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New VAT on Property Rules

The long awaited changes to VAT on property came into law recently when outlined by former Tánaiste and new Taoiseach Brian Cowen. The New VAT on Property Rules will come into effect on 1 July 2008. The amendments to the VAT regime are extensive, however the main changes can be summarised as follows:

Sales of new properties

- The first sales of new residential properties are still taxable at 13.5%. All subsequent sales will be exempt from VAT.
- New non-residential properties (i.e. properties that are less than five years old) are taxable at 13.5%. Where a property has been occupied for more than two years and is being sold for a second time within five years from completion, it will be classed as a second hand property and different rules will apply.
- All 99 year leases will be regarded as freehold properties and will be taxable at 13.5%.

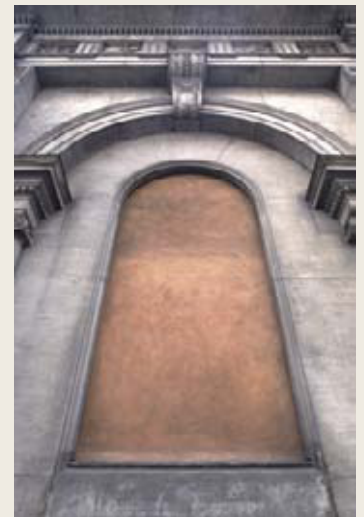
Sales of second hand properties

- The sales of non-residential second hand properties will be exempt from VAT however an option to tax will be available.
- In order for the supply of a second hand property to be taxable, both the seller and the purchaser must jointly opt to tax the transaction.
- Where development work is carried out on a property which materially alters its use and the value of the work exceeds 25% of the market value of that property, the property will be classed as new and should it be sold within 5 years of the development work, it will be taxable at 13.5%.

Leases

- All leases are exempt from VAT.
- There will no longer be a distinction between short and long leases. Consequently it will no longer be possible to waive an exemption of short lettings. It is advisable that Landlords with existing waivers of exemptions in place, assess whether or not the waivers should be continued post June 2008.

- Where a lease on a non residential property to an unconnected party is granted, the Landlord may opt to tax the lease and charge VAT at 21% on each rent. If the parties to the lease are connected an option to tax the lease may not be availed of unless the lessee has 90% input credit deductibility.
- All leases on residential property are exempt from VAT.
- The VAT 4a/4b procedures will also be discontinued as of 1st July 2008.



Capital Goods Scheme

- A capital goods scheme has been introduced in the New VAT rules. The scheme provides that each property will have a VAT life of 10 or 20 years, 10 years in the case of a refurbishment and 20 in the case of a new development.
- Effectively any VAT claimed on the development of a building will be apportioned over the VAT life of the property. Where the use of a property changes from one year to another and Revenue claw back a portion of the input credits, the claw back will be apportioned over the VAT life of the property.
- There is also a provision that where the use of a property drastically changes and more than 50% of the input credits claimed must be repaid to Revenue, the payment must be made in one go. This is referred to by Revenue as the Big Swing.

Transitional rules will be in place to ease the transition from the old rules to the new. The changes are fundamental therefore advice should be sought on the VAT position of each property to prevent any unexpected VAT costs in the future.

Franchising

The franchise sector is now well established and is an important contributor to the Irish economy both in terms of the employment it creates and the wealth it generates. The growth in the franchise sector in Ireland looks set to increase through new franchisees setting up their own businesses, through existing indigenous businesses using the franchise model for expansion and through new non-Irish franchises entering the market due to our strong domestic economy.

Franchising is a comprehensive business relationship whose four essential elements ensure a better success rate than starting a non-franchised business. These are:

- A legal agreement between the franchisor and franchisee
- An operations manual, on the workings of the business, written by the franchisor
- A training programme, provided to the franchisee
- On-going support, from the franchisor to the franchisee, during the term of the contract

In return for these the franchisee pays the franchisor an initial franchise fee and a continuing management services fee based on a small percentage of turnover.

