Denis

(14)

-----Original Message-----
From: O'Leary, Des [mailto:Des.O'Leary@finance.gov.ie]
Sent: 20 April 2012 11:29
To: Barry, Denis; Smith, Liam
Cc: O'Leary, Marie; Ryan, Sinead; Lynch, Joe (ICTx_SDRP); Buckley, Michael
Subject: RE: Draft residence consultation

Denis,

This is the text we propose to issue, subject to clearance at higher levels and any further comments you may have. I note what you said about the terms of the commentary in the Budget documents. However, if we were to go that route it would require us to get clearance at Ministerial level first for the most likely amendments and still have to go through the consultation process afterwards, with the possibility of having to resubmit alternative amendment proposals to the Minister in the Autumn.

Welcome any comments you have, with a view to issuing for consultation next week.

Regards,

Des O'Leary
Taxation Division
01-6045657
087-9290049

From: Barry, Denis [mailto:debarry@revenue.ie]
Sent: 02 April 2012 10:33
To: Smith, Liam; O'Leary, Des
Cc: O'Leary, Marie; Ryan, Sinead; Lynch, Joe (ICTx_SDRP); Buckley, Michael
Subject: RE: Draft residence consultation

Des

Whilst a matter for your Department, my own view is that Liam's doc does not do what was was envisaged by the Budget announcements. The Budget announcements were -

"I intend to keep the contentious issue of the tax treatment of tax exiles under constant review"

and

*"A **set of proposed amendments** to the current regime applying to non-residents **will be published in early 2012** and **put out to public consultation** to inform preparation for further changes in 2013"*

Liam's draft document is not the publication of a "set of proposed amendments" to the tax residence rules. Rather, it appears to ask - what should be done re the tax residence rules?. Therefore, from a policy perspective, what are the proposed changes that are to be subject to public consultation? Put another way, if you wait until August to start drafting proposed amendments, you will then have to publish the proposed amendments for consultation as that is the commitment given in the Budget material.

Also, in publishing the proposed changes, one must have regard for the agreements (known as double taxation agreements) that the State has signed with other jurisdictions. I mention this as there is little point in having a raft of proposed changes that do not, because of double taxation agreement relieving provisions, give the Exchequer yield that one might imagine or expect.

You may wish to consider.

Denis

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 30 March 2012 16:02

(14)

To: Barry, Denis; Ryan, Sinead; Lynch, Joe (ICTx_SDRP); Buckley, Michael
Cc: O'Leary, Des; O'Leary, Marie
Subject: Draft residence consultation

Everyone,

The Minister agreed before the Budget that there should be a public consultation on tax residence issues. I have assumed that this should include the Domicile Levy as well as the residence rules.

I have drafted a press release to announce the consultation. This is along the lines of similar recent consultation announcements. The consultations typically last three months – I have put in a date of 1 August on the assumption that this will be published in early May.

I would be obliged if you would have a look at the draft and make comments or suggestions.

I am out of the office from today until Monday 16 April but Des is around for the next two weeks, so you can send any suggestions to both of us, please.

Thanks, regards,

Liam
Ph 6045581

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Public consultation on tax residence rules

The Minister for Finance, Mr Michael Noonan TD, invites interested parties to make submissions on possible revisions to the current residence rules for the taxation of individuals.

In the Programme for Government, the Government indicated that, as part of its fiscal policy, it would ensure that tax exiles make a fair contribution to the Exchequer. In Budget 2012 the Minister abolished the "citizenship" condition for payment of the Domicile Levy to ensure that "tax exiles" could not avoid the levy by renouncing their citizenship. He also said that he intended to keep the contentious issue of the tax treatment of tax exiles under constant review. The Programme for Government update in March 2012 confirmed the commitment to undertake a consultation process on residence issues in 2012 to inform preparation for further changes in 2013.

Tax Residence

In line with the position prevailing in many other countries, individuals who are tax resident in the State are taxable here on their worldwide income, gains, gifts and inheritances; whilst individuals who are not resident here for tax purposes are taxable on Irish source income and gains, on income from employments where the duties are carried out in the State, and on gifts and inheritances of Irish situated property. .

In Ireland, an individual's residence status for tax purposes for a tax year is determined by reference only to a "day counting" test of the number of days that an individual is present in the State for that tax year (183 days in a tax year or 280 days between the year in question and the preceding year).

In addition to the residence rules, the Domicile Levy was introduced in recent years with the aim of ensuring that individuals with strong links with Ireland made a minimum tax contribution. The levy, as introduced, applied to Irish citizens who were Irish domiciled, with Irish located assets worth in excess of €5 m, Irish income in excess of €1 m in a tax year, and an Irish income tax liability below €200,000. The levy is €200,000, but any Irish income tax paid in respect of the tax year can be credited against the levy liability. From 1 January 2012, the levy no longer applies solely to Irish citizens.

Commission of Taxation

The Commission on Taxation in its 2009 Report[1] considered that residence rules for tax purposes should contain a number of features:

- Be equitable in that they allow for the application of taxation fairly to taxpayers in a variety of circumstances;
- Be easily understood;
- Be based on objective and clearly defined criteria so as to provide certainty and avoid manipulation;
- Be framed so as to protect Ireland's taxing rights.

[1] A copy of the report of the Commission on Taxation can be accessed through the Tax Policy section of the Department of Finance website at http://www.commissionontaxation.ie/Report.asp

(14)

The Commission recommended that the 183/280 days test for determining the tax residence of an individual should be supplemented by additional criteria, which should include a permanent home test and a test based on an individual's centre of vital interests.

These additional criteria are used in a range of other jurisdictions. A "citizenship" test is also used in a very limited number of jurisdictions.

Views sought
The issues on which the Minister would welcome views include:

- Whether or not, and how, the current day counting rules should be amended;
- Whether or not, and how, the day counting rules should be supplemented with other rules;
- The appropriateness of citizenship as a basis for taxation;
- Whether or not, and how, the conditions for and/or the range of application of the Domicile Levy should be changed;
- Whether or not the Domicile Levy should continue in place if the rules for determining residence were modified.

Any proposals should have due regard to

- The need to ensure that Exchequer tax yields are not undermined;
- The continued promotion of Ireland as a location for inward investment;
- Their ease of administration;
- Their implications for arrangements in place under double taxation agreements with other jurisdictions.

Submissions received will be published on the Department's website following the conclusion of the consultation process. Submissions may be e-mailed to: residence.consultation@finance.gov.ie, or posted to

Residence Consultation
Capital and Savings Taxation Policy Unit
Economic and Taxation Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

All submissions should be received, at the latest, by 1 August 2012.

Smith, Liam

From:	Reynolds, Sinead
Sent:	25 April 2012 09:47
To:	Smith, Liam
Cc:	Milne, Seamus
Subject:	FW: Rep from Brendan Ryan
Attachments:	Brendan Ryan re wealthy avoiding tax and tax exiles.doc

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Liam,

Copy of the reply we issued to Deputy Ryan as requested.

Regards,

Sinéad Reynolds
Income Tax Incentives
Financial Services & Taxation Division,
Department of Finance

PH: 01 6045592

From: Milne, Seamus
Sent: 06 February 2012 08:17
To: Smith, Liam; Aherne, Deirdre
Cc: Reynolds, Sinead
Subject: Rep from Brendan Ryan

Liam/Deirdre,

Please see our response to this rep which was sent to the Minister's Office last week. Given how busy everyone is currently, we decided to issue that part of the response that was ready to go. We indicated that a separate response would issue in relation to tax exiles.

Regards

Seamus Milne
Income Tax Incentives
Department of Finance
Ireland
Tel. +353 1 6045594

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Ref: 11/0004/MF

February 2012

Mr. Brendan Ryan T.D.
Leinster House
Kildare Street
Dublin 2

Dear Brendan,

I refer to your letter of 28 November 2011 in relation to tax exiles and taxation of the very wealthy. I wish to apologise to you for the delay in responding. This is due to pressures of work associated with the Budget and Finance Bill.

The restriction of reliefs' measure (in place since 2007 and further tightened since 2010) limits the capacity of high earners to reduce their tax liability through the cumulative use of various tax incentives. An individual is subject to the restriction where they claim €80,000 or more of specified reliefs and they also have an adjusted income of €125,000 or greater. High earners that are subject to the full restriction pay an effective rate of income tax of 30%, on average. This is in addition to PRSI and the Universal Social Charge (USC).

It is also worth noting that the top 1% of income earners pay approximately 22% of the overall amount of income tax collected by the Exchequer each year.

I will reply to you separately on the issue of tax exiles in the near future.

Yours sincerely

Michael Noonan, T.D.
Minister for Finance

Budget 2013

Residence Consultation and current Residence R

Residence for Tax Purposes - Public Consultation P

(16)

Derek Moran

Minister, from Des O'Leary

Approval requested

Your approval is sought to **publish** the submissions received following the public consultation process on Ireland's tax residence rules, as announced in the Budget Statement, with a view to possible changes in Finance Bill 2013.

This submission also examines possible changes to the residence rules for tax purposes and related measures.

Details

Section 1 – consultation process

The Commission on Taxation recommended that the 183/280 days test for determining the tax residence of an individual should be supplemented by additional criteria, which should include a permanent home test and a test based on an individual's centre of vital interests. These additional criteria are used in a range of other jurisdictions. A "citizenship" test is also used in a very limited number of jurisdictions.

The Programme for National Government makes a commitment that the Government "will ensure that tax exiles make a fair contribution to the Exchequer". (Both Government parties made commitments in their election manifestos to introduce measures to deal with "tax exiles".)

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Before Budget 2012 you approved a submission that the current residence rules should be supplemented by additional rules providing that an individual could be deemed resident if s/he was present in the State for a smaller number of days than the current criteria, if s/he had a "place of abode" and/or "centre of vital interests" in the State. However, as this would be a significant change to the current position, you also approved a public consultation process on possible changes to the current tax residence rules to allow interested parties to comment and make suggestions.

The consultation process closed on 1 August. A total of eight submissions were received; see consultation details and *précis* of submissions received at Appendix 1.

The source of the submissions was as follows:

- Three were from professional bodies – the Irish Tax Institute, The Society of Trust and Estate Practitioners Limited, and the Consultative Committee of Accountancy Bodies – Ireland.
- Two were from professional firms – Matheson Ormsby Prentice, Solicitors, and Mazars, Chartered Accountants.
- One was the American Chamber of Commerce Ireland, the representative body for US companies based in Ireland.
- One was from a member of the public, Mr Cormac Doyle.
- One was from Sensible Money – an economic think tank exploring solutions to the debt crisis.

Of the eight submissions received –

- None proposed significant change to the current rules on residence for tax purposes.
- Several commented on the need for certainly and offered the view that the present day-counting rules achieve this.
- A number of submissions cautioned that changes to the rules could have an adverse impact on foreign direct investment (FDI).
- None recommended using citizenship as a basis for taxation.
- Some submissions expressed concern that erosion of the rules relating to domicile could bring the income and gains of non-domiciliaries within the Irish tax net, which might also affect FDI. [This was outside the scope of the consultation process, which related to the taxation rules for domiciled rather than non-domiciled individuals.]
- One submission raised concern that certain Capital Acquisitions Tax provisions (taxation of

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worldwide benefits after five consecutive years of residence) could lead non-domiciled individuals relocating to Ireland to remain less than five years. [This is also outside the scope of the consultation, which related to the taxation rules for domiciled individuals rather than non-domiciled individuals. However, it seems implausible that an individual who had employment in Ireland would leave that employment to avoid taxation on an inheritance, the timing of which would be uncertain. In any event, inheritance tax paid in another jurisdiction would be allowed as a credit against any Irish CAT liability on an inheritance, either under a double taxation agreement or as a "unilateral credit".]

None of the submissions examined the issue from the point of view of ensuring a fair contribution to the Exchequer from "tax exiles", or individuals who arrange their affairs so as to be non-resident in Ireland for tax purposes.

As indicated, your approval is sought to publish the submissions immediately after the Budget.

Section 2 - Potential changes to the residence rules:

Options:

(16)

Appendix 1

Consultation on Residence 2012

Views sought:

The issues on which the Minister sought views were:

- Whether or not, and how, the current day counting rules should be amended;
- Whether or not, and how, the day counting rules should be supplemented with other rules;
- The appropriateness of citizenship as a basis for taxation;
- Whether or not, and how, the conditions for and/or the range of application of the Domicile Levy should be changed;
- Whether or not the Domicile Levy should continue in place if the rules for determining residence were modified.

Any proposals were required to have due regard to:

- The need to ensure that Exchequer tax yields are not undermined;
- The continued promotion of Ireland as a location for inward investment;
- Their ease of administration;
- Their implications for arrangements in place under double taxation agreements with other jurisdictions.

There were eight (8) submissions received.

1. The Consultative Committee of Accountancy Bodies –Ireland (CCAB)
2. Mr Cormac Doyle.
3. The Society of Trust and Estate Practitioners Limited (STEP)
4. American Chamber of Commerce Ireland
5. Irish Tax Institute (ITI)
6. Sensible Money (Paul Ferguson, James Mc Cumiskey, Tony Weekes)
7. Matheson Ormsby Prentice Solicitors (MOPS)
8. Frank Greene, Mazars Chartered Accountants

(16)

Précis:

Q's 1 and 2

- Amendment/supplementing of the current counting days.

Body	Submission
CCAB	Rules clear and fair; could be remedied by only counting the second of two contiguous [i.e. next or together in sequence] days where present over 24 continuous hrs. Re CAT – could be amended so that workers coming to Ireland not limited to less than 5 yrs to avoid exposure to gift/inheritance tax.
Cormac Doyle	For justice and equity tax on earnings outside Ireland should be proportionate to number of days spent in Ireland.
STEP	Current rules should not be changed.
American Chamber	Rules work well, not in favour of change/supplementing as per Commission on Taxation. Cautions on deterring foreign executives travelling to Ireland as this would affect FDI. CAT consequences of any changes should be considered so as not to deter international executives becoming resident.
ITI	Changes not desirable; could have unintended consequences. Some may relocate if look back rule (280 days) reduced. Unlikely to give significant increases in revenue.
Sensible Money	No recommendation.
MOPS	No change to current test. Maintain consistency and certainty of current test.
Mazars	No change – certainty in existing rules.

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- Appropriateness of citizenship as a basis for taxation

CCAB	Not appropriate to discuss this as a stand alone issue; fundamental constitutional concern and unclear as to how it could be exchequer positive.
Cormac Doyle	Unfair and inequitable if all 'passport holders' subject to Irish Tax.
STEP	Inappropriate to use citizenship for Irish tax purposes; domicile should be left undisturbed as central to other issues.
American Chamber	No comment.
ITI	No change - Contrary to international norms; Ireland a small economy should operate with OECD best practice guidelines.
Sensible Money	No recommendation.
MOPS	Recommends not moving to using citizenship as basis for assessing individual for Irish tax. Notes that enforcement of any tax laws on this basis would be difficult/expensive. May make citizenship less attractive and impact on FDI.
Mazars	No recommendation. No advantage as easy to relinquish citizenship.

- Whether or not, and how, the conditions for and/or the range of application of the Domicile Levy should be changed;

CCAB	Domicile levy acts as an impediment to investment in Ireland. Does not provide insight into full level of taxation payable by those subject to the levy.
Cormac Doyle	No recommendation.
STEP	Propose no change. View that any alteration to reduce income or asset thresholds could have an adverse impact on foreign investment.
American Chamber	No recommendation.
ITI	No recommendation.
Sensible Money	No recommendation.
MOPS	Retain the applicability of domicile to ensure that the income and gains of non-domiciliaries do not automatically come within the Irish tax net. Reform the CAT code – remove current provisions taxing worldwide gains after 5 yrs consecutive residence.
Mazars	Domicile levy should be left in place.

- Whether or not the Domicile Levy should continue in place if the rules for determining residence were modified.

CCAB	If residence rules strengthened case for Domicile Levy is

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	eroded. Any measure which punishes investment is bad policy. Domicile levy does not permit an offset of EU/Irish taxes – disincentive to invest in Ireland.
Cormac Doyle	No recommendation.
STEP	Residence rules should not be modified.
American Chamber	No recommendation.
ITI	No recommendation.
Sensible Money	No recommendation.
MOPS	Residence rules should not be modified.
Mazars	No recommendation.

(16)

Appendix 2

Permanent home concept as used in the tie break clause in Double Taxation Agreements

The OECD tax residence "tie break" Rules

The OECD Model Tax Convention mentioned above states that the term resident of a State means resident under the domestic tax legislation of that State.

However, the OECD recognises that, under the domestic tax legislation of certain jurisdictions, an individual may himself or herself being tax resident in two or more jurisdictions. This can have adverse tax consequences and the OECD advocates that where:

- an individual is tax resident in two jurisdictions in the same tax year; and
- there is a double taxation agreement in place between two jurisdictions,
- then the following "tie-break" rules are to apply in the order shown below.

Test 1 - Permanent home
An individual shall be deemed to a resident of the State in which he or she has a ***permanent home*** available to him or her. If he or she has permanent home available in both States it is necessary to look at the next test.

Test 2 - Centre of vital interests
An individual shall be deemed to be a resident of the State to which his or her personal and economic relations are closer (centre of vital interests). If Test 2 cannot be determined, it is necessary to look at Test 3.

Test 3 - Habitual abode
An individual shall be deemed to be resident of the State in which he or she has an habitual abode. If he or she has an habitual abode in both States, or in neither, then it is necessary to look at Test 4

Test 4 - Nationality
An individual shall be deemed to be a resident of the State of which he or she is a national.

Final Test
If Tests 1 to 4 cannot determine which jurisdiction the individual is deemed to be tax resident, then tax residency is decided by the competent authorities of each jurisdiction.

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Appendix 3

Domicile Levy

The Domicile Levy was introduced in the Finance Act 2010 and was charged on an individual:

- who in any year was Irish domiciled and an Irish citizen,
- whose worldwide income for the year exceeds €1m,
- whose Irish located property in the year is greater than €5m, and
- whose liability to Irish income tax for the year is less than €200,000.

Where a relevant person has paid Irish income tax for a year that person is entitled to a credit for the income tax paid in calculating the amount of the domicile levy for that year.

In 2011, returns and payments in respect of the Domicile Levy for the tax year 2010 (the first year for which the levy applied) were made by 11 persons who paid a total of €1,667,011.

The amendment introduced in section 136 Finance Act 2012 removed the requirement to be an Irish citizen. The affect of this amendment is that persons who meet the other criteria will be liable to the levy whether or not they are Irish citizens.

The returns for the tax year 2011 were the first returns affected by the amendment. The Domicile Levy returns and payments in relation to the tax year 2011 were due to be filed on 31 October 2012 or 15 November 2012 for persons who file income tax using the Revenue Online System (ROS).

As of 20th November 2012, 10 persons submitted returns declaring a liability in respect of the Domicile Levy for the tax year 2011 and these persons paid a total of €1,645,329.

Information Note

Residence for Tax Purposes - Public Consultation Process

Derek Moran

Minister, from Des O'Leary

Approval requested

Your approval is sought to **publish** the submissions received following the public consultation process on Ireland's tax residence rules, as announced in the Budget Statement, with a view to possible changes in Finance Bill 2013.

Details

The Commission on Taxation recommended that the 183/280 days test for determining the tax residence of an individual should be supplemented by additional criteria, which should include a permanent home test and a test based on an individual's centre of vital interests.

These additional criteria are used in a range of other jurisdictions. A "citizenship" test is also used in a very limited number of jurisdictions.

The Programme for National Government makes a commitment that the Government "will ensure that tax exiles make a fair contribution to the Exchequer". (Both parties to the Government make commitments in their election manifestos to introduce measures to deal with "tax exiles".)

Before Budget 2012 you approved a submission that the current residence rules should be supplemented by additional rules providing that an individual could be deemed resident if s/he was present in the State for a smaller number of days than the current criteria, if s/he had a "place of abode" and/or "centre of vital interests" in the State. However, as this would be a significant change to the current position, you also approved a public consultation process on possible changes to the current tax residence rules to allow interested parties to comment and make suggestions.

The consultation process closed on 1 August. A total of eight submissions were received; see consultation details and *précis* of submissions received at Appendix 1.

Sources of submissions-

- three were from professional bodies – the Irish Tax Institute, The Society of Trust and Estate Practitioners Limited, and the Consultative Committee of Accountancy Bodies – Ireland.
- Two were from professional firms – Matheson Ormsby Prentice, Solicitors, and Mazars, Chartered Accountants.
- One was the American Chamber of Commerce Ireland, the representative body for US companies based in Ireland.
- One was from a member of the public, Mr Cormac Doyle.

