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Conor O'Brien
Partner

Introduction

The Government published Finance Bill 2018 on 18 October 2018. The Bill contains the taxation measures announced in the Minister for Finance's Budget speech on 9 October 2018 as well as a small number of measures not previously announced.

The Irish economy is in robust health and has staged a remarkable recovery from the downturn caused by the property market crash 10 years ago. This is a tribute to the surefootedness of Irish policy-makers and to the discipline of Irish citizens. The healthy economic environment is very positive for Irish businesses, as is the continued prudent management of government finances and the unrivalled stability of Ireland's attractive corporation tax regime. There will be some disappointment that, in what are relatively benign economic times, there is a paucity of tax measures designed to stimulate domestic entrepreneurship, attract international mobile talent or reverse the many crisis-era tax increases.

The Bill confirms the modest, but welcome, income tax reliefs announced in the Budget, including:

- a reduction in the 4.75% rate of USC to 4.5%
- an increase of €750 in the standard rate income tax band
- an increase in the home carer tax credit of €300
- an increase in the earned income tax credit of €200

The Bill also confirms the unwelcome tax increases announced in the Budget, including:

- an increase in the VAT rate applicable to tourism-related activities from 9% to 13.5%
- the second of three 0.1% increases in the rate of employer's PRSI, by way of an increase in employer contributions to the National Training Fund
- an increase in betting duties and tobacco-related excise duties

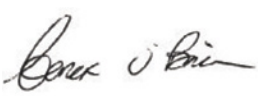
The Government has again reaffirmed its commitment to Ireland's 12.5% corporation tax rate. Ireland's commitment in this regard has been rock-solid for many years. The Bill confirms that the corporate exit tax which Ireland has committed to introduce under EU law will be levied at the 12.5% rate.

The Bill includes the legislation necessary to comply with Ireland's commitment under EU law to introduce controlled foreign corporation (CFC) rules. These rules are intended to target the artificial diversion of profits to low-taxed jurisdictions. It is not intended that genuine commercial transactions would be affected but companies will need to carefully review their affairs to ensure that they are not inadvertently affected.

The Bill contains a number of measures designed to reduce the tax system's administrative burden. These include a substantial rewrite of the Employment Incentive and Investment Scheme and Start-up Refunds for Entrepreneurs tax reliefs for investments in corporate trades designed, inter alia, to simplify compliance; some simplification of the film tax credit, and a reduction of some of the compliance burden related to tax appeals. If this is the beginning of a trend of cutting red tape, that would be most welcome as the administrative costs of our tax system have grown substantially in recent years – often driven by EU and OECD requirements outside the Irish state's control.

Ireland's income tax system is skewed against those on higher incomes to a degree that is almost unique in the developed world – more so than in any other EU member of the OECD. The top 1% of income earners in Ireland pay 28% of all income tax and USC, which is almost double the entire amount paid by the bottom 74% of income earners. More than half of all income tax and USC is paid by the top 7% of earners. Despite this, the Bill confirms the practice of confining tax relief to incomes under €70,000 and of narrowing the income tax base. There appears to be almost no prospect of reversals of the substantial crisis-era tax increases in marginal income tax, capital gains tax, capital acquisitions tax and other investment tax rates. All of these taxes are now high by international standards.

Ireland's policy of offering a competitive tax regime to foreign corporate investment has been of great benefit to the nation, and continues to attract near universal support. The contrast however with the tax regime offered to domestic entrepreneurs is stark. That regime is uncompetitive by international standards and, if the tide of foreign corporate investment ever recedes, we may well regret not having nurtured our domestic entrepreneurial sector when the time was right. It is to be hoped that sensible targeted measures to support this sector will be introduced.



Conor O'Brien
Head of Tax and Legal Services

Contents:

Personal Tax

Robert Dowley
Partner

Universal social charge

The Bill 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 2019 table at the end of this publication.

As expected, the Bill confirms that these changes take effect from 1 January 2019.

Income tax bands

The Bill provides for the increases in the standard-rate tax bands announced in the Budget. It confirms that all bands will increase by €750 from 1 January 2019, with an equivalent increase in the additional band available to a dual-income couple, married or in a civil partnership. Full details of the revised thresholds are available in the Tax Rates and Credits 2019 table at the end of this publication.

Tax credits

The Bill provides for the increases in the home carer tax credit from €1,200 to €1,500 and the earned income tax credit from €1,150 to €1,350 announced in the Budget. Both increases apply from 1 January 2019.

Hepatitis C and HIV compensation payments

An exemption from tax applies to compensation payments by the Hepatitis C Compensation Tribunal to individuals infected with Hepatitis C or HIV.

The Bill extends the tax exemption to payments made under a comparable overseas scheme in an EEA member state. This change comes into operation on 1 January 2019.

Childcare support payments

The Bill introduces an exemption from income tax for certain payments made by the Minister for Children and Youth Affairs to assist with the cost of childcare, which for the most part are means-tested. The payments can be made to parents or guardians, or the cohabitant of the parent or guardian of the child.

The charge applies from 1 January 2019 but payments made before then are also exempt from tax with retrospective effect.

Taxation of payments under Magdalen scheme

The current tax exemption for payments made to women under the Magdalen Laundries Restorative Justice Ex Gratia Scheme (and their state pensions) is being extended to women who were resident in certain adjoining institutions of the Magdalen Laundries.

The Bill also provides for an exemption from tax for any income and/or gains realised from the investment/ reinvestment of the payments qualifying for this exemption.

The above changes are retrospective to 1 August 2013, when the scheme came into operation. Where tax has been paid on any of the income/gains referred to above, in 2013 or 2014, a claim for a refund can be submitted on or before 31 December 2019. The normal four year time limit for refund claims applies for 2015 onwards.

Finally, the Bill establishes two new sections covering the declarations and notifications to be made to Revenue to exempt a deposit account containing such payments from DIRT.

Disposal of a site to a child

Relief from capital gains tax is available on the transfer of a site by a parent to a child where the transfer is to enable the child to construct his or her principal private residence on the site. The site value must not exceed €500,000 and the area of the site must not exceed one acre. The relief will be extended to a transfer of a site to the spouse or civil partner of the child for disposals made on or after 1 January 2019.

Capital acquisitions tax (CAT)

CAT thresholds

In his Budget speech, the minister announced an increase in the tax-free threshold that generally applies for CAT purposes for gifts or inheritances from a parent to a child. The Bill provides for the threshold to increase from €310,000 to €320,000, and also clarifies that the increase applies to gifts or inheritances taken on or after 10 October 2018.

On Budget Day, the minister referenced concerns about the tax burden for families on inheriting the family home as being the driver for this increase. The proposed increase in the threshold is small, however, and there is a long way to go in restoring the threshold to the previous level, which was in excess of €500,000 before the financial crisis.

Full details of the revised tax-free thresholds are available in the Tax Rates and Credits 2019 table at the end of this publication.

Dwelling house exemption

There is an exemption from CAT in respect of inheritances of certain residential property, subject to conditions. One of these conditions is that the taxpayer does not have a beneficial interest in any other residential property at the date of the inheritance.

The Bill provides that, for the purpose of determining whether this condition is met, the taxpayer will be treated as having an interest in any residential property that is subject to a discretionary trust which they have established and of which they are a potential beneficiary.

Time limits for making enquiries

Under the current CAT rules, the Revenue Commissioners can generally make enquiries or authorise inspections in relation to a return during the four years commencing on the date the return is received.

There are a number of CAT reliefs which are subject to claw-back if certain conditions are not met for a period of years. As a result of an amendment in the Bill, the Revenue will be entitled to make enquiries and authorise inspections during the four year period commencing on the latest date on which all of the conditions for a relief or exemption were required to be satisfied.

