Finance Bill 2019

Smart business advisors

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Overview

On 17 October, The Department of Finance released the first draft of Finance Bill 2019. This Bill set out the proposed legislative changes required in order to implement the Budget Day announcements of 8 October.

In his Budget speech, the Minister stated that the Budget was "developed in the shadow of Brexit". That sentiment was carried through to the Finance Bill which contains a number of measures which aim to retain the status quo for certain tax measures in the event that the UK leaves the EU.

As announced in the Budget, the Bill contains only very modest reductions in the personal tax burden, including increases in the Home Carer and Earned Income tax credits. While these changes are welcome, we believe that much more needs to be done in the area of high personal taxation, in order to make Ireland more competitive.

The Bill introduces a number of significant changes to Ireland's transfer pricing regime. This includes formal documentation requirements, penalties for non-compliance, extending the scope to certain non-trading and capital transactions, and the future extension to cover significant SME transactions (subject to a Commencement Order).

The Bill introduces EU Anti-Tax Avoidance Directive (ATAD) compliant anti-hybrid rules into Irish law, with effect from 1 January 2020. The purpose of the rules is to counteract certain cross-border transactions resulting in non taxation or double deduction scenarios.

These changes were well flagged and were preceded by detailed and lengthy consultations with stakeholders. However, the Finance Bill contains a number of changes without any prior consultation, most notably with regards to the tax treatment of property owning structures. It is imperative, in order to have confidence in the stability of the Irish tax system, that Government continues to engage with businesses and their advisors on potential tax changes. BDO will continue to engage with the Department of Finance on these consultations.

On a more positive note, the Bill contains some welcome changes to the Key Employee Engagement Programme (KEEP), the Employment and Investment Incentive (EII) and the R&D tax credit regime. The combination of these changes should improve the attractiveness of Ireland's tax regime for entrepreneurs and business owners.

If you have any questions on what the Finance Bill means for you or your business, please contact any member of the BDO tax team.

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Personal Tax

Home Carer Tax Credit

The Bill confirms a €100 increase in the Home Carer Tax Credit from €1,500 to €1,600.

Earned Income Tax Credit

The Bill contains an increase of €150 in the Earned Income Tax Credit for self-employed individuals from €1,350 to €1,500.

Universal Social Charge (USC)

The Bill confirms the extension of the reduced rate of Universal Social Charge for full medical card holders whose income does not exceed €60,000 for a further year to 31 December 2020.

Living Donors exemption

The Bill extends that the relief available to exempt the reimbursement of expenses by the HSE to an individual for donation of a kidney for transplantation from Income Tax is to be extended to make the relief available to living donors who donate the lobe of a liver.

Magdalen Restorative Justice Ex-Gratia Scheme

The Bill contains an amendment to the legislation relating to the tax exemption available for payments made under the Magdalene Laundry ex-gratia scheme. The amendment is to provide additional clarity that for an individual to qualify for the relief, in all circumstances they must have received a payment under the Magdalen Restorative Justice Ex-Gratia Scheme.

Tax Treatment of Certain Payments to Carers and Foster Parents

The Bill proposes to extend the tax exemption for social welfare measures introduced in Finance Act 2018 to certain foster care related payments made by Tulsa.

Tax Treatment of Certain Training Allowances and Education-Related Payments

Sections 13 and 14 of the Bill insert new sections into the legislation which exempts from Income Tax certain training allowances paid by or on behalf of the Minister for Education and Skills and certain student support payments awarded by SUSI, Education and Training Boards or Local Authorities.

Employment Taxes

Special Assignee Relief Programme (SARP)

SARP regime is a relief from Income Tax on 30% of salary between €75,000 and €1 million to qualifying employees.

The Bill confirms the extension of the SARP regime to 31 December 2022.

Foreign Earnings Deductions (FED)

FED is relief from Income Tax on up to €35,000 of salary for employees who travel out of State to certain qualifying countries on behalf of their employer.

The Bill confirms the extension of the FED to 31 December 2022.

Key Employee Engagement Programme (KEEP)

The Bill reflects the changes to KEEP which were announced on Budget Day. The Bill provides measures to allow companies who operate through a group structure to qualify for KEEP.

