KPMG

Taxing Times

Finance Act 2017
& Current Tax Developments

kpmg.ie/financeAct2017
#FinanceAct

December 2017

Focus. Clarity. Insight

KPMG is Ireland's leading Tax practice with over 600 tax professionals based in Dublin, Belfast, Cork and Galway. Our clients range from dynamic and fast growing family businesses to individuals, partnerships and publicly quoted companies.

KPMG tax professionals have an unrivalled understanding of business and industry issues, adding real value to tax based decision making.

Corporate Tax

Private Client Practice

Global Mobility Services

Employment Tax

VAT

International and Cross Border Tax

For further information on Finance Act 2017 log on to: **kpmg.ie/financeact2017**

Conor O'Brien
Partner

Introduction

The Government published Finance Act 2017 on 19 October 2017. The Act contains the taxation measures announced in the Minister for Finance's Budget speech on 10 October 2017 as well as a small number of measures not previously announced. As the Report stage is complete, we refer to the Act in this issue of Taxing Times as Finance Act 2017.

The Act continues the policy of offering an attractive taxation regime to businesses locating in Ireland. In an unstable world, the continuity of this policy, which has lasted for six decades and has always been overwhelmingly supported across the Irish political spectrum, is remarkable. Ireland is likely to remain in the top rankings of attractive locations for business to invest.

The Act is the third in a row that offers welcome personal tax relief to citizens who endured with great discipline the onerous fiscal adjustments necessitated by the financial crisis.

These measures include:

- 2.5% rate of USC is reduced to 2%
- 5% rate of USC is reduced to 4.75%
- Increase of €750 in the income tax standard rate band
- Increase of €200 in the earned income credit
- Increase of €100 in the home carer tax credit
- Capital gains tax treatment to apply to gains on share options granted by unquoted SMEs to key employees where the conditions of a new Key Employee Engagement Programme (KEEP) incentive are met

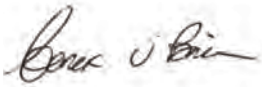
The new KEEP incentive raises certain practical issues, including the need to agree the market value of unquoted shares. It is to be hoped that, as KEEP is rolled out, practical administrative procedures will be introduced in order to eliminate any uncertainties on such matters and to ensure that the incentive is workable.

Other measures announced in the Budget and confirmed by the Act are the welcome retention of the 9% VAT rate for tourism-related services and the less welcome increase from 2% to 6% in the rate of stamp duty on commercial property transactions.

The Act includes a number of important technical amendments to ensure that Ireland's taxation laws are compatible with large bodies of new company law, accounting standards and case law, as well as to codify some long-standing administrative practices. These amendments, which are detailed and complex in nature, are the fruit of a great deal of unheralded but very important work by Ireland's civil servants that enhance the efficiency and effectiveness of the taxation system.

The ongoing policy of heavily taxing incomes of over €70,000 is to be regretted and is compounded this year by the announced 0.3% phased increase in employer PRSI. The top 1% of income earners already pay substantially more personal taxes than the bottom 74% of income earners combined. The top 6% of income earners pay about half of all personal taxes in Ireland. Much independent research highlights the dangers of uncompetitive taxation of this relatively mobile sector, particularly in a small open economy. The research indicates that some rate cuts for this cohort might actually increase Exchequer yield due to the dynamic and broad effects of such cuts on economic behaviour.

The most effective narrowly targeted tax measures would be improvements to the capital gains tax relief for entrepreneurs and the tax relief for foreign assignees to Ireland (SARP). In our view, improvements in these two reliefs would promote both job creation and economic growth. There will be widespread disappointment that there appears to be no positive movement at all on these items. It is to be hoped that such measures might be included in future Acts so that Ireland can face future economic challenges in the most competitive shape possible.



Conor O'Brien
Head of Tax and Legal Services

Content:

Personal Tax 2

Employee Tax Issues 4

Business Tax 8

Financial Services 14

Property & Construction 18

Indirect taxes 22

Trade is a taxing question in a post-Brexit world 24

BEPS related developments 26

Tax Rates & Credits 2018 30

Personal Tax

Robert Dowley
Partner

Universal social charge (USC)

The Act provides for the various changes to universal social charge rates and thresholds announced in the Budget. Full details of the revised rates and thresholds are available in the Tax Rates and Credits 2018 table at the end of this publication.

As expected, the Act confirms that these changes take effect for 2018 and subsequent years of assessment.

As a result of the revised rates, those aged over 70 years with aggregate income not exceeding €60,000 are now capped at a USC rate of 2%. In addition, the Act contains an extension of the equivalent cap for medical-card holders aged under 70 years with aggregate income not exceeding €60,000.

Income tax bands

The Act provides for the increases in the standard rate tax bands announced in the Budget. It confirms that all bands will increase by €750, with a commensurate increase in the additional band available to a married couple with two earners. Full details of the revised thresholds are available in the Tax Rates and Credits 2018 table at the end of this publication.

Changes in tax credits

The Act provides for the increases in the home carer tax credit (from €1,100 to €1,200) and the earned income tax credit (from €950 to €1,150) announced in the Budget. Both of these increases apply for 2018 and subsequent years. In addition, the Act confirms that the earned income tax credit and the fisher tax credit are non-refundable tax credits.

Mortgage interest relief

The minister confirmed on Budget Day that mortgage interest relief is to be extended to the end of 2020 on a tapered basis. This means that the relief for 2018, 2019 and 2020 will be 75%, 50% and 25% respectively of the existing relief available in 2017.

The Act includes the required legislative amendments to give effect to this announcement.

Anti-avoidance

The Act introduces changes to a number of anti-avoidance provisions relating to the transfer of assets abroad. These provisions seek to assess an Irish resident or domiciled individual to Irish tax on income or gains accruing to a foreign company or settlement (the foreign entity) in certain circumstances.

These provisions currently do not apply

where the transaction giving rise to the income or gain was made for bona fide commercial reasons and was not part of an arrangement the main purpose or one of the main purposes of which was the avoidance of liability to tax.

The Act has reframed the provisions to consider the substance of the activities of the foreign entity itself. With effect from 1 January 2018, the provisions will not apply where, at the time of the transaction, genuine economic activities are carried on by the foreign entity in a member state of the European Union or European Economic Area.

By adjusting the focus of the tests in the anti-avoidance measures from one which looks at the transaction in question (e.g. the disposal of an asset giving rise to a gain) to one which looks to the genuine nature of the foreign entity's activities, the approach is more consistent with other anti-avoidance measures.

Exemptions for certain kinds of property

The Act confirms that compensation received by a property owner under the 2017 Voluntary Homeowners Relocation Scheme will not trigger a chargeable capital gain for sums received from 19 October 2017 onwards. This scheme assists people whose homes are not sustainable due to the threat of floods.

Finance Act 2016 introduced changes so that certain compensation payments under the new raised bog restoration incentive scheme would be exempt from capital gains tax. The Act has introduced further measures to exempt from capital gains tax certain disposals of land to the Minister for the Arts, Heritage, Regional, Rural and Gaeltacht Affairs linked to granting a right of turbary (right to cut turf or peat for fuel) to certain individuals entitled to compensation under those schemes.

Capital acquisitions tax

The Act moves to include vested Retirement Annuity Contracts and certain Personal Retirement Savings Accounts as forms of retirement fund which can be inherited free from capital acquisitions tax where the inheritance is under the will or intestacy of the disponer and the successor (being a child of the deceased) has reached the age of 21 at the time of the inheritance. This change is to prevent the successor being liable to both income tax and capital acquisitions tax on the inheritance, as the transfer of such funds would be treated as drawdowns by the successor subject to income tax at 30%.

The Act amends the dwelling house exemption to clarify that no liability to inheritance tax will be triggered where a gift to a dependent relative becomes an inheritance due to the disponer passing away within two years of making the gift. It also clarifies that a property transferring to a dependent relative does not need to have been the principal private residence of the disponer at any stage to qualify for the dwelling house exemption.

Domicile levy

The domicile levy applies to Irish-domiciled individuals who own Irish assets valued in excess of €5m, have a world-wide income that exceeds €1m and who have paid less than €200,000 Irish income tax in the relevant year.

The Act clarifies that an individual's income for the purposes of the definition of world-wide income is income before deducting capital allowances and losses.

This clarification will potentially widen the scope of the domicile levy for 2018 and subsequent years. This is because Irish domiciled individuals will no longer be able to use a reduced measure of income, reflecting certain claims for loss relief and offset of capital allowances, to fall beneath the income threshold.

Capital Gains Tax anti-avoidance provisions

Entrepreneur relief and retirement relief

Known as entrepreneur relief a reduced 10% rate of Capital Gains Tax applies to the first €1 million of gains on disposal of qualifying business assets by individuals.

Retirement relief can exempt or relieve CGT on the disposal of qualifying business assets by individuals aged 55 or over.

Similar anti-avoidance measures are introduced in respect of these reliefs:

- The reliefs will not apply to a disposal by an individual of qualifying assets (goodwill or shares/securities) where the disposal is to a company and where the individual is connected with that company. Provision is also introduced to prevent the relief applying where an individual artificially arranges to be unconnected with the company.
- A further restriction on entitlement to the relief is also introduced in certain situations where an individual also qualifies for tax relief on transfer of a business to a company.
- These newly introduced restrictions will not apply in circumstances where a disposal is made for bona fide commercial reasons and is not part of an arrangement, one of the main purposes of which is tax avoidance.

A separate anti-avoidance rule is also introduced regarding retirement relief on disposals to children by individuals who are over 66. The provisions seeks to ensure the €3m value threshold is the only amount of relief that is obtained.

Employee Tax Issues

Eric Wallace
Partner

Key Employee Engagement Programme (KEEP)

In 2016, the Department of Finance launched a consultation on the Taxation of Share Based Remuneration. In KPMG's response to the consultation, a number of detailed changes were suggested, including the introduction of a new employee share option plan which would seek to place start-up companies and Small and Medium Enterprises (SMEs) on an equal footing with larger employers in attracting and retaining key employees.

