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Finance Bill 2021 **highlights**

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Overview

On 22 October, The Department of Finance released the first draft of Finance Bill 2021. This Bill set out the proposed legislative changes required in order to implement the Budget Day announcements of 12 October.

Budget 2020 saw the enactment of the largest budget in the history of the State in an effort to deal with the adverse economic consequences of the global COVID-19 pandemic. This year the Minister speech focuses on measure to assist the country to take advantage of the expected economic bounce, tackle the housing crisis and assist taxpayers with increases in the cost of living. These initiatives are balanced with the need to address the massive increase in national debt as a result of measures introduced to reduce the affects of COVID-19 on the economy.

One of the most noteworthy announcements in the Budget was the agreement to join the new OECD Global Tax Deal, which will see Ireland introduce a new minimum effective rate of corporation tax of 15% for certain large companies, while maintaining the 12.5% rate for all other companies. As expected, these measures will not take effect in the coming year and in this regard, no legislation relating to these measures have been presented at this stage.

As announced in the Budget, the Bill contains a number of increases in standard rate bands by €1,500 and €50 increase in the personal tax credit, employee tax credit and earned income credit. It also provides details of the Remote Working Relief. The ordered phasing out of COVID-19 related supports schemes is detailed in the legislation in line with the Budget announcement.

A number of measures have been introduced in the Bill that were not announced in the Budget while some are technical amendments and anti-avoidance measure others will have more significant impact for certain tax payers. In particular, bringing non-resident companies into the corporation tax regime on rental income will have the affect of increasing the rate of tax from 20% to 25% on rental surplus generated from Irish property for non-resident corporations.

Details on the positive introduction of the Digital Gaming Tax Credit will be welcome by the Digital Gaming sector and will help attract investment in this area into Ireland.

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.

Ciaran Medlar

Head of Tax

12 October 2021

Personal Tax

Tax Credits

The Bill contains the announced increase of €50 in the Personal Tax Credit, Employee Tax Credit (PAYE Credit) and Earned Income Tax Credit for self-employed. These all move from €1,650 to €1,700.

The Sea-going Naval Personal Tax credit has been extended to 31 December 2022 but the amount remains at €1,500.

Tax Bands

The income tax standard rate band is increased for all earners from €35,300 to €36,800 for single individuals and from €44,300 to €45,800 for married couples/civil partners (with one earner).

Universal Social Charge (USC)

The Bill provides that, as announced in the Budget, the 2% band has been widened so that it applies on income of €12,013 to €21,295 from the start of 2022 - from €20,687 previously. This is to ensure that people on the national minimum wage will not see the 30 cent an hour increase push them into the 4.5% USC band.

Also, the reduced rate of 2% which currently applies to full medical card holder under 70 years of age with income of less than €60,000 will be extended for one year to the end of 2022.

Remote Working Relief

The Finance Bill gives effect to the Budget announcement to provides for income tax relief for employees who work from their home. With effect from 1 January 2022, an income tax deduction amounting to 30% of the cost of the specified amount relating to vouched expenses for heat, electricity and internet services can be claimed.

The specified amount is 30% of the amount determined by the following formula:

$$(A * B)/C – D$$

(A) is the amount of the relevant expenses incurred and defrayed by the remote worker in the year of assessment,

(B) is the number of days in the year of assessment the remote worker performed the duties of their office or employment from their qualifying residence,

(C) is the number of days in the year of assessment, and

(D) is any amount reimbursed or to be reimbursed, directly or indirectly to the remote worker in relation to those expenses by his or her employer

Personal Tax

Remote Working Relief (cont.)

The specified amount will be treated as a deduction from the employee's emoluments so the tax relief will be determined based on the employee's marginal tax rate.

Finally, the statements issued by the relevant service providers will need to be submitted to Revenue electronically. It is likely that the current Receipts Tracker on MyAccount will facilitate this submission.

Benefit-in-kind (BIK)

The Finance Bill has been amended to exempt from income tax, USC and PRSI a number of health and wellbeing related benefits provided to directors or employees.

The exempt benefits include the following:

A qualifying medical check-up

The provision of a check-up must be made available to all directors and employees and the requirement to undergo a check-up must be a requirement under the terms of their office or employment.