The conditions relating to qualifying employees are now extended to part-time / flexible working arrangements as well as allowing movement within the group. In addition, the relief is extended to existing shares as well as those newly issued.

BIK on Electric Cars

The Bill confirms that the 0% BIK on electric cars is to be extended to 31 December 2022, this is subject to the existing vehicle value limit of €50,000.

Business Tax

Research and Development (R&D) Tax Credit

The Bill confirms the amendments of the R&D tax credit which was announced on Budget Day. The Bill confirms additional support will be provided for micro and small companies who undertake R&D activities. These include:

- Increase the R&D tax credit by 5% to 30%
- The method of calculation of the payable credit for micro and small sized companies is being enhanced. It will be based on twice the current year payroll liabilities.
- The introduction of a new provision to allow pre-trading R&D expenditure to qualify for the R&D credit, which limits to offset or repay payroll tax and VAT liabilities for the same period.
- The limit on the R&D expenditure outsourced to third level institute of education will increase from 5% to 15%.

The Bill also makes several amendments to the operation of the credit. These amendments include:

- Grants funded by any State and / or the European Union must be deducted from qualifying R&D expenditure.
- A company which outsources to third parties must notify on or before the payment date if the R&D credit is intended to be claimed.
- Aligns the penalty application of an R&D credit over claim to the penalty procedures for other credit over-claims.
- Where a payable amount or amount surrendered to a key employee is later withdrawn, any offset of losses or credit cannot be used to shelter the clawback on this amount.

Scientific Research

The Bill amends the section 765 of the Act which deals with allowances for capital expenditure on scientific research to ensure that relief for capital expenditure on buildings or structures and R&D tax credit cannot be claimed on the same expenditure.

Business Tax

Employment and Investment Incentive (EII)

The Bill confirms that from 8 October 2019, full relief of 40% of the investment will be available in the year of investment.

The maximum annual investment qualifying for relief for investors will increase to €500,000 where the investor undertakes not to dispose of the shares for a period of 10 years. In any other case, the annual investment limit will increase by €100,000 to €250,000. The increased limits will be effective from 1 January 2020.

The Bill includes several technical amendments to EII:

- Amendments to the formula for calculating a clawback where the maximum amount which may be raised through EII in a year has been exceeded.
- Investors who subscribe for eligible shares, via a designated fund, to claim relief for the year of assessment in which the amount was subscribed to the designated fund.
- The managers of a designated fund to deliver a return of the holdings of eligible shares within 30 days of receipt of a statement of qualification from the qualifying company.
- Application of fixed penalties if there is a failure to notify Revenue of an event that will result in relief being withdrawn, within 60 days of the event occurring.
- Modification of the clawback provisions in relation to share redemption to address circumstances where there is a redemption of shares by any member of its partner businesses and linked businesses.
- Clarification of when Income Tax becomes due and payable in circumstances where the relief is withdrawn because the investor ceases to be a qualifying investor.
- Update of the relevant anti-avoidance provisions.

Business Tax

Dividend Withholding Tax

The Bill confirms an increase in Dividend Withholding Tax (DWT) of 5% from 20% to 25% as of 1 January 2020. For Irish-resident individual investors, this is not a tax increase but is fundamentally a method of expediting the payment of tax on dividends. Most corporate and other foreign investors should not be affected by the rate increase.

Section 110 TCA 1997

The Bill contains amendments to broaden the definition of a specific person to increase the number of structures that will be subject to existing section 110 anti-avoidance provisions.

Investment Limited Partnership (ILP)

The Bill confirms the treatment of the income and gains arising from ILPs. The income and gains will be treated as arising or accruing to the individual partners in proportion to their share in the partnership as opposed to arising or accruing to the partnership. In addition, the Bill clarifies how losses arising or accruing to an ILP to be treated.

The Bill has made an amendment on the terminology references to a “unit” and a “unit holder” in replacing references to “partnership interest” and a “partner”.

These amendments apply to ILPs authorised under section 8 of the Investment Limited Partnership Act 1994 on or before 1 January 2020 and will be in effect in conjunction with the introduction of ATAD Anti-Hybrid Rules (explained later in document).

Purchase and sales of securities

The Bill amends the legislation so that it operates to ensure the specified criteria of the tax treatment follows the substance of the stock borrowing and repurchase transaction where they are concluded within 12 months or less.