A copy of KPMG's submission can be accessed **here**. The Act confirms the Budget announcement introducing a much-welcomed employee share-option incentive scheme targeted at the SME sector. KEEP will aim to support SMEs in attracting and retaining key talent by effectively deferring the taxation of gains on employee shares until the sale of the shares.

Currently, where an employee exercises a share option, a liability to income tax, USC and employee PRSI generally arises on the date of exercise of the option. The taxable amount is the difference between the market value of the shares acquired and the price paid to exercise the option. The timing of this tax-trigger point places most SMEs at a disadvantage to listed companies as, unlike their larger competitors, SMEs are unable to offer their employees a ready market in their shares which would allow the employee to sell some of the shares to fund the tax liability.

Broadly, in the case of share options granted and exercised under the KEEP, the Act confirms that the tax liability for the employees would only arise at the date of disposal of the relevant shares. In addition, the gain will be subject to capital gains tax instead of income tax, USC and employee PRSI. Therefore, the incentive provides for a saving of 19%, based on current tax rates, in the tax payable by an employee on the gain as compared to standard share option gains.

This new incentive will allow a 'qualifying company' within the SME sector to provide 'qualifying individuals' with 'qualifying share options', provided certain conditions are met throughout the option-holding period.

A 'qualifying company' is broadly defined as an unquoted SME which exists wholly or mainly for the purpose of carrying on a 'qualifying trade'. The definition of a qualifying trade is narrower than we would have hoped for, as many activities are excluded, including professional services (e.g. medical, legal, accountancy, finance, auditing services to list a few examples), financial activities, building and construction, dealing in or developing land, forestry, and activities in the coal, steel and shipbuilding sectors. The initial Bill also provided for an exclusion for companies carrying on pharmaceutical and engineering services. Such exclusions have now been removed which is helpful. A company whose business consists wholly of the holding of all of the shares in a qualifying company will also be a qualifying company.

The qualifying company must be either incorporated in Ireland or in another EEA country, but tax resident in Ireland or be resident in another EEA country but carrying on a business in Ireland through a branch or agency.

While generally the 'qualifying company' cannot be a quoted company, a SME whose shares are listed on the Enterprise Securities Market (ESM) of the Irish Stock Exchange will qualify. Similarly, SMEs whose shares are listed on an EEA equivalent of the ESM or on corresponding markets in a country with which Ireland has a Double Taxation Agreement, will also qualify.

One of the key conditions to qualify for KEEP is that, on the date of the grant of the option, the company must be regarded as a SME. A SME for this purpose is defined as an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million. There are also certain reporting requirements the company must comply with to be regarded as a 'qualifying company'.

To be regarded as a 'qualifying individual', the individual must be a full-time employee/director of the qualifying company from the date of grant of the option to the date of exercise, working at least 30 hours per week for the qualifying company. Also, an individual will cease to be a 'qualifying individual' if they, together with connected persons, own more than 15% of the ordinary share capital of the 'qualifying company'. This is a much lower ownership limit than we were hoping for. In our submission to the Department of Finance, we recommended a limit of 30% to facilitate rewarding and incentivising senior team members in smaller companies where an expectation of holding shares up to 30% could exist.

To be considered a 'qualifying share option', the option must:

- be an option to acquire shares in the company at a price at least equal to the shares' market value at the date of the grant of the option,
- be held for a minimum of one year before exercise (with certain limited exceptions applying), and
- only be exercisable for 10 years, commencing on the date the options are granted.

As noted previously, practical difficulties can arise in arriving at the market value of a minority shareholding in a private company. It is hoped that practical administrative procedures will be introduced to help provide certainty on meeting the market value condition.

The shares acquired on exercise of the option must be new ordinary fully paid-up shares which carry no present or future preferential rights to dividends or to a company's assets on its winding-up, and no present or future preferential right to be redeemed. The Act confirms that shares acquired under KEEP cannot qualify for relief under the Employment and Investment Incentive (EII), which could ordinarily provide for an income

tax deduction for investing in certain qualifying companies, where specific conditions are met.

The new legislation provides for the value of the shares over which share options can be granted to any one employee to be limited to:

- €100,000 in any year of assessment,
- €250,000 in any three consecutive years of assessment, and
- 50% of the annual emoluments of the individual in the year in which the option is granted.

Similarly, the total value of unexercised qualifying options that can exist at the date of grant per SME is capped at €3 million.

While the introduction of the KEEP is a very welcome development and on balance, the new provisions mirror many of the recommendations put forward by KPMG in our submission, some key provisions which we were hoping to see disappointingly do not feature at all. For instance, in KPMG's response to the consultation we suggested that the period of ownership of the options should be treated as a period of ownership of the share for Entrepreneurs' Relief. This could reduce the CGT rate to 10% on lifetime chargeable gains of up to €1 million.

The new legislation is due to apply to qualifying options granted to employees during the period 1 January 2018 to 31 December 2023. However, the provisions are subject to EU State Aid approval before they can be formally implemented. We understand from the minister's Budget speech that engagement with the European Commission is ongoing and is expected to conclude shortly. It is worth noting that the UK and Sweden recently obtained EU State Aid approval for similar employee share option schemes.

Benefit in kind (BIK) on electric vehicles

As part of the Government's programme to address climate change, the Act introduces a 0% BIK rate for electric vehicles in 2018. This is to be contrasted with the general rate of car BIK, which can be up to 30% of the car's original market value. This is a welcome development which should incentivise the take-up of electric vehicles.

The BIK exemption will apply equally to company cars and company vans, and will apply to these vehicles provided during 2018.

The Act also provides for an exemption from BIK where an employer provides facilities for the charging of electric vehicles for employees and directors (once all employees and directors can avail of the facility).

Employees of medical insurers - BIK

The Act inserts a new provision to tax the value of health or dental insurance policies that are provided by an employer who is a health or dental insurer (or a tied agent of such an insurer) to their employees or family members of employees.

The Act provides that the taxable benefit will be determined by reference to the market value of the insurance policy (before tax relief at source) that would have been available less the amount paid by the employee or their family member. The Act also confirms that where an employee is in receipt of such a taxable benefit, the medical insurance tax credit may be claimed by the employee.

Preferential loans

Tax legislation provides for a BIK charge where an employer provides an employee with a loan at preferential rates. The Act includes some technical

amendments to ensure that the tax liability is calculated by reference to the difference between the amount of interest actually paid (rather than payable) and the specified rates. The specified rates for preferential loan BIK purposes remain unchanged:

- qualifying home loan – 4%
- other loans – 13.5%

PAYE modernisation

Revenue launched a consultation in October 2016 on the modernisation of the PAYE system. A new system is to become effective from 1 January 2019. Under the new system, employers will be required to submit real-time information (RTI) to Revenue in respect of proposed payments to employees.

KPMG's submission on this topic can be accessed **here**.

While some aspects of the new system are to be welcomed, e.g. the elimination of certain paper forms such as P45s, P60s and P35s, it will be difficult for employers to comply fully with RTI submission obligations.

The Act includes extensive legislative changes to the PAYE rules to cater for the new system. Some of these are:

- PAYE income is to be assessable on a paid basis, rather than an earnings basis for 2018 onwards. However, this does not apply to directors holding 15% or more of the shares in their employer.
- A statutory basis to oblige an employer who fails to deduct the correct PAYE to subsequently account for PAYE as if the earnings paid to the employee were net of tax amounts i.e. a full gross-up. This is to apply for 2018 onwards.
- The due date for PAYE payable under a PAYE settlement agreement is to be accelerated to 23 January (from 15 February) of the following year in respect of 2019 onwards.
- The extension available for electronic remittance of PAYE will be to the 24th of the month following delivery of net pay to the employee but will only be available where the relevant return has been electronically filed by the 15th of that month. This is to apply for 2019 onwards.
- For PAYE due in respect of 2019 onwards, interest on late remittance to Revenue is to be calculated by reference to the specific month in which it fell due.

The Minister for Finance, in his Budget 2018 announcements, indicated that Revenue would be undertaking a programme to ensure employers' obligations are met in advance of PAYE modernisation implementation in 2019. Therefore, employers should now take the time to review their employee data and payroll processes to ensure that they are ready to comply with RTI reporting from 2019.

Business Tax

Anna Scally
Partner

Intangible assets

In line with the announcement on Budget Day, the Act reintroduces a cap on the annual deductibility of capital allowances and related interest expense in relation to expenditure incurred on intangible assets on or after 11 October 2017.

The aggregate of the capital allowances and related interest expense allowed to be deducted in any single tax year is to be restricted to 80% of the trading income derived from the intangible assets.

There is no change to the tax relief for expenditure on intangible assets incurred prior to 11 October 2017. It is important to note that the full amount of qualifying expenditure will continue to be deductible, albeit over a longer period. The cap merely limits the deductible amount in a given tax year, with any unused excess carried forward for use in later years.

Interest as a charge relief

Irish tax legislation provides relief to a company for interest on a paid basis to a company where it uses borrowed funds to acquire shares in or lend money to certain related companies, provided that certain complex conditions are met.

Prior to the Finance Act amendment, relief was available to acquire shares in or lend to a trading company, a rental company or a company holding shares in a trading or rental company. Under a strict interpretation of the legislative provisions, relief did not extend to interest paid on a loan used to acquire shares in or lend to a holding company which is part of a multi-tiered holding company structure. However, it has been the long-standing administrative practice of Revenue to allow relief for interest paid in acquiring the shares in or lending to a company which is held through a multi-tiered holding company structure.

As expected, the Act amends the interest as a charge relief provisions to reflect the administrative practice operated by Revenue for many years. It is specifically provided that relief is available for interest on a loan used to acquire shares in or lend to a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a trading company indirectly through an intermediate holding company or companies, provided all other conditions are met. This clarification is welcome. However, the relief does not extend to cases where rental companies are held through multi-tiered holding structures.

An anti-avoidance provision has been introduced which provides that the extended relief shall apply only where the company in which the investment is made and each intermediate holding company exists for bona fide commercial reasons and not as part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax.

The Act also introduces technical amendments to the recovery of capital provisions such that a company will be deemed to recover capital where, subject to exceptions, an intermediate holding company recovers capital from another company.

