

DÁIL ÉIREANN

AN BILLE AIRGEADAIS (UIMH. 2) 2008 —ROGHCHOISTE

FINANCE (NO. 2) BILL 2008 —SELECT COMMITTEE

Leasuithe Ionadacha
Substitute Amendments

SECTION 11

25. In page 39, before section 11, to insert the following new section:

“Amendment of
Chapter 5
(miscellaneous
charging provisions)
of Part 5 of
Principal Act.

11.—(1) Chapter 5 of Part 5 of the Principal Act is amended by inserting the following after section 128C:

“Tax treatment
of directors of
companies and
employees who
acquire
restricted
shares.

128D.—(1) In this section—

‘director’ and ‘employee’ have the meanings, respectively, given to them by section 770(1);

‘employer’ means the company in which the director or employee holds his or her office or employment;

‘market value’ shall be construed in accordance with section 548;

‘restricted shares’ shall be construed in accordance with subsection (3);

‘shares’ includes stock;

‘specified period’ has the same meaning as in subsection (3)(a).

(2) Subject to subsection (7), this section applies where—

(a) a director or employee acquires shares (including shares acquired on the exercise of a right to which section 128 applies) in a company as a director or employee of that company or of another company,

(b) the shares are shares in the company in which the director or employee holds his or her office or employment or in a company which has control (within the meaning of section 432) of that company, and

(c) at the time of acquisition, the shares are restricted shares.

(3) For the purposes of this section, shares are restricted shares if—

[SECTION 11]

- (a) there is a written contract or agreement in place under the terms of which there is a restriction on the freedom of the director or employee by whom the shares are held to assign, charge, pledge as security for a loan or other debt, transfer, or otherwise dispose of the shares for a period of not less than one year (in this section referred to as the 'specified period'),
- (b) the contract or agreement is in place for bona fide commercial purposes and does not form part of a scheme or arrangement of which the main purpose or one of the main purposes is the avoidance of tax,
- (c) the shares cannot be assigned, charged, pledged as security for a loan or other debt, transferred, or otherwise disposed of in any circumstances during the specified period, other than—
 - (i) on the death of the director or employee, or
 - (ii) as a consequence of the director or employee agreeing to—
 - (I) accept an offer for the shares (in this clause referred to as the 'original shares') if the acceptance or agreement would result in a new holding (within the meaning of section 584) being equated with the original shares for the purposes of capital gains tax,
 - (II) a transaction affecting the shares or such of the shares as are of a particular class if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting all the ordinary share capital of the company in question or, as the case may be, all the shares of the same class as the shares acquired by the director or employee, or
 - (III) accept an offer of cash, with or without other assets, for the shares if the offer forms part of a general offer made to holders of shares of the same class as the shares acquired by the director or employee or of shares in the same company and made in the first instance on a condition such that if it is satisfied the person making the offer will have control (within the meaning of section 432) of that company,

and

- (d) during the specified period, the shares are held in a trust established by the employer for the benefit of employees and directors, or held under such other arrangements as the Revenue Commissioners may allow.

(4) Where this section applies—

[SECTION 11]

- (a) any charge to income tax under Schedule E (and computed in accordance with section 112 or 128, as the case may be), or under Schedule D, on the acquisition of the shares, shall be reduced by an amount determined by the formula—

$$A \times \frac{B}{100}$$

where—

A is the amount of the income tax charge under Schedule E or Schedule D, as the case may be, and

B is—

- (i) where the specified period is one year, 10,
 - (ii) where the specified period is 2 years, 20,
 - (iii) where the specified period is 3 years, 30,
 - (iv) where the specified period is 4 years, 40,
 - (v) where the specified period is 5 years, 50,
 - (vi) where the specified period is more than 5 years, 60,
- (b) the charge to income tax referred to in paragraph (a) shall be computed by reference to the market value of the shares at the date of acquisition but without regard to the restriction on the freedom of the director or employee by whom the shares are held to assign, charge, pledge as security for a loan or other debt, transfer, or otherwise dispose of the shares.

