

# CHANGES TO TAX RELIEF FOR SPORTSPERSONS

Finance Act (No.2) 2013 contains some favourable changes for sportspersons. **Pearse Kenney** explains.

## BACKGROUND

Finance Act 2002, by enacting Section 480A of the Taxes Consolidation Act, 1997 (TCA), introduced a tax relief for certain classes of sportspersons on their retirement. The relief was a recognition of the relatively short careers and limited earning capacity for most professional sportspersons in Ireland. It was given by way of repayment of tax, applied so that a sportsperson engaged in certain specified sporting occupations or sporting professions could, on their permanent retirement, claim a tax deduction of 40% from his or her income for up to ten tax years during which he or she was tax resident in Ireland.

The persons who qualify for the relief are listed in Schedule 23A of the TCA, and are as follows:

- Athlete
- Badminton player
- Boxer
- Cyclist
- Cricketer (applicable 2012 and subsequent years)
- Footballer
- Golfer
- Jockey
- Motor racing driver
- Rugby player
- Squash player
- Swimmer
- Tennis player (applicable 1999-2000 and subsequent years)

## CALCULATING THE RELIEF

On permanent retirement, qualifying sportspersons are entitled to a deduction from their total income for up to ten tax years of assessment. The deduction is 40% of the gross receipts before deducting expenses.

Qualifying receipts are those which are derived wholly and exclusively from the engagement of the qualifying individual in the specified occupation or specified profession and which arise from their actual participation in the sport.

Accordingly, where the qualifying individual is an employee, qualifying receipts include salaries, fees, wages, bonuses or perquisites paid to the individual by his or her employer as a direct consequence of the participation by the individual in the sport.

For self-employed individuals, qualifying receipts include match or performance fees, prize monies and appearance monies paid to the individual as a direct consequence of their participation in the sport.

Receipts which are excluded when calculating the relief include sponsorship monies, fees for promotions, advertising or media works and image rights fees.

The ability to claim 100% of the expenses against the reduced income contributes to making the relief quite generous especially for self-employed individuals who have a wider scope for claiming expenses than individuals who are engaged as employees.

There is a provision that allows that where an individual who has been granted the relief recommences the specified

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“THIS AMENDMENT PROVIDES SPORTSPERSONS WITH GREATER FLEXIBILITY IN WHERE THEY CAN BASE THEMSELVES AND PURSUE THEIR SPORTING CAREERS. IT PARTICULARLY WILL FAVOUR THOSE WHO HAVE BUILT UP A NUMBER OF YEARS TAX RESIDENCY IN IRELAND AND WHO WISH TO MOVE TO ANOTHER EEA OR EFTA STATE IN ORDER TO PROGRESS THEIR CAREER OR SIMPLY TO BROADEN THEIR HORIZONS”

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occupation or specified profession the relief will be withdrawn by raising an assessment to tax under Schedule D Case IV for the years in which the relief was given. The individual may however seek to claim the relief again on a subsequent retirement.

#### **FINANCE ACT (NO.2) 2013**

Up until Finance Act (No.2) 2013, the relief introduced by Finance Act 2002 operated in the main as enacted.

The 2009 Commission on Taxation report recommended capping the total repayment of tax for any ten-year period at €350,000. It also recommended that a sportsperson could only select a block of ten consecutive years for which to claim the relief (rather than the best ten non-continuous years), however the recommendations were not enacted in subsequent Finance Acts. While the method of calculating tax relief remains unaltered, Finance Act (No.2) 2013 has made some fundamental changes to how the relief applies for retirements occurring on or after 1 January 2014.

Firstly, while a qualifying individual continues to mean an individual who carries on a specified occupation or a specified profession as per Schedule 23A of the TCA, it is now a requirement that the individual has complied with the Income Tax Acts – a requirement that was not previously stated in the legislation.

Secondly, it was previously required that the individual must have been tax resident

in Ireland when he or she retired permanently from the specified occupation or a specified profession. This was viewed as being contrary to EU law and as a result of pressure brought to bear by Ireland's EU partners it is now sufficient for the individual to be resident in Ireland, an EEA State or an EFTA State in the tax year in which he or she permanently retires from the specified occupation or specified profession.

This amendment provides sportspersons with greater flexibility in where they can

particular comfort since many of those to whom the relief applies may have their careers cut short by injury at any time and who may be forced into retirement.