The amendments apply in respect of a loan made on or after 19 October 2017.

Measures to capture accounting standard changes

The Finance Act contains a number of provisions setting out the tax treatment applicable to a broad range of accounting adjustments, including retrospective changes required on a change in accounting policy, when an accounting standard is adopted for the first time, and in cases of certain fundamental, material and other errors.

The amendments provide for the existing five-year 'spreading' to apply to an adjustment arising on the adoption of a new accounting standard and the adoption of an amendment of an accounting standard for the first time. This is likely to be relevant to some taxpayers with respect to the 2018 accounting period. For example, this provision should be applicable where there is a change in accounting revenues recognised on adoption of IFRS 15 (Revenue from Contracts with Customers) or further losses are recognised from a change in the approach for bad debt provisioning by certain companies in the financial

Olivia Lynch
Partner

services sector on adoption of IFRS 9 (Financial Services). Both of these new standards mandatorily apply for accounting periods beginning on or after 1 January 2018, with early adoption permitted.

It is provided that a retrospective adjustment that is recognised in opening reserves and arises as a result of a change in accounting policy (other than an adoption of an accounting standard or an amendment of an accounting standard for the first time) should be taken into account for tax purposes in the earliest period following adoption of the new policy.

Where a company's accounts include an adjustment relating to a retrospective error (including a fundamental or material error and an error which is not a fundamental error or a material error), the company is required to amend and re-file any corporation tax returns which would have included amounts had the prior year accounts not been affected by the error (subject to the standard statutory four year time limit).

Anti-avoidance provisions relevant to certain close company share transactions

Two new anti-avoidance provisions relevant to certain close company share transactions were introduced in the Committee Amendments.

The first amendment seeks to target specific situations whereby cash is being extracted from a close company through a share redemption or buyback. It appears that the proposed provision seeks to limit the disposing shareholder's allowable income tax base cost of the shares in certain cases where there has been an historic share for share exchange, thereby increasing the amount of the disposal proceeds subject to tax in the hands of the disposing shareholder.

Previously, where a shareholder had contributed shares which he / she held in one company to another company in exchange for the issue of shares in the other company, the allowable income tax base cost of those shares would generally have been the market value of the shares at the time of the exchange.

The second amendment seeks to broaden an existing anti-avoidance provision which applies where companies enter into arrangements to pay distributions to each other's members. The new provision targets situations where a member of one close company enters into arrangements with another close company for the disposal of their shares. In situations where the consideration for the disposal is funded directly or indirectly by the member's company, but the consideration is received by the disposing member from the other close company, the consideration is to be treated as a distribution from the member's company. It is hoped that clear guidance in relation to this provision will be issued due to the uncertainty the provision will cause for taxpayers involved in genuine management buy-outs or buy-ins and other bona fide transactions.

Accelerated capital allowances for buildings used for the purposes of providing childcare services or a fitness centre for employees

New provisions were introduced in the Report Amendments to allow for accelerated capital allowances in respect of:

1) Expenditure incurred by an employer on the construction of a building which is used for the purposes of providing either childcare facilities which meets the requirements of the Child Care Act 1991 (Early Years Services) Regulations 2016 or fitness centre facilities for its employees or, where the employer is a company, the employees of a connected company. Allowances will be available over a seven year period from the date the building comes into use as a childcare facility or a fitness centre facility for employees (15% per annum for the first six years, and 10% in year seven). A balancing adjustment will be required if the building is disposed of within seven years of its first use after the qualifying expenditure is incurred. The relief will be included on the list of specified reliefs for the purposes of the high earner's restriction.

2) Expenditure incurred by an employer on plant and machinery which is in use in a qualifying childcare facility or a fitness centre facility provided for its employees or the employees of a connected company. An allowance may be claimed for the full amount of the qualifying expenditure in the first period in which the plant and machinery is brought into use.

The reliefs will not apply in respect of a trade carried on by the employer which involves the provision of childcare or fitness centre facilities. The new provisions will come into effect from a date to be set down in a Ministerial Order.

Ken Hardy
Partner

Tax exemption for certain share disposal gains

Irish tax legislation provides for an exemption from corporation tax on chargeable gains arising on the disposal of shares in a subsidiary by a parent company where certain conditions are met. The exemption does not apply to the disposal of shares in a subsidiary where that subsidiary derives the greater part of its value from 'relevant assets'. Broadly, relevant assets are Irish land, Irish minerals or mineral rights, and certain exploration or exploitation rights.

The Act introduces an anti-avoidance measure to prevent the portion of the value of shares attributable directly or indirectly to relevant assets being reduced by an arrangement which involves the transfer of money or other assets to the company by a connected person before the disposal of the company, where the main purpose or one of the main purposes is the avoidance of tax.

The amendment applies to disposals made on or after 19 October 2017.

Capital gains groups

The Act extends the definition of a company in determining the members of an Irish capital gains group. Currently, only companies resident in Ireland, another EU member state or an EEA member state can be included in a capital gains group. Provided certain conditions are met, assets can be transferred between group members, free from capital gains tax.

The definition of a group is now being extended to include companies resident in any jurisdiction with which Ireland has a double taxation agreement (e.g. the US). This change is welcome and will facilitate groups with members resident outside of the EU/EEA in availing of

Irish capital gains group relief where relevant. However, the asset transferred must continue to be within the Irish tax net post-transfer.

The change also aligns the definition of a group for Irish capital gains tax purposes with the group as defined for Irish corporation tax loss relief provisions.

In tandem with the change above, the capital gains exit charge provisions have also been amended.

Previously, where there was a transfer of assets between members of a capital gains group and one of the parties to the transfer changed its tax residence to a jurisdiction outside the EU/EA within 10 years, a clawback of the group relief claimed on the transfer could arise. From 1 January 2018 this clawback can only apply if the new jurisdiction of residence is one with which Ireland does not have a double tax agreement.

Energy-efficient equipment

The Act gives effect to the Budget Day announcement on extending the scheme for accelerated capital allowances for certain energy-efficient equipment (due to expire at the end of 2017) for a further three years to the end of 2020. The incentive was introduced as a means of encouraging businesses to invest in energy-efficient equipment. The scheme provides for a 100% deduction in the year of first use for expenditure incurred on certain energy-efficient equipment included in a list maintained by the Sustainable Energy Authority of Ireland.

Knowledge Development Box – losses

The Knowledge Development Box (KDB) first came into operation for accounting periods commencing on or after 1 January 2016. A company which qualifies for the regime is entitled to a deduction equal to 50% of its qualifying profits (effectively meaning a 6.25% corporate tax rate on those profits). The first KDB claims would have been filed with 31 December 2016 tax returns, which were due to be filed in September 2017.

The Act includes a technical amendment to the loss relief provisions that apply where a company has claimed relief under the KDB.

Amendments following enactment of Companies Act 2014

Corporation tax and capital gains tax

Further to the enactment of the

Eoghan Quigley
Partner

Companies Act 2014, many of the references in the Taxes Acts to the Companies Acts required updating. The Act contains a number of such amendments.

The Act clarifies that the successor company under a merger will be deemed to be the original lender in relation to a debt. This can be critical in determining whether any gain or loss arising from the settlement of the debt is within the charge to capital gains tax. The Act also provides that a transfer of asset pursuant to a merger or division should not give rise to a gain or loss for capital gains purposes.

The Act gives effect to a range of corporation tax administrative measures that are necessary where a transferor company dissolves in the course of a merger or division transaction effected under Companies Act 2014. These provisions apply with effect from 1 June 2015, being the date of the enactment of Companies Act 2014.

The Act provides that the successor company is responsible for the relevant tax payment, filing, reporting obligations and liabilities of the dissolved transferor company.

The Act also provides for follow-on matters related to tax appeals to be dealt with by the successor company. Any right of appeal on an appealable matter previously exercisable by a transferor company shall be exercisable by the successor company. Similarly, where tax refunds are due to a transferor company dissolved in the course of a merger or division, the successor company shall become entitled to that refund.

Capital Acquisitions Tax (CAT)

For capital acquisitions tax purposes, the Act also clarifies that the transfer of property under a merger or division will not be regarded as a subsequent sale of the property that would trigger a clawback of either business property relief (where a six-year clawback period applies) or the CAT/CGT same event credit (where a two-year clawback period arises).

Stamp duty

The Act includes various technical amendments to facilitate the application of reliefs from Irish stamp duty in the case of mergers effected under the Companies Act 2014.

In this regard, the Act amends Section 79 of the Stamp Duties Consolidation Act 1999, which provides for an exemption from Irish stamp duty on transfers between 'associated companies'. One of the key conditions for this relief to apply is that both parties have an intention to and, in fact, remain 90% 'associated' for a two-year period after the transfer. This condition cannot be met in the case of a merger by absorption as the transferor is dissolved at the point of the merger.

The Act provides that this requirement will be deemed to have been met in the case where a transferor is dissolved under the merger by absorption procedure subject to:

a) the recipient retaining the asset for the two-year period, and

b) the beneficial ownership of the ordinary shares in the recipient remaining 'unchanged' for the-two year period.

The Act also provides that the resolution, or the relevant court order, effecting the merger will be regarded as a 'conveyance on sale', thereby ensuring there is a requirement for the parties to submit a stamp duty return and claim the exemption.

The Act also amends Section 80, Stamp Duties Consolidation Act 1999, which provides for an exemption from Irish stamp duty on transfers under a bona fide reconstruction or amalgamation.

The relief is extended to include transfers to a limited company or designated activity company (DAC) pursuant to a merger under Chapter 3 of Part 9 of the Companies Act 2014, i.e. merger by acquisition, absorption or formation of a new company, subject to the same conditions as regards form of consideration etc., as currently apply.

To qualify for the exemption, the stampable instrument transferring the relevant assets must be executed within 12 months of the date of incorporation of the transferee or the resolution to increase the nominee's nominal share capital.

Paul O'Brien
Partner

The relief can be clawed back in certain circumstances where the transferor or transferee within two years ceases to be the beneficial owner of shares received under the reconstruction or amalgamation. The clawback does not apply where the cessation of beneficial ownership is by reason of a further reconstruction, amalgamation, liquidation or merger.

