KPMG

Taxing Times

Finance (No.2) Act 2023 & Current Tax Developments

KPMG is Ireland's leading Tax practice with over 800 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

Indirect Tax

International Tax and Transfer Pricing

For further information on Finance Act 2023
log on to: kpmg.ie/financeact2023

Tom Woods
Partner

Introduction

The Government published Finance (No.2) Bill 2023 on 19 October 2023. The Bill contained the taxation measures announced in the Minister for Finance's Budget speech on 10 October 2023 together with several measures not previously announced. As the Report stage is complete, we refer to the Bill in this issue of Taxing Times as Finance (No.2) Act 2023.

Finance (No.2) Act 2023 was introduced by the Minister following a substantial budget package of €14bn facilitated by strong tax receipts in the current year.

Some of the measures included in the Act to assist individuals and families in dealing with unprecedented cost of living pressures include:

- An increase in the standard rate cut off point by €2,000 to €42,000;
- A reduction of the 4.5% rate of USC to 4% and an increase in the 4% USC rate entry threshold from €22,920 to €25,760; and
- Increases to multiple tax credits.

In his speech on Budget Day, the Minister emphasised the importance of tackling the housing crisis and supporting enterprise. The Act confirms the measures announced in the Budget in respect of these areas. They include the following:

- The introduction of mortgage interest relief for certain homeowners impacted by increased interest rates;
- The introduction of a measure of rental income relief at the standard rate for residential landlords;
- Extensions to the Help-to-Buy scheme;
- An increase in the EII investment limit to €500,000;
- An increase in the R&D tax credit from 25% to 30% together with other amendments to the credit; and
- A new qualifying financing company regime

As expected, the Act provides for the introduction of a new minimum effective rate of tax for companies/groups with revenues exceeding €750 million. These measures are required to implement commitments made by Ireland at an EU and OECD level. There is a considerable amount of legislation to implement these measures.

Further to public consultation during the Summer, the Act also includes legislative measures to introduce new measures applying to outbound payments of interest, royalties and distributions (including dividends) to jurisdictions on the EU list of non-cooperative jurisdictions, no-tax, and zero-tax jurisdictions. These measures are designed to meet commitments contained in Ireland's National Recovery and Resilience Plan.

The Act also makes a number of changes impacting certain businesses, including changes to certain corporation tax loss relief rules and changes to areas which have been the subject of consultation with impacted sectors, including a revised form of the bank levy for 2024 based on a measure of deposits held by each liable institution.

The Act makes a number of changes to CGT Retirement Relief for business owners and farmers, including extending the age limit for the relief from 66 to 70. In an unwelcome measure, a new limit of €10 million will apply to disposals to a child made from the age of 55 until the age of 70. This measure will certainly be an impediment to a well-organised lifetime inter-generational transfer of larger businesses without which the success of those businesses and the employment they create could be impacted.

A number of measures relating to pensions are made in the Act, including the removal of the upper age limit on taking benefits from Personal Retirement Savings Accounts (PRSAs), allowing for drawdowns by a PRSA holder after they reach the age of 75 years.

As the Minister announced on Budget Day, the Act also include the new capital gains tax relief for angel investment in start-ups

While there are incremental improvements, we would like to see further improvements in future years to increase the attractiveness of our personal tax regime to attract mobile talent on which both domestic and multinational business are increasingly dependent on. It is hoped that future Budgets will include such measures to ensure that Ireland remains the country of choice for foreign direct investment and do more to foster and support entrepreneurial businesses.

Tom Woods

Tom Woods
Head of Tax & Legal Services

Contents:

Personal Tax

Universal social charge

The Act provides for the various changes to universal social charge thresholds for 2024 as announced in the Budget. All changes take effect from 1 January 2024.

As announced on Budget Day, the entry point for the third (now 4%) rate of USC has been increased from €22,920 to €25,760. This increase will not only ensure that those who benefit from the rise in the minimum wage to €12.70 per hour (applicable from 1 January 2024) will stay within the two lower USC rate bands, but will also generate a modest benefit for every taxpayer with income above those levels.

The Act provides for the continuation of the cap on USC for medical-card holders aged under 70 with aggregate income not exceeding €60,000. USC for such individuals will remain capped at a rate of 2% until 31 December 2025.

The USC remains capped at a rate of 2% for those aged 70 years and over with aggregate income not exceeding €60,000.

Full details of the revised rates and thresholds are available in the Tax Rates and Credits 2024 table at the end of this publication.

Tax bands and tax credits

The Act provides for the increase in an individual's standard rate tax band from €40,000 to €42,000. This €2,000 increase is also reflected in the bands for married couples (either with one or two earners), and the band for those claiming the single person child carer credit.

The Act provides for the increases in the personal tax credit, employee tax credit and earned income tax credit from €1,775 to €1,875 respectively. The home carer credit has been increased from €1,700 to €1,800, the single person child carer credit has been increased from €1,650 to €1,750 and the incapacitated child tax credit has gone up to €3,500 from €3,300.

The availability of a tax credit of €1,500 for sea-going Naval Personnel has also been extended until 31 December 2024.

All increases apply from 1 January 2024 and full details of the revised bands and credits are available in the Tax Rates and Credits 2024 table at the end of this publication.

Rent tax credit

The Act provides for the increase of the rent tax credit to €750 in respect of rental payments, with jointly assessed couples now being entitled to a maximum credit of €1,500 (€750 each). These increases apply for the 2024 and 2025 tax years.

The credit is generally available to a tenant in the private rental sector who is not in receipt of any other State housing support. As previously, the Rent Tax Credit remains only available to tenancies registered with the RTB and licences for the use of a room in another person's private principal residence.

Parents who cover the costs of their student children's rental accommodation will now also be able to claim the rent credit in respect of those costs as long as the following conditions are met:

- Neither the parent nor child are related to the landlord,
- The child is undertaking an approved course and using the property to allow them to participate in the course, and
- The tenancy is registered with the Residential Tenancies Board (where required).

This change applies retrospectively from 1 January 2022 (so it should apply to the 2022, 2023, 2024 and 2025 tax years).

Members of the Oireachtas who are in receipt of tax-exempt allowances (or who are allowed to take a deduction for the costs of maintaining a second residence) will no longer be allowed to claim the rent tax credit.

Robert Dowley
Partner

Exemption in respect of Clinical Placement Allowance

The Act provides for the exemption from income tax, USC and PRSI of a payment (commonly known as a Clinical Placement Allowance) made by the Minister for Health to an individual who is undertaking a Supernumerary Clinical Placement as part of an undergraduate programme in nursing or midwifery approved by the Nursing and Midwifery Board of Ireland.

The exemption will apply to all such payments received on or after 1 January 2024.

Exemption in respect of allowances for maternity-related administrative support

In August 2023 the Minister of State for Local Government and Planning at the Department of Housing, Local Government and Heritage announced that elected members of a local authority eligible for maternity leave can also claim an administrative support allowance to cover the cost of hiring someone to assist with their basic office, secretarial and other administrative duties.

The Act provides that the payment of this allowance will be exempt from income tax, USC and PRSI.

Pension matters

The Act states that Revenue will not approve any applications for new retirement annuity contracts (RACs) which are received after 1 January 2024. In practice RACs have declined in popularity due to the availability of other more flexible pension products in recent years and therefore this change may not have a significant practical impact.

The Act imposes a deemed distribution and tax charge on the beneficiary of an Approved Retirement Fund, an occupational pension scheme, a personal retirement savings account (PRSA) or Pan-European Pension Product (PEPP) where the assets of such pension schemes are used to make a loan or as security on a loan provided to (i) the beneficial owner or a connected person or (ii) a close company of which the beneficial owner (or any person connected with the beneficial owner) is a participator. The value of the deemed distribution is the value of the assets used to make the loan or used as security.

To date, this deemed distribution treatment applied only where an ARF made a loan to an individual who is beneficially entitled to the ARF assets or to a person connected to that individual.

The Act provides for the removal of the upper age limit on PRSAs, allowing for drawdowns by a PRSA holder after they reach the age of 75 years. Current rules impose an upper age limit of 75 years on accessing funds in a PRSA such that when a PRSA holder does not commence taking benefits from their PRSA before reaching age 75, the fund is deemed to 'vest', and the individual is not permitted to draw down funds in any form, although the funds may pass to beneficiaries after the holder's death.

Finally, the Act provides that where a pension scheme owns residential properties which it leases, then the rents receivable from this activity will not be exempt from income tax or capital gains tax unless the tenancy (or tenancies) have been registered with the Residential Tenancies Board. This change applies with effect from 1 January 2024.

Returns in relation to foreign accounts

The Act removes the obligation of a taxpayer who is not otherwise obliged to file a self-assessment tax return to file such a return solely by virtue of opening a foreign bank account on the basis that the foreign account would already be reportable to the Irish tax authorities under the provisions of CRS, DAC2 or FATCA.

Medical partnerships

As part of the Report Stage amendments to the Act, a new section has been added regarding medical practitioners operating in partnership. This section is being introduced in response to a 2022 Tax Appeal Commission decision where it was determined that income from a contract entered into by an individual with the Health Service Executive ('HSE') continued to be income of that individual even if the income was assigned to another party. Added to this, the HSE will typically enter into contracts with practitioners rather than with partnerships or entities. As a result, such income continues to be the income of the individual partner who entered the contract with the HSE even if the income is actually received by a partnership of which he/she is part of. However, in the aforementioned TAC decision it was suggested that it was common practice for income received by individual partners under HSE contracts to be treated as partnership income where other partners or employees of the partnership assist with the delivery of the services (e.g. another doctor seeing a patient if their main doctor was unable to do so). Given the potential impact on practitioners who had been applying the common practice in good faith and not in pursuit of a tax advantage, Revenue have put in place transitional measures which apply up to 31 December 2023 with the Minister committing to bring in legislation to address the matter as part of the Finance Act, which he has now done.

The new section specifically deals with a scenario where one or more medical practitioners (being persons who hold a basic medical qualification) who formally operate in a partnership with other medical practitioners (a 'medical partnership') receive payments from the HSE under a contract to provide 'relevant medical services' (which include general practitioner service, midwifery service, medical care for infants, mental health services, etc). Such persons will be considered 'relevant medical services providers' and will be entitled to make a joint election with the partnership to treat income from relevant medical services provided by the other partners/ employees of the partnership as income of the partnership. This means that the income (and any associated expenses) should be treated as part of the trading activity of the partnership, divided between the partners under the terms of their partnership agreement and subjected to tax accordingly. Professional Services Withholding Tax ('PSWT') will continue to apply to the payments from the HSE that are subject to the election and the medical partnership will be considered the specified person for PSWT purposes in relation to that income.

Chargeable persons

The Act includes an amendment to existing legislation on the time limits applicable to assessments raised by the Revenue Commissioners for income tax purposes. The purpose of the amendment is to allow the Revenue Commissioners to raise or amend an assessment at any time where an individual (referred to as a 'chargeable person') is required to file an income tax return but has failed to do so, or where in Revenue's opinion an incomplete income tax return has been filed.

Relief for investment in corporate trades

In order to understand the context for the changes in the Act to the scheme for tax relief for investment in corporate trades (formerly known as BES and then EIIS relief) it is important to understand that the relief as legislated for in the Taxes Act must comply with a set of EU rules known as the General Block Exemption Regulation (GBER) in order to comply with EU State Aid rules. As such, when the GBER requirements change, Irish tax legislation must also be updated.

In June 2023, the EU Commission adopted some targeted amendments

Cian Liddy
Partner

to the GBER and member states were given 6 months to implement those changes in their domestic law. The Act contains the necessary amendments to Irish law, namely:

- Whereas previously the definition of eligible shares included shares with a preferred right to dividends or assets on a winding up, this has now been removed as the updated GBER requires that eligible risk finance investments must be full risk ordinary shares. There is an exception for shares issued to the managers of a qualifying investment fund.
- Under current law, companies seeking to raise this type of funding can do so if they are in the initial stages of operations or if they are established businesses expanding into new geographic markets or products. For those companies seeking 'expansion risk finance investment' there is currently a requirement that the amount raised through these share issues is greater than 50 per cent of their average annual turnover in the preceding 5 years. In the Act this is to be relaxed to 30 per cent where the investment significantly improves the environmental performance of the company or for other environmentally sustainable investments.
- For expansion risk finance investments the requirement that the monies be used to expand into new products or new geographic markets has been broadened so that it now can apply to expansion into 'new economic activities'.
- For companies seeking to raise this funding in their initial stages of operation the requirement that a company must be raising capital before it has started operations or within 7 years of its first commercial sale has been broadened in the Act so that companies raising capital within 10 years of the date of incorporation can also qualify. There are also provisions which explain how to interpret the 7 and 10 year thresholds where businesses have been acquired or formed through merger.
- Those companies that raise initial risk finance can also raise 'follow-on' risk finance if the follow-on funding was foreseen in the business plan for the initial risk finance investment. The Act amends the use of the word 'foreseen' to 'provided for' which should make it very clear that the business plan must explicitly refer to the follow-on funding.
- The lifetime limit for companies who wish to raise risk finance investments has been increased from €15m to €16.5m and the twelve-month limit has been increased from €5m to €5.5m. An amendment has also been made to the allow for the new CGT relief afforded to 'angel investors' so that shares which qualify for relief under these new rules are also counted when assessing whether the lifetime and twelve-month limits have been exceeded.
- However, significant changes have been made to the level of relief that will be available to investors with the rate of relief now depending on the basis under which the company seeking to raise risk capital is eligible.
- For companies which have not yet commenced operations, the relief for investment will be based on 125 per cent of the amount subscribed.

