

Bankruptcy

Nearly all Schemes of Arrangement done with creditors are done on an informal basis in this country. However, it is possible to organise a formal arrangement under the Bankruptcy Acts 1988 to 2011.

To be adjudicated Bankrupt you must have committed an act of Bankruptcy. A Bankruptcy Summons is a demand for payment of the sum due within 14 days in default of which you will have committed an act of Bankruptcy. You may apply to the High Court within 3 days of the service of the bankruptcy order on you, giving reasons why

you should not have been made bankrupt. You can also Petition the Court for protection from Bankruptcy proceedings so that you can put an offer of composition to your creditors. If the offer is accepted by 60% in number and value of your creditors and approved by the Court then it is binding on all your creditors. If the offer is not accepted or not approved by the Court then the Court itself may adjudicate you Bankrupt.

Only the Court can adjudicate someone Bankrupt. When someone is adjudicated Bankrupt their property vests in the Official Assignee in Bankruptcy. All property held by you when you are made bankrupt vests in the Official Assignee for the benefit of your creditors. The only property that does not vest in the Official Assignee is essentials up to a value of €3,100. Any property you acquire after you are made bankrupt, transfers to the Official Assignee.

The Official Assignee deals with all practical aspects of the day to day running of the Bankruptcy - such as disposing of the Bankrupt's assets and cer-



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Census 2011—the result

The preliminary total for the population enumerated on Census Night 10 April 2011 was 4,581,269 persons, compared with 4,239,848 persons in April 2006, an increase of 341,421 persons since 2006 or 8.1 per cent. This translates into an annual average increase of 68,284, or 1.6 per cent.

The most recent inter-censal period (2006-2011) shows the

highest natural increase at 45,000 persons per annum, with 73,000 births and 28,000 deaths.

The previous peak of 40,000 per annum was dur-



ing the 1979-1981 period which had a similar high number of births, but these were offset by a higher number of deaths (33,000).

Housing numbers (dwellings) have increased more rapidly than total population between 2006 and 2011, with

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Bankruptcy (cont.)

Consumer Prices in October, as measured by the CPI, increased by 0.3% in the month. This compares to no change recorded in October of last year. As a result, the annual rate of inflation increased to 2.8%, up from 2.6% in September 2011. The annual rate of inflation for Services was 4.1% in the year to October, while Goods increased by 1.2%..

The volume of **retail sales** (i.e. excluding price effects) decreased by 0.8% in September 2011 when compared with the previous month and there was an annual decrease of 3.9%. If Motor Trades are excluded, the volume of retail sales decreased by 0.2% in September 2011 when compared with the previous month, while there was an annual decrease of 3.4%.

In the year to October, residential property prices at a national level, fell by 15.1%. This compares with an annual rate of decline of 14.3% in September and a decline of 11.1% recorded in the twelve months to October 2010.

tifying to the Court who the creditors of the Bankrupt are.

Only Creditors who prove their claims in the Bankruptcy can share in any dividend. The Official Assignee can fix the time within which claims must be submitted. Proof of Debt may be furnished by way of a detailed statement of account, an affidavit of debt or other prescribed means.

In the case of the family home, a bankrupt's interest in the family home vests in the Official Assignee as with all other property. However the Official Assignee may not sell the family home without obtaining permission from the High Court. Where the Official Assignee seeks this permission, the High Court may postpone the sale of the family home having regard to the interests of the creditors and of any spouse and dependants of the bankrupt.

The High Court may appropriate your salary or pension for the benefit of your creditors. However this is subject to any provision the High Court may make to meet your family responsibilities and your personal situation. Social welfare and unemployment payments are not liable to appropriation.

The Civil Law (Miscellaneous Provisions) Act 2011 made substantial

amendments to the provisions governing the discharge of your Bankruptcy. The new methods of being discharged are as follows:

- Every bankruptcy shall, on the 12th Anniversary be discharged, or
- The Bankrupt has paid all costs and preferential claims and obtained the consent of all creditors, or
- The Bankrupt's estate has been fully realised, and paid all costs and preferential creditors and has paid his other creditors at least 50% of what was owed, or
- The Bankrupt's estate has been fully realised, all costs and preferential claims must have been paid, all property acquired after the adjudication order must have been disclosed, the Bankruptcy must have subsisted for 5 years and the Court must be persuaded that it is reasonable and proper to grant a discharge.

In many cases it is clear which jurisdiction the debtor should be made bankrupt in. However, under European Union law you can file for bankruptcy anywhere in Europe. In practice, it

may be possible to change your Residence and Domicile from, say, Ireland to that of, say England, where the bankruptcy regime is much more favourable in terms of the length of the bankruptcy. An Irish bankruptcy could last up to 12 years. A UK bankruptcy could last just one year. A faster bankruptcy process may have significant benefits for a bankrupt in areas such as pensions and expected inheritances. An area of particular interest is the United Kingdom laws which protects all pensions arising from tax-approved pension schemes against being part of a bankrupt's estate.