The Act specifies that the resolution or court order effecting the merger is a 'conveyance on sale', thereby requiring a stamp duty return and claim for exemption to be made.

Agri-business measures

Relief for farm restructuring

The Act makes an amendment to the capital gains tax relief for farm restructuring which applies to the sale, purchase or exchange of certain agricultural land in the period from 1 January 2013 to 31 December 2019. The amendment provides that individuals who have benefited from the relief are required to provide certain information to Revenue to enable the amount of capital gains tax that would have been paid if the relief had not applied to be calculated. This information is required to allow the Government to comply with State Aid publication requirements. The information must be supplied for disposals made on or after 1 July 2016

Solar panels

The Act gives effect to the Budget Day announcement that agricultural land on which solar panels are installed will retain its status as agricultural land for the purposes of certain capital gains tax (CGT) and capital acquisitions tax (CAT) reliefs. However, this is subject to a condition that the area on which the solar panels are installed does not exceed 50% of the total area of the land concerned. The CGT relief in question is that which applies in the case of an individual aged 55 or over who disposes of all or part of his or her business or farming assets (commonly referred to as retirement relief). The CAT relief in question is that which applies in the case of the gift or inheritance of agricultural land (known as agricultural relief). The amendments apply to disposals made on or after 1 January 2018.

The amendments are important for the development of the solar industry in Ireland. Up to now, farmers have been reluctant to lease agricultural land to solar developers as the lease arrangement could reduce the ability to avail of the above tax reliefs.

Stamp duty on transfers of certain agricultural land

The Act amends the stamp duty relief for certain sales and transfers of agricultural property between relatives, known as consanguinity relief. Up to now, the effect of the relief was to reduce the stamp duty rate on transfers of non-residential property by 50%. Therefore, while the appropriate stamp duty rate on transfers of non-residential property was 2%, the rate on transfers of agricultural land that met the conditions for consanguinity relief was 1%. One of the qualifying conditions to avail of the relief was that the individual disposing of the land be under 67 years of age. This relief was due to expire on 31 December 2017.

The Act extends the relief to 31 December 2020 and also removes the upper age limit of 67 for availing of the relief. In addition, the rate of stamp duty where consanguinity relief applies is retained at a fixed rate of 1% despite the increase in the stamp duty rate on transfers of non-residential property to 6%.

Stamp duty on transfers to young trained farmers

Transfers of agricultural land to young trained farmers under the age of 35 are currently exempt from stamp duty provided certain conditions are met. The Act makes an amendment to the relief to take account of EU State Aid requirements. The amendment inserts additional qualifying conditions: (a) the young trained farmer must now submit a business plan to Teagasc, and (b) must come within the EU Commission definition of "micro, small and medium enterprises". This exemption is due to expire on 31 December 2018. In his Budget speech, the minister indicated that the exemption would continue. However, the Act does not include any provision to extend the exemption.

Stamp duty relief for farm consolidations

The Act re-introduces a stamp duty relief for certain farm consolidation transactions whereby a farmer sells agricultural land and purchases other agricultural land in order to consolidate his or her holding. To be eligible to claim the relief, the sale and purchase of the land must occur within 24 months of each other and within the period commencing 1 January 2018 and 31 December 2020. Where the relief applies, stamp duty at a rate of 1% is payable on the excess of the value of the qualifying land that is purchased over the value of the qualifying land that is sold. The relief will not apply unless a valid consolidation certificate is obtained from Teagasc.

Relief for certain income from leasing of farm land

Tax relief is currently available to an individual who earns rental income from the lease of their farmland if a number of qualifying conditions are satisfied. The relief is also subject to various anti-avoidance measures which prevent the relief from applying in certain circumstances. One such measure seeks to counteract arrangements whereby lessors and lessees effectively swap farmland. As part of the

Colm Rogers
Partner

Committee Stage amendments to the Act the anti-avoidance provisions have been clarified to make it clear that, going forward, the relief is prevented from applying in circumstances where: (i) the lessee of the farmland (the "original farmland"), or a person connected with that lessee, is also a lessor of other farmland, and the lessee of that other farmland is the lessor of the original farmland, or (ii) the lessee of the original farmland is also a lessor of other farmland, and the lessee of that other farmland is the lessor of the original farmland or a person connected with that lessor.

The amended anti-avoidance measure comes into operation on 2 November 2017.

Miscellaneous stamp duty measures

The Act introduces on a statutory footing a Revenue administrative practice whereby a clawback of stamp duty associated companies relief would not be pursued in the event of a liquidation of the transferor within two years of the transfer. This concession is now subject to the same two conditions specified in respect of mergers by absorption as outlined above.

The Act also includes an anti-avoidance provision to provide that the relief will only apply where the relevant transaction is undertaken for bona fide commercial reasons and not as part of a scheme or arrangement of which one of the main purposes is the avoidance of tax or stamp duty.

The Act also makes some technical amendments to the stamp duty legislation including: (i) clarifying that, where a surcharge applies as a result of the late filing of a stamp duty return, the surcharge is part of the stamp duty assessment, (ii) providing for the recovery of certain tax-geared penalties outside of the standard six-year time limit, thereby aligning this provision with those for other taxes and duties, and (iii) specifying that, in the case of a relief which requires certain qualifying conditions to be satisfied, the four-year time limit within which Revenue must make enquiries and assessments will commence on the latest date on which all of the conditions were required to be satisfied.

Tax Appeals Commission

The Act makes a number of amendments to certain provisions required to take account of the establishment of the Tax Appeals Commission. The commission is an independent statutory body whose main task is hearing and determining appeals against assessments and decisions of the Revenue concerning taxes and duties.

Use of taxpayer information

To comply with EU General Data Protection Regulations (GDPR), the Act includes a new provision which contains certain rules and guidelines regulating the use of information on taxpayers obtained by Revenue. It also provides for individuals to have access to the information in certain circumstances.

Revenue powers

The Act makes a number of amendments to the provisions in respect of Revenue powers. These include: (i) changes to the manner in which a taxpayer must be notified where Revenue have sought information on the taxpayer from third parties, (ii) a lowering of the threshold for non-disclosure to the taxpayer of an application made by Revenue to the High Court for an order requiring a third party to deliver certain information on the taxpayer to Revenue and (iii) the introduction of a new power to allow the Department of Finance request taxpayer information in relation to State aid matters.

Employment and Investment Incentive (EII)

Changes were made to the Act at Committee Stage to amend the tax regime for income tax relief for investments made in certain qualifying companies. The minister indicated that the amendments were being made in order to align the relief with the European Commission General Block Exemption Regulations (GBER), which require that risk finance aid schemes such as EII are restricted to independent private investors and do not provide relief to persons with close connections to the undertaking.

The amendments mean that certain individuals can no longer claim EII relief for investments made in a company where the individual, or an associate of the individual (the definition of which now includes a relative), owns shares in the company which are not the subject of the EII claim, owns any loan capital or voting rights of the company or has a right to any of the assets of the company on a winding up. Shares subscribed for by an individual upon the formation of the company do not need to be taken into account in considering whether the above condition is breached.

The amendments have effect as respects shares issued on or after 2 November 2017.

Double taxation agreements

The Act provides for the ratification of a new double taxation agreement with Kazakhstan. The Act also provides for the ratification of a new information exchange agreement with Macao (Special Administrative Region of the People's Republic of China).

Financial Services

Gareth Bryan
Partner

IREF withholding tax

Finance Act 2016 introduced a new 20% withholding tax which is applicable to investments made by certain investors in Irish Real Estate Funds (IREFs). In broad terms, an IREF is a regulated Irish fund which derives more than 25% of its value directly or indirectly from certain Irish real estate assets. This tax is separate from the exit tax regime for Irish funds and, in general, should only apply to certain investors who would otherwise be exempt from exit tax. The Finance Act contains a number of amendments to the IREF legislation.

IREF assets

As noted above, IREF legislation applies to Irish funds which derive more than 25% of their value directly or indirectly from certain Irish real estate assets. These 'IREF assets' include Irish land and buildings, Irish mineral/exploration rights, shares in Irish Real Estate Investment Trusts (REITs), certain profit-participating loans issued by Section 110 securitisation companies which are connected with Irish real land and buildings, and units in other IREFs. IREF assets also include shares deriving their value (or the greater part of their value) directly or indirectly from Irish land and buildings and mineral/exploration rights, except where those shares are quoted on a stock exchange. The Finance Act seeks to limit this exclusion for quoted shares so that it will only apply where the quoted shares are also regularly and substantially traded.

Excluded unitholders

In broad terms, IREF withholding tax is intended to apply to those investors who do not suffer fund exit tax. However, the IREF legislation also seeks to exclude certain types of 'good' investors from the tax. These include (amongst others) certain Irish and EU regulated funds, Irish and EU pension funds, EU life assurance funds and certain Irish registered charities. The Finance Act includes amendments which will ensure that the exclusion for Irish pension funds covers Approved Retirement Funds (ARFs), Approved Minimum Retirement Funds (AMRFs) and vested Personal Retirement Savings Accounts (PRSAs).

Intermediaries

Under the IREF legislation, investors who qualify for an exemption from IREF withholding tax generally must provide the IREF with a declaration (in a prescribed form) establishing the basis for their exemption. The Finance Act introduces a provision for a declaration to be made by a nominee holder of

Brian Brennan
Partner

IREF units who is acting on behalf of a qualifying Irish or EU pension fund, an Irish registered charity, or an Irish credit union. The intermediary must be regulated under the Markets in Financial Instruments Directive (MIFID).

Multi-tiered IREFs

Under the current IREF legislation, a double charge to IREF withholding tax can arise where one IREF holds units in another IREF and the subsidiary IREF is considered to be a personal portfolio IREF (PP IREF) in respect of the parent IREF. Broadly speaking, an IREF will be treated as a PP IREF with respect to a unitholder where some, or all, of the IREF assets or IREF business may be, or was, selected or influenced by a unitholder or a person connected with a unitholder, or a person acting on their behalf.

