

**DILLON KELLY CREGAN**

Chartered Certified Accountants and Business Advisors

18 Upper Mount Street, Dublin 2  
T: 01-676 2791 / 01- 662 3053  
F: 01-661 1150  
E: info@dillonkellycregan.ie

## Partners:

John Turner  
Ronan Lynch  
Ian Dillon

**in this issue...**


tax briefs **page 3** • five is the new magic number **page 4**  
business briefs **page 5** • funding by the masses **page 6**  
legal briefs **page 7** • restrictive covenants **page 8**

# OUTLOOK FOR 2014

THE HEALING PROCESS  
BEGINS



December marked the important milestone of Ireland's exit from its three-year EU/IMF support programme. As the country bade slán agus beannacht to the Troika quarterly reviews, the yields on Ireland's 10-year sovereign bonds have generally been priced at 3.5% or less in post-bailout trading. Indeed, perhaps the most significant achievement under the programme was the re-establishment of sovereign credit-worthiness. Ireland's long-term borrowing costs were around 8% and rising sharply and rapidly as the bailout was entered into in December 2010. They ultimately reached a crisis peak of close to 16% in the summer of 2011 (consistent with an implied probability of default in excess of 70%) as investor confidence in the ability of the sovereign to carry the burden of its high, fast-rising and uncertain liabilities simply evaporated.

continued... 



continued...

Such yield levels were notional as opposed to reflective of actual borrowing costs of course as the EU and IMF provided a cheap (sub 3.5%) source of Eur67.5bn of funding to supplement domestic resources of Eur17.5bn in covering three years of fiscal funding and banking system support costs. In effect, the funding programme bought the country three years of 'shelter time' in which to re-establish its creditworthiness by overhauling the fiscal position and restructuring the banking sector, thereby paving the way for a recovery in the economy. Viewed through this prism, the programme certainly achieved a key objective. Underpinned by steadfast implementation of programme measures (as well as additional support from Europe including via interest rate reductions, loan term extensions and the prom note deal), sovereign borrowing costs have fallen back to affordable rates, with 10-year yields having averaged 3.7% over the past six months. In turn, this has enabled both the sovereign and other entities including the banks to meaningfully re-engage with private capital markets.

Notably, following a 'clean' exit from the programme, the Irish government successfully returned to the bond markets on a fully standalone basis in early January, raising Eur3.75bn in a 10-year bond sale. Investor appetite was extremely strong, with the order book totalling some Eur 14bn and including interest from over 400 investors with a wide geographical spread including from the Middle East and Asia. Coming from a point where default was seen as a near-inevitability, the re-opening of Ireland Inc's access to the capital markets within the three-year programme timeframe is thus no mean feat.

At times, the role of the Troika as 'policy forcer' was probably overstated in the sense that the overriding rationale for the fiscal and financial policy measures introduced over the three year programme had much more to do with the unsustainably large underlying problems in each area than with the need to satisfy the demands of Ireland's official lenders per se. Moreover, the reality is that the landscape facing Ireland remains challenging outside the bailout, as indeed it was up to early December within it: government deficit and

debt levels remain high and will require further corrective action while high levels of private debt also remain a headwind; legacy problems continue to hold back the return to full health of the banking sector; and an unemployment rate of over 12% highlights the extent of the scarring effect of the crisis on the economy.

Nevertheless, incoming news on the economy highlights improving trends in some key areas. In particular, recent improvements in the Irish labour market have been driven by robust increases in employment which has now risen for the past four quarters. In Q3 of last year, jobs growth stood at 3.2% year on year which translates into 58,000 net new jobs for the period, the highest increase since Q3, 2007. Gains in employment have been broad-based with all major sectors (Agriculture, Forestry & Fishing, Services, Manufacturing and Construction) adding positively to the jobs growth. Strong employment growth has translated into a notable ongoing decline in the unemployment rate. The official rate of unemployment as measured by the Quarterly National Household Survey was at 12.8% for Q3, 2013, the lowest it's been in four years and considerably below its peak of 15.1% in Q1, 2012. Based on the proxy provided by the Live Register figures, the jobless rate declined further in Q4, standing at 12.4% in December.