Microgeneration of Electricity

Microgeneration of electricity is the small-scale production of electricity by consumers who generate electricity in their own homes for their own consumption and sell the excess electricity produced to the grid.

Under existing rules, where an individual who purchases electricity for their own use is able to generate electricity at their sole or main residential premises in Ireland using renewable, sustainable or alternative forms of energy and sell any excess electricity back to the grid, then the profits or gains arising from such sales up to an amount of €200 will be exempted from income tax, USC and PRSI. The term renewable, sustainable or alternative forms of energy means energy used in the production of electricity, which is mainly sourced from one or more of wind, hydro, biomass, waste, biofuel, geothermal, fuel cells, tidal, solar and wave. The exemption does not apply to profits generated from a trading activity.

The Act confirms the Budget Day announcement of a €200 increase in the income disregard/exemption limit, up from €200 to €400 with effect from 1 January 2024. The Act also confirms a one-year extension of the exemption to 31 December 2025.

Employment Taxes

Olive O'Donoghue
Partner

In keeping with the Government's general theme of continuing to support workers and help tackle the cost-of-living crisis, the Act includes positive enhancements to some existing benefit in kind (BIK) employment tax initiatives, designed to ease the financial burden on PAYE workers.

Whilst the Minister in his Budget Day speech confirmed there will shortly be a review of the taxation of share-based remuneration, the Act also includes a significant amendment to the method by which taxes owing in respect of employee share option gains are collected and remitted to Revenue.

Unapproved Share Option Schemes – Pay As You Earn (PAYE)

Share options are one of the most common forms of share-based remuneration in Ireland.

Currently, gains arising from the exercise, assignment or release of stock options are taxed via the self-assessment system (known as the Relevant Tax on Share Options system (RTSO)). Under the RTSO system, the employee is responsible for settling the Income Tax, the Universal Social Charge (USC) and employee Pay Related Social Insurance (PRSI) within 30 days of the exercise of the option.

The Act provides for a significant overhaul to the aforementioned treatment by abolishing the RTSO system.

For gains arising in respect of the exercise, assignment, or release of a share option on or after 1 January 2024, employers will now be required to account for the income taxes and PRSI due on share option gains through the PAYE system.

Employers will therefore need to diligently track employee share option events with a view to calculating taxable gains and including them within their real time PAYE reporting submissions.

Further, employers will need to ensure they have adequate provisions in place to effect a 'sell to cover' mechanism on exercise. This broadly involves the immediate sale of a sufficient number of shares purchased by the employee in order to finance the PAYE due following exercise.

The taxation of share options can be complicated in the case of mobile employees and the gains on exercising share options may be taxable in multiple jurisdictions.

While the extension of PAYE to share options is a welcome measure from an employee perspective, employers will now need to understand the personal tax situation of cross-border employees in greater detail.

The inclusion of share option gains in the PAYE system will essentially mean that all BIKs provided to employees are now captured through the real time reporting system.

BIK on employer-provided vehicles

The Act confirms Budget Day announcements with regard to BIK on employer-provided vehicles.

With effect from 1 January 2023, BIK on employer-provided vehicles is calculated based the vehicle's CO2 emissions.

The CO2 emission rate of the vehicle now has a major impact in the calculation of the BIK, in addition to the Original Market Value (OMV) and annual business KMs driven.

In recognition of the negative financial impact of the new BIK rules on employee's net pay, the government

Eoghan Quigley
Partner

announced in March of this year, a temporary change to the 2023 rules. While the CO2 categories have not changed, the temporary rules provide a reduction of €10,000 to the OMV of the vehicles in A to D categories which encompass most vehicles. There is no reduction to OMVs for cars in the E emissions category.

Another helpful temporary measure introduced in March saw the upper limit of the highest business mileage band (originally set at 52,000KM) reduced by 4,000KM to 48,001KM for 2023.

These temporary measures were set to expire at the end of 2023, however, in a welcome move, the Act confirms that, as announced on Budget Day, the above temporary amendments will remain in force for another year until the end of 2024.

BIK on electric vehicles

Finance Act 2022 extended the application of the special BIK rules on electric vehicles to 2025 which permit a fixed reduction in the OMV for the purposes of the BIK calculation.

The OMV discount was set to taper to zero by 2025 with BIK calculations thereafter set to be based on full OMV of the vehicle.

In an effort to continue to encourage the adoption of greener vehicles, the Act confirms Budget Day announcements that the tapering of this discount will be deferred by two years.

As a result, the €35,000 OMV discount will apply for 2024 and 2025 and will taper to €20,000 for 2026 and €10,000 for 2027.

New time limits for employer assessments and refunds

The Act includes an amendment to existing legislation with regard to both employer assessments and repayment of PAYE and USC refunds.

Broadly, these amendments serve to ensure that employers cannot secure a refund of PAYE and USC where an employer return is made after the expiry of 4 years commencing at the end of the year of assessment in which the relevant income tax month falls. In addition, where Revenue deem an employer to have made an insufficient return, subject to some exceptions, the same time limit for amending the return now applies.

The amendments also limit Revenue's ability (again, subject to certain exceptions) to raise a PAYE assessment beyond 4 years from the end of the following tax year in which the relevant income tax month falls (consistent with most other taxes).

Gift & Inheritance Tax

Camilla Cullinane
Partner

Reporting of interest free loans

Capital acquisitions tax (CAT) has always been required to be applied to the benefit conferred to the recipients of interest free loans. In accordance with Revenue practice, the taxable benefit for CAT purposes is currently calculated by reference to the highest rate of return which the individual giving the loan could obtain by placing the funds on deposit i.e. the deposit interest foregone.

Generally, under current law, there is only a requirement to file a gift tax return in respect of the benefit of such loans where greater than 80% of the loan recipient's relevant CAT group threshold has been utilised.

The Act introduces a new CAT reporting requirement in respect of such loans, even in instances where no gift tax is payable in respect of the loan.

The CAT treatment of such loans attracted a lot of coverage in 2021 when an initial draft of the Finance Act 2021 provided for a change in the manner in which the benefit arising from interest free loans would be calculated. The proposed change was ultimately removed from the 2021 Act. The introduction of this filing requirement in the Act indicates the matter remains topical and likely under review within Government.

The reporting requirement will apply to 'specified loans' meeting the following conditions:

- A benefit arises in respect of the loan under CAT principles,
- A loan advanced from a 'close relative', or loans involving certain companies owned by close relatives,
- No interest has been paid on the loan within 6 months of the calendar year end, and
- The balance outstanding on the loan and other loans to which the reporting requirement apply, in aggregate exceed €335,000 for at least one day in the calendar year (this amount happens to be the current Class A tax free threshold for CAT purposes).

For the above purposes, close relative is broadly defined and includes a parent, civil partner of a parent, lineal ancestor, lineal descendant, sibling and aunt or uncle.

The circumstances in which loans involving private companies will be within the scope of the reporting obligation are:

- A loan from a company to a person, where one of the beneficial owners of the company is a close relative of the borrower,
- A loan to a company, where one of the beneficial owners of the company and the person making the loan are close relatives,
- A loan by one company to another company, where a beneficial owner of each company are close relatives.

Where company shares are held in trusts having no 'ascertainable' beneficial owners, loans advanced by such companies are deemed to be advanced by the original disponer of the shares, and loans received by such companies are deemed to be received by the beneficiaries of the trust. The interpretation of 'ascertainable' beneficial owners is unclear.

There are also provisions to extend the rules to private companies owned by companies.

The relevant return will require details of the lender, the balance outstanding on the loan, and other details to be determined by the Revenue Commissioners. The law comes into effect from 1 January 2024 and the timing of reporting requirements will vary depending on whether conditions in relation to the 'specified loans' are satisfied.

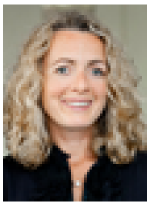
CAT relief for gifts and inheritances of relevant business property

The Act provides for a number of amendments to the clawback provisions applicable to CAT business relief. This is a relief from CAT for gifts and inheritances of relevant business property. The relief amounts to a 90% reduction in the taxable value of the relevant business property taken by the beneficiary (meaning broadly a 3.3% effective tax rate). Where certain conditions are not met for a period of 6 years after the gift or inheritance, the relief is withdrawn.

The first amendment to the clawback provisions provide that the 6 year clawback period commences on the 'valuation date' which is generally the date of the gift in the case of a gift. In the case of an inheritance, it is more complex and is typically a function of how and when the estate of the deceased is being administered. Under the existing law, the clawback period commenced on the date of gift or inheritance, which is less specific.

The second amendment broadens the instances in which a clawback can arise, from a sale, a redemption or a compulsory acquisition under the current rules, to a 'disposal'. As with the current provisions, a clawback will not arise where the relevant asset is replaced with another qualifying asset within 12 months.

The final amendment, which is administrative, clarifies that an additional return is to be delivered to the Revenue Commissioners within 3 months of becoming aware of a CAT clawback event occurring together with a discharge of the outstanding tax.



Olivia Lynch
Partner

CAT for gifts and inheritances of agricultural property

The Act provides for a number of amendments to the agricultural property relief provisions. Agricultural property relief provides relief from capital acquisitions tax for gifts and inheritances of agricultural property. The relief amounts to a 90% reduction in the market value of agricultural property taken by the beneficiary.

A clawback of agricultural relief arises if the agricultural property is disposed of within six years of the date of the gift or inheritance and not replaced by other agricultural property. The Finance Act makes a number of amendments to the clawback provisions, as follows:

- It is proposed that a lease of the agricultural property to a farmer within six years of the gift or inheritance should not be considered to be a disposal which would give rise to a clawback of the relief.
- commencement of the six year clawback period for a gift or inheritance of agricultural property (other than cash to invest in agricultural property) will be on the valuation date of the gift or inheritance. The valuation date is generally the date of the gift in the case of a gift. In the case of an inheritance, it is more complex and is typically a function of how and when the estate of the deceased is administered. Under the existing law, the clawback period commences on the date of the gift or inheritance, which is less specific. In addition, the Act amends the commencement of the six year clawback period in the case of a gift or inheritance of cash to invest in agricultural property to be the date the cash is invested in the agricultural property. This is a significant change to the clawback rules.
- The Act states that, in a situation where agricultural property is disposed of for less than market value consideration within the six year clawback period, an amount equal to the market value of the agricultural property immediately before the disposal must be substituted for the actual disposal proceeds in calculating the market value of the portion of the gift or inheritance which does not qualify as agricultural property for the purposes of the clawback provisions.
- The Act also states that a clawback of agricultural relief will arise where a beneficiary or lessee ceases to satisfy the active farmer test within a period of six years commencing on the valuation date or the date cash is invested in agricultural property, as appropriate.

The Act also states that an administrative amendment which will require an additional return to be delivered to the Revenue Commissioners and the outstanding capital acquisitions tax paid within three months of an individual becoming aware of a clawback event.

CAT and the Succession Act 1965

In 2022 amendments were made to the Succession Act 1965 by the Birth Information and Tracing Act 2022 to grant a person affected by an incorrect birth registration (an affected person) succession rights in relation to his or her "social" parents, siblings and extended family, in addition to his or her existing right of succession in relation to his or her birth parents, siblings and extended family. Essentially, an affected person will have the same rights of inheritance for both their social family and their birth family.

A number of amendments were made in Finance Act 2022 to bring the capital acquisitions tax legislation in line with these changes. The Act makes a number of changes to ensure that the relevant provisions in CAT legislation now operate as intended.

The Act also provides for a measure announced as part of the Budget to grant foster children access to the Group B threshold on gifts and inheritances received from relevant individuals, including brothers and sisters of their foster parents, the parents of their foster parents and natural children of their foster parents.

Business Tax

Alan Bromell
Partner

Anna Scally
Partner

Capital Gains Tax

Retirement relief

Retirement relief provides relief from capital gains tax to individuals on the disposal of certain shares in a family company and qualifying assets used in the course of a trade where certain conditions are met. The relief applies to disposals after the age of 55.

Currently, full relief from capital gains tax is available where the consideration for the disposal of qualifying shares or assets to a person other than a child is less than €750,000 for persons aged 55 to 65 years and less than €500,000 for persons aged 66 or over. The Finance Act extends the higher threshold of €750,000 to disposals of qualifying shares or assets made by individuals aged 55 to 69 years from 1 January 2025. This is a welcome change reflecting the pattern of increased longevity of individuals in business.

Currently, full relief from capital gains tax is available for individuals who dispose of qualifying shares or assets used in the course of a trade to a child where the individual is aged 55 to 66. This relief allows for an orderly succession plan to be implemented where the future of businesses contributing to the economy can be protected and enhanced.

The relief is capped at a value of €3 million for individuals aged 66 and over. The Finance Act amends the relief as follows for qualifying shares or assets disposed of to a child from 1 January 2025:

- The age at which the €3 million cap begins to apply will increase from 66 to 70.
- In a change that will have significant adverse consequences for the succession plans of some business owners, a €10 million limit on the value of qualifying assets disposed of by individuals aged 55 to 69 to a child will be introduced. This measure will certainly be an impediment to well-organised lifetime inter-generational transfers of larger businesses without which the success of those businesses and the employment which they create could be negatively impacted.