The Finance Act seeks to remedy this by removing the charge to IREF withholding tax on payments from the subsidiary IREF to the parent IREF provided that the holding of the units in the subsidiary IREF is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is to avoid Irish tax.

Treaty claims

As IREF withholding tax is a form of income tax, a non-Irish holder of units who is resident in a country with which Ireland has a double taxation agreement might be entitled to a full or partial refund of tax if that treaty restricts Ireland's taxing rights on dividends and/or gains on the sale of shares. The IREF legislation introduced in Finance Act 2016 included provisions to restrict the ability of non-resident persons holding 10% or more of the units in an IREF from claiming those treaty benefits. The Finance Act seeks to extend these provisions to capture situations where two or more connected persons each own less than 10% of units but between them own more than 10%.

IREF withholding tax refunds

At present, when a unitholder in an IREF sells units for consideration in excess of €500,000, the purchaser must withhold, and account to Revenue for, 20% withholding tax on the gross proceeds (rather than the gain). The seller can seek a refund so that the amount of IREF withholding tax finally suffered is limited to tax on the unitholder's gain on sale.

The Finance Act seeks to introduce an administrative simplification so as to permit certain sellers to seek advance

Kevin Cohen
Partner

clearance from Revenue for IREF withholding tax not to be applied in the first instance. The claimants must seek approval from Revenue in advance of the taxable event occurring and provide certain information about their unitholding, including details as to why the IREF is not considered to be a PP IREF in respect of that unitholder.

Refunds for 'good' indirect investors

In some cases, certain unitholders in an IREF (i.e. Irish and EU regulated funds, Irish and EU pension funds, EU life assurance funds) who would qualify for an exemption from IREF withholding tax if they invested directly in the IREF may invest through an intermediary vehicle which does not qualify for an exemption. Where this happens, under the current IREF legislation, those indirect 'good' investors can seek a refund of IREF withholding tax provided that the IREF is not considered to be a PP IREF in respect of that unitholder.

The Finance Act includes an anti-avoidance measure which provides that no refunds are to be permitted to the extent that the profits to which the IREF taxable event refers arose prior to that unitholder making their (indirect) investment. A more general anti-avoidance rule is also to be introduced so as to only permit refunds to 'good' indirect investors where it would be reasonable to consider that the repayment arises from transactions carried out for bona fide commercial reasons and which did not form part of a scheme or arrangement the main purpose (or one of the main purposes) of which was to avoid Irish tax.

In addition, similar to the proposed pre-clearance procedure for sales of IREF units, the Finance Act seeks to introduce an administrative simplification in respect of those 'good' indirect investors who would be entitled to a full refund of IREF withholding tax by virtue of the above-mentioned refund provisions. It is proposed that these indirect investors will be able to seek advance clearance from Revenue for the tax not to be applied in the first instance. The claimants must seek approval from Revenue in advance of the taxable event occurring and provide certain information about their unitholding, including why the IREF would not be considered to be a PP IREF of the indirect investor concerned. The procedure will be available in respect of both IREF withholding tax that would be operated by the IREF itself on distributions and redemptions and IREF withholding tax that must be operated by the purchaser of units in an IREF where the consideration exceeds €500,000.

Exemption for land owned for five years

At present, there is an exemption from IREF withholding tax in respect of distributions made out of gains arising on the disposal of land and buildings which were held by the IREF for a period of at least five years (though this exemption does not apply to distributions where the IREF is a PP IREF in respect of that unitholder). The Committee Stage amendments to the Act include the removal of this exemption in respect of disposals occurring or unrealised profits or gains recognised in the IREF's income statement on or after 1 January 2019. In our Property & Construction section we discuss the proposal in the Act to reduce the holding period applicable to an exemption from capital gains tax which applies to the disposal of certain land and buildings. The rationale behind that change is to reduce any impact the required holding period may have had on the supply of development land, with the intention of increasing supply in the market. It is likely that similar rationale may underpin this change to the IREF regime (though it would not be universally accepted that the exemption from IREF withholding tax was impacting on the supply of property in the market).

Section 110 companies

Irish tax resident companies which meet the conditions of the Section 110 securitisation regime are subject to corporation tax on their net accounting profits. While a similar rule applies to Irish trading companies, an important distinction is that companies taxed under the Section 110 securitisation regime are also entitled to a tax deduction for interest on profit-participating loans.

Finance Act 2016 introduced new restrictions on interest deductibility

Brian Daly
Partner

arising on profit-dependent loans where the qualifying Section 110 company held certain assets connected with Irish real estate. In broad terms, the interest deductibility restrictions introduced in Finance Act 2016 apply to the extent that a qualifying securitisation company holds and/or manages 'specified mortgages' such that these assets are to be treated as part of a separate business, known as a 'specified property business' carried on by the company. Specified mortgages are defined as:

- loans which are secured on and derive their value or the greater part of their value (directly or indirectly) from Irish land and buildings;
- swaps or similar derivatives which derive their value or the greater part of their value (directly or indirectly) from Irish land and buildings or a loan with the characteristics described above (other than such investments which derive the greater part of their value from those types of excluded securitisation transactions discussed below);
- units in an Irish Real Estate Fund (IREF), and
- profit-dependent loans (or part thereof) issued by another Section 110 company which fund, and are attributable to, its specified property business.

Where a qualifying securitisation company is subject to the regime introduced in Finance Act 2016, the general Section 110 rules will continue to apply to this 'specified property business'. However, interest deductions in respect of profit-participating loans will be restricted to the amount of interest that would have been payable on that loan had it been a non-profit-participating loan entered into by way of a bargain made at arm's length.

The Finance Act seeks to amend the definitions of 'specified mortgages' and 'specified property business', the effect of which would be to include in the definition of 'specified property business' a business (or that part of the business) which includes the holding and/or managing of shares that derive their value, or the greater part of their value, directly or indirectly, from Irish land and buildings.

The proposed expanded definition of 'specified business property' (and, hence, the resulting restriction in respect of deductibility of interest on profit-dependent loans attributable to that 'specified property business') is to apply with respect to interest paid on or after 19 October 2017.

iXBRL reporting obligations for investment undertakings

The Finance Act seeks to extend the obligation for Irish companies to provide financial statements electronically in iXBRL format to the Revenue Commissioners to Irish regulated funds (investment undertakings). The obligation to provide iXBRL financial statements will be brought in on a phased basis through regulations to be made by the Revenue Commissioners with the consent of the Minister for Finance.

Life products

The Act contains two technical changes to the taxation of life products.

The first change seeks to prevent life assurance companies from taking relief for foreign tax, either as a tax deduction or foreign tax credit, where that foreign tax is attributable to profits reserved for or allocated to the policyholders.

The second change seeks to extend the circumstances where an assignment of a life policy will not give rise to a charge to exit tax for a policyholder. The amendment ensures that assignments of life policies in favour of a "qualifying company" within the meaning of Section 110 of the Act should not result in an adverse exit tax treatment for a policyholder for example, in cases where such a "qualifying company" acquires home loans from a traditional financial institution and requires a borrower to assign a life policy to the qualifying company as security for the loan.

Property & Construction

Jim Clery
Partner

Changes to the 7-year CGT exemption

To stimulate acquisitions in the property market, a capital gains tax (CGT) exemption was introduced in Finance Act 2012 in respect of gains on land and buildings acquired under an unconditional contract between 7 December 2011 and 31 December 2014. The portion of any gain exempted is linked to the period of ownership. Up to now, a minimum period of ownership of seven years was required (with tapered relief available where the asset is held for more than seven years).

The Act reduces the required holding period from seven to four years for disposals made on or after 1 January 2018. The aim of the change is to reduce any impact the required holding period may have had on the supply of development land, with the intention of increasing supply in the market.

From 1 January 2018 owners will be able to sell assets which qualify for relief between the fourth and seventh anniversary of the acquisition date, while still availing of relief from CGT on any gains arising. The change will equally apply to land and buildings located in other EEA states (which are eligible for the current relief). The relief as it originally applies will continue to apply to a disposal after the seventh anniversary of the acquisition date.

Increased stamp duty on non-residential property

The rate of stamp duty on the transfer of non-residential property was increased from 2% to 6% for instruments executed on or after 11 October 2017. However, where a binding contract was entered into before 11 October 2017, the rate of stamp duty will remain at 2%, provided that:

- the instrument is executed before 1 January 2018, and
- the instrument contains an appropriate statement certifying that the instrument was executed solely on foot of a binding contract entered into before 11 October 2017 (the form of this statement has not been released by Revenue).

On 27 October 2017 Revenue published eBrief No. 94/2017 which outlines how transitional relief can be claimed by eligible taxpayers. A person who files a stamp duty return before the enactment of the Finance Act and who is satisfied that the transitional measures would apply if the Finance Act is enacted has two options:

(i) To file a return through the e-stamping system, pay stamp duty at the 6% rate and be issued a stamp certificate. On enactment of the Finance Act, the taxpayer can request a refund of the difference between the 2% and 6% rates by amending the return and submitting the relevant documentation to Revenue, or

(ii) To file a return through the e-stamping system and pay the stamp duty at the 2% rate, in which

case a stamp certificate will not be issued. When the Finance Act is enacted, Revenue will publish information on how the postponed stamp certificated can be obtained.

The tripling of the stamp duty rate is a significant change which will likely reduce the number of commercial property transactions in the course of the next year. This will have material knock-on consequences for commercial property values in the Irish market. It seems that the minister's estimated additional yield of €376 million from this measure is highly ambitious, given that c. €9 Action of transactions would be needed to generate such a yield.

In the context of the increase in the rate noted above, and in recognition of the current housing supply challenges, the minister on Budget Day announced that a stamp duty refund scheme will be introduced for land purchased for the development of housing.

The Report Stage amendments provide for the refund mechanism to revert effective stamp duty for qualifying residential development projects to 2%. The measures are very complex and interested parties should seek specific advice in order to comply with the measures. The scheme provides for a refund only, not a reduction of duty upfront. The requirements are linked to definitions in the Building Control Act and Regulations. The claim for the refund must be made in a prescribed form (details of which have not yet been released).

