KPMG makes Pre-Budget 2020 Submission

In our Pre-Budget 2020 submission, KPMG has made recommendations which we believe can enable Ireland to continue to move along a path towards a corporation tax code which offers a simplified rate structure and which is more powerful in supporting and retaining business investment in Ireland as a result.

On a similar theme, we have made recommendations that seek to reduce the rate of tax on profits (whether capital gains or dividends) realised by individual entrepreneurs. The entrepreneurs we have in mind include founders of businesses with high growth potential, owners of family businesses as well as highly mobile individuals with entrepreneurial skills and capital.

The focus of our submission is on suggested changes to Ireland's tax regime on capital gains and the return on capital invested by Irish entrepreneurs. Our recommendations are summarised below and overleaf.

Companies & Capital Gains

We recommend that Ireland applies a 12.5% rate of tax to capital gains arising on the disposal of assets used in the course of the trade.

We believe that this recommendation will have a behavioural impact in supporting continued and new business investment in Ireland by internationally mobile business.

We do not believe that this will reduce corporation tax revenues – rather it is a measure that should support sustaining future corporation tax revenues.

This is because the risk of triggering a tax rate of 33% on the disposal of capital assets used for the purposes of a trade by a company whose profits are otherwise taxed at 12.5% acts as a barrier to continued and new investment in Ireland.

The understood policy intent is that reorganisations occurring solely within the corporate sphere where there is no economic change in ownership should be made tax free.

To create certainty that Irish measures achieve this policy intent in this area, we recommend that:

- the 'bona fide' tests in corporation tax and stamp duty provisions as well as anti-abuse provisions as they relate to reorganisation provisions are amended to make it clear that their application should support tax free outcomes for reorganisation / reconstruction events that occur solely within the corporate sphere. In the absence of these technical amendments, uncertainty of tax treatment can remain.

To improve certainty for investors that only a single layer of tax should apply within the corporate structure, Ireland should:

- Provide for a legislative exemption from double taxation on the sale of shares held as a capital investment by a company.
- Make technical changes to a number of taxing provisions, including Ireland's corporation tax exemption from gains on disposal of substantial shareholdings, so that they operate to achieve this outcome and their application does not, in practice, result in double taxation.

If you believe these issues may affect your business, or you would like to discuss KPMG's Pre-Budget 2020 submission in more detail, please contact your KPMG team or the KPMG contacts below:

Tom Woods
Head of Tax & Legal

t: +353 1 410 2589
e: tom.woods@kpmg.ie

Orla Gavin
Partner

t: +353 1 410 1202
e: orla.gavin@kpmg.ie

Andrew Gallagher
Partner

t: +353 1 410 1550
e: andrew.gallagher@kpmg.ie

Entrepreneurs and returns on capital

To improve the competitiveness of the Entrepreneur Relief regime, we suggest that the 10% rate of tax is retained and the lifetime gains limit is increased to €10 million.

Extend the 10% rate to dividends received by entrepreneurs which meet the same conditions for holding of shares and working director/employee as is required for the capital gains regime.

The expanded relief would be capped at a single lifetime limit of €10 million which could be made up of either capital gains or dividend income meeting the Entrepreneur Relief conditions.

This would make it tax neutral for the entrepreneur whether they received their return in the form of a dividend or a capital gain and would lessen the current incentive for founder shareholders to sell their holdings in high growth SMEs at the earliest date. This would also provide greater flexibility for owners of family businesses to choose the form in which they realise profit from the SME in order to give the best fit for the SME business, their personal financial position and allow phased timing of business transfers to the next generation.

Looking at the wider tax environment for Irish entrepreneurs and the sustained growth in Ireland of businesses through major events such as intergenerational transfers or third party sales, we suggest, in addition:

- Preserving the broad framework for Ireland's Capital Gains Tax (CGT) retirement relief and Capital Acquisitions Tax (CAT) business property relief in their existing form.
- Preserving CGT retirement relief for eligible disposals (principally applicable to family members and transfer of business assets between age 55 and 65 years).
- Amending section 176, Taxes Consolidation Act 1997 (TCA 1997) to allow capital gains tax treatment to apply to disposals in the form of phased reductions in shareholdings which do not currently meet the significant reduction test in that section.
- Providing certainty that the broadly cast anti-avoidance measures in section 135(3A), TCA 1997 do not have unintended consequences for genuine commercial transactions by including a 'bona fide' exception such that the measures do not apply to bona fide commercial transactions.

Preserving the 10% rate of tax for Entrepreneur Relief and increasing the lifetime limit for eligible gains to €10 million as suggested above also potentially reduces the rate of capital gains tax applicable to disposals made before 55 years of age, disposals to third parties outside the retirement relief limits and disposals on transfers to eligible family members from age 66 years onwards.

We suggest minor technical amendments to the definitions in the Entrepreneur Relief provisions to allow the provisions to apply to common commercial holding structures.

These would amend the Entrepreneur Relief provisions to:

- Change the definition of holding company to include an indirect interest of an entrepreneur held through a company which is controlled by them.
- Apply the trading test for a group on a group-wide basis – perhaps by adopting the approach to a group-wide trading test applied in section 626B, TCA 1997.
- Clarify the interaction with retirement relief provisions applicable to a disposal, in particular, by an individual aged 66 or older so that the application of retirement relief does not absorb that amount of lifetime gains available for Entrepreneur Relief on a subsequent disposal.

Liam Lynch
Partner

t: +353 1 410 1734
e: liam.lynch@kpmg.ie

Olivia Lynch
Partner

t: +353 1 410 1735
e: olivia.lynch@kpmg.ie

Have your voice heard
Insights drawn from real life and feedback from business have the greatest effect when legislators draft measures so that they can work as intended. KPMG actively participates in consultations on tax policy matters and legislative proposals. To have your voice heard, please speak to your KPMG client service team.

© 2019 KPMG, an Irish partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. The KPMG name and logo are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. (5100)