Health expenses

The provision of healthcare must be made available to all directors and employees. The qualifying health expenses covered by this exemption are aligned with the health expenses that can be claimed when filing a Form MED1.

Coronavirus testing

The test must be necessary for the performance of the duties of the office or employment of the director or employee, and the tests must be made available to all directors and employees of that body corporate, where necessary, for the performance of the duties of the office or employment of those directors and employees.

Influenza vaccination

The vaccination must be made to all employees and directors. An employer may also reimburse a director or employee for costs they have incurred in obtaining a vaccine independently without giving rise to a charge to tax. The requirement for the vaccine to be necessary for the employee or director to perform their role is not required for this exemption.

Personal Tax

Extension of BIK exemption for Electric Vehicles

The BIK exemption for battery electric vehicles will be extended out to 2025 but with a tapering effect on the vehicle value.

- Up to 31 December 2022 - A full exemption will continue to apply on vehicles with an original market value of €50,000 or less. A partial exemption applies on vehicles in excess of the value. This is granted by reducing the value by €50,000 when calculating the cash equivalent for the car.
- From 1 January 2023 – The full exemption will apply to vehicles with an original market value of €35,000 or less with a partial exemption thereafter.
- From 1 January 2024 – The full exemption will apply to vehicles with an original market value of €20,000 or less with a partial exemption thereafter.
- From 1 January 2025 – The full exemption will apply to vehicles with an original market value of €10,000 or less with a partial exemption thereafter.

The €5,000 relief for Battery Electric vehicles is being extended to the end of 2023.

Taxation of International Flight Crew

Employment income arising to a flight crew member in respect of an employment exercised aboard an aircraft, operated in international traffic, where the place of effective management of the enterprise operating the aircraft is in Ireland, is currently within the scope of the Irish PAYE system.

The amendment in the Finance Bill will provide an exemption from this provision applying where the individual is:

- resident in a Double Tax Treaty country; and
- subject to tax on this income, either in their country of residence or another DTA country.

This amendment will come into operation with effect from 1 January 2022.

Personal Tax

Wage Supports

As announced on Budget Day, the Employment Wage Subsidy Scheme (EWSS) will remain in place in its current form up to 30 November 2021.

The Scheme will then be wound down over the period to 30 April 2022.

The following are the broad parameters:

- businesses availing of the EWSS on the 31st of December 2021 will continue to be supported until the 30th of April 2022,
- across December, January and February, a two-rate structure of €151.50 and €203 will apply,
- for March and April 2022, the final two months of the scheme, a flat rate subsidy of €100 will be put in place. The reduced rate of Employers' PRSI will no longer apply for these two months,
- the scheme will close to new employers from the 1st of January 2022, and
- eligibility for the scheme will continue to be a 30% reduction in turnover/customer orders in the full year 2021 as compared to the full year 2019.

Pandemic Placement Grant

The Pandemic Placement Grant made by or on behalf of the Minister for Health to student nurses and student midwives will be exempt from income tax, USC and PRSI. The exemption applies to a maximum amount of €2,100 per student nurse/midwife.

Debt Warehousing

Finance Bill 2021 proposes to expand the tax debt warehousing scheme to allow self-assessed income taxpayers with employment income who have a material interest in their employer company to warehouse income tax liabilities relating to their Schedule E income from that employer company.

A further amendment will prevent two interest charges arising in instances where both the person and their employer company are availing of debt warehousing, and both are liable for the tax due on the person's salary. In these circumstances interest on the tax due on the person's salary will be collected from the employer only unless an employer fails to pay the liabilities and interest on those liabilities, in which case, the employee will be liable for the interest on any amount of Schedule E liabilities remaining unpaid.

Personal Tax

PAYE - Debt Warehousing

Directors with a material interest in a company will not be given credit for PAYE tax deducted from payments made to them by the company unless tax has been remitted to the Collector-General.

The Debt Warehousing provisions introduced in 2020 required a company to operate PAYE on payments made to directors and employees but the remittance of these taxes could be deferred.

The unintended consequence was that certain directors, whose company has warehoused PAYE debt and who are subject to self-assessment, were denied a credit for the PAYE warehoused by the employer. This effectively accelerated the payment of that tax and left them liable for interest if not paid in time.