(17)

- One was from Sensible Money – an economic think tank exploring solutions to the debt crisis.

Of the eight submissions received –

- None proposed significant change to the rules as they presently stand.
- Several commented on the need for certainly and offered the view that the present day-counting rules achieve this.
- A number of submissions cautioned that changes to the rules could have an adverse impact on foreign direct investment.
- None recommended using citizenship as a basis for taxation
- As regards domicile, concern was expressed that erosion of the rules relating to domicile could bring the income and gains of non-domiciliaries within the Irish tax net, which would again impede FDI.
- One submission raised concern that certain Capital Acquisitions Tax provisions (taxation of worldwide benefits after 5 consecutive years of residence) favours /encourages non-domiciled individuals relocating to Ireland to remain less than 5 years.

None of the submissions examined the issue from the point of view of ensuring a fair contribution to the Exchequer from "tax exiles", or individuals who arrange their affairs so as to be non-resident in Ireland for tax purposes.

Submitted for approval. You may wish to discuss with officials.

Smith, Liam

From: Shaughnessy, Martina
Sent: 04 January 2013 15:59
To: Coleman, Jacqui
Cc: Smith, Liam
Subject: RE: Tax Exiles

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Jacqui

As discussed the minister has already widened the scope of the domicile levy by removing the citizenship condition. Other measures on high earners affect non residents.

It may be reviewed in the finance bill.

Kind regards

Martina

From: Coleman, Jacqui
Sent: 04 January 2013 15:17
To: O'Leary, Des; Shaughnessy, Martina
Subject: FW: Tax Exiles

Can you be of assistance with the following please?

Regards

Jacqui

From: Ian Kehoe [mailto:iank@sbpost.ie]
Sent: 04 January 2013 15:10
To: Press Office Finance
Subject: SB Post

Jacquie,
The Programme for Government made a commitment to ensure that tax exiles ``make a fair contribution to the exchequer", and the Department of Finance recently carried out a review on the issue. The submissions are also against making any changes to the current situation.
I am informed that the minister has rowed back on the position in light of the observations raised.
Is this the case – or will the issue be addressed in the Finance Bill?
I am on 087 2702394.
Many thanks,
Ian

Ian Kehoe
Assistant Editor -- Current Affairs Editor, Business Editor
The Sunday Business Post
80 Harcourt Street
Dublin 2
Ireland
00 353 1 6026019
00 353 87 2702394

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Smith, Liam

From:	Ryan, Sinead (ICTx_PerIncTx2_10) <sryan004@revenue.ie>
Sent:	09 January 2013 15:52
To:	Smith, Liam
Cc:	Barry, Denis; Lynch, Joe (ICTx_CapiTax); Flynn, Pam
Subject:	Remittance basis - FB2013
Attachments:	13.01.09 draft sub.doc

(19)

Liam

Further to our discussion, please see attached draft submission.

If you have any questions, please do not hesitate to contact me.

Regards

Sinéad

Sinéad Ryan
Income and Capital Taxes Division
Personal Income Tax 2
Dublin Castle

Phone: +353 1 6748484 (VPN: 48484)
Fax: +353 1 6795814
Email: sinead.ryan04@revenue.ie

The interpretation given in this email is based on the facts and circumstances as presented by you and should not be relied upon for any other case.

****

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(17)

DRAFT for discussion purposes only

Finance Bill 2013

Remittance Basis of Assessment

1. Decision sought

Approval is sought to amend the provisions of Section 71 and Section 29 of the Taxes Consolidation Act 1997 ("TCA") so as to prevent the use of arrangements to avoid the remittance basis of taxation.

2. Background

As you are aware, in the normal course, an individual who is resident in the State is taxable in the State on his or her worldwide income as it arises. However where an individual is resident but not domiciled in the State, he or she is only taxable in the State on income from foreign securities and possessions to the extent that income from such sources is received in or remitted to the State. This is known as the remittance basis of taxation.

Similar provisions apply in relation to Capital Gains (section 29 TCA 1997).

The remittance basis is not an exemption from tax but is rather a deferral such that the charge to tax is deferred until such time as the individual who is non-domiciled but resident in the State for tax purposes brings the money into the State. It was never intended that the income or gain would be exempt from Irish tax in the long term.

A case has come to our attention whereby an individual (who availed of the remittance basis in the past) has in the first instance transferred income to his spouse who subsequently remitted the income to the State, so as to avoid the charge to income tax.

3. Proposals

It is therefore proposed that section 71 and possibly section 29 of the TCA be amended to provide that, where income or gains which has previously been subject to the remittance basis of taxation is transferred to a spouse of the individual who claimed the remittance basis, then the remittance basis will continue to apply to such income and capital notwithstanding it has been transferred to a spouse in the first instance.

We are available to discuss this matter further.

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Finance Bill (No 2)2013
Capital Gains Tax
Remittance Basis of Assessment – anti-avoidance

Derek Moran

Minister, from Des O'Leary

1. Approval sought

Last year you introduced anti-avoidance provisions in Section 29 Taxes Consolidation Act 1997 (TCA) to prevent the mis-use of the remittance basis of taxation by transferring gains to a spouse in a manner which avoided tax. Your approval is now sought to amend the section to ensure it operates as intended by replacing the reference to "chargeable gains" with a reference to the proceeds from the disposal of an asset.

2. Background

An individual who is resident in the State is taxable in the State on his or her worldwide income and gains as they arise. However, where an individual is resident but not domiciled in the State, he or she is only taxable in the State on income or gains from foreign securities and possessions to the extent that they are received in the State. This is known as the remittance basis of taxation. The remittance basis is not an exemption from tax; the charge to tax is deferred until such time as the individual who is non-domiciled but resident in the State brings the money into the State.

In Finance Act 2013 you approved amendments to the remittance basis for both Income Tax and Capital Gains Tax (CGT) to counteract an avoidance scheme uncovered by Revenue. [The facts were as follows: an individual who was non-Irish domiciled and subject to the remittance basis, had a non-Irish source of income and so did not pay tax when the income arose; he transferred the money to his spouse, who was Irish domiciled and not subject to the remittance basis, so because the income or gain did not arise in the year when it was remitted, a tax liability was avoided.] The amendments provided that, where income or gains which were subject to the remittance basis are transferred to a spouse or civil partner of the individual who claimed the remittance basis, the remittance basis of assessment will continue to apply to the income or gains notwithstanding the transfer (that is, the income or gain will still be taxable when remitted to the State).

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However, the amendment to the remittance basis for CGT, in section 45 Finance Act 2013, does not achieve what is intended because it refers to the transfer of "chargeable gains" (that is, the amount on which CGT is charged) rather than to the proceeds of the disposal of assets which are transferred by an individual to his or her spouse. The reference to chargeable gains could cause confusion as to when a remittance becomes taxable.

4. Proposal

It is proposed to amend section 29(5A) of the Taxes Consolidation Act 1997 to ensure it works as intended, by deleting the reference to "chargeable gains" and by providing that a transfer of the proceeds of the disposal of assets to the State, in circumstances where a gain which has previously been subject to the remittance basis is transferred to the spouse or civil partner of the individual who claimed the remittance basis, the remittance basis will continue to apply to the gain when the proceeds are remitted to the State.

Submitted for consideration and approval. Officials are available to discuss if required.

Capital and Savings Tax Policy
September 2013

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

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Teach Baltaugh
73/79 Sráid an Mhóta Íocht
Baile Átha Cliath 2
Éire

Office of the Revenue Commissioners
Large Cases Division
Ballaugh House
73/79 Lower Mount Street
Dublin 2
Ireland

Charles Garavan

4th December 2013

RE: FOI Request CRMS 5773/2013

Dear Mr. Garavan,

I refer to your request received 8th November 2013 under the Freedom of Information Acts 1997 and 2003 (FOI Acts) seeking documents relating to the background to the domicile levy and number of cases subject to the domicile levy.

As FOI decision-maker for Large Cases Division in Revenue Commissioners, please find below information which has been extrapolated or deduced from documents which is relevant to your specific requests with regard to;

- The number of cases, if any, where the domicile levy has applied
- The number of such cases, if any, where the individual(s) subject to the levy has been resident in Ireland in the relevant year
- The amount of tax collected pursuant to the provisions
- The number of audits or investigations into the possible application of the provisions

For each year from 1 January 2010 to date.

The information requested has been provided below in tabular format. We are unable to provide the amount of tax collected pursuant to the provisions but have provided the amount of tax due per the returns for each year. We have provided details as to the total number of interventions undertaken, which includes audits or investigations, into the possible application of the provisions.

Year	Number of domicile levy returns filed in relation to this year	Tax due per returns filed	Number of persons resident in the state who filed a return	Number of cases that were subject of an enquiry with regard to potential filing of a domicile levy return for a year.
2010	24	2,776,034	15	34
2011	21	2,645,396	12	44
2012	14	1,884,949	5	2

With regard to the above table;

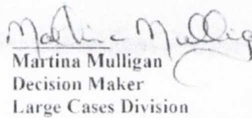
The total number of cases that were subject to enquiries regarding a potential requirement to file a domicile levy return is 61. The total in the table exceeds this as some of the cases would have a potential filing requirement in relation to a number of years. Enquiries in relation to 2012 are low as the returns were only due on 31/10/2013 and a compliance operation in relation to that year is only in the initial stages.

If you require further clarification regarding these figures, you can contact me at 01-6131574 or by email at mmulli01@revenue.ie

It is my understanding you will also be receiving a reply from another section of revenue relating to other aspects of this request.

Please note that should you wish to have this decision reviewed an application for review must be made not later than 4 weeks after notification of this decision. (A copy of the review procedures is attached.)

Yours sincerely,



Martina Mulligan
Decision Maker
Large Cases Division

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

Revenue

Mr. Charles Garavan

Office of the Revenue Commissioners
Capital Taxes Division
Stamping Building
Dublin Castle
Dublin 2
Ireland

Oifig na gCoimisinéirí Ioncaim
Rannán Cánacha Caipitiúla
Áras Stampála
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
Éire

5 December 2013

Re: Freedom of Information Request CRMS 5573/2013

Dear Mr. Garavan

I refer to your request under the Freedom of Information Act 1997, as amended, for access to documents relating to the following legislative provisions.

> *Section 150 of the Finance Act 2010*
>
> *Section 136 of the Finance Act 2012*
>
> *Sections 531AA to 531AK of the Taxes Consolidation Act 1997*
>
> *Reports, memoranda and/or correspondence received from or provided to, or notes or minutes of meetings or discussions with other government departments or officials thereof in relation to the provisions.*
>
> *Briefing notes or other explanatory documents provided to Government ministers or other TDs or Senators in relation to the provisions prior to or during the passage through the Houses of the Oireachtas of the relevant Finance Bills.*

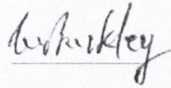
I have examined all the records held by this Division in relation to your request. I have identified 18 records, of which I am releasing 13 in full and 5 in an edited format.

I attach a schedule of records, which provides details of the records being released. Section 22 of the Freedom of Information Act 1997, as amended, provides an exemption in respect of records that would be exempt from production in court either on the grounds of contempt or legal professional privilege. Some of the material in record no. 1 is not being released for this reason. Some of the material contained in 4 of the records is not relevant to your request and is not, therefore, being released.

It is my understanding you will also be receiving information from another section of Revenue relating to this request.

Should you wish to have this decision reviewed, an application for review must be made not later than 4 weeks after notification of this decision. A copy of the review procedures is enclosed for your information.

Yours sincerely,



Michael Buckley

Assistant Principal

Capital Taxes Branch

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

Schedule of Records: FOI Request CRMS 5773/2013

Record No.	Brief Description	Comments	Allow/refuse release of record	Basis of Refusal	Record Edited
1.	2 emails dated 27/11/2009.	Correspondence re introduction of possible wealth tax.	Allow partial release of one email-other email not relevant to request	Exempt under section 22 FOI Act 1997 as amended (legal privilege).	Yes
2.	Attachment to email referred to at 1.	Note outlining possible scheme of wealth tax.	Allow.	Not Applicable (N/A).	No
3.	2 emails dated 8/12/2009.	Correspondence re domicile levy.	Allow.	N/A	No
4.	Attachment to one of the emails referred to at 3 above.	Note entitled "draft domiciliary levy".	Allow.	N/A	No
5.	2 emails dated 8/12/09.	Correspondence re domicile levy.	Allow.	N/A	No.
6.	Attachments to emails referred to at 5 above.	Documents entitled "draft domiciliary levy" and "domicile levy".	Allow.	N/A	No
7.	2 emails dated 9/12/09 and 10/12/09.	Correspondence re domicile levy.	Allow partial release.	Not relevant to request.	Yes.
8.	2 emails dated 12/1/2010.	Correspondence re domicile levy.	Allow full release of one of the emails.	One of the emails not relevant to request.	Yes.

	Attachments to email referred to at 8 above.	Note re issues requiring policy decisions and draft legislation.	Allow.	N/A	No
10.	2 emails dated 12/1/2010.	Correspondence re domicile levy.	Allow full release of one of the emails.	One of the emails not relevant to request.	Yes.
11.	Attachments to one of the emails referred to at 10 above.	Note re domicile levy and draft legislation.	Allow.	N/A	No
12.	2 emails dated 13/1/10.	Correspondence re domicile levy.	Allow full release of one of the emails.	One of the emails not relevant to request.	Yes.
13.	Attachments to one of the emails referred to at 12 above.	Revised note re domicile levy and draft legislation.	Allow.	N/A	No.
14.	email dated 18/1/10	Correspondence re domicile levy.	Allow.	N/A.	No.
15.	Document entitled "Finance Bill 2010 -Domicile Levy".	Summary of proposed domicile levy.	Allow.	N/A	No
16.	Note to Minister for Finance.	Sets out key features of how the levy will work.	Allow.	N/A	No.
17.	Speaking/detailed notes for Minister.	Briefing material for debates in Houses of the Oireachtas.	Allow.	N/A.	No.

	Speaking note for Minister.	For debates in Houses of the Oireachtas.	Allow.	N/A.	No.

(1)

-----Original Message-----
From: Creighton, Eugene
Sent: 27 November 2009 15:15
To: 'Moran, Derek'
Cc: O'Grady, Michael (Commissioner)
Subject: FW: Possible Wealth Tax (Targeted at non-resident domiciliaries)

Derek,

As discussed, Michael, who is unavailable this afternoon, asked me to come back to you on this. It seems to us that there is a probable EU law blocker on any such tax - that is assuming the objective would be to include EU/EEA tax residents (Malta, Switzerland?) within the scope of this wealth tax.

Taxing an EU/EEA resident on their Irish-located assets while not taxing an Irish resident in the same circumstances would most likely fall foul of the free movement of persons and capital and non-discrimination EU treaty articles. Limiting the scope of the tax to those non-residents who retained an Irish domicile might provide some defence - we'd only be discriminating against our own nationals ! - but I doubt it - as we would effectively be taxing them for choosing to take up residence in another EU.

If there is an EU impediment, the option still remains to bring the tax in and not apply it to those resident in a EU/EEA country, but this would look soemwhat odd and be easy to side-step.

As an alternative we set out in the attachement an alternative which, while structured on a non-descriminatory basis, only catches those who currently do not paid much income tax here and who have considerable wealth here (in a way it ends up as another minimum tax provision ?). We're not sure it is all worht it for €50,000 a head !

Eugene

Wealth Tax 2.doc

(2)

Wealth Tax – Possible Scheme

EU law constraint on limiting charge only to non-residents: Taxing EU/EEA residents (Malta, Switzerland etc.) on their Irish-located assets while not taxing an Irish resident in the same circumstances would fall foul of the free movement of capital and non-discrimination EU treaty articles. In order to get around this constraint (this would need to be checked with AG's), the new Wealth Tax might apply to:

- All Irish domiciled individuals wherever resident (difficult to shake off domicile)
- Whose Irish liability to income tax for a year is less than, say, €50,000 but whose Irish-located wealth is greater than, say, €5 million
- Rate of tax would be, say, 1% of value

Desired outcome? Wealthy Irish domiciled individuals with significant Irish-located assets – regardless of tax residence status – would have to "opt" to pay either a minimum income tax or a minimum wealth tax of €50,000. Tax-resident individuals with wealth in excess of €5m will in many cases already be paying income tax of €50K+ – particularly after the likely Budget (horizontal measures etc) changes.

Likely to be comment about this being a reverse of the UK "non-dom" tax, where wealthy foreigners pay a minimum £30,000 p.a. for the privilege of living (being tax resident) in the UK. This would be a "dom" tax, where wealthy Irish nationals (for the most part probably non-Irish resident) pay a minimum tax because they have significant assets located in the State.

Might be desirable in that context to require at least some minimum physical presence in the State in the relevant year (say, 30 days) before the wealth tax charge would apply.

Question also of how to deal with the genuine asset-rich/income-poor individual: the extreme example of the widow on a social welfare pension owning non-income generating land or house worth €5m?

Tax Base?

Land and buildings, including private homes

Shares in private Irish companies (possibly exclude shares in genuine Irish trading companies and Irish PLCs)

Moveable assets (possibly excluding domestic furnishings, except antiques/art)

Bloodstock (possibly excluding livestock)

Stopping avoidance? This would have to involve some complexity, even for €50K

Charge would probably need to be gross value; otherwise open to "artificial" loans. (Valuation of land/buildings/private shares could stand for 3 years to minimise compliance costs)

Charge would need to include assets of minor children, assets of spouses transferred by individual at less than market value, assets of discretionary trusts etc. – lots to consider on the anti-avoidance front.

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

(3)

Buckley, Michael

From: Creighton, Eugene
Sent: 08 December 2009 09:43
To: 'Derek.Moran@finance.gov.ie'
Cc: O'Grady, Michael (Commissioner)
Subject: FW: Domiciliary Levy

Derek,

As discussed, we will, of course, feed you notes during the course of today.

I'm broadly ok with the note but would make the following comments (Michael may have more):

- If it is to be necessary to be both an Irish National (i.e. passport holder) and an Irish domicile in order to be caught by the new levy, there will be an inbuilt incentive to side step the levy by dropping Irish nationality even though Irish domicile is retained. Domicile is distinct from nationality. This condition effectively changes the levy from a domicile based one to a citizenship based one.
- While I appreciate you are using the "option" reference as an example to show that the levy will act as an incentive to acquire sufficient Irish income generating assets to result in an actual Irish inocme tax liability of €200,000 or more so as to avoid the complications of calculating the domicile levy, the actual legal text will not provide an "option" to pay one or the other. The structure of the levy will probably be such as to either exempt anyone who has a income tax liability of €200,000 or more or to give a credit for the levy against income tax.
- Not sure of desirably of another day counting exercise. It will add complexity and administration and will need rules for exceptions (e.g. visiting serious ill relative). I woudl prefer to keep scheme simple. Irish domicile and significant Irish assets should be enough to "nexus" with Ireland to trigger the charge.
- The reason we see a need for excluding Irish PLCs is because of the danger of some of them delisting to avoid shareholdings of significant shareholders being counted as Irish capital.
- In the case of Irish trading companies the justification for excluding them would include the fact that the capital is invested at risk with a view to profit with any resulting profits fully liable to Irish tax. However, we may need to look further at thisas it may be possible to make a similar argument for farm land.

Eugene.

-----Original Message-----
From: Moran, Derek [mailto:Derek.Moran@finance.gov.ie]
Sent: 08 December 2009 08:30
To: O'Grady, Michael (Commissioner); Creighton, Eugene
Cc: Ryan, Paul
Subject: Domiciliary Levy

****

This e-mail has been received by the Revenue Internet e-mail service. (IP)

****

Michael, Eugene

Attached is a reworked version of your outline scheme with some additional input. For example, the Minister is inclined to refer to Irish "capital" as distinct from "wealth".

How does it look to you?

The text in the speech is per your amended draft.

Not surprisingly I am a bit uncomfortable with the fact that we don't have a fully developed proposal. As such from a press/media point of view and in terms of political briefing we will need to have half a dozen crisp messages that we will repeat (the last of which will be that the detail will be in the Budget)

- Who does it effect?
- How much will they pay?
- Is it a wealth tax?
- Is this the same as the UK dom tax?
- How much will it raise?

I am sure there are others I have not thought of. Your assistance would be greatly appreciated.

Regards

Derek

Derek Moran
Assistant Secretary
Department of Finance

00 353 1 6318005

<<Domiciliary Levy.doc>>

Attention:
This e-mail is privileged and confidential. If you are not the intended recipient please delete the message and notify the sender. Any views or opinions presented are solely those of the author.
This email was scanned by Sophos and has been certified virus free with the pattern file currently in use. This however cannot guarantee that it does not contain malicious content.

