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Irish Taxation
Institute

TAXRELAY

Special on Property Reliefs

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Reliefs Affected by Budget 2011



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Budget Changes to Property Reliefs

Following the announcement of the changes to property reliefs in Budget 2011, there has been a very significant volume of queries from members and thus we are issuing a Special Tax Relay on the matter.

We hope that this Tax Relay will help to:

1. Outline the changes announced
2. Clarify who is affected/not affected
3. Detail the changes and their consequences
4. Outline the information available to date
5. Outline the reliefs/allowances affected
6. Highlight members' concerns
7. Outline the Institute's engagements on the matter

1. Outline of the changes

In Budget 2011 the Minister for Finance announced the phased abolition of property based legacy reliefs. A number of detailed Financial Resolutions were published on the subject, with the Minister's Budget Speech (see below). The Budget changes will apply to individuals and companies with effect from 7 December 2010.

2. Who is affected/not affected

Two broad categories of reliefs are impacted:

- » Relief from income tax for residential accommodation (i.e. Section 23 type relief); and
- » Accelerated Capital Allowances in respect of a variety of buildings and structures.

It is important to note that:

- » S23 residential owner occupier relief is unaffected.
- » The capital allowances restrictions only apply to "passive participants". They do not appear to apply where the allowances are made in taxing a trade in relation to which an individual is an active partner or active trader as defined under Section 409A/Section 409D TCA 1997.
- » Where the capital allowances arise in respect of a building in use for a trade of an individual or company, those allowances may continue to be used against the income of that trade only.

3. Detail of the changes and their consequences

Section 23 type relief – the detail

- » From 1 January 2011, Section 23 type relief will only be available against rental income from the property giving rise to the relief. In the past this relief was available on all rental income.
- » Any Section 23 type relief which is not used within the 10 year qualifying period will be automatically lost and cannot be carried forward.

- » From 1 January 2011 the existing claw-back on sale will continue to apply. However the new owner will not be able to claim any relief.
- » For any Section 23 properties unsold on 30 June 2011 the 10 year period will begin on that date regardless of whether a qualifying lease has commenced.

Capital Allowances – the detail

- » From the year of assessment 2011, restricted allowances in respect of a building used in a trade may be only offset against the income of that trade.
- » Where the allowances arise in respect of a building which has been let, the capital allowances are ring fenced against the rent from that building from which the allowances derive.
- » The capital allowance period is to be curtailed.
 - > For the seven and ten year capital allowance schemes any unused allowances at the end of the seven and ten years respectively will be lost. If the period has already expired then any reliefs remaining will be lost.
 - > If the accelerated capital allowance period is in excess of ten years, the allowance period will be shortened to seven years. If this period has already ended, the reliefs will be lost. If the period has not yet ended the remaining losses will be condensed into the

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remaining period (following a discount of 20%). Any allowances unused beyond the seven years will be lost.

Many individuals (or companies) who invested in capital allowance schemes or Section 23 type reliefs, may lose some of the benefits they had been expecting. In cases where the rent on a property is low and/or borrowings are high, there may be little or no taxable rental income attributable to that property and therefore the ring-fencing of relief and allowances will be particularly onerous.

The fact that reliefs and/or allowances may not be carried forward beyond their original intended life could result in many investors losing the benefit of substantial amounts of relief. Given the restrictions previously imposed on high earners, many of these investors will now be unable to use the relief within the intended period.

Note: In his speech the Minister referenced his intention to impose a 'guillotine' provision in 2014. Interestingly, this "guillotine" does not appear in the Financial Resolutions.

4. Information available

The information that has been published thusfar by the Department of Finance and Revenue in respect of the restrictions is the following documentation:

- » [The National Recovery Plan](#)
- » [The Minister for Finance's Budget 2011 speech](#)
- » [Financial Resolutions passed on Budget night](#)
- » [Summary of 2011 Budget Measures Policy changes](#)
- » [Summary of Budget 2011 Changes, Property Reliefs](#)

5. The reliefs that will be affected

The reliefs that will be affected by the Budget 2011 restrictions are listed in the schedule at the end of this article.

