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Taxing Times

Finance Act 2020 & Current Tax Developments

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Tom Woods
Partner

Introduction

The Government published Finance Bill 2020 on 22 October 2020. The bill contained the taxation measures announced in the Minister for Finance's Budget speech on 13 October 2020 as well as a small number of measures not previously announced. As the Report stage is complete, we refer to the bill in this issue of Taxing Times as Finance Act 2020.

Finance Act 2020 was introduced by the minister against the backdrop of two significant economic uncertainties – the impact of Brexit and the continuing effect of Covid-19. The extent of the uncertainty caused by Covid-19 can be seen in the fact that the level of restriction in effect has been changed in the 9 short days between the Budget announcement and publication of the Finance Act.

The act confirms the tax measures announced in the Budget to deal with the impact of Covid-19 on certain sectors of the economy, such as:

- A reduced 9% rate of VAT for the tourism and hospitality sector
- Extension of the arrangements for warehousing of tax liabilities to include income tax and repayment of amounts received under the Temporary Wage Subsidy Scheme

In addition, the act includes provisions to implement the welcome Covid Restrictions Support Scheme (CRSS) announced in the Budget. Under the scheme, Revenue will make cash payments to businesses whose turnover in 2020 has dropped to 25% or less of their average turnover for 2019 due to public health measures forcing them to close, or significantly restrict operations at, their business premises. Payments of up to €5,000 per week will be available to affected businesses, depending on their turnover for 2019.

The act addresses one Brexit-related issue by including a variety of technical amendments required to ensure that shareholders who currently hold shares in quoted companies via a central securities depository (CSD) in the United Kingdom are not affected by the imminent transition of those shares to a CSD in Belgium.

Tackling housing and climate change have been emphasised as being two of the core missions of the current Government. The act reflects the various measures in these areas announced in the Budget:

- Extension of the Help-to-Buy measures as announced in the July Stimulus Plan
- Extension of, and amendments to, the Stamp Duty Residential Development Refund Scheme
- An increase in carbon tax by €7.50/tonne of carbon dioxide in each of 2021-2029 and an increase of €6.50 per tonne in 2030 to reach a total of €100/tonne
- Various modifications to Ireland's regime for charging vehicle registration tax and motor tax to reflect the transition to the new WLTP measure of carbon emissions
- Extension of the accelerated capital allowances scheme for energy-efficient equipment for a further three years

The minister's Budget announcement included a welcome change to Entrepreneur's Relief to provide that the requirement for the taxpayer to own the shares for at least 3 years can be satisfied at any time, rather than needing to be satisfied in the 5 years prior to the disposal. It was hoped that the act would include some other minor amendments to allow a wider cohort of entrepreneurs to benefit from the relief but unfortunately these measures have not been included. It is also disappointing that no reduction was made to the capital gains tax rate which would have stimulated greater activity and generated yield for the State.

From a personal tax perspective, the act implements the modest changes to USC, employer's PRSI and self-employed earned income credit announced in the Budget.

In keeping with Revenue's objective in their Statement of Strategy 2020-2022 to build on their existing advanced digital capability, the act introduces measures to modernise the operation of Professional Services Withholding Tax (PSWT). Subject to a Ministerial Commencement Order, PSWT is to move from the current paper-based system to a fully electronic system similar to the electronic Relevant Contracts Tax system introduced in 2012.

Following the significant changes to Ireland's transfer pricing regime introduced in Finance Act 2019, the act includes changes intended to clarify the operation of the exemption for certain transactions between Irish taxpayers. These changes are subject to a commencement order which should allow more time for discussions with industry on the exemptions.

Given the broader economic uncertainty and shift from a surplus position of €1.3 billion to a projected 2020 deficit of €21.5 billion, it was broadly expected that there would be a limited number of tax relieving measures introduced this year. That said, it is hoped that measures which have been lobbied for in recent years to improve the competitiveness of Ireland's tax regime will be revisited as the economy stabilises.

Tom Woods

Tom Woods
Head of Tax and Legal Services

Contents:

Personal Tax

Robert Dowley
Partner

Universal social charge

The Finance Act provides for both the modest change to the 2% universal social charge threshold for 2021 announced in the Budget and (retrospectively) the change to that threshold that has been implemented by Revenue on an administrative basis since 1 February 2020.

These changes have been made in line with increases in the national minimum wage, thus ensuring that the 2% rate remains the highest rate of USC that is charged on the income of full-time minimum wage workers.