Overall, the latest figures offer a good deal of encouragement in relation to both the momentum behind and composition of Irish economic growth. The fact that employment and domestic demand are now beginning to support the recovery is a welcome indication that growth is becoming more broadly-based, while incoming news from abroad points to the likelihood of a growth pick-up in Ireland's main export markets in 2014 relative to last year. In turn, that should facilitate a further strengthening of Ireland's recovery in 2014 as domestic and external demand combine to deliver GDP growth of around 2% or more.

Simon Barry is Chief Economist Republic of Ireland with Ulster Bank

### RELIEF FOR LONG TERM UNEMPLOYED STARTING A BUSINESS

Where an individual who has been unemployed for 12 months and has been in receipt of jobseekers benefit, jobseekers allowance or a Single Parent Child Carer Credit and where that individual starts a new business, the individual is entitled to claim relief from income tax on the first two years of trading capped at a value of €40,000 per annum. USC and PRSI will continue to be payable. The new business must commence during the period 1 January 2014 to 31 December 2016, but will exclude trades previously carried on by other people to which the qualifying person has succeeded, or activities which were previously carried on by other people.

The relief can apply to multiple new trades carried on by the one individual provided the limit of €40,000 is not breached.

### LOCAL PROPERTY TAX SURCHARGE

Chargeable Persons for Income Tax, Corporation Tax or Capital Gains Tax who have not fulfilled their obligations with regard to Local Property Taxes (LPT) may fall foul of the LPT Surcharge when filing other taxes. Taxpayers may incur a Surcharge of 10% of their Income Tax, Corporation Tax or Capital Gains Tax liability, where their LPT Return is outstanding or an agreed payment arrangement is not being met at the date of filing the Income Tax, Corporation Tax or Capital Gains Tax return. Given that the surcharge is 10% of the tax liability it often can be significantly greater than the LPT liability outstanding and can create a significant cash flow issue. To that end it is imperative to comply with the LPT legislation.

Revenue had set a deadline of 29 November last for a householder to nominate a method of paying the LPT, and had warned of penalties for those who failed to meet the deadline.

There is now a small window where interest and penalties will not apply, but on 31 March next that window closes.

### PAY AND FILE SUMMARY

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

#### Corporation Tax

Filing date for Corporation Tax returns for accounting periods ending in June 2013	<b>21 March 2014</b>
--	----------------------

Balance payment of Corporation Tax for accounting periods ending in June 2013	<b>21 March 2014</b>
---	----------------------

### HOME RENOVATION INCENTIVE

The Home renovation incentive provides for tax relief for homeowners by way of an income tax credit at 13.5% of qualifying expenditure on repairs, renovations or improvements carried out to the Homeowners main home by qualifying contractors.

Tax relief may be claimed on qualifying expenditure from €5,000 to a maximum spend of €30,000 inclusive of VAT. The income tax credit is payable over 2 years following the year in which the work is undertaken. Unused tax credits may be carried forward to the next tax year.

Qualifying works must be carried out on or after 25 October 2013 and up to 31 December 2015. Qualifying works carried out between 25 October 2013 and 31 December 2013 and paid for during that period will be treated as though they were paid in 2014 for credit purposes. Where planning permission is required and is in place prior to 31 December 2015, works carried out up to 31 March 2016 will qualify for relief. The works may be phased, and multiple payments to different contractors are allowed. Claims may be made for costs at the 13.5% rate of tax and excluding anything subject to VAT at 23%.

In order to qualify for relief Homeowners must be LPT compliant and Contractors must be registered for VAT and RCT and must have a tax clearance certificate.