Bank Levy

The Bill confirms an increase in the Bank Levy on certain financial institutions from 59% to 170% of the DIRT paid in the 2017 base year for payments due in 2019 and 2020.

International Tax

Transfer Pricing

Transfer pricing rules require members of a corporate group to transact with each other using arm's length prices. The Bill substantially increases the obligations of businesses to comply with arm's length requirements and expands the scope of what is subject to transfer pricing.

Effective from 1 January 2020, arm's length pricing rules extend to non-trading arrangements and large capital transactions, and all transactions must comply with updated 2017 OECD Transfer Pricing Guidelines and supplementary OECD guidance. Non-trading transactions involving two parties subject to Irish taxation are not in scope provided the arrangement has no tax avoidance motive or benefit.

Businesses are required to prepare Local File documentation if it is a member of a group with turnover greater than €50 million, and a Master File if the group has turnover greater than €250 million. Failure to prepare and provide a Local File within the 30 day requirement carries fixed penalties starting at €25,000. Failure to evidence reasonable efforts to apply arm's length pricing may be penalised by a tax-geared amount.

Small and medium-sized enterprises (SME) will remain exempt from transfer pricing rules and documentation obligations until such time the Minister effects a Commencement Order for legislation contained in the Bill.

Arrangements put in place pre 1 July 2010 are no longer exempt from transfer pricing rules as the Bill eliminates the existing grandfathering exemption provision.

Exit tax

The Bill has amended the exit tax rule which was introduced in Finance Act 2018. The amendments in the Bill include some technical changes to the exit tax provisions to counter a situation where the exit tax could have been circumvented and to correct the transposition error in the legislation introduced last year.

International Tax

Mandatory automatic exchange of information in relation to reportable cross-border Arrangements

The Bill introduces a new Chapter 3A to the Act which relates to mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning.

The regime requires intermediaries and taxpayers, in certain cases, to file a return with the relevant tax authority if involved in a cross-border arrangement that meets specified reporting criteria.

Anti-Hybrid Rules

The Bill introduces anti-hybrid rules into Irish law in order to comply with ATAD. The new rules will be applied to payments made or arising on or after 1 January 2020.

The purpose of the anti-hybrid rules is to counteract the tax advantages arising from mismatch outcomes inherent in certain cross-border arrangements which result in deduction without inclusion or double deductions.

The anti-hybrid rules apply to arrangements between “associated enterprises” and may also apply to a “structured arrangement” that is not between associated entities.

Brexit

UK residents' personal allowances and deductions

The Bill proposes to maintain the status quo for qualifying UK residents by permitting them to retain entitlement to certain personal allowances, deductions and reliefs for the calculation of their Irish Income Tax liability.

Income Tax exemption for certain payments

The Bill includes an Income Tax exemption for certain payments made on behalf of the Minister for Education and Skills for student grants. The new legislation extends this exemption to UK student support payments along with EU Member State payments in certain circumstances.

Stamp Duty on Gibraltar-regulated assurers

The Bill provides that Gibraltar-regulated assurers will continue to liable the current 1% levy on life assurance policies and 3% levy on non-life insurance policies on their Irish business in the event of the UK leaving the EU.

Corporation Tax Measures and Reliefs

The Bill provides for an amendment to subsections 2(b) and 3(d) of section 130 of the TCA 1997 to guarantee that the status quo is continued in relation to certain Corporation Tax measures or reliefs in the event of a disorderly exit of the UK from the EU.

Group Companies

The Bill includes amendments to section 616(1) of the TCA 1997 to deem the United Kingdom a relevant state for the interpretation of a group of companies. The amendment will ensure that companies which are deemed resident in the UK will continue to be seen as being in a group of companies in the event of a disorderly Brexit.

Property

Irish Real Estate Funds (IREFs)

The Bill confirms a number of anti-avoidance amendments to the taxation of Irish Real Estate Funds (IREFs).

The Bill amends the calculation of the amount on which IREF withholding tax is charged to guarantee that any gains which are reflected in the market value of the unit, but are not reflected in the accounts of the IREF are subject to IREF withholding tax.