In order to address this issue, the Finance Bill introduced an amendment to enable the director to warehouse the income tax liability arising on this employment income only. In addition, a further amendment was introduced to remove an interest charge on a director where both the director and their employer company are availing of debt warehousing, and both are liable for the tax due on the person's salary.

In these circumstances interest on the tax due on the director's salary will be collected from the employer only. However, if an employer fails to pay the liabilities and interest on those liabilities, the employee will be liable for the interest on any amount of Schedule E liabilities remaining unpaid.

Personal Tax

The below Carbon Tax measures were confirmed in Budget 2021, however, as they are in line with the schedule for Carbon Tax rates for the period 2021-2030 that was legislated for in the 2020 Finance Act, no legislation is required in Finance Bill 2021 in this regard.

The Carbon Tax was raised by €7.50 per tonne of CO_2 emitted.

A litre of diesel will rise by 2.5 cent – or €1.48 for the average full tank – while petrol will increase by 2.1 cent -or €1.28 on a full tank. Home heating oil is also set to rise from May 1st next year, up by €19.40 for a 900 – litre tank.

Tax treatment of income from micro-generation of electricity

As announced in the Budget, the Bill includes an exemption from tax the first €200 of income arising from the domestic generation of electricity supplied to the grid. It is noted that this is intended to allow better engagement with the Clean Energy Guarantee Scheme.

Accelerated Capital Allowance scheme for Energy Efficient Equipment

The Bill includes the proposed measures that will be introduced to amend the Accelerated Capital Allowance (ACA) scheme. These amendments will allow taxpayers to deduct the full cost of expenditure on highly energy efficient equipment from taxable profits in the year of purchase.

The announced amendments to prohibit equipment directly operated by fossil fuels from qualifying for accelerated capital allowances are also included in the draft Finance Bill. As is the extension to 31 December 2024 to the ACA scheme for Gas Vehicles and Refuelling Equipment Scheme and the expansion of the scheme to encompass hydrogen-powered vehicles and refuelling equipment.

Business Taxes

Digital Gaming Tax Credit

The Bill confirms that a Digital Gaming Tax Credit will be made available in an effort to encourage job growth in the sector. The relief will be provided for as a credit in the amount of 32% of the qualifying expenditure, subject to a minimum spend of €100,000 and a spend cap of €25 million.

Some of the key points set out in the Bill include:

- Expenditure across the design, production and testing of a digital game should be considered as qualifying expenditure.
- The tax credit will not be available in respect of digital games produced mainly for the purpose of advertising or gambling.
- There will be a requirement that a cultural certificate is attained for any games to be considered under this tax credit regime.
- The company must be resident in Ireland, or resident in another European Economic Area State and be carrying on activities in Ireland through a branch or agency.
- The tax credit will not be available to companies who are part of an undertaking in difficulty.
- It should be possible to make a reclaim for costs incurred either on an annual basis, or on completion of the development effort.
- The credit will be available for offset against corporation tax liabilities of the company, with any excess then repayable as a cash refund.

The exact date of implementation of this new tax credit is unknown at present as European State aid approval is required but we would expect that this should be done in 2022.

Business Taxes

Tax Relief for New Start-up Companies

As announced in the Budget, there has been an extension of the Tax Relief for New Start-up Companies in Finance Bill 2021.

The relief first introduced by Finance (No. 2) Act 2008 provided for a three-year exemption from corporation tax. The relief reduces the corporation tax payable by a new trade on the profits of the trade and gains on the disposal of any assets used for the purposes of the trade. The quantum of the relief available is linked to the amount of Employers' PRSI paid by the company. Full relief is available where the corporation tax liability does not exceed €40,000 and Marginal relief is also available where the tax liability is between €40,000 and €60,000.

The relief which has been extended three times previously in 2014, 2015 and in 2018 and was due to expire on 31 December 2021 has now been extended until the end of 2026. The relief will now also apply to any company which commences a new trade between 1 January 2022 and 31 December 2026. Companies that commence a qualifying trade on or after 1 January 2018 will be able to avail of the relief for up to five years, instead of the current three years.

