RELEVANT TO ACCA QUALIFICATION PAPER F6 (IRL) AND PERFORMANCE OBJECTIVES 19 AND 20

New companies start-up relief

In the syllabus for Paper F6 (IRL), *Taxation*, with effect from 2012 onwards, the examiner has included the new relief available for start-up companies, whereby start-up companies can claim an exemption from corporation tax. The purpose of this article is to explain the workings of this relief. The article sets out details of the scheme, including the maximum and marginal tax-exempt amounts allowable and the time limits for the relief.

Background to relief
The relief was introduced in the Finance Act 2009 by inserting a new section 486C into the Taxes Consolidation Act 1997. The purpose of the relief is to encourage new business activity in the traded sector of the Irish economy.

Section 486C provides relief from corporation tax in their first three years of operation for new companies:
- that are incorporated on or after 14 October 2008
- which commence a qualifying trade in 2009, and
- whose corporation tax liabilities do not exceed certain specified levels.

Section 45 of the Finance Act 2010 extended the relief to such companies commencing to trade in 2010 and Section 34 of the Finance Act 2011 provided for the extension of the three-year tax relief for start-up companies to those companies which commenced a trade in 2011.

What is a qualifying trade?
A qualifying trade does **not** include:
- a trade that was previously carried on by another person or formed part of another person's trade
- a trade of dealing in or developing land or exploration and extraction of natural resources, or
- a trade consisting of 'service company' activities as defined in Section 441 of the TCA 1997. Service companies include those companies whose businesses consist of the carrying on of a profession or the provision of professional services, or of exercising an office or employment. Service companies also include businesses that provide services to professionals.

Where a company claiming relief takes over the activities of another trade, those activities will be treated as a separate trade (which will not be a qualifying trade). Relief is also not available where part of the qualifying trade is transferred to a connected person.

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Minimum and maximum amounts of relief

Full relief is available to a new company in any of its first three years of operation where its total corporation tax liability for a 12-month accounting period does not exceed €40,000. The relief is for corporation tax and would exclude any income tax that might be payable resulting from payment of a patent royalty, and the consequent withholding of income tax.

A qualifying new company with a corporation tax liability up to €40,000 will have its corporation tax liability reduced to nil. The maximum relief over three years is €120,000 (€100,000 for companies engaged in the transport sector). There is a sliding scale of marginal relief where the corporation tax liability for a 12-month accounting period exceeds €40,000 but is less than €60,000.

Marginal relief

Where the corporation tax liability for a 12-month accounting period exceeds €40,000, but is less than €60,000, the corporation tax payable by the company for the accounting period is reduced to an amount determined by the following formula:

$3 \times (T-M) \times (A+B)/T$

where:

T is the total corporation tax payable by the company for the accounting period
M is the lower relevant maximum amount (ie €40,000)
A is the corporation tax payable by the company for the accounting period in relation to income from the qualifying trade, and
B is the corporation tax payable by the company for the accounting period in relation to chargeable gains on the disposal of qualifying assets of the qualifying trade.

Example

If a company's tax liability is €41,000 (all attributable to income from a qualifying trade), it will get relief of €38,000 and will pay €3,000, calculated as follows:

3 x (€41,000 – €40,000) x €41,000/€41,000 = €3,000

There is no relief for a company with a corporation tax liability of €60,000 or greater in any 12-month accounting period. The €40,000 and €60,000 limits are proportionately reduced for accounting periods of less than 12 months.

Changes introduced in Finance Act 2011

Section 34 of the Finance Act 2011 modifies the existing relief so that the value of the relief is now linked to the amount of employers’ PRSI paid by a

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company in an accounting period under the Employer Job (PRSI) Incentive Scheme introduced in 2011. The purpose of these changes is to better target the relief at start-up companies generating employment.

The changes introduced in Finance Act 2011 apply to all qualifying companies for accounting periods beginning on or after 1 January 2011. However, companies that set up and commenced a qualifying trade in 2009 or in 2010 will be able to obtain relief on the previous (ie pre-Finance Act 2011) basis for profits earned in accounting periods commencing before 2011.

Exclusions from relief

The relief is not available for companies operating in:

- the fishery and aquaculture sectors,
- the primary production of agricultural products, or
- the coal sector.

The reason for this is that these areas have separate EU regimes relating to the provision of aid.

Time limit for claims for relief

A claim for relief must be made on the CT1 Form. The claim must specify the amount of the relief being claimed for an accounting period. The CT1 Form must be filed within nine months of the end of the company's accounting period. Where the accounting date falls on or after the 21st of the month, it is deemed to fall on the 21st of the month.

Conclusion

This is an important relief that is targeted at assisting new companies and, hopefully, generating new employment opportunities. As such, it is possible it could feature as a question in future exams.

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