Broadly, to be eligible to apply for the refund 'construction operations' pursuant to a 'commencement notice' must have begun within 30 months of the date of the land conveyance. Then the project must be completed within 2 years of the 'commencement notice' in order to avoid a clawback. There are provisions for phasing developments using separate commencement notices to enable larger developments to qualify. The level of development must be at least 75% of the area of the land occupied or produce (over several storeys) gross floor space of at least 75% of the land area.

The scheme ceases for projects commencing after 31 December 2021, so this is a temporary measure only.

Tim Lynch
Partner

Changes to the threshold for stamp duty on residential property

The threshold below which stamp duty does not apply on residential lettings (for any term not exceeding 35 years or for any indefinite term) will be increased from €30,000 to €40,000. This will be effective for instruments executed on or after the date of passing of the Finance Act.

Stamp Duty on share transfers

Significant stamp duty changes have been introduced at the Seanad stage of the Finance Act 2017. Stamp duty at up to 6% will now apply to transfers of shares where the shares derive their value from Irish property. Previously the rate for shares was 1%. The changes also impact investment undertakings that are IREFs. The increased rate should not apply where there is no change in control of the underlying property, where the property in the company is held for long term rental income (and not for disposal) nor where the underlying property is residential property.

Vacant site levy

The Urban Regeneration and Housing Act 2015 introduced legislation providing for the establishment of a vacant site register in relation to sites situated in an area in need of housing, are suitable for the provision of housing, and vacant or idle.

Additionally, in relation to such sites, a vacant site levy of 3% is payable from 2019 onwards (in respect of the preceding year), with a lower levy of between 0% and 1.5% applying where any site loan is greater than 50% of the market value of the vacant site.

In an attempt to prevent perceived hoarding of development land, the minister on Budget Day announced proposed changes to the vacant site levy which will increase the rate in the second and subsequent years to 7%. For example, if a vacant site is held in 2018 and 2019, under the proposed changes a 3% levy would apply for 2018 and a 7% levy would apply for 2019 (payable in arrears).

To give effect to the proposed changes, legislative amendments to the Urban Regeneration and Housing Act 2015 will be needed. These are not included in the Finance Act and are expected to be in a Local Government Act.

Vacant home tax report

The Act provides for the commissioning and delivering by the Minister, within 9 months of a report governing the issues surrounding and revenue estimates of a new tax on vacant residential property.

Pre-letting residential expenses

In a move to address the shortage of properties in the private rented sector, a measure has been introduced to encourage owners of vacant residential property to bring such property to the rental market. The proposed measure will allow a deduction for 'pre-letting' expenses of a revenue nature (for example, routine repairs and maintenance costs) incurred on a property which has been vacant for a period of 12 months or more

(such expenses incurred before the first letting of the property would not currently be considered deductible). The relief will be subject to clawback if the person who incurred the expenses ceases to let the property as a residential premises within four years. This clawback could potentially apply on a sale of the property by the landlord and also upon the death of the landlord. The clawback will occur in the year the property ceases to be let as a residential premises. The relief will be subject to a cap of €5,000 per property and will be available for qualifying expenditure incurred up to the end of 2021.

The legislation refers to property which is let by the landlord throughout the four year period and which we understand is intended to include temporary vacant periods between leases.

Broadening the scope of shares/securities within the charge to capital gains tax

The Act includes a number of changes regarding the CGT charge for non-residents and CGT clearance requirements.

At present, a non-resident is subject to Irish CGT on the disposal of certain assets, including unquoted shares and securities deriving their value from Irish land and buildings but not on disposals of quoted shares that derive their value for Irish land and buildings.

In an enhancement to an anti-avoidance provision introduced in 2015 to counteract attempts to swamp a company with cash so that its shares do not derive their value from Irish land and buildings, the Act provides that the anti-avoidance provision will also apply where a company is swamped with assets other than cash.

A CGT clearance certificate is required on the disposal of certain specified assets, including unquoted shares and securities deriving their value from Irish land and buildings, where the consideration is at least €500,000 (or €1m in the case of residential property). Similar to the above, an anti-avoidance provision to counteract 'swamping' attempts is being introduced.

The changes above apply to disposals on or after 19 October 2017 and it is worth noting that all of the provisions referenced above, the definition of shares includes security.

Help to Buy incentive

In a welcome move, the minister has retained the Help to Buy incentive, and has not made any changes to the operation of the scheme in the Act. A detailed analysis of why we support the Help to Buy incentive is contained in our recent TaxWatch publication, which is available on our website www.kpmgpublications.ie.

Indirect taxes

Terry O'Neill
Partner

VAT

VAT rates

The Finance Act confirms there are no changes to the current rates of VAT. Similarly, there is no change to the flat rate farmer addition, which remains at 5.4%.

In line with the Government's National Cancer Strategy, the VAT rate applicable to sunbed services will increase from 13.5% to 23% with effect from 1 January 2018.

VAT exemption for educational activities

The Act amends the legislative provisions governing the application of the VAT exemption for children's or young people's education, school or university education, and vocational training and retraining.

The main impact of the changes is to clarify the scope of the VAT exemption for vocational training and retraining and to place on a statutory footing general Revenue administrative practice in respect of the application of the VAT exemption to such services. Some uncertainty had arisen in respect of the application of the VAT exemption to vocational training and retraining services following an updating of the exemption in Finance Act 2015.

There are also a number of technical amendments to clarify the application of the VAT exemption to certain educational services and to update legislative references.

Furthermore, the Act includes provisions enabling Revenue to implement regulations to further define the conditions under which VAT exemption can apply in the education and training sector. Operators within that sector should carefully consider whether these changes have any impact on the VAT treatment that applies to their activities.

These changes are to apply with effect from the passing of the Finance Act.

Glenn Reynolds
Partner

Excise duties

There are number of excise-related measures in the Act, including:

- Confirmation of the announcement in the Budget of an increase in excise duty on a packet of 20 cigarettes by 50 cents (including VAT), pro-rata increases on other tobacco products, and an additional 25 cent on a 30 gram pack of 'roll your own' tobacco. These increases took effect on 11 October 2017.
- The Diesel Rebate Scheme for qualifying road transport operators is being amended to exclude from the scheme undertakings in financial difficulty, as defined in the European Commission guidelines on State Aid.
- Updates to the definition of category A and B vehicles for Vehicle Registration Tax (VRT), which will take effect on 31 July 2018.
- An amendment to clarify that the amount of VRT repaid under the vehicle Export Repayment Scheme cannot exceed the amount of VRT originally paid on a vehicle.

Sugar tax

Following the Budget announcement, the Act introduces legislation for an excise duty on sugar-sweetened drinks (a 'sugar tax'). It is intended to come into effect in April 2018. Notably, the measure is subject to approval by the European Commission and the minister's commencement order.

The introduction follows a global trend towards taxing drinks with a high sugar content as a means of tackling obesity, diabetes and other health risks. Sugar tax regimes are already in place in France, Hungary, Mexico, Norway and certain US states. Ireland's sugar tax regime is intended to align with the proposed introduction of a similar regime in the UK (also due to be introduced in April 2018), so as to minimise the potential for leakages in Exchequer revenue arising from illegal and cross-border sales.

The rate of sugar tax will be 16.26 cent per litre on sugar-sweetened drinks which have a sugar content of 5 to 8 grams per 100 millilitres, and 24.39 cent per litre where they have a sugar content of 8 grams or more per 100 millilitres. The tax is liable on the first supply of such products in the State.

Exclusions from the scope of the sugar tax include sugar-sweetened drinks with less than 5 grams of sugar per 100 millilitres, dairy products, alcoholic drinks and certain non-alcoholic wines. Also excluded are pure fruit juices that do not contain added sugar. If, however, sugar is added to pure fruit juices, the entire sugar content in the drink will be assessed.

The Act provides that suppliers liable to pay the sugar tax must register with Revenue in advance of their first supply to which the tax applies. Liable suppliers shall be obliged to file sugar tax returns on a bi-monthly basis, with the return and payment due by the end of the month following each bi-monthly period.

The Act also provides for a relief from the tax for a registered exporter on sugar-sweetened drinks supplied outside the State by that exporter. A repayment of the tax may also be granted where drinks that have been subject to the sugar tax are subsequently returned to the liable supplier.

Suppliers and exporters of sugar-sweetened drinks will be required to maintain detailed records. Affected suppliers and exporters will need to consider updating their systems to meet the requirements.

The Act also provides that it will be an offence to fail to comply with the sugar tax requirements. Persons, including officers of a company, who commit such an offence will be liable on summary conviction to a fine of up to €5,000.

Revenue may issue regulations setting out the scope and operation of the tax in detail.

Trade is a taxing question in a post-Brexit world

Glenn Reynolds
Partner

Trade is a taxing question in a post-Brexit world

Nearly 16 months on from the Brexit referendum, we are still no closer to understanding what Ireland's trading relationship with the UK will look like from March 2019 and beyond.

Neither the Budget nor the Finance Act brought any surprises from a Brexit perspective. In his Budget speech, the minister announced additional measures to help make Ireland Brexit-ready, recognising its potentially negative impact on the economy as a whole and on certain sectors in particular. Brexit also influenced the retention of the reduced 9% VAT rate for the tourism sector, amid some calls for the restoration of the rate to 13.5%.

As anticipated, there were no specific legislative measures aimed at the VAT, customs or excise regime that will apply to trade with the UK after Brexit.

The ability of the Irish Government to plan for life post-Brexit is of course hampered by the uncertainty surrounding the UK government's position on exit. Ireland's ability to take unilateral action is also constrained by the framework of harmonised EU customs, excise and VAT rules, within which Ireland must operate.

The real action on Brexit continues with the ongoing negotiations between the UK and the EU-27, with agreement on the Brexit 'divorce Act' being a stumbling block to starting meaningful discussions on the trading position post-Brexit and in particular on whether any transitional period will be agreed.

The final shape of the Brexit negotiations will determine the future customs relationship between Ireland and the UK and, importantly, whether customs duties will be payable on goods traded with the UK, whether there will be restrictions on certain goods, and what form of customs import and export procedures, if any, will apply.