Surcharge for discretionary trust tax returns

The Bill provides for a surcharge to be imposed where a discretionary trust tax return is not filed by the due date. The due date falls 4 months after the valuation date of the inherited property subject to the discretionary trust.

Payment of tax following an appeal

The Bill provides that any additional tax arising as a result of the determination of an appeal against an assessment to CAT is due and payable on the same date that the tax due under the original assessment was payable. However, this provision will not apply in circumstances where the amount of tax paid before the making of the appeal is not less than 90% of the tax determined to be due as a result of the appeal. Instead, the outstanding tax is payable within one month of the date of the determination of the appeal.

Credit for capital gains tax – life assurance policies

A CAT relief exists whereby CGT occurring on the same event giving rise to the CAT is available as a credit against the CAT. On the death of a person insured under a life assurance policy, any tax properly withheld by the life assurance provider is treated as CGT for the purposes of the CAT relief.

A condition of the CAT relief is that the asset must be held by the donee for a period of two years after the gift or inheritance. The Bill includes an amendment to ensure the two year requirement does not apply to life assurance policies in death situations given the life assurance policy will have matured on the death (and will not be capable of being held for two years).

Business property relief – definitions

The Bill updates a number of technical definitions included in the business property relief legislation to align them with the definitions in the Companies Act 2014.

Employment Taxes

Ken Hardy
Partner

Key Employee Engagement Programme (KEEP)

In his Budget speech, the minister acknowledged that the level of interest to date in the KEEP incentive has been lower than expected. To incentivise the take-up of the incentive and to support SMEs in attracting and retaining key talent, the minister announced a number of changes to the rules relating to the total market value of qualifying share options that may be granted by a qualifying company to an employee or director.

The Bill confirms the Budget Day changes announced by the minister. Specifically, it provides that the ceiling on the maximum market value of shares over which options may be granted by a small and medium-sized enterprise (SME) to any one employee or director under the KEEP scheme should not exceed:

- €100,000 in any one year of assessment,
- €300,000 in all years of assessment, or
- 100% of the annual emoluments of the employee or director in the year in which the qualifying share option is granted.

The €300,000 limit is a lifetime limit, and replaces a previous limit of €250,000 for any three consecutive years of assessment. The above limits apply separately to each qualifying company; i.e. where an employee leaves and joins a new company, a separate €300,000 lifetime limit applies.

The proposed amendments are subject to a ministerial commencement order.

The Bill also includes a technical amendment which provides that Revenue may publish certain information in relation to the company such as the company's name, address, CRO number, the date of exercise of the qualifying share options and the principal activity carried on by the company.

It is disappointing that the opportunity was not taken to expand the relief to apply to a holding company of a qualifying group, and not just a single company. We hope that this change will be implemented to ensure that the relief could operate in common commercial situations.

Benefit-in-kind exemptions for Permanent Defence Force members

The Bill inserts a new provision to exempt from a benefit-in-kind charge the provision of living accommodation on land occupied by, used by or under the control of the Permanent Defence Force, as well as the provision of healthcare to members of the Permanent Defence Force.

The exemptions apply for the 2018 and subsequent years of assessment.

Benefit-in-kind exemption for the provision of electric vehicles

As part of the Government's commitment to take action to address climate change, the Bill extends the exemptions from a benefit-in-kind charge for employer-provided electric cars and vans, which was due to expire at the end of 2018.

A full exemption will apply for electric vehicles made available between 1 January 2019 and 31 December 2021 where the original market value of the vehicle does not exceed €50,000. A benefit-in-kind charge will arise in respect of an electric vehicle with an original market value exceeding €50,000. The charge is calculated by reference to the amount of the original market value of the vehicle that is in excess of €50,000.

PAYE for health and dental insurance providers

The Bill confirms that PAYE should be operated on the taxable value of the benefit of health or dental insurance policies provided by an employer who is a health or dental insurance provider, or a tied health insurance agent, to its employees.

Retirement benefits for public servants

The public service pension-related deduction (PRD), which currently applies to the remuneration of public servants, is to be abolished on 31 December 2018 and replaced by an additional superannuation contribution (ASC) from 1 January 2019.

The Bill provides that ASC payable by a public servant will be deductible as an expense in computing the amount of taxable employment income in the tax year in which it is paid.

Relief arising in special circumstances

The Bill introduces provisions to ensure that employees who are paid on a weekly or fortnightly basis and have an additional pay-day in a tax year (commonly referred to as a 'Week 53 pay-day'), will not have an underpayment of tax when their liability is reviewed following the end of the tax year. Certain deductions and tax credits to which the employee is entitled, together with the appropriate standard-rate band, will be increased by 1/52 for employees paid weekly and 1/26 for employees paid fortnightly. If the age exemption and associated marginal relief applies, it will also be increased in the same manner.

Pay As You Earn (PAYE) modernisation

PAYE modernisation and real-time reporting for the administration and operation of the PAYE system will be introduced from 1 January 2019. Extensive legislative changes to the PAYE rules were enacted in Finance Act 2017 and the Income Tax (Employments) Regulations 2018, which were released on 7 September 2018 to facilitate the new system. The Bill introduces a number of additional technical changes required to facilitate the new system, including:

- The inclusion of an obligation for employers to file a monthly USC return
- Update of the employer's pension reporting requirements to include the ASC which will be payable by public servants from 1 January 2019
- Confirmation that if an employer is required to re-gross income of an employee where the employer fails to correctly operate the PAYE system, the required income is chargeable on the employee as employment income
- Update of references to the Income Tax (Employment) Regulations 2018

Business Tax

Colm Rogers
Partner

Paul O'Brien
Partner

Intangible assets

Finance Act 2017 reintroduced 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. This cap operates so as to restrict the aggregate of the capital allowances and related interest expense allowed to 80% of the trading income derived from the intangible assets. The cap merely limits the deductible amount in a given tax year, with any unused excess carried forward for use in later years. The 80% cap does not apply in respect of capital expenditure on intangible assets before 11 October 2017.

Where a company incurred expenditure on intangible assets both before 11 October 2017 (pre 2017 IP) and after 11 October 2017 (post 2017 IP), only a portion of the intangible asset allowances and interest would be subject to the 80% cap. The amendment in the Bill requires that the company identify separate income streams related to pre 2017 IP and post 2017 IP. It then provides that the use of the capital allowances and related interest on capital expenditure on pre 2017 IP and post 2017 IP is ring-fenced for use against income from the same IP. The result is that capital allowances on pre-2017 IP which were not subject to the 80% cap are not available for use against income from post-2017 IP.

The amendment puts on a statutory basis the method of apportionment already set out in Irish Revenue guidance issued in January 2018.

Relief for Investments in Corporate Trades

The minister announced in his Budget speech that, following a recent review of the Employment and Investment Incentive (EII) regime, he would introduce a package of measures in the Finance Bill to address the issues identified in that review. Since Business Expansion Scheme (BES) relief was rebranded and relaunched as EII relief in Finance Act 2011, efforts have been made to streamline the relief and increase its attractiveness to both investors and companies alike. The changes proposed in the Bill are welcome and hopefully will result in the continued growth in popularity of EII fundraising in the SME sector. The latest available statistics (for 2016) show that €108m of EII funds were raised (up from €74m in 2015).

Whilst the proposed legislation aims to consolidate and streamline the relief, many of the substantive features of EII - and the Start-up Refunds for Entrepreneurs (SURE) relief which applies to investments by entrepreneurs in start-up companies are retained. The thresholds and limits applying to investors and companies alike remain unchanged, and the anti-avoidance legislation applying to EII and SURE fundraisings go largely untouched.