The Bill confirms the introduction of effective restrictions on allowable interest payments. An IREF is charged with Income Tax on any excess interest resulting from two rules. The first rule places a debt cap on the IREF equal to 50% of the cost of IREF assets, where any interest on incremental debt gives rise to excess interest. The second rule limits allowable interest to 80% of IREF profits where any interest above that amount is excess interest.

The Bill also contains a general rule where Income Tax is charged on any other amount expensed in the accounts of the IREF not incurred wholly and exclusively for the purpose of the IREF business activities.

The Bill introduces a charge to tax at the fund level in certain holders of excessive rights situations, technical amendments to guarantee the section operates as planned and places the IREF return filing requirement on an annual basis.

The Bill includes an amendment to provide for a penalty for non-compliance with the IREF return requirements.

The amendments regarding restrictions on interest and market value took effect from 9 October 2019.

Stamp Duty Non-Residential Properties

The Bill provides the increase in the rate of Stamp Duty on transfers of non-residential property from 6% to 7.5%.

The former 6% rate will continue to apply where binding contracts were in place before 9 October 2019 and where the instruments for the transfers are executed before 1 January 2020.

Property

Changes to REIT Regime

The Bill has confirmed a number of amendments to the Real Estate Investment Trust (REIT) regime as announced on Budget Day. The first amendment inserts a requirement for any expense deducted when calculating REIT profits available for distribution to be incurred wholly and exclusively for the purpose of the REIT business.

The second amendment confirms that distributions containing the proceeds of property disposals are subject to DWT.

The third amendment to the regime confirms that the REIT must either reinvest the proceeds of a property disposal in the REIT property business or distribute the proceeds within 24 months. The amounts not reinvested or distributed will be treated as part of the REIT's property income, 85% of which has to be distributed annually.

Last, the fourth amendment confirms that when a REIT (or group REIT) ceases to satisfy its trust status, its assets are deemed for tax purposes to have been disposed and re-acquired, unless the REIT is in place for a minimum of 15 years.

Living City Initiative

The Finance Bill confirms the extension of the Living City Initiative in its current form to 31 December 2022.

Help to Buy Scheme

The Finance Bill confirms the extension of the Help to Buy Scheme unchanged for a further two years to 31 December 2021.

Capital Taxes

CGT Relief for Farm Restructuring

The Bill confirms an extension to the Capital Gains Tax relief available where an individual disposes and purchases land/or exchanges land with another farmer to consolidate an existing farm to 31 December 2022.

The scheme was originally due to expire on 31 December 2019.

CAT Thresholds

The Bill confirms an increase to the Group A tax free threshold which mainly applies to transfers between parents and children by €15,000, from €320,000 to €335,000 as of 9 October 2019.

Development of an e-Probate System

The Bill proposes an amendment to the legislation to allow for regulations to assist the development of an e-Probate system. This will enable Revenue to develop IT systems for filing documents as part of the e-Probate process.

This includes allowing for the online filing of the Inland Revenue Affidavit which provides an account of the deceased individual's estate.

Dwelling House Exemption

The Bill proposes an amendment to the legislation to confirm the appropriate operation of the dwelling house exemption.

The conditions of the relief are being amended to ensure that all properties inherited from the same estate are considered when evaluating eligibility for the dwelling house exemption.

Stamp Duty where a "cancellation scheme" is used for company acquisitions

The Bill confirms a Stamp Duty charge of 1% of the consideration to be paid by the acquirer where there is an agreement to acquire a (target) company and the target company enters into a Court-approved scheme of arrangement involving the cancellation of its shares in accordance with the Companies Act 2014.

This is in effect from 9 October 2019.

Indirect Taxes

Food Supplements

The Bill confirms that with effect from 1 January 2020 food supplements will be subject to VAT at 13.5%. There are a number of products that will not be affected by this change such as foods for specific groups (essential for vulnerable groups), vitamins and minerals such as folic acid licensed as medicines by the HPRA, and fortified foods.

Definition of 'Qualifying Vehicle'

The definition of 'Qualifying Vehicle' in Section 59 of the VAT Consolidation Act 2010 in the context of a right to a deduction of tax borne or paid will be amended to reflect the fact that motor vehicles that are first registered on or after 1 January 2021 will be subject to a lower CO_2 emissions threshold of less than 140g/km while motor vehicles that are first registered on or after the 1 January 2009 and up to 31 December 2020 will continue to be subject to the current CO_2 emission threshold of less than 156g/km. Accountable persons that acquire 'Qualifying Vehicles', that are used primarily for business purposes (at least 60%) can recover 20% (subject to their VAT recovery entitlement) of the VAT incurred on the hire or purchase of that 'Qualifying Vehicle'.