For disposals of qualifying assets from 1 January 2025, an individual will only be able to claim full retirement relief on a transfer to a child where the market value of the qualifying assets or shares at the time of the disposal does not exceed €10 million. Previous transfers to a child are taken into account for the purposes of ascertaining whether this threshold is exceeded and is applied differently depending on when the individual attained the age of 66 and the time of disposals.

Where the market value of qualifying assets or shares transferred to a child exceeds the €10 million threshold, the value in excess of €10 million is subject to capital gains tax. This cost will likely stymie well-organised lifetime succession plans without which the success of the business and their wider contribution will be threatened.

Taxation of compensation and insurance proceeds

Irish law provides that capital sums received as compensation in respect of an asset or insurance proceeds will not be subject to capital gains tax where these amounts are used to restore an

Donal Thomas
Partner

asset (e.g. insurance proceeds used to reinstate a building damaged in a fire) or to replace an asset which has been lost or destroyed. Instead, the charge to capital gains tax is deferred until the restored or replaced asset is sold, with any such amounts received not available to deduct in calculating any CGT due on a future sale of the asset.

The Act contains an amendment to specifically exclude compensation or insurance proceeds received further to a compulsory purchase order, or notice of such order, in respect of Irish real estate from this relief.

Revised Entrepreneur relief

Revised Entrepreneur relief is a relief which applies a 10% CGT rate to lifetime gains of up to €1 million realised by shareholders on the disposal of investments in certain companies subject to meeting qualifying conditions including minimum shareholding and working hours.

The Act modifies the definition of a holding company for the purposes of Revised Entrepreneur Relief. A holding company under this new definition is a company that (i) holds shares in other companies, all of which are 51% subsidiaries, and (ii) the business of that holding company consists wholly or mainly of the holding of shares in those 51% subsidiaries.

The impact of the change is to clarify that the relief only applies to holding companies that only hold shares in companies that are more than 51% subsidiaries, meaning a holding company that holds a mix of investments in companies some of which are more than 51% subsidiaries and some of which are not, will not qualify. Unfortunately, the Minister for Finance did not make any amendments which might make it easier for entrepreneurs to access the relief.

CGT relief for angel investors

In his Budget Day speech, the Minister announced a new targeted CGT relief for angel investors in innovative start-ups. The legislation is detailed comprising 17 pages.

The relief provides for a lower rate of capital gains tax of 16% for investors in innovative start-up companies, or 18% where the individual invests via a partnership. This lower rate of CGT applies to gains arising on the disposal of eligible shares up to a capped amount. While the intention behind the introduction of this relief is welcome, there are a number of issues with the legislation as currently drafted which will, in practice, make it extremely difficult for this relief to be availed of by innovative start-ups and their investors.

The relief is designed to be compliant with the Regulation (EU) No 651/2014, known as the State Aid General Block Exemption Regulation (known as GBER). Further, the draft legislation leverages certain definitions included in the existing Employment and Investment Incentive and Seed Capital Scheme (EIIS). As a result, the maximum amount of investment a qualifying company can raise under both EIIS and this new CGT relief for angel investors is €16.5m.

To qualify for the relief a number of conditions must be met, both by the investor and the company. One such condition is that a company must obtain two 'certificates of qualification' from the Irish Revenue, being a certificate of going concern and a certificate of commercial innovation. For an investment to qualify, a company is obliged to provide copies of these certificates to the investor. The draft legislation outlines the information a company is required to submit to Revenue to obtain these certificates, which includes the submission of a business plan in respect of the sought investment.

The draft legislation also limits the type of investment being sought by the start-up to an initial risk finance investment. Where a start-up is raising finance to fund new economic activity or raising finance subsequent to an initial investment, these subsequent fund-raising rounds may not qualify for the relief. This is likely to prove challenging for start-ups that will undoubtedly have fundraising needs more than once in the early part of their lifecycle.

Qualifying Company

The company seeking investment must be a 'qualifying company' as defined in the legislation. This requires a company to obtain both certificates mentioned above prior to seeking funding from investors. Prior to making an application a company must meet all of the following conditions:

- be incorporated and tax resident in Ireland, another EEA State or the UK, (including where the business of the start-up is carried on via an Irish branch)
- hold a tax clearance certificate
- all companies controlled by the company are qualifying subsidiaries. A qualifying subsidiary is one that is tax resident in Ireland, another EEA State or the UK (including an Irish branch), and one in which the company holds a controlling interest (at least 51%)
- is not controlled by another company, meaning where a founder holds a controlling interest in the applicant company via a personal holding company they may not qualify
- exists wholly for the purpose of carrying on relevant trading activities, with this definition of trading activities taken from the EIIS provisions. A company that is a holding company can qualify where,

Paul O'Brien
Partner

John Doran
Partner

its business consists wholly of the holding of shares or securities or the making of loans to qualifying subsidiaries, or its business consists of both the holding of shares or securities or the making of such loans and the carrying on of relevant trading activities in Ireland. The use of 'wholly' when assessing the activities of a company or a holding company differs to the 'wholly or mainly' test typically applied in Irish legislation. Where a holding company raises finance under this scheme for relevant trading activities undertaken by its qualifying subsidiary, it is required to use the investment funds solely for the purpose of subscribing for shares in that subsidiary.

- it is an innovative enterprise, as defined in the GBER. There are various criteria for determining what is an innovative, the most relevant for Irish start-ups is likely to be that its research and development costs represent at least 10% of total operating costs either in one of the three years prior to the application or based on the audited financial statements for the period in which the application is made, and
- has sufficient expertise and experience to implement the business plan, or where this is not yet the case intends to have this.

Further, where the company is part of a wider group known as a 'relief group', the entities must meet certain conditions, including that all companies are unlisted (with no arrangements to become listed), all issued shares are fully paid up, the entities are SME's, none of which are considered "an undertaking in difficulty", and formed in the 5 years prior to the certificate of commercial innovation being issued. Broadly the companies that form a relief group include 'linked businesses', meaning where one company controls the other, or 'partner businesses', where one business holds 25% or more of the share capital or voting rights of the other. The related definitions are taken from the existing EIIS regime.

Qualifying Investor
A Qualifying Investor as defined in the Act is an individual who subscribes for 'eligible shares'.

Eligible shares
The definition of eligible shares is taken from the existing EIIS provisions, i.e., new shares forming part of a company's share capital, which may be redeemable.

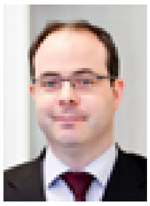
Minimum investment & holding period
To qualify for the relief the shares must be held for a period of a least 3 years from the date of investment and the amount of eligible shares subscribed for must be at least €20,000 or at least €10,000 where this investment entitles the investor to a 5% interest in the company. It is difficult to see the application of the lower limit in practice.

The individual will cease to meet the conditions for the relief where during the minimum 3-year investment period they hold more than a 49% interest in the company (as defined in the Act).

The Act also provides for relief where an individual invests via a partnership structure where certain conditions are met. One such condition is that the partnership must prepare audited financial statements annually and Revenue may request copies of these accounts. The individuals underlying investment in the start-up via a partnership is subject to a minimum investment of €20,000 and the partnership must invest at least €20,000 in each qualifying company.

Further, consideration for the share subscription is required to be wholly in cash and at market value.

Conditions to be met by the individual
In order to qualify for the relief, an individual cannot be connected with the



Nancy Fallon
Partner

Andrew Gallagher
Partner

company. In this context, an individual can be connected with the company in a number of different ways, including if they are a director or employee of the company or a relief group company, or already has an interest in the capital of the company. An individual can also be connected by virtue of their associates, which includes a relative or partner.

The definition of qualifying investor poses a number of issues practically for start-ups and their investors. Firstly, in many cases angel investors may be involved with start-ups prior to investment in a mentorship role, including as a non-executive director. Secondly, the legislation as currently drafted precludes an investor from qualifying for the relief where they have advanced a loan to the company. Again, this is a typical feature of angel investment whereby start-ups tend to seek seed funding via Convertible Loan Notes and Simple Agreements for Future Equity for early fundraising, with this preceding an equity investment.

Both of these requirements are likely to dilute the appeal and availability of this relief for start- ups and angel investors, which is disappointing given the intention behind this relief.

Procedural considerations

As mentioned, to avail of the relief, a company must obtain two separate certificates from Irish Revenue. The certificate of going concern can be renewed on expiry. The draft legislation does not specify to what extent a simplified procedure may exist for a renewal. While the pre-approval process should provide certainty for start-ups as to their entitlement to raise capital under this scheme, there is no prescribed timeline for reviewing applications and granting approval in the draft legislation. Due to the prescriptive nature of the conditions and the information required to be provided by a company, including a business plan, in practice it may mean that applications could take some time. There are likely to be competing demands for start-ups when raising investment and tight timelines, meaning that efficiency in Revenue's process for the review and processing of certificates will be key to the operation of this relief.

Helpfully, when assessing an application Revenue may also consider any recommendation or report provided by Enterprise Ireland when assessing applications or renewals under the scheme. This is welcome as Enterprise Ireland should be reasonably well placed to review and assess business plans. But it will be important to ensure that the review process is efficient, and commitments are made to adhere to specific timelines. Perhaps this will follow in guidance. An appeals process exists for applicants where Revenue has declined to issue one or both certificates, which must be submitted within 30 days.

The relief

Where a qualifying investor disposes of their investment in the qualifying company, capital gains tax relief is available. The relief operates by applying a lower effective rate of capital gains tax of 16% (as opposed to the current rate of 33%) to a capital gain which qualifies for relief under this provision. The capital gain which may avail of the relief is calculated as the lower of (i) the chargeable gain, (ii) twice the amount of the investment in the shares being disposed of, and (iii) an amount determined by a formula, which is intended to cap the amount of relief afforded by the section to gains of €3 million for any one investor (in respect of all qualifying investments). Where the investment is made via a partnership, the lower rate of capital gains tax is 18% for the individual.

The Act includes a restriction on the mechanism by which an investor can dispose of their investment, with relief only available for a disposal event by way of a sale of shares. The Bill specifically excludes from the scope of the relief divestment by way of redemption, repayment or repurchase of shares by a company. Thus, potentially further limiting the appeal of this relief for investors.

The Act also clarifies that where Retirement Relief or Revised Entrepreneur Relief is available to the individual and provides for a greater relief from capital gains tax, the angel investor relief is disapplied. Also importantly, where an investor has previously claimed EIIS, they are precluded from claiming for this relief.

There are a number of anti-avoidance provisions included in the draft legislation, which can also take into consideration future transaction that may be envisaged at the time of application. These provisions will require careful consideration by applicants.

Withdrawal of Relief

Where a company has been issued with certificates of qualification and does not meet the conditions of the relief, or no longer meets these conditions, the certificates are withdrawn, and relief ceases to apply from that date. A company is precluded from providing the certificates to investors and must return these to Revenue.

Where the company has these certificates withdrawn, but provides these to investors, it will be penalised for doing so. The Act proposes that this penalty will operate by charging the company to tax at the rate of 25% on an amount of income equal to 1.36 times of the investment from the investor (or investors) determined by a formula. This gives rise to an effective tax rate on the recaptured amount of 34%, with any claim for loss relief or an allowance on this income also prohibited. Therefore, the consequences for an innovative company seeking to avail of this relief where the company does not, or no longer, meets the conditions for the relief are potentially very penal. This means a company seeking to avail of this relief should carefully consider the basis upon which it has determined it meets the conditions for the relief, as the consequences of getting this wrong are potentially significant.

Further, there is a reporting obligation on the company to notify Revenue where there has been a material change in the facts which may mean the company no longer meets the conditions for the relief. A company is required to make this notification within 30 days of the change and where it fails to do so the company or its officer who has knowledge of the change, may be liable to a penalty of up to €4,000.

Where information comes to the attention of Revenue which causes them to form the opinion that there has been a change in the material facts relevant to the company meeting the conditions for the relief, Revenue will give notice of their intention to withdraw the certificates. A company has 30 days from receipt of this notice

to make submissions to Revenue. Further, Revenue may consider recommendations or reports from Enterprise Ireland when assessing whether to issue a determination that the certificates have been withdrawn. Following this, a company may appeal the determination to the Appeal Commissioners and has 30 days from receipt of the determination to do so.

Commencement

The relief will apply to investments made up to 31 December 2026 and is subject to a Ministerial Order, meaning the relief will not come into effect until this order is made.

When the scheme is operational Revenue is required to maintain and publish a register on its website, which includes the name, address and companies' registration number of the company, along with details of the certificates held by the company, the date of issue, period it remains valid for and where a company no longer qualifies, the date of withdrawal from the scheme.

While the introduction of a CGT relief for angel investors is welcome, the complexity and onerous requirements associated with the relief has the potential to make it unattractive and difficult to avail of in practice. It remains to be seen if Revenue will seek to simplify this relief for start-ups via published guidance.

Corporation tax loss group relief provisions

With effect from accounting periods beginning on or after 1 January 2024, the Finance Act amends the rules which restrict certain claims for group relief in situations where the accounting periods of group companies are not aligned or when a company joins or leaves a group.

