

### Tax Exemption for Start-Up Companies - Budget 2009

In October 2008 the government outlined a three-year tax exemption for start-up companies. The 2009 Finance Bill answers a considerable number of questions concerning the initiative.

In general, if a trade qualifies for the 12.5% Corporation Tax rate and is carried on by a company incorporated on/after 14th October 2008 and the trade is a new trade, it will qualify for the new exemption.

This exemption (under the provisions of section 486C of the Taxes Consolidation Act 1997) is meant to provide a stimulus for individuals in the establishment of new businesses and is a three-year exemption from Corporation Tax on profits and capital gains for companies with a tax liability of less than €40,000 per year. Because the Corporation tax rate is 12.5% this in effect exempts trading profits of up to €320,000 per year from Corporation Tax for three years. What are the conditions attaching to this Relief?

Where corporation tax for the period is between €40,000 and €60,000, marginal relief will apply. No relief is available where corporation tax liability for the period exceeds €60,000. This relief will apply for three years from the commencement of the new trade. Therefore the company could potentially shelter €960,000 of trading profits from tax over a three year period.



#### What is meant by 'set up'?

The trade must not have been previously carried on by another individual or company.

The activities of the new trade must not have been part of a trade previously carried on as part of another person's trade or profession.

#### What is meant by Profession?

Trade will not include professions, providing professional services, exercising an employment, or the provision of services to a business entity carrying on a profession or exercising an employment.

Neither the Finance Bill nor the Taxes Acts define 'profession'. In a court case in which the matter was examined, it was stated that 'profession' involves an occupation requiring either intellectual skill, as in painting, sculpture or surgery, or skill controlled by the intellectual ability of the operator. It distinguished this from an operation which is substantially the production or sale of commodities.

While certain activities clearly fall within this definition, and are accepted as being the exercise of a profession, such as medicine or law, there may be questions about the status of others. Each case should be examined with regard to its own particular facts and the question of degree is important.

#### The following activities are considered by Revenue as not constituting the carrying on of a profession:

Advertising agents, auctioneers of livestock in a cattle mart, insurance brokers, the operation of a retail pharmacy, public relations companies and stock brokers.

A trade consisting of dealing in or developing lands, excluding construction operations, will not qualify. Neither will a company working minerals or operative mines, which has implications for sand pits, gravel pits etc.

**The tax authorities regard the following as being professions, and therefore not qualifying for the new exemption:** accountant, actor, actuary, archaeologist, architect, auctioneer/estate agent, barrister, computer programmer, dentist, doctor, engineer, journalist, management consultant, optician, private school, quantity surveyor, solicitor, veterinary surgeon. This list is not exhaustive.

Another example of the subjectivity of this relief is that accountancy comes within the meaning of profession, while book-keeping, payroll and VAT compliance activities, would not in themselves constitute a professional activity.

#### Exemption does not apply to individuals

It is necessary for the business to be carried on by a limited company, and an individual person setting up a new business would not qualify.

#### Will the new business be profitable?

Some start-up businesses may not yield profits for a number of years, and these losses can be valuable to off-set against the other taxable profits and income of the individual (non-limited company).

If the business is not likely to be profitable in year one and two, the value of this relief requires more detailed examination. The tax exemption is therefore of maximum benefit where the start-up business is generating profits from year 1.

#### Restrictions on relief

Where the trading activities consist wholly or mainly of the haulage by road of persons or goods or the haulage by road of other vehicles, the maximum Corporation Tax exemption over the three years is restricted to €100,000.

Another potential restriction is that the claiming of this Corporation Tax exemption may impact on the company's entitlement to other State supports. As to how this interaction will impact is not known presently, but we understand that the Department of Finance is drawing up guidance notes in this area.

Like any worthwhile tax relief, there are conditions attaching, and this relief is no exception.

The purpose of many of the restrictions is to ensure that the tax relief relates only to genuine 'start-up' businesses, and are not part of a trade or business previously carried on by another individual or company.



**The trade must be set up and commenced in 2009.** (Edit - the 2010 Budget extended the qualifying commencement period to 2010. Please visit [company exemption](#) article to view the situation for 2011)

The company carrying on the trade must be a new company, that is it must have been incorporated no earlier than 14 October 2008.

For example: We have an existing company which we once used for a now discontinued trade - will it qualify? The answer is no, because it was incorporated prior to 14 October 2008, this company will not qualify. Neither would an existing trading company setting up a new trade qualify.

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