(5) Where a charge to income tax under Schedule E or Schedule D on the acquisition of shares by a director or employee is reduced in accordance with subsection (4), and—

- (a) the restriction on the freedom of the director or employee to assign, charge, pledge as security for a loan or other debt, transfer, or otherwise dispose of the shares acquired by him or her is subsequently removed or varied, or
- (b) the shares are disposed of in any of the circumstances mentioned in subparagraphs (i) and (ii) of subsection (3)(c) before the specified period expires,

[SECTION 11]

then, notwithstanding any limitation in the Income Taxes Acts on the time within which assessments may be made, the income tax charge on the acquisition of the shares shall be adjusted to take account of the actual period during which there was a restriction on the freedom of the director or employee to assign, charge, pledge as security for a loan or other debt, transfer or otherwise dispose of the shares. The adjustment of liability to tax as may be necessary for the purposes of this paragraph shall be made at any time, whether by means of an assessment, an additional assessment or otherwise.

(6) Where this section applies and a charge to income tax on the acquisition of shares by a director or employee is, for the purposes of section 552, to be treated as forming part of the consideration given by the director or employee for the acquisition of the shares, then the amount of the income tax charge to be so treated shall be the amount as reduced in accordance with subsection (4), together with any additional amount charged as a consequence of an adjustment made in accordance with subsection (5).

(7) This section does not apply to shares acquired by a director or employee under the terms of a scheme approved of by the Revenue Commissioners under Schedule 11, 12, 12A or 12C.

(8) Where in any year—

- (a) a person awards restricted shares to a director or employee, or
- (b) an event that comes within paragraph (a) or (b) of subsection (5) occurs in relation to restricted shares awarded,

then the person shall deliver to the Revenue Commissioners on or before 31 March in the year of assessment following the year in which the award was made or the event occurred, as the case may be, particulars of the award or the event, as the case may be.

(9) For the purposes of subsection (8), a person shall be deemed to award restricted shares to a director or employee where the director or employee acquires the restricted shares on the exercise of a right to which section 128 applies, and the right was granted to the director or employee by the person.

Tax treatment of directors of companies and employees who acquire forfeitable shares.

128E.—(1) In this section—

‘director’ and ‘employee’ have the meanings, respectively, given to them by section 770(1);

‘market value’ shall be construed in accordance with section 548;

‘forfeitable shares’ shall be construed in accordance with subsection (3);

‘shares’ includes stock.

(2) This section applies where—

[SECTION 11]

(a) a director or employee acquires shares (including shares acquired on the exercise of a right to which section 128 applies) in a company as a director or employee of that company or of another company, and

(b) at the time of acquisition, the shares are forfeitable shares.

(3) Subject to subsection (4), for the purposes of this section, shares are forfeitable shares if—

(a) there is a written contract or agreement in place under the terms of which—

(i) there will be a forfeiture of the shares, if certain circumstances arise or do not arise,

(ii) as a result of the forfeiture, the director or employee will cease to have any beneficial interest in the shares, and

(iii) the director or employee will not be entitled to receive, directly or indirectly, consideration in money or money's worth in respect of the shares on their forfeiture in excess of the consideration given by the director or the employee for the acquisition of the shares,

and,

(b) the contract or agreement is in place for bona fide commercial purposes and does not form part of a scheme or arrangement of which the main purpose or one of the main purposes is the avoidance of tax.

(4) Shares shall not be forfeitable shares by reason only that the shares are unpaid or partly paid shares which may be forfeited for non-payment of calls.

(5) Where this section applies, any charge to income tax under Schedule E (and computed in accordance with section 112 or 128, as the case may be), or under Schedule D, on the acquisition of the shares, shall be computed by reference to the market value of the shares at the date of acquisition but without regard to provision in a contract or agreement referred to in subsection (3) for the forfeiture of the shares.

(6) If under the terms of a contract or agreement referred to in subsection (3) the shares are forfeited, then—

(a) the director or employee shall, for income tax purposes, be treated, for the year of assessment in which the shares were acquired, as if he or she did not acquire the shares, and

[SECTION 11]

(b) such adjustment shall be made by repayment or otherwise as the case may require, on receipt of a claim from the director or employee, which shall be made within 4 years from the end of the year of assessment in which the shares are forfeited.

(7) Subsection (6) applies notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made. Section 865(6) does not prevent the Revenue Commissioners from repaying an amount of tax as a consequence of any adjustment made in accordance with subsection (6).

(8) Notwithstanding section 546(2), where subsection (6) of this section applies, the amount of a loss accruing on the forfeiture of the shares shall not exceed the amount of consideration given by the director or employee for the acquisition of the shares less any amount received by the director or employee on the forfeiture of the shares.

