



# FINANCE BILL 2019 HEADLINES

**17 OCTOBER 2019**

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## Income Tax

The Bill contains provisions to enact the minor income tax changes announced by the Minister in his Budget speech but there are no material additional measures.

### ***Self employed***

As announced in the Budget, the Bill increases the tax credit for self-employed individuals by €150 from €1,350 to €1,500.

### ***Home Carers***

The Bill increases the home carer's tax credit by €100 from €1,500 to €1,600.

### ***Special Assignee Relief Programme ("SARP") & Foreign Earnings Deduction ("FED")***

As announced on Budget Day, the Bill contains provisions to extend the SARP and FED programmes to 31 December 2022..

### ***BIK on electric cars***

The Bill extends the availability of the 0% BIK for electric cars and vans with a market value of less than €50,000 to 31 December 2022. Where the vehicle cost exceeds €50,000, BIK at the standard rates will only apply to the excess.

The Bill also sets out a new charging regime for employer provided cars from 1 January 2023 that will be based on kilometres travelled and the carbon dioxide emission levels of the car. The BIK on vans will increase from 5% to 8% of the original market value of the van from 1 January 2023.

### ***Key Employee Engagement Programme (KEEP)***

The KEEP scheme provides for tax relief for certain share remuneration provided to key employees by unquoted SMEs. The Bill confirms the Budget Day announcements of amendments designed to make the scheme more workable in practice.

The amendments extend the relief to companies that operate through certain corporate group structures. Furthermore, the amendments also allow for part-time/flexible working arrangements and the movement of employees between qualifying companies in the group. The relief is also extended to existing shares as well as those newly issued.

These amendments represent progress in dealing with the technical conditions that have made KEEP difficult to operate. The Bill has not however dealt with all of the practical issues and for

example the valuation difficulties imposed on unquoted SMEs when issuing KEEP options have not been addressed with any practical measures.

### ***BREXIT***

There is a practical measure to supplement the definition of the EU with the UK with effect from a BREXIT date for the purposes of allowing UK individuals with Irish income to continue to retain certain personal allowances, deductions and reliefs.

### ***Exemption for training allowance and certain education related payments***

There are provisions providing exemption from income tax for training allowance payments and certain payments for education supports.

### ***Help to Buy Scheme***

There are provisions extending the Help to Buy Scheme by two years to 31 December 2021.

### ***Pensions***

There are provisions to provide tax relief for pension contributions made by a company to occupational pension schemes set up for employees in certain defined circumstances relating to corporate restructurings, mergers, divisions and joint ventures. Otherwise, there are no other pensions related measures.

## **Business Taxation**

### ***Transfer Pricing***

As expected, the existing transfer pricing regulations have been amended and extended in their scope and application. Transfer pricing rules will now apply not only to trading transactions but to all other transactions where the profits or gains arising are within the charge to Irish tax. In relation to the computation of capital allowances and chargeable gains, transfer pricing rules will only apply in respect of transactions relating to assets that have a market value in excess of €25m. Certain exclusions from the rules are allowed for transactions between associated Irish entities (for example a group company renting a premises to another group company).

Increased transfer pricing documentation requirements have also been introduced. Small and medium enterprises will have reduced transfer pricing requirements.

The amended transfer pricing rules will apply for chargeable periods commencing on or after 1 January 2020. In addition for periods commencing on or after 1 January 2020 the grandfathering arrangements for transactions entered into on or before 1 July 2010 will no longer apply.

Section 110 companies are being excluded from the new transfer pricing rules, though they will be subject to additional anti-avoidance provisions legislated for separately.

### ***Research & Development (R&D) tax credit regime***

As announced in the Budget, the Bill make certain improvements to the R&D tax credit regime. The measures, which are subject to State aid approval from the European Commission, include:

- An increase in the R&D tax credit rate from 25% to 30% for small and micro businesses.
- An enhanced method for small and micro businesses to calculate the payable element of the R&D tax credit.
- A new provision to allow certain pre-trading R&D expenditure incurred by small and micro businesses to qualify for an R&D tax credit.
- Increasing, from 5% to 15%, the allowable limit on R&D expenditure outsourced to universities or institutes of higher education.