### REDUCED FILING REQUIREMENTS

From 1 January 2014 reductions in the filing and payment frequencies for VAT, PAYE/PRSI and RCT by smaller businesses are being extended as summarised below:

- Businesses making total annual VAT payments of less than €3,000 are eligible to file VAT returns and make payments on a 6 monthly basis;
- Businesses making total annual VAT payments of between €3,000 and €14,400 are eligible to file VAT returns and make payments on a 4 monthly basis;
- Businesses making total annual PAYE/PRSI payments of up to €28,800 are eligible to make payments on a 3 monthly basis;
- Businesses making total annual RCT payments of up to €28,800 are eligible to file RCT returns and make payments on a 3 monthly basis.

Reduced filing and payment requirements should result in improved cash flow as the business will have an extended period before payment of taxes is due and business' should benefit from reduced administration costs through less frequent filing of tax returns.

Revenue will shortly write to each eligible business confirming that reduced frequency of tax returns and tax payments is applicable.

# FIVE IS THE NEW MAGIC NUMBER

‘Let every man divide his money into three parts, and invest a third in land, a third in business, and a third let him keep in reserve.’

Talmud, c. 1200 BC-AD 500



With the recent decision to hike up DIRT on deposits and exit tax on gross savings and investment policies to 41% from 1 January 2014, more people will seek net investment returns ahead of a paltry €13.80 on every €1,000 left on deposit for twelve months. But beware....speculating is not investing and choosing funds and investments based on whatever is flavour of the day or is hotly tipped on the web or is leading the performance tables should set the alarm bells ringing.

Investment is all about you and your personal objectives and financial goals. In order to build and manage a successful investment portfolio it is recommended that you identify where your overall assets are invested and build a portfolio that has the right balance and risk that is right for you.

The following five steps are easy to follow;

## 1 HAVE CLEAR GOALS

Is the objective of your investment to seek a real return i.e. a net return ahead of inflation? Is it to generate income? Is it a combination? Can you invest part of the money with a longer term time horizon? What will you do for accessible cash?

## 2 KNOW YOUR INVESTMENT RISK TOLERANCE

Risk and return go hand in hand and if you want higher returns you have to take higher risks. There are no shortcuts and if an investment offers more than the risk-free rate (ie deposits) then it comes with higher risks in terms of capital loss and the possibility of lower returns than anticipated. Higher risk investments such as equities are generally expected to return more than lower risk-free investments such as cash. However, taking on a high level of risk does not guarantee greater returns or it wouldn't be risky! There are numerous ways to measure risk but checking the volatility of your investment is a good place to start with (volatility being the extent to which your investment fluctuates in value). Volatility of an investment in isolation is not enough to assess an investment.

Investors with 10 or more year time horizon can often tolerate more short-term volatility, they could for example invest a greater proportion of their portfolio in equities as they have time to recover from any short-term setbacks.

CONTINUED ON PAGE 6



## WRITE-OFF DEBT FOR HOMEOWNERS

**Eligible customers will have mortgage split in two and bank will discount loan**

AIB is set to write-off debt immediately for homeowners in arrears who are deemed eligible for a new split mortgage product.

Under the plan, a customer deemed eligible for a split mortgage will have the loan broken into two tranches. The first part, which the customer will be expected to repay, will be based on the current market value of their home, while the other will be warehoused, interest free, for settlement at a later date.

For example, if someone owes €300,000 but the current value of their property is assessed at €200,000, that €200,000 figure becomes the first tranche, with the balance of €100,000 parked for repayment.

It is understood that AIB will, in addition, write-off up to 20 per cent of the first tranche. That means up to €40,000 of the €200,000 in the example above will

be written -off by the bank immediately – leaving troubled homeowners servicing a mortgage of €160,000, nearly half the €300,000 outstanding.

AIB is calling the write-offs a “partial compromise of principle debt” and a “right-sizing of the loan”.



## IMPORTANCE OF SUCCESSION PLANNING

One of the toughest decisions that any family business may face is whether the business will be passed on to family members or sold by the retiring generation. This decision not only threatens the continuity of the business, but can threaten the family unit itself and often leads to costly litigious disputes.