All of this in turn will influence the impact of Brexit on trade and the economy, and in particular on the more Brexit-sensitive industries.

Possible options after Brexit

At this point the two certainties we know are: (i) the UK has a hard-stop date of 29 March 2019 to exit the EU unless a transitional period is agreed, and (ii) Brexit, whatever form it eventually takes, is likely to result in fundamental changes to the VAT and customs regime under which current trade with the UK takes place.

The UK and Ireland's membership of the EU Customs Union allows goods to flow freely between the two without tariffs, quotas or customs checks, enhancing economic co-operation and facilitating trade whilst maintaining a uniform EU-wide position on non-EU trade.

If the UK exits the EU Customs Union without any equivalent free-trade agreement, it will become a 'third country' from a customs perspective, and customs duties and procedures will apply to goods traded with it. This would mean the imposition of a range of tariffs on goods traded between the UK and Ireland from 29 March 2019. The duty ranges can vary, for example, from 0% to 14% for industrial goods, and 8% to 50% for agri-food products, and can be up to 12% for clothing.

The customs regime provides some reliefs which can mitigate the potential burden of customs on international trade. The availability of these reliefs should, to some extent, soften the impact of Brexit for some Irish businesses, but their application is limited.

The British government's stated position to date is that the UK will leave the Customs Union so that it is free to negotiate free-trade agreements with other countries. However, the UK would also like to negotiate a free-trade agreement with the EU.

The best outcome for Ireland would be the retention of the UK in the

Terry O'Neill
Partner

Customs Union. Next best would be a comprehensive free-trade agreement that maintains the key features of the current trading regime and avoids the introduction of tariffs on trade with the UK.

A transition period based on a time-limited Customs Union framework has recently been mooted by the UK. If that is not agreed, a lot of work is required for businesses and government to be ready for the new customs, excise and VAT requirements in a very short timeframe. The clock is ticking to March 2019 and the lurking shadow of a cliff-edge Brexit remains if a negotiated settlement is not reached.

'Frictionless trade' - fact or fiction?

The UK government has mooted the idea that there could be a 'frictionless border' between Ireland and the UK, particularly Northern Ireland, post-Brexit, with technology being extensively used to manage frontier issues, including customs.

The absence of detail has left many sceptical about the form this might take and the practicalities of monitoring the movement of goods within the confines of EU rules. Even if the UK were to remain in the Customs Union, the challenges associated with it leaving the EU should not be underestimated. For example, depending on the form of free-trade agreement or customs union agreed, customs declarations of some form may still be required in respect of trade between Ireland and the UK.

An additional and less discussed feature is that, even if the UK remains in the Customs Union, it would not remain a part of the EU VAT area. This would mean that, unless changes are made, VAT would be payable on goods moving to Ireland from the UK at the point of importation (and vice versa), which could represent a significant VAT cashflow cost for businesses. In addition, some form of checking the movement of goods traded between the two would be required from a VAT perspective.

Current EU rules facilitate cross-border shopping between Ireland and the UK. Brexit could have an impact by imposing allowances on shopping cross-border. How these rules would be enforced will require careful consideration.

It is safe to assume that Brexit, in whatever form, will result in considerable administrative burdens and challenges for Irish businesses and will necessitate a substantial investment in infrastructure by businesses and government alike.

Planning is essential to prepare for the impact of Brexit. Businesses would be advised to take steps now to prepare. Businesses that have a good understanding of their supply chains and have quantified their Brexit exposures in detail at a product, customer or supply-chain level will be best placed to create the most competitive solution for a post-Brexit world.

An earlier version of this article first appeared in *The Sunday Business Post* and is reproduced with their kind permission.

BEPS related developments

Conor O'Sullivan
Partner

Looking ahead to implementation of the multilateral instrument

On 7 June 2017, representatives from over 70 jurisdictions, including Ireland, participated in an OECD ceremony for the signing of a multilateral instrument (MLI) to implement tax treaty-related measures to prevent Base Erosion and Profit Shifting (BEPS). As part of an OECD webcast on various BEPS developments on 17 October 2017, it was noted that 71 jurisdictions had signed up to the MLI, covering 1,136 bilateral tax treaties globally.

In the Finance Act, Ireland took its first step in giving legislative footing to its MLI choices (announced by the Department of Finance in a technical briefing note on 2 June 2017). The Act allows the Government to put a motion containing Ireland's MLI choices before the Oireachtas for approval in a similar manner to how double tax treaties are ordinarily enacted under Irish law. Subsequent to this motion passing successfully, another piece of primary legislation will be required to give full legislative footing to Ireland's MLI choices. It is expected that this will happen in 2018, either through Finance Act 2018 or through a separate Act.

Implementation mechanics

The MLI is a legal instrument under which countries, including Ireland, set out a range of changes which they are willing to adopt into double tax treaties which they have in place. The changes to tax treaties recommended under Actions 2, 6 and 7 of the OECD's plan have the objective of providing greater protections against the misuse of tax treaties. The changes to tax treaties are either classified as "minimum standard" (countries are required to include the change) or "best practice" (countries have an option as to whether they include the change).

The changes selected under the MLI will be adopted into selected ('covered') treaties where equivalent choices are made by the tax treaty counterparty and enacted into the law of both countries. With the exception of its tax treaty with the Netherlands, which is understood to be at an advance stage of renegotiation, Ireland has indicated its intention to extend MLI changes to all of its tax treaties. However, as the US did not sign the MLI (and plans to renegotiate its treaties bilaterally), the MLI will not affect Ireland's treaty with the US.

Ireland's position

Certainty of access to tax treaty benefits is critical to Irish-based businesses. This underpins the effectiveness of Ireland's tax treaty network, one of the key attractions of Ireland as a hub for international business.

The MLI will come into force after five signatory countries have ratified and brought it into effect. To date, only Austria has ratified its MLI choices. It is expected that the threshold of five ratifications will be reached by the end of 2017, allowing the MLI to take effect in early 2018. Once the domestic ratification steps have been completed, Ireland will deposit its instrument of ratification with the OECD shortly thereafter. Before the measures in a specific bilateral tax treaty take effect, the counterparty treaty country must take similar steps and ratify its MLI choices under its domestic law.

Since each jurisdiction needs to take steps in accordance with its local laws and Ireland has legislative steps to complete, the timing of implementation across Ireland's tax treaties is uncertain. In practice, the likely date that measures could be expected to come into effect for most of Ireland's tax treaties appears to be from the beginning of 2019. Once Ireland has completed its adoption process, which is expected during 2018, businesses will need to monitor adoption in other jurisdictions to understand the effective date in individual treaties.

Orla Gavin
Partner

What changes is Ireland willing to adopt?

Treaty Preamble and Principal Purpose Test (PPT)

As it is a "minimum standard", all countries, including Ireland, must include the following preamble language (or already have similar wording) in treaties that will be subject to MLI changes:

"Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)" [emphasis added].

In addition, Ireland and most of its treaty counterparty countries have chosen to adopt a general anti-abuse measure in the treaty in the form of the following Principal Purpose Test (PPT):

"A benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement" [emphasis added].

Countries can also elect to include additional conditions set out in a Simplified Limitations on Benefits (LOB) article. If, however, both countries do not elect for a Simplified LOB, then only the PPT applies, unless both countries choose to reserve any changes for bilateral negotiation or to allow each country to unilaterally apply its choice. Ireland has elected to adopt only the PPT. It is expected that approximately 40 bilateral treaties globally will contain a Simplified LOB as well as the PPT. Some countries that Ireland has a tax treaty with, such as India, Russia and Mexico, have opted to include a Simplified LOB as well as the PPT.

Dependent Agent Permanent Establishment (PE) Threshold

As it is not a "minimum standard", Ireland has opted to "reserve" on the MLI provisions that would have decreased the "dependent agent" threshold for the recognition of a taxable PE in a jurisdiction due to the activities, for example, of employees who discuss contract terms with local counterparties. The MLI measures include the creation of a PE in situations where a dependent agent "habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise".

As Ireland has "reserved" on this MLI provision, this decrease in the PE threshold will not take automatic effect in any of Ireland's bilateral double tax treaties. Care will, however, need to be taken to continue to monitor the activities of employees in foreign markets. It is possible that Ireland's stance could lead to some countries seeking a bilateral negotiation to change the dependent agent provisions in their tax treaty with Ireland. Any such change would likely take some time to agree and be ratified before it could come into effect.

It is understood that over 300 bilateral tax treaties globally will include an expanded PE definition. Some countries that signalled their interest in lowering the dependent agent threshold by virtue of their MLI choices to adopt the measure are India, Japan, Mexico, Russia, Turkey, France and Spain.

Liam Lynch
Partner

Ireland proposes to adopt changes to the automatic exemption tests for recognition of a PE under its treaties by continuing to treat certain activities as automatically excluded from the scope of a local taxable presence. This is subject to adoption of a change in wording which recognises that certain activities (e.g. storage of goods, market research) could create a taxable presence in the local jurisdiction if they are more than ancillary to the business of the non-resident company. Ireland views this position as consistent with its longstanding interpretation of the existing provisions. It is clear that Ireland's current policy position in relation to the threshold for recognition of a taxable presence in Ireland remains unchanged for international enterprise conducting business in Ireland.

Dispute resolution

In the matter of dispute resolution, almost all countries propose or already have mutual agreement and corresponding adjustment provisions in their treaty with Ireland. Improvements to dispute resolution mechanisms are welcomed, particularly as it is widely expected that the BEPS related changes may give rise to more disputes.

In the case of arbitration, 26 countries have chosen binding mandatory arbitration. Some countries propose to adopt nearly all arbitration options, including Singapore, Italy, France, Australia, Canada, Germany and the UK. Ireland is open to the type of arbitration that is used and has signalled its intention to make its MLI selections accordingly, choosing to adopt all arbitration options.