The Bill also makes several other changes to the R&D tax credit regime including:

- Providing that grants funded by any State and/or the European Union must be deducted from qualifying R&D expenditure.
- Imposing certain new notification requirements on a company which outsources R&D to third parties.

### ***Employment Investment Incentive***

As announced in the Budget, the Bill makes a number of amendments to the Employment Investment Incentive (EII). The main changes are to provide for full tax relief in the year in respect of which the investment is made, and to increase the overall maximum investment relief from the current maximum of €150,000 to €250,000 and €500,000 depending on the length of the investment (4 years and 10 years respectively).

The Bill also includes some additional anti-avoidance measures such as clarifying that if a company buys back, redeems or repays any shareholder for shares in the company using EII investments within the compliance period, then there will be a reduction in the relief granted to all EII investors as a result.

## **Section 110**

The Bill amends Section 110 of the Taxes Consolidation Act 1997 which deals with the taxation of securitisation companies. In conjunction with the changes being introduced in the Bill to the transfer pricing regime, the Bill amends the provisions in Section 110 related to the deductibility of interest on certain profit participating notes. Profit participating notes are carved out of the transfer pricing regime, but additional anti-avoidance provisions are being introduced in order to strengthen the existing protections against abuse of the securitisation regime. These amendments broaden the definition of a “specified person” to increase the number of structures that will be subject to anti-avoidance provisions. The amendments also reframe the tax avoidance main purpose test on an objective basis.

## **Hybrid Mismatches**

The Bill introduces anti-hybrid rules as required by the EU Anti-Tax Avoidance Directives (“ATAD”). The legislation applies to payments made or arising on or after 1 January 2020.

The anti-hybrid rules aim to prevent arrangements that exploit differences or “mismatches” in the tax treatment of a financial instrument or an entity under the tax laws of two or more jurisdictions to generate a tax advantage. The Bill outlines a number of specific situations that give rise to a mismatch outcome, including double deduction, deduction / non-inclusion and withholding mismatches.

ATAD anti-hybrid rules apply to all corporate taxpayers with no de-minimis threshold and apply to arrangements between associated enterprises and certain “structured arrangements” not between associated entities, where a mismatch outcome is priced into the terms of an arrangement or an arrangement is designed to produce a mismatch outcome.

The anti-hybrid rules will apply a “primary rule” to neutralise the hybrid mismatch in the country where the benefit from the mismatch arises and a “defensive” rule to neutralise a mismatch where the mismatch is not neutralised by a primary rule. For each of the mismatch situations provided for in the legislation, the primary rule will seek to deny the entity a tax deduction in the State in respect of the relevant payment. The defensive rule only applies in certain circumstances to either deny a deduction or to include the relevant payment as taxable income of the entity.

## **Investment Limited Partnerships**

The Bill amends existing legislation related to the taxation of Investment Limited Partnerships (“ILPs”) such that the income and gains of an ILP are treated as arising or accruing to the individual partners in proportion to their share in the partnership rather than arising or accruing to the partnership. The Bill also makes some technical amendments to replace references to a “unit” and a “unit holder” with references to a “partnership interest” and a “partner” and to clarify how losses arising or accruing to an ILP are treated. These amendments apply to ILPs that are granted authorisation under Section 8 of the Investment Limited Partnership Act 1994 on or after 1 January 2020.

***Repos and stock lending***

The Bill provides for new legislation on the tax treatment of stock borrowing and repurchase (repo) arrangements. In substance, both stock borrowing and repo agreements are a form of short-term lending and are accounted for as such. The legal form of the transaction involves the temporary transfer of the legal title of stock between parties with a view of a reversal in the future. This legislation operates to ensure the tax treatment follows the substance of such transactions where they are concluded within 12 months or less (being a short-term loan) where specified criteria are met.

***Emissions-based limits on certain cars***

The Bill provides for an amendment to the existing regime of tax relief for expenditure incurred on business cars. The CO2 emissions thresholds which determine the amount of expenditure on business cars that can qualify for tax relief are adjusted downwards. The new rules will generally apply to expenditure incurred from 1 January 2021.