(9) Where in any year—

(a) a person awards forfeitable shares to a director or employee, or

(b) shares awarded to a director or employee are forfeited,

then the person shall deliver to the Revenue Commissioners on or before 31 March in the year of assessment following the year in which the award was made or the shares were forfeited, as the case may be, particulars of the award or the forfeiture, as the case may be.”.

(2) This section applies as on and from 20 November 2008 in respect of shares acquired on or after that date.”.

—*An tAire Airgeadais.*

[This amendment is in substitution for amendment no. 25 on the principal list of amendments dated 7th December, 2008.]

SECTION 68

71. In page 108, before section 68, to insert the following new section:

“Amendment of section 12 (deduction for tax borne or paid) of Principal Act.

68.—Section 12 of the Principal Act is amended

(a) in subsection (1)—

(i) in paragraph (a) by deleting “and” in subparagraph (vii), and by substituting “section 12A, and” for “section 12A.” in subparagraph (viii),

(ii) by inserting the following after subparagraph (viii) of paragraph (a):

[SECTION 68]

“(ix) subject to subsection (4) and regulations (if any), 20 per cent of the tax charged to that accountable person in respect of the purchase, hiring, intra-Community acquisition or importation of a qualifying vehicle (within the meaning assigned by paragraph (c)), where that vehicle is used primarily for business purposes, being at least 60 per cent of the use to which that vehicle is put, and where that accountable person subsequently disposes of that vehicle the tax deducted by that person in accordance with this subsection shall be treated as if it was not deductible by that person for the purposes of paragraph (xxiv)(c) of the First Schedule.”,

and

(iii) by inserting the following after paragraph (b):

“(c) For the purposes of paragraph (a)(ix) and subsection (4) (ba), a ‘qualifying vehicle’ means a motor vehicle which, for the purposes of vehicle registration tax is first registered, in accordance with section 131 of Finance Act 1992, on or after 1 January 2009 and has, for the purposes of that registration, a level of CO2 emissions of less than 156g/km.”,

(b) in subsection (3)(a)(iii) by inserting “subject to subsection (1)(a)(ix)” before “the purchase”,

(c) in subsection (4) by inserting the following after paragraph (b):

“(ba) For the purposes of this subsection, the reference in paragraph (b) to ‘tax, borne or payable’ shall, in the case of an acquisition of a qualifying vehicle (within the meaning assigned by subsection (1)(c)) be deemed to be a reference to ‘20 per cent of the tax, borne or payable’.”,

and

(d) by inserting the following after subsection (4):

“(4A) (a) Where an accountable person deducts tax in relation to the purchase, intra-Community acquisition or importation of a qualifying vehicle in accordance with subsection (1)(a)(ix) and that person disposes of that qualifying vehicle within 2 years of that purchase, acquisition or importation, then that person shall be obliged to reduce the amount of the tax deductible by that person for the taxable period in which the vehicle is disposed of by an amount calculated in accordance with the following formula:

$$\frac{TD \times (4-N)}{4}$$

where—

TD is the amount of tax deducted by that accountable person on the purchase, acquisition or importation of that vehicle, and

[SECTION 68]

N is a number that is equal to the number of days from the date of purchase, acquisition or importation of the vehicle by that accountable person to the date of disposal by that person, divided by 182 and rounded down to the nearest whole number,

but if that N is greater than 4 then N shall be 4.

(b) Where an accountable person deducts tax in relation to the purchase, intra-Community acquisition or importation of a qualifying vehicle in accordance with subsection (1)(a)(ix) and the vehicle is subsequently used for less than 60 per cent business purposes in a taxable period, then that person is obliged to reduce the amount of tax deductible by that person for that taxable period by an amount calculated in accordance with the following formula:

$$\frac{TD \times (4-N)}{4}$$

where—

TD is the amount of tax deducted by that accountable person on the purchase, acquisition or importation of that vehicle, and

N is a number that is equal to the number of days from the date of purchase, acquisition or importation of the vehicle by that accountable person to the first day of the taxable period in which the vehicle is used for less than 60 per cent business purposes, divided by 182 and rounded down to the nearest whole number,

but if that N is greater than 4 then N shall be 4.””.

—*An tAire Airgeadais.*

[This amendment is in substitution for amendment no. 71 on the principal list of amendments dated 7th December, 2008.]

SCHEDULE 5

92. In page 154, line 1, to delete “(a)” and substitute “(i)” .

—*An tAire Airgeadais.*

[This amendment is in substitution for amendment no. 92 on the principal list of amendments dated 7th December, 2008.]