Thirdly, the period in which the relief applies has been amended so that the deduction is now to be made in any of the tax years comprising the year of assessment in which the individual permanently retires from the specified occupation or the specified profession and the fourteen years of assessment immediately preceding the year

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“THE RELIEF WAS A RECOGNITION OF THE RELATIVELY SHORT CAREERS AND LIMITED EARNING CAPACITY FOR MOST PROFESSIONAL SPORTSPERSONS IN IRELAND.”

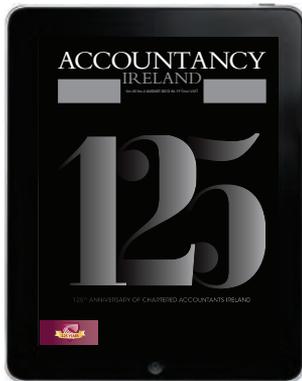
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base themselves and pursue their sporting careers. It particularly will favour those who have built up a number of years tax residency in Ireland and who wish to move to another EEA or EFTA State in order to progress their career or simply to broaden their horizons, both sporting and personal, who can now do so in the knowledge that the relief that they have accrued prior to leaving Ireland will still be available even if they do not ultimately retire in Ireland. This provides

of assessment in which they retire. Previously, the ten years of assessment in which the individual could claim the deduction were the year in which the individual permanently retired from the specified occupation or the specified profession and any year of assessment from the tax year 1990/1991 during which the individual was tax resident in Ireland.

Clearly this limits the scope for cherry-picking the years in which the relief will

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## “THE RELIEF HAS HELPED ATTRACT AND RETAIN SPORTSPERSONS”

provide the optimum tax refund. This may impact on those with long careers for whom some of their highest career earnings occurred in the earlier part of their careers since these years may fall outside the scope of the relief depending on the year of retirement. This is something that those who may be affected by this change may wish to consider closely.

However, the fact the retiring individual is no longer compulsorily required to include their year of retirement as part of their ten years should prove beneficial to those whose earnings taper off in the year in which they retire and, indeed, to those who may not be tax resident in Ireland in their year of retirement.

Finally, the requirement to file an income tax return in the year of retirement in order to claim the relief no longer applies where an individual is not otherwise required to file a return. This amendment appears to be aimed at those who are not tax resident in Ireland in the year in which they retire.

### CONCLUSION

The relief, since its inception, has proved attractive for professional sportspersons in Ireland and has been instrumental in attracting and retaining sportspersons carrying out their sporting activity in Ireland. Since relatively few individuals are eligible to claim the relief it has not proved to be too much of a drain on the Exchequer.

Finance Act (No.2) 2013 represents a sea change in how the relief operates and will be welcome news to those who qualify for the relief who up to now were restricted in their movement by the requirement to be resident in Ireland on their retirement.

It may also be good news for those who were previously tax resident in Ireland while carrying on a qualifying professional sporting activity and who may not have returned to Ireland to retire (either by choice or by lack of opportunity) who felt that the relief would no longer apply to

them. It appears now that the relief may apply provided such individuals meet the new residency requirements when they do permanently retire.

The changes in the residency requirements in the year of retirement may also pique the interest of those who retired while resident in an EEA or EFTA State (other than Ireland) before 1 January 2014 and otherwise would have qualified for the relief who may argue that the relief as constituted at the time of their retirement was contrary to EU law.

Employers may take a more jaundiced view of the change as it will no doubt impact on their ability to retain the services of employees for whom opportunities are available outside of Ireland and who would have been heretofore reluctant to move in case it jeopardised their relief on retirement.

Employees may now have a stronger hand in contract negotiations as the potential for loss of the relief on retirement, should they move no longer appears so stark.

The limiting of the timeframe in which the relief may apply should impact negatively only on those engaged in the qualifying sporting activities in which professional careers tend to last for more than fifteen years.

Notwithstanding the clear benefits to the sportsperson in terms of freedom of movement it is still a requirement for qualifying individuals to have been tax resident and to have paid tax in Ireland in order to claim a refund on retirement. Consequently, an exodus of sportspersons from Ireland seems unlikely since the longer the stay in Ireland the greater the benefits that accrue.

For the same reason, the impact on the ability to attract sportspersons from outside of Ireland to take up residency in Ireland in order to pursue their sporting endeavours should not prove too detrimental.

The changes do, however, alter the playing field and it will be interesting to see how they play out for sportspersons, their administrators and for the sporting public in general. ■

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