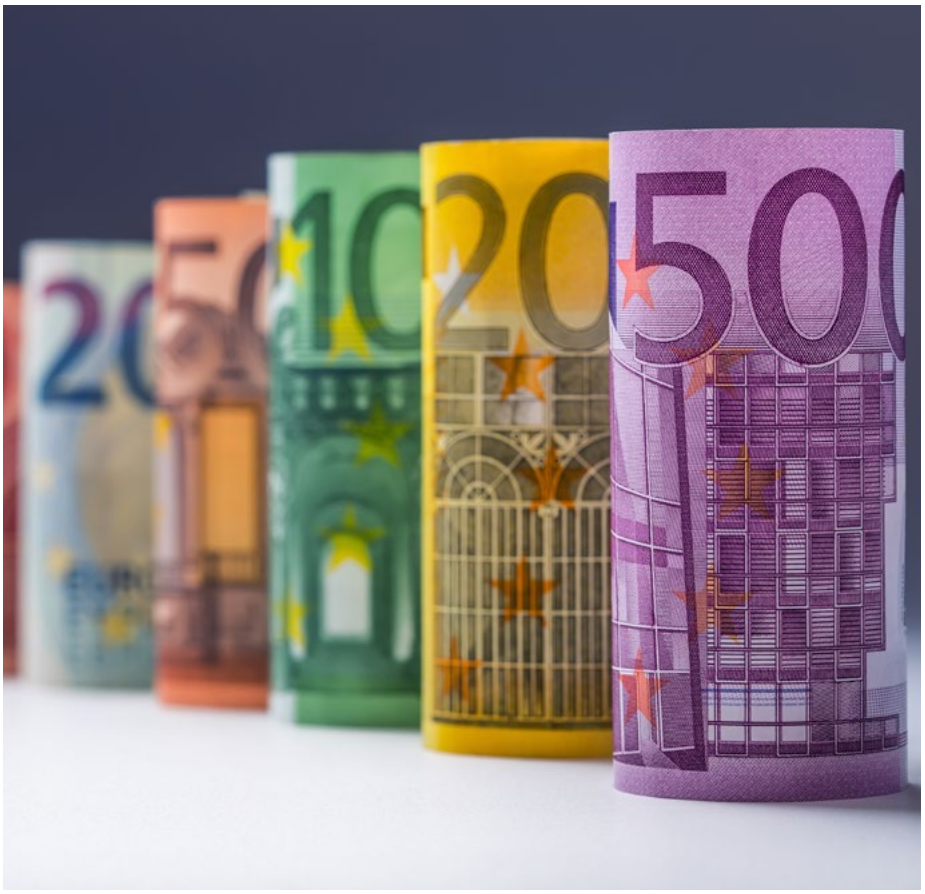
The act extends the cap on USC for medical-card holders aged under 70 with aggregate income not exceeding €60,000. The highest rate of USC payable by such individuals will continue to be 2% until 31 December 2021.

Full details of the revised rates and thresholds are available in the Tax Rates and Credits 2021 table at the end of this publication.

Tax credits

The act provides for the increases in the earned income tax credit from €1,500 to €1,650 with effect from 1 January 2020 and the dependent relative tax credit from €70 to €245 with effect from 1 January 2021. Both increases were announced in the Budget.

The tax credit for sea-going naval personnel has been extended until 31 December 2021 with the amount of the credit increasing to €1,500 in 2021 (previously €1,270).



Payment of the Home Sharing Host Allowance

Finance Act 2019 introduced a new section to provide for the exemption from income tax of certain payments made by TUSLA (The Child and Family Agency).

The act extends this exemption to the Home Sharing Host Allowance paid by or on behalf of the Health Service Executive (HSE).

This new exemption applies from 1 January 2020.

Mobility Allowance

Up to 2013 it was possible for individuals aged between 16 and 66 unable to walk or use public transport due to disability to apply for a means tested monthly payment from the HSE under a scheme known as the Mobility Allowance. The intention was to help these individuals finance a trip in a taxi or other form of hired transport in order to benefit from a change in surroundings. While the scheme closed in 2013, the HSE continues to make payments to individuals who qualified for the payment at the time of closure.

The act confirms that any payments made under the scheme after 1 January 2021 are exempt from tax and should not be included in the calculation of an individual's total income. This treatment is also extended on a retrospective basis to payments made under the scheme prior to 1 January 2021.

