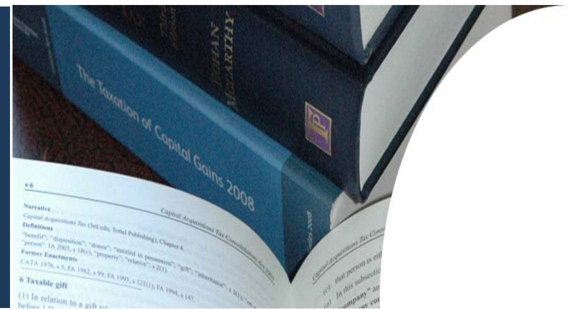
OHT Guide to Domicile Levy Finance Bill 2014



Domicile Levy

Finance Act 2010 introduced a new levy known as the “Domicile Levy”, which is a charge of €200,000 payable by individuals who are domiciled in Ireland for 2010 and later years.

The purpose of the levy is to ensure that individuals with substantial income and assets located in the State make a contribution to the exchequer.

An individual who is domiciled in Ireland is subject to the levy if:-

1. his worldwide income in the relevant year of assessment is in excess of €1,000,000

   and

2. the value of his Irish property is in excess of €5,000,000.

The levy will apply irrespective of where the taxpayer lives, or is tax resident; in another jurisdiction. Up to 2011 the individual also has to be an Irish Citizen to come within domicile levy.

Worldwide Income:

For the purposes of the levy an individual’s income is calculated without any deductions provided for in the Taxes Consolidation Act which would deem;

> *“income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purpose of income tax”.*

The term “total income” which is used when referring to the worldwide income includes all income before any deductions are allowed. The legislation provides as follows:

> *“world-wide income’, in relation to an individual, means the individual’s income, without regard to any amount deductible from or deductible in computing total income, from all sources ....as if any provision....providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted”*

This is a very wide definition and could result in an individual who has income which is substantially lower than €1,000,000 annually when calculated for income tax purposes, being deemed to have earned in excess of €1,000,000 in a given year of assessment for domicile levy purposes.

For example an individual who can claim patent royalties exemption is exempt from income tax but he will still have an exposure to the domicile levy if his worldwide income exceeds €1,000,000.

Irish Property:

Irish property is defined for domicile levy purposes as property in the State to which the individual is beneficially entitled in possession at the valuation date.

The valuation date is **31 December** in the relevant year of assessment.

The term “Irish property” does not include shares in a trading company or shares in a holding company which derives the greater part of its value from trading subsidiaries.

In valuing property no allowance is made for any debts or encumbrances charged on the property, so an individual who has a number of investment properties on which there are large mortgages, who has very little equity and does not think of himself as a mulit-millionaire in property terms, may have an unexpected exposure to the levy (depending on the level of his income).

If the Revenue Commissioners are not satisfied with the taxpayer’s estimate of the value of property they may appoint a qualified person to inspect and value the property.

Credit for Income Tax Paid:

Where an individual pays income tax in a year of assessment in Ireland he will be allowed a levy deduction for the income tax paid. The income tax credit can only be set off against the domicile levy if the income tax is paid before or at the same time as the domicile levy.

Anti-avoidance:

There are a number of anti-avoidance measures in the legislation geared to ensuring that high net worth individuals cannot take steps to bring themselves outside the scope of the levy. For example where a relevant individual transfers property to a spouse or minor child on or after 18 February 2010 the transfer will be ignored for the purposes of the levy, and the value of the property will be included when valuing the Irish property.

Transfers which are made to discretionary trusts and foundations will also be ignored for the purposes of the levy if the transfer took place after 18 February 2010.

Pay & File:

If an individual is subject to the domicile levy in a tax year he has to file a full and true return with the Revenue Commissioners by 31 October in the year

following the valuation date (i.e. 31 December of the previous tax year). The levy also has to be paid by 31 October in the following year.

Finance Act 2014 introduced a provision granting Revenue the power to seek a return of information in relation to a taxpayer's affairs. If Revenue seek this information it needs to be provided within 30 days.

Points to Note:

An individual who is calculating the value of his Irish property must include any property transferred to a spouse after 18 February 2010. However the legislation does not remove the value of the transferred property from the total value of the transferee spouse's Irish property so technically the Irish property appear to count twice.

Example:

John transfers Irish property to Mary worth €2,500,000 in March 2010. John still has Irish property worth €4,000,000 in his own name and Mary had property worth €3,000,000 in her own name prior to the transfer.

If the legislation is applied to this example both John and Mary would satisfy the €5,000,000 Irish property value test for the purpose of the income levy even though John now holds Irish property with a value of less than €5,000,000.

Another point to note in relation to the legislation is that there is no provision to remove a property from the calculation of property value if it is transferred to a spouse and subsequently sold.

Technically a married couple could have a double charge to domicile levy hit even though they do not each own the required €5,000,000 in Irish property.

Finance Act 2014 provided that the audit penalties for non-compliance may apply to the domicile levy by Revenue.

Double Taxation Agreements:

Revenue indicated at a TALC Committee Meeting in February 2010 that they do not consider the Domicile Levy to be tax on income, capital gains tax or to be a similar tax. Currently most double taxation agreements ("DTAs") deal with income tax, CGT or similar taxes.
If the new Domicile Levy is not a tax which comes within the ambit of the current DTA network then no credit for the levy would be available if an individual pays tax in Ireland, as well as paying tax in another jurisdiction, e.g. the United Kingdom.

This Revenue view would result in the levy posing a significant disincentive to a person with a high income who may consider travelling abroad to work. If he pays income tax on income in another jurisdiction and he is subject to Domicile Levy in Ireland, he will not be entitled to a credit for the income tax paid in another jurisdiction, so he will pay a higher level of tax than a person earning the same level of income who stayed in Ireland.

In the first 2 years of position only 10 or 11 returns were received.

In 2012 the citizenship requirement was removed, in 2014 media report following the relevance of some statistics on a freedom of information request, indicated that just under €10 million had been collected since 2010, from 31 individuals.

Caveat: *These notes are intended as a general guide. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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