A **franchisor** is a person or business who has developed a business method (product or service) and seeks to expand through offering franchisees/investors the right to trade under their business name using their operational methods, organisational systems and trademarks. The franchisor will assist in setting up and maintaining links with the franchisee through continued support including advice, training and ongoing research of the concept.

A **franchisee** is the investor who purchases the right to trade using the franchisor's tried and tested business concept and all that it entails. The franchisee maintains links with the franchisor in a number of ways including the exclusive purchase of products or services, the payment of a management services fee and/or an advertising levy.

A **franchise agreement** is a legally binding contract that defines the obligations of the franchisor and franchisee throughout the period of the operation of the franchise. It defines the duration of the contract, the territory in which the franchisee will conduct business and the level, frequency and method of payment of all continuing fees. It may also include equipment specifications, extension and termination clauses and the conditions under which either party may terminate or extend their business arrangement. The operating manual may be an integral part of the agreement, obliging the franchisee to follow the strictly defined business method laid out in it.

The **operations manual** is a "blueprint" for the operation of the franchise. It provides specifications and instruction on how to conduct the franchise activity on a day-to-day basis. It includes such diverse areas as equipment specifications (where applicable), financial and accounting procedures, product preparation and presentation, staff selection, local advertising and promotion and customer liaison.

In a retail outlet the franchise package may specify the shop front layout and design, product display, fixtures and fittings and equipment necessary to operate the business. In a service franchise the package includes business stationery and promotional literature; it may also include equipment and materials.

The **initial franchise fee** covers the franchisor's expenses in recruiting, training and setting up the franchisee in business. It also covers areas such as site selection and design. There is usually a small profit element for the franchisor.



The **continuing fees**, also known as the **management services fee (MSF)** or **royalty**, is a payment usually made on a monthly basis by the franchisee to the franchisor or master franchisor. It is calculated as a percentage of the franchisee's gross turnover, excluding VAT.

The **advertising levy** covers the franchise system's advertising and promotional activities. It is usually calculated as a percentage of the franchisee's gross turnover, excluding VAT.

Territory is the area within which the franchisee has the right to conduct the franchise business. The territory may be defined in terms of population size or street/town/county. A map may form part of the agreement, defining the specific territory for the franchisee. Exclusive territory may or may not be offered. If it is, the franchisee is assured that no competing units of the same system will be introduced within the area.

VAT on a Cash Receipt Basis - Recent Changes

Accounting for VAT on a cash receipts basis involves the practice of paying VAT to Revenue on sales at the date payment of the relevant invoice is received instead of at the date the invoice is raised. The delayed remittance of VAT to Revenue represents a significant cash flow saving.

The Finance Act 2008 amended the legislation regarding the operation of VAT on cash receipts as follows: where an individual/company who accounts for VAT on a cash receipts basis gives a discount to a customer, the individual/company is now obliged to issue a credit note to the customer. Where no credit note is issued, Revenue will hold the individual/company liable for the full VAT amount on the original invoice.

Revenue Penalties for Deceased Taxpayers

Revenue recently provided clarity on the application of penalties where a taxpayer is deceased.

Where penalties have been agreed prior to the taxpayer's death and that penalty remains unpaid at the date of death, Revenue will pursue the personal representatives of the deceased taxpayer for recovery of the unpaid penalty. Revenue may publish details of the penalty and underpaid tax where the publication criteria are met.

Where an agreement on penalties has not been reached prior to the date of death, Revenue will not seek repayment of any penalty from the deceased taxpayer's personal representatives. Given that no penalty will be imposed by Revenue, no publication will occur.

The above procedures will apply to cases which have not been settled by 18 March 2008. Revenue has advised that settled cases will not be reopened.

