

newsletter

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PERSONAL INSOLVENCY BILL 2012

The Minister for Justice has published the long-awaited **Personal Insolvency Bill** aimed at reforming insolvency laws, some of which have been in place for over a century.

Debt arrangements reached between borrowers and banks will be subject to court approval under the Personal Insolvency Bill.



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The Bill proposes the establishment of an independent body to be known as the **Insolvency Service** that will oversee the non-judicial personal insolvency system.

The Bill includes a number of new non-judicial debt resolution processes. To avail of one of these processes an individual will have to be insolvent-i.e unable to pay debts as they fall due. The proposals will have to be made through a Personal Insolvency Practitioner and can only be applied for once in a lifetime in relation to each procedure.

Debt Relief Notice (DRN)

A DRN will allow for the write-off of qualifying debt up to €20,000, subject to a three year supervision period; the terms to qualify are strict and the debtor will have to have a monthly disposable income of €60 or less after the provision of "reasonable" living expenses. They must hold assets of €400 or less, with the exemption of certain household appliances or tools needed for employment and one motor vehicle up to the value of €1,200.

Debts that will qualify for a DRN would include Personal Loans, Bank Overdrafts, Credits cards etc. Debts that will not qualify for inclusion in a DRN include, Court Fines, Family Maintenance payments , Taxes and service charge arrears

Debt Settlement Arrangement (DSA)

A DSA is available only in respect of unsecured debt and cannot be utilised to affect the rights of the holders of secured assets.

A Personal Insolvency Practitioner must advise the debtor as to their options in regard to the insolvency processes, and assist in the preparation of the necessary Prescribed Financial Statement .

Upon registration of a Protective Certificate there is a standstill period of 70 days (which can be extended by another 40) during which creditors may not take action against the debtor. The DSA is then put to the creditors for agreement and requires the approval of 65% in value. If approved and no objection within 10 days there will be formal registration with the Insolvency Service and with subsequent court approval thereafter the DSA will come into effect.

The Personal Insolvency Practitioner will then administer the DSA for its duration over a period of 5 years

Personal Insolvency Arrangement (PIA)

A PIA is available in respect of secure debt up to € 3 million (this limit can be waived by all creditors) and all unsecured debt.

The debtor must owe a debt to at least one secured creditor. The debtor must apply for a Protective Certificate and upon registration there is a standstill period of 70 days (which can be extended by another 40).

A PIA must be supported by at least 65% of creditors in value of actual votes cast and at least 50% of secured creditors and 50% of unsecured creditors in terms of value. When agreed it is binding on all creditors. The Personal Insolvency Practitioner will then administer the PIA for its duration over a period of 6 years.

Bankruptcy

The Bill also provides for a number of amendments to the Bankruptcy Act 1988

The main new provisions are as follows:

- The new minimum amount for a creditor to petition for bankruptcy is €20,000.
- The automatic discharge from bankruptcy after 3 years from the date of adjudication (reduced from the current 12 years).
- Bankruptcies existing for 3 years or more at the time of commencement of the Act will be automatically discharged after a further six months have elapsed.
- The Official Assignee or a creditor may apply to the court to object to the discharge of a person from bankruptcy. The grounds for such an objection are that the debtor has failed to co-operate with the Official Assignee or has hidden or failed to disclose income or assets. The court may suspend the discharge pending further investigation or extend the period before discharge of the bankrupt up to a maximum of 8 years from the date of adjudication.
- Provision for a court to make a payment order requiring the discharged bankrupt to make certain payments in favour of creditors, allowing for reasonable living expenses for a period of up to five years.
- An extended timeframe of 3 years prior to petition from bankruptcy in regard to certain fraudulent transfers or settlements of assets or voluntary settlements of property.



REPAYMENT OF TAXES

Finance Act 2012 included an update on the rules surrounding the repayment of taxes outside a four year period. Previously claims for repayments of taxes outside a four year period, while not refundable by Revenue, would be available for offset against other tax liabilities.

However Finance Act 2012 states that where a claim is lodged outside of the relevant time limit, offset against any other tax liabilities of the person is now prohibited.

The only exception to this rule is in the event that Revenue applies to assess or recover tax in a period that is four years or more after the end of the year or period involved. In such a case, tax which cannot be repaid because of the application of the four year time limit but which relates to the same accounting period that is being assessed by Revenue retrospectively, will be available for offset against that liability.

Taxpayers should ensure that any repayments of taxes due are claimed and received from Revenue within the relevant time limit.