Delivery of CAT returns, period for making enquiries and raising assessments

To date, individuals have been required to submit a capital acquisitions tax ('CAT') return in two circumstances:

- The first is where the current gift/inheritance brings the aggregate taxable value of all gifts and inheritances received from the relevant 'CAT group' above 80% of the applicable tax-free threshold for that group. For example, the Group A threshold covering gifts from parents to a child is currently €335,000. Accordingly, if a child receives aggregate gifts and inheritances from their parents of €268,000 or more, they are required to file a CAT return (Form IT38).
- The second is where an individual was notified in writing by the Revenue Commissioners that they were required to deliver a return.

Included in the act is a provision to extend the filing obligation to all instances where agricultural relief or business relief is claimed on a gift or inheritance. This is likely an effort by Revenue to have more visibility where these reliefs are being claimed so that they have an opportunity to review the claim.

The act also provides for changes to the starting point of the four-year window in which Revenue can make enquiries in relation to a CAT return and raise assessments. In most circumstances, the starting point will be fixed at 31 December of the year in which a return is received by Revenue rather than the date on which the return was received by Revenue as is currently the case. For example, the four-year window for a return submitted to Revenue in 2020 will now only expire on 31 December 2024. If there are conditions that need to be satisfied in order to qualify for a relief or exemption claimed in the return, the four-year window can be extended such that it will only start on the later of the above, or the latest date on which the relief conditions were required to be satisfied. The four-year window for discretionary trust tax returns is unchanged and will continue to commence on the date those returns are filed with Revenue.

However, there is also provision in the act to allow Revenue to raise an assessment outside of the four-year window to take account of facts or other matters arising due to events occurring after a return has been filed.

In a similar vein, claims for repayment of CAT must be made within the four-year window commencing on 31 December in the year in which the CAT fell due (previously 31 October).

Liam Lynch
Partner

Income tax – debt warehousing

The act includes provisions to effect the debt warehousing measures for self-assessed taxpayers announced in the Budget.

The scheme should allow taxpayers who are subject to self-assessment to defer payment of their 2019 balance of income tax and their 2020 preliminary income tax (known together as Covid-19 income tax) on an interest-free basis for up to a year if they make a declaration that they expect their total income (from all sources) in 2020 to be less than 75% of their 2019 income as a result of Covid-19 restrictions. The scheme will also be available to taxpayers who were not subject to self-assessment in 2019 but who will be unable to pay their 2020 preliminary tax as a result of the impact of Covid-19 restrictions. It appears that the scheme only applies where the Covid-19 restrictions in question are those imposed by the Irish government.

No statutory interest will be charged on warehoused Covid-19 income tax during the 12-month period starting from the filing date for 2019 personal tax returns (either 31 October or 10 December 2020 where filing is done via ROS). If the warehoused tax has not been paid in full by the time the 12-month period expires but the taxpayer has agreed a payment arrangement with the Collector-General within that period, simple interest at a rate of 3% per annum will be charged on the remaining balance until it has been paid in full.

Self-assessed taxpayers will also be able to warehouse their 2020 balance of tax and their 2021 preliminary tax if they make a similar declaration that they expect their 2021 income to be less than 75% their 2019 income as a result of Covid-19 restrictions.

Taxpayers must meet their other tax obligations in order to obtain and retain the beneficial treatment available under the scheme, otherwise the normal interest rate for late payments of c. 8% per annum will apply. They must also have met their preliminary income tax obligations for 2019.