The key improvement to the relief is a move away from a system of 'pre-clearance', under which companies applied to the Revenue Commissioners for certificates which they then provided to investors, to a system of 'self-certification' under which companies raising EII and SURE financing will issue 'statements of qualification' to investors. Investors will then self-assess their own qualification before claiming relief. Key features of this new 'self-certification' system are:

- A requirement that companies can only issue 'statements of qualification' in circumstances where the company has spent 30% of the funds raised for qualifying purposes, or a period of two years has elapsed since the end of the year of assessment in which the shares were issued
- In the case of EII relief, the requirement to issue separate 'statements of qualification' for the initial relief granted (30/40ths) in the first year of investment and the second tranche (10/40ths), which is available at the end of a four year investment term (subject to meeting certain conditions)
- In certain circumstances where the basis for withdrawal of relief is within the company's control (e.g. where the company ceases to be a qualifying company), the company can be subject to the clawback (rather than the individual). The amount of this clawback varies depending on why the clawback arises
- The imposition of a penalty on the company (equal to 25% of the clawback arising on a withdrawal of relief) where it is concluded that the company deliberately or carelessly made an incorrect return (the 'statement of qualification' being the return in this instance)
- The inclusion of reporting requirements whereby the company must report to the Revenue Commissioners certain details relating to qualifying investments. This is to facilitate the Revenue's own reporting requirements under the EU General Block Exemption Regulation (GBER), an EU regulation which facilitates compliance of certain risk finance initiatives with EU state aid rules, provided they meet certain outlined conditions
- A facility whereby companies can apply to Revenue for confirmation that they meet relevant conditions

The above move to a 'self-certification' system is most welcome as, in practice, the requirement to obtain Revenue certification in advance of claiming relief had, on occasion, been administratively difficult to manage.

Whilst most of the features of EII and SURE are untouched, other key improvements are worth mentioning:

- The removal of the requirement for the qualifying company to have started

Olivia Lynch
Partner

trading within two years of issuing qualifying shares or to have spent the money raised on R&D activities within one month of the end of the investment term (where the company was relying on the carrying on of R&D activities to qualify for relief)

- The extension of the EII relief (but not SURE) to preference shares and redeemable shares, which will provide much needed flexibility
- Whilst investors (or their associates) with existing interests in companies may be precluded in certain circumstances from claiming tax relief on further investments, a relaxation of these rules has been introduced for certain 'micro' companies. It is referred to as the 'start-up capital incentive'. This should facilitate tax relief for 'friends and family' type investments in early-stage ventures
- The relief has been extended to share issuances on or before 31 December 2021
- These new provisions will take effect for shares issued from 1 January 2019

As noted above, many of the complex anti-avoidance provisions are retained and, indeed, compliance with the GBER-based conditions is a prominent feature of the revamped rules (including the requirement that all qualifying investments must be based on a business plan, with the concept of a business plan being defined in the law quite comprehensively). Many conditions therefore still need to be satisfied to ensure that relief is available. Nevertheless, the over-arching shift from a 'pre-clearance' system to a 'self-assessment' system should be welcomed by all.

Relief from corporation tax for certain start-up companies

A relief from corporation tax for certain qualifying start-up trades was introduced in Finance Act (No. 2) 2008. The relief was due to expire for qualifying trades which commence after 31 December 2018. The Bill extends the relief for companies which commence qualifying trades before 31 December 2021, where the relevant conditions are met.

The amount of corporation tax relief available is linked to the amount of employer's PRSI paid by the company in each accounting period, subject to a maximum of €5,000 per employee and an overall annual corporation tax liability limit of €40,000 on qualifying income and gains (with marginal relief available where the company's corporation tax liability would otherwise be between €40,000 and €60,000). A further evaluation of the effectiveness of the relief is to be carried out in 2021.

Film corporation tax credit relief

A reimagined film corporation tax credit (FCTC) relief was introduced in Finance Act 2013 to promote the Irish film industry by encouraging investment in Irish-made films. The scheme provides relief in the form of a corporation tax credit related to the cost of the production of certain films (the previous version of the relief was an income tax-based relief provided to individual investors in film production companies). The relief was due to expire at 31 December 2020, but the Bill provides for a four year extension, to 31 December 2024.

In his Budget speech, the minister also announced that a regional uplift to the FCTC relief would be introduced for productions made in areas designated under the state aid regional guidelines. The Bill provides for a new, time-limited, tapered regional uplift of 5% for productions in these particular areas. The regional uplift will apply to productions which take place on or after 1 January 2019. Where the regional film development uplift applies, the Bill provides that FCTC relief will be available at the following rates for the following periods:

- 37% for claims made between 1 January 2019 and on or before 31 December 2020;
- 35% for claims made after 31 December 2020 but on or before 31 December 2021;
- 34% for claims made after 31 December 2021 but on or before 31 December 2022;
- 32% for claims made after 31 December 2022

The regional film development uplift will be subject to EU approval.

The Bill also provides for a number of amendments to ensure that the FCTC relief operates in an efficient manner. The changes include a provision for the credit to move to a self-assessment-based system. An amendment is also included in respect to the application process to allow for the Department of Arts, Heritage and the Gaeltacht to issue

Tim Lynch
Partner

a certificate to a producer company confirming whether a film is a qualifying film and whether it qualifies for the regional film development uplift relief. Two amendments are also included in the Bill to ensure that FCTC relief remains state aid-compliant.

Mutual agreement procedures time limits

The Finance Bill has made an amendment to remove the normal four year time limit imposed on amending a tax return, in the case where an amendment is required by reason of a Mutual Agreement Procedure (MAP). Many of Ireland's double tax treaties and the EU Arbitration Convention provide a mechanism whereby the competent authority of each treaty country may resolve difficulties or disputes arising from double tax for a taxpayer by mutual agreement. A taxpayer can request MAP assistance from the Irish Revenue. MAP is most often requested in relation to transfer pricing of transactions between affiliates in a group where there is a difference in view between the competent authorities as to the amount of profits which should be subject to tax in each treaty country.

In some cases the outcome of MAP may require the profits of an Irish company to be adjusted, and may result in a refund of tax. In these cases the taxpayer will usually be required to submit revised tax returns for the affected accounting periods. MAP procedures by their nature can be complex and typically involve multiple past tax years. Accordingly, the removal of the general four year time limit means there will be no time limit for revising tax returns to give effect to the agreed outcome of MAP.

Tax exemptions for non-profit-making bodies

The Bill makes some technical amendments to ensure that a number of non-profit-making bodies are provided certain tax exemptions in order to avoid circular payments in and out of the Exchequer. These bodies include the Motor Insurers' Bureau of Ireland, Limerick Twenty Thirty Strategic Development DAC (a subsidiary of Limerick City Council), the National Transport Authority, Sport Ireland, the Child and Family Agency, and the Western Development Commission. In some cases, these exemptions have been included with retrospective effect from the bodies' various dates of establishment.

Energy-efficient equipment

The Bill amends the scheme under which accelerated wear and tear allowances are available for capital expenditure incurred on the provision of certain energy-efficient equipment.

The definition of "energy-efficient equipment" has been amended to mean equipment that complies with specified energy-efficient criteria and is named on a specified list. The Bill provides that the Minister for Communications, Climate Action and Environment, on approval of the Minister for Finance, can specify the "energy-efficient criteria" relating to minimum levels of efficiency, performance, speed, storage or efficacy to be met, and the certifications and standards to be complied with or tested via statutory instrument. The Bill makes provision for the Sustainable Energy Authority of Ireland to establish and publish a list of equipment eligible under the scheme on its website.

Gas-propelled vehicles and refuelling equipment

The Bill provides for a new accelerated capital allowances scheme for capital expenditure incurred on gas vehicles and gas refuelling equipment used for the purposes of carrying on a trade. For this purpose, gas means compressed natural gas, liquefied natural gas or biogas. A 100% wear and tear allowance will be available for capital expenditure incurred between 1 January 2019 and 31 December 2021.