6. Members' Concerns

Members have raised concerns about the impact that these measures will have on taxpayers. Many of these taxpayers invested at the height of the property market and are heavily leveraged, depending on their particular arrangements. They may have incurred a significant drop in the value of their properties, are facing interest rate rises and now see the value of their reliefs/allowances significantly curtailed. This causes uncertainty amongst the investor community who had a legitimate expectation that they would be able to claim the tax reliefs/allowances offered to them when they made their investment.

7. The Institute's engagements on the matter

ITI has been in discussions and meetings with members this week since the Budget announcements were made. We are engaging with the Department of Finance and the Revenue Commissioners and will provide any updates on the matter as soon as they arise.

If any member wishes to discuss these developments or contribute examples of their experience, please contact one of the members in our Technical Team.

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SCHEDULE: Reliefs Affected by Budget 2011

It would appear from initial reading of the Financial Resolutions that the reliefs listed below will be affected by the new provisions. The restrictions would appear not to apply where the allowances is made in taxing a trade in relation to which an individual is an active partner or active trader as defined under Section 409A/Section 409D. It would also not apply for companies where the allowance is made in taxing a company's trade.

Under TCA Part 9 Principal Provisions Relating to Capital Expenditure

- » Any writing down allowance under Section 272 (writing down allowances)
- » Any made under Section 272 and increased under Section 273 (acceleration of writing-down allowances in respect of certain expenditure on certain industrial buildings)
- » Any balancing allowance under Section 274 (balancing allowances and balancing charges)
- » Any allowance under chapter 1, part 9 as applied by:
 - > Section 372AX (allowances for certain holiday camps),
 - > Section 372AY (allowances for certain tourism infrastructure facilities)
 - > Section 843 (allowances for buildings used for third level education)
 - > Section 843A (allowances for buildings for certain childcare purposes)

that is a specified relief (*i.e. as defined under Section 485C and listed under Schedule 25B.*)

Under TCA 1997 Part 10 Income Tax and Corporation Tax: Reliefs for Renewal and Improvement of Certain Urban Areas, Certain Resort Areas and Certain Islands

Chapter 1 – Customs

House Docks Area

Section 323: Capital allowances in relation to construction of certain commercial premises

Chapter 2 – Temple Bar Area

Section 331: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 332: Capital allowances in relation to construction or refurbishment of certain commercial premises

Chapter 3 – Designated areas, designated streets, enterprise areas and multi-storey car parks in certain urban areas

Section 341: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 342: Capital allowances in relation to construction or refurbishment of certain commercial premises

Section 343: Capital allowances in relation to construction or refurbishment

of certain buildings or structures in enterprise areas

Section 344: Capital allowances in relation to the construction or refurbishment of certain multi-storey car parks

Chapter 4 – Qualifying Resort Areas

Section 352: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 353: Capital allowances in relation to construction or refurbishment of certain commercial premises

Chapter 7 – Qualifying Areas

Section 372C: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 372D: Capital allowances in relation to construction or refurbishment of certain commercial premises

Chapter 8 – Qualifying Rural Areas

Section 372M: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 372N: Capital allowances in relation to construction or refurbishment of certain commercial buildings or structures

Chapter 9 – Park and ride facilities and certain related developments

Section 372V: Capital allowances in relation to construction or refurbishment of certain park and ride facilities

Section 372W: Capital allowances in relation to construction and refurbishment of certain commercial premises

Chapter 10 – Designated areas of certain towns

Section 372AC: Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Section 372AD: Capital allowances in relation to construction or refurbishment of certain commercial premises

Chapter 11 – Relief for lessors and owner-occupiers in respect of expenditure incurred on the provision of certain residential accommodation

Section 372AP: Relief for lessors

Chapter 12 – Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Section 372AX: Accelerated capital allowances in relation to the construction or refurbishment of certain registered holiday camps

Section 372AY: Capital allowances in relation to the construction or refurbishment of certain tourism infrastructure facilities



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