There are many other obstacles to successful continuation. Fortunately these can be overcome by detailed succession planning on both a personal and business level.

Initially, most family businesses are straightforward in terms of ownership and management as they develop a relatively simple system of natural governance. However, as a family grows, the demographic changes and the roles of different family members become more complex. It can be difficult to establish, and in particular agree upon, a clear balance of power and to have clarity of roles within the business.

If you need advice on this area then please contact us.

## CERTAIN GREEN FEES NOW EXEMPT FROM VAT

Revenue has published a Brief which sets out their position following the recent judgement in the Bridport & West Dorset Golf Club Limited case (C-495/12). The Court of Justice of the European Union (CJEU) in this case found that green fees charged by members' clubs are VAT exempt. As a consequence of this decision Revenue accepts that green fees charged by member owned clubs to non-members should be treated as exempt from VAT.



## SEPA POST FEBRUARY 1 DEADLINE

We have now passed the original SEPA migration deadline of the 1 February 2014. In January, due to slower than expected migrations across the SEPA zone, the European Commission allowed for an extended 6 month window to accommodate companies who were having difficulties with their migrations. Individual member states are allowed to decide how much of this extension they will need to minimise disruption to payment processing. IPSO (Irish Payment Services Organisation), has agreed with the Irish banks an extension until the 31 March 2014 will be required to accomplish full SEPA migration in Ireland.

With all that time and effort spent to ensure your company was SEPA compliant, it's now time to make the most of your investment. Increased efficiency can be achieved by making greater use of bulk payment files, rather than manual inputting of individual payments. Further efficiencies can be gained by making greater use of the data, such as invoice numbers and payment file details which can be included in the XML payment file. This information can be used to assist reconciliation for both the debtors and creditors.

e-Day on the 19 September 2014 is a further initiative towards more efficient payment methods. From this date it is intended the public sector in Ireland will no longer write cheques to business users, nor will the public sector accept cheques from business users. Businesses will need to adjust their payment methods to accommodate this change.

The work is nearly completed, it's now time to maximise the return on your investment!

Email: [sepa@aib.ie](mailto:sepa@aib.ie)

### 3 FOCUS ON A MIX OF ASSETS

Asset allocation is the process of dividing up your capital and allocating it to more or different types of asset classes. An asset class is the term given to a group of investments that share similar risk and return characteristics and includes cash, equities, fixed interest, property, commodities and alternative investments and then across different regions and, in the case of funds, investment styles. The key is getting the mix aligned with your risk profile.

In simple terms – think of whisky as risky and water as safe, the more water you add to your whisky the less potent it is, all be it, still with a kick!

### 4 SELECT HIGH-QUALITY FUNDS

Investors derive much of their financial knowledge from what they read, hear or see in newspapers, magazines, websites, television and books not to mention the internet. However, just because there is a lot of information does not mean that it is necessarily accurate, objective or relevant to your situation.

The best solution is to take advice from an experienced independent financial adviser who has a predefined process to his/her advice and investment strategy. You can check if your adviser is an Authorised Adviser (as opposed to a Multi-Agency Intermediary) at: [www.registers.centralbank.ie](http://www.registers.centralbank.ie)

### 5 MONITOR AND REVIEW

Investment does not finish at the point when you buy your fund or investment. With multi-asset class portfolios that use funds, over time, each asset class will generate different returns, which will cause your portfolio's asset allocation and consequently its risk profile to change, or rather drift away from its original position. Other facts such as tax implications and if a fund manager moves job or a poor economic outlook can affect the reasons for holding an investment. It is therefore important to periodically reappraise your investments and discuss with your adviser.

### SUMMARY

Slow and steady wins the race! The greater the portfolio loss in any given year then the higher the level of future growth required to recover from that loss. Remember a 35% fall in a portfolio requires 54% growth to recover whereas a 5% fall in a portfolio requires only 5.3% growth. Once you are clear of your goals, minimising portfolio volatility should be a key objective and will prove its worth when we experience the next market downturn.