Tabhair aire:
Tá an r-phost seo faoi phribhléid agus faoi rún. Mura tusa an duine a bhí beartaithe leis an teachtaireacht seo a fháil, scrios é le do thoil agus cuir an seoltóir ar an eolas. Is leis an údar amháin aon dearcaí nó tuairimí a léirítear.
Scanadh an r-phost seo le Sophos agus deimhníodh go raibh sé saor ó víoras leis an bpatrúnchomhad atá in úsáid faoi láthair. Ní féidir a ráthú leis seo áfach nach bhfuil ábhar mailíseach ann.

(4)

DRAFT DOMICILIARY LEVY

The new tax might apply to:

- All Irish Nationals and
- All Irish domiciled individuals wherever resident
- Whose worldwide income (whether liable to Irish tax or not) is greater than €1m as calculated under Irish tax rules. (Note this will be relevant for Irish nationals who are non resident)
- Whose Irish liability to income tax for a year is less than, say, €200,000 but whose Irish-located capital is greater than, say, €5 million
- Rate of tax would be, say, 4% of value

Desired outcome?

Wealthy Irish domiciled individuals with significant Irish-located assets – **regardless of tax residence status** – would have to "opt" to pay either a minimum income tax or a minimum domiciliary levy of €200,000. The reality is that such non residents will aim for the lower figure – hopefully this should drive them to create an income tax liability of €200,000. It should be noted that this €200,000 liability (if we use an income of €1m, is less than a revised horizontal measure would expect them to contribute i.e. it is not an excessively high figure.

Tax-resident individuals with capital in excess of €5m will in many cases already be paying income tax of €200K+ – particularly after the likely Budget (horizontal measures etc) changes. (However by including an income test as well, we ensure we exclude Irish residents from the charge since they should have exceeded the tax figure required by virtue of the horizontal proposals.

Likely to be comment about this being a reverse of the UK "non-dom" tax, where wealthy foreigners pay a minimum £30,000 p.a. for the privilege of living (being tax resident) in the UK.

This would be a "dom" tax, where wealthy Irish nationals (for the most part probably non-Irish resident) pay a minimum tax because they have significant assets located in the State. This can be portrayed in a progressive light.

Might be desirable in that context to require at least some minimum physical presence in the State in the relevant year (say, 30 days) before the wealth tax charge would apply.

Question also of how to deal with the genuine asset-rich/income-poor individual: the extreme example of the widow on a social welfare pension owning non-income generating land or house worth €5m? See above – they now must have income of €1m pa (even if that income in not within the charge to Irish tax by virtue as would be the case for non residents)

DRAFT DOMICILIARY LEVY

What Tax Base?
Land and buildings, including private homes.

Shares in private Irish companies (possibly exclude shares in genuine Irish trading companies and Irish PLCs) – why exclude these? Ultimately this is about getting them to pay something rather than a conceptual approach to the base assets to be taxed.

Moveable assets (possibly excluding domestic furnishings, except antiques/art)

Bloodstock (possibly excluding livestock)

Stopping avoidance?

This would have to involve some complexity, even for €250K

Charge would probably need to be gross value; otherwise open to "artificial" loans. (Valuation of land/buildings/private shares could stand for 3 years to minimise compliance costs)

Charge would need to include assets of minor children, assets of spouses transferred by individual at less than market value, assets of discretionary trusts etc. – lots to consider on the anti-avoidance front.

Needs to be a strong statement in the speech that this proposal will be monitored to ensure the desired effect is being achieved or else the CoT proposals will have to be revisited.

5

Buckley, Michael

From: Creighton, Eugene
Sent: 08 December 2009 18:04
To: 'Moran, Derek'
Cc: O'Grady, Michael (Commissioner)
Subject: FW: Dom Levy

Derek,

Attached find some notes to supplement main note.

Eugene

Domicile-Levy.doc

-----Original Message-----
From: O'Grady, Michael (Commissioner)
Sent: 08 December 2009 11:04
To: 'Moran, Derek'
Cc: Creighton, Eugene
Subject: Dom Levy

Derek:

- Having a double nationality-cum-domicile test before this tax kicks in would be unusual. My own view is that it's better to stick with domicile unless there's a desire to present this partly as a price wealthy Irish nationals living abroad have to pay for the privilege of holding on to their Irish passport.
- Neutral on the 30-day physical presence test. I can see the presentational advantages.
- For simplicity, would prefer to see this as a flat tax of €200K (creditable against income tax) - ie once the minimum income/wealth/physical presence thresholds are met - rather than as a progressive wealth tax charged at 4%. The reality is that no non-resident caught by the tax is in any event going to pay > €200K. However, again I can see that presenting this as a wealth-type tax might have attractions.
- On the tax base, rather than getting involved in lists of what's in or out and valuation rules, I think we should simply piggyback on existing CAT rules in this area*.

I attach a suggested revised version of your note incorporating the CAT piggyback idea and some other suggestions e.g. saying something about why we're using domicile as the main test.

Michael

Domiciliary Levy1.doc

* Eugene is preparing a short list of what's in/out under the CAT rules ("situs" rules for things like moveable property, shares etc.); they'll have it later this morning

(6)

Domicile Levy

Who will the new Domicile levy affect?

Irish domiciled individuals wherever resident:

- Whose world wide income (calculated on basis of Irish tax rules) is greater than €1 million
- Who pay €200,000 or less in Irish income tax, and
- Whose Irish-located capital is greater than €5 million.

Effect of these rules is that levy should be payable by non-resident but Irish domiciled individuals with worldwide income of €1,000,000 or more and Irish located assets of greater than €5,000,000.

The rules ensure that asset rich but income poor individuals are not liable for the levy.

Irish resident and domiciled individuals with worldwide income greater than €1,000,000 should not, in general, be liable to the levy where they pay €200,000 or more in Irish income tax.

If such individuals have used tax shelters or are in receipt of exempt income they are likely to have still paid Irish income tax of €200,000 or more due to the operation of the high earners restriction as enhanced in the Budget.

To the extent that a tax resident Irish domiciled person pays less than €200,000 in Irish income tax he/she will be liable for the domicile levy if his/her worldwide income is €1,000,000 or more and he/she has Irish assets of €5 million or more. Unlikely to be many such persons but someone using a lot of double tax relief may fall into this category. It may be necessary to give further thought to the treatment of this class of person.

What is Domicile?

Domicile is a general law concept. It is not defined in tax law. A person's domicile is distinct from their nationality and from their place of residence. A person might not be resident in Ireland but still be domiciled in Ireland.

Domicile is based on the notion of a person's permanent home.

The fact that a person is born in Ireland, has lived in Ireland for a large part of their life, regularly visits Ireland year-on-year, has substantial assets, including a residence, in Ireland or whose near family members are resident and domiciled in Ireland are good indicators that a person is Irish domiciled even if they are resident for tax purposes elsewhere.

Establishing domicile can require an in-depth examination of a person's background, lifestyle and intentions over the course of the person's lifetime. This examination will extend to areas of the person's own life and also that of his/her family.

What does Domicile mean?

Domicile is a matter of general law, not tax law. Many factors go into determining a person's domicile. These include:

- It is not possible to be without a domicile
- A person can have only one domicile
- Domicile is distinct form nationality or residence, but both these factors may have an impact on a person's domicile
- A person is normally domiciled in the country where the person has his/her permanent home
- An existing domicile continues until it is proven that a new one has been acquired.

What types of domicile are relevant for purposes of the new levy?

Two types of domicile will be primarily relevant for the purposes of the new levy:

- Domicile of origin
- Domicile of choice.

Domicile of Origin

A person is born with a domicile known as the domicile of origin. Normally a person assumes the domicile of his/her father. If the father has died before birth or where the parents are unmarried the person assumes the domicile of the mother.

The domicile of origin need not be the country in which a person was born (e.g. where a person is born in a country which is not their father's country of domicile).

Once a person has reached the age of majority he/she can reject his/her domicile of origin and acquire a new domicile called a domicile of choice. This is not easy to do.

In order to abandon domicile of origin the person must prove conclusively that he/she has severed all links with the country of his/her domicile of origin.

Even if you leave your country of your domicile of origin you will continue to be domiciled there until you acquire a domicile of choice elsewhere.

Domicile of Choice

Broadly, to acquire a domicile of choice a person must leave their current country of domicile and settle permanently in another country. This requires a person to establish a physical presence in the new country and have an intention to reside there permanently. Factors which are relevant, include:

- The person's intentions
- Where the person is permanently resident
- The person's business interests
- The persons social and family interests
- The ownership of property
- The nature of any will made.

This list is not exhaustive.

Why not just charge non-resident nationals to income tax ?

Non-resident nationals are already liable to income tax to the extent that they have Irish source income. To extend Irish income tax to the worldwide income of non-resident nationals would be very difficult having regard to the tax treaties which Ireland has entered into with other countries.

These treaties allocate taxing rights between countries on the basis, primarily, of residence but also as respects the income source for some types of income such as rents from property.

To implement worldwide taxation of Irish nationals would require the renegotiation of all our tax treaties. Some countries may resist renegotiation or refuse to renegotiate or seek different terms for other areas of taxation.

As it is unlikely that other countries would readily consent to give up their taxing rights where an Irish national was resident in that country. The result of imposing Irish taxation on the basis of nationality would be double taxation by Ireland and the country of residence.

Why not impose the levy on non-resident but Irish domiciled individuals?

Limiting any charge to non-residents may give rise to EU law difficulties in the case of Irish domiciled persons resident in Ireland moving to another EU/EEA country.

Such a person would not be liable to the charge while resident in Ireland but immediately on moving to and becoming tax resident in another EU/EEA country would become liable to the levy. This is likely to be in breach of EU law.

Is the new Domicile Levy the same as the Uk's Domicile Tax

No it is not. The UK has a special tax charge on resident but not domiciled persons who are eligible for the "remittance basis" of taxation, that is, only taxed on the income they remit to the UK.

The UK Remittance Basis Charge (RBC) is designed to get a tax contribution from those who while tax resident in the UK do not suffer much taxation because they do not actually remit any income to the UK.

In contrast, the new Domicile Levy announced in the Budget applies to Irish domiciled but non-tax resident persons who have substantial, permanent and on-going links with this country but who do not pay much Irish income tax. It is designed to ensure that such persons with substantial Irish based assets now make an appropriate tax contribution.

How does the UK's Remittance Basis Charge (RBC) work?

Basically, the remittance basis of taxation means the person is taxed on UK source income in full but on foreign income only to the extent that the person remits the income to the UK. Persons liable to the remittance basis of taxation may choose to pay income tax on the normal basis or may choose to pay income tax based on the remittance basis.

Where a person opts for the remittance basis of taxation the person losses his/her entitlement to UK personal tax allowances and reliefs. In addition, certain long term UK residents who opt for the remittance basis are liable to the "remittance basis charge" (RBC).

The RBC is an annual tax charge of €30,000. It represents tax on a part of the foreign income which is left outside the UK and is payable in addition to any UK tax that is paid on UK income or foreign income remitted to the UK.

Locality of Assets

The new levy will only apply to assets situated in Ireland. It is not proposed to set out a "situs"" code for determining where assets are situated as there are considerable general law rules governing this issue:

Examples of these rules are:

- Land, including buildings: Freehold or leasehold land is located in the country in which it is situated.
- Securities: A bearer security is located in the country where the certificate is situated. Registered securities are situated in the country in which the register is required to be kept.
- Debts: a simple contract debt is situated in the country where the debtor resides. A speciality debt (i.e. a debt payable under a sealed instrument) is situated where the

instrument happens to be. A judgement debt is situated where the judgement is recorded.

- Tangible property such as furniture, bloodstock, etc is located where situated.
- Currency is located where situated.
- Bank balances are located in the country where the branch of the Bank at which the account is kept is situated.

DRAFT DOMICILIARY LEVY

The new levy might apply to:

- All Irish domiciled individuals wherever resident
- Whose worldwide income (whether liable to Irish tax or not) is greater than €1m as calculated under Irish tax rules. (Note this will be relevant for Irish nationals who are non resident)
- Whose Irish liability to income tax for a year is less than, say, €200,000 but whose Irish-located capital is greater than, say, €5 million
- Rate of tax would be, say, 4% of value

Desired outcome?

Wealthy Irish domiciled individuals with significant Irish-located assets – **regardless of tax residence status** – would effectively have to "opt" to pay either a minimum income tax or a minimum domiciliary levy of €200,000. The expectation is that such non-residents will aim for the lower figure – hopefully this should drive them to create an income tax liability of €200,000 (if necessary by shifting income-generating assets into Ireland). It should be noted that the €200,000 liability, if we use an income threshold of €1m, the levy is less than the post-Budget horizontal measure would expect them to contribute if they were tax resident – i.e. it is not an excessively high figure.

Tax-resident Irish domiciliaries with income of €1 million + will in most cases already be paying income tax of €200K+ – particularly after the likely Budget (horizontal measures etc) changes which will aim to achieve an effective tax rate of 30% for high earners: Irish tax residents are taxable on worldwide income. (For example, an Irish resident individual with income of €1 million should pay income tax of close to €300,000 post-Budget.)

Likely to be comment about this being a reverse of the UK "non-dom" tax, where wealthy foreigners pay a minimum £30,000 p.a. for the privilege of living (being tax resident) in the UK.

This would be a "dom" tax, where wealthy Irish nationals (for the most part probably non-Irish resident) pay a minimum tax because they have significant assets located in the State. This can be portrayed in a progressive light.

Might be desirable in that context to require at least some minimum physical presence in the State in the relevant year (say, 30 days) before the wealth tax charge would apply.

While residence is the main "connecting factor" for tax, domicile is also common internationally – indeed our own CAT legislation was until recently based almost entirely on domicile. Domicile of birth is difficult to shake off so that Irish people

residing temporarily abroad can more easily be brought within the scope of a domicile-based charge. Limiting any charge to non-residents may cause EU law difficulties in the case of EU/EEA tax residents.

Question also of how to deal with the genuine asset-rich/income-poor individual: the extreme example of the widow on a social welfare pension owning non-income generating land or house worth €5m? See above – they now must have income of €1m pa (even if that income in not within the charge to Irish tax by virtue as would be the case for non residents)

What Tax Base?

Rather than getting involved in listing what assets are in or out, the suggested approach is to piggyback on the existing CAT rules governing property "situate in the State" and CAT methods of valuation of such property. While the CAT rules depend on a some case law governing "situs" for different types of assets (moveable property, shares etc) but these would be reasonably well understood by practitioners advising wealthy individuals. Given the nature of this tax, there seems little point in inventing new special rules.

Stopping avoidance?

There may be a need to put in anti avoidance measures, even for €200K. (For example, consideration may need to be given to including assets of minor children, assets of spouses transferred by individual at less than market value, assets of discretionary trusts etc.)

Needs to be a strong statement in the speech that this proposal will be monitored to ensure the desired effect is being achieved or else the CoT proposals will have to be revisited.

(7)

B..kley, Michael

From: Creighton, Eugene
Sent: 10 December 2009 12:18
To: 'Ryan, Paul'
Cc: O'Grady, Michael (Commissioner)
Subject: RE: Domicile Levy

Thanks, Paul, will talk next week. [redacted]

Eugene

-----Original Message-----
From: Ryan, Paul [mailto:Paul.Ryan@finance.gov.ie]
Sent: 10 December 2009 12:14
To: Creighton, Eugene
Cc: O'Grady, Michael (Commissioner)
Subject: RE: Domicile Levy

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Thanks Eugene - we didn't put the nationality description into the speech; apparently this was deemed more speech-like than our construction - it's unfortunate, but we'll have to move on when firming-up on the measure.

At least, errors in the speech can always be explained away - that's why we have the Finance Bill.

We might have a chat next week (out tomorrow) about the above as well [redacted]

[redacted]

Paul

-----Original Message-----
From: Creighton, Eugene [mailto:ecreight@revenue.ie]
Sent: 09 December 2009 20:55
To: Ryan, Paul; O'Grady, Michael (Commissioner)
Subject: Re: Domicile Levy

Paul, not sure u got earlier message. Note ok. But speech referred to nationality being a necessary condition. This is easy to side step and if to be dropped (which we believe it should) you will need to manage the change in approach. Eugene

----- Original Message -----
From: Ryan, Paul <Paul.Ryan@finance.gov.ie>
To: Creighton, Eugene; O'Grady, Michael (Commissioner)
Sent: Wed Dec 09 20:18:26 2009
Subject: Domicile Levy

****

This e-mail has been received by the Revenue Internet e-mail service. (IP)

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Eugene & Michael,

This is a note which we are using for briefing at this evening's Press Conference - it's a far shorter note than you've seen before as we feel that on this 'less is more' until we work out the details.

Paul

<<Domicile Levy Briefing 09 12 09.doc>>

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8

-----Original Message-----
From: Creighton, Eugene
Sent: 12 January 2010 18:45
To: 'Moran, Derek'; 'Ryan, Paul'
Subject: Domicile levy

Derek, Paul,

Attached please find working draft of initial definitions etc for the domicile levy to give you a feel for how it might look (most of the policy issues will be in the definitions) plus a note on possible policy issues needing decisions that we've logged so far.

Eugene.

domicile-draft.doc

Domicile Levy-notes.doc

(9)

Domicile Levy: Issues Requiring Policy Decisions

- **Who will be liable**: Anyone who is domiciled in the State in 2010 or a subsequent year whose world-wide income for the year [including capital gains] exceeds €1,000,000; whose liability to Irish income tax [and capital gains tax] for the year is less than €200,000; and whose taxable property in the State on the valuation date for the year exceeds €5,000,000. If world-wide income is to include capital gains then Irish tax liability should probably, but not necessarily, include capital gains tax liability.
- **Definition of world-wide income**: Definition will be as wide as possible based on Irish tax rules with no account taken of exempt income or of tax reliefs (either Irish or foreign) except for maintenance payments (both Irish and foreign provided the foreign payments attract substantially the same tax treatment as an Irish maintenance payment).
- **Definition of world-wide income**: Are capital gains to be counted as income ? If not, there may be a risk of avoiding the levy through use of devises converting income into gains. Excluding them may result in a lot of messing.
- **Minimum Irish tax liability**: If world-wide income is to include capital gains then it might be considered that the minimum Irish tax payment test should include any Irish capital gains tax liability?
- **Definition of taxable property**: Taxable property will be all Irish situate property including limited interests (e.g. a life interest or an annuity paid out of property situate in Ireland). Are pension funds to be included ? There will be limited exceptions designed to protect investments in PLCs and trading companies. It is not proposed to provide for any exemptions such as art objects and gardens/houses open to the public. Irish property held in a discretionary trust [and similar entities such as foundations and the like] to be counted as property of the person who set up the trust. But may need to consider treatment of charitable trusts and foundations.
- **Treatment of spouses**: If Irish property of a spouse is to be aggregated then it would seem appropriate to exclude such property where they are separated. Also question of whether Irish property of a non-Irish domiciled spouse should be aggregated (although if this were allowed it would act as an incentive to transfer sufficient assets to non-domiciled spouse to avoid the levy). On balance it would be simplest if all Irish assets of both spouses were aggregated for purposes of the levy where they are living together. If aggregate assets are less than €10 million and both are Irish domiciled then only one levy is payable (with an election to be made by the spouse who proposes to pay the levy). If assets exceed €10 million and both are Irish domiciled then both pay the levy (regardless of the proportionate ownership of the property). If one is Irish domiciled and one is not and property exceeds €10 million, then only one levy is payable regardless of amount of assets.
- **Treatment of minor children**: Property of minor children to be aggregated.

- **Irish property limit of €5 million.** To avoid abuses it will be necessary to determine this as a gross amount with no account taken of mortgages etc. On this basis a €5 million threshold may be considered too low.
- **Valuation date**: more reflection needed on most appropriate date?
- **Date of payment**: As world-wide income and liability to Irish income tax will only become known some time after the end of a tax year, the "due date" for payment of the levy will be sometime in the tax year after the year of charge, the normal self assessed tax payment date of 31 October suggests itself.

Domicile Levy.

.-(1) The Principal Act is amended by inserting the following Part after Part 18B:

"Part 18C

Domicile Levy

Interpretation (*Part 18C*).