A qualifying vehicle means a new gas vehicle which is constructed or adapted for the transport of goods (or any burden), the haulage of vehicles or the carriage of passengers. However, the vehicle must be either unsuitable for use as a private vehicle, or wholly or mainly hired to members of the public or for the transport of members of the public in the ordinary course of trade.

Refuelling equipment is defined as a storage tank for gaseous fuel, a compressor, pump, control or meter used for the purposes of refuelling gas vehicles, or equipment for supplying gaseous fuel to the fuel tank of a gas vehicle.

Childcare and fitness facilities for employees

Finance Act 2017 made provision for accelerated capital allowances in respect of expenditure incurred by an employer in the construction of a building used for childcare facilities or fitness centre facilities where certain requirements were met. However, the relief was introduced subject to the issue of a commencement order which was never issued.

The Bill amends the qualifying expenditure definition so that the relief will be available to all employers and not just to persons carrying on a trade wholly or mainly relating to childcare services or the provision of facilities in a fitness centre. It also includes a new restriction that the facilities provided must not be accessible or available for use by the general public.

The requirement for the issue of a commencement order has been revoked and the provision will now take effect from 1 January 2019.

Joe O'Mara
Partner

Gareth Bryan
Partner

Anti-avoidance on loans from close companies to participators

An anti-avoidance provision has been included in the Bill to counteract arrangements designed to avoid or reduce a charge to tax under specific rules which apply where loans are advanced from close companies to participators.

Currently a charge to tax applies where a close company makes a loan to an individual who is a participator or an associate of a participator. Under these rules, the company will be required to account for tax at a rate of 20% on the grossed-up amount of the loan. In effect, the grossed-up amount of the loan is treated as an annual payment. There are various exclusions from this general rule and the tax paid is refunded to the company if a claim is made within four years of the year of assessment in which the loan is repaid.

The proposed new rule captures any arrangements under which a participator in a close company (or an associate of that participator) receives a loan and arrangements are entered into which have, as their main purpose or one of their main purposes, the avoidance of a tax charge under the pre-existing rules.

The amendment will apply in respect of arrangements entered into on or after 18 October 2018 (i.e. the date on which the Bill was published).

Trustees ceasing to be resident in Ireland

An exit tax charge arises where a trust which is resident in Ireland becomes non-resident as a consequence of the trustees becoming neither resident nor ordinarily resident in Ireland. It is calculated based on the market value of the trust assets at the time the trust becomes non-resident. To ensure that the exit charge is EU-compliant, the regime will be amended to provide that the trustees can opt to discharge the exit tax in six equal annual instalments.

Tax Appeals Commission procedures

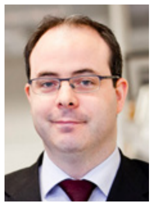
The Bill makes some technical amendments to the tax appeal procedures, including: (i) providing for the matters that the Appeal Commissioners should have regard to in determining an appeal in relation to farm stock values, (ii) removing the requirement for certain information to be provided in a statement of case, and (iii) clarifying the circumstances in which the Appeal Commissioners can make a determination in an appeal without a hearing.

Other

The Bill contains technical updates to ensure that the most recent EU directives are referenced in the occupational pension scheme legislation.

Professional Services Withholding Tax (PSWT) is operated by certain state and semi-state bodies. The Bill removes six entities from the list of bodies that are required to operate PSWT and adds four new entities - the Policing Authority, Educational Research Centre, Sport Ireland and certain harbour companies. These changes will come into operation on 1 January 2019.

Agri-business measures



Andrew Gallagher
Partner

Income averaging allows certain farmers to pay tax based on average profits over a five year period and is intended to assist farmers in dealing with the income volatility associated with the industry. The Bill gives effect to the Budget Day announcement that eligibility for this relief has been extended to cases where the farmer, or their spouse/civil partner, carries on another trade or profession, or holds or controls more than 25% of the share capital in a company carrying on a trade or profession.

Under current legislation, an individual who claims farm restructuring relief is required to provide certain information to Revenue. The Bill provides that this information is to be furnished to Revenue at the same time as the individual's tax return when entitlement to the relief arises in 2019 and subsequent tax years. Where entitlement to relief arose between 1 July 2016 and 31 December 2018, the information must be provided to Revenue along with the individual's 2018 tax return.

The Bill also gives effect to the flagged extension to stock relief for a further three year period, until the end of 2021. Stock relief provides for an additional income tax deduction for stock increases during the tax year. This extension applies to the three separate stock relief measures:

- the general 25% stock relief
- the 50% stock relief for registered farm partnerships
- the 100% stock relief for certain young trained farmers

There are also amendments to take account of EU state aid requirements that govern aid given to the agricultural and forestry sectors. These amendments provide that the aggregate of (i) stock relief available to a young trained farmer, (ii) relief from stamp duty available to such individuals on the acquisition of agricultural property and (iii) the succession tax credit in respect of certain farm partnerships cannot in total exceed €70,000.

Both the young trained farmer stock relief and stamp duty exemption are being further restricted and will only be available to micro and small-sized enterprises. Previously both reliefs were also available to medium-sized enterprises.

Eoghan Quigley
Partner

Stamp duty measures

As announced on Budget Day, the Bill provides an extension to 31 December 2021 of the exemption from stamp duty on the transfers of agricultural land to young trained farmers under the age of 35 where certain conditions are met. This is subject to a commencement order.

Where a person qualifies as a young trained farmer within four years of the transfer of agricultural land, a repayment of stamp duty can be claimed. The Bill provides that, to claim a repayment, the person must submit a business plan to Teagasc and it must be a micro or small enterprise.

There are also some technical amendments to remove outdated references in the young trained famer relief provisions.

Farm consolidation relief was reintroduced with effect from 1 January 2018. The Bill contains technical updates to reflect that stamp duty is now claimed on a self-assessment basis, which was not the case when the relief was previously available.

VAT on bloodstock

The financial resolutions passed on Budget Day included an increase in the VAT rate from 9% to 13.5% on the sale of bloodstock. However, the sale of bloodstock to flat-rate farmers should continue to qualify for the 4.8% VAT rate.

Property & Construction

JIm Clery
Partner

Carmel Logan
Partner

Rental income – landlord interest deductions on residential properties

Following the relaxation of interest deduction restrictions in recent Finance Acts for certain properties let to individuals in receipt of all rent supplement/housing assistance payment or to local authorities, a full interest deduction for landlords of residential properties will be restored from 2019. This is an acceleration of the 2021 timeframe announced last year and reinstates full tax relief for a normal business expense.

Rent-a-Room Relief

The threshold for exempt income under the Rent-a-Room Scheme is currently €14,000 per annum. The Finance Bill has introduced measures to ensure the relief does not apply to certain short-term lettings from 2019 onwards, where the room(s) are used for a period which does not exceed 28 consecutive days. There is a carve-out for (i) room(s) used by certain incapacitated persons, (ii) scenarios where the room(s) are used for a minimum of four consecutive days per week for not less than four consecutive weeks, or (iii) where the person using the room(s) is in full or part-time education in a university, college, school or other educational establishment in the state. The aim is to reduce displacement of housing space to tourist letting.

Home Renovation Incentive (HRI)

The Home Renovation Initiative scheme seeks to incentivise individuals to upgrade their homes using tax-compliant contractors. The relief is due to expire on 31 December 2018 and has not been extended in the Bill.

Stamp duty

Despite rumours in the weeks leading up to the Budget, it is welcome that the minister has not altered the stamp duty rate applicable to private rental sector (PRS) projects. Given the current housing challenges, any such change could have led to delays in project acquisitions, reduction in investment and ultimately increases in the cost of delivering large-scale rental developments.