EXTENSION OF MANDATORY ON-LINE FILING

From 1 June 2012 the following categories of tax payers are obliged to file their returns electronically:

- All VAT registered tax payers
- Self assessed individuals claiming certain income tax exemptions (Artists Exemption, Woodlands Exemption etc)
- Self assessed individuals claiming certain income retirement reliefs (RAC payments, Relief for PRSA contributions etc)
- Self assessed individuals claiming certain income tax reliefs (BES relief, EII relief, Seed Capital relief, Film relief etc)

Where a taxpayer is obliged to file and pay on ROS, the penalty for failing to do so is €1,520 each time a taxpayer fails either to pay or file on-line. Where there is a genuine difficulty with filing and paying on-line, taxpayers may on application to Revenue be excluded from electronic filing.

Tax Tip

If you think you may be in a tax refund in respect of 2011, why not send in your return early and obtain your refund now!!!

NPPR

Collection of the Non Principal Private Residence Charge for 2012 commenced on 31 March 2012. The 2012 charge is based on the ownership and status of the property on the 31 March 2012. Late filing fees of €20 per month or part of a month will apply where the charge was not paid on or before 30 June 2012. It should be noted that the late filing fees will continue to roll up as long as the charge remains unpaid.



PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

Income Tax

| | |
|--|------------------|
| Filing date of 2011 return of income (self-assessed individuals) | 31 October 2012 |
| Pay preliminary income tax for 2012 (self-assessed individuals) | 31 October 2012 |
| On-Line pay and file date for 2011 return of income | 15 November 2012 |

Capital Gains Tax

| | |
|---|------------------|
| Payment of Capital Gains Tax for the disposal of assets made from 01 January 2012 to 30 November 2012 | 15 December 2012 |
|---|------------------|

Corporation Tax

| | |
|---|--------------|
| Filing date for Corporation Tax returns for accounting periods ending in October 2011 | 21 July 2012 |
| Payment of Corporation Tax balance for accounting periods ending in October 2011 | 21 July 2012 |

DOES YOUR COMPANY QUALIFY FOR A TAX REFUND?

INTRODUCTION

Since its introduction in 2004, the research and development ("R&D") tax credit has been improved and extended. Since 2009, cash refunds of unused R&D credits can be claimed. Finance Act 2012 has further improvements, including rewarding some staff by transferring R&D credits to them to claim income tax relief.

A recent survey suggests fewer than 20% of Irish companies have made claims, so many companies must be missing out on this valuable relief. As defined, R&D is much broader than many realise, and covers far more than white-coated technicians in labs. Consider its potential application to your company, particularly if a cash refund is possible.

EXPENDITURE THAT QUALIFIES

Certain criteria must be met to be "qualifying activities" for the R&D credit, including the areas of science and technology where work was carried out. In some areas, R&D activity is obvious (e.g. pharmaceuticals) but software development, engineering, food production, health and agriculture are other areas where relief may be available.

Companies often underestimate the categories of qualifying R&D expenditure. In addition to direct R&D costs, indirect expenses (support staff wages, rent, and many others) can be included by reasonable apportionment.



GENERAL OVERVIEW

If it meets the conditions, a company can claim a corporation tax credit equal to 25% of its "incremental" expenditure on qualifying R&D activities over the "base year" spending level. The R&D credit is in addition to the "normal" 12.5% deduction.

The incremental qualifying expenditure may be capital (a new building or machine) or revenue (salaries, materials) in nature, with direct and indirect expenditure qualifying. Grant-aided expenditure does not qualify. The activities need not be carried out in Ireland. Though aimed mainly at in-house R&D activity, sub-contracted work can qualify, subject to monetary limits.

METHOD OF CLAIMING CREDIT

The claim is included in the corporation tax return, Form CT1. While no supporting documentation is needed on making a claim, it should be in place as Revenue often audit R&D claims, particularly where cash refunds of unused R&D credits arise.



TIME LIMIT FOR CLAIMS

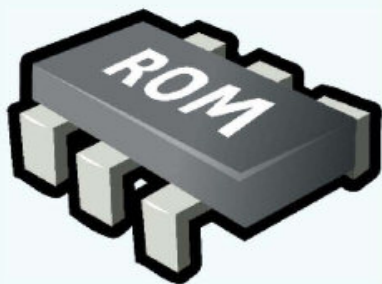
Claims must be made within one year of the end of the accounting period in which the R&D expenditure was incurred. Any R&D tax credit not claimed by then is lost.