531AA.-(1) In this Chapter-

'relevant individual', in relation to a tax year, means an individual -

(a) who in domiciled in the State in the tax year,

(b) whose world wide income for the tax year is more than [€1,000,000],

(c) whose [aggregate] liability to income tax [and capital gains tax] in the State for the tax year is less than [€200,000],

(d) whose taxable property on the valuation date in the tax year is in excess of [€5,000,000];

'world-wide income' means the aggregate of-

(a) income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and

(i) without regard to any deduction—

(I) in respect of double rent

allowance under section 324(2), 333(2), 345(3) or 354(3),

(II) under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(III) under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(IV) under section 847A, in respect of a relevant donation (within the meaning of that section),

(V) under section 848A, in respect of a relevant donation (within the meaning of that section),

and,

(ii) having regard to a deduction for any payment to which section 1025 applies [or a payment of a similar nature in relation to a separation arrangement which attracts substantially the same tax treatment], made by an individual pursuant to a maintenance

arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,

and

[(b) chargeable gains computed in accordance with the Capital Gains Tax Acts;]

'liability to income tax', in relation to an individual and a tax year, means the amount of income tax due and payable by the individual for the tax year in accordance with the Tax Acts and in respect of which a final decision has been made;

['liability to capital gains tax', in relation to an individual and a tax year, means the amount of capital gains tax due and payable by the individual for the tax year in accordance with the Capital Gains Tax Acts and in respect of which a final decision has been made;]

'final decision' means a decision against which no appeal lies or against which an appeal lies within a period which has expired without an appeal having been brought;

'taxable property', in relation to an individual and a valuation date, means-

all property, situate in the State, to which the individual is beneficially entitled in possession on the valuation date,

as respects a discretionary trust on which the individual has settled property, all property situate in the State which is comprised in the discretionary trust

on the valuation date],

as respects a foundation to which the individual has disposed of, or transferred, property, all property situate in the State which is comprised in the foundation on the valuation date,

but does not include-

[(a) shares in a public limited company quoted on a stock exchange in the State, and]

[(b) shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades;]

'valuation date', in relation to a tax year, means .... in that year;

'market value of property' means the price which such property would fetch if sold in the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property;

'tax year' means a year of assessment for income tax [or capital gains tax or, as the case may be, for both income tax and capital gains tax;]

'domicile levy' has the meaning assigned to it by section 531AB;

'chargeable gain' shall be construed in accordance with section 545;

'discretionary trust' means [import Wealth Tax Act definition];

['foundation', in relation to an individual, means, any

legal entity, including any foundation, anstalt, stiftung, treuntermehmen and any other similar legal entity, wherever established, to which the individual disposes of, or transfers, property for purposes other than purely charitable;]

Charge to domicile levy and rate of charge.

531AB.- Subject to this Part, with effect from 1 January 2010 a tax, to be called domicile levy, shall be charged, levied and paid annually on the market value of the taxable property on the valuation date in every year of every relevant individual and the rate of tax shall be 4 per cent of that market value subject to a maximum payment of €200,000.

Aggregation of taxable property of certain persons.

Valuation procedures.

Valuation: Appeals.

Tax to be paid only once on same property.

Notice of potential liability to domicile levy.

Delivery of returns and self assessment.

Making and amending of assessments by Revenue.

Appeals against assessments.

Payment of tax.

Interest on overdue tax.

Surcharge for late returns.

Penalties.

[Criminal offences]

?

(2) Adaptation of relevant TCA provisions: care and management, collection and recovery, civil penalties, criminal offences, attachment, publication, etc

(3) Extension of certain Acts: Provisional Collection of Taxes Act, Inland Revenue Regulation Act, etc.

(12)

-----Original Message-----
From: Creighton, Eugene
Sent: 13 January 2010 11:48
To: Ryan, Paul
Subject: Domicile levy

Paul,

Slightly expanded and revised note and draft for attention.

Eugene

Domicile Levy-notes.doc

domicile-draft.doc

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(13)

Domicile Levy: Issues Requiring Policy Decisions

- **Who will be liable**: Anyone who is domiciled in the State in 2010 or a subsequent year whose world-wide income for the year [including capital gains] exceeds €1,000,000; whose liability to Irish income tax [and capital gains tax] for the year is less than €200,000; and whose taxable property in the State on the valuation date for the year exceeds €5,000,000. If world-wide income is to include capital gains then Irish tax liability should probably, but not necessarily, include capital gains tax liability.
- **Definition of world-wide income**: Definition will be as wide as possible based on Irish tax rules and on the assumption that the person is resident in Ireland for tax purposes for the year with no account taken of exempt income or of tax reliefs (either Irish or foreign) except for maintenance payments (both Irish and foreign provided the foreign payments attract substantially the same tax treatment as an Irish maintenance payment).
- **Definition of world-wide income**: Are capital gains to be counted as income ? If not, there may be a risk of avoiding the levy through use of devises converting income into gains. Excluding them may result in a lot of messing.
- **Minimum Irish tax liability**: If world-wide income is to include capital gains then it might be considered that the minimum Irish tax payment test should include any Irish capital gains tax liability?
- **Definition of taxable property**: Taxable property will be all Irish situate property including limited interests (e.g. a life interest or an annuity paid out of property situate in Ireland). Are pension funds to be included ? There will be limited exceptions designed to protect investments in PLCs and trading companies. It is not proposed to provide for any exemptions such as art objects and gardens/houses open to the public. Irish property held in a discretionary trust [and similar entities such as foundations and the like] to be counted as property of the person who set up the trust. But may need to consider treatment of charitable trusts and foundations.
- **Treatment of spouses**: If Irish property of a spouse is to be aggregated then it would seem appropriate to exclude such property where they are separated. Also question of whether Irish property of a non-Irish domiciled spouse should be aggregated (although if this were allowed it would act as an incentive to transfer sufficient assets to non-domiciled spouse to avoid the levy). On balance it would be simplest if all Irish assets of both spouses were aggregated for purposes of the levy where they are living together. If aggregate assets are less than €10 million and both are Irish domiciled then only one levy is payable (with an election to be made by the spouse who proposes to pay the levy). If assets exceed €10 million and both are Irish domiciled then both pay the levy (regardless of the proportionate ownership of the property). If one is Irish domiciled and one is not and property exceeds €10 million, then only one levy is payable regardless of amount of assets.
- **Treatment of minor children**: Property of minor children to be aggregated.

- **Irish property limit of €5 million.** To avoid abuses it will be necessary to determine this as a gross amount with no account taken of mortgages etc. On this basis a €5 million threshold may be considered too low.
- **Valuation date**: more reflection needed on most appropriate date?
- **Date of payment**: As world-wide income and liability to Irish income tax will only become known some time after the end of a tax year, the "due date" for payment of the levy will be sometime in the tax year after the year of charge, the normal self assessed tax payment date of 31 October suggests itself. Therefore the first payment date will be **31 October 2011**.
- **Scheme will need rules to govern**: Valuation procedures; Valuation appeals; Avoiding charging tax twice on same property (if possible); Notification of possible liability by persons potentially affected; Delivery of returns electronically; Full self assessment by taxpayer; Estimated assessments by Revenue and amending assessments by taxpayers; Appeals against assessments; Interest on late payment; Surcharge for late returns; Civil penalties and criminal fines; Adaptation of various aspects of TCA and other Acts.

Domicile Levy.

.-(1) The Principal Act is amended by inserting the following Part after Part 18B:

"Part 18C

Domicile Levy

Interpretation (*Part 18C*).

531AA.-(1) In this Part-

'relevant individual', in relation to a tax year, means an individual -

(a) who in domiciled in the State in the tax year,

(b) whose world wide income for the tax year is more than [€1,000,000],

(c) whose [aggregate] liability to income tax [and capital gains tax] in the State for the tax year is less than [€200,000],

(d) whose taxable property on the valuation date in the tax year is in excess of [€5,000,000];

'world-wide income', in relation to an individual, means [the aggregate of] the individual's -

(a) income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and

(i) without regard to any deduction—

(I) in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),

(II) under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(III) under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(IV) under section 847A, in respect of a relevant donation (within the meaning of that section),

(V) under section 848A, in respect of a relevant donation (within the meaning of that section),

and,

(ii) having regard to a deduction for any payment to which section 1025 applies [or a payment of a similar nature in relation to a separation arrangement which attracts substantially the same tax

treatment], made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,

and

[(b) chargeable gains computed in accordance with the Capital Gains Tax Acts,]

determined on the basis that the individual is deemed to be resident in the State for the tax year;

'liability to income tax', in relation to an individual and a tax year, means the amount of income tax due and payable by the individual for the tax year in accordance with the Tax Acts and in respect of which a final decision has been made;

['liability to capital gains tax', in relation to an individual and a tax year, means the amount of capital gains tax due and payable by the individual for the tax year in accordance with the Capital Gains Tax Acts and in respect of which a final decision has been made;]

'final decision' means a decision against which no appeal lies or against which an appeal lies within a period which has expired without an appeal having been brought;

'taxable property', in relation to an individual and a valuation date, means-

(a) all property, situate in the State, to which the individual is beneficially entitled in possession on

the valuation date,

(a) as respects a discretionary trust on which the individual has settled property, all property situate in the State which is comprised in the discretionary trust on the valuation date],

(b) as respects a foundation to which the individual has disposed of, or transferred, property, all property situate in the State which is comprised in the foundation on the valuation date,

but does not include-

[(i) shares in a public limited company quoted on a stock exchange in the State, and]

[(ii) shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades;]

'valuation date', in relation to a tax year, means .... in that year;

'market value of property' means the price which such property would fetch if sold in the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property;

'tax year' means a year of assessment for income tax [or capital gains tax or, as the case may be, for both income tax and capital gains tax;]

'domicile levy' has the meaning assigned to it by section 531AB;

'chargeable gain' shall be construed in accordance with section 545;

'discretionary trust' means [import Wealth Tax Act definition];

['foundation', in relation to an individual, means, any legal entity, including any foundation, anstalt, stiftung, treuntermehmen and any other similar legal entity, wherever established, to which the individual disposes of, or transfers, property for purposes other than purely charitable;]

Charge to domicile levy and rate of charge.

531AB.- Subject to this Part, with effect from 1 January 2010 a tax, to be called domicile levy, shall be charged, levied and paid annually on the market value of the taxable property on the valuation date in every year of every relevant individual and the rate of tax shall be 4 per cent of that market value subject to a maximum payment of €200,000.

Aggregation of taxable property of certain persons.

Valuation procedures.

Valuation: Appeals.

Tax to be paid only once on same property.

Notice of potential liability to domicile levy.

Delivery of returns and self assessment.

Making and amending of assessments by Revenue.

Appeals against assessments.

Payment of tax.

Interest on overdue tax.

Surcharge for late returns.

Penalties.

[Criminal offences]

?

(2) Adaptation of relevant TCA provisions: care and management, collection and recovery, civil penalties, criminal offences, attachment, publication, etc

(3) Extension of certain Acts: Provisional Collection of Taxes Act, Inland Revenue Regulation Act, etc.

(14)

Bu ley, Michael

From: Creighton, Eugene
Sent: 18 January 2010 10:08
To: 'Ryan, Paul'
Cc: Buckley, Michael; 'Moran, Derek'
Subject: RE: Domicile levy

Paul,

In looking at the domicile levy further we have found that:

1. Including capital gains in both the world wide income test and the Irish tax liability test will probably give rise to technical complexities that may be difficult to resolve. Accordingly, on the basis that the Budget statement referred only to "income" we think that it would be best to confine these tests to pure income.

2. Including all property placed in discretionary trusts, etc by Irish domiciled individuals without some limitation may be problematical. What we really need to ensure is that individuals do not take advantage of such devices to shelter property from the new levy. As the new levy was only announced in the December Budget there seems little reason to count property placed in discretionary trusts etc anytime before say 6/12 months ago. Individuals may have used entities such as these over the years for any number of legitimate purposes (e.g. to ensure children do not get hands on excessive wealth too early in life, etc) and it would seem harsh to count property so disposes of as the property of the transferor for the purposes of the new domicile levy. Accordingly we would suggest that only property placed in discretionary trusts etc in the 6/12 months prior to the announcement of the levy and property placed in such entities after the Budget announcement be counted as property of the transferor.

3. Again in looking at possible aggregation rules we may be too harsh in aggregating property transferred (at less than market value) before the announcement of the domicile levy without some limitation on how far back one looks. It might be best not to count such transfers of property to spouses and minor children made more than 6/12 months before the announcement of the levy. If the spouses/minor children are Irish domiciled in their own right they will, of course, be subject to the levy in their own right if they meet the various tests. Property transferred at less than market value after the announcement of the levy should, possibly, be counted as the property of the transferor. Although if the transferee is also liable in his/her own right then some rule will be needed to ensure that the same property is not double counted. On balance it might be best to ignore such property transfers and count the property as remaining the property of the transferor without counting it as the property of the spouse/minor child.

4. Exemptions: You may want to give some more thought to exemption PLCs. On balance we do not think that the mere existence of the new levy would prompt Irish listed PLCs to delist. In any event the trading company exemption would apply to the more important PLCs. If there is to be an exemption for trading companies (so as to minimise the impact of the levy on investment decisions) then it would be best to ensure that a holding company whose primary business is the holding of shares in trading companies is also excluded.

Eugene.

-----Original Message-----
From: Ryan, Paul [mailto:Paul.Ryan@finance.gov.ie]
Sent: 13 January 2010 12:06
To: Creighton, Eugene
Subject: RE: Domicile levy

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This e-mail has been received by the Revenue Internet e-mail service. (IP)

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Thanks Eugene

-- -Original Message-----
From: Creighton, Eugene [mailto:ecreight@revenue.ie]
Sent: 13 January 2010 11:48
To: Ryan, Paul
Subject: Domicile levy

Paul,

Slightly expanded and revised note and draft for attention.

Eugene

<<Domicile Levy-notes.doc>> <<domicile-draft.doc>>

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http://www.revenue.ie/en/practitioner/secure-email.html

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15

Finance Bill 2010 - Domicile Levy

Coverage

An individual who is Irish-domiciled and an Irish citizen, and who is covered by the following criteria:

- Whose worldwide income exceeds €1 million;
- Whose Irish-located property is greater than €5 million; and
- And whose liability to Irish Income Tax was less than €200,000;

-

- Will pay a Domicile Levy of €200,000

Features

- The Domicile Levy is a straight-forward charge for a fixed amount of €200,000
- The Levy is not calculated by reference to the value of an individual's property or capital.
- The Levy is not calculated by reference to an individual's income.
- 'Property' has the same meaning as in existing taxation legislation, it covers real property (land, etc) and other assets such as cash, deposits, shares, etc
- The Domicile Levy is not an Income Tax or tax on income; it is also not a Property Tax or tax on property – it is a charge on individuals who meet certain criteria relating to wealth, liability to Income Tax and, most importantly, domicile and an Irish citizenship.
- It will be self-assessed under the pay and file system.

Issues

- Relatively easy for an individual to renounce citizenship to avoid the Levy
- D/JELR to review people renouncing citizenship with a view to tightening up procedures if it becomes a problem
- Irish citizenship is not normally used as a determinant of tax liability, other than for the remittance basis of Income Tax, which is a relief from taxation.
- Our network of Double Taxation Treaties (DTA) provide for credits against taxes paid by an individual in a foreign jurisdiction on their worldwide income so that they are not subject to double taxation; this is done by specifying a list of taxes covered by the DTA such as Income Tax, CGT and "similar taxes after the making of the DTA". As the Domicile Levy will be payable on an individual's worldwide income, they will attempt to get a credit in a foreign jurisdiction for the Levy paid by them but this may be possible as it is not covered within the definition of taxes under the DTA. This may lead to potential litigation by such individuals and protracted discussions between Revenue and other Tax Authorities about the precise meaning of the Levy which could, in time, damage our DTA relations.

DEPT OF FINANCE PAGE 87/18

FB 10 # 77 (16)

Finance Bill 2010 - Domicile Levy

Mr. Derek Moran 27/I/10
Mr. Jim O'Brien to see please 27/1

Mr. Brophy,

Minister, from Paul Ryan

Overview of issue

1. Our recent discussion on the format of the Domicile Levy, which you announced in the Budget Speech, refers. Set out below are the key features of how the Levy arising from our discussions where there was a cumulative domicile/citizenship test combined with a 'fixed' charge on persons covered by the criteria underpinning the levy rather than a charge calculated by reference to income or property.

2. There are issues of concern around citizenship and Double Taxation Treaties (DTAs) that you may wish to discuss further.

Key features

Coverage

An individual who is Irish-domiciled and an Irish citizen, and who is covered by the following criteria:

- Whose worldwide income exceeds €1 million;
- Whose Irish-located property is greater than €5 million; and
- And whose liability to Irish Income Tax was less than €200,000;

- Will pay a Domicile Levy of €200,000

Notable Aspects

- The Domicile Levy is a straight-forward charge for a fixed amount of €200,000
- Not calculated by reference to the value of an individual's property or capital.
- The Levy is not calculated by reference to an individual's income.
- 'Property' has the same meaning as in existing taxation legislation, it covers real property (land, etc) and other assets such as cash, deposits, shares, etc
- The Domicile Levy is not an Income Tax or tax on income; it is also not a Property Tax or tax on property – it is a charge on individuals who meet certain

criteria relating to wealth, liability to Income Tax and, most importantly, domicile and an Irish citizenship.

Issues

Citizenship v domicile

Irish citizenship is not normally used as a determinant of tax liability, other than for the remittance basis of Income Tax, which is a relief from taxation. If the Levy was to apply to individuals who are both Irish citizens and Irish-domiciled, domicile is by far the stronger provision because an individual cannot easily revoke domicile.

Interplay with Double Taxation Treaties

Our network of Double Taxation Treaties (DTA) provide for credits against taxes paid by an individual in a foreign jurisdiction on their worldwide income so that they are not subject to double taxation; this is done by specifying a list of taxes covered by the DTA such as Income Tax, CGT and "similar taxes after the making of the DTA". As the Domicile Levy will be payable on an individual's worldwide income, they will attempt to get a credit in a foreign jurisdiction for the Levy paid by them but this may not be possible as it is not covered within the definition of taxes under the DTA. This may lead to potential litigation by such individuals and protracted discussions between Revenue and other Tax Authorities about the precise meaning of the Levy which could, in time, damage our DTA relations.

Foreign Investors

It is considered that the 'domicile' test is sufficient to ensure that foreign investors in Ireland are not liable to the Levy. Although such investors might secure Irish citizenship, it is very unlikely that they would ever renounce their domicile of their native jurisdiction. In any event, the tendency for investors to take out citizenship has declined in recent years.

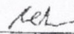
Other related matters

A related matter involves the possibility of harmonising Irish rules about residency and the counting of days with those of the UK. In this regard, you specifically asked about harmonising day of departure/day of arrival arrangements with the UK.

Having reviewed those arrangements in the UK, we found that they have abolished the departure/arrival arrangements in 2008. Their regime that replaced that arrangement is, in essence, a form of Cinderella Rule which was introduced in

Finance Act 2008 with effect from 6th April of 2008 – the relevant extract from the legislation is attached. Prior to this, the UK did not count either days of arrival or days of departure as days of presence for residence purposes toward the 183 figure for a year.

You may wish to discuss further.



Capital Taxes and Savings Policy Unit
27th January, 2010

(17)

[Note for Minister: This section is subject to Committee Stage amendments]

SECTION 141

DOMICILE LEVY

SPEAKING NOTE

This section inserts a new Part, Part 18C, into the Taxes Consolidation Act 1997. This new Part contains provisions relating to a Domicile Levy which was announced in the Budget of last December. Deputies will be aware that the Budget Speech indicated that it was being introduced with the intention of ensuring that wealthy Irish-domiciled individuals made a contribution to the State during these times of economic and fiscal difficulty.

The Levy is charged on an individual who is Irish-domiciled and an Irish citizen whose:

- world-wide income exceeds €1m;
- Irish-located capital is greater than €5m; and
- liability to Irish Income Tax in a relevant tax year was less than €200,000.

The amount of the levy is €200,000 and is payable annually where the conditions referred to above are met. Irish income tax paid by an individual will be allowed as a credit against domicile levy.

The Levy is payable on a self-assessment basis on or before 31st October in the year after the valuation date.

The valuation date is 31st December each year.

SECTION 141

DOMICILE LEVY

DETAILED NOTE

This section inserts a new Part, Part 18C, into the Taxes Consolidation Act 1997, which contains provisions relating to domicile levy.

Section 531AA(1) of the new Part 18C contains definitions that are used throughout the new provisions. A "relevant individual" is an individual:

- who is domiciled in, and a citizen of, the State in a tax year,
- whose world-wide income for a tax year is more than €1m,
- whose liability to income tax in the State for a tax year is less than €200,000, and
- the market value of whose Irish property on the valuation date in a tax year is in excess of €5m.