***General rules on deductions***

The Bill clarifies that taxes on income are not deductible in computing the amount of profits or gains chargeable to tax. This clarifies Revenue's view with regard to such taxes. The Bill also provides a definition of doubtful debts for corporation tax purposes.

***Tax treatment of Additional Tier 1 instruments***

The Bill extends the tax treatment afforded to Additional Tier 1 instruments which are issued by financial institutions to meet certain regulatory capital requirements to comparable instruments issued by companies other than regulated financial institutions.

***Dividend withholding tax (DWT)***

As announced in the Budget, the Bill increases the applicable rate of DWT from 20% to 25% with effect from 1 January 2020.

## Property

### *REITs and IREFs*

The Bill includes a number of anti-avoidance provisions applicable to REITs and IREFs.

On REITs, the Bill provides for an expansion of dividend withholding tax on distributions of proceeds of property disposals, a requirement to reinvest the proceeds of a property disposal in the REIT property business or distribute the proceeds within a 24 month period and a deemed disposal and re-acquisition event of REIT assets on cessation of being a REIT or group REIT only where the REIT has been in existence for at least 15 years. These three measures took effect from Budget night by way of a financial resolution.

In relation to IREFs, the Bill amends the calculation of the amount on which IREF withholding tax is levied to ensure that any gains which are reflected in the market value of the unit, but which are not reflected in the accounts of the IREF, are subject to IREF withholding tax.

In relation to both REITs and IREFs, the Bill introduces a requirement that expenses incurred must be incurred “wholly and exclusively” for the purposes of the REIT or IREF business. In addition to the general expense restriction, the Bill also provides for a two aspect restriction on deductions for interest that can be made by an IREF in arriving at the surplus available for distribution. Under both restrictions, any excess amount is charged to tax in the hands of the IREF.

The Bill also contains a number of additional technical provisions, to ensure the tax regime operates as intended. These include the introduction of a charge to tax at the fund level in certain holder of excessive right situations and a provision to place the IREF return filing requirement on an annual footing. The Bill also makes an amendment to Schedule 29 to provide for a penalty for non-compliance with the IREF return requirements.

### *Living City Initiative*

The Bill provides for the extension of the property incentive scheme known as the Living City Initiative until 31 December 2022.

## Capital gains tax

The CGT exit tax charge that was introduced last year has been amended in order to tighten up the wording of the legislation and correct some typographical errors. The amendments were introduced to close off on a situation where the exit tax charge could have been circumvented and to correct a transposition error in the legislation introduced last year to bring the provision fully into line with Article 5 of the EU Anti-Tax Avoidance Directive.

Some technical amendments have also been introduced into the definition of a capital gains tax group in order to ensure that after Brexit, UK companies will continue to be treated as if they were EU companies for the purposes of group relief measures in relation to CGT.

## Capital acquisitions tax

As announced in the Budget, the tax free threshold for gifts and inheritances within Category A (generally parents to their children) is increasing from €320,000 to €335,000. This applies to gifts and inheritances from 9 October 2019.

The Bill updates the information that is to be provided to the Revenue Commissioners and the Probate Office in respect of the estate of a deceased person. The amendment is being made in anticipation of the introduction of an electronic process for applying for probate or letters of administration.

The Bill amends the exemption from inheritance tax for beneficiaries inheriting certain dwelling houses to ensure that a dwelling house will not qualify for the exemption where a beneficiary: (i) already has an interest in another dwelling house on the date of the inheritance (generally the date of death), or (ii) acquires an interest in another dwelling house from the same deceased person in the period after the date of inheritance and up to the time when the estate, or its residue, is available for distribution to beneficiaries.

## Stamp duty

As mentioned in budget 2020 the rate of stamp duty applying to conveyances or transfers and lease premiums of non-residential property has been increased from 6% to 7.5%.