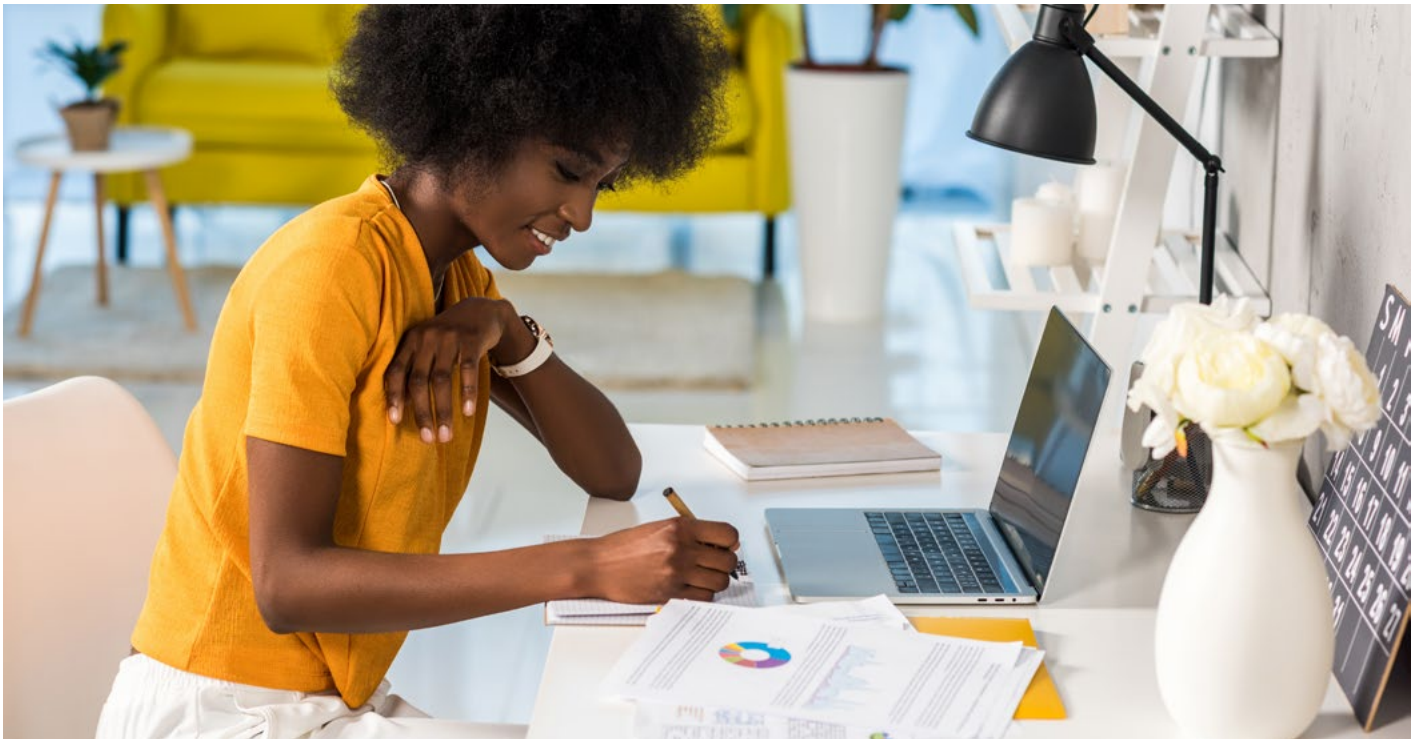
The use of the scheme will not impact on a taxpayer's ability to obtain a tax clearance certificate from Revenue if required.

To avail of the scheme for a given tax year, a taxpayer will need to make the declaration referenced above as part of their tax return for that year. If it subsequently transpires that the declaration was incorrect (e.g. the taxpayer's total income for the year is 75% or more of their 2019 income), their full income tax liability for the year in question will be deemed to have fallen due on 31 October of that year and statutory interest at the normal rate of 8% per annum will be applied from the due date until payment.

The act does not make any provision for warehousing capital gains tax liabilities for 2020 which are due for payment on 15 December 2020 and 31 January 2021.

Employment Taxes

Eoghan Quigley
Partner



Taxation of the Pandemic Unemployment Payment ('PUP')

It was previously confirmed by the Minister for Finance and Revenue that the PUP will be subject to income tax and the Universal Social Charge ('USC').

The act provides for a legislative footing for this tax treatment to ensure that the PUP will be liable to income tax and USC in the same way as other social welfare benefits such as illness benefit, maternity benefit and jobseekers benefit.

No PRSI should be due in respect of the PUP.

The extent to which an individual will be liable to pay any income tax and USC to Revenue will ultimately depend on their overall income position for the year and their personal circumstances.

In January 2021, individuals in receipt of the PUP will receive a Preliminary End of Year Statement from Revenue for 2020. If there is tax due, they will have the choice to settle the liability in full or in part or alternatively Revenue will collect the underpayment by reducing the individuals tax credits over a 4-year period commencing in January 2022.

Share incentive schemes - employer reporting requirements

Currently, where employees provide certain share-based remuneration to employees, they are required to report certain details to the Revenue on an annual basis by 31 March following the relevant tax year.

The act updates the specific provisions governing the following forms of employee remuneration to introduce mandatory electronic reporting in a format as prescribed by Revenue:

- Convertible securities
- Restricted shares
- Forfeitable shares

Where an employer awards shares to its directors or employees and such award is not already caught within the requirement to report under one of the specific sections referenced above, the employer is still required to provide details of such share award to Revenue in a prescribed electronic form by 31 March of the following tax year under a general 'catch-all' provision.

