

## Property Sector

### Our Team



#### Mary Nyhan, Partner

Mary Nyhan provides specialised advice on the tax aspects of business and corporate succession. In relation to succession planning, she focuses on tax planning tools to optimise the level of taxation payable on business transfers and she has also has significant experience on ensuring that protections are in place in the event that the intentions of the disponent or circumstances of any party change in the future.

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### Property Sector

The Government has brought in various changes to stimulate the current inactivity in the property market. The property sector at its' peak amounted to 20 per cent of the country's GDP, and this has now been reduced to around 5 per cent. The decline in the property market has had a negative effect on employment levels and on the tax intake through the loss of Stamp Duty, VAT, Income Tax, PRSI and Capital Gains Tax. Rather optimistically, the Government hopes the changes will bring about the right conditions for construction employment to return to normal levels and bring confidence back to the property sector in general.

The key changes are:

#### Stamp Duty

The multiple Stamp Duty rates (up to a top rate of 6 per cent) for commercial property transfers have been abolished and replaced with a flat rate of 2 per cent on all amounts from midnight tonight (this includes farmland as well as commercial and industrial buildings).

There has been no changes to the current stamp duty arrangements for residential property. The current rate of 1 per cent on transactions up to and including €1 million and 2 per cent thereafter continue to apply.

#### Capital Gains Tax

A Capital Gains Tax incentive for property purchased between midnight tonight and the end of 2013 has been introduced. If a property is bought during this period and held for at least seven years, the gain attributable to the seven year holding period will be exempt from Capital Gains Tax.

It should also be noted that the rate for Capital Gains Tax has been increased from 25 per cent to 30 per cent. This will be effective from 7 December 2011.

#### Legacy Property Tax Reliefs

The Department of Finance has undertaken an Economic Impact Assessment of the property tax relief changes proposed by the previous Government. This report is being finalised and will be published with the Finance Bill. According to the Minister for Finance the report highlights the vulnerability of small investors to insolvency if they lose these reliefs. The proposed changes by the previous Government are therefore not being proceeded with in this Budget.

Instead, the Minister has introduced a surcharge on individuals with gross incomes over €100,000. The 5 per cent surcharge will apply on the amount of income sheltered by property reliefs in a given year. This surcharge will apply to all investors with this level of gross income regardless of whether it was a Section 23 or accelerated capital allowance scheme. Reliefs in Section 23 type investments will not be terminated or otherwise restricted for investors with an annual gross income under €100,000.

It should be noted that residential owner-occupier relief is unaffected by this surcharge.

Investors in Accelerated Capital Allowance schemes will no longer be able to use any capital allowance beyond the tax life of the particular scheme where that tax life ends after 1 January 2015. Where the tax life of a scheme has ended before 1 January 2015, no carry forward of allowances into 2015 will be allowed. In effect, a form of the guillotine proposed in last year's budget is being retained.

These measures are being introduced with effect from 1 January 2012.

## Mortgage Interest Relief

Mortgage interest relief for first-time buyers between 2004 and 2008 is being increased to 30 per cent.

For 2012 purchases, first-time buyers will get mortgage interest relief at a rate of 25 per cent rather than at 15 per cent, and non-first time buyers will benefit from relief at 15 per cent instead of a reduced rate of 10 per cent.

Mortgage interest relief will no longer be available to house purchasers who purchase after the end of 2012 and the relief will be fully abolished from 2018.

## Household charge

A household charge of €100 is being introduced in 2012. This household charge is viewed as an interim measure pending the implementation of a full property tax which will be introduced in 2014.

## Upwardly Rent Review

Draft legislation has been prepared by the Minister for Justice, Equality and Defence, Alan Shatter TD, to tackle the position of upwardly rent reviews. However, the current draft legislation is vulnerable to legal challenge and will therefore need additional time to finalise.

This area is a matter of particular interest to NAMA who have to deal with the problems caused by upward only rent reviews which apply to NAMA properties. NAMA has introduced a policy guidance for dealing with tenants' difficulties arising from upward only rent reviews. The NAMA policy guidance provides an opportunity for NAMA to approve rent reductions where it can be shown that rents are in excess of the current market levels. The policy also provides for the appointment of an independent valuation of market rent where necessary.

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