The term "Irish property" means all property, situate in the State, to which an individual is beneficially entitled in possession on a valuation date, but does not include —

- shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades,
- shares in a holding company which derive their value from subsidiaries which wholly or mainly carry on a trade or trades.

The term "world-wide income" means essentially an individual's gross income without regard to exemptions or reliefs with the exception of maintenance payments.

The term "valuation date" means 31st December in a tax year.

Section 531AA(2) provides that for the purposes of Part 18C, where the whole or the greater part of the market value of any share in a company incorporated outside the State that would be a close company if it were incorporated in the State is attributable, directly or indirectly, to property situate in the State. This is an anti-avoidance provision to prevent Irish-situate property from being transferred to an offshore company that would be a close company if it were resident in the State.

Section 531AA(3) provides that in estimating the value of property for the purposes of this Part, no deduction will be made for debts or encumbrances.

Section 531AA(4) provides that references in Part 18C to the Revenue Commissioners will be construed as including references to any of their officers.

Section 531AC provides for the granting of a credit for income tax paid against domicile levy.

Part 18C also includes provisions relating to the valuation of property, appeals regarding the value of real property, the delivery of returns, the making and amending of assessments by the Revenue Commissioners, the right of the Revenue Commissioners to make enquiries and amend assessments.

The provisions of Chapter 1 of Part 40, Chapter 1 of Part 47 and section 1080 of the Taxes Consolidation Act 1997 which relate to appeals, penalties and interest charged on outstanding tax respectively are applied to domicile levy.

Section 141 applies for the year of assessment 2010 and subsequent years of assessment.

The levy will ensure that wealthy citizens make a contribution to the national finances at this time of difficulty.

[Note for Minister: Amendments no. 104, 105, 107 and 115, tabled by Deputy Bruton, have been ruled out of order.]

FINANCE BILL 2010

DÁIL ÉIREANN — SELECT COMMITTEE

AMENDMENTS No. 102 to 124

SECTION 141

[Text of amendments set out in the list of amendments published by the Bills Office]

SPEAKING NOTE

I propose to take amendments nos. 102 to 124, inclusive, together.

These amendments relate to section 141 of the Bill, which contains provisions relating to a Domicile Levy which I announced in last December's Budget. Deputies will be aware that the Budget speech indicated that it is being introduced with the intention of ensuring that wealthy Irish domiciled individuals make a contribution to the State during these times of economic and fiscal difficulty.

Amendment no. 108 contains anti-avoidance provisions that are designed to prevent individuals from transferring Irish-situate property to spouses, minor children, discretionary trusts or other entities. The absence of these provisions would render section 141 of the Bill largely ineffective as it currently stands because it presents avoidance opportunities which these amendments will close off. **Amendments nos. 102, 103, and 106** contain definitions which relate to the anti-avoidance provisions in **amendment no. 108**.

Amendment no. 113 is a technical amendment to clarify the way the credit for income tax paid will work.

Amendment no. 114 substitutes a new section 531AF for the existing section 531AF, to clarify the matters that may be included in the return to be delivered by taxpayers to Revenue under this section. The new section provides that a relevant individual is obliged to deliver a full and true return on or before 31st October in the year after the valuation date (i.e. 31st December of each year), together with the payment of Domicile Levy, of all such matters and particulars in relation to the determination of liability to the Levy as the Revenue Commissioners may require.

Amendment no. 114 also substitutes a new section, section 531AG, into Part 18C of the Taxes Consolidation Act 1997, which Part is being inserted into the Taxes Consolidation Act 1997 by section 141 of the Bill. The new section 531AG provides that the Revenue Commissioners may give an opinion to an individual who is considering making a significant investment in the State as to whether or not the individual would be likely to be regarded as an individual who is domiciled in, and a citizen of, the State in a relevant tax year. There is, however, no obligation on the Revenue Commissioners to give such an opinion.

The other amendments renumber sections and subsections in the Bill as a result of the insertion of the new provisions, and correct drafting errors.

I commend these amendments to the Committee.

Deputy Bruton tabled a number of amendments which have been ruled out of order. The effect of these amendments would have been that non-Irish situate property would be taken into account in determining the €5m capital test. I decided to limit the imposition of the Levy to persons who have significant Irish capital, rather than significant world-wide capital, on the basis that the levy is primarily designed to secure a contribution from those who have a significant and ongoing presence in this country, but who do not make a significant contribution in terms of paying income tax.

One of the possible effects of the Deputy's amendment would be to impose the Domicile Levy on a person who, although an Irish citizen and Irish-domiciled with significant world-wide capital, has little or no Irish property or income and who seldom, if ever, visits the country. It was never the intention that such a person would be exposed to the Domicile Levy.

As I have said the levy is aimed at those who have a significant and on-going connection with Ireland represented by significant Irish located capital and who make little, if any, contribution to the country in terms of paying income tax.

I presume that **Amendment 110** is consequential on Deputy Bruton's other amendments on the Domicile Levy which have been ruled out of order. This would have the effect of deleting an anti-avoidance measure which prevents an individual circumventing the Domicile Levy by transferring Irish property into a foreign close company in which the individual owns shares. The provision would not be necessary if Deputy Bruton's amendment was accepted.

This amendment, if accepted on its own, will undermine the intention of the levy and, therefore, I cannot accept it.

Background note

Section 141 of the Bill inserts a new Part, Part 18C, into the Taxes Consolidation Act 1997. This new Part contains provisions relating to a Domicile Levy which was announced in the Budget last December.

The Levy is charged on an individual who is Irish-domiciled and an Irish citizen whose:

- World-wide income exceeds €1m,
- Irish-located capital is greater than €5m; and
- Liability to Irish Income Tax in a relevant year was less than €200,000.

The amount of the Levy is €200,000 and is payable annually where the conditions referred to above are met. Irish income tax paid by an individual will be allowed as a credit against the Domicile Levy.

The valuation date is 31st December each year. The Levy will be payable each year on a self-assessment basis on or before 31st October in the year following the valuation date. The Levy for 2010 will, therefore, be due and payable on or before 31st October 2011.

(18)

SECTION 136

AMENDMENT OF SECTION 531AA (INTERPRETATION (PART 18C)) OF PRINCIPAL ACT

SPEAKING NOTE

This section gives effect to the proposal in the Budget statement that citizenship be removed as a requirement for the payment of domicile levy. This means that, regardless of citizenship, the domicile levy will be payable by Irish-domiciled individuals whose Irish assets are exceed €5m, whose worldwide income exceeds €1m and whose liability to Irish income tax for the relevant year is less than €200,000. An individual therefore cannot avoid the levy by renouncing citizenship, if he or she meets the other conditions for paying the levy.

The amendment applies to domicile levy chargeable for the year 2012 and subsequent years.

Request Ref: FOI/002/2014

14 February 2014

Mr Charles Garavan

Re – Freedom of Information Request – Domicile Levy

Dear Mr. Garavan,

I refer to the request which you made under the Freedom of Information Acts 1997 and 2003 for access to records in relation the Domicile Levy, the background to the introduction of provisions (including perceived need for and aim of provisions). Telephone conversations with Mr Liam Smith and Ms Anita Kelly of this office, under which you agreed to narrow your request and confine it to electronic records, refer.

In response to your request, I have decided to grant your request the records detailed on the attached schedule. Please find attached copies of the records released to you under this request.

If you have any queries Ms Anita Kelly may be contacted by direct telephone at number (01) 6696310. Anita will endeavour to answer any questions you may have, and to assist you generally in this matter.

In any correspondence with this Department regarding your FOI request please quote the above Request Reference.

Yours sincerely,

Donal Murtagh
Deciding Officer

Tithe an Rialtais
Sráid Mhuirfean Uacht
Baile Átha Cliath 2
Éire

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http://www.finance.gov.ie

Government Buildings
Upper Merrion Street
Dublin 2
Ireland

Name: **Mr Charles Garavan**
Ref No: **002-2014**
Request Records re Domicile Levy (electronic/backrground to provisions)
Schedule of Records: Summary of decision making

Record No.	Brief Description and Date of Record	File Ref.	No. of Pages	Decision: Grant/ Part Grant/Refuse	Basis of Refusal - Section of Act	Reason for Decision	Public Interest Considerations if applicable (for and against release)	Identify deletions where record is part refused
1	Email M O Grady 07.12.2009	F49/19/10	2	Grant				
2	Email D Moran 08.12.2009	F49/19/10	3	Grant				
3	Email E Creighton 08.12.2009	F49/19/10	4	Grant				
4	Email M O Grady 08.12.2009	F49/19/10	3	Grant				
5	Email E Creighton 08.12.2009	F49/19/10	7	Grant				
6	Email D Moran 08.12.2009	F49/19/10	2	Grant				
7	Domicile Levy note - 09.12.2009	F49/19/10	2	Grant				
8	Domiile Levy Q & A 09.12.2009	F49/19/10	9	Grant				
9	Fax E Creighton 21.01.2010	F49/19/10	4	Grant				
10	Email E Creighton 23.01.2010	F49/19/10	1	Grant				
11	Email M Buckley 18.02.2010	F49/19/10	4	Grant				
12	Email M Buckley 23.02.2010	F49/19/10	7	Grant				
13	Email M Buckley 23.02.2010	F49/19/10	3	Grant				
14	Email M Buckley 03.03.2010	F49/19/10	6	Grant				
15	Email M Buckley24.03.2010	F49/19/10	7	Grant				
16	Briefing - 15.12.2010	F49/19/10	2	Grant				
17	Email L Smith 23.12.2010	F49/19/10	4	Grant				
18	Email L Smith 08.06.2011	F49/19/10	1	Part Grant		personal information		1
19	Email M Buckley 05.09.2011; extracts from Forfas report and itemised Spreadsheet	F49/19/10	5	Grant				
20	Email M Buckley 24.11.2011	F49/19/10	2	Grant				
21	Email Des O Leary 24.11.2011	F49/19/10	2	Grant				
22	Email E Creighton 25.11.2011	F49/19/10	10	Part Grant (4)		Material not relevant to request		3-9; 10
23	Email Des O Leary 27.11.2011	F49/19/10	3	Grant				
24	Email E Creighton 28.11.2011	F49/19/10	12	Part Grant (6)		Material not relevant to request		5-10; 11,12
25	Email E Creighton 28.11.2011	F49/19/10	6	Grant				

Moran, Derek

From: O'Grady, Michael (Commissioner) [mogrady@revenue.ie]
Sent: 07 December 2009 13:37
To: Moran, Derek
Cc: Creighton, Eugene
Subject: RE: Might look like this in speech!

①

Derek,

As discussed, some concern here about the interaction with tax treaties: if this is to be an "Income Tax" it will cut across treaty taxing rights. Advice from our International side is that this should be called a "domiciliary levy" to give us some cover. Also this needs to be a credit aginst any Income Tax paid (to preserve the status quo for "resident doms"). Probably no need to be explicit about this provided the speech indicates this is targetted against wealthy doms who pay little or no Income Tax here.

We're suggesting a few minor changes to the text - as highlighted below - to deal with these points.

Michael

-----Original Message-----
From: Moran, Derek [mailto:Derek.Moran@finance.gov.ie]
Sent: 07 December 2009 11:44
To: O'Grady, Michael (Commissioner)
Subject: Might look like this in speech!

****

This e-mail has been received by the Revenue Internet e-mail service. (VOI)

A special policy has been applied and this e-mail has been scanned for viruses and program code.

Note: The content has not been scanned. (Virus Only Inbound Policy))

****

"Our tax treatment of non-resident individuals is broadly in line with that of most other OECD countries. However, there is a requirement to ensure that every wealthy Irish domiciliary who pays little or no Income Tax here makes a contribution to the State, especially during times of economic and fiscal difficulty.

In order to deliver on this objective measures will be introduced that will impose on all Irish domiciled individuals, whose worldwide income exceeds €1 million and Irish-located wealth is greater than €5 million, a requirement to pay an Irish Domiciliary Levy of €200,000 per annum regardless of where they are tax resident. The full details of how this will operate will be set out in the Finance Bill."

Derek Moran
Assistant Secretary
Department of Finance

09/03/2010

Moran, Derek

From: Moran, Derek
Sent: 08 December 2009 18:10
To: 'Creighton, Eugene'
Cc: O'Grady, Michael (Commissioner)
Subject: RE: Dom Levy

Many thanks

I have advised him that he should keep this at a high level and keep repeating that we will flesh out in the FB

-----Original Message-----
From: Creighton, Eugene [mailto:ecreight@revenue.ie]
Sent: 08 December 2009 18:04
To: Moran, Derek
Cc: O'Grady, Michael (Commissioner)
Subject: FW: Dom Levy

Derek,

Attached find some notes to supplement main note.

Eugene

<<Domicile-Levy.doc>>

```
>  -----Original Message-----
> From:      O'Grady, Michael (Commissioner)
> Sent:      08 December 2009 11:04
> To: 'Moran, Derek'
> Cc: Creighton, Eugene
> Subject:  Dom Levy
>
> Derek:
>
> *   Having a double nationality-cum-domicile test before this tax kicks
> in would be unusual. My own view is that it's better to stick with
> domicile unless there's a desire to present this partly as a price
> wealthy Irish nationals living abroad have to pay for the privilege of
> holding on to their Irish passport.
> *   Neutral on the 30-day physical presence test.  I can see the
> presentational advantages.
> *   For simplicity, would prefer to see this as a flat tax of EUR200K
> (creditable against income tax) - ie once the minimum
> income/wealth/physical presence thresholds are met - rather than as a
> progressive wealth tax charged at 4%.  The reality is that no
> non-resident caught by the tax is in any event going to pay > EUR200K.
> However, again I can see that presenting this as a wealth-type tax might have
attractions.
> *   On the tax base, rather than getting involved in lists of what's in
> or out and valuation rules, I think we should simply piggyback on
> existing CAT rules in this area*.
>
>
> I attach a suggested revised version of your note incorporating the
> CAT piggyback idea and some other suggestions e.g. saying something
> about why we're using domicile as the main test.
>
> Michael
>
>  <<Domiciliary Levy1.doc>>
> * Eugene is preparing a short list of what's in/out under the CAT
> rules ("situs" rules for things like moveable property, shares etc.);
> they'll have it later this morning
>
```

1

Domicile Levy

Measure

- Wealthy Irish non-residents who remain domiciled in Ireland must contribute to the State during this time of economic and fiscal difficulty.

- Measures will be introduced to impose a Domicile Levy on all Irish-domiciled individuals whose:

  - World-wide income exceeds €1 million
  - Irish-located capital is greater than €5 million
  - Pay less than €200,000 in Income Tax

- Wealthy individuals domiciled in Ireland who are covered by these factors will pay a **Domicile Levy of €200,000** regardless where they live or where they are tax resident.

- Capital includes: land and buildings, other property (art work, etc), bank deposits, shares and other investments.

- Full details of how this will operate will be set out in the Finance Bill.

Domicile

- Domicile is a general legal concept, distinct from a person's nationality and place of residence: a person might not be resident in Ireland (or tax resident in Ireland), but they may still be domiciled in Ireland.

- A person is normally domiciled in the State where they have their permanent home.

- A person must have a domicile and only one domicile can be held at a time.

- Domicile is based on the notion of a permanent home, determining a person's domicile covers the following indicators:

  - Born in Ireland or has lived in Ireland for a large part of their life.
  - Regularly visits Ireland.
  - Maintenance of substantial assets here, including a residence.
  - Near-family members resident and domiciled in Ireland.

  - Establishing domicile can require an in-depth examination of a person's background, lifestyle and intentions over the course of their lifetime. This can extend to a person's family.

- There are two types of domicile:

  - by origin (where you are born and follows a person's father's domicile)

(7)

- choice: a person leaves their current country of domicile to settle elsewhere by establishing a physical presence there with intention to reside there permanently.

Domicile Levy

What is the Domicile Levy?

The Domicile Levy is being introduced to ensure that wealthy individuals, regardless of their residence, who are domiciled in Ireland, will make a contribution to State during this time of economic and fiscal difficulty.

Who will the new Domicile levy affect?

Irish domiciled individuals, wherever resident, who:

- Have a world-wide income is greater than €1 million
- Own Irish-located capital is greater than €5 million
- Pay €200,000 or less in Irish Income Tax

The overall effect is that levy should be payable by non-resident, but Irish domiciled, individuals with worldwide income of €1,000,000 or more and Irish located assets of greater than €5,000,000 who pay less than €200,000 in Income Tax.

People who are not covered by these three factors will not be liable to the Levy, this includes wealthy individuals who have paid more than €200,000 in Irish Income Tax.

How much is the new Domicile Levy?

Wealthy individuals domiciled in Ireland will pay a Domicile Levy of €200,000 regardless where they live or where they are tax resident if they:

- Have a world-wide income is greater than €1 million
- Own Irish-located capital is greater than €5 million
- Pay €200,000 or less in Irish Income Tax

[This question hasn't been answered. The other document suggests the levy is €200,000. Is that the answer, or is it, "full details will be in the Finance Bill? – LS]

(8)

Will Irish resident and domiciled individuals with worldwide income greater than €1 million have to pay?

Irish resident and domiciled individuals with world-wide income greater than €1 million should not, in general, be liable to the levy if they pay €200,000 or more in Irish Income Tax.

If such individuals have used tax shelters, or are in receipt of exempt income, they are still likely to have paid Income Tax of €200,000 or more due to the operation of the high earners' restriction ('horizontal measure') as enhanced in the Budget.

Therefore, it is only those non-resident domiciled individuals who have world-wide income greater than €1 million and own Irish-located capital greater than €5 million, who pay less than €200,000 or less in Irish Income Tax will have to pay the Levy.

Why not just make non-resident nationals liable to Income Tax?

Non-resident nationals are already liable to Income Tax to the extent that they have Irish-source income. An extension of Irish Income Tax to the world-wide income of non-resident nationals would be very difficult because of the tax treaties which Ireland has entered into with other countries.

These treaties allocate taxing rights between countries on the basis, primarily, of residence but also as respects the income source for some types of income such as rents from property.

To implement world-wide taxation of Irish nationals would require the renegotiation of all our tax treaties. Some countries may resist renegotiation or refuse to renegotiate or seek different terms for other areas of taxation.

As it is unlikely that other countries would readily consent to give up their taxing rights where an Irish national was resident in that country. The result of imposing Irish taxation on the basis of nationality would be double taxation by Ireland and the country of residence.

(8)

Why not impose the levy on non-resident, but Irish-domiciled individuals?
Limiting any charge to non-residents may give rise to EU law difficulties in the case of Irish domiciled persons resident in Ireland moving to another EU/EEA country.

Such a person would not be liable to the charge while resident in Ireland but immediately on moving to and becoming tax resident in another EU/EEA country would become liable to the levy. This is likely to be in breach of EU law.

Is the new Domicile Levy the same as the UK's Domicile ('non-doms') Tax?
No, the Domicile Levy is not the same as the UK 'non-Doms' tax.

The UK has a special tax charge on resident, but not domiciled, persons who are eligible for the "remittance basis" of taxation where they are only taxed on the income they remit to the UK. In the main, these are individuals who come from abroad to live in the UK but remained domiciled elsewhere, usually their country of origin.

The UK Remittance Basis Charge (RBC) is designed to get a tax contribution from those who, while tax resident in the UK, are not liable to much taxation because they do not actually remit any income to the UK.

In contrast, the new Domicile Levy announced in the Budget applies to Irish domiciled, but non-tax resident persons who have substantial, permanent and on-going links with this country but who do not pay much Irish income tax. It is designed to ensure that such persons with substantial Irish based assets now make an appropriate tax contribution.

[Ireland also has a remittance basis for non-domiciled and non-ordinarily resident individuals. – LS]

How does the UK's Remittance Basis Charge (RBC) work?
Basically, the remittance basis of taxation means the person is taxed on UK source income in full but on foreign income only to the extent that the person remits the income to the UK. Persons liable to the remittance basis of taxation may choose to pay income tax on the normal basis or may choose to pay income tax based on the remittance basis.

(8)

Where a person opts for the remittance basis of taxation the person losses his/her entitlement to UK personal tax allowances and reliefs. In addition, certain long term UK residents who opt for the remittance basis are liable to the "remittance basis charge" (RBC).

The RBC is an annual tax charge of €30,000. It represents tax on a part of the foreign income which is left outside the UK and is payable in addition to any UK tax that is paid on UK income or foreign income remitted to the UK.