The act extends the scope of these reporting requirements to include awards in the form of 'a cash equivalent of shares' or where a discount on shares is provided to the employee/director.

Olivia Lynch
Partner

Temporary Wage Subsidy Scheme ('TWSS') – Debt Warehousing

The TWSS provided much needed cashflow assistance to businesses in the early stages of the crisis and was instrumental in maintaining the link between the employer and employee. Whilst this scheme has now formally ceased, many employers still need to refund overpaid subsidies to Revenue, a process which is currently being undertaken by Revenue.

In a welcome move, the minister in his Budget speech confirmed that TWSS subsidy repayments can be included in the tax debt warehousing scheme to provide additional liquidity support at this time for employers affected by Covid-19. The Finance Act gives legislative effect to this announcement. Provided an employer meets the criteria of the debt warehousing scheme, the TWSS subsidy repayment amounts may be included as part of the scheme.

In addition, the act confirms that Small and Medium Enterprises (SMEs) who are dealt with by either Revenue's Business Division or Personal Division, automatically qualify for warehousing of debt without prior Revenue approval. Other employers will need to notify Revenue where they form the opinion that they are unable to repay excess subsidy amounts due at this time.

Debt Warehousing of PAYE, PRSI and VAT liabilities - legislative amendments

Legislation for warehousing of PAYE, PRSI and VAT debts was introduced in the Financial Provisions (COVID-19) (No. 2) Act 2020 to allow businesses affected by Covid-19 to park unpaid debts with favourable interest arrangements applying for a set period.

The act includes some technical amendments with regard to the calculation of interest applicable where the employer meets the requirements of the debt warehousing scheme. The initial legislation did not allow for interest to be calculated on a reducing balance basis.

The revision now ensures that account is taken of any payments made by an employer to reduce the debt in calculating interest payable.

The adjusted interest calculation methodology also applies where an employer does not comply with the warehousing conditions, albeit with a higher interest rate applicable.

These revisions make sense and similarly, the Finance Act includes the same amendments with respect to PRSI within the Social Welfare Acts and VAT within the VAT Acts.

Employment Wage Subsidy Scheme ('EWSS')

Legislative amendment

Proprietary directors

The Finance Act includes an update to the EWSS. Whilst the Financial Provisions (COVID-19) (No. 2) Act 2020 excluded a proprietary director of a company from participating in the EWSS, Revenue subsequently announced that the scheme would in fact apply to this class of individual where certain qualifying criteria is met. The act now gives legislative effect to this change.

Broadly, the qualifying criteria is as follows:

- The employer meets the eligibility criteria for the EWSS,
- The proprietary director is on the payroll of the eligible employer, and
- The proprietary director has been paid wages which were reported to Revenue on the payroll of the eligible employer at any stage between 1 July 2019 – 30 June 2020.

The proposed legislation also confirms that where an individual is a proprietary director of two or more companies, a claim for EWSS can only be submitted in respect of a single company. In such instances a proprietary director will be required to irrevocably choose one company for the purposes of making EWSS claims.

Changes to subsidy rates

In October the Minister for Finance announced increases to the rates of

subsidies payable under the EWSS which was confirmed by Revenue on 21 October.

The Committee Stage Amendments to the act now provide legislative footing to these rate increases.

A set of revised subsidy rates will apply in respect of payroll submissions with pay dates on or after 20 October 2020 and before 31 January 2021.

Gross weekly pay	Revised Rates
Less than €151.50	Nil
€151.50 – €202.99	€203
€203 - €299.99	€250
€300 - €399.99	€300
€400 - €1,462	€350
Over €1,462	Nil

Prior to these changes, the maximum subsidy payable under the EWSS was €203 per employee per week. An additional three rates are now being introduced up to a maximum of €350 per employee per week with the aim of aligning the EWSS payments more closely with the rates currently payable to individuals under the Pandemic Unemployment Payments scheme ('PUP').

For example, where an employer is currently availing of the EWSS for an employee on a weekly wage of €350, prior to the changes, they would have received the maximum subsidy of €203. With effect from 20 October, this subsidy will increase to €300 per week.

Employer Eligibility – New Criteria from January 2021

Currently to be eligible for the EWSS, employers must be able to demonstrate to Revenue that, due to the disruption to their business caused by COVID-19, the business will experience at least a 30% reduction in turnover or customer orders during the period 1 July 2020 to 31 December 2020 as compared the same period in 2019.

Where the eligibility criteria were met in that period, employers could avail of the EWSS from 1 July 2020 to the end of the scheme i.e. 31 March 2021 or such later date as the Minister provided.