VAT changes for Sub-Contractors

The Finance Bill 2008 contains a change with regard to how VAT is charged on invoices from a subcontractor to a principal contractor. From 01 September 2008 onwards, the principal contractor is required to self account for VAT on invoices from the subcontractor. The subcontractor must include a line on his invoice to the effect that the VAT will be accounted for by the reverse charge mechanism. Instead of

VAT changes for Sub-Contractors (continued...)

the principal contractor paying VAT to the subcontractor and then claiming same from Revenue, he will pay the net amount to the subcontractor and have no reclaim from Revenue. The principal contractor will include the VAT on the invoice in both the VAT on sales and VAT on purchases column with the result that no VAT is paid over to Revenue. This is essentially a cash flow saving mechanism.

RCT Update (Relevant Contract Tax)

The circumstances where RCT should be operated was widened following Finance Act 2007. Where a person who is registered for RCT engages a contractor to work on either their own home or business premises, RCT would have to be operated as the individual is deemed to be a principal contractor. Revenue has relaxed this provision in the Finance Bill 2008 as follows:

A company which is engaged in either the building, meat or forestry industries will not be obliged to operate RCT on payments to subcontractors who work on its business premises.

An individual who is a principal contractor by reason of being engaged in the meat or forestry business (but not building) will not be obliged to operate RCT on payments to subcontractors who work on their own home or business premises.

Therefore an individual who is engaged in the building industry either as a property developer or owner of a construction company will have to operate RCT on payments to subcontractors engaged to carry on work on their private dwellings or business premises.

Revenue are enforcing the legislation vigorously in recent years and have been imposing interest and penalties for the incorrect operation of RCT even in situations where there is no loss of tax. Thus it is vital that RCT rules are adhered to.

PAY AND FILE SUMMARY

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

Corporation Tax

Filing date of return of income for companies with year ends during the month ended 30 September 2007 21st June 2008

Income Tax

Filing date of 2007 return of income 31st October 2008
Pay preliminary income tax for 2008 31st October 2008

Capital Gains Tax

Payment of Capital Gains Tax for the disposal of assets made between 01 January 2008 to 30 September 2008. 31st October 2008

Money Laundering Bill, 2008

This new piece of legislation has been introduced in order to transpose the EU's Third Money Laundering Directive into Irish law. The current legislation requires the Financial Sector and other designated bodies such as lawyers, accountants, auctioneers and tax advisors to:

- Identify their customers;
- Report suspicious transactions to the Garda Síochána/Revenue Commissioners;
- Keep records and;
- Have procedures in place.

The objective of the 2008 Bill is to strengthen Ireland's anti-money laundering and anti-terrorist funding legal framework. It is intended to do this by requiring the Financial Sector and other affected bodies to take additional measures to identify their customers particularly where situations of higher risk have been identified. The draft legislation will have the effect of consolidating the existing anti-money laundering legislation.

The transposition of the Third Money Laundering Directive will bring Ireland into line with international standards. The Third Directive includes the following:

- Ongoing customer due diligence;
- Designated bodies are required to identify non-domestic politically exposed persons;
- A requirement of identification of beneficial ownership of legal entities such as companies and trusts;
- The extension of money laundering obligations to Trust and Company Service Providers;
- The putting in place of a system of compliance by non-financial designated persons and;
- The provision of increased protection for employees making suspicious transaction reports.

Changes to Relief on Medical Expenses

A deduction can be claimed for medical expenses and certain dental expense in an individual's tax return. A list of qualifying medical and dental expenses is available on www.revenue.ie. The relief is given at the individual's marginal rate of tax. Prior to 2007, a deduction could only be claimed for expenses in excess of €125 in the case of one individual or €250 in the case of two or more individuals per annum. These lower restrictions no longer apply.

The provisions for claiming medical expenses were further relaxed in 2007 as a taxpayer can now obtain relief for any expenses paid for or on behalf of any other person. Previously the taxpayer could only claim for expenses he incurred for himself, his dependents or his relatives. (Eg. Expenses claimed on behalf of non related parties are now claimable).

Should Hill Walkers Pay Fees to Landowners?