Inspection and removal of records

An amendment has been made to Section 108 of the VAT Consolidation Act 2010 by inserting two additional subsections which ensure that the powers contained in this Section can be used in respect of mutual assistance requests received by the Revenue from other EU Member States under the provisions of Council Regulation 904/2010/EC on administrative cooperation and combating fraud in the context of VAT.

Customs & Excise

The 2019 Finance Bill legislates for the excise measures announced by the Minister Paschal Donohoe in the Budget.

These measures include:

- An increase of 50 cent on a pack of twenty cigarettes on the most popular price category with pro-rate increases for other tobacco products.
- An increase in the carbon tax rate levied on mineral oils used as auto fuels.
- An increase in carbon tax for non-auto fuels to be introduced in May 2020.
- On foot of an ECJ ruling, from 1 January 2020, it will be an offense to use marked gas oil in private pleasure craft.
- An enhanced diesel rebate scheme was announced to benefit operators in the haulage sector. This will come into effect on the January 1st 2020.
- An increase in the production threshold for small breweries. The production threshold is raised to 50,000 hectolitres per annum, relief is granted up to 30,000 hectolitres per annum.
- A betting tax relief that will allow persons liable to betting duty and betting intermediary duty to reduce their liability by claiming a relief from such duty subject to a limit of €50,000 in a calendar year. This relief is subject to a Commencement Order.
- A number of the changes confirm that the amount of VRT payable on registering certain passenger vehicles in the State from 1 January 2020 will be partly based on the level of Nitrogen Oxide (“NOx”) emissions of the vehicle.
- Extension of certain VRT reliefs relating to hybrid electric vehicles and plug-in hybrid electric vehicles.

Other Measures

Depreciatory Transactions in a Group

The Bill confirmed an amendment to section 621 of the Taxes Consolidation Act 1997 to correct an inconsistency in the treatment of allowable losses in relation to certain share disposals that involve a corporate group.

The amendment provides that the calculation of a gain on a share disposal is now to be on a self-assessment basis. Previously, this would have been determined by the Inspector of Taxes in the first instance or by an Appeal Commissioner on appeal.

Exemption of specified non-commercial state sponsored bodies from certain tax provisions

Section 20 of the Bill amends Schedule 4 of the TCA 1997 to include Children's Health Ireland, Enterprise Ireland and the National Oil Reserves Agency Designated Activity Company on the schedule. This schedule exempts certain State-sponsored bodies from Income Tax and Corporation Tax under Schedule D, Cases III, IV and V.

Capital allowances for commercial vehicles

Section 18 of the Bill amends legislation to reduce the capital allowances available in respect of expenditure incurred on the provision or hiring of vehicles that fall with the CO2 emission categories of C and E. The provisions will apply to expenditure incurred from 1 January 2021, except in cases where a hire contract has been entered into, and the first payment is paid prior to this date.

Tier 1 Instruments

The Bill confirms the treatment afforded to Additional Tier 1 instruments is extended to cover an instrument issued by non-financial institutions. The corresponding conditions are required to be modified accordingly to ensure it is equivalent to financial institutions.

Non-residents availing of services from a resident independent authorised agent

The Bill amends section 1035A of the TCA 1997 to remove the potential liability to Irish tax that may arise to non-residents who avail of the services of an independent authorised agent who is a regulated investment or asset manager resident in the State.

Other Measures

Tax Appeals Process

The Bill confirms amendments to the tax appeals process involving notification of case management conferences and the measures relating to the staying of cases that involve Mutual Agreement Procedures (MAP) with regard to double taxation.

Non-Deductible taxes on income

Section 19 of the Bill inserts a paragraph to the legislation to clarify that taxes on income are non-deductible in calculating the amount of profits or gains chargeable to tax under Case I or Case II of Schedule D.

Pension contribution

The Bill updates the conditions contained in the Act for a company to qualify for tax relief for pension contributions made to occupational pensions scheme set up for employees of another company in specific circumstances.

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