The Finance Bill has made some procedural changes to the provisions dealing with a stamp duty charge arising on the signing of a contract, rather than on an actual conveyance or transfer on sale (for example, 'certain resting in contract' scenarios). Where the appropriate stamp duty has been paid on the first event, the Revenue Commissioners will now issue a stamp certificate on the later event to the effect that the instrument is not chargeable to stamp duty. Heretofore, the stamp duty paid on the first event had been transferred to the later instrument, with the original instrument rescinded. This process has become impractical with the move to e-stamping.

The Bill contains technical amendments to ensure that a taxpayer can make a valid appeal to the Appeal Commissioners against a decision by Revenue on a claim for a repayment of stamp duty. The time limit for making such an appeal is 30 days.

Local property tax

The new valuation date for Local Property Tax (LPT) is 1 November 2019. A public consultation was undertaken by the Department of Finance in April 2018 and the minister in his Budget speech stated that the report will be published in due course. The consultation will have particular regard to valuation issues. The minister reassured homeowners that any future changes in LPT will be moderate and affordable.

VAT & other indirect taxes

Terry O'Neill
Partner

VAT

VAT rates

The Finance Bill confirms the announcement in the Budget that the VAT rate applicable to certain goods and services, mainly in the tourism and hospitality sectors, will increase from 9% to 13.5% with effect from 1 January 2019. The 9% VAT rate will, however, continue to apply to sales of printed newspapers and the provision of sports facilities. The 9% rate will also be extended to books, newspapers and periodicals supplied electronically, with effect from 1 January 2019. Electronic publications which wholly or predominantly are devoted to advertising, or consist wholly or predominantly of audible music or video content, will continue to be subject to VAT at the 23% rate.

Consequently, from 1 January 2019, the rate applying to the following goods and services will increase to 13.5%: restaurant and catering services; hotel and similar accommodation; admissions to cinemas, museums and other attractions; hairdressing services, and certain supplies of horses (other than for use in food and agricultural production) and greyhounds. Suppliers of such goods and services will need to consider the impact of the higher VAT rate on their pricing, and to update their systems and procedures to apply the correct VAT rate from 1 January 2019 onwards.

The reduction in the VAT rate from 23% to 9% for books, newspapers and periodicals supplied electronically follows agreement reached among EU finance ministers in early October to allow reduced rates of VAT to apply to digital publications. Prior to this, EU VAT rules required all EU member states to apply the standard rate of VAT.

The Bill confirms there are no other changes to the current rates of VAT or to the flat-rate farmer addition, which remains at 5.4%.

Forced sales of residential property

The Bill makes a technical change to a VAT anti-avoidance measure commonly referred to as the 'developer rule'. The change is intended to ensure that the developer rule applies in the same manner to forced sales of residential property by receivers, liquidators and mortgagees as to non-forced sales. The developer rule provides that VAT is automatically chargeable on the sale of residential property by the developer of that property in the course of a property development business (or by

Glenn Reynolds
Partner

a person connected to the developer of the property) where the developer was entitled to deduct VAT on the acquisition or development of the property. This measure will take effect upon the passing of the Bill.

Non-EU use of telephone cards

The Bill removes provisions which allowed for a repayment of VAT to telecommunication service providers in cases where VAT had been charged on the sale of a telephone card but where that card had subsequently been used outside of the EU. This measure will take effect from 1 January 2019.

Excise duties

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

- Confirmation of the increase announced in the Budget in betting duty for bookmakers and remote bookmakers from 1% to 2%, as well as the increase in betting intermediary duty for remote betting intermediaries from 15% to 25%. The increases are to take effect from 1 January 2019.
- Confirmation of the announcement in the Budget of an increase in excise duty on a packet of 20 cigarettes by 50 cents (including VAT), and pro-rata increases on other tobacco products as well as an additional 25 cent on a 30 gram pack of 'roll your own' tobacco. These increases took effect at midnight on 9 October 2018. There will also be an increase in the Minimum Excise Duty on tobacco products, with the result that excise payable on all cigarettes sold below €11 will have the same amount of excise payable as cigarettes sold at €11.
- An amendment to the scope of the sugar-sweetened drink tax (sugar tax). The amendment results in certain categories of beverages which exceed the sugar content threshold and which do not meet a minimum calcium content of 119 mg per 100 ml becoming subject to sugar tax.

Vehicle Registration Tax (VRT)

There are also a number of amendments to VRT legislation, including:

- A 1% increase in the rate of VRT chargeable on registrations of diesel passenger cars and light commercial vehicles in each of the CO_2 emissions bands. There is no change to VRT rates for non-diesel, diesel hybrid and plug-in hybrid vehicles.
- As announced in the Budget, the extension of the VRT relief for the purchase of hybrid electric vehicles to 31 December 2019.
- Repayments of the VAT element of VRT to leasing companies on acquiring new cars will cease in respect of vehicles registered from 1 January 2019 onwards, and will cease altogether by 1 April 2019.
- The VRT export repayment scheme for EU Category M1 vehicles (i.e. passenger cars) is extended to all Category A registered vehicles (including light commercial vehicles).
- The introduction of a scheme for the proportionate payment of VRT where a vehicle leased in from another EU member state is brought into Ireland for the duration of the lease and is subsequently exported from Ireland following expiry of the lease. Certain conditions must be met for this proportionate payment to apply. This follows a European Court of Justice judgment which held that full rates of VRT should not apply to vehicles leased in from another member state.

Other indirect tax developments

A number of other recent indirect tax developments outside of the Finance Bill are important to note.

Vouchers

The VAT treatment of the issue, sale and redemption of vouchers is due to be updated with effect from 1 January 2019. The changes provide clarity on what constitutes a voucher and how the issue, sale and redemption of vouchers should be treated from a VAT perspective. In particular, the changes introduce the concept of a Single Purpose Voucher (SPV) and a Multi-Purpose Voucher (MPV).

Currently, the sale of vouchers, gift tokens, book tokens, etc is not liable to VAT except where, and to the extent that, the amount charged exceeds the value shown on the voucher. Instead, VAT arises on redemption of the voucher.

As a result of the changes, VAT will now need to be accounted for on the issue and sale of SPVs. This will create a cashflow cost as the VAT inherent in the voucher will need to be paid up front to Revenue. In cases of non-redemption, the provisions also mean that it is not possible to reverse VAT accounted for on SPVs.

In the context of MPVs sold through a chain, it will no longer be required to account for VAT at each stage. However, unlike SPVs, non-redemption of MPVs should not give rise to a VAT charge.

The changes will take effect on 1 January 2019.

VAT recovery on deal fees

On 17 October 2018, the European Court of Justice (CJEU) judgment was released in the Ryanair Limited v The Revenue Commissioners case (C-249/17) which relates to Ryanair's entitlement to recover VAT on professional costs related to its unsuccessful bid to acquire all of the shares of Aer Lingus. The CJEU held that Ryanair should be entitled to full VAT recovery on such costs on the basis that it intended to provide management services to the target company following acquisition, even though the acquisition was not completed and therefore the intended management services were never provided. This is an important judgment in the complex area of VAT recovery on deal fees.

VAT treatment of hire purchase transactions

On 18 October 2018, the CJEU judgment was released in Volkswagen Financial Services (UK) Ltd (C-153/17), a case concerning the VAT treatment of hire purchase (HP) transactions and HP suppliers' entitlement to VAT recovery on general overhead costs relating to HP transactions. In summary, the judgment held as follows:

- The treatment of a HP transaction as involving a VAT taxable supply of goods and a VAT exempt supply of credit is compatible with the EU VAT Directive. This reflects the current VAT treatment of HP transactions in Ireland.
- VAT on overhead costs incurred by HP suppliers should be partially recoverable based on a method which takes into account both the taxable supply of the goods and the exempt supply of credit. This was contrary to the Advocate General's analysis, which suggested that VAT recovery should not be available on costs which were incorporated into the price of the VAT exempt supply of credit.