The conflict between a person's right to enjoy the countryside and a landowner's right to private property has become a topical issue in recent years. This can be illustrated by the establishment of 'Comhairle na Tuaithe' (Countryside Council) under the Department of Community, Rural and Gaeltacht Affairs in 2004. This 'council' comprises representatives of the farming organisations, recreational users of the countryside and state bodies with an interest in the countryside. It sought primarily to address the following issues:

- Access to the countryside;
- Developing a countryside code;
- Developing a countryside recreation strategy.

The latter aim was realised in September, 2006 when the countryside recreation strategy was launched. The strategy aims to strike a balance between granting reasonable access to recreational users to the countryside and respecting the legal rights and concerns of landowners who are predominantly the farming community. It was proposed to encourage farmers to provide for outdoor recreation thereby providing them with an opportunity to benefit financially.

It is arguable that entitling farmers to charge hill walkers to use their land is of benefit to both the landowner and the recreational user. This is largely because of the provisions contained in the Occupier's Liability Act, 1995. Under this Act 'visitors' and 'recreational users' are distinguished and are owed different standards of care from the landowners.

Section 2 of the Act relates to visitors and the duty of care owed to them. A visitor is an entrant who is on the premises of the occupier and is there at the invitation of, or with the permission of, the occupier.

Section 4 of the 1995 Act refers to recreational users. These are entrants who are present on the premises with or without the occupier's permission or at the occupier's implied invitation without a charge for the purpose of engaging in a recreational activity.

The imposition of a fee would raise the status of a person from a recreational user to a visitor and the importance of this distinction lies in the duty of care owed. The Act provides that an occupier owes a visitor a 'common duty of care'. The scope of this duty is to take such care as is reasonable in all the circumstances to ensure that a visitor does not suffer injury or damage by reason of any danger existing on the premises. However, the duty owed to recreational users is a basic one and is simply not to injure such persons intentionally and not to act with reckless disregard for their safety.

Therefore, it is apparent that requiring hill walkers to pay fees to farmers for the use of their land would not only give financial reward to the farmers but may also afford greater legal protection to the hill walkers in relation to the physical state of the farmers' lands.

Hibernian buys into Vivas

Hibernian Insurance has recently announced its purchase of a further 28% stake in health insurance provider Vivas, bringing their overall control to about 70% with Allied Irish Banks holding the remainder. It is reported that the purchase of shares from senior management at Vivas has cost Hibernian in the region of €8m.

Hibernian and AIB previously became partners in the insurance sector when they merged Hibernian Life and Pensions with Ark Life in 2006.

Joint backing by AIB and Hibernian will allow Vivas' products to be sold both through AIB's branch network and Hibernian's direct and broker networks.

Mobile calls take to the skies

The telecoms regulator, Com-Reg is set to allow the use of mobile phones on commercial airlines flying to and from Ireland. This closely follows a similar decision taken by Ofcom in the UK in relation to British airspace.

Ryanair intends to introduce the service later this year whilst Aer Lingus has no immediate plans for same.

Ryanair will launch its service at international roaming charge rates which are higher than the 60c per minute EU roaming charges. Calls will be enabled by mobile base stations on the aircraft which will communicate with satellites.

Davy Predicts Weak Economic Growth Until 2010

Davy Stockbrokers has forecast that Ireland's economic growth will fall to 2% in 2009.

In a monthly report, Davy Research said that it does not expect economic growth to return to normal levels until 2010. It now expects GNP growth of 1% this year and 2% for 2009, down from a previous forecast of 3.4%.

The stock broking firm also expects the house price slump to continue and predicts that prices will fall by a further 10.7% this year and by a further 7.2% next year. Davy has reduced the number of completions it expects to see next year from 40,000 to 25,000.

By the end of 2009 it also forecasts that unemployment will have hit 7% - compared to 5.5% currently.

Davy has slashed its forecasts in response to what it calls the "negative wealth effect". It says that consumers are finding it harder to get credit as the labour market weakens

Changes planned for the Deposit Protection Scheme

The Government is planning changes to the deposit protection scheme in order to offer better safeguards to bank customers in the event of an Irish institution suffering a Northern Rock style collapse.