The rules which restrict the amount of available relief are being amended to clarify that the rules apply not just to the surrendering of group relief which is available for offset against the total profits of a claimant company (as is currently the case) but also to the surrendering of group relief which is (i) available for offset against income of a claimant company taxable at the 12.5% corporate tax rate and (ii) available for offset on a value basis against the claimant company's relevant corporation tax.

The amendments ensure that the rules are now properly aligned so as to apply to each of the different types of available group relief.

Stamp duty – US and Canadian listed shares

The Act introduces a stamp duty exemption for transfers of Irish shares where those shares are dealt on a recognised stock exchange in the United States of America or Canada, and the securities settlement system is operated by a central securities depository in the United States of America or Canada. This is a welcome amendment which puts a administrative practice of the Revenue Commissioners on a statutory footing.

However, it is disappointing that equivalent measures were not considered for Irish shares listed in other markets. The 1% stamp duty liability on Irish shares listed on other markets (including Euronext Dublin) has diminished the competitiveness of the equities market in Ireland and increased the cost of equity capital for Irish companies. The Irish economy needs a vibrant Irish equities market to encourage continued growth and development of Irish businesses.

Distributions and dividend withholding tax

The Finance Act amends certain income tax and dividend withholding tax provisions to align them with EU law.

Currently, a charge to Irish income tax arises in respect of all distributions made by Irish companies, other than where an exemption applies. The amendments provide for an income tax exemption for distributions to residents of European Economic Area ('EEA') states and equivalent pension schemes in Tax Information Exchange Agreement ('TIEA') countries.

Digital Games Corporation Tax Credit

In order to support employment growth in the Digital Gaming sector in Ireland, the Digital Games Corporation Tax Credit (DGTC) was first introduced in 2021. The regime provides a 32% corporation tax credit to companies which incur expenditure on the design, production and testing of a digital game and is linked to the portion of such qualifying expenditure which is expended on the development of the digital game in Ireland or within the EEA.

A number of changes have been made to the DGTC within Finance Act 2023, the most significant of which are designed to align the credit with new international definitions of qualifying refundable tax credits.

In this regard, a digital games development company will have the option to either avail of a full cash payment or to request that the credit be offset against tax liabilities. This is similar to how the R&D tax credit is now structured and is intended to enable the credit to be considered a 'qualifying refundable tax credit' under BEPS Pillar 2 rules, thus ensuring it is relevant when Multinational Corporation (MNCs) are making investment decisions.

The Finance Act has confirmed that if the credit is paid out in cash, it will not be treated as income of the company for corporation tax purposes. It also confirms that where a company specifies that the amount of the credit is to be offset against the company's corporation tax liability for the accounting period, the amount may be taken into account for the purposes of calculating preliminary corporation tax.

Other updates that have been made include:

- A requirement that to qualify for the credit, a digital games development company will need to have been carrying on the trade of developing digital games for a period of at least 12 months prior to making a claim,
- The introduction of the concept of a 'valid claim'. A valid claim is a claim which contains all information that Revenue may reasonably require to enable them to determine if the credit is properly due and must be made before any money is refunded or offset.
- Amendments to the timing of when the claim is made. A company claiming the digital games credit has until 12 months from the end of the accounting period in which the last of the expenditure giving rise to a claim is incurred, to make a claim. Where a company receives the final cultural certificate in respect of the game within 3 months prior to the expiry of the 12-month period, the company has 3 months from the date on which that certificate is issued to make its claim.
- Confirmation that the interim digital games corporation tax credit will be claimed in the return which relates to the accounting period in which the expenditure giving rise to the claim is incurred, and the digital games corporation tax credit will be claimed in the return which relates to the accounting period in which the last of the expenditure giving rise to the claim is incurred.

Capital Allowances on Certain Energy-Efficient Equipment

Accelerated capital allowances (ACAs) are available to companies who purchase certain items of energy-efficient equipment which are used for the purposes of a trade. Instead of receiving capital allowances over the standard period of 8 years, allowances are granted up front in year 1 at 100% of the cost of the relevant energy-efficient equipment.

Recognising the importance of energy efficiency to the green agenda, the Finance Act extends the ACA regime by two years with claims continuing to be available up to accounting periods ending 31 December 2025.

Pre-trading expenditure

The Finance Act contains clarifications in relation to the set-off of pre-trading expenses against other income. Currently, pre-trading expenses relating to a trade or profession cannot be taken into account in calculating a loss that may be offset against other income for both income tax and corporation tax purposes. The Bill clarifies that pre-trading expenditure is also prevented from being set off against other income taxable at the 12.5% corporation tax rate, sheltering income on a value basis or being used as a loss which could be surrendered as group relief. In summary, this amendment clarifies the position that losses resulting from pre-trading expenses may only be carried forward for use against future income of the trade or profession.

The amendment will apply to accounting periods commencing on or after 1 January 2024.

Agri-business measures

During the course of his Budget speech, the Minister for Finance announced his intention to extend a number of important agricultural reliefs which were set to expire at the end of this year. The Act includes the following measures:

Accelerated capital allowances – farm safety equipment

This relief allows for accelerated capital allowances of 50% per annum for eligible farm safety equipment and was due to expire on 31 December 2023. The Act extends the availability of the relief to 31 December 2026.

Stock relief

Stock relief reduces taxable farm profits by reference to the increase in value of farm trading stock over an accounting period. The Bill amends stock relief for young trained farmers and relief for succession farm partnerships, to increase the aggregate lifetime limit available from €70,000 to €100,000 with effect from 1 January 2024. Stock relief for registered farm partnerships is being amended to increase the threshold from €15,000 to €20,000 with effect from 1 January 2024.

Stamp duty relief for Young Trained Farmers

The lifetime aggregate limit for stamp duty relief for the conveyance of farmland to eligible young trained farmers has been increased from €70,000 to €100,000 from 1 January 2024. In the absence of this relief, such conveyances would generally be charged to stamp duty at a rate of 7.5%.

Consanguinity (stamp duty) relief

Consanguinity (stamp duty) relief is designed to facilitate and encourage intergenerational farm transfers. It reduces the rate of stamp duty applicable to intra-familial transfers of farmland from 7.5% to 1% where certain conditions are met. The Act extends this stamp duty relief to 31 December 2028.

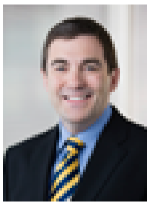
Farm consolidation stamp duty relief

Farm consolidation relief applies a 1% stamp duty charge (instead of the normal rate of 7.5%) on the net consideration where farm holdings are consolidated by way of linked sales and purchases of land and where the acquisition and disposal take place within a 24-month period. The Act amends the relief to avoid clawbacks on subsequent transfers to civil partners as well as spouses.

Other matters

In his Budget speech, the Minister indicated a change to the relief from tax which is available for individuals in respect of certain income from the leasing of farmland. He indicated that the relief will be amended so that it only becomes available when the land has been owned by the lessor for seven years. These provisions were introduced at Committee Stage.

Research & Development Tax Credit



Ken Hardy
Partner

Damien Flanagan
Partner

Two important enhancements to the Research and Development Tax Credit (RDTC) were announced by the Minister for Finance as part of Budget 2024, with further details now outlined within the Finance Act.

The first is an increase in the rate of the RDTC from 25% to 30%, which is available to all claimants regardless of size.

The second enhancement is a doubling of the amount of the RDTC available to be refunded to a company as part of its first year RDTC instalment. This has increased from €25,000 to €50,000. This change is designed to provide quicker access to funding for Small and Medium Enterprises.

Both enhancements outlined above will apply for accounting periods commencing on or after 1 January 2024.

In addition, Finance Act 2023 introduces a 'Pre-notification' requirement for new RDTC claimant companies or companies that have not made an RDTC claim in the three previous accounting periods. Where applicable, the following details must be provided to Revenue within a period of 90 days before the RDTC claim is made:

i. the name, address, and corporation tax number of the company,

ii. a description of the research and development (R&D) activities carried out by the company,

iii. the number of employees carrying on R&D activities, and

iv. details of expenditure incurred by the company on R&D activities which has been or is to be met directly or indirectly by grant assistance or any other assistance.

In addition to the information listed above, as part of the pre-notification process, Revenue may require the company to provide additional information and provide any assistance which may reasonably be required for the purpose of Revenue's inspection of the RDTC claim information.

Practically this update will mean that companies coming within the above rules will need to commence the RDTC claim preparation earlier to ensure that the relevant details of the R&D activities and associated expenditure are collated in the manner required by Revenue and available 90 days prior to the R&D claim being made.

For a new RDTC claimant company with a 31 December accounting period, under the existing RDTC rules, its deadline for filing its 2024 RDTC claim would be 31 December 2025. However, the pre-notification rules require that the relevant details need to be submitted to Revenue before 2 October 2025. If the intention is to file an R&D claim in the tax return on 23rd September 2025, the relevant details will need to be submitted to Revenue on approximately 23rd June 2025, in effect bringing forward the claim preparation by a full three months.

It is unclear at this stage what Revenue will do with this information upon receipt and whether they will provide some kind of 'approval' before the claim is submitted. It is important that companies are aware of this update to avoid any loss of RDTC amounts due to the failure to adhere to the updated pre-notification deadline.

Property & Construction

Jim Clery
Partner

The property and construction sector was front and centre of any discussions in advance of Budget 2024, with an expectation that a number of significant measures would be introduced. As stated by the Minister in his Budget speech, housing is 'undoubtedly the biggest domestic challenge we face today'.

We welcome the Minister seeking to address a number of the issues faced by participants in the sector – particularly in alleviating the financial burdens faced by tenants and homeowners (both existing and prospective), in providing incentives to small landlords to remain in the private rental market, and in providing time for further engagement with local authorities on the Residential Zoned Land Tax. We are also keenly aware of the wide range of existing initiatives which have been rolled out separate to the Budget process – Housing for All, Croí Cónaithe, the Shared Equity Scheme, Cost-Rental Housing, and Project Tosaigh amongst others. These are having a tangible impact on the housing sector and we welcome further measures to positively impact the challenges faced by all sector participants.

Measures to assist landlords and tenants

Rented Residential Relief

There has been much discussion around the importance of small-scale landlords in the Irish private rental sector. In acknowledgement of their vital role and in order to address the decline of 'small landlords' in the private rental market, a new tax relief is being introduced, exempting a portion of rental income in certain cases.

This rental relief will have a maximum annual value of between €600 - €1,000 per landlord. It is difficult to see how that, on its own, will encourage landlords to enter or stay in the market.

The exemption will be in the form of an income tax relief for individuals at 20% of residential rental profits on properties located in Ireland, providing for an annual tax credit of up to €600 for 2024, €800 for 2025 and €1,000 for 2026 and 2027.

There are a number of conditions that must be met in order to avail of the relief, including:

- A property must be a 'qualifying premises', whereby for a particular year, the premises must be occupied by a tenant (with most tenancies requiring registration with the Residential Tenancies Board), let to a public authority, or be actively marketed for rent on 31 December of that year;
- The landlord must be compliant with Local Property Tax obligations in respect of all qualifying premises owned by them, and must hold a valid Tax Clearance Cert from Revenue.
- The relief will not be available where the premises is occupied by certain tenants who are connected to the individual or are close relatives of the individual or their spouse/civil partner.

A full claw-back of the benefit of the relief will apply if the landlord removes from the rental market within four years any of the 'qualifying premises' held in year one when the benefit is claimed. Similarly, a full claw-back of the relief will apply if the landlord, within four years, lets any of the 'qualifying premises' held in year one to certain tenants who are who are connected to the individual or are close relatives of the individual or their spouse/civil partner.

It should be noted that the clawback provisions, as currently drafted, would subject the income on which relief has been claimed to tax at marginal rates (up to 55%). As such, where a taxpayer claims a credit of €600, they may subsequently face a tax liability of up to €1,650 where they fall within the clawback provisions. This seems

Carmel Logan
Partner

unusual and significantly damages the attractiveness of the relief. We have requested clarification from the Department of Finance.

In the case of joint ownership of a property, the relief will be divided in proportion to the percentage of the rental income to which each owner is entitled.

Non-resident Landlords

Changes were introduced in Finance Act 2022 which came into effect on 1 July 2023 which changed the operation of withholding tax on payment to non-resident landlords involving collection agents.

The Finance Act includes measures to address a technical anomaly in respect of non-resident landlords, whereby tenants were potentially subject to a withholding tax obligation on rental payments, notwithstanding the payment was being made to an Irish collection agent.

While we support the Government's efforts to simplify the process surrounding the assessment and collection of tax on rental income accruing to non-resident landlords over the last two years, we consider that the current approach still remains unduly complex and is out of step with other countries. We recommend that consideration is given to implementing a new system (similar to those implemented in other jurisdictions) that allows for non-resident landlords to receive rental payments gross without withholding tax, with appropriate approval from the Revenue Commissioners.

Measures to assist homebuilders and homeowners

Mortgage Interest Relief

As a measure to offset the considerable financial burden faced by mortgage holders due to significant increases in interest rates, a temporary one-year mortgage interest tax relief provision is being introduced. The mortgage interest relief is highly targeted and quite heavily capped and therefore will make only a small difference to those experiencing material interest rate increases.