## Funding by the Masses

A new type of funding concept which is fast gaining popularity is Crowdfunding. It's the practice of financing a project or venture by seeking many small amounts of money from a large number of people, typically using an online platform.

Crowdfunding is used to raise money for a variety of purposes, from donations for charitable or other philanthropic initiatives to reward-based investment for start-up businesses. In a depressed world-wide economy, it is seen by many as having the potential to be a very useful tool for businesses and other projects to access finance in a cash-starved environment.

The European Commission has recognised the growth in Crowdfunding and as a result has launched a consultation paper covering the forms of crowdfunding and what it describes as a range of "soft-law measures". The ideas which the Commission is considering in order

to unleash its full potential include raising public awareness of crowdfunding and ensuring that EU-wide access is given to crowdfunding platforms. Apart from its many benefits, the consultation paper also addresses the risks and challenges of crowdfunding and the potential safeguards required to protect against illegal or undesirable practices in the areas of fraud prevention, intellectual property protection and anti-money laundering.

Crowdfunding may provide an alternative to the many Irish entrepreneurs and businesses struggling to access finance. The accessibility of the internet and social media makes its reach almost universal, a very different scenario from the traditional method of raising finance which generally involves seeking larger investments from a much more limited pool of potential investors.

## DEBT FOR EQUITY SWAPS

### What is it all about?

In recent years, in particular, we hear a lot about debt for equity swaps. Debt for equity deals occur when large companies run into serious financial trouble, and often result in these companies being taken over by their principal creditors.

A debt for equity swap is a capital reorganisation of a company where a bank or other creditor converts indebtedness owed to it by the company into one or more classes of the debtor company's share capital. This is typically driven by the bank or other creditors of the company.

Such a reorganisation may occur where the debtor company is in a distressed state but its creditors do not believe that the situation warrants the appointment of a receiver or liquidator. Any such appointment would mean that the creditors are likely to receive a lesser return than if they substitute some of their debt for equity. The hope is that with a lower debt repayment profile they will receive an acceptable return on their equity once the company returns to profitability or is sold.

A debt for equity swap has no set structure. The swap may simply comprise a direct exchange of debt for shares in the company. In more complex cases, a new company funded by debt and equity provided by the bank and other creditors and investors may be formed to acquire the existing business from a liquidator or examiner appointed to the financially distressed debtor company.

## CAPITAL GAINS TAX EXEMPTION

Principal Private Residence Relief can be extended to a second residence in a individuals ownership for any period during which a dependant relative occupies the residence rent free. Therefore for the period that such a relative occupies a residence other than the individual's main residence, a capital gains tax (CGT) exemption can be claimed for both properties.

A dependent relative includes a relative of the individual or of his/her wife/husband. The relative must be incapacitated by old age or infirmity from maintaining himself or herself in order to be deemed dependent. A dependent relative can also include:

- (1). the widowed mother or father, whether or not incapacitated, of the individual or of his/her wife/husband, who is maintained by the individual, or
- (2). a person who is the father or mother of the individual or of the wife or husband of the individual and is a surviving civil partner who has not subsequently married or entered into another civil partnership.

There is no income test for the above reliefs.

The principal private residence exemption from CGT can only be extended to include one additional residence irrespective of whether or not the individual is married.

## SMALL CLAIMS COURT

The Small Claims Court was set up as an alternative method of commencing and dealing with a civil proceeding in respect of a small claim, without the need for a solicitor. The aim of the Small Claims Court is to provide an inexpensive, fast and easy way for 'consumers' and 'businesses' to resolve disputes. The matter is dealt with in your local District Court office.

To be eligible to use the procedure, you, the 'consumer' must have bought the goods or services (or the service) for private use from someone selling them in the course of business. As a 'business' you must have bought the goods or services (or the service) for use in business from someone selling them in the course of business. Furthermore, the claim cannot exceed €2,000.