(8)

What is Domicile?
Domicile is a general law concept and it is not defined in tax law.

A person's domicile is distinct from their nationality and from their place of residence. A person might not be resident in Ireland, but still be domiciled in Ireland.

Domicile is based on the notion of a person's permanent home.

The fact that a person is born in Ireland, has lived in Ireland for a large part of their life, regularly visits Ireland year-on-year, has substantial assets, including a residence, in Ireland or whose near family members are resident and domiciled in Ireland are good indicators that a person is Irish domiciled even if they are resident for tax purposes elsewhere.

Establishing domicile can require an in-depth examination of a person's background, lifestyle and intentions over the course of the person's lifetime. This examination will extend to areas of the person's own life and also that of his/her family.

What does Domicile mean?
Domicile is a matter of general law, not tax law. Many factors go into determining a person's domicile. These include:

- It is not possible to be without a domicile
- A person can have only one domicile
- Domicile is distinct form nationality or residence, but both these factors may have an impact on a person's domicile
- A person is normally domiciled in the country where the person has his/her permanent home
- An existing domicile continues until it is proven that a new one has been acquired.

What types of domicile are relevant for purposes of the new levy?
Two types of domicile will be primarily relevant for the purposes of the new levy:

- Domicile of origin
- Domicile of choice.

8

What is a Domicile of Origin?

A person is born with a domicile known as the domicile of origin. Normally a person assumes the domicile of his/her father. If the father has died before birth or where the parents are unmarried the person assumes the domicile of the mother.

The domicile of origin need not be the country in which a person was born (e.g. where a person is born in a country which is not their father's country of domicile).

Once a person has reached the age of majority he/she can reject his/her domicile of origin and acquire a new domicile called a domicile of choice. This is not easy to do.

In order to abandon domicile of origin the person must prove conclusively that he/she has severed all links with the country of his/her domicile of origin and re-established her/himself in the other territory – see further information below.

Even if you leave your country of your domicile of origin you will continue to be domiciled there until you acquire a domicile of choice elsewhere.

What is a Domicile of Choice?

Broadly, to acquire a domicile of choice a person must leave their current country of domicile and settle permanently in another country. This requires a person to establish a physical presence in the new country and have an intention to reside there permanently.

Factors which are relevant, include:

- The person's intentions
- Where the person is permanently resident
- The person's business interests
- The persons social and family interests
- The ownership of property
- The nature of any will made.

This list is not exhaustive.

[Also, the burden of proof is on the individual to prove his domicile to Revenue, under section 71(3) TCA, for the purposes of claiming the remittance basis. – LS]

(8)

What is the locality of assets for the Domicile Levy?

The new levy will only apply to assets situated in Ireland. It is not proposed to set out a "situs" code for determining where assets are situated as there are considerable general law rules governing this issue:

Examples of these rules are:

- Land, including buildings: Freehold or leasehold land is located in the country in which it is situated.
- Securities: A bearer security is located in the country where the certificate is situated. Registered securities are situated in the country in which the register is required to be kept.
- Debts: a simple contract debt is situated in the country where the debtor resides. A speciality debt (i.e. a debt payable under a sealed instrument) is situated where the instrument happens to be. A judgement debt is situated where the judgement is recorded.
- Tangible property such as furniture, bloodstock, etc is located where situated.
- Currency is located where situated.
- Bank balances are located in the country where the branch of the Bank at which the account is kept is situated.

(8)

What are the current residence rules?

An individual is resident in the State for tax purposes if they are present in the State for 183 days or more in a tax year; or they are present in the State for 280 days or more in two consecutive years where they are treated as present in the State for the second of those years.

Broadly speaking, individuals who are resident in the State are liable to Irish tax on their worldwide income and gains; and individuals who are not resident in the State are liable to Irish tax on Irish source income and gains.

Individuals who are resident, but not ordinarily resident in the State (that is, individuals not resident for three or more consecutive tax years) or individuals who are resident, but not domiciled, in the State (broadly speaking, individuals who do not regard Ireland as their permanent home), are taxable on Irish sourced income in full and on foreign income to the extent that such income is remitted or brought into the State.

Individuals who are resident or ordinarily resident, but not domiciled in the State, are taxable on Irish sourced capital gains in full and on foreign capital gains to the extent that the gain is remitted to the State.

Even where an Irish domiciled person establishes non-residence, he remains liable to Irish tax on income arising in Ireland (e.g. income from directorships, a trade or profession, rented properties etc.). The only income which escapes Irish tax for individuals in this category is income arising elsewhere in the world outside Ireland.

The Finance (No 2) Act 2008 tightened the rules (i.e. the 'Cinderella' rule) by providing that an individual is deemed to be present in the State for a day if the individual is present at any time during a day.

The Irish rules are in line with the OECD position generally.

(8)

How many non-residents file Irish tax returns?

According to the Revenue Commissioners, some 5,867 non-resident individuals filed Irish tax returns for the 2007 tax year (the latest year for which figures are available) in respect of their Irish-source income or income derived from working here. Many of these non-residents are foreign nationals or have a foreign domicile; and many of the non-resident Irish citizens or Irish domiciled individuals included in this figure may have become non-resident for reasons unrelated to taxation, but have retained Irish investments such as rental property. These individuals could not be categorised as 'tax exiles' under any reasonable definition of that term.

What is the tax yield from non-resident Irish citizens?

I am advised by the Revenue Commissioners that the only data available in relation to the taxable income of non-residents comes from income tax returns filed in Ireland by those non-resident individuals who have Irish-source income or income derived from working in Ireland. The available data does not distinguish between citizens and non-citizens.

For the 2007 tax year, the latest year for which data is available, aggregate Irish-taxable income shown on returns filed by non-resident individuals (of all nationalities) amounted to approximately €150 million and the related tax liability amounted to approximately €43 million. Revenue is not in a position to predict with any accuracy the equivalent figures for 2010.

Revenue

Office of the Revenue
Income and Capital
1st Floor
Stamping Building
Dublin Castle
Ph. No. 353-1-6792777 Ext.
Fax No. 353-1-6711826

(9)

Fax Transmission

TO	Ciarán Smith	Office	Finance
FROM:	Eugene Creighton	OFFICE:	Income and Capital Taxes Division
DATE:	21.1.2010	No. of Pages (incl. Cover)	4
SUBJECT:	Domicile Levy		

Message

IMPORTANT

The Information contained in this entire fax is confidential and/or privileged. This fax is intended to be read or used only by the person to whom it is addressed. If the reader of this fax is not the intended recipient, you are hereby notified that any dissemination, distribution, publication or copying of this fax is prohibited. If you receive this fax in error, please notify the sender by telephone and return this fax to the sender at the address above. Thank you.

1

(9)

Finance Bill 2010 – Domicile Levy

Mr. Derek Moran

Mr. Jim O'Brien, to see please

Minister, from Paul Ryan

Decision sought

1. In Budget 2010 you announced a new "domicile levy" to ensure that wealthy Irish domiciled individuals made a contribution to the State during these times of economic and fiscal difficulty. Your approval is sought for the detail of the levy proposals and for certain anti-avoidance features.

Background

2. The levy as announced in Budget 2010 was to apply to:
   - All "Irish national and domiciled individuals"
   - Whose worldwide income exceeds €1 million
   - Whose Irish located capital is greater than €5 million
   - And whose liability to Irish income tax was less than €200,000

   Proposals for the detail of the levy are set out below

Scope of the levy

3. **It is proposed that the levy should apply to Irish domiciled individuals as opposed to Irish nationals.** Irish citizenship is not normally used as a determinant of tax liability, other than for the income tax remittance basis, which is a relief from taxation and can be claimed by Irish citizens who are resident but not ordinarily resident in the State ~~(although there is a submission for this year's Bill to remove the income tax remittance basis for non-ordinarily resident individuals)~~. If the levy were to apply to individuals who are both Irish citizens and Irish domiciled, it could be easily avoided by renouncing citizenship. It is more difficult for an individual to claim s/he is not Irish domiciled than it would be for her/him to renounce Irish citizenship, so in that light domicile rather than citizenship or nationality should be the determining factor[1].

4. **The levy will apply to all Irish domiciled individuals who meet the income, capital and tax liability criteria.** It is not possible to limit its application to non-resident and/or non-ordinarily resident individuals as this might breach the EU treaty. In practice, Irish resident and domiciled individuals are likely to have an Irish income tax liability greater than €200,000 because of the restrictions on claiming tax reliefs. In effect therefore the €200,000 Irish income tax liability test should act to limit the levy to non-residents and non-ordinarily residents. The worldwide income test will operate using Irish tax rules (i.e. the individual will have to calculate his/her worldwide income as if they were resident in the State for the tax year).

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[1] Up to Nov 1999 the charge to CAT operated on the basis of the domicile of the disponer (i.e. where the disponer was domiciled in the State a tax charge arose). Since then, a gift or inheritance is subject to CAT if either the disponor or the donee/successor is resident or ordinarily resident (or the subject of the gift or inheritance is Irish situate property)

(9)

5. **Irish located capital should include all Irish situate property.** However, it is suggested that Irish trading companies (and holding companies whose primary business is holding shares in trading companies) should be excluded. To encourage investment in Irish publicly quoted companies, you may prefer also to exclude them from the definition of Irish situate property. However, such an exclusion would be likely to cause controversy, given the involvement of certain high profile non-residents in Irish plcs. In any event, an exclusion for trading companies would include most of the major plcs.

Married persons

6. **To ensure compliance with the Murphy decision, it is suggested that spouses living together should be subject to the levy on an individualized basis with anti-avoidance rules applying to ensure that assets, etc., cannot be swapped around so that one or both spouses fail one or other of the income, capital or tax liability tests.**

Administration

7. **The levy should be subject to the self-assessment and pay and file system.** For year of assessment 2010, the payment date will be 31 October 2011. The usual interest and penalties for late payment, late filing and incorrect returns should apply, and the levy should be subject to the usual appeal procedures via the Appeal Commissioners. Payment of the levy will be required on a provisional basis (i.e. based on Revenue's assessment) where an individual's income tax liability is not finalised by the due date.

8. **The valuation date for property should be 31 December in each year.**

9. Provision will be made for returns, assessments, appeals, collection (including interest), civil penalties, criminal offences, and other administrative matters similar to the other direct taxes.

Anti-avoidance measures

~~8.~~10. **It is proposed that, as announced, the levy should focus on worldwide income rather than capital gains.** There may be technical difficulties with including capital gains with income. However, it is possible that individuals ~~will~~ may try to avoid the levy by converting income to capital and if Revenue feel this is occurring ~~we would suggest that~~ this issue ~~should~~ could be revisited.

~~9.~~11. **Irish Property transfers (at less than full market value) to spouses, minor children and discretionary trusts after the announcement or introduction of the levy should be treated as the property of the transferor for the purposes of Irish located capital test.** ~~You may wish to extend this to property transfers from 1 January 2009.~~

~~10.~~12. **To prevent avoidance no account should be taken of mortgages or loans when calculating the €5 million Irish capital threshold.** If there are difficulties with this suggestion, you may wish to adjust the capital threshold. If a net basis is to be used there may be need to devise complicated anti-avoidance rules to ensure that an individual's overall debt is not excessively attributed to Irish located assets. It may be difficult to devise such rules in the time available.

(9)

~~11.~~13. ~~Any assets of a discretionary trust of which the individual is a settlor should be attributed to the individual in determining liability to the levy. You may wish to confine the provision to property transferred into trusts from 1 January 2009 or the date of announcement of the levy rather than to property transferred to a trust before that date.~~ [dealt with in para 9]

~~12.~~14. **Shares in a non-Irish close company where the shares derive all or part of their value from Irish situate assets should be counted as Irish assets.**

~~13.~~15. ~~**The valuation date for property should be 31 December in each year.** However, for anti-avoidance purposes any transfers which essentially allow the individual to keep control of the assets (for example, to spouses, children, discretionary trusts, etc.) within that year should be taken as being the individual's property as of 31 December.~~ [dealt with at para 9 above]

Possible drafting issues

~~14.~~16. As this is a new tax it is possible that unforeseen issues will arising during the drafting process ~~when the legislation is being drafted~~. If any of these unforeseen issues are policy matters we will revert to you for approval.

Submitted for consideration and approval please. You may wish to discuss with officials.

Capital and Savings Taxation Policy
January 2010

Smith, Liam

From:	Creighton, Eugene <ecreight@revenue.ie>
Sent:	23 January 2010 15:28
To:	Ryan, Paul
Cc:	Moran, Derek; Smith, Liam; Buckley, Michael
Subject:	Domicile levy

(10)

Paul,

As respects the nature of the charge to the domicile levy we would strongly advise that it be constructed as a levy on property by linking the rate to the value of the property subject to a maximum amount. In other words 4% of the value of Irish property over EUR5,000,000 subject to maximum levy of EUR200,000.

The reasons for this are:

Firstly, it means that the levy is a levy on property not on income. Merely requiring someone caught by the various tests to pay EUR200,000 could leave it open to that person to argue that the levy is in fact an income related levy (by virtue of the two income related tests i.e. the world-wide income test and the Irish income tax liability test). It they were to be sucessful in so arguing they may be able to make a case for treaty benefits to apply to the levy. This if sucessful could mean that they would claim treaty relief here against the levy for any income tax paid in another jurisdiction on their world wide income. They may also argue in their country of residence that they are entitled to relief in that country for any "income" related levy paid in Ireland. This could give rise to queries from treaty partners as to the nature of the levy and disputes as to whether on not tax treaty benefits apply to it. We could be dragged into such disputes even if we were to maintain that the levy was not an income tax. By clearly constructing the levy as a levy on property we will prevent such unnecessary and potentially embarassing situations arising.

The second reason for this approach is that it will provide flexibility to increase/decrease the rate and the maximum payment in the future.

Regards,

Eugene

****

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http://www.revenue.ie/en/practitioner/secure-email.html

****

Smith, Liam

From:	Buckley, Michael <mlbuckle@revenue.ie>
Sent:	23 February 2010 16:51
To:	Smith, Liam
Cc:	Ryan, Paul; Aherne, Deirdre
Subject:	Commttee Stage amendments re domicile levy
Attachments:	Domicile levy (addln materrial).doc
Importance:	High

13

Liam,

Attached is additional material re Commitee Stage amendments relating to domicile levy as discussed this morning.

Michael

<<Domicile levy (addln materrial).doc>>

****

Please note that Revenue cannot guarantee that any personal and sensitive data, sent in plain text via standard email, is fully secure. Customers who choose to use this channel are deemed to have accepted any risk involved. The alternative communication methods offered by Revenue include standard post and the option to register for our (encrypted) secure email service. http://www.revenue.ie/en/practitioner/secure-email.html

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(13)

Additional material re Committee Stage amendments relating to section 141

Summary of anti-avoidance provisions

The anti-avoidance provisions are contained in **amendment no. 108**. This amendment inserts two new subsections into section 531AA of the new Part 18C of the Taxes Consolidation Act 1997. These provisions are necessary to prevent individuals transferring Irish-situate assets at less than market value to spouses, minor children, discretionary trusts or to entities known as "foundations". The new provisions deem an individual to be beneficially entitled in possession to property which has been transferred by an individual to his or her spouse, minor children, discretionary trusts or "foundations" to be his or her property on the valuation date (i.e. 31st December each year). The amendment will apply as respects property transferred to spouses, minor children, discretionary trusts or "foundations" on or after 18 February 2010.

Discretionary trusts are trusts where the trustees have discretion to appoint income or capital to one or more persons named in the trust deed. They are not obliged to appoint assets to those persons, however. The term "discretionary trust" is defined widely – see **amendment no. 102**.

The term "foundation" (see **amendment no. 103**) is widely defined. Included within the definition are entities known as establishments and trust enterprises where the legal ownership, as distinct from the beneficial ownership, passes to a person. These entities are established under the laws of countries such as Liechtenstein, Switzerland, the Netherlands, Belgium, France, Austria and Germany.

The anti-avoidance provisions will not apply where property is transferred on or after 18 February 2010 for less than market value to a spouse or minor children under a "maintenance arrangement" within the meaning of section 1025 of the Taxes Consolidation Act 1997. In addition, the provisions will not apply to a discretionary trust or "foundation" which is established for charitable purposes under Irish law or where one or more of the objects of the trust or foundations is/are incapable of managing his/her/their affairs because of age or improvidence or physical, mental or legal capacity.

Reason for change in provision dealing with delivery of returns

The substituted section 531AF(1) provides that a relevant individual is obliged to deliver a return on or before 31st October in the year after the valuation date (i.e. 31st December of each year), together with payment of Domicile Levy, of all such matters and particulars in relation to the determination of liability to the Levy as the Revenue Commissioners may require.

Section 531AF in the Bill as published requires a relevant individual to deliver a return, together with payment of Domicile Levy, showing details of the individual's world-wide income and Irish-situate property, and such other information in relation to the determination of liability to Domicile Levy as the Revenue Commissioners may require. The substituted section 531AF will not require an individual to give details

(13)

of his or her world-wide income. It is considered that, if an individual ticks a box on a return in respect of Domicile Levy to the effect that he or she is liable to pay the Levy, this will be sufficient.

Giving of advance opinion by Revenue in certain cases

The new section 531AG provides that the Revenue Commissioners may give an individual who is considering making a significant investment in the State an opinion as to whether or not the individual would be likely to be regarded as Irish-domiciled and an Irish citizen for the purposes of the Domicile Levy. There is no obligation on the Revenue Commissioners to give such an opinion, however. This provision is designed to act as an incentive for wealthy individuals to invest in this country.

Select Committee on the Finance and Public Service

Meeting on 15 December 2010

Briefing on the Domicile levy

- The Domicile Levy was introduced in Finance Act 2010 to ensure that wealthy individuals will make a contribution to State during this time of economic and fiscal difficulty.
- It applies to Irish domiciled individuals who are also Irish citizens, wherever they are resident, who:
  - have a world-wide income greater than €1 million
  - own Irish property is greater than €5 million; and
  - pay €200,000 or less in Irish income tax
- The amount of the levy is €200,000 and is payable annually where these conditions are met. Irish income tax paid by an individual will be allowed as a credit against the Domicile Levy.
- "Irish property", for the purposes of the levy, means all property situate in the State, to which an individual is beneficially entitled in possession on the valuation date (31 December each year), but does not include assets which are essentially trading assets (shares in a trading company or a holding company of a trading company).
- The levy is imposed on persons with €5 million or more of Irish property, rather than worldwide capital, because it is primarily designed to secure a contribution from people who have a significant and ongoing presence in Ireland but do not make a significant income tax contribution.
- The normal appeals, penalties and statutory interest provisions in the Taxes Consolidation Act apply to the Domicile Levy.
- The levy legislation contains a number of provisions to prevent avoidance of the levy by transferring Irish situate property to spouses, minor children, discretionary trusts and other entities.
- It also contains a measure whereby Revenue may give an opinion to an individual who is considering making a significant investment in the State as to whether he or she would be likely to be regarded as both domiciled in and a citizen of the State in a particular tax year. This "advance opinion" system is designed to act as an incentive for wealthy individuals to invest in Ireland.

16

- The first tax year for which the Domicile Levy applies is 2010. It is not possible to know whether an individual meets the assets, income and income tax criterion for payment of the Domicile Levy until after that tax year has finished – as noted above, the "valuation date" for the levy is 31 December. The Domicile Levy for 2010 is therefore payable by the normal date for the payment of the balance of income tax for that year, which is 31 October 2011.

A.2(d) Request 4 – Revenue Commissioners (CRMS 5773/2013) and Department of Finance (FOI/002/2014)

Kelly, Anita

From:	Smith, Liam
Sent:	23 December 2010 14:03
To:	Kearney, Rosemary
Cc:	Ryan, Paul; Aherne, Deirdre
Subject:	FW: Domicile Levy
Attachments:	Dáil query from Deputy Gilmore on Domicile Levy.doc
Importance:	High

Rosemary,

Material for the Taoiseach's reply to Deputy Gilmore's query attached, cleared by Paul Ryan.

Regards,

Liam

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhpost seo a chur i gcló
Please consider the environment; only print this e-mail if you have to.