Exit tax

Orla Gavin
Partner

The EU Anti-Tax Avoidance Directive (ATAD) was agreed by EU member states in 2016. Under the Directive, Ireland was required to introduce an ATAD-compliant exit tax for companies which transfer their tax residence or business assets outside of Ireland. The regime had to be implemented by 1 January 2020.

The minister confirmed on Budget Day that Ireland would bring forward the date of implementation of an ATAD-compliant exit tax regime. The minister considered that early introduction of this measure would provide certainty to businesses currently located in Ireland and to those considering investing in Ireland in the future.

Prior to Budget Day, Ireland had an exit tax regime which deemed a company which ceased to be tax-resident in Ireland to dispose of its assets at market value. The unrealised gains were subject to capital gains tax charge at a rate of 33%. Companies that were ultimately controlled by EU/tax treaty resident persons and not controlled by Irish residents were excluded from the scope of the charge.

The new ATAD-compliant exit tax regime does not distinguish between the ultimate owners of a company in applying the charge. This broadens the scope of companies potentially subject to the revised exit tax regime.

The new regime will tax unrealised capital gains on certain capital assets where:

- a company that is resident in another member state transfers assets from an Irish permanent establishment to another territory,
- a company that is resident in another member state transfers a business (including the assets of the business) carried on by a permanent establishment in Ireland to another territory, or
- a company ceases to be tax-resident in Ireland.

The tax rate for the exit charge is set at 12.5%, which is equivalent to the Irish corporation tax rate on trading profits. However, the Bill contains specific anti-avoidance measures which seek to deny the 12.5% rate where the charge arises as part of a wider transaction to dispose of the asset in circumstances where a gain would otherwise have been taxable at a rate of 33%.

No exit charge arises where certain assets are disposed of such as Irish land, exploration rights or assets in use as part

of a trade in Ireland. This is because such assets should remain within the charge to Irish tax.

The measures allow for a harmonised approach on intra-EU transfers of assets. They deem the market value of assets subject to exit tax in another EU member state to be the acquisition cost in Ireland. However, these provisions do not apply to treat the asset brought into Ireland as acquired at market value for capital allowances purposes.

Capital gains tax principles apply in measuring the exit gain. This means that foreign currency movements during the holding period of the asset may result in an increase or decrease in the gain, as measured in euro terms.

In line with ATAD, the Bill provides an option for payment of the exit tax to be deferred where the assets are transferred to an EU/EEA country. Where a company makes the deferral election, the tax will be payable in six equal annual instalments. The first instalment will be due nine months after the event triggering the exit charge where the company is subject to corporation tax or, in the case of capital gains tax, on 31 October in the tax year following the year in which the exit tax event occurs.

The remaining instalments would be due on each of the next five anniversaries of the initial due date.

To avail of the option to pay in six instalments, the company must make an election and include certain specified information in the tax return for the year in which the event triggering the exit tax occurs.

In addition, the company is obliged to supply certain information to the Irish Revenue within 21 days of the end of each of the five calendar years following the event which triggers the exit tax.

The deferral will cease to apply where any of the following occur:

- The assets or business carried on by a permanent establishment is sold or disposed of.
- The assets are transferred to a non EU/EEA country.
- The company ceases to be resident in an EU/EEA country.
- The company becomes insolvent or a liquidator is appointed.
- The company fails to pay the instalments within 12 months of the due date.

In those circumstances, any part of the exit tax which has not been paid, together with late payment interest (computed as if the deferral did not apply), becomes due and payable.

The Bill provides that the Revenue may seek security from a company electing for the exit tax deferral where in their view such a deferral would present a serious risk that tax would not be collected. It also permits the Revenue to seek payment of unpaid exit tax from an Irish-resident group company or an Irish-resident controlling director of the company.

An existing exemption from exit tax, which applies where a company ceases to be resident in Ireland as a result of a merger under European directives, is preserved in the Bill.

The Bill also contains transitional provisions relating to the administration of the pre-existing exit charge.

Ireland introduces Controlled Foreign Company (CFC) rules

Conor O'Sullivan
Partner

Ireland is required under the EU Anti-Tax Avoidance Directive (ATAD) to enact Controlled Foreign Company (CFC) rules. The Finance Bill sets out the CFC measures which take effect for accounting periods beginning on or after 1 January 2019.

Ireland has chosen to adopt one of two possible frameworks under ATAD, which is a transactional approach that applies transfer pricing principles in determining if profits of a low-taxed CFC should be taxed in Ireland. The general thrust of the regime is to assess an Irish company with a CFC charge based on an arm's length measure of the undistributed profits of the CFC that are attributable to the activities of Significant People Functions (SPFs) carried on in Ireland. The CFC charge does not apply where the essential purpose of the arrangements is not to secure a tax advantage.

Interaction with transfer pricing

If arrangements involving SPFs in Ireland are in place with a CFC which are either already within the scope of Ireland's transfer pricing regime or remunerated on an arm's length basis, the CFC charge does not apply. Therefore, where companies with Irish operations have arrangements in place with low-taxed foreign group members, one protection against the imposition of a CFC charge in relation to a CFC's income from these arrangements is to adopt robust transfer pricing policies that apply an arm's length price to the arrangements.

Scope of application to CFCs

As Ireland taxes worldwide profits of Irish resident companies, including the profits of foreign branches, the CFC regime does not apply to the foreign branches of Irish resident companies. Instead it will apply to Irish tax on income of foreign resident companies where certain activities are performed in Ireland by a company that controls the CFC.

The meaning of 'control' is broadly defined to include companies under the common control of an individual *and their associates who include relatives, taken together.* However, the CFC charge is only applicable to companies and not to individuals. It also only applies to the extent of the proportionate shareholding, held by the company in the CFC.

The Irish-based activities in scope of the CFC charge could be conducted in Ireland by an Irish resident company or a non-resident company. The CFC charge can apply to either the company controlling the CFC or to a connected company, depending on who performs the relevant activities in Ireland.

Foreign resident companies potentially may be CFCs because of common individual owners but no CFC charge applies unless and to the extent that a company holds shares in that CFC.

Exclusions from the scope of the charge

There are a number of exclusions from the CFC charge, discussed below:

The essential purpose test

The CFC charge does not apply if securing a tax advantage was not the essential purpose of an arrangement giving rise to the CFC's income.

For many groups that have low-taxed foreign subsidiaries because they have taken advantage of local tax incentives, the overriding commercial purpose for the CFC's business arrangements will mean that, despite the tax benefits

Sharon Burke
Partner

accruing to the CFC, the essential purpose of the arrangements is not to secure the tax benefits.

As this is quite a subjective test, it is hoped that the release of guidance, expected in the first quarter of 2019, will assist businesses in understanding the scope of application of this important exclusion.

Low-profit or low-margin subsidiaries

Where the CFC has profits of less than €75,000 or low-value activities, i.e. where the arm's length margin on operating costs is less than 10%, a CFC charge would not arise. This should be a useful exclusion for foreign subsidiaries that present a low risk of diverting profits from Ireland.

No undistributed income

As the CFC rules are essentially targeted at income that is not in the scope of Irish tax, the CFC charge does not apply if the CFC has no undistributed income for the period. The rules take into account and reduce the measure of undistributed income of a CFC where dividends are paid from the CFC's undistributed income of the accounting period (i) during the accounting period or within nine months of the accounting period end, and (ii) to a person resident in Ireland or a member state of the EU/EEA where the distribution has been subject to tax in that state.

CFC profits in the character of capital gains

To be within scope of the CFC charge, the undistributed profits of the CFC must be income in character. Generally, profits in the character of capital gains are excluded from the charge.