Mortgage interest tax relief will be available to individuals at the 20% standard tax rate in respect of the increase in the interest paid between the calendar year 2022 compared to the calendar year 2023, where:

- the mortgage is in respect of a taxpayer's sole or main residence in Ireland;
- the outstanding mortgage balance was between €80,000 and €500,000 on 31 December 2022;
- the taxpayer is compliant with Local Property Tax and planning permission requirements in respect of the relevant property; and,
- the loan is or was solely used by the individual for the purchase, repair, development or improvement of the 'qualifying property' or in the replacement of an existing loan which was used as such.

The maximum value of the relief is €1,250 per property and it is estimated that approximately 165,000 mortgage holders will benefit from this measure.

There are restrictions on the relief in respect of properties acquired from spouses / civil partners and other connected parties in certain cases. Furthermore, the relief is only available once per property, and therefore must be apportioned where there is part-ownership of a particular property.

In order to claim this relief, the taxpayer must make a claim to Revenue providing specified details in respect of the claimant, the property and the loan

Tim Lynch
Partner

arrangement. The relief will operate by way of a credit offset against the taxpayer's income tax liability in 2023. It is anticipated that the relief may be claimed in early 2024.

Help-to-Buy Scheme

The Help-to-Buy (HTB) scheme is being extended for a further year until 31 December 2025. We believe this extension is both meaningful and helpful to the overall objective of facilitating housing supply.

The HTB scheme has been a significant support to first time buyers since its introduction in Budget 2017, with over 40,000 people having been supported to buy their home under the scheme. The scheme was due to end in 2024 and this extension will be welcome for prospective first-time buyers and indeed registered builders who can continue to bring marginal supply onto the market.

The scheme is also being amended to assist the users of the Local Authority Affordable Purchase (LAAP) scheme in accessing the HTB scheme. The affordable dwelling contribution received under the LAAP scheme will be usable for the purposes of calculating the 70% loan-to-value requirement of the HTB thereby facilitating access by all LAAP purchasers to the HTB scheme. This amendment is applied from 11 October 2023.

The Minister also noted that he will consider in the coming year whether any further changes are required to the HTB Scheme.

Measures to assist developers and occupiers

Residential Zoned Land Tax ('RZLT')

In his Budget speech, the Minister emphasised the importance of the RZLT as an initiative to suitably activate housing supply, but acknowledged the importance of landowners having sufficient opportunity to engage with the mapping process and that a fair and transparent process is applied. As such, the Minister has extended the liability date of RZLT by one year in order to allow for the planned 2024 review of the RZLT maps to take place and for landowners to further engage with the mapping process.

Where land was zoned for residential use and serviced by 1 January 2022, RZLT was previously to be charged and levied from 1 February 2024 onwards. This should now apply from 1 February 2025.

We welcome this extension of the liability date to allow for further engagement by landowners with local authorities in respect of the mapping process. However, we believe the proposed changes to RZLT fall short of the amendments which are required, and the RZLT legislation as it is currently constituted will result in the tax being applied in many areas where the developer is doing everything in their power to bring sites forward for development, but they are hampered by conditions outside their control.

Marie Armstrong
Partner

Wider property sector measures

Vacant Homes Tax

The rate of the Vacant Homes Tax is being increased from three times to five times a property's existing base Local Property Tax liability. This increase will take effect from the next chargeable period, commencing 1 November 2023.

The Vacant Homes Tax was introduced in 2023 with the stated aim of maximising the use of existing housing stock to increase the supply of homes available for rent or purchase. It applies to residential properties which are in use as a dwelling for less than 30 days in a 12-month chargeable period, and there are a number of exemptions to ensure owners are not unfairly taxed where properties may be vacant for genuine reasons.

Defective Concrete Products Levy

The Defective Concrete Products Levy is being amended such that it will no longer apply to the pouring concrete used in the manufacture of precast concrete products with effect from 1 January 2024.

A refund scheme is also being put in place to allow those who will have paid the levy on such concrete between 1 September 2023 and 31 December 2023 to reclaim it. Such a claim must be made within four months of the end of the accounting period in the period 1 September 2023 to 31 December 2023. Details regarding this measure were previously announced by the Minister on 6 September 2023.

There are a number of administrative and record-keeping obligations on both the supplier and acquirer of 'ready to pour' concrete in order to avail of the exemption from the levy.

604A CGT Exemption

Section 604A provides an exemption from Capital Gains Tax for certain properties acquired between 7 December 2011 and 31 December 2014. The Finance Act updates the wording of this exemption to refer to properties 'purchased' rather than 'acquired' in this period.

The legislation has also been amended to clarify that any provision in the Capital Gains Tax Acts which fixes the consideration deemed to be received on a disposal or given on an acquisition shall be disregarded, and instead one must look to the actual consideration, and whether this was equal to market value, when considering whether the exemption should be available.

As such, following the proposed changes it seems the exemption is intended to no longer apply to properties acquired by means other than a purchase.

In a highly unusual move, these 'clarifications' are suggested to apply to disposals made on or after 1 January 2018.

Exemption for Short-term Leases

There is an exemption from stamp duty for certain short-term (<35 years) residential leases where the per-annum rent is below a specified threshold. This threshold is being increased from €40,000 to €50,000 per annum.

Financial Services

Philip Murphy
Partner

Liam Lynch
Partner

Taxation of certain qualifying financing companies

The Finance Act introduces a new section which will provide for an interest deduction for a non-trading financing company in certain restricted circumstances.

Broadly, a non-trading financing company will now be entitled to a deduction for interest paid on external third-party finance which is borrowed for the purpose of on-lending to a trading subsidiary in which it directly or indirectly (through a directly held intermediate holding company) owns 75% or more of the ordinary share capital. In addition, the trading subsidiary must use the funds wholly and exclusively for the purposes of its trade and must be tax resident in an EC Member State, EEA State or tax treaty country. The section is subject to strict conditions and anti-avoidance rules.

An interest deduction would likely be available to a non-trading financing company under the existing 'interest as a charge' provisions anyway where the requirements to qualify for the new relief apply are met.

Bank Levy

The Finance Act includes provisions for the introduction of a revised bank levy for 2024. This is following the Department of Finance's public consultation on the future of the bank levy which ran earlier this year. The bank levy in its current form was due to expire at the end of 2023 following several extensions to the levy.

The revised bank levy will apply to banks which received financial assistance from the State during the banking crisis (AIB, EBS, Bank of Ireland and PTSB). The revised bank levy sees a change from the current method which is based on applying a percentage (308%) to the amount of deposit interest retention tax (DIRT) paid in 2019 by the in-scope banks. The new bank levy will be applied at the rate of 0.112% of the value of deposits held by AIB, EBS, Bank of Ireland and PTSB on 31 December 2022, to the extent that such deposits are 'eligible deposits' within the meaning of the European Union (Deposit Guarantee Schemes) Regulations 2015. The due date, certain administrative practices and the non-deductibility of the levy for corporate tax purposes remain unchanged.

As part of the Budget process, the Minister had outlined that the revised bank levy will have a revenue target of €200 million. The bank levy was originally designed to produce a fixed annual yield of €150 million, however as a result of the planned exit of Ulster Bank and KBC from the market only €87 million was raised from the levy in 2022 and 2023.

The Finance Act provisions apply for 2024 only. The Minster previously outlined that he will review the revised bank levy again during 2024 to ensure it remains appropriately calibrated.

Anti-hybrid rules

The Act includes a number of technical amendments to the anti-hybrid rules. These rules seek to address the taxation treatment of certain financial instruments, entities and arrangements that have a hybrid character such that tax authorities in different countries view them differently and as a result, a tax result that is perceived to be abusive or unfair arises.

The anti-hybrid rules apply to entities including certain legal persons (such as companies), partnerships, undertakings, trusts and associations as well as to other legal arrangements (of whatever nature or form) that are 'subject to' any of the taxes to which the anti-hybrid rules apply. The Act amends (and broadens) the scope of the rules so as capture any such legal arrangements which are 'within the charge' to any of the taxes to which the anti-hybrid rules apply.

The Act also amends the reverse hybrid rules. These rules are intended to address a situation where the profits

Ciara Wrafter
Partner

Kevin Cohen
Partner

of a 'hybrid entity' are not within the charge to tax in any jurisdiction because of a mismatch in how the tax authorities in the entity's home jurisdiction and the tax authorities in the investors' jurisdiction view the entity. The rules contain an exemption for qualifying collective investment schemes that satisfy a number of conditions including reaching certain thresholds relating to diversity of ownership and to diversity of investments. The Act makes a technical amendment to a provision that allows a period of 24 months for a new collective investment scheme to reach those thresholds. The Act also makes another technical amendment to a provision that allows a collective investment scheme which has subsequently fallen below these thresholds a period of 12 months to wind down its activities before the exemption from the rules lapses.

FATCA, CRS and DAC2 penalty provisions

The Finance Act amends the penalty provisions that apply to financial institutions for failure to report certain financial information which is subject to exchange under agreements with other jurisdictions (under FATCA, CRS or DAC 2). The amendments clarify who the penalty is to be discharged by where a penalty is imposed on a financial institution that is a partnership or trust.

The amendments confirm that in the case of:

- A partnership, the penalty shall be discharged by the precedent partner;
- A trust which is not an Investment Undertaking, the penalty shall be discharged by the trustees of the trust; and
- A trust that is an Investment Undertaking, the penalty shall be discharged by the trustees of the trust, the management company or any such person who is authorised to act on behalf of the trust and habitually does so.

Leasing

Gareth Bryan
Partner

Joe O'Mara
Partner

There has been extensive industry interaction with the Revenue Commissioners and the Department of Finance over recent years in respect of leasing matters generally and historic practices in particular. Revenue have signalled their intention to withdraw many of their historic leasing practices from the end of 2023. The Act codifies some of these practices and introduces some measures which will mitigate against the loss of others.

While these changes are welcome, a number of significant issues have not been addressed and may result in significant uncertainty and a less attractive tax environment for many leasing groups in Ireland or considering Ireland for investment in the future.

Capital allowances for leased assets

In general, only the owner of plant and machinery can claim capital allowances, however, there are rules which provide that where the plant or machinery is finance leased and the lessee bears the burden of wear and tear, the lessor and lessee can jointly elect for the lessee to claim the allowances instead. Except where the lessee is an individual, the Act removes the existing joint election by lessor and lessee and, instead, provides that the lessee may claim allowances where it satisfies relevant criteria.

The Act modifies the rules such that they will apply to 'relevant leases'. Relevant leases will continue to include finance leases but will also include operating leases where (i) the discounted present value of the lease payments is 80% or more of the fair value of the leased asset; (ii) the lease term equals or exceeds 65% of the leased asset's predictable useful life; and (iii) the lease is granted on such terms that the use and enjoyment of the leased asset is obtained by the lessee for a period at the end of which it is considered likely that the leased asset will pass to the lessee.

Additional qualification criteria are to be introduced for relevant leases that are operating leases before the lessee can claim capital allowances including that the lessor acquired the leased asset by way of a bargain made at arm's length and the asset belongs to the lessor before and during the lease term. In all cases, a relevant lease must also be entered into by way of a bargain made at arm's length.

Where the lessee is not an individual, a claim must be made in the corporation tax return for the period and where the lessor and lessee are both within the charge to Irish tax they must have jointly agreed in writing at the commencement of the relevant lease that the burden of wear and tear of the leased asset in fact falls directly on the lessee. In making such a claim, the lessee is obliged to provide extensive information in relation to the lessor and the leased asset. In addition, new reporting obligations are introduced for both the lessor and lessee.

The Act also introduces a change to the balancing allowances and charges rules. These provide that an event giving rise to a balancing allowance or charge can occur for the lessor when entering into a relevant lease and similarly for a lessee on the conclusion of the relevant lease where the asset returns to the lessor rather than ownership transferring to the lessee. The amount received for the lessor on the balancing event should be the higher of the open-market value of the asset and the discounted present value of the lease payment. For the lessee the amount received on the balancing event should be calculated as the higher of the amount payable under a residual value guarantee in respect of the asset which forms part of a lease for accounting purposes at the end of the lease term.

There are also technical related amendments to the rules which provide for a restriction of losses by reference to capital allowances and to an exemption from capital gains tax which applies to certain tangible moveable property.

Brian Brennan
Partner

Taxation of lease payments

The general rule that a company should compute its taxable profits based on its accounting results is modified in the case of a company which leases assets under a finance lease. Under these modified rules such a company is subject to tax on the gross amount of rents receivable by it. This treatment is a corollary of the fact that such a company may be entitled to claim capital allowances on the leased asset and ensures that the commercial profits which the company earns are ultimately subject to corporation tax. However, as noted above there are situations where a lessee may be entitled to claim capital allowances on leased asset. Where this occurs the lessor is not entitled to allowances. By longstanding practice the Revenue Commissioners have allowed such lessors to be taxed on their finance margin (effectively in line with their accounting results) where the lessee is the party claiming the allowances. The Revenue Commissioners have said they intend to terminate many of their historic leasing practices at the end of 2023 and codify in law those which they wish to retain.

Thus, the Act proposes to put this arrangement on a statutory footing and to provide further clarification in relation to the taxation treatment of lease payments for both the recipient and the payer.

The Act introduces amendments which confirm that in calculating the profits of a trade, the income from a lease (in the case of a lessor) and the lease rental payments (in the case of a lessee) to be included in the tax computation are the gross payments under the lease (and not just the amounts recorded in the company's profit and loss account). However, these amounts are to be spread evenly over the life of the lease irrespective of how the transaction is recorded in the company's accounts. For finance leases using FRS 101 or FRS 102 the accounting results should generally align with this new spreading requirement. However, for operating leases this may create new obligations to model and evenly distribute the lease payments (which may prove difficult especially where there are variable components).