Under the current rules, Irish savers can only receive 90% of the money they had deposited at a failed bank or building society, subject to a maximum of €20,000. Therefore customers with large lump sums would have to split their money between several banks in order to gain maximum protection.

The Irish scheme applies to banks that are authorised to do business here by the Central Bank. Irish customers of foreign banks operating here are protected by the scheme of that bank's home country. Irish customers of Dutch bank Rabobank, for example, would be eligible for compensation under the Dutch scheme.

Tax Relief on Foreign Medical Expenses

According to the latest list of approved institutions issued by Revenue, tax relief can now be claimed on medical expenses incurred in a growing number of countries. Along with Northern Ireland, Britain, North America and Western Europe, some clinics in Poland, Romania, Thailand, Russia and Iran have now been added to the list.

According to the 1997 Taxes Consolidation Act, any institution approved by the Minister for Finance in consultation with the Minister for Health is recognised by the Revenue as qualifying for tax reliefs. Depending on the claimant's Irish PAYE tax band, refunds of 20% or 41% can be applied for on all medical expenses incurred.

According to the Department of Finance it is "very rare" for a medical institution to be turned down for inclusion on the approved list as long as it "ticked all the boxes".



Commercial Leases

Today commercial leases take the form of 'FRI' leases, that is 'full, repairing and insuring' leases usually for a term of twenty years at open market rent subject to upward only review every five years. With a single letting of an entire building the tenant is liable for all repairs and outgoings. With a letting of part of a building the landlord usually covenants to maintain the structure and common areas but passes on the cost to the tenant through a service charge. With regard to this service charge, the landlord is obliged to have the service charge covenant in the lease comprehensively drawn to include all possible items of service which may be required to be carried out and for which the landlord will seek reimbursement from the tenant.

Under the Landlord and Tenant (Amendment) Act, 1980 as amended by the Landlord and Tenant (Amendment) Act, 1994 the tenant acquires a statutory right to renew his lease after a period of five years' occupation. However, this position has now been changed in relation to leases of office space only whereby the automatic right to renewal after five years may be waived.

The typical commercial lease contains a rent review clause which provides that the rent payable under the lease is to be reviewed on the basis of the market rent which might reasonably be expected to be achieved for the property at the date of the rent review. The object of the rent review clause is to protect the value of the landlord's investment and also to reflect the changing value of the property during the term of the lease. The rent review clause may be agreed upon by the landlord and the tenant. Otherwise, it will be carried out by an appointed independent party. Once the revised rent has been decided upon, a memo recording the revised rent will be included in the lease.

Commercial leases are subject to restrictions on alienation. These restrictions operate to prevent the tenant from assigning, subletting or otherwise parting with possession of the premises without the landlord's prior consent. The purpose of such restrictions is to enable the landlord to retain control over who occupies their property thus protecting their property and their income from the property.

Bullying in the workplace

In recent times bullying has become an increasing problem in the workplace. In 2001, the Health and Safety Authority (HSA) established a Task Force which defined bullying as "repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work".

Bullying in the workplace is addressed under the Safety, Health and Welfare at Work Act, 2005 and the Employment Equality Acts, 1998 and 2004. The 2005 Act provides that employers have a duty to ensure the health and safety of their employees in the workplace (Section 8). Under this section employees also have a duty not to engage in improper behaviour which would endanger himself or other employees. The HSA works to ensure that workplace bullying is not tolerated and that employers have procedures for dealing with such bullying. In keeping with this employers must take reasonable steps to prevent bullying in the workplace and should put in place an anti-bullying policy and procedures for dealing with related complaints. The employer should ensure that all employees are aware of the policy on bullying and must also consider and act upon any complaints made.