From: Kearney, Rosemary
Sent: Wed 08/12/2010 17:46
To: Ryan, Paul
Cc: Smith, Liam; Moylan, Dermot
Subject: Leaders Questions today

Paul
Please see attached request from the Taoiseach's Office for draft material to respond to a query raised this morning by Deputy Gilmore at Leaders Questions (extract attached to Paul Mooney's e-mail). I am attaching a copy of the PQ reply which I think is the one referred to in Paul's e-mail. I would be grateful if you could send the draft material to me before Monday next and I will send it on to the Taoiseach's Office.
Many thanks
Rosemary

Rosemary Kearney
Minister's Office
Department of Finance
Tel: 604 5633

From: Paul.Mooney@Taoiseach.Gov.IE [mailto:Paul.Mooney@Taoiseach.Gov.IE]
Sent: 08 December 2010 17:21
To: Kearney, Rosemary
Subject: LQ 8 Dec Gilmore

Rosemary,

(17)

Please see the following extract from today's LQ. I would be grateful if your office could send a draft response for the Taoiseach's signature **by close of play on Monday 13 December**.

Many thanks

Paul Mooney
Taoiseach's Private Office
Dept of the Taoiseach
Government Buildings
Upper Merrion St
Dublin 2

Ph: 00353 1 6194020
Fx: 00353 1 6764048
e mail: paul.mooney@taoiseach.gov.ie

Deputy Eamon Gilmore: In the budget for 2010, the Minister for Finance announced a fairly modest measure whereby tax exiles would pay a levy to the Irish State. This was subject to a number of fairly generous conditions, and the tax exiles would have an income in excess of €1 million per year and property worth more than €5 million. To date, not a single cent has been collected from that levy. In reply to Deputy Shortall, the Minister for Finance indicated a few days ago that the first amount to be collected will not be due until 31 October 2011.

Meanwhile, in yesterday's budget payments to carers have been cut for the second time by €8 per week. People on the blind pension have seen a cut for the second time, again by €8 per week. Widows have seen the same cut and people who have lost their jobs have been also cut for the second time. All these cuts, which are second cuts, will come into effect in approximately three weeks' time, at the beginning of the new year.

Will the Taoiseach explain why the measure on tax exiles, which was introduced last year, will take two years to come into effect whereas people on some of the lowest incomes in the country, including carers, widows, people who have lost their jobs and blind people, have been hit twice in the same period? The pain being inflicted on them comes into effect immediately.

The Taoiseach: I do not have the details of the issue raised by the Deputy but I will certainly follow it up. It is clearly a detailed Finance Bill matter.

(17)

Dáil query from Deputy Gilmore on Domicile Levy

Material for reply by Taoiseach

Deputy Gilmore asked on Wednesday 8 December why it appeared the Domicile Levy was taking two years to come into effect.

The Domicile Levy was introduced in Finance Act 2010 to ensure that wealthy individuals will make a contribution to State during this time of economic and fiscal difficulty. It applies to Irish domiciled individuals who are also Irish citizens, wherever they are resident, who:

- have a world-wide income greater than €1 million
- own Irish property is greater than €5 million; and
- pay €200,000 or less in Irish income tax

The amount of the levy is €200,000 and is payable annually where these conditions are met. Irish income tax paid by an individual will be allowed as a credit against the Domicile Levy.

"Irish property", for the purposes of the Domicile Levy, means all property situate in the State, to which an individual is beneficially entitled in possession on the valuation date (31 December each year), but does not include assets which are essentially trading assets. The Levy applies to persons with €5 million or more of Irish property, rather than worldwide capital, because it is primarily designed to secure a contribution from people who have a significant and ongoing presence in Ireland but do not make a significant income tax contribution.

The first tax year for which the Domicile Levy applies is 2010. It is not possible to know whether an individual meets the assets, income and income tax criteria for payment of the Domicile Levy until after that tax year has finished – as noted above, the "valuation date" for the levy is 31 December. The Domicile Levy for 2010 is therefore payable by the normal date for the payment of the balance of income tax for that year, which is 31 October 2011.

Dept of Finance
Capital and Savings Taxation Policy
December 2010

(17)

Domicile levy

- The Domicile Levy is being introduced to ensure that wealthy individuals will make a contribution to State during this time of economic and fiscal difficulty.
- It will apply to Irish domiciled individuals who are also Irish citizens, wherever they are resident, who:
  - have a world-wide income greater than €1 million
  - own Irish property is greater than €5 million; and
  - pay €200,000 or less in Irish income tax
- The amount of the levy is €200,000 and is payable annually where these conditions are met. Irish income tax paid by an individual will be allowed as a credit against the Domicile Levy.
- "Irish property", for the purposes of the levy, means all property situate in the State, to which an individual is beneficially entitled in possession on the valuation date (31 December each year), but does not include assets which are essentially trading assets (shares in a trading company or a holding company of a trading company).
- I have limited the imposition of the levy to persons with €5 million or more of Irish property, rather than worldwide capital, because it is primarily designed to secure a contribution from people who have a significant and ongoing presence in Ireland but do not make a significant income tax contribution.
- The normal appeals, penalties and statutory interest provisions in the Taxes Consolidation Act apply to the Domicile Levy.
- The levy legislation contains a number of provisions to prevent avoidance of the levy by transferring Irish situate property to spouses, minor children, discretionary trusts and other entities.
- It also contains a measure whereby Revenue may give an opinion to an individual who is considering making a significant investment in the State as to whether he or she would be likely to be regarded as both domiciled in and a citizen of the State in a particular tax year. This "advance opinion" system is designed to act as an incentive for wealthy individuals to invest in Ireland.

Kelly, Anita

From:	Smith, Liam
Sent:	08 June 2011 15:17
To:	Moran, Derek
Subject:	Domicile levy

(15)

Derek,

I received a call from on the Domicile Levy.

He was enquiring about the policy behind its introduction, specifically in relation to the offset of Irish income tax against the levy liability. He wondered whether it had been considered allowing foreign income tax paid to be offset against the levy.

I said the policy driver would have been to apply the levy to individuals who were not paying muc tax in Ireland, so on that basis foreign tax paid would not have been considered for offset. The current double taxation provisions would not cover the Domicile Levy. He asked if unilateral cred for foreign tax had been considered, as is allowed in certain other taxes. I said no.

He said he had been contacted by a Big 4 firm who had two clients who might be liable for the levy. He indicated that these individuals were considering moving assets outside Ireland so they would not be liable for the levy. [Moving assets now would be too late to affect their liability for th levy in 2010, but I did not say this.]

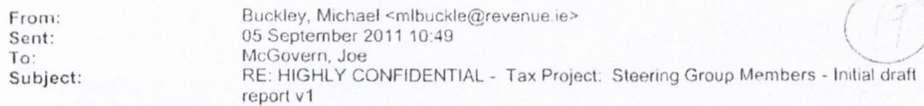
asked whether consideration had been given to changing the provisions. I said no and that we would first look at the return from the first year of the levy, which would not be received until after 31 October.

He said that CAI might make a submission on this matter but they might not make one until after that date.

Liam

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhphost seo a chur i gcló.
Please consider the environment; only print this e-mail if you have to.

Kelly, Anita



From: Buckley, Michael <mlbuckle@revenue.ie>
Sent: 05 September 2011 10:49
To: McGovern, Joe
Subject: RE: HIGHLY CONFIDENTIAL - Tax Project: Steering Group Members - Initial draft report v1

Joe,

The following observations are relevant to item no. 37:

The levy applies to an Irish-domiciled individuals who are Irish citizens whose world-wide income in a tax yaer exceeds €1m and whose Irish-situate property exceeds €5m. The levy is not a levy on an individual's income or property as such. These are merely the factors that determine whether or not the levy applies in a particular tax year. There is no reason why Irish bank accounts should be excluded from the definition of "Irish property" no more than any other category of asset.

As regards the recommendationto exclude income which has been exempted from Irish tax under a double tax treaty from the definition of "world-wide income", the levy is framed on the basis that exemptions, reliefs or deductions (apart from certain maintenance payments) are not taken into account. The definition of "world-wide income" is, therefore, based on an individual's **gross** income in a tax year. Accordingly, there is no reason why income exempted under a double taxation treaty should be excluded if other exempt income or income which is subject to reliefs or deductions is taken into account.

Michael

-----Original Message-----
From: McGovern, Joe
Sent: 02 September 2011 15:33
To: Buckley, Michael
Subject: FW: HIGHLY CONFIDENTIAL - Tax Project: Steering Group Members - Initial draft report v1
Importance: High

Michael,

Can you have a look at 37, domicile levy plese?

Joe

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 02 September 2011 15:14
To: McGovern, Joe; Lynch, Joe (ICTx_SDRP)
Cc: Aherne, Deirdre; Creighton, Eugene
Subject: FW: HIGHLY CONFIDENTIAL - Tax Project: Steering Group Members - Initial draft report v1
Importance: High

Joe, Joe,

As discussed, please find attached a copy of a draft Forfás report with various recommendations. This has gone to CBI Division in Revenue but not to ICT Division, as far as I can see. Some of the recommendations relate to your areas (11 and 45 relate to Stamp Duty, 37 relates to the Domicile Levy, 12 and 15 relate to CGT, although 12 is a purely policy issue, and 39 appears also to relate to CGT).

I was out of the office until yesterday so am only reviewing the document now. Could I ask you to have a look at the recommendations and give any observations you have please?

(19)

I understand there is a meeting on Thursday next week so if you could get back before then I'd be grateful.

Regards,

Liam
Ph 6045581

Smaoinigh ar an timpeallacht sula socraíonn tu an ríomhpost seo a chur i gcló.
Please consider the environment, only print this e-mail if you have to.

From: Tobin, Gary
Sent: 16 August 2011 12:30
To: Murtagh, Donal; Levey, Kate; Milne, Seamus; Smith, Liam; Murphy, Pat; O'Connor, Brendan
Cc: 'O'Connell, Tadhg'; 'Byrne, Jim'; Moran, Derek; 'O'Dea, Eamonn'
Subject: FW: HIGHLY CONFIDENTIAL - Tax Project: Steering Group Members - Initial draft report v1
Importance: High

Dear all

Please see attached a spreadsheet which summarises the 52 recommendations contained in a draft FORFAS report which benchmarks Ireland's business tax regime against competitor countries.

Each recommendation is listed in the spreadsheet alongside the page reference in the full report.

The full draft report is also attached.

I would be grateful if you could provide obs on those recommendations related to your area please by Friday 26 August. (We will be required to give Forfas and D/JEI obs by first week in September and this report will be feeding into their pre-Budget submission so the earlier we can get our response in – the more time we may save later on.

I have tried to highlight who has responsibility for each recommendation in the attached spreadsheet (I may not have got it right in all cases – let me know if I haven't)

Any questions – please call me.

I appreciate people are on leave – but any obs – however preliminary – would be appreciated

Kind regards

Gary

Attention:
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Scanadh an r-phost seo le Sophos agus deimhníodh go raibh sé saor ó víoras leis an bpatrúnchomhad atá in úsáid faoi láthair. Ní féidir a ráthú leis seo áfach nach bhfuil ábhar mailíseach ann.

---

(19)

11.11 Domicile levy

A new domicile levy of €200,000 was introduced in Ireland with effect from 1 January 2010. The domicile levy applies to individuals who are both Irish domiciled and an Irish citizen, and whose

- worldwide income exceeds €1 million;
- Irish property is greater than €5 million in value at the valuation date i.e. 31 December in the tax year, and
- liability to Irish income tax in a relevant year was less than €200,000.

"Worldwide income" includes an individual's gross income before any exemptions, reliefs or deductions. The term "Irish property" relates to all assets situated in Ireland that are beneficially owned by an individual on the valuation date. This includes cash held on deposit with Irish bank accounts.

The domicile levy has the potential, as we demonstrate by way of example below, to discourage investment in Ireland by non resident Irish domiciliaries. While the political context for its introduction is well understood, our findings are that a levy system of this sort is out of step with international tax norms. The levy could benefit from a cost/benefit review (assuming such a review has not already been undertaken).

The definition of Irish property within the domicile levy provisions has influenced decisions which have a detrimental impact on continued investment in Irish assets, and particularly Ireland's bank deposit base. The negative impact of this wide definition is best portrayed by way of an example.

Example:

An Irish individual relocates to Germany in 2011. He has €5 million on deposit in an Irish bank account at 31 December 2011. Assuming the other conditions above are satisfied, the individual will be required to pay an additional tax charge of €200,000 on or before 31 October 2012.

If, however, the individual chose to move the cash to a non-Irish deposit account, it would be possible to avoid a domicile levy charge.

The above example illustrates the type of negative behaviour that is created by the domicile levy. We can see above that an individual is being encouraged to remove €5 million from Ireland thus resulting in reduced funds available to Irish banks. This contrasts significantly with a regime for promoting and encouraging individuals to bring/retain assets in Ireland which is where the focus of our taxation of high net worth individuals should lie.

Another anomaly with the domicile levy is that it does not give effect to the terms of double tax treaties. In essence, where a double tax treaty provides for a particular source of income to be exempt in Ireland, the domicile levy does not take this into account i.e. this income is included in "worldwide income"

Policy option

Irish bank accounts should be excluded from the definition of "Irish property"

Income which has been exempted from Irish tax under the terms of a double tax treaty should be excluded from the definition of the "worldwide income"

(19)

37	Irish bank accounts should be excluded from the definition of "Irish property" Income which has been exempted from Irish tax under the terms of a double tax treaty should be excluded from the definition of the "worldwide income"	189	

Kelly, Anita

From:	Buckley, Michael <mlbuckle@revenue.ie>
Sent:	24 November 2011 17:20
To:	Smith, Liam
Cc:	McGovern, Joe
Subject:	RE: Budget 2012 - Sub - residence rules - v2

(20)

Liam,

It would seem that any increase in the domicile levy could only apply for the year 2012. (Increasing the charge for the year 2011 would amount to retrospective legislation and would not be permissable.)

As discussed, consideration might be given to deleting the citizenship condition in the domicile levy legislation - this would be consistent with the thrust of the proposed residence changes.

Michael

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 24 November 2011 12:56
To: Barry, Denis; McGovern, Joe; Ryan, Sinead; Buckley, Michael; O'Leary, Des
Cc: Aherne, Deirdre
Subject: Budget 2012 - Sub - residence rules - v2
Importance: High

Everyone,

Draft sub on residence issues attached. Paragraph on residence rules for Denis and Sinéad, paragraphs on CGT "specified assets" and Domicile Levy for Joe and Michael.

Obs welcome.

Regards,

Liam

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Scanadh an r-phost seo le Sophos agus deimhníodh go raibh sé saor ó víoras leis an bpatrúnchomhad atá in úsáid faoi láthair. Ní féidir a ráthú leis seo áfach nach bhfuil ábhar mailíseach ann.

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Kelly, Anita

From: O'Leary, Des
Sent: 24 November 2011 20:47
To: Smith, Liam
Cc: Aherne, Deirdre
Subject: RE: Budget 2012 - Sub - residence rules - v3

(21)

Liam,

Is it necessary to go as far as removing the citizenship tag? While it may be "easy" to renounce citizenship, is this not a major step involving loss of entitlement to an Irish passport? Such a move for a high profile Irish celebrity/business person would be a considerable statement of separation from their "Irishness". If they felt the need to go that far for financial gain, without it being of significant detriment to the State, one might well say "let them". The political intent behind the policy is to get exiles, most of whom trade on their Irish nationality, to pay a minimum tax contribution.

Penultimate sentence "Submitted for your approval"

Des

From: Smith, Liam
Sent: 24 November 2011 18:25
To: 'Buckley, Michael'
Cc: McGovern, Joe; Aherne, Deirdre; O'Leary, Des; 'Barry, Denis'; 'Ryan, Sinead'
Subject: RE: Budget 2012 - Sub - residence rules - v3

Thanks Michael,

I have amended as appropriate – v3 attached.

Liam

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From: Buckley, Michael [mailto:mlbuckle@revenue.ie]
Sent: 24 November 2011 17:20
To: Smith, Liam
Cc: McGovern, Joe
Subject: RE: Budget 2012 - Sub - residence rules - v2

Liam,

It would seem that any increase in the domicile levy could only apply for the year 2012. (Increasing the charge for the year 2011 would amount to retrospective legislation and would not be permissable.)

As discussed, consideration might be given to deleting the citizenship condition in the domicile levy legislation - this would be consistent with the thrust of the proposed residence changes.

Michael

(21)

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 24 November 2011 12:56
To: Barry, Denis; McGovern, Joe; Ryan, Sinead; Buckley, Michael; O'Leary, Des
Cc: Aherne, Deirdre
Subject: Budget 2012 - Sub - residence rules - v2
Importance: High
Everyone,

Draft sub on residence issues attached. Paragraph on residence rules for Denis and Sinéad, paragraphs on CGT "specified assets" and Domicile Levy for Joe and Michael.

Obs welcome.

Regards,

Liam

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****

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http://www.revenue.ie/en/online/secure-email.html

****

Smith, Liam

From:	Creighton, Eugene <ecreight@revenue.ie>
Sent:	25 November 2011 11:46
To:	Smith, Liam; O'Leary, Des
Cc:	O'Grady, Michael (Commissioner); Barry, Denis
Subject:	FW: Budget 2012 - Sub - residence rules - v2
Attachments:	Budget 2012 - Sub - residence rules - v2.doc
Importance:	High

(22)

Des, Liam,

These are major changes that will have significant impacts and be difficult to administer and police. We are strongly of the view that such major changes should be introduced on foot of a public consultation exercise similar to that currently under way in the UK on the exact same issue. You do not refer to this consultation or consider some of the options the UK Treasuary put out in the draft submission and I think some reference to their process is needed.

If you press ahead with actual changes, we think that bare place of abode and centre of vital interests tests without first being triggered by a breach of a day count rule will bring too many unintended people into the Irish tax net. The complexities that will eventually result from efforts to exclude such people as the various types are identified will probably eventually render the tests extremely complex and perhaps unworkable. From an administrative point of view the tests will be difficult to administer and will require extenssive resources to adequately police.

I have made some suggestions/coomments on the draft submission that you might like to consider (Denis may have some further comments). Give me a call if you want to discuss anything.

Regards

Eugene
-----Original Message-----
From: Barry, Denis
Sent: 24 November 2011 14:13
To: Creighton, Eugene
Subject: FW: Budget 2012 - Sub - residence rules - v2
Importance: High

Just received
-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 24 November 2011 12:56
To: Barry, Denis; McGovern, Joe; Ryan, Sinead; Buckley, Michael; O'Leary, Des
Cc: Aherne, Deirdre
Subject: Budget 2012 - Sub - residence rules - v2
Importance: High

Everyone,

Draft sub on residence issues attached. Paragraph on residence rules for Denis and Sinéad, paragraphs on CGT "specified assets" and Domicile Levy for Joe and Michael.

Obs welcome.

Regards,

Liam

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22

Domicile levy

32 34. Another method of raising the tax contribution from non-residents with a substantial connection to Ireland would be to increase the Domicile Levy. The levy was introduced in 2010 and applies to an individual who is Irish domiciled and an Irish citizen; whose worldwide income in the tax year exceeds €1 m; whose Irish located property is worth more than €5 m; and whose liability for Irish income tax in the year is less than €200,000. The amount of the levy is €200,000.

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33 35. The yield from the Domicile Levy is restricted by the availability of Irish income tax paid in the year as a credit against an individual's levy liability. As of 22 November 2011, only ten taxpayers had paid the levy in respect of the 2010 tax year, with a total yield of just under €1.5 m (a further yield in respect of the 2010 tax year is not expected, unless a late return is filed). There is no information available on the number of such individuals who pay Irish income tax in excess of €200,000 and who therefore would not have to pay the levy. Options which could be considered include:

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- Restrict the amount of income tax available as a credit against the levy to €100,000 – this would mean everyone liable to pay the levy would have to pay at least €100,000. However, most of the taxpayers who have paid the levy have paid the full amount.
- Increase the amount of the levy to €400,000. Based on the first Domicile Levy yield this would raise an additional €1.5 m.

34 36. There were reports of individuals renouncing Irish citizenship to avoid the Domicile Levy, so an increase in the levy would not necessarily lead to an increased yield. This could be countered by removing the "Irish Citzen" teat and apply the levy on a pure domicile basis.

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[4] The changes were (a) if an individual was temporarily non-resident and disposed of certain assets during that period, s/he was liable to any Irish CGT due on the disposal on her/his return to Ireland; and (b) if an individual transferred an asset to a spouse who became temporarily non-resident, and the spouse disposed of the asset while non-resident and was not liable to Irish CGT on the disposal, the original transfer by the first spouse was treated as taxable (transfers of assets between spouses are not normally liable to CGT).

22

35 37 Another change which might be considered is changing the "Irish located-property" requirement to "worldwide property". This would prevent an individual transferring assets abroad to avoid the levy, but a worldwide asset threshold might be harder to verify.