Following a review of the relief it was found that Covid pandemic supports have had a large impact on the availability and benefits of the relief. Companies in certain sectors have been severely affected by public health measures as a result of the pandemic. Many businesses have faced closures which has in turn reduced employment numbers. COVID-19 support schemes, such as the Employment Wage Subsidy Scheme (EWSS) and Temporary Wage Subsidy Scheme (TWSS) have further reduced the Employer PRSI payable. As the relief is calculated by reference to the Employers' PRSI payments the benefits that this relief provides has been reduced significantly.

Employment Investment Incentive (EII) Scheme

Extension of Scheme

As outlined in the Budget, Finance Bill 2021 extends the Employment Investment Incentive (EII) Scheme for a further three years to 31 December 2024.

Investment Funds

In line with the comments made by Minister Donohoe in his budget day speech that the EII scheme "has yet to reach its potential" in financially supporting Irish businesses in their start-up years and the wider economy through job creation, Finance Bill 2021 intends to open up the EII scheme to a wider range of investment funds for investing in Irish SMEs. Under the current legislation, the only Funds through which an investment in Irish qualifying SMEs can be made is a "designated investment fund", as designated by the Revenue Commissioners. A designated investment fund must, amongst other conditions, be a fund formed under the Designated Investment Funds Act 1985.

Business Taxes

Investment Funds (cont.)

Measures included in the Bill provide, a "qualifying investment fund" whose investment in qualifying companies on behalf of individuals may also be eligible for the EII scheme. The type of entity falling within this definition relate to the following;

1. A "limited partnership", registered under the Limited Partnerships Act 1907 and managed by an alternative investment fund manager in accordance with the relevant EU regulations
2. An "Investment limited partnership" i.e. a partnership authorised under the Investment Limited Partnerships Act 1994.

Both categories of "qualifying investment fund" must have a partnership agreement in place outlining its principal business as being the investment of funds in accordance with a defined investment policy for the benefit of its investors.

This is a welcome development as it opens up the EII scheme to a broader range of funds which should entice further investment towards Irish SMEs and job creation. This is particularly timely as businesses continue in their attempts to recover from the impact on Covid on their business plans and operating markets.

Claw back Provisions for Extended Years

Finance Bill 2021 outlines that for shares issued on or after 1 January 2022, 10/40ths of the relief granted can be subject to claw back unless 3 years after the eligible shares are issued:

1a. The number of qualifying employees has increased by at least 1 <u>and</u>

1b. The total emoluments paid to full time qualifying employees after 3 years is greater than the total amount paid to qualifying employees in the year before the issue of eligible shares. The amount by which it should be greater is at least the wages of one qualifying employee.

or

2. The amount of expenditure on Research and Development and Innovation ("R&D+I") incurred at the end of the period that the 3 years ends is greater than the R&D+I incurred in the year before the issue of eligible shares.

The Finance Bill also outlines how any withdrawal of relief arising on shares issued on or after 1 January 2022 will be administered. The withdrawal of relief will be achieved by the making of an assessment on the qualifying company to corporation tax under Schedule D, Case IV for the fourth year of assessment after the year that the eligible shares were issued. The amount of the assessment on the company will be equal to 0.4 times the 10/40ths amount of relief granted referred to above.

Business Taxes

Company Self-Assessment and Statement of Qualification ("SOQ")

As announced in the Budget, the requirement that 30% of the funds raised under an EII fundraise had to be spent before the qualifying company could proceed with its self-assessment for EII eligibility has been removed in the Finance Bill.

Also, Finance Bill 2021 shortens the length of time within which a qualifying company can issue an SOQ to a qualifying investor to allow them claim their income tax relief. This has been reduced from within 2 years from the end of the year of assessment in which the shares were issued to 4 months after the end of assessment in which the shares are issued. Also, the company is now required to file its RICT return with Revenue, which outlines the EII funds raised and eligible shares issued, by no later than 4 months after the end of the year of assessment in which the shares were issued.

These are very welcome developments as there has been a significant administrative burden on start-up businesses to both track the percentage rate of expenditure of EII funds and ensure all EII funds were allocated to a qualifying purpose. The removal of the 30% spend requirement should make the EII scheme more attractive to investors as there should now be more clarity on the timing of when they can expect to get the benefit of the tax relief.