The Employment Equality Acts oblige employers to prevent harassment in the workplace. Section 14 of the 2004 Act governs the issue of harassment and states that it includes any form of unwanted conduct related to grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community. Sexual harassment is also included and is defined as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature".

If an employee feels he is being bullied he should first make it clear to the person concerned that his behaviour is unacceptable and undermining. If this method is ineffective the employee should then consider making a formal complaint to his manager/employer. If the complaint relates to one of the grounds of discrimination listed in the Employment Equality Act a case may be brought before the Equality Tribunal.

Employers should note that if an adequate bullying policy is not provided an employee may make a formal complaint of this fact to the Workplace Contact Unit of the HSA.

The Unfair Dismissals Acts 1977-2001 may also be relevant where the bullying has such an effect as to force the employee to leave his job. This may amount to 'constructive dismissal' and could result in the Employment Appeals Tribunal finding that the employee in question is entitled to compensation from his employer.

It is important to note that complaints under the Employment Equality Acts and the Safety, Health and Welfare at Work Act must be brought within 6 months. This may be extended to 12 months where 'reasonable cause' for the delay is shown.



Employment Rights Bill Published

The Minister for Enterprise Trade and Employment has published the Employment Rights Compliance Bill which substantially revises the law in relation to the enforcement of employment rights. On its publication the Minister stated that "this bill will modernise the labour inspectorate, strengthen enforcement of employment rights and work permits, promote greater compliance in the workplace and increase the penalties for those employers who seek to gain advantage by denying employees their entitlements under law"

Some of the key provisions in the Bill are:

- Establishment of the National Employment Rights Authority (NERA) on a statutory basis.
- Increased powers for labour inspectors including the prosecution of summary offences by the NERA
- Increased penalties for breaches of employment law
- Protection of whistleblowers in the event of breaches of employment law being reported in good faith
- Requirements for employers to retain employment related documents for specified periods.

A Gentle Reminder to Residential Landlords

Subject to limited exceptions, all landlords must register details of Irish residential tenancies with the Private Residential Tenancies Board (PRTB) within one month of their commencement.

If they do not, landlords can be prosecuted and face a fine of up to €3,000, and/or up to 6 months imprisonment. Even if they are not prosecuted, landlords registering outside the specified time period will have to pay double the fee for late registration currently €140. The registration requirements relate to each particular tenancy and not to a property; therefore each time the tenancy changes in a property a new application for registration must be made.

Landlords who fail to register are ineligible to deduct any interest paid on monies borrowed to purchase, improve or repair the rented residential premises from their Irish rental income for tax purposes.

Finally the PRTB will not deal with any disputes relating to residential tenancies unless the tenancy is properly registered with the PRTB.



The William Hill Case

The extent of a bookmaker's duty of care to its customers was recently addressed in England in the much publicised William Hill case. Graham Calvert, a greyhound trainer, sued the prominent bookmakers for more than £2 million in compensation for the losses he suffered. Mr. Calvert stated that he lost more than £2 million as well as his marriage, livelihood and health as a result of a six month gambling spree in 2006. He claimed that he was manipulated by the bookmakers and argued that they were guilty of 'negligent encouragement and inducement' by not acting to curb Mr. Calvert's gambling even though he had indicated he wanted them to on at least two occasions.

The Court heard that between the years 2000 and 2005 Mr. Calvert made approximately £50,000 profit per year from gambling. Mr. Calvert told the court that his demise came about when the William Hill Company limited his bets on greyhound racing, a sport he knew well, and he then started to place bets on horseracing and golf.

It was argued on behalf of Mr. Calvert that William Hill had sought to encourage Mr. Calvert to go on huge betting sprees, breaching their own 'self-exclusion' policy. Under this procedure, which is designed to protect addictive gamblers, Mr. Calvert's account was closed for six months and he was barred from placing telephone wagers. However, Mr. Calvert circumvented this by opening a new account under the same name but with a different credit card. It was under this new account that Mr. Calvert lost £347,000 on a single bet when he placed the wager on America to win the Ryder cup in 2006. However, Mr. Justice Michael Briggs, in the High Court, held that William Hill owed no duty of care to their customers to protect them from the financial and psychological consequences of their gambling. The Judge opined that had William Hill taken care to exclude Mr. Calvert from telephone gambling for six months, his gambling disorder would still probably have brought about his financial ruin, but over a longer period of time. This decision will bring a sense of relief to bookmakers who, if the Court had found in favour of Mr. Calvert, would have been subject to increased law suits from their customers.