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Recommendation

36 38 It is recommended that the Domicile Levy be increased from €200,000 to €400,000, with Irish Income Tax up to €200,000 continuing to be allowed as a credit against the levy. [Joe/Michael – could this be done for the 2012 payment, in respect of 2011 tax year, or would it have to wait for the 2012 tax year and 2013 payment? – LS] It is recommended that the citizenship test be dropped and that the levy apply on a pure Irish domicile basis.

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Kelly, Anita

From: O'Leary, Des
Sent: 27 November 2011 20:46
To: Smith, Liam
Subject: RE: Budget 2012 - Sub - residence rules - v3

(23)

Liam,

Point re citizenship accepted.

Des

From: Smith, Liam
Sent: 25 November 2011 09:40
To: O'Leary, Des
Cc: Aherne, Deirdre
Subject: RE: Budget 2012 - Sub - residence rules - v3

Des,

I'm not mad about the levy idea in itself, but the citizenship condition adds nothing to it. You can get rid of your citizenship easily (major step though it is in some ways) which makes it easy to get out of the levy, but you can't get rid of your domicile easily.

Saying "let them renounce citizenship" doesn't get us any more money. Getting rid of the citizenship condition might well do, and is more coherent in terms of taxation policy generally.

No one will necessarily know that someone has renounced his/her citizenship, and certainly it won't be possible for the State to release that information, so if renouncing your citizenship is a "statement", it's one that no one will hear, and won't prevent a "exile" from continuing to trade on her/his nationality and being a big man/woman in the local area.

There are currently five conditions which have to be met to make someone liable - citizenship, domicile, income over €1m, Irish property over €5m, Irish income tax liability under €200k. Removing one of those conditions makes it more likely that an individual will be liable.

Adding a place of abode or centre of vital interests test to the residence rules is the most appropriate thing to do but obviously the domicile levy is going to get more publicity. Given the small yield it's not going to be highly regarded but making it more likely to collect money will make it slightly more effective.

So I agree with the Revenue suggestion. You, Derek and the Minister may not, of course.

Liam

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-----Original Message-----
From: O'Leary, Des
Sent: 24 November 2011 20:47
To: Smith, Liam
Cc: Aherne, Deirdre

(23)

Subject: RE: Budget 2012 - Sub - residence rules - v3

Liam,

Is it necessary to go as far as removing the citizenship tag? While it may be "easy" to renounce citizenship, is this not a major step involving loss of entitlement to an Irish passport? Such a move for a high profile Irish celebrity/business person would be a considerable statement of separation from their "Irishness". If they felt the need to go that far for financial gain, without it being of significant detriment to the State, one might well say "let them". The political intent behind the policy is to get exiles, most of whom trade on their Irish nationality, to pay a minimum tax contribution.

Penultimate sentence "Submitted for your approval"

Des

From: Smith, Liam
Sent: 24 November 2011 18:25
To: 'Buckley, Michael'
Cc: McGovern, Joe; Aherne, Deirdre; O'Leary, Des; 'Barry, Denis'; 'Ryan, Sinead'
Subject: RE: Budget 2012 - Sub - residence rules - v3

Thanks Michael,

I have amended as appropriate – v3 attached.

Liam

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhpost seo a chur i gcló.
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From: Buckley, Michael [mailto:mlbuckle@revenue.ie]
Sent: 24 November 2011 17:20
To: Smith, Liam
Cc: McGovern, Joe
Subject: RE: Budget 2012 - Sub - residence rules - v2

Liam,

It would seem that any increase in the domicile levy could only apply for the year 2012. (Increasing the charge for the year 2011 would amount to retrospective legislation and would not be permissable.)

As discussed, consideration might be given to deleting the citizenship condition in the domicile levy legislation - this would be consistent with the thrust of the proposed residence changes.

Michael
-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 24 November 2011 12:56
To: Barry, Denis; McGovern, Joe; Ryan, Sinead; Buckley, Michael; O'Leary, Des
Cc: Aherne, Deirdre
Subject: Budget 2012 - Sub - residence rules - v2
Importance: High

2

—

Kelly, Anita

From: Creighton, Eugene <ecreight@revenue.ie>
Sent: 28 November 2011 12:11
To: Smith, Liam; O'Leary, Des
Cc: O'Grady, Michael (Commissioner); Moran, Derek
Subject: RE: Budget 2012 - Sub - residence rules - v2

(24)

Liam, Des

In looking at this again, the suggestion in paragraph 42 - extract below, although not in the specific recomendation, seems to us here to be particularly harsh as it would mean that people of Irish domicile who have no on-going connection with the State will be subject to the domicile levy. This would be particularly so if the "Irish citenzinship" condition is dropped (e.g someone who emigrated as a child to the US and who subsequently became sucessful). Even if such a person can argue that they have effectively changed their domicile there would be still a degree of doubt over whether or not the levy applies and whether or not the irish Revenue would come after such a person. The resultant uncertainty would not be good for the reputation of our tax systems.

"42. Another change which might be considered is changing the "Irish located property" requirement to "worldwide property". This would prevent an individual transferring assets abroad to avoid the levy, but a worldwide asset threshold might be harder to verify."

You might bear the above in mind in any discussions on this matter.

Eugene

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 28 November 2011 11:09
To: Creighton, Eugene
Cc: Barry, Denis; O'Grady, Michael (Commissioner); Aherne, Deirdre
Subject: FW: Budget 2012 - Sub - residence rules - v2

Eugene,

Changes in attached following comments/queries from Des below.

Liam

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-----Original Message-----
From: Smith, Liam
Sent: 28 November 2011 10:43
To: O'Leary, Des
Cc: Aherne, Deirdre
Subject: RE: Budget 2012 - Sub - residence rules - v2

Des,

Sorry about that, have amended accordingly.

24

Liam

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-----Original Message-----
From: O'Leary, Des
Sent: 27 November 2011 20:07
To: Smith, Liam
Subject: RE: Budget 2012 - Sub - residence rules - v2

Liam,

Text of recommendation missing in 33?

Last line: submitted for approval only?

Des

From: Smith, Liam
Sent: 25 November 2011 17:08
To: 'Creighton, Eugene'
Cc: O'Grady, Michael (Commissioner); Barry, Denis; O'Leary, Des; Aherne, Deirdre
Subject: RE: Budget 2012 - Sub - residence rules - v2

Eugene,

As discussed, concerns noted and taken on board, and thanks for helpful obs. Please see changes in attached where supplementary tests linked to minimum presence threshold and consultation is recommended. Sending this version to Derek now (he may think it a bit long).

Liam

Smaoinigh ar an timpeallacht sula socraíonn tú an ríomhpost seo a chur i gcló.
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From: Creighton, Eugene [mailto:ecreight@revenue.ie]
Sent: 25 November 2011 11:46
To: Smith, Liam; O'Leary, Des
Cc: O'Grady, Michael (Commissioner); Barry, Denis
Subject: FW: Budget 2012 - Sub - residence rules - v2
Importance: High

Des, Liam,

These are major changes that will have significant impacts and be difficult to administer and police. We are strongly of the view that such major changes should be introduced on foot of a public consultation exercise similar to that

Kelly, Anita

From: Creighton, Eugene <ecreight@revenue.ie>
Sent: 28 November 2011 12:58
To: Smith, Liam
Subject: RE: Budget 2012 - Sub - residence rules - v2

(25)

Thanks.

-----Original Message-----
From: Smith, Liam [mailto:Liam.Smith@finance.gov.ie]
Sent: 28 November 2011 12:54
To: Creighton, Eugene; O'Leary, Des
Cc: O'Grady, Michael (Commissioner); Moran, Derek
Subject: RE: Budget 2012 - Sub - residence rules - v2

Eugene,

As you note I wasn't recommending changing the condition to worldwide property but I wasn't explicit that I wasn't recommending it. I mentioned it because there have been reports of this happening. Paragraph redrafted as follows:

42. Another way to broaden the scope of the levy would be to change the "Irish located property" requirement to "worldwide property". This would prevent an individual transferring assets abroad to avoid the levy (there have been reports of this taking place) but a worldwide asset threshold might be harder to verify. It might also bring into charge someone who is not the intended target of the measure, such as an individual who had an Irish domicile of origin but no ongoing connection to Ireland - for example, an individual who had emigrated as a child with her/his family. Changing the assets definition is therefore not recommended.

I have also put the recommendations in the start, as requested by Des - revised version attached.

Liam

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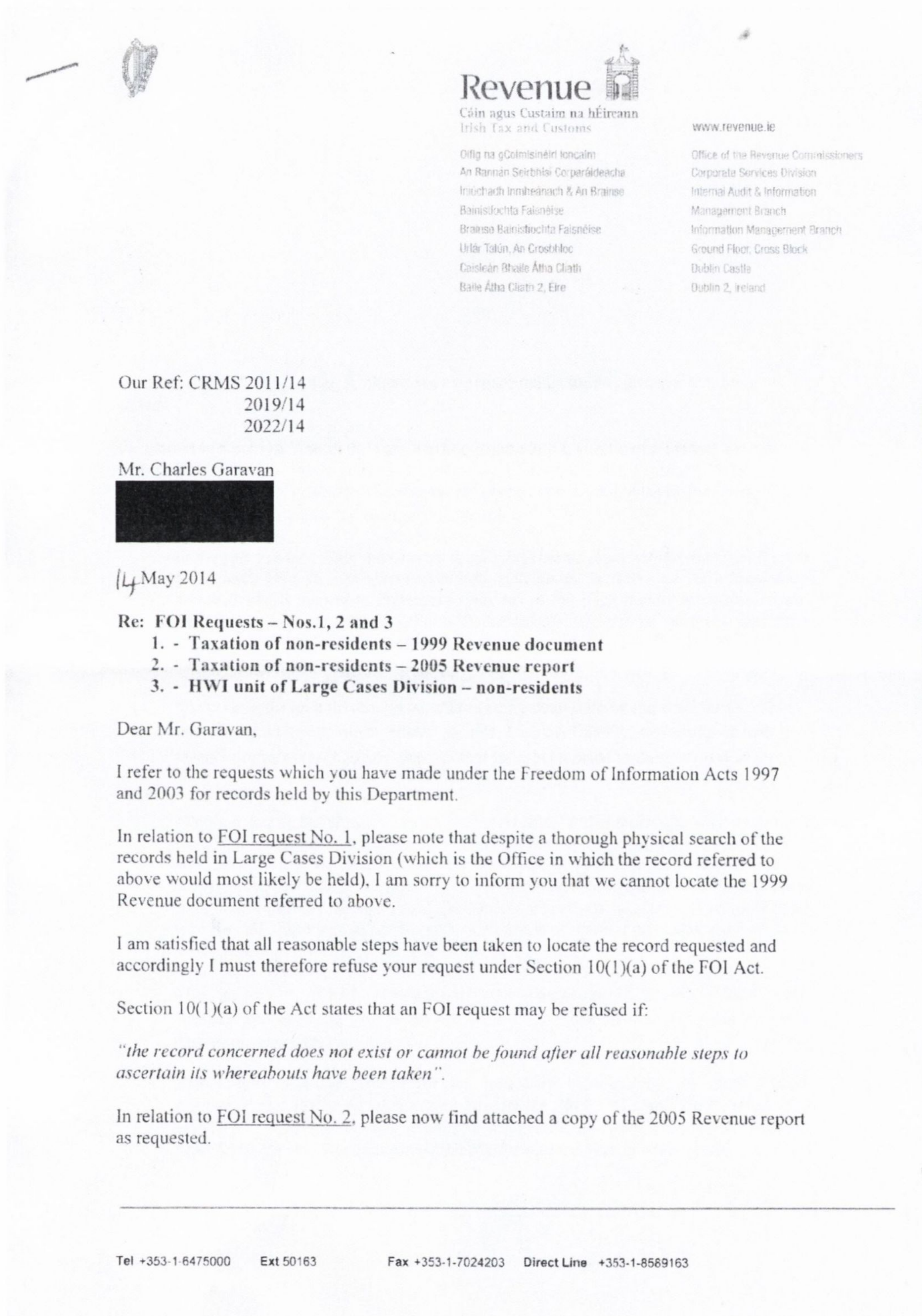
Subject: RE: Budget 2012 - Sub - residence rules - v2

Liam, Des

In looking at this again, the suggestion in paragraph 42 - extract below, although not in the specific recomendation, seems to us here to be particularly harsh as it would mean that people of Irish domicile who have no on-going connection with the State will be subject to the domicile levy. This would be particularly so if the "Irish citenzinship" condition is dropped (e.g someone who emigrated as a child to the US and who subsequently became sucessful). Even if such a person can argue that they have effectively changed their domicile there would be still a degree of

A.2(e) Requests 5, 6 and 7 – Revenue Commissioners (CRMS 2011/14, CRMS 2019/14 and CRMS 2022/14)



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Baile Átha Cliath 2, Éire

Office of the Revenue Commissioners
Corporate Services Division
Internal Audit & Information Management Branch
Information Management Branch
Ground Floor, Cross Block
Dublin Castle
Dublin 2, Ireland

Our Ref: CRMS 2011/14
2019/14
2022/14

Mr. Charles Garavan

14 May 2014

Re: FOI Requests – Nos.1, 2 and 3
1. - **Taxation of non-residents – 1999 Revenue document**
2. - **Taxation of non-residents – 2005 Revenue report**
3. - **HWI unit of Large Cases Division – non-residents**

Dear Mr. Garavan,

I refer to the requests which you have made under the Freedom of Information Acts 1997 and 2003 for records held by this Department.

In relation to FOI request No. 1, please note that despite a thorough physical search of the records held in Large Cases Division (which is the Office in which the record referred to above would most likely be held), I am sorry to inform you that we cannot locate the 1999 Revenue document referred to above.

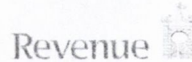
I am satisfied that all reasonable steps have been taken to locate the record requested and accordingly I must therefore refuse your request under Section 10(1)(a) of the FOI Act.

Section 10(1)(a) of the Act states that an FOI request may be refused if:

"the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken".

In relation to FOI request No. 2, please now find attached a copy of the 2005 Revenue report as requested.

Tel +353-1-6475000 Ext 50163 Fax +353-1-7024203 Direct Line +353-1-8589163



In relation to FOI request No. 3, please see responses below to the questions you have raised:

In relation to the High Wealth or High Worth business unit ("HWI") of Revenue's Large Cases Division:

1. The number of individuals whose tax affairs have been dealt with by the HWI unit, broken down by year for each year from 2003.

   In the years 2004 – 2006 there were c. 350 individuals dealt with in the High Wealth Individuals Unit, in 2007 there were 400 individuals, in 2008 and 2009 there were 430 individuals who were expected to pay tax to the High Wealth Individuals Unit. From 2010 onwards, there are c.450 individuals as well as partners and their associated entities in 9 professional firms that would be expected to pay tax to the High Wealth Individuals and Professional Business District.

2. The criteria for an individual's tax affairs being dealt with by the HWI unit – whether based on net worth, annual income, Irish tax liability, ownership of Irish assets or otherwise – and any changes that have been made to these criteria since 2003.

   High net worth individuals, are identified as those individuals who own or control net assets in excess of €50m or whose income is over €1.3m and non-residents with substantial economic interests in Ireland. A number of individuals dealt with in the district have net assets less than €50m, but have been brought into the High Wealth Individuals District as they had substantial connections to a person already dealt with in the District. In 2010 600 partners and their associated entities in 9 professional firms were added to the case base.

3. The total amount of Irish income tax and capital gains tax (CGT) paid by individuals whose affairs are dealt with by the HWI unit for the three most recent years that such figures are available.

   Please note that the figures for the taxpayers managed by the High Wealth Individual and Professional Business District for 2013, 2012 and 2011 include 600 partners and their associated entities in 9 Professional firms. The figures show tax paid in the tax year but are not necessarily for that tax year of assessment.

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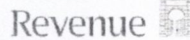

Tax year	*Tax*
2013	*€244m*
2012	*€226m*
2011	*€234m*

4. The number of individuals whose affairs are dealt with by the HWI unit who are not resident in Ireland, broken down by year for each year from 2003.

   We do not have a breakdown of the information as requested. However, we prepared the following information previously.

Tax year	*Number of non-resident persons, who filed income tax returns, dealt with by High Wealth Individuals Unit*
2005	*19*
2006	*40*
2007	*42*
2008	*41*
2009	*46*
2010	*54*

5. The amount of Irish income tax and CGT paid by such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland, for the three most recent years that such figures are available.

   We do not have a breakdown of the information as requested. However, an enquiry was conducted which established that persons dealt with in the High Wealth Individuals Unit who filed tax returns declaring non-residence in 2007 and 2006 paid €8m Income Tax and €2.5m CGT in 2007 and paid €8m Income Tax and €4.5m CGT in 2006.

6. The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland, but who were previously resident in Ireland for tax purposes, broken down by year for each year from 2003

   We do not have a breakdown of the information as requested.

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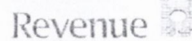

7. The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland, but who are Irish domiciled, broken down by year for each year from 2003.

   We do not have a breakdown of the information as requested.

8. The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland who filed a domicile levy return, broken down by year for each year from 2003.

9. The number of such individuals whose affairs are dealt with by the HWI unit and who are not resident in Ireland who had paid the domicile levy, broken down by year for each year from 2003

   We will take questions 8 and 9 together. The Domicile Levy was introduced by Section 150 Finance Act 2010 and only applies to 2010 year of assessment onwards. The Domicile Levy did not apply to years prior to 2010. We set out below a table of the information requested.

Tax year	*Number of non-resident persons filing domicile levy return dealt with by High Wealth Individuals Unit*	*Number of non-resident persons filing domicile levy return who paid the domicile levy, dealt with by High Wealth Individuals Unit*
2010	*6*	*6*
2011	*7*	*7*
2012	*7*	*7* *Note: In one case the declared liability was nil*
2013	*We do not have this information as the filing deadline for 2013 is 31 October 2014.*	*We do not have this information as the filing deadline for 2013 is 31 October 2014.*

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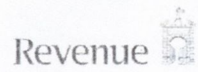
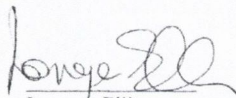


If you are unhappy with the decision in these cases you have the right to have them reviewed. If you wish to avail of this right you should write to the above address. A copy of the review procedures is enclosed for your information.

Yours sincerely,



Lorayne Ellison
FOI Decision Maker

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P.S. 6795/05

Miscellaneous.

15 February 2006

Mr. Brian Cowen, T.D.,
Minister for Finance,
Upper Merrion Street,
Dublin 2

Dear Minister,

You wrote to me on 31 May, 2005 regarding the work Revenue was doing during 2005 on monitoring the application of non-residency rules in respect of cases handled by our Large Cases Division. In response, I confirmed that I would provide you with a report on the outcome of the monitoring exercise when it was complete.

Background
As one dimension of its risk-based audit programme for 2005 the High Wealth Individuals Unit of our Large Cases Division decided to monitor compliance with the statutory rules governing residence of certain taxpayers (mainly Irish domiciled) who claimed to be non-resident in Ireland in particular years. This monitoring exercise consisted of a series of audits on a cross section of these taxpayers.

Main Elements of the 2005 Audit Programme
Nine cases, selected on the basis of internal risk criteria, were audited during 2005. The cases were all individuals who had claimed to be non - resident either on Returns of Income or in correspondence with Revenue. The audits included the examination and verification of material and records provided by the individuals on request from Revenue.

The general objective was to ascertain if the absences claimed were compatible with claims to non-residence under the rules and were consistent with other data and intelligence available to Revenue.

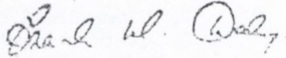
Outcome of Audits
In all nine cases the records examined supported the claims of the taxpayers to be outside the State for at least the number of days required to establish non-residence and no conflict was found between any Revenue intelligence and claims by taxpayers to be abroad on particular dates. It appeared from the examination of the records that all the taxpayers under audit had taken particular care to document their movements in and out of the State and to ensure that the rules were not breached. It was also clear that in some of the cases a specific member of the taxpayer's staff had responsibility for monitoring that taxpayer's travels to ensure that the taxpayer did not breach the residence rules.

Conclusion
On the basis of the cases examined during 2005 therefore we have no reason to conclude that

the individuals concerned failed to comply with the statutory rules governing non-resident status. We will of course continue to include within our regular Audit Programme the examination of a cross section of cases where there is a claim to non-resident status with a view to monitoring compliance with the statutory requirement.

I will keep you informed if any developments of interest emerge from this on-going monitoring programme.

Yours sincerely,



Frank M. Daly,
Chairman