The following claims can be dealt with under the Small Claims procedure:

- (a) a claim for goods or services bought for private use from someone selling them in the course of a business (consumer claims);
- (b) a claim for goods or services bought for business use from someone selling them in the course of a business (business claims);
- (c) a claim for minor damage to property (but excluding personal injuries); and
- (d) a claim for the non-return of a rent deposit for certain kinds of rented properties (excludes claims which are handled by the Private Residential Tenancies Board).

Claims cannot be made in the Small Claims Court for debts, personal injuries or breach of leasing or hire-purchase agreements.

The person against whom the claim is made will be given an opportunity to admit the claim, defend the claim and/or put in a counterclaim. Once everything is ready for Court you receive a letter from the Small Claims Office telling you the date and time of the court hearing and the location of the court itself.



# RESTRICTIVE COVENANTS

## Restrictive Clauses in Employment Contracts: necessary protection or unfair restraints?

Overly-restrictive terms and conditions in employment contracts raise a number of important rights issues for both employers and employees. In tough economic times, it makes sense for an employer company to seek to protect their trade and business interests, but the question is how far can (or should) they go? In a recession economy, where employees already feel trapped in their employment, and unable to move because of the lack of opportunities and fear of unemployment, non-competition or solicitation clauses can severely (and often very unfairly) restrict their right to change employer, set up their own business in a similar industry or, in some cases, to earn a living.

Essentially, an employer will use 'restrictive covenants' or 'restraint of trade' clauses to try to protect its trade secrets or confidential information and its connections with its customers and / or suppliers by preventing an employee from competing with their old employer by setting up their own business (non-compete), taking their clients or customers (non-solicitation) and from entering into employment with a rival company.

The most important consideration when looking at any such restrictive clause in an employment contracts is whether or not the clause is reasonable. For a restriction to be deemed 'reasonable', it should not be too far-reaching or unfairly restrictive. Generally speaking, restrictive clauses would be examined with regards to the following criteria:

**Geographical area: is the geographical area too wide?** For example, if a clause includes a geographical area where the employer company does not do business, or if the clause is attempting to prevent an employee taking up employment for a competitor throughout the whole of Europe, it is likely that it would be considered unreasonable. Even if the geographical territory is not clearly defined, the Courts will usually consider it to be 'worldwide', thereby making it almost impossible to enforce.

**Length of time:** the length of time for the restriction must be justifiable. In practice, six months to twelve months would be the norm, but whether such a restriction would be considered unreasonable or excessive would depend on individual circumstances and the particular facts of the case.

The type of trade or commercial information the employer is trying to protect. For example, trade secrets essential to an employer company's business would be afforded greater protection under these clauses.

**Level of employee's position within the employer company:** if an employee is a low-level worker on an average salary, it would be ludicrous to try to restrict their moving to a new employer, particularly in circumstances where they may have had little direct contact with customers, or had no in-depth knowledge of any trade or commercial secrets. Conversely, more senior employees and key personnel within the employer company, who may have had greater access to confidential trade information and customers, are more of a threat when they leave.

One of the most common reactions by an employer, following a perceived breach of such restrictive termination clauses, would be to look for a Court injunction against the former employee.

In general, the Courts will look at the employer's business interests and weigh them up against the employee's right to earn a livelihood, a right which is enshrined in our Constitution and considered to be a basic human right.

The Courts will also look at an employee's circumstances and consider the effect of their not being able to earn a living in the event that an injunction is granted and what effect this would have generally on the employee. More recent case law suggests the Courts are willing to take a practical approach and encourage the free movement of workers by rejecting unfair anti-competitive clauses.

In summary, an employer needs to carefully consider whether inserting these types of clauses into an Employment Contract is necessary, and whether they would withstand a legal challenge in Court. The employee should also try to observe all terms and conditions in their Contract of Employment, but should consider getting legal advice in circumstances where they are prevented from moving on with their career.