Effective tax rate test

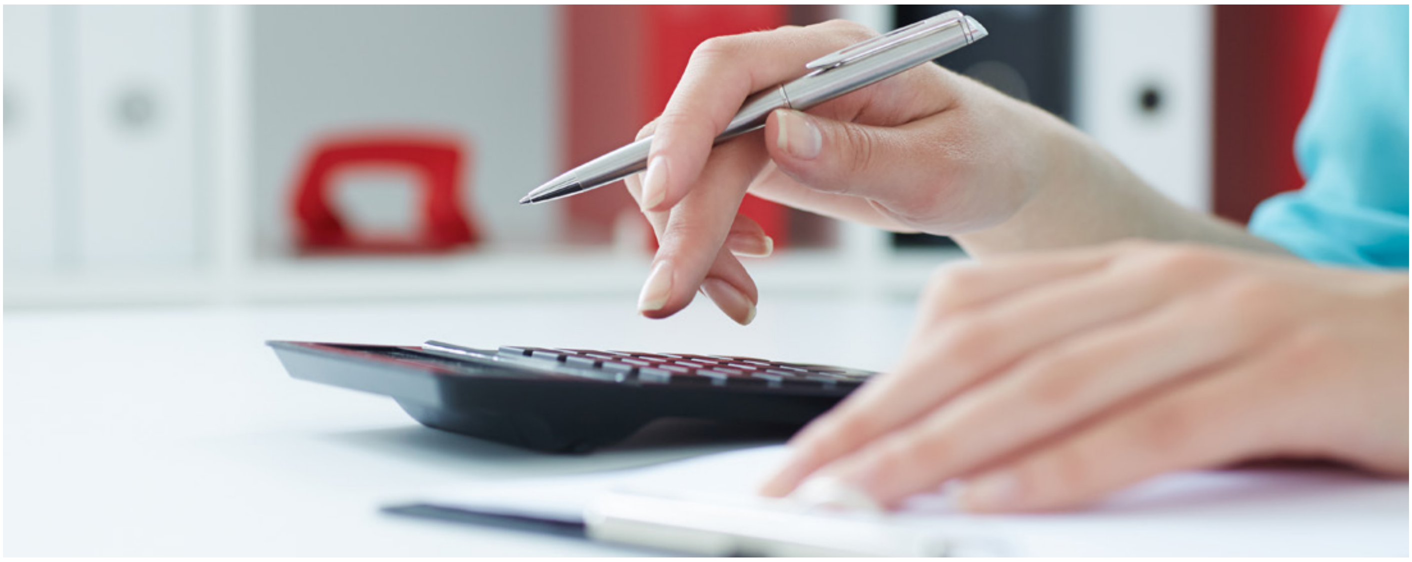
The undistributed income of a CFC is also excluded if the tax paid by the CFC on its *profits (which for this test includes capital gains)* is at least half of the tax that would have been paid by the CFC if it were an Irish resident company. This requires making the assumption that the CFC is an Irish resident company, and involves re-computing a corresponding amount of *taxable profit* of the CFC using Irish tax principles and applying either the 12.5% or the 25% rate of Irish corporation tax *on income and the 33% effective rate of tax on capital gains.*

The effective tax rate test is a cash tax test. It requires a comparison of the foreign tax paid for the period with the corresponding amount of Irish corporation tax. Even where the nominal tax rate on the profits of the CFC would appear to satisfy this test, timing differences in the recognition of the CFC's taxable *measure of profits* or deductions in the period could give rise to a CFC failing to meet the test.

Due to the complex nature of assumptions necessary to perform the effective tax rate computation, groups may not find it practicable to rely upon this test for any but a small number of foreign subsidiaries.

Exempt period and acquisitions

Where an Irish parent has acquired a CFC, the measures allow an exempt period during which the parent has a grace period of 12 months post-acquisition to restructure arrangements with the CFC. Where the CFC is still held after the end of the grace period and a CFC charge does not apply for the first accounting beginning immediately after the end of the grace period, a CFC charge will not be applied for the grace period.



Andrew Gallagher
Partner

Non-genuine arrangements

Having considered all of the above, there is also a non-genuine arrangements test, under which, a CFC charge should not apply unless:

- the CFC would not have owned its assets or borne the risks which generate all or part of its undistributed income but for the SPFs performed in Ireland in relation to those assets and risks, and
- it would be reasonable to consider that the SPFs carried on in Ireland are instrumental in generating the income of the CFC.

The SPFs are the actions of the decision-makers who control and manage the key functions related to the assets and business risks of the CFC. These are not the decision-makers related to shareholder functions such as a decision to establish or to capitalise the CFC.

Where there are no SPFs performed in Ireland related to the assets and business risks of the CFC, there is no CFC charge under the Irish CFC rules.

Computing the CFC charge

If none of the above exclusions are applicable, the CFC charge applies to the undistributed income of the CFC to the extent that income can be reasonably attributed on an arm's length basis to SPFs in Ireland.

The rate of tax that applies to the taxable income under the CFC charge is the rate that would have applied if the income had arisen directly to the CFC as an Irish resident company i.e. a rate of 12.5% if the income arises from the conduct of a trade and a rate of 25% for income that is non-trading in character.

No relief, deduction or set-off is allowed against the CFC charge except for foreign tax paid on the CFC's income and a foreign CFC charge paid in respect of the CFC's income.

Tax paid under the CFC rules is (i) creditable against the Irish tax chargeable on a subsequent distribution of that income or (ii) deductible in computing the gain arising on a disposal of the CFC.

Conclusion

The CFC measures in the Finance Bill have been subject to both high-level and more detailed rounds of consultation, in which KPMG has participated. We believe that Ireland's policy-makers have listened to the feedback provided and have drawn upon many familiar concepts in introducing these measures into Ireland's corporation tax regime.

It is expected that one of the most useful exclusions from the scope of the CFC charge will require businesses to assess how the purpose and intention underpinning the choice of business arrangements for CFCs meet the essential purpose test. In its response to requests for feedback on the CFC proposals, KPMG has suggested a number of commonly occurring business scenarios for inclusion in guidance on the implementation of the measures. We hope that guidance which incorporates a number of examples across a range of business sectors can support greater certainty for business in implementing the measures.

Implementation of the multilateral instrument

Anna Scally
Partner

On 7 June 2017, Ireland participated in an OECD ceremony to sign a multilateral instrument (MLI). The MLI will be used to implement changes to bilateral double taxation agreements (tax treaties) in order to counteract misuses of tax treaties that result in base erosion and profit sifting. Currently, 84 jurisdictions have signed up to the MLI.

Under the MLI, countries set out a range of changes which they are willing to adopt into tax treaties which they have in place. Where the changes chosen by Ireland are also selected by a tax treaty jurisdiction, the change takes effect in the tax treaty concerned once both countries have ratified the MLI under their domestic law. Once in effect, the MLI changes for a tax treaty can be read side by side with the treaty measures, and supplement or supersede, as the case may be, measures in the existing treaty.

With the exception of its tax treaties with the US, the Netherlands, Germany and Switzerland, Ireland proposes to extend MLI changes to all of its tax treaties.

It is understood that, under Swiss and German law, it is not possible to amend multiple tax treaties using a single legal instrument such as the MLI. The tax treaty with the Netherlands is already at an advanced stage of renegotiation. Although these treaties are being renegotiated on a bilateral basis, it can be expected that Ireland's MLI tax treaty policy choices will be reflected in its treaty negotiations. The US did not sign the MLI and plans to renegotiate its tax treaties bilaterally. Ireland's recently signed tax treaties with Ghana and Kazakhstan are included as covered tax treaties in Ireland's MLI choices. As these treaties are relatively new, many of Ireland's MLI choices already apply in these treaties.

