



Irish Government Acts to Kick-Start Property Market

The Irish Government yesterday announced a number of significant measures in its Budget designed to stimulate activity in the property market:-

- **Stamp duty** on commercial property and other non-residential land has been cut from 6% to a **flat rate of 2%**
- A **Capital Gains Tax incentive** has been introduced for property purchased between 7 December 2011 and 31 December 2013. Where such property is held for at least 7 years, the gain attributable to that seven year holding period will be relieved from Capital Gains Tax
- The Government has **abandoned** its plans to abolish **upward only rent review** provisions in leases which were signed prior to 28 February 2010.

In its place NAMA has published a Guidance Note by which it will encourage landlords of properties whose loans are under NAMA control (and also NAMA appointed receivers) to consider a short term reduction in rents on Irish properties that are in excess of the current market rents where (i) tenants prove that the level of the rent threatens the continued viability of the business; and (ii) a rent review is not otherwise due or the rent has not previously been reduced at the request of the tenant. The Guidance is not intended to benefit *“a tenant who may be in a position to bear the burden of rent due under existing contractual arrangements because they are part of a Group with profitable trading outlets in and outside of Ireland”*, e.g. the UK multiples which trade in Ireland. The NAMA Guidance policy applies only to business leases entered into prior to 28 February 2010. Any lease must be for more than 5 years and have at least 2 years to go before a break option date or termination. Any rent reduction approved by NAMA will commence in the year 1 January 2012 to 31 December 2012 and will initially be for a 12 month period and will be subject to annual review.

The following factors are likely to adversely impact a tenant's application for relief:-

- Repayment of loans to the director/proprietor/tenant over the past three years
- Significant change in the levels of stock on hand to reflect a reduced cash position
- Significant movements in personal bank account balances
- Whether there is a relationship between the debtor/receiver and the tenant seeking relief
- The extent to which the tenant is currently in breach of covenant including the covenant to pay rent; and
- Any reduction in the current rent which has been agreed in the 12 months preceding the effective date of the rent reduction request to the NAMA debtor/receiver

Also, the tenant and the NAMA debtor/receiver must share the view that a temporary rent reduction is likely to be the major factor in determining whether the tenant's business survives; and the tenant must provide all reasonable evidence to demonstrate the business case that a rent reduction will ensure the survival of the business and the maintenance of full or part time jobs. Full details of the Guidance Note can be found on the NAMA website.

Most commentators agree that these measures should result in a marked increase in activity (albeit from an extremely low level) in the commercial property investment market here.

The Minister for Finance has also announced the establishment of a NAMA oversight group chaired by Michael Geoghegan (formerly of HSBC) to advise him on NAMA's strategy and its capacity to deliver



on that strategy through property disposal and ongoing management of assets. The Group will advise the Minister on appointments to the NAMA board by identifying candidates with entrepreneurial and property skills and on strategy to attract international investment in property here.

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