SILICON VALLEY BANK TO OPEN IN IRELAND

US based Silicon Valley Bank is to establish a presence in Ireland with €80m of new lending facilities becoming the first new bank to open for business in Ireland since the start of the financial crisis.

The lender is a niche business bank that will lend exclusively to fast-growing Irish technology, life science, clean tech, private equity and venture capital businesses over five years subject to usual lending criteria.



The National Pensions Reserve Fund will help Silicon Valley Bank identify potential clients in the above niche sectors

HOUSE PRICE INCREASE

House prices rose in May by 0.2 per cent as the property market nationally recorded its first rise since 2007.

Prices in Dublin were up for the third month in a row sparking hopes that the worst could be over for the housing market in the capital. Prices have now halved since the peak of the boom with the average property now estimated to be valued at €157,600. Over the last year prices nationally are down 15 per cent.

Although prices have increase marginally in May, the experts believe that it is still to early to tell whether we have hit the bottom of the market with some experts predicting further falls across the country for the remainder of 2012.



BANK CREDIT REFUSALS OVERTURNED

The Credit Review Office received 44 applications from SME's who have been refused credit by the two pillar banks AIB and Bank of Ireland between March and May of this year.

The figures were revealed in a quarterly review of the Credit Review Office by John Trethowan. Trethowan said that while work was still ongoing on a number of cases that of all the cases completed during the three month period, 17 bank refusals were overturned, resulting in the banks supplying €2 million of credit.

Since the Office's establishment in April 2010, 35 per cent of all refusals have been overturned. Any business that has been turned down for a loan application should contact the Credit Review Office at info@creditreview.ie

MANUFACTURING ACTIVITY GREW IN MAY

Activity in the Irish manufacturing sector grew in May, according to the NCB manufacturing Purchasing Managers Index (PMI).

The PMI showed a reading of 51.2 in May, up from 50.1 in April, and above the 50 level which separates contraction from growth. Encouragingly, the employment reading expanded for the third consecutive month. The employment reading in May was 54.4, signifying that more firms expanded employment than cut employment.

New business at Irish manufacturing firms increased for a fourth successive month in May, with respondents mainly linking growth to higher new export orders. New business from abroad rose at a solid pace as firms were reportedly able to generate sales from outside the Eurozone.

AIB LAUNCHES STARTUPS PROGRAMME

AIB has launched a programme of supports aimed at helping startup businesses get off the ground,

The supports form part of the bank's Big Drive for Small Business initiative. Central to the programme is AIB's Start UP Package which offers a range of incentives to people who open a Business Start up Current Account. These include: free banking for two years, an SME loan with a variable rate of 4.4% and 50% discount off the first years membership to an affiliated participating local Chamber of Commerce.



LEASING: AN OPTION

Have you considered the best way to fund your plant and equipment? Asset-based finance is a method of funding fixed asset purchases that utilises the intrinsic security value in assets such as cars, commercial vehicles and other plant and equipment.

In the current economic climate, overdrafts and other forms of finance have been difficult to come by, and may become more so. However, asset finance can provide an additional line of credit, particularly for companies that require a significant investment in vehicles, plant and equipment. Interestingly, our own recent market research shows that only 27% of Irish companies currently use asset finance as a source of funding.

When seeking asset finance, the following criteria should be considered when making an application.

Financial information – asset finance companies are seeking more detailed financial information and projections from their customers to justify the rationale for a particular asset acquisition. Professional accountants play a key role in this.

Equity – asset finance companies will usually fund up to 80% of the cost of an asset.

Term – the shorter the required term, the more likely an asset finance company will be to accept the risk. Five and seven year terms are more difficult to obtain than previously.

Asset type – assets like cars, commercial vehicles and certain other plant have a proven second hand market and therefore offer good security.

Existing relationship – in many cases, banks and asset finance companies will support customers with whom they have an existing relationship. There has been a move away from “one-off” asset finance transactions to “all inclusive” banking relationships that may incorporate asset finance, term debt, clearing accounts and credit cards.

Proven track record – Customers with a proven credit record with their banks and the Irish Credit Bureau, particularly in the current climate, will be in a stronger position.

Management team – an experienced and professional management team with realistic and achievable business goals will be held in higher regard.

Suppliers – increasingly, asset finance companies will only deal with established and reputable suppliers to avoid potential product liability issues.

Asset Finance has a crucial part to play in the economic recovery, because of its unique secured nature. And whilst asset finance companies, like everyone involved in the financial markets, are very aware of the importance of responsible lending, it continues to offer a valuable alternative source of finance.