This treatment is modified in the case of 'relevant leases' (as described above): the lessor is to be taxed on the financing margin recorded in its financial statements (or, in the case of a relevant lease which is not a finance lease, the amount that would be so recorded if it were a finance lease). However, to qualify for this treatment, the conditions enumerated for lessees must be satisfied and where the lessee is not Irish tax resident, it must be reasonable to consider that the amount of lease expenditure deductible by the lessee for foreign tax purposes is similar to that calculated under the equivalent Irish rules (essentially an amount equivalent to the financing margin of the lease rentals and not the gross rental expense). In making a claim for this treatment, the lessor is obliged to provide extensive information in relation to the lessee and the leased asset.

The Act introduces provision for non-trading lessors to carry forward their losses in their functional currency (which would not be the case under general principles). In addition, no provision is made to codify the long-standing practice of allowing non-trading lessors to deduct interest incurred in their leasing activities.

Leasing ring-fence

Under Irish tax legislation excess capital allowances on leased plant and machinery may only be set off against income from the leased asset or, where the lessor is a company carrying on a trade of leasing, the profits from that trade. This is referred to as the 'leasing ring-fence'.

The following categories of income are currently treated as income from a trade of leasing in the context of the leasing ring-fence:

- income from the leasing of machinery or plant;
- income from the provision of loans to fund the purchase of machinery

James Kelly
Partner

or plant;

- income from the provision of machinery or plant leasing expertise;
- income from the disposal of leased machinery or plant; and
- income from activities which are ancillary to those set out above.

Excess capital allowances which are not utilised in the relevant accounting period may be carried forward indefinitely for set off against future income from the trade of leasing. They can also be surrendered (by way of group relief) to other members of the same leasing group to shelter profits from their trade of leasing.

There are currently two different configurations of groups that can constitute a leasing group. The Act proposes adding another: those members of a group of companies that are members of the same corporation tax loss group.

The Act also widens the range of the activities that come within the ring fence to include:

- the provision of intra-group finance and guarantees via intermediate financing companies;
- the disposal of the contractual right to acquire machinery or plant of a type which is similar to the type of machinery or plant leased by the leasing group where, at the time that the contract was entered into, it was intended that the asset was to be acquired and leased by the leasing group; and
- the disposal of any part of an item of plant or machinery, where that plant or machinery was in use for leasing purposes.

As noted above, the Revenue Commissioners have said they intend to terminate many of their historic leasing practices at the end of 2023. As part of that Revenue have indicated that certain confirmations of trading treatment to leasing groups will be withdrawn and to clarify Revenue's view of the appropriate treatment of certain items once these confirmations have lapsed, the Act contains a number of other amendments. These include narrowing the ability to treat gains above cost on leased equipment as arising on trading account and capable of being sheltered against ring-fenced leasing losses.

Revenue have also indicated that they expect that some lessors carrying on certain activities within the leasing ring fence will likely be treated as carrying on non-trading activities in the future. As the existing rules on the use of ring-fenced leasing losses only to allow them to be used to shelter income form a trade of leasing, the Act modifies these rules to allow their use against passive leasing ring-fence income (on a value basis) both within the company itself and by means of surrendering group relief. For those lessors engaged in financing activities, the new intermediary lender rules discussed in the Financial Services section may be of relevance.

The Act introduces additional detailed reporting requirements which will be required in the tax returns of companies which are within the leasing ring-fence. The disclosures primarily relate to details on how specified capital allowances or losses generated from the leasing activity are utilised by the company itself or surrendered to other members of the leasing business group.

Indirect Taxes

Glenn Reynolds
Partner

VAT

The Act includes measures affecting the VAT rates for certain goods and services, some technical amendments to the VAT Consolidation Act 2010 for certain VAT exempt activities and some administrative points in respect of the operation of the VAT system, including VAT registration thresholds and seeking VAT rate determinations from Revenue.

As had also been announced in the Minister for Finance's Budget Day speech, the Revenue Commissioners have opened a public consultation on modernising the VAT system which seeks input on how digital advances can be used to modernise Ireland's VAT invoicing and reporting system.

VAT Rate Changes

The Act includes several VAT rate changes or clarifications, which were announced by the Minister in his Budget Day 2024 speech. These include:

- The VAT rate of 9% for supplies of gas and electricity being further extended until 31 October 2024. This temporary VAT rate had previously been extended on several occasions and was due to revert to 13.5% on 1 November 2023.
- The VAT rate on supplies of audiobooks and electronic editions of books (e-books) will reduce from 9% to 0% with effect from 1 January 2024. This brings the VAT rate for electronically published matter in line with that of equivalent printed matter, similar to the expansion of the 0% rate to e-newspapers which came into effect from 1 January 2023. The electronic supply of books, newspapers and audiobooks which are wholly or predominantly devoted to advertising, or which wholly or predominantly consist of audible music or video content will remain at the standard rate of 23%.
- The 0% VAT rate for the supply and installation of solar panels on private dwellings will be extended to include their supply and installation on buildings used wholly or predominantly for the provision of primary or post-primary education by recognised schools within the meaning of the Education Act 1998.

The Act also includes a measure confirming that the flat-rate addition payable to farmers who are not VAT registered will decrease from 5% to 4.8% with effect from 1 January 2024.

Deposit Return Scheme

The Act includes certain VAT-specific measures related to the operation of the new Deposit Return Scheme for plastic bottles and aluminium cans etc. This deposit system, which is intended to be effective from February 2024, is intended to incentivise consumers to return their empty beverage containers for recycling or reuse, with the goal of assisting in the reduction of single use plastics, helping Ireland meet EU targets and promoting a wider circular economy.

The Act provides for the deposit to be charged by participants of the scheme without any obligation to account for VAT on the deposit collected, unless the relevant item (e.g., bottle or container) is not returned, in which case VAT should be accounted for by the scheme operator.

The application of VAT rules for the Deposit Return Scheme may result in some increased complexity from a VAT systems perspective for retailers.

Technical Amendments to certain VAT exemptions

The Act includes some technical amendments to certain VAT exemptions provided for in Schedule 1 to the VAT Consolidation Act 2010.

There is a technical amendment to remove the exemption for the 'issuing' of stocks, shares, debentures and other securities reflecting that such an 'issue' is in fact outside the scope of VAT. While in principle this change is a technical amendment which does not impact the VAT treatment of the issue of stocks, shares, debentures and other securities, there could be a negative impact on the ability to apply VAT exemption to professional support services provided in respect of such 'issues'.

The second amendment concerns the VAT treatment of emergency accommodation, to bring domestic Irish

David Duffy
Partner

VAT legislation in line with the EU VAT Directive. This is not expected to have any change in practice, as the Revenue Commissioners already treat the supply of emergency accommodation as VAT exempt.

VAT Registrations

The Act includes measures to adjust upwards the VAT registration turnover thresholds for supplies of taxable goods from €75,000 to €80,000 and for supplies of taxable services from €37,500 to €40,000. The thresholds depend on turnover in any continuous 12-month period.

The last upward adjustment in VAT registration thresholds was in 2008, and saw the thresholds for taxable supplies of services and goods move from €35,000 to €37,500 and €70,000 to €75,000 respectively, removed 2,700 companies from the VAT net and cost €20.5 million in a full year. The current change comes in advance of a package of EU-wide measures aimed at simplifying VAT compliance for small and medium enterprises, which is due to take effect from 1 January 2025 onwards.

VAT Rate Determinations

The Act removes the ability for a taxpayer to request, and for the Revenue Commissioners to issue, a VAT 'determination'.

This was a procedure whereby the Revenue Commissioners could, under VAT law, be requested to issue a formal ruling in relation to VAT rate applying to supplies (including whether or not VAT exemption applied).

VAT Modernisation Public Consultation

As had been announced in the Minister for Finance's Budget Day 2024 speech, the Revenue Commissioners have opened a public consultation on VAT Modernisation, which seeks input on how digital advances can be used to modernise Ireland's VAT invoicing and reporting system. The consultation opened on Friday, 13 October 2023 and will remain open until Friday, 12 January 2024.

This public consultation signals an important first step towards significant VAT compliance reforms, which would have a significant impact, not only for businesses VAT compliance systems and processes but their wider finance, accounts payable and accounts receivable systems and processes.

It is expected that the consultation should align to the EU's 'VAT in the Digital Age' proposals (currently under discussion in the EU Council) intended to introduce harmonised e-invoicing and digital reporting obligations for cross-border supplies within the EU in 2028. If introduced, those engaged in Business to Business or Business to Government transactions would become obliged to issue and receive e-invoices in accordance with a common EU standard, and to digitally report a subset of data from that e-invoice to the Revenue Commissioners in real time or a 'near real-time' basis.

Excise Duty Measures

The Act contains legislative provisions which will give effect to the excise measures announced in the Budget, including:

- Another extension of the temporary Mineral Oil Tax rate reductions, with a phased restoration in two stages on 1 April 2024 and 1 August 2024.
- The rates of Tobacco Products Tax for cigarettes and for other tobacco products have been increased, with effect from 11 October 2023. The increase amounts to 75 cent, inclusive of VAT, on a packet of 20 cigarettes in the most popular price category, with pro-rata increases on other tobacco products.
- There are no changes to the alcohol product tax rates from 11 October 2023 but the rates of excise duty applicable to cider and perry exceeding 8.5 per cent abv have been increased to align with the rates currently applicable to Other Fermented Beverages at similar strengths with effect from 1 January 2024.

Outbound Payment Measures

Orla Gavin
Partner

In the National Recovery and Resilience Plan (NRRP) submitted to the European Commission in 2021, which was required to access funding under the EU's Recovery and Resilience Facility, Ireland made a series of commitments to help tackle aggressive tax planning. One such commitment provided was to introduce legislation applying to outbound payments to prevent double non-taxation outcomes.

The subject already of two separate public consultations held by the Department of Finance, the new measures being introduced as part of this Finance Act will apply to certain interest and royalty payments and certain distributions made on or after 1 April 2024. For arrangements in place on or before 19 October 2023, the provisions will only apply to payments or distributions made on or after 1 January 2025.

An overview of the scope and application of the new measures is provided below:

Overview and scope

The new taxation measures will apply withholding tax, or disapply existing domestic withholding tax exemptions, to certain outbound payments. The current rate of withholding tax applied to interest and royalty payments is 20%, while a 25% rate of withholding tax is applied to distributions.

To be in scope, the interest or royalty payment or the distribution must be made by a company to an associated entity that is resident in a specified territory. In this context, a specified territory is defined as (i) a territory that is on Annex I of the EU list of non-cooperative jurisdictions or (ii) a zero-tax/no-tax territory. A specified territory cannot be another EU/EEA country, and these new provisions will not apply to any payments made to a recipient in an EU country as a result.

The legislation cross-references the version of Annex I of the EU list of non-cooperative jurisdictions that was published on 23 October 2023. This list includes:

American Samoa, Anguilla, Antigua and Barbuda, Bahamas, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

Importantly, the new measures will only apply to payments or distributions made by a company to an associated entity. Two entities will be associated if there is more than a 50% relationship in terms of share capital or ownership interests in the case of an entity which does not have share capital, voting power or entitlement to profits. Two entities will also be associated in cases where one entity has definite influence in the management of the other entity, or where the two entities are both associated entities of another entity. As a relationship of more than 50% is required, this could result in investments in joint ventures falling outside the scope of these new measures. Transactions with unrelated third parties should not be affected by the provisions.

Application of the new withholding tax measures

Royalties

Ireland currently imposes withholding tax on patent royalty payments and other annual payments, with withholding tax relief typically being available where the payments are made by a company to a person who is resident for tax purposes in an EU country or a country with which Ireland has a double tax treaty and certain conditions are met.

The new legislation will disapply the existing withholding tax relief and also expand the categories of royalty payments that are subject to Irish withholding tax where the payments are made by a company to an associated entity that is resident for tax purposes in a specified territory (or a permanent establishment of that entity situated in a specified territory) to the extent that the royalty payment is not an 'excluded' payment.

Sean Sheridan
Partner

The definition of a royalty for these purposes is closely aligned with the royalty definition in the OECD Model Tax Convention and will include a payment of any kind for:

- the use of, or the right to use:
  - any copyright of literary, artistic or scientific work, including cinematographic films,
  - any patent, trademark, design or model, plan, secret formula or process, or
- information concerning industrial, commercial or scientific experience (often referred to as commercial know-how).

The definition of royalty does not extend to payments for the use of software or industrial, commercial or scientific equipment.

The new withholding tax provisions should not apply if the payment is not deductible for Irish corporation tax purposes.

The legislation also introduces the concept of an 'excluded' payment which should fall outside the scope of the new withholding tax measures. This should include cases where it is reasonable to consider that the payment is within the charge to a supplemental tax (being a Pillar Two top-up tax or a CFC charge), a foreign tax at a rate greater than 0% or a domestic tax other than the new withholding tax. Payments made to pension funds, government bodies or other tax-exempt entities should also be excluded from the scope of the provisions.