The main legal requirement in bankruptcy law in the UK is to prove your centre of main interest is in the UK. Relocating to Britain for about six months is usually satisfactory evidence. If you prove you have a genuine tenancy agreement or if you have gainful employment and prove you are settled there, you can apply for bankruptcy. However, Insolvency Service officials in the UK have been watching for abuse and have taken a number of cases back to the courts and successfully overturned initial bankruptcy orders.

Changes to RCT System from 1 January 2012

There are significant reforms to the Relevant Contracts Tax (RCT) scheme coming into force on 1 January 2012. These changes are to enhance its effectiveness, reduce opportunities for fraud and help decrease the administrative burden for businesses and Revenue. The key elements of the new scheme as outlined in the Act are:

- Replacement of the current RCT rates of 0% and 35% with a three-rate withholding scheme:



- o zero rate which will apply on the same basis as currently applies to a C2 holder - criteria include compliance with tax obligations for previous three years,

- o standard, i.e. 20%, rate for subcontractors registered for tax with a record of substantial compliance,
- o 35% rate which will be a default rate where both zero and 20% are not appropriate.
- o Abolition of the monthly RCTDC repayment system and replacement with an offset system and annual repayment.

The mandatory use of electronic means for the transfer of information, data, payments and returns.

The following is an overview of how the new scheme will work.

It should be remembered that all contacts between the principal and Revenue will be through the ROS on-line process.

- When a principal enters into a relevant contract with a sub-

contractor, he will be obliged to provide Revenue with details of the subcontractor and contract, on-line, including confirmation that the contract being entered into is not a contract of employment. Revenue will then acknowledge the contact and will advise the principal and subcontractor of the rate to be applied, if available.

- Prior to making a payment under the contract, the principal must notify Revenue (by electronic means) of their intention to make the payment and state the gross amount to be paid. Revenue will issue a deduction authorisation setting out the rate of tax and the amount of tax to be deducted from the payment. The

The standardised unemployment rate in October 2011 was 14.4%, up slightly from a rate of 14.3% in September. In unadjusted terms there were 430,432 people signing on the Live Register in October 2011. This represents a marginal increase of 879 (+0.2%) over the year.

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Census 2011—the result

a 13.3 per cent increase in dwellings compared with 8.1 per cent for the population. The number of dwellings increased by 234,562 from 1,769,613 in 2006 to 2,004,175 in 2011, representing an annual average increase of 46,912.

The 2006 Census provided figures for the first time on vacant dwellings in Ireland and the data showed that 15.0 per cent of all housing was

vacant in April 2006. These Preliminary Results show that the total number of vacant dwellings in 2011 has increased by 27,880 from 266,322 to 294,202. As the total housing



stock has also increased since 2006 by 13.3 per cent – higher than the 10.5 per cent increase in vacant dwellings – the overall vacancy rate (i.e. the percentage of dwellings that are vacant) has therefore fallen slightly to 14.7 per cent.

House prices in Dublin are 51% lower than at their highest level in early 2007. Apartments in Dublin are 60% lower than they were in February 2007. Residential property prices in Dublin are 53% lower than at their highest level in February 2007. The fall in the price of residential properties in the Rest of Ireland is somewhat lower at 42%. Overall, the national index is 45% lower than its highest level in 2007.



JBW Consultants

Certified Public Accountants
 3 Church Street
 Dungarvan
 Co. Waterford
 Phone: +353(0)58 45878
 E-mail: info@jbw.ie
 Web: www.jbw.ie

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Changes to RCT System from 1 January 2012(cont.)

principal must pay the subcontractor in accordance with the deduction authorisation and provide a copy of the authorisation to the subcontractor.

- Revenue will automatically put credit for any tax deducted onto the subcontractor's tax record. That credit will be available for offset as it arises or for repayment annually.
- If the subcontractor is registered for ROS, they will be able to access their own records through ROS.



- Revenue will have all de-

tails of the payments notified to them by principals. Depending on the filing frequency of the principal, a deduction summary will be issued to the principal, either monthly or quarterly, listing all of the payments Revenue has been made aware of. If the summary is correct, the principal needs only to arrange payment on or before the due date for the return. The return will be deemed to have been made on that date. If the summary requires amendment the principal can amend it online and arrange for payment on or before the due date.

Payment should be made online by the due date. As all principals will be electronic filers, the due date is the extended date – the 23rd day after the end of the period covered

by the return. The compliant principal will then have fulfilled their obligations.

- If the deduction summary is amended after the due date, the return will be late and a surcharge will apply. Revenue will issue a notice of the tax and any surcharge due.

Revenue can assess the liability of a principal, normally following an investigation or audit. A notice of assessment will issue in such cases.

If you are a Principal, you should ensure you are registered for ROS well ahead of the go live date for the new system (visit www.revenue.ie and follow the instructions to register for ROS).