BOSI SME Expansion Fund

Research carried out on behalf of Bank of Scotland (Ireland) found that over half (57%) of SME companies see growing their business as a priority in 2008. Many businesses may feel that 2008 is going to be a challenging year but encouragingly, 74% of SMEs feel positive about their business in the year ahead.

The SME market has seen a lot of growth in Ireland over the past number of years – right across a number of sectors from retail to leisure and from professional services to manufacturing. Because of this, more and more banks are coming out with savvy financial options for small and medium sized companies. It is evident at the moment that the research findings match the demand that many bankers see on the ground from progressive, companies looking to expand.

What is the first step in expanding?

Expansion is a big step for any business. As with all business ventures, it is important to do your homework. Talking to other companies about the development of their company is a great way to pick up tips that will help you secure the financial backing that you need for your expansion, as well as making you know of any potential pitfalls.

Seeking finance should only be done when you are confident that you have done your homework. Find out what is on the market and remember to look for a lender who knows your business well. Finding a lender who will support you and is prepared to be flexible as your business grows is a great place to start.

What are your options?

There are a number of SME funds available on the market. Bank of Scotland (Ireland) has recently launched a new €500m fund aimed specifically at helping small and medium sized companies grow their business. The fund has been designated to support trading businesses that are looking to expand their operations in 2008. The minimum loan amount is €500k and businesses need to have been operating profitably for two years or more. This fund is not targeted at start-ups or property and construction related lending. This is the first time that the bank has designated money specifically for expanding businesses.

The new Fund marks the start of a number of initiatives aimed specifically at businesses in that sector. The Bank of Scotland (Ireland) SME Expansion Fund is Ireland-wide and will be available through the Bank's Belfast office and also around the Republic.



The Internet in the Office

The internet has a prominent position in the vast majority of work places. With such widespread use it is inevitable that a certain level of misuse will occur. It is therefore important that employers set out an office policy on the use of the internet and that employees are aware of the level and the type of use of the internet that is permitted.

One of the more contentious issues in this area is that of employees using company time and resources to download images from pornographic sites. Some content is illegal and under the Child Trafficking and Pornography Act - anyone who knowingly possesses child pornography is guilty of an offence. However, receiving an email attachment which contains child pornography is not an offence provided that the recipient did not receive such material knowingly.



It is vital that employers put in place a strict policy prohibiting the accessing or downloading of pornographic material in the workplace. A failure to do this could leave them open to prosecution. It should also be noted by employers that if a workplace internet policy does not specifically state that downloading or distributing adult pornography constitutes gross misconduct, then summarily dismissing an employee who is shown to have engaged in such activity may leave the employer open to an action for unfair dismissal.

Another important issue relating to the use of the internet in the office is the question of whether an employer can access and read staff emails. The Data Protection Commissioner has stated that in order to protect their business, reputation, resources and equipment, employers may wish to monitor staff's use of email and the internet. However, employers should be aware that the collection, use or storage of information about employees and the monitoring of their email or internet access involves the processing of personal data and thus comes under data protection law.

Under this legislation, employees must be informed of the existence of the surveillance. Furthermore, any monitoring must be a proportionate response by an employer to the risk he or she faces, taking into account the legitimate privacy and other interests of employees.

It is recommended that if employers intend to monitor web access by employees, they should inform the employees of this policy and the basis on which their web access records will be accessed and by whom. It is essential that such policies are implemented in the workplace as any activity engaged by an employee on-line has the potential to negatively impact on the company.