Similarly, the shortening of the time within which a company can issue the SOQs to investors to allow them to claim their tax relief should also increase the attractiveness of the scheme as previously an investor may have had to wait up to two years after investing their funds before they received their SOQ (and often a lot longer prior to the introduction of the SOQs).

The above measures are aimed to help allow the scheme to operate more efficiently and grant income tax relief to qualifying investors in a timely manner. This may help ease concerns and frustrations experienced by individuals who previously made EII investments and suffered significant delays in obtaining the relevant EII certificates from Revenue to claim their income tax relief. It may have been helpful if Minister Donohoe acknowledged these frustrations and committed to providing Revenue with the relevant staffing and resources necessary to close out all legacy cases as a matter of priority. This may have further allayed frustrations of investors arising from previous negative experiences in claiming the relief.

Relaxation of Rules around the Capital Redemption Window

Under existing rules, a qualifying company with pre-existing EII investments can redeem shares, from any member other than an investor who is within the compliance period of their EII shareholdings (commonly known as the “capital redemption window”) without triggering a clawback of EII relief in certain limited circumstances. However, if an individual investor has multiple investments year on year, each will have its own compliance period. Each compliance period for that investor has to be completed before any transaction can occur whereby the company could return capital to the individual without resulting in a clawback.

Business Taxes

Relaxation of Rules around the Capital Redemption Window (cont.)

For example, this implies that if an individual made an EII Investment in 2020 (Investment 1 and whose compliance period would end in 2024) and another EII investment in the company in 2021 (Investment 2 whose compliance period would end in 2025), that individual would have to wait until 2025, when the compliance period of Investment 2 has ended, before they could realise Investment 1 without triggering a clawback of relief.

Finance Bill 2021 allows that where an individual has multiple EII investments in a qualifying company and the company redeems shares of that individual (or the individual disposes of their EII shares), where the compliance period for the share issue which is subject to the redemption or disposal has ended, no clawback of relief will arise on any separate EII investment that individual made in the company.

Therefore, in our example above and under the revised rules set out in Finance Bill 2021, the individual could realise Investment 1 in 2024, when the compliance period for that specific share issue ends. This should not then result in any clawback of relief obtained from Investment 2 in consequence of Investment 2 still being within its compliance period until 2025.

Business Taxes

Agri-Business

The Bill confirms the extension to a number of reliefs relating to the Agri Sector. These include:

1. The extension of General Stock Relief for farming trades to 31 December 2024. This relief provides for a 25% tax deduction for the increase in farm trading stock. The relief was due to expire on 31 December 2021.
2. Stock Relief at a rate of 100% for young-trained farmers is extended to 31 December 2022. This relief was due to expire on 31 December 2021.
3. Stock Relief at a rate of 50% for farmers who are partners in registered farm partnerships is extended to 31 December 2022. This relief was also due to expire on 31 December 2022.
4. Lastly, the Young Trained Farmer stamp duty relief is also extended to 31 December 2022. This provides for relief from stamp duty on the transfer of agricultural land to Young Trained Farmers.

The Minister commented in his Budget speech that it is hoped that these reliefs can be further extended pending EU State Aid negotiations.

Section 481 Film Relief

A technical amendment which was not announced in the Budget is included in relation to the above relief. The measure confirms the existing practice that allows that the definition of 'qualifying expenditure' to include labour-only services on the production of a qualifying film.

Dividends paid out of foreign profits

Section 129A TCA 1997 prevent dividend paid out of profits earned when a company was resident outside the State from being treated as franked investment income. The Bill includes an amendment to Section 129A to correct an anomaly that could occur where interim dividends are paid out of current year profits. This measure was not announced in the Budget.

Merger by absorption (section 617A and section 630 TCA 1997)

The Bill introduces measure to confirm that mergers by absorption (both domestic and international) do not give rise to chargeable gains.

Business Taxes

Tax Appeal Procedures

To address administrative difficulties, the Bill includes measure that extend the period in which the Appeal Commissioner must complete and sign a case stated for the purpose of an appeal to the High Court by a maximum of 42 days.