Lombard

CREDIT GUARANTEE BILL

The Minister for Jobs, Enterprise and Innovation recently published the Credit Guarantee Bill 2012. The scheme will provide a 75% state guarantee to banks against losses on qualifying loans to firms with growth and job creation potential.

Initially, the scheme will facilitate up to €150 million of additional lending a year to SMEs. The cost of the scheme per €150m of lending is €6.38m.

However, this does not take into account benefits to the exchequer which this lending will bring in terms of increased tax receipts and decreased social welfare payments. When these benefits are taken into account, the net gain is over €25m per €150m of lending.

How the scheme will work

The State will enter into an agreement with each lender and will accredit the lender to participate. The guarantee will be given to each lender for a collection of loans (a portfolio approach) rather than individually (loan-by-loan-basis). The choice of loans which make up the portfolio is at the discretion of the lender, provided the borrowers meet the eligibility criteria.

An Annual portfolio claim limit will be set for the aggregate value of loans for each lender, thereby capping the State's exposure. Once a lender's default claims have reached their

claim limit, any further losses must be borne by the lender and will not be eligible to be reclaimed from the State.

Both the borrower and the bank retain exposure in the event of default. The State is exposed only to the portion of the loan guaranteed up to a pre-specified limit.

The period for which the guaranteed is provided (as distinct from the term of the loan) is three years.

The State Aid framework sets the requirement that a premium must be charged to the borrower in return for the State guarantee. Recipient businesses will be required to pay the Minister (the Guarantor) an annual premium of 2% on the outstanding balance of the loan, assessed and collected annually in advance.

A qualifying enterprise must not employ more than 250 persons.

There are a number of exclusions including primary production in agriculture, horticulture and fisheries, refinancing of existing debts and overdrafts and property-related activities. The food and drinks sector will be eligible for the Scheme.

The bill is currently before the Oireachtas, and it is expected that it will be enacted shortly.

SOCIAL WELFARE & PENSIONS ACT 2012

The Social Welfare & Pensions Act 2012 gives legislative effect to a number of the changes to the Social Welfare code announced in the Budget Statements of 5 and 6 December 2011. It includes changes in the method of calculating the daily rates of Jobseeker's Benefit (based on a five day week rather than a six day week), restriction on access to Mortgage Interest Supplement Scheme for the first twelve months while a person engages in the Mortgage Arrears Resolution process and for new recipients of the one-parent family payment, the age for the youngest child will reduce to seven years by 2014.

The Act also strengthens the powers of Social Welfare Inspectors to make enquiries of Landlords where a person is in receipt of rent supplement and Inspectors may also make enquiries at ports and airports to ensure that certain recipients of Social Welfare comply with residency requirements.

AGENCY WORKERS

While Agency workers do not have the same employment rights as regular workers, under the EU Directive on Temporary Agency Work, Temporary Agency Workers have the right to equal treatment regarding basic employment conditions. The EU Directive on Temporary Agency Work came into effect on the 5 December 2011. The Directive is transposed into Irish Law by the Protection of Employees (Temporary Agency Work) Act 2012. It provides that all Temporary Agency Workers must have equal treatment with regular workers in respect of hours of work and rest periods; pay and work done by pregnant woman, children and young people. The Act came into effect on the 16 May 2012. Temporary Agency Workers covered by the Act have the right to the same employment conditions as if they had been directly employed by the hirer under a Contract of Employment. The right to equal pay has retrospective effect to the 5 December 2011.

The Act applies to Agency Workers employed by an Employment Agency who are assigned to work for a temporary period to another Organisation. The Act may exclude employees under a Managed Service Contract which is a Contract for Services, for example, cleaning, where the Contractor is responsible for managing and delivering the service. The Act does not apply to work done in the course of a Work Placement Scheme or any publicly funded Vocational Training or a Re-training Scheme. Pay is defined as including only basic pay, shift premium, piece rates, over-time premium, unsocial hours premium and Sunday premium. Pay does not include Occupational Pension Schemes, Financial Participation Schemes, Sick Pay Schemes, Benefits-in-Kind or Bonus Payments.

COMMERICAL LEASES

Since the enactment of the Civil Law (Miscellaneous Provisions) Act 2008 any Commercial Tenant is entitled to opt out of his Statutory entitlement to a further Lease of between five and twenty years which automatically arises after leasing a Commercial Premises for five years or more. Prior to this Act, Commercial Landlords faced a difficulty in that while a Tenant may have had no intention of exercising a right to renew the Lease it wasn't possible to agree this at Law so if the Tenant assigned the benefit of the Lease to another party that other party might seek to renew the Lease. In an effort to get around the possibility of Tenants acquiring renewal rights Landlords often granted short-term Leases for a period restricted to usually four years nine months.