Many countries included compatibility reservations under which they have signalled that an arbitration process would not apply to resolve disputes arising in matters which concern tax evasion, fraud and domestic anti-avoidance measures (GAAR), etc. Japan has lodged an objection in relation to the scope of matters reserved from arbitration. In addition, it appears that Japan has excluded from arbitration all treaties that (like the treaty between Ireland and Japan) provide a tie-break test for dual-resident companies.

Taxation of indirect property disposals

Ireland has opted to extend its taxing rights to include capital gains arising from the disposal of shares deriving their value from Irish land. A number of

Tom Woods
Partner

other countries including China, France, Germany, India, Japan and Spain have also chosen to extend taxing rights in this manner.

KPMG observations

Some initial observations on these treaty-based changes are:

- Our initial view is that Irish businesses with robust commercial substance in Ireland should be able to continue to rely on the benefits of the relevant Irish treaties. However, as the practical application of these treaty changes internationally is uncertain at this stage, they will need to be monitored closely.
- It will be important for groups to understand the potential impact of treaty changes to their cross-border transactions. The changes around treaty abuse could result in the loss of treaty benefits in certain cases, while the changes to the PE definition could result in taxable presences being created in countries where no PE had been considered to exist heretofore. In certain cases, a group-wide review will be required.
- China, Korea and India have chosen the PPT as an anti-abuse test for their tax treaty with Ireland, even though their tax treaty policy is to include an LOB test. It remains to be seen whether this tax policy choice influences the approach of tax authorities in these jurisdictions to transactions with Irish counterparties or whether this treaty change will simply sit alongside the already comprehensive domestic anti-avoidance/beneficial ownership rules that apply in those jurisdictions.
- The US did not sign the MLI, as it plans to renegotiate its treaties bilaterally. The US does not support the adoption of a PPT as a general anti-abuse measure in its tax treaties as it considers that the subjective nature of this test gives rise to uncertainty in its application for taxpayers. It has adopted a detailed LOB test as its tax treaty anti-abuse measure.
- Jurisdictions may at any time adopt further provisions of the MLI. Ongoing monitoring of developments will therefore be necessary.

Tax Rates and Credits **2018**

Personal income tax rates (changed)

	At 20%, first	At 40%
Single person (increased)	€34,550	Balance
Married couple/civil partnership (one income) (increased)	€43,550	Balance
Married couple/civil partnership (two incomes)* (increased)	€69,100	Balance
One parent/widowed parent/surviving civil partner (increased)	€38,550	Balance

* €43,550 with an increase of €25,550 maximum

Personal tax credits (changed)

Single person	€1,650
Married couple/civil partnership	€3,300
Single person child carer credit	€1,650
Additional credit for certain widowed persons /surviving civil partner	€1,650
Employee credit	€1,650
Earned income credit (increased)*	€1,150
Home carer credit (increased)	€1,200

* Applies to self employed income and certain PAYE employments not subject to the PAYE credit

Help to Buy Scheme (unchanged)

Income tax rebate, capped at €20,000, for first time buyers of a principal private residence. The relief is 5% of the house value (capped at €400,000). Maximum relief (i.e. €20,000) available for homes valued between €400,000 and €500,000. Post 31 December 2016, there is no relief for houses valued greater than €500,000. Claimants must take out a mortgage of at least 70% of the purchase price. The scheme only applies to new builds, self builds or a converted building not previously used as a dwelling and not to second hand properties. The scheme will be in place until 31 December 2019.

Home loan interest relief granted at source on principal private residence* (changed)

Married/widowed - First time buyers loan taken out from 2009 to 2012**	
Years 6-7	Lower of €4,000 or 20% of interest paid
After year 7 (where applicable up to and including 2017)*	Lower of €900 or 15% of interest paid
2018	75% of relief available in 2017
2019	50% of relief available in 2017
2020	25% of relief available in 2017
Married/widowed - Other mortgages, loans taken out from 2004 to 2012**	
2017*	Lower of €900 or 15% of interest paid
2018	75% of relief available in 2017
2019	50% of relief available in 2017
2020	25% of relief available in 2017
Married/widowed - First time buyers loan taken out from 2004 to 2008**	
After year 7 and up to and including 2017*	Lower of €1,800 or 30% of interest paid
2018	75% of relief available in 2017
2019	50% of relief available in 2017
2020	25% of relief available in 2017

Single persons

Thresholds set at 50% of those outlined above for married/widowed persons

* Loans taken out on or after 1 January 2013 do not qualify for Mortgage Interest Relief. The relief available in 2017 was extended in Budget 2018 on a tapered basis to 2020

** Applies to civil partnerships/surviving civil partner also

Local Property Tax (varying rates) (unchanged)

Market Value less than €1,000,000*	0.18%
Market Value greater than €1,000,000:	
- First €1,000,000	0.18%
- Balance	0.25%

* Market Value less than €100,000 - calculated on 0.18% of €50,000. Market Value €100,000 - €1,000,000 assessed at mid-point of €50,000 band (i.e. property valued between €150,001 and €200,000, assessed on 0.18% of €175,000).

- Applies to residential (not commercial) properties. Exemptions for houses in certain unfinished estates and newly constructed but unsold property. Exemption until 31 December 2019 for new and unused houses purchased between 1 January 2013 and 31 October 2019 and second hand property purchased between 1 January 2013 and 31 December 2013
- Certain payment deferral options may be available for low income households
- From 2015 onwards, local authorities can vary the basic LPT rates on residential properties in their administrative areas. These rates can be increased or decreased by up to 15%

Deposit Interest Retention Tax (changed)

DIRT (rate reduced)	37%*&**

* 41% rate remains for exit taxes on financial products

** The rate of DIRT will be decreased by 2% each year for the next 2 years until it reaches 33% in 2020. This was announced in Budget 2017

PRSI contribution, Universal Social Charge (changed)

	%	Income
Employer	10.85%* (increased)	No limit
	8.6%* (increased)	If income is €376 p/w or less
Employee (class A1)**		
PRSI	4%	No limit**
Universal Social Charge	0.5% (unchanged)	€0 to €12,012***
	2.0% (reduced)	€12,013 to €19,372****
	4.75% (reduced)	€19,373 to €70,044*****
	8% (unchanged)	> €70,044

* 0.1% increase in National Training Levy from 1 January 2018 included in Employer PRSI for Class A and Class H employments

** Employees earning €352 or less p/w are exempt from PRSI. In any week in which an employee is subject to full-rate PRSI, all earnings are subject to PRSI. Unearned income for employees in excess of €3,174 p.a. is subject to PRSI.
Sliding scale PRSI credit of max. €12 per week where weekly income between €352 and €424

*** Individuals with total income up to €13,000 are not subject to the Universal Social Charge

**** Increase in upper limit of the 2.0% band from €18,772 to €19,372

***** Reduced rate (2.0%) applies for persons over 70 and/or with a full medical card, where the individual's income does not exceed €60,000

Self-employed PRSI contribution, Universal Social Charge (changed)

	%	Income
PRSI	4%	No limit*
Universal Social Charge	0.5% (unchanged)	€0 to €12,012**
	2.0% (reduced)	€12,013 to €19,372***
	4.75% (reduced)	€19,373 to €70,044****
	8% (unchanged)	€70,045 to €100,000
	11% (unchanged)	> €100,000

* Minimum annual PRSI contribution is €500

** Individuals with total income up to €13,000 are not subject to the Universal Social Charge

*** Increase in upper limit of the 2.0% band from €18,772 to €19,372

**** Reduced rate (2.0%) applies for persons over 70 and/or with a full medical card, where the individual's income does not exceed €60,000

Tax relief for pensions (unchanged)

- Tax relief for pensions remains at the marginal income tax rate
- The Defined Benefit pension valuation factor is an age related factor that will vary with the individual's age at the point at which the pension rights are drawn down
- Except where a Personal Fund Threshold applies, the Standard Fund Threshold is €2m

Capital gains tax (unchanged)

Rate	33%
Entrepreneur relief (reduced rate)*	10%
Annual exemption	€1,270

* Relief remains capped at lifetime limit of €1m chargeable gains. 10% rate applies to disposals on or after 1 January 2017

Capital acquisitions tax (unchanged)

Rate	33%
Thresholds	
Group A	€310,000
Group B	€32,500
Group C	€16,250

Corporation Tax rates (unchanged)

Standard rate	12.5%
Knowledge Development Box rate	6.25%
Residential land, not fully developed	25%
Non-trading income rate	25%

Value Added Tax (9% rate retained)

Standard rate/lower rate/second lower rate	23%/13.5%/9%
Flat rate for unregistered farmers	5.4%
Cash receipts basis threshold	€2m

Stamp duty - commercial and other property (changed)

6% on commercial (non residential) properties* and other forms of property not otherwise exempt from duty, effective on and from 11 October 2017**

* Where a claim for a refund is made, up to two-thirds of the stamp duty paid on the acquisition of land may be repaid if residential development on the land commences within 30 months following the date of execution of the stampable instrument. This refund is available where an instrument is executed on or after 11 October 2017. There are some further conditions which must also be satisfied. The Act provides that the refund will not be available where development commences after 31 December 2021.

** The 2% rate continues to apply for purchasers with binding contracts in place before 11 October 2017, provided the instrument for the transfer is executed before 1 January 2018 and contains a statement to this effect.

Stamp duty - residential property (unchanged)

1% on properties valued up to €1,000,000

2% on balance of consideration in excess of €1,000,000

KPMG

How will the Budget affect you?

Find out with our Budget 2018 tax calculator at **kpmg.ie**

1 Stokes Place
St. Stephen's Green
Dublin D02 DE03

Telephone +353 1 410 1000
Fax +353 1 412 1122

1 Harbourmaster Place
IFSC
Dublin D01 F6F5

Telephone +353 1 410 1000
Fax +353 1 412 1122

90 South Mall
Cork T12 KXV9

Telephone +353 21 425 4500
Fax +353 21 425 4525

Dockgate
Dock Road
Galway H91 V6RR

Telephone +353 91 534 600
Fax +353 91 565 567

The Soloist Building
1 Lanyon Place
Belfast BT1 3LP

Telephone +44 28 9024 3377
Fax +44 28 9089 3893

Produced by: KPMG's Creative Services. Publication Date: Dec 2017. (2991)