State body exemptions

The measures include the designation of two State-sponsored bodies to the list of exempt bodies, namely the Approved Housing Bodies Regulatory Authority and the Western Development Commission.

Exemption from transfer pricing rules for certain Irish-to-Irish transactions

The Bill includes an overhaul of Section 835E which relates to the exemption from transfer pricing rules for certain Irish-to-Irish transactions. The Irish-to-Irish exemption was initially introduced in Finance Act 2019, however has caused difficulties with affected taxpayers, with Finance Act 2020 including a re-write of 835E, subject to a Ministerial Commencement Order (which was not enacted), and subsequently the modifications to the exemption proposed in Finance Bill 2021.

The scope of the exemption has been broadened to allow for a wider range of scenarios to qualify for the exemption, as opposed to the narrow set of criteria that were required previously.

Furthermore, certain transactions that are not within the charge to tax are also able to avail of the exemption, meaning that there is no longer the requirement for Irish-to-Irish transactions to include a nominal fee in order to meet the requirements of the exemption.

The updated rules on exemptions from transfer pricing rules for certain Irish-to-Irish intercompany transactions comes into effect for accounting periods commencing on or after 1 January 2022.

International Taxes

Attribution of Profits to Permanent Establishments

The use of the “Authorised OECD Approach” and the OECD’s Attribution of Profits to Permanent Establishments guidelines have been applied in practice for quite some time, however the Finance Bill introduces these measures for incorporation into the Taxes and Consolidation Act for the first time.

The OECD’s Multilateral Instrument, Model Tax Convention, as well as many of Ireland’s Double Tax Agreements have included provisions on attributing profits to PE’s, however the introduction of the Authorised OECD Approach according to the Finance Bill brings forward more clarity on the treatment of PE’s from an Irish domestic transfer pricing perspective.

The Bill introduces a transfer pricing documentation requirement for PE’s, with similar information required for the PE documentation that is found in a company’s Local File under Section 835G.

The documentation requirement mirrors that of the transfer pricing Local File requirement for companies, in that it includes a potential penalty protection provision for PE’s that prepared their documentation by the tax filing deadline, as well as a requirement that PE’s submit their documentation to Revenue within 30 days of request, or be subject to penalties of up to €25,000 + 100 per day.

PE’s which are part of Small and Medium-sized Enterprises (SME’s) are exempt from preparing documentation, however in a notable divergence from transfer pricing documentation rules in Section 835G, PE’s with attributable income to the PE of less than €250,000 are also exempt from the documentation requirement.

The new rules for the attribution of profits to PE’s come into effect for accounting periods commencing on or after 1 January 2022.

International Taxes

Interest Limitation Rules

Finance Bill 2021 legislates for the transposition of the Anti-Tax Avoidance Directives. The Bill introduces a limit on deductible interest expenses of 30% of EBITDA for companies within scope of the measure, for accounting periods commencing on or after 1 January 2022.

The Bill confirms the de minimis amount of €3,000,000 for a 12 month accounting period, pro-rated in respect of shorter accounting periods.

The Bill includes an exclusion from profit of any income or expenses directly connected with a qualifying long-term infrastructure project. To qualify for the exclusion the project must be to provide, upgrade, operate or maintain a large scale asset and:

- The operator must be established and tax resident in a Member State
- The asset must also be in a Member State and
- The interest income and deductible interest must arise in a Member State

The assets must have a minimum expected life span of 10 years.

The Bill recognises the impact this change will have on investors where they had an agreement in place prior to 17 June 2016. Therefore, they have allowed for a deduction where the deductible interest equivalent in respect of the legacy debt is deducted when calculating the net interest equivalent.

Disallowed interest may be carried forward and may be deducted in future years if the company has sufficient interest capacity.

Total spare capacity, which is the aggregate of interest spare capacity and limitation spare capacity, can also be carried forward for a period not exceeding 60 months from the end of the accounting period in which it arose.

The Bill provides for Standalone entities, to ensure they are not in scope. A Standalone entity means a company that is:

- Resident in the state
- Not a member of a worldwide group
- Has no associated enterprises and
- Does not have a permanent establishment in a territory other than the state

The Bill allows Companies to operate the restriction on a single entity or local group basis.

International Taxes

Interest Limitation Rules (cont.)