Interest

Irish tax resident companies are generally required to deduct withholding tax on payments of yearly interest. However, a range of exemptions from interest withholding tax can apply, including interest paid in the course of a trade or business carried on in Ireland to a company which is tax resident in an EU member state (other than Ireland) or a country with which Ireland has a double tax treaty provided that that relevant territory imposes a tax that generally applies to interest receivable in that territory by companies from sources outside the territory, and interest payments made in respect of listed debt (the Quoted Eurobond exemption) or wholesale debt instruments where the relevant conditions are satisfied.

Where a company makes a tax-deductible interest payment to an associated entity that is tax resident in a specified territory (or a permanent establishment of an associated entity which is situated in a specified territory), the legislation will disapply the application of the existing Irish domestic interest withholding tax exemptions.

The legislation will also bring 'short' interest payments – interest payments on loans with a term of less than

Conor O'Sullivan
Partner

12 months – made to an entity in a specified territory within the scope of Irish withholding tax.

Each of the exclusions outlined above for royalties should equally apply for interest payments. The legislation also includes an additional exclusion which will result in an interest payment falling outside the scope of withholding tax to the extent that:

i. the recipient makes an onward payment of a corresponding amount to another entity in an accounting period that commenced within 12 months of the end of the tax period;

ii. the corresponding amount would have been an excluded payment if it had been made directly to that entity (e.g., the payment would have been subject to tax); and

iii. the payments were made for bona fide commercial purposes.

Distributions

Where a company makes a distribution to an associated entity that is tax resident in a specified territory (or a permanent establishment of an associated entity which is situated in a specified territory), existing domestic reliefs from Irish dividend withholding tax will be disapplied. However, the new withholding tax provisions will not apply where the distribution is being made out of income, profits or gains that have been subject to (i) Irish domestic tax, (ii) foreign tax at a nominal rate greater than 0%, or (iii) a CFC charge or a top-up tax under Pillar Two. In addition, the provisions should not apply to distributions made out of foreign branch profits that are subject to foreign taxation.

Similar to the comments made above in respect of interest and royalty payments, a distribution should also be excluded from the scope of the new withholding tax provisions where it is reasonable to consider that, at the level of a direct or indirect recipient, the distribution is within the charge to a Pillar Two top-up tax, a CFC charge, a foreign tax at a rate greater than 0% or a domestic tax other than the new withholding tax.

The range of exclusions included in the legislation for distributions should therefore allow a company to effectively look up and down its ownership chain when considering whether the profits being distributed have been subject to tax within the group's corporate structure, and whether the distribution should therefore fall outside the scope of the new withholding tax requirements.

Administration

Where a company makes an interest or royalty payment or a distribution to an associated entity that is tax resident in a specified territory or a permanent establishment of an associated entity situated in a specified territory, the company will be required to disclose the following details in its annual corporation tax return:

i. the amount of the payment or distribution;

ii. the amount of tax withheld on the payment or distribution; and

iii. the territory where the recipient of the payment is tax resident or situated, as the case may be.

Global Minimum Taxation - Pillar 2

Cillein Barry
Partner

As announced in the Minister's Budget speech, Finance (No.2) Act 2023 includes legislation to implement the 15% minimum tax rate under the OECD's Pillar Two agreement and as adopted in EU's Minimum Tax Directive. The 15% minimum tax rate is also known as the Global Anti-Base Erosion (or GloBE) rules. Spanning over 120 pages of legislation, the introduction of these rules into Irish law will mark a paradigm shift for in-scope businesses. It will also represent a significant challenge as affected businesses seek to grapple with these new rules, which sit in tandem with Ireland's existing (and increasingly complex) corporation tax system.

Scope

It should be noted at the outset that the GloBE rules will not affect the majority of Irish businesses – generally multinational groups with annual turnover exceeding €750 million in two of the last four years should fall in scope. As a result, most Irish SME's will remain unaffected by the rules, with their trading profits continuing to be subject to the headline 12.5% rate of corporation tax. In line with the EU's Minimum Taxation Directive however, Ireland's implementation of the rules has been extended to also apply to wholly domestic large-scale groups (subject to the five year deferral discussed below), but again such groups with less than €750m consolidated turnover should fall outside the scope of the rules.

These rules will come into force for accounting periods beginning on or after 31 December 2023 for the Irish companies of affected multinational groups. A deferral of the rules is effectively in place for wholly domestic groups, so that the rules should first apply five years after the group would otherwise first fall in scope.

Minimum Effective Tax

The Pillar Two GloBE rules are designed to implement a global minimum effective tax rate (ETR) of 15% on a jurisdictional basis. This means that the financial information of each of the group members in any given jurisdiction must be aggregated, adjusted as required under the rules, and an ETR calculated for that jurisdiction. If this jurisdictional ETR is less than 15%, then top-up tax is payable to bring the ETR up to 15%.

The jurisdictional basis of calculation of the top-up tax liability means that Ireland's current approach of calculating the corporation tax liability of each company separately does not apply under the GloBE rules. While for some groups accessing and interpreting the necessary financial information of sister, parent and subsidiary companies in the same jurisdiction may be relatively straightforward, this can pose a significant practical challenge for other groups, for example where separate Irish business operations within the same group operate in silos from one another.

Domestic Top-Up Tax

Various mechanisms exist under Ireland's implementation of the rules to collect top-up tax that arises in respect of a group's Irish or foreign operations. For Irish operations that have an effective rate of tax of less than 15%, Ireland has elected to adopt a Qualified Domestic Top-Up Tax ('QDTT'), preserving Ireland's primary taxing rights over these profits and ensuring

Colm Rogers
Partner

that any incremental top-up tax payable with respect to Irish operations should be payable in Ireland.

To calculate the amount of top-up tax payable under the Irish QDTT, financial accounting data must be taken from one of two sources – the data used to prepare the overall multinational group's consolidated financial statements or the data used to prepare Irish statutory financial statements (provided certain conditions are met). Unfortunately, there is no choice for Irish businesses as to which data source they would prefer to use; if the conditions are met to use Irish financial statements, these must be used. Otherwise, the data used to prepare the group's consolidated financial accounts is used, even if that financial data is under a different accounting standard to that used to calculate the Irish corporation tax liability of the group's Irish companies.

Other Top-Up Tax Collection Mechanisms

Ireland's implementation of the rules also includes mechanisms that would require Irish companies to pay top-up tax in Ireland with respect to foreign group members where the ETR for a particular jurisdiction is less than 15%. The Income Inclusion Rule ('IIR') could apply if an Irish entity is the direct or indirect parent of such foreign group members where that tax is not otherwise collected under that particular jurisdiction's QDTT regime. The Under-Taxed Profits Rule ('UTPR') could also apply if any top-up tax remains payable after the application of the QDTT and IIR rules, meaning the Irish entities could be subject to additional tax in Ireland on behalf of any other low-taxed foreign entity within the same multinational group, be that a subsidiary, parent or sister company.

A benefit of Ireland's implementation

of the QDTT is that most groups will likely be entitled to avail of the QDTT safe harbour in respect of their Irish operations. This means that amounts collected under the Irish QDTT should be the final amounts collectible in respect of Ireland under GloBE and further calculations under the IIR or UTPR mechanisms will not need to be undertaken by foreign group members in respect of Ireland. Similarly, Ireland has adopted the QDTT safe harbour such that no IIR or UTPR should arise in Ireland where a foreign entity has been subject to QDTT in its local jurisdiction.

In line with the EU Minimum Taxation Directive, Ireland will commence collection under the QDTT and IIR mechanisms for accounting periods commencing from 31 December 2023. However, the UTPR will not apply until one year later, for accounting periods commencing on or after 31 December 2024 (subject to certain limited exceptions where it can apply at the same time as the IIR).

Safe Harbours

The OECD has put forward a number of safe harbours that businesses may rely upon to remove jurisdictions from the scope of the rules where certain conditions are met. Most important of these are the transitional Country-by-Country safe harbour rules, which use MNE Groups' Country-by-Country reporting and other data to determine whether a top-up tax liability would likely arise for a jurisdiction and, if not, the MNE Group will not need to apply the GloBE rules for that jurisdiction.

Such safe harbours will be particularly important for MNE Groups seeking to apply the GloBE rules in the initial years following their introduction, reducing the number of jurisdictions in respect of which complex GloBE calculations must be performed and better enabling hard pressed finance and tax teams to focus on those jurisdictions most likely to incur a top-up tax liability.

Implementation of these transitional safe harbours is permitted under the EU Minimum Taxation Directive and, importantly, Ireland has included these in its implementation of the GloBE rules here.

Compliance Challenge

The scale of the challenge for businesses faced with applying the

Caoimhe McLoughlin
Partner

GloBE rules is highlighted in the GloBE Information Return, which is the informational return that must be filed by each in-scope group each year.

The GloBE Information Return has been designed at the OECD level for all implementing countries. As a result, the level of information required to be disclosed as part of this filing is greatly above that required in Ireland's annual corporation tax return. Rather than simply requesting foundational information needed for Revenue to assess a taxpayer's return, the GloBE Information Return will mandate the inclusion of detailed information for each group member, covering all aspects of the GloBE Rules. While all data points will not be relevant to all multinational groups, the number of data points to disclose in the return each year expands in line with the number of entities within the group and the number of jurisdictions in which the group has a presence.

Importantly, Ireland's implementation of the rules proposes to allow Irish businesses to avail of a transitional simplified reporting framework where they pay and file their Irish QDTT liability on a group basis. This will be an important relief for affected Irish businesses in terms of reducing the compliance costs and burden associated with the GloBE rules.

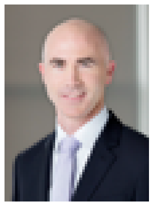
The first GloBE Information Return for in-scope groups will need to be filed within 18 months of the end of the first accounting period subject to the rules. This means a 30 June 2026 filing deadline for calendar year end groups that are in-scope from 1 January 2024. Thereafter, the GloBE Information Return must be filed within 15 months of the end of the relevant accounting period.

What next

While the release of the Irish GloBE legislation provides some welcome clarity, the OECD confirmed that further guidance will be released in the coming months and as such the required level of certainty for taxpayers is not yet achieved.

The application of the transitional Country-by-Country safe harbour rules will continue to be a current focus for groups to narrow down the jurisdictions where a GloBE tax may arise in 2024. From there it's important to understand and apply the rules to calculate the estimated top-up tax. The calculations, and the ultimate compliance obligations, could require an extensive data collection exercise, involving cross-functional teams and in certain cases the use of technology. These areas should be key focuses for businesses at this time.

Other Tax Matters



Neil Casey
Partner

Donation of heritage items

Taxpayers who donate heritage items to Irish national collections may avail of a tax credit equal to 80% of the donated item which can be set against the taxpayer's liability for certain taxes.

The Act increases the maximum aggregate value of items that can be donated under the scheme in any one year, on which the credit can be claimed, from €6 million to €8 million.

Tax exemption for charities

Charities can avail of an exemption from income tax on certain types of income. To avail of the exemption, it is necessary for the charity to secure the approval of the Revenue Commissioners.

The Act extends the exemption to income earned from the provision of professional services by a charity where the services are provided i) in the course of carrying out the charitable activities in question or ii) by the beneficiaries of the charity themselves.

In addition, the Act provides specific powers to the Revenue Commissioners to withdraw the income tax exemption from a charity where they have determined that it has ceased to be eligible. Where the exemption is so withdrawn, the Act also provides that the Revenue Commissioners may notify the Charities Regulatory Authority.

The Act also provides that the Revenue Commissioners may publish a list of charities who benefit from the exemption.

Charitable donations

The Act updates the list of approved bodies for participation in the scheme for tax relief in respect of charitable donations to include i) the Royal Irish Academy and ii) any 'designated institution of higher education' as defined or any body established for the sole purpose of raising funds for such an institution.

The change has retrospective effect on and from 10 November 2022.

Tax exemption – approved sporting bodies

Certain bodies established for promotion of sports can avail of an exemption from income tax and corporation tax on certain types of income. With effect from 1 January 2024, in determining eligibility for the tax exemption, 'sport' will be defined in line with the Sport Ireland Act 2015.

The change will not impact sporting bodies who currently benefit from the tax exemption.

The Act also provides that the Revenue Commissioners may publish a list of sporting bodies who benefit from the exemption.

Professional Services Withholding Tax

Professional Services Withholding Tax (PSWT) is required to be operated by a number of specified public bodies on payments made for the provision to them of certain types of professional services.

The Act extends the list of entities required to operate PSWT to include the Irish Air Navigation Service, Tailte Éireann, Coimisiún na Meán, the Royal Irish Academy and any 'designated institution of higher education' as defined and that is also a funded body within the meaning of the Higher Education Authority Act 2022.

The Act also removes from the list, The Commissioner of Valuation, The Chief Boundary Surveyor and The Director of Ordnance Survey.

The inclusion of the Royal Irish Academy and designated institutions of higher education has retrospective effect as on and from 10 November 2022.

Relief for investment in films

Relief is available in the form of a corporation tax credit at a rate of 32% on the qualifying cost of the production of certain qualifying films. The relief is subject to a cap of €70 million of qualifying costs.

The Act confirms the announcement by the Minister on Budget Day of an increase in the cap on qualifying expenditure from €70 million to €125 million. The amendment will be effective at a future date, subject to EU State aid approval, and will apply to films certified by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media after 1 January 2024 or after ministerial commencement, whichever is later.