The 2008 Act sought to assist a Commercial Tenant who might wish to take a Lease and whose Landlord might previously have been unwilling to grant a Lease for a term which would trigger a right to renew the Lease. Since the passing of the Act the Landlord and the Tenant can freely enter into Leases for five years or more as the Landlord can be satisfied that he can obtain vacant possession at the end of the Term, if he wishes. All Commercial Tenants can opt out of the Lease since the passing of the Act – previously this was confined to Tenants who rented office accommodation only.

Prior to the passing of the Act Commercial Landlords often imposed restrictions on Tenants preventing them from granting a Sub-Lease for terms greater than four years and nine months. In those cases the original Tenant would usually be required to indemnify the Landlord against loss or damage suffered by the Landlord as a result of any rights of renewal arising out of such a Sub-Lease. The 2008 Act includes a provision whereby any Sub-Tenant can waive his rights of renewal. This allows existing Tenants more flexibility in off-loading unwanted space. The 2008 Act is particularly useful to existing Tenants who have the premises under a short-term Lease where, for example, they have built up a strong customer base in a specific location as the Landlord and the Tenant would be able to enter into a new Lease on the expiry of the existing Tenancy without the risk of rights of renewal being automatically acquired by the Tenant. The change brought about by the 2008 Act allows greater flexibility in the arrangements between Commercial Landlords and Tenants while at the same time striking a balance between Landlords and Tenants rights by ensuring that the Tenants cannot sign away the protections afforded to them by the Landlord & Tenant Acts without first having obtained independent legal advice in the matter.

Irish Business in the UK

HELP FOR IRISH COMPANIES LOOKING TO SET UP IN THE UK

With a population of just over 62 million people and, with a flight time of one hour or less from anywhere in Ireland, it's easy to see why the two way trading relationship between the UK and Ireland is very strong.

The UK is Ireland's largest trading partner which provides a great opportunity for Irish companies wishing to establish a presence in the UK. Here are just a couple of statistics that are worth noting...

At present, Irish companies employ in the region of 100,000 people in the UK. There are over 45,000 Irish directors of UK companies - 16% of all non-British Directors in the UK. There are over 50 Irish companies listed on the London Stock Exchange.

In the Financial Year 2010- 2011, Ireland was the 11th largest investor in the UK - with a book value of £12.1bn.

But how does an Irish company go about setting up in the UK? What should companies be aware of and who should they seek advice from when such companies are ready to set up?

UK Trade & Investment (UKTI), based at the British Embassy in Dublin helps British companies to export into the Irish Market and Irish companies to set up and grow in the UK. For companies that are interested in establishing a physical presence in the UK, our goal is pretty simple. We help Irish companies to set up and grow in the UK and then, once you are there, we would like to see your business succeed and to grow globally.

Our advice is free, confidential and valuable. We can help with advice on establishing a business, understanding the market, access to networks of customers and suppliers, information on costs, taxation and the law, as well as help with finding the right workforce; and then, once you are established, we will support you as you export from the UK into a global market.

The help we can provide to Irish companies entering the UK can be broken down into three main stages:

- (1) Planning and pre-set up advice
- (2) Set-up phase
- (3) Aftercare/Business Growth

There is a huge range of support that our team can give to companies throughout all three stages and here are some of the things we can help with:-

- **Generic UK Information:** Why Invest in the UK?
- **UK Industry specific information:** economic trends, network connectivity, etc
- **UK location guidance** and independent property/office searches
- **UK Tours/Visits** - arranged and escorted
- **Connectivity** to Local Enterprise Bodies, Councils and Public Sector Partners
- **Introductions to local investment agencies** offering 'soft-landing' initiatives
- **Ongoing Aftercare**
- **Benchmarking analysis** of UK against other global Inward Investment destinations
- **Introductions** to Academia/R&D Institutions

Paul Caplis is Head of the Investment team with UK Trade & Investment in Dublin:

"The UK is an ideal market for Irish companies to invest and to grow in. When the time is right and when your company is ready to take the first step towards establishing a physical presence in the UK, come and talk to us. We are based in Dublin and we are here to help."

For more information, you can contact Paul on 01 2053762 or email him paul.caplis@fco.gov.uk