The Bill includes an Equity Ratio calculation where a relevant entity can make an election in respect of an accounting period and the interest limitation rules shall not apply to the relevant entity for that accounting period. The election can be made where:

- the relevant entity's ratio of equity over total assets is greater than, equal to or not more than two percentage points less than the worldwide group's ratio of equity over total assets, calculated on the basis of the ultimate consolidated financial statements relating to the period in which the relevant entity's accounting period ends, or
- the relevant entity is a member of a single company worldwide group, the relevant entity's ratio of equity over total assets is greater than, equal to or not more than two percentage points less than the single company worldwide group's ratio of equity over total assets calculated on the basis of the financial statements relating to the period in which the relevant entity's accounting period ends.

Modernisation of Revenue's pay and file system for the collection of certain banking and insurance levies

The Bill includes a number of amendments to the Stamp Duties Consolidation Act 1999 (SDCA 1999) designed to provide a legislative basis for Revenue's modernisation programme for how it collects certain stamp duties on insurance policies, financial cards and cheques. The pay and file system for the collection of these stamp duties is to be streamlined and fully automated, replacing a complicated system of manual returns and varied payment methods.

Property

Non-resident Corporate Landlords

In a measure that was not announced in the Budget, Finance Bill 2021 will introduce an amendment to bring non-resident corporate landlords in receipt of Irish rental income within the charge to corporation tax.

Non-resident corporate landlords that do not carry on a trade in the State through a branch or agency are currently within the charge to income tax at the standard rate of 20%, rather than corporation tax of 25%. Several amendments have been proposed to bring companies not resident in the State that are in receipt of Irish sourced rental income within the charge to corporation tax, in place of the income tax charge which currently applies.

The change will align the tax treatment of non-resident corporate landlords with that of Irish resident companies that are liable to 25% corporation tax on Irish rental income and will be subject to the new ATAD interest limitation rule when introduced.

The Bill includes measures provides that current allowances and loss forward that are treated as income tax items will be transferred across to the corporation tax treatment.

The measure will apply to rental income accrued from 1 January 2022.

Zoned Land Tax

The Bill legislates for a new Zone Land Tax (ZLT), the purpose of which is to encourage the development of housing on zoned and serviced residential land.

The rate of tax will be 3% of the market value of the land and there will be no minimum size exclusion. This is to ensure that smaller sites in urban areas will be captured.

The tax will apply to land that is serviced and zoned for residential or mixed-use purposes. Land that is affected by physical issues such as contamination will not be subject to the tax.

There will be a number of exclusions from the ZLT:

1. Land that is zoned residential that consists of existing dwellings and their surroundings, amenities and infrastructure requirements, or business essential to the fabric of the community will be excluded. Land that is zoned residential but used for commercial purposes (including farmland) will be subject to the tax.
2. Land that is zoned for mixed use and is in use for commercial business (including farmland) will be excluded. Land that is vacant or idle or is not integral to business will be subject to the tax.

Local Authorities will prepare maps identifying the zoned residential serviced land that will be within the scope of the tax and these maps will be updated annually. The draft maps must be published by 1 November 2022.

Property

Zoned Land Tax (cont.)

There will be an appeals process available to a person who disputes the inclusion of their land on the map. There will also be an option to apply to have land de-zoned where it is currently zoned residential and is serviced. This process will follow the normal local authority procedures.

Once residential construction has started on a site, payment of the tax will be suspended, but the charge to the tax will accrue. If the development is delivered on schedule in accordance with the terms of the planning permission, no further tax will be payable.

Land zoned before January 2022 will become liable for the tax from 1 January 2024, while land zoned after January 2022 will become liable for the tax three years from when the land first satisfies the relevant criteria.

The tax will operate on a self-assessment basis and will be administered by the Revenue Commissioners.

Help-to-Buy Scheme

The Help to Buy incentive is a scheme for first-time home buyers. The Bill has extended the scheme to December 2022 in its current form, offering first-time buyers a tax rebate of up to €30,000. A full review of the scheme will also be carried out over the course of next year.

Extension of pre-letting expenses for landlords

The Bill extends the availability of tax relief for pre-letting expenses of landlords for a further three years, until 31 December 2024, where the property has been vacant for 12 months.