A refund mechanism continues to exist for land purchased at the higher rate of stamp duty that is used to build residential housing; the refund results in a stamp duty charge of 2%. The formula used to calculate the refund due will be 11/15 of 7.5% (previously 2/3 of 6%) of the stamp paid.

The 6% rate will continue to apply for purchasers or lessees with binding contracts in place before 9 October 2019 (the executed instrument will have to contain a statement to this effect in a form specified by the Revenue Commissioners) and where the sale or lease is executed before 1 January 2020. Binding contracts signed on or after 9 October 2019 will be subject to the 7.5% stamp duty rate.

Legislation has also been updated to impose a stamp duty charge where an agreement is in place to make a payment to acquire a company and the company that is subject of the acquisition enters into a Court-approved scheme of arrangement involving the cancellation of its shares in accordance with the Companies Act 2014. Stamp duty is payable at the rate of 1% of the consideration paid to the shareholders of the company for the cancellation of their shares as if the shares were being directly purchased. The stamp duty is payable by the acquirer. This measure came into effect on 9 October 2019.

## Value added tax

The Bill includes an amendment which provides that VAT at the reduced rate (currently 13.5%) will apply to the sale of food supplements (suitable for human oral consumption) from 1 January 2020.

In relation to certain motor vehicles first registered on or after 1 January 2021, VAT recovery will only be available in respect of vehicles with a CO<sub>2</sub> emissions threshold of less than 140g/km. Currently, VAT recovery is available in respect of vehicles with CO<sub>2</sub> emissions levels less than 156g/km.

## Excise Taxes

The Bill confirms the Budget increases in the rates of Tobacco Products Tax which, when VAT is included, amount to 50 cent on a pack of 20 cigarettes in the most popular price category with pro-rata increases on other tobacco products. The changes took effect from midnight on 8 October 2019 (“Budget night”).

The Bill confirms the increase announced in the Budget to the level of “carbon tax” which applies to the sale of auto fuels. The changes took effect from midnight on Budget night. The Bill also confirms that the increases relating to non-auto fuels will take effect from 1 May 2020.

The Bill provides for increased relief for certain road transport operators (“hauliers”) under the Diesel Rebate Scheme, as was announced in the Budget. The increased relief will apply to purchases after 1 January 2020.

The Bill also confirms the increased production thresholds which will apply in determining whether “micro-breweries” will be entitled to make a claim for relief under the existing scheme which applies to Alcohol Products Tax. The increased threshold will apply from 1 January 2020.

The Bill includes an amendment which provides for relief from betting duty, which was announced in the Budget. The relief will be capped at €50k per annum and is subject to a commencement order.

The Bill contains a number of amendments in relation to VRT. 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. The Bill also confirms the extension of certain VRT reliefs relating to hybrid electric vehicles and plug-in hybrid electric vehicles.

## Miscellaneous

### *Mandatory Disclosure*

The Bill inserts a new chapter into the Taxes Consolidation Act giving effect to the EU mandatory disclosure directive with effect from 1 July 2020. The new provisions apply to certain cross-border transactions that could potentially be used for aggressive tax planning. There is a requirement for persons referred to as “intermediaries” and taxpayers to make a return to the Revenue regarding cross-border arrangements with characteristics referred to as “hallmarks”.

### *Tax Appeals*

The Bill makes a couple of minor amendments to the tax appeals process relating to the notification of case management conferences and the procedures relating to the staying of cases which involve Mutual Agreement Procedures in respect of double taxation.

### *Mutual Agreement Procedures (“MAP”)*

The Bill contains a new provision that specifies that an assessment or amended assessment will not be final and conclusive where, within 30 days of a notice of assessment, the person to whom the

assessment has been made pursues redress by way of a request for a MAP. This will enable the collection of disputed tax to be suspended in cases subject to a MAP.

### ***Fixed charges on book debts***

The Bill provides for a mechanism to allow a transferee of a fixed charge over the book debts of a company to make a notification to Revenue within 21 days of the transfer. This allows the charge holder to limit their liability to the PAYE/PRSI, USC, VAT and LPT of the company over whose debts the fixed charge exists. This change is designed to mirror the notification mechanism that currently exists for the original charge holder.

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