This amendment, once approved, is a positive move which is intended to make Ireland more attractive as a location for larger film productions. It remains to be seen as to whether the increased cap will attract more film productions to Ireland, particularly given that similar film reliefs in other countries have no cap on qualifying expenditure.

Controlled Foreign Company regime

Controlled Foreign Company (CFC) legislation was introduced with effect from 1 January 2019. The regime is designed to prevent the artificial diversion of profits from controlling companies to offshore entities in no or low-tax jurisdictions. This is achieved by taxing the controlling company on the undistributed income of the CFC. The legislation includes a number of exemptions including:

Sean Sheridan
Partner

- Effective tax rate test: This applies where the CFC has paid local tax that amounts to at least 50% of the tax that would apply should the profits be calculated under Irish tax rules.
- Low profit margin test: This applies where the accounting profits of the CFC are less than 10% of its relevant operating costs for the period.
- Low accounting profits: This applies where the CFC has accounting profits of less than €750,000 (including less than €75,000 of non-trading income) or has accounting profits of less than €75,000.

The above three exemptions are not available where the CFC is resident in a 'listed territory'. These listed territories are defined by reference to the EU list of non-cooperative jurisdictions for tax purposes (the 'list'). The list is updated periodically by the Council of the European Union.

Enhanced Controlled Foreign Company (CFC) rules were introduced in Finance Act 2020 and apply where an Irish company has a subsidiary in a jurisdiction included on the EU list of non-cooperative jurisdictions for tax purposes (the list). The list is updated periodically by the Council of the European Union. The Finance Act includes an amendment to take account of the update to the list issued in February 2023.

The non-cooperative jurisdictions in the February 2023 version of the list are American Samoa, Anguilla, Bahamas, *British Virgin Islands, Costa Rica,* Fiji, Guam, *Marshall Islands,* Palau, Panama, *Russia,* Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, Vanuatu.

The jurisdictions in italics were not included in the version of the list which applies for accounting periods commencing between 1 January 2023 and 31 December 2023.

It should be noted that a further update to the list was issued by the European Council on 17 October 2023.

The non-cooperative jurisdictions in the October version of the list are American Samoa, *Antigua and Barbuda,* Anguilla, Bahamas, *Belize,* Fiji, Guam, Palau, Panama, *Russia*, Samoa, *Seychelles,* Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, Vanuatu.

The jurisdictions in italics were not included in the version of the list which applies for accounting periods commencing between 1 January 2023 and 31 December 2023.

EU information reporting directives (DAC 6 and DAC 7)

DAC 6

The Finance Act contains technical amendments to clarify the powers that are available to Revenue to make enquiries into the accuracy of a return made, or the failure to make a return, concerning the mandatory disclosure of certain reportable cross-border arrangements (commonly referred to as DAC6 reporting).

DAC 7

Ireland has an obligation to transpose certain EU tax measures under the seventh EU Directive on Administrative Co-operation in tax matters (DAC 7).

Finance Act 2022 introduced EU-wide automatic reporting obligations on digital platform operators in respect of certain sales made via their platform under DAC 7. Finance Act 2023 includes technical amendments to ensure appropriate transposition of DAC 7, as it relates to the new reporting requirements for digital platform operators.

DAC 7 also introduced a common legal basis by which EU Member States are obliged to facilitate other Member States in conducting joint tax audits. Finance Act 2023 provides the legal basis and procedural arrangements for Revenue to conduct joint tax audits with the competent authorities of other EU Member States. It should be noted that a person subject to a joint audit shall have the same rights and obligations as in the case of an enquiry carried out by Revenue officers only, including in the course of any process of complaint, review or appeal relating to the joint audit.

Payments to holders of sea-fishing boat licences

The Finance Act amends the provision dealing with the tax treatment of certain income tax and corporation tax liabilities that normally arise on receipt of payments under the Brexit Voluntary Permanent Cessation Scheme. These amendments allow tie-up related deductions to be made against payments made in 2021 and 2022, as originally intended.

Tax exemptions for certain non-profit bodies and non-commercial state-sponsored bodies

The Finance Act extends certain tax-exemption provisions to various not-for-profit and non-commercial state-sponsored bodies including Ennis 2040 (Strategic Development) Designated Activity Company and Nature Partners Company Limited by Guarantee, Grangegorman Development Agency and the National Paediatric Hospital Development Board.

The applicable exemptions are to take effect from the dates of establishment of the bodies.

Tax Rates and Credits **2024**

Personal income tax rates (changed)

	At 20%, first	At 40%
Single person (increased)	€42,000	Balance
Married couple/civil partnership (one income) (increased)	€51,000	Balance
Married couple/civil partnership (two incomes) (increased)*	€84,000	Balance
One parent/widowed parent/surviving civil partner (increased)	€46,000	Balance

* €51,000 with an increase of €33,000 maximum.

Personal tax credits (changed)

Single person (increased)	€1,875
Married couple/civil partnership (increased)	€3,750
Single person child carer credit (increased)	€1,750
Additional credit for certain widowed persons/surviving civil partner	€1,650
Employee credit (increased)	€1,875
Earned income credit (increased)*	€1,875
Home carer credit (increased)**	€1,800
Incapacitated child tax credit (increased)	€3,500

* Applies to self employed income and certain PAYE employments not subject to the PAYE credit.
** It is not possible to claim both the increased Standard Rate Cut-Off Point for married couples (two incomes) and the Home Carer Tax Credit.

Capital gains tax (changed)

Rate	33%
Entrepreneur relief (reduced rate)*	10%
Angel Investor Relief**	16% / 18%
Annual exemption	€1,270

* Relief remains capped at lifetime limit of €1m chargeable gains.
** The relief will be available to an individual who invests in an innovative start up SME for a period of at least. 3 years. The investment by the individual must be in the form of fully paid up newly issued shares costing at least €10,000 and constituting between 5% and 49% of the ordinary issued share capital of the company. Qualifying investors may avail of an effective reduced rate of CGT of 16%, or 18% if through a partnership, on a gain up to twice the value of their initial investment. There is a lifetime limit of €3 million on gains to which the reduced rate of CGT will apply.
*** Capital Gains Tax Retirement Relief. Increase in age limit from 66 to 70 and new lifetime limit of €10 million on qualifying disposals to children effective from 1 January 2025.

Mortgage Interest Tax Relief

A temporary one year mortgage interest tax relief scheme is being introduced for home owners with an outstanding mortgage balance on their principal private residence of between €80,000 and €500,000 on 31 December 2022. Tax relief will be available on the difference betwen the interest paid on that loan between the calendar year 2022 & 2023 at the standard rate of income tax (20%), capped at €1,250 per property.

Help to Buy Scheme (changed)

Income tax rebate, capped at €30,000, for first time buyers of a principal private residence. The relief is 10% of the house value. 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 has been amended to include the Local Authority Affordable Purchase Scheme (LAAP), with effect from 11 October 2023. The entire scheme has extended until 31 December 2025.

Vacant Homes Tax (changed)

Vacant Homes Tax will apply to a residential property occupied for less than 30 days in a 12 month period. A number of exemptions will apply to properties which are unoccupied for genuine reasons. Tax will be charged at a rate equal to five times the property's existing LPT.

Local Property Tax (varying rates) (unchanged) based on the following bands:

Bands €	Charge	Bands €	Charge
1 - 200,000	€90	962,501 – 1,050,000	€1,035
200,000 - 262,500	€225	1,050,001 – 1,137,500	€1,189
262,501 – 350,000	€315	1,137,501 – 1,225,000	€1,408
350,001 – 437,500	€405	1,225,001 – 1,312,500	€1,627
437,501 – 525,000	€495	1,312,501 – 1,400,000	€1,846
525,001 – 612,500	€585	1,400,001 – 1,487,500	€2,064
612,501 – 700,000	€675	1,487,501 – 1,575,000	€2,283
700,001 – 787,500	€765	1,575,001 – 1,662,500	€2,502
787,501 – 875,000	€855	1,662,501 – 1,750,000	€2,721
875,001 – 962,500	€945	1,750,000 +	€2,721,+0.3% on value over €1.75m

- Valuation date for LPT purposes was 1 November 2021 and determined the LPT to be paid for 2022 - 2025.
- Applies to residential (not commercial) properties.
- Applies to new homes constructed on or before the valuation date of 1 November 2021, which will be brought within the scope of LPT charges from 2022 onwards.
- Various other exemptions no longer apply.
- 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 (changed)

Standard rate/lower rate	23% / 13.5%
Electricity and gas*, and sporting facilities	9%
Flat rate for unregistered farmers (rate decreased)	4.8%
Cash receipts basis threshold	€2m

* 9% rate applying to electricity and gas extended to 31 October 2024.
** 0% rate in respect of e-books, audio books and solar panels for schools will be introduced from 1 January 2024.
** The VAT registration threshold for goods & services has increased to €80,000 and €40,000, with effect from 1 January 2024.

Deposit Interest Retention Tax (unchanged)

DIRT	33%*

* 41% rate remains for exit taxes on financial products.

Dividend Withholding Tax (unchanged)

Rate	25%*

* A modified DWT regime which was to be introduced from 1 January 2021 was deferred. Under the modified regime it is proposed to use real-time data collected under the modernised PAYE system to apply a personalised rate of DWT to each individual taxpayer.

PRSI contribution (changed), Universal Social Charge (changed)

	%	Income
Employer	11.05%/11.15%*	No limit
	8.8%/8.9%*	If income is €441 p/w or less
Employee (class A1)		
PRSI	4% / 4.1%*	No limit**
Universal Social Charge	0.5% (unchanged)	€0 to €12,012***
	2.0% (changed)	€12,013 to €25,760****
	4.0% (changed)	€25,761 to €70,044*****
	8% (unchanged)	> €70,044

* As from the 1 October 2024, the employee PRSI rate will increase from 4% to 4.1%. The employer PRSI rate will increase from 11.05% to 11.15% and from 8.8% to 8.9% where weekly income is €441 or less.
** Employees earning €352 or less p/w are exempt from PRSI. In any week in which an employee is subject to a full-rate PRSI, all earnings are subject to PRSI. Unearned income in excess of €5,000 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% band from €22,920 to €25,760.
***** 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. This concession has been extended to the end of 2025.

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

	%	Income
PRSI	4% / 4.1%*	No limit**
Universal Social Charge	0.5% (unchanged)	€0 to €12,012***
	2.0% (changed)	€12,013 to €25,760****
	4.0% (changed)	€25,761 to €70,044*****
	8% (unchanged)	€70,045 to €100,000
	11% (unchanged)	> €100,000

* As from the 1 October 2024, the PRSI rate will increase from 4% to 4.1%.
** 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% band from €22,920 to €25,760.
***** 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. This concession has been extended to the end of 2025.

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.

Rent Tax Credit (changed)

Taxpayers who are renting a property and are not receiving housing supports will qualify for a rent tax credit of €750 per annum. The credit will be doubled in the case of married couples and civil partners. The eligibility for the credit will be extended to parents who pay for their student children's rental accommodation in the case of rent a room accommodation and "digs". This change will also apply retrospectively to the tax years 2022 & 2023.

Rented Residential Relief (Landlords)

A new tax relief introduced for Landlords from 1 January 2024 will provide relief at the standard rate of tax on residential rental income. The tax relief will be as follows:

2024	€3,000
2025	€4,000
2026 & 2027	€5,000

A full claw-back of the benefit of the relief applies in the event the landlord removes from the rental market, within 4 years, any of the rental properties in year 1 when the benefit is claimed. There is no claw-back after the expiry of the 4 year period.

* The relief relates only to tenancies registered with the Residential Tenancies Board (RTB), or where a landlord lets a residential property to a public authority (including a local authority) and subject to meeting certain other conditions.
** In the case of joint ownership of a property, the relief will be divided in proportion to the percentage of the rental income to which each owner is entitled.

Tax relief for remote working (unchanged)

Income tax deduction amounting to 30% of the cost of vouched expenses for heat, electricity and broadband in respect of those days spent working from home.

Capital acquisitions tax (unchanged)

Rate	33%
Thresholds	
Group A	€335,000
Group B	€32,500
Group C	€16,250

Corporation Tax rates (changed)

Standard rate*	12.5% / 15%
Knowledge Development Box rate	10%
Land (not fully developed) and non-trading income rate	25%
Exit tax**	12.5%

* The finance bill will publish legislation to implement the 15% minimum effective rate for large companies (global turnover greater than €750 million) as provided for under the OECD Pillar Two agreement. Effective for accounting periods commencing on or after 31 December 2023.
** Applies to unrealised gains arising where a company migrates or transfers assets offshore, such that they leave the scope of Irish taxation.
*** Research & Development Tax Credit, Increase in the rate from 25% to 30% and increase in the year 1 payment threshold from €25,000 to €50,000.

Stamp duty - commercial and other property (unchanged)

7.5%* on commercial (non residential) properties and other forms of property not otherwise exempt from duty.

* There is a refund scheme available to reduce the rate of stamp duty to 2% on certain residential development property transfers. This has been extended to 31 December 2025.

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

10% on the cumulative purchase of 10 or more residential houses in a 12 month period.

Create Your Own

GRADUATE CAREER 2024

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

85 South Mall
Cork T12 A3XN

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

kpmg.ie/financeact2023
#FinanceBill

Produced by: KPMG's Creative Services. Publication Date: October 2023. (9058)