Stamp Duty on certain acquisition of Residential Property

The Finance (Covid 19 and Miscellaneous Provisions) Act 2021 legislated for the introduction of Section 31E of the Stamp Duty Consolidation Act 1999. This section applies a 10% stamp duty charge to the purchase of 10 or more residential properties in any 12-month period, subject to some exemptions. The Bill has made a number of technical amendments to the legislation, however none of these change the purpose or substance of same:

- The exclusion of apartments from the scope of the higher rate is reinforced
- It has been clarified that “acquisition” of the residential units also refers to indirect acquisition such as by way of shares in a company in which the units are held
- It has also been clarified that the acquisition of a residential unit that has an existing social housing lease in place does not qualify for the exemption available to units that are leased for social housing purposes on the same day that they are acquired

Capital Taxes

Capital Acquisitions Tax

The Bill includes amendments to the provisions dealing with the delivery of returns. The amendment requires that, where requested by the Revenue Commissioners, the disponer of a gift which comprises agricultural property (where agricultural relief applies) or relevant business property (where business relief applies), must deliver a return to the Revenue Commissioners in respect of such gifts.

The Bill includes an amendment to how a gift or inheritance comprising the free use of money is valued. The amendment inserts a new provision and provides that in the case of a gift or inheritance of the free use of money, the value of that gift or inheritance is to be determined by reference to the best price obtainable of borrowing an equivalent sum in the open market. The Revenue CAT Manual had previously stated that the value in this instance would be regarded as the price a prudent lender/depositor could get in the open market.

Indirect Tax

VAT Groups

The Bill amends the VAT Grouping rules whereby a fixed penalty of €4,000 shall apply for each VAT period in which Revenue are not notified of any changes by which the VAT Group no longer meet the qualification criteria. Such a notification to Revenue must be made in writing within 30 days after the end of the VAT period during which the change occurred.

In addition, the Bill provides that the secretary of the relevant entity shall also be liable to a separate fixed penalty of €4,000 for each VAT period in which Revenue are not notified.

Cancellation Deposits

The Bill gives effect to previous judgments of the Court of Justice of the European Union which provides that VAT is due on early termination or cancellation fees in certain circumstances (e.g. fixed term contracts).

Covid-19 – VAT Rate Changes

The Bill formally legislates for the temporary application of the zero rate of VAT to the supply of Covid-19 vaccines, the supply of Covid-19 in-vitro diagnostic medical devices (testing kits) and services closely linked to both to 31 December 2022.

The Bill also provides for a VAT exemption on the importation of goods by, and the zero-rating of goods and services supplied to, the European Commission or to an agency or a body established under EU law, in the execution of tasks conferred by EU law in responding to the Covid-19 pandemic, where those goods or services are not for onward supply for consideration.

Flat-Rate Addition

As outlined in the Budget, the Bill confirms that with effect from 1 January 2022, the flat-rate addition for farmers will reduce from 5.6% to 5.5%.

Section 56 Authorisation

The Bill clarifies that in order to qualify for VAT 56 Authorisation and avail of the zero rating of certain purchases, a “qualifying person” must derive 75 per cent or more of its turnover from intra-community supplies of goods, exports, and certain supplies of contract work.

Ministerial Refund Orders

The Bills provides that Revenue can seek the repayment of VAT incorrectly claimed under a Ministerial Refund Order.

Customs & Excise

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

These measures include:

Excise

An increase of 50 cent on a pack of twenty cigarettes on the most popular price category and pro-rate increases for other tobacco products

Granting of up to 50% excise relief to independent small producers of cider and other fermented drinks in accordance with Council Directive (EU) 2020/1151.

VRT

An increase in VRT rates above band 8.

Extension of certain VRT reliefs relating to hybrid electric vehicles and plug-in hybrid electric vehicles.

Other measures

A number of other measure have been covered by Finance Bill 2021 namely:

1. Obligation to keep certain records.
2. Deposit interest earned by a trust upon which DIRT has been deducted will be subject to the 33% rate of tax.
3. A number of amendments have been made to the criteria for the tax defaulters publication list. Most notable is that the publication threshold for publication on the list of defaulters has increased from €35,000 to €50,000.

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