Ireland's process for enacting and ratifying the MLI under domestic law is similar to its approach to enacting

tax treaties under Irish law. A motion seeking approval of the Oireachtas for the detailed MLI changes listed by tax treaty was placed before the Dáil and the order was approved on 18 October 2018. *On 23 October 2018, the order (Statutory Instrument) setting out Ireland's choices under the MLI was signed into law.*

The final step in giving legislative effect to Ireland's MLI choices is the inclusion of legislation in the Finance Bill *to make specific reference to the Statutory Instrument. The Finance Bill was amended at the Committee Stage to refer to the Statutory Instrument. Following the enactment of the Finance Bill,* the instrument of ratification of Ireland's MLI choices is expected to be deposited with the OECD in early January 2019. Based on this assumed timing, the MLI will come into force on 1 May 2019.

Irish changes under the MLI *are therefore likely to* take effect for withholding taxes from 1 January 2020 and other taxes for taxable periods beginning on or after November 2019. Before the measures in a specific tax treaty take effect, the counterparty treaty country must take similar steps and ratify its MLI choices under its domestic law. To date, the MLI has been ratified by 15 countries, including the UK, France and Japan.

Businesses or individuals claiming relief from taxes under tax treaties will need to monitor the adoption of the MLI in other jurisdictions to understand the effective date of operation and the impact of changes in individual treaties.

Ireland's MLI choices

MLI changes reflect both overarching changes which potentially affect all benefits under a treaty, and more targeted measures which only affect certain reliefs, e.g. those related to immovable property.

Brian Brennan
Partner

Treaty preamble and principal purpose test

Countries adopting the MLI must include preamble language in tax treaties that makes it clear that the intention of the treaty is not to create opportunities for non-taxation or reduced taxation by obtaining reliefs provided in the treaty for the indirect benefit of residents of third jurisdictions. The inclusion of such wording is designed to reinforce the interpretation and application of treaty reliefs in a manner that does not result in these outcomes.

In addition, Ireland and most of its treaty counterparties have chosen to adopt a general anti-abuse measure in the treaty in the form of a principal purpose test (PPT). This test will operate to deny the benefit of the treaty if obtaining that benefit was one of the principal purposes of any arrangement or transaction, unless it is established that granting that benefit would be in accordance with the object and purpose of the relevant tax treaty provisions.

Although OECD guidance is available in relation to the operation of the PPT in various scenarios, it is likely that in practice different jurisdictions will apply different interpretations. Businesses may face challenges under the PPT in differing circumstances depending on the treaty jurisdiction's perceived risk of treaty misuse.

Permanent establishment (PE) threshold

Ireland has chosen to 'reserve' and not adopt MLI provisions that could reduce the threshold under which a 'dependent agent' such as an employee or group member could create a taxable presence in the form of a PE in a jurisdiction. Such MLI changes result in recognising a taxable PE in the treaty jurisdiction 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".

This change in the operation of the PE threshold will not take automatic effect under the MLI in Ireland's tax treaties. Care will, however, need to be taken to continue to monitor whether the activities of employees or group members in foreign markets, e.g. in discussing contract terms with counterparties, can create a taxable presence for the Irish resident in those jurisdictions.

Ireland has chosen to adopt anti-fragmentation measures which can operate to aggregate presences in a jurisdiction to meet the threshold for creation of a taxable PE in that jurisdiction.

Taxation of indirect property disposals

In a choice that reflects its domestic tax policy in retaining taxing rights on Irish property, Ireland has opted under the MLI to extend its taxing rights to include capital gains arising from the disposal of shares deriving their value from Irish land and property.

Dispute resolution

It is widely expected that the increased uncertainty caused by recent changes to the international framework for transfer pricing, as well as MLI changes to tax treaties, may give rise to more disputes in future.

Among 28 countries, Ireland has chosen to support the use of a new binding mandatory arbitration mechanism to resolve tax treaty disputes. Its MLI choices signal Ireland's willingness to adopt different forms of international arbitration as a potential future means of dispute resolution.

Separate to the MLI, Ireland and other EU member states are required to transpose the EU's Directive for a mandatory arbitration mechanism for dispute resolution by 30 June 2019. It will apply to complaints submitted on or after 1 July 2019 relating to any year commencing on or after 1 January 2018, and offers an alternative dispute resolution mechanism to the new international arbitration mechanism to be adopted under the MLI.

KPMG observations

- Irish businesses with robust commercial substance in Ireland should be able to continue to rely on the benefits of the relevant Irish treaties. As the practical application of these treaty changes internationally is uncertain at this stage, they will need to be monitored closely.
- Groups should consider the impact of these changes under all relevant tax treaties, not just Ireland's tax treaties. More generally, it will be important for groups to understand the potential impact of treaty changes to their cross-border transactions. Changes to treaty anti-abuse measures could result in the loss of treaty benefits in certain cases, while the changes to the PE definition in other tax treaties could result in taxable presences being created in countries where no PE had been considered to exist up to now.
- The MLI changes apply not just to companies but also to individuals who are claiming tax treaty benefits.
- Jurisdictions may at any time adopt further provisions of the MLI. Ongoing monitoring of developments will therefore be necessary.

Tax Rates and Credits 2019

Personal income tax rates (changed)

	At 20%, first	At 40%
Single person (increased)	€35,300	Balance
Married couple/civil partnership (one income) (increased)	€44,300	Balance
Married couple/civil partnership (two incomes)* (increased)	€70,600	Balance
One parent/widowed parent/surviving civil partner (increased)	€39,300	Balance

* €44,300 with an increase of €26,300 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)*	€1,350
Home carer credit (increased)	€1,500

* 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). 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* (unchanged)

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
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
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
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) Minister to review in late 2018

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%

Value Added Tax (9% rate changed)

Standard rate/lower rate	23%/13.5%*
Newspapers, electronically supplied publications** and sporting facilities	9%
Flat rate for unregistered farmers	5.4%
Cash receipts basis threshold	€2m

* VAT rate for tourism sector reverts to 13.5% from 1 January 2019 (previously 9%)
** 9% VAT rate applies to electronically supplied publications from 1 January 2019 (previously 23%)

PRSI contribution, Universal Social Charge (changed)

	%	Income
Employer	10.95%* (increased)	No limit
	8.7%* (increased)	If income is €386 p/w or less
Employee (class A1)**		
PRSI	4%	No limit**
Universal Social Charge	0.5% (unchanged)	€0 to €12,012***
	2.0% (unchanged)	€12,013 to €19,874****
	4.5% (reduced)	€19,875 to €70,044*****
	8% (unchanged)	> €70,044

* 0.1% increase in National Training Levy from 1 January 2019 included in Employer PRSI for Class A and Class H employments. A further 0.1% increase will apply from 1 January 2020.
** 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 €19,372 to €19,874
***** 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% (unchanged)	€12,013 to €19,874***
	4.5% (reduced)	€19,875 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 €19,372 to €19,874
**** 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

Capital acquisitions tax (changed)

Rate	33%
Thresholds	
Group A (increased)*	€320,000
Group B	€32,500
Group C	€16,250

*Increased Group A threshold applies to gifts or inheritances received on or after 10 October 2018

Corporation Tax rates (changed)

Standard rate	12.5%
Knowledge Development Box rate	6.25%
Land, not fully developed	25%
Non-trading income rate	25%
Exit tax*	12.5%

* Applies to unrealised gains arising where a company migrates or transfers assets offshore, such that they leave the scope of Irish taxation. Applies from 10 October 2018.

Stamp duty - commercial and other property (unchanged)

6% on commercial (non residential) properties* and other forms of property not otherwise exempt from duty.

* 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 and is subject to conditions. The refund will not be available where development commences after 31 December 2021.

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

Deposit Interest Retention Tax (changed)

DIRT (rate reduced)	35%*&**

* 41% rate remains for exit taxes on financial products
** The rate of DIRT will be decreased to 33% in 2020

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