The Committee Stage Amendments to the Act provide for an update to the provisions of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (which legislated for the EWSS) such that the EWSS will now apply to an employer for the period 1 July 2020 to 31 December 2020 based on the eligibility criteria outlined above.

In order for employers to avail of the EWSS from 1 January 2021, the Act introduces a new set of employer eligibility criteria which are identical to the 2020 criteria with the exception of the period concerned. These new criteria will determine an employer's eligibility from 1 January 2021 until the expiration of the EWSS (currently 31 March or such later date as provided for by the Minister).

Under these new provisions the EWSS will be available to an employer from 1 January 2021 until the end of the scheme where they can demonstrate to the satisfaction of the Revenue that their business (due to the disruption caused by Covid-19) will experience either a 30% decline in customer orders or turnover during the period 1 January 2021 to 30 June 2021 as compared to the same period in 2019 (i.e. 1 January 2019 to 30 June 2019). In cases where the business of the employee has not operated for the whole of the corresponding period in 2019, the following will apply:

- Where the business operations have commenced on or before 1 May 2019, the 30% decline test must be determined in 2021 by reference to the same reference period in 2019 in which the business was in operation. For example, if the employer's business commenced on 1 February 2019, then a 30% decline in the period 1 February 2021 – 30 June 2021 must arise as compared to 1 February 2019 - 30 June 2019.
- Where the business operations have commenced after 1 May 2019, the employer must be able to show that the turnover or customer orders during the period 1 January 2021 to 30 June 2021 will be at least 30% less than what the turnover or customer orders would have been had there been no disruption caused by COVID-19.

As is currently the case, any employer who is entered in the register established and maintained under the Child Care Act 1991 will be considered eligible for the scheme without having to satisfy the reduction in turnover or customer order tests in 2021. This would include pre-schools, play groups, creches and other services catering for pre-school children in addition to creches etc. that cater for primary school children.

While these new provisions signal a further welcomed extension to the EWSS, they are likely to cause concern for many employers who entered the EWSS in 2020 on the understanding that if the decline in turnover/customer orders test was satisfied in July to December 2020, that the EWSS would be available to them until 31 March.

The changes outlined above would now require an employer who wishes to continue to avail of the relief into 2021 to suffer a further 30% decline in turnover/customer orders in the first half of 2021 over and above what was already required in the second half of 2020.

Frequency of EWSS Payments

Significant cashflow concerns existed for employers availing of the EWSS to date due to the one month waiting time to receive payment of the EWSS from Revenue.

When the EWSS was first introduced, the law provided that the payments would be made to employers as soon as possible after the 14th of the month following the month in which the employees were paid.

This was a significant delay when compared to the timing of payments under the TWSS (whereby refunds were paid typically within a week of employees being paid).

In a welcomed announcement on 6 October 2020, Revenue announced that it had brought forward the date for EWSS payments to the 5th day of the following month.

The Committee Stage Amendments to the Act now provide that payments of subsidies under the EWSS will be paid to employers as soon as practical after the date on which the employer notifies Revenue of the payments made to employees.

This reduced turnaround time is most welcomed as the time taken to process subsidy claims was having a negative effect on cashflow for many businesses around the country.

It is important to note that employers who did not previously meet the employer eligibility criteria to qualify for the EWSS, but who now meet the conditions due to further Government restrictions can now register for the EWSS. Once registered, employers can then claim subsidy payments in respect of payroll submissions with a pay date on or after their registration date i.e. it is not possible to backdate any claims for earlier periods.

Business Tax

Marie Armstrong
Partner

Colm Rogers
Partner

Covid Restrictions Support Scheme (CRSS)

The act introduces two sections to provide for the introduction of the new Covid Restrictions Support Scheme, the CRSS, specifically targeting sectors which have been or will be impacted significantly by the restrictions set out in the Government's 'Plan for Living with Covid-19'. Generally, it is envisaged that the CRSS will apply where Level 3 restrictions or above are in place, but it may also apply to certain businesses at lower levels of restriction (e.g. nightclubs). The CRSS is scheduled to run from 13 October 2020 until 31 March 2021 but can be extended to 31 December 2021.

Objective of the CRSS

The legislation states that the objective of the CRSS is to provide economic stimulus in order to mitigate the twin impacts of Covid-19 and a no-deal Brexit on the economy. The minister will monitor the administration of the CRSS, with up-to-date data being provided at least every three months, with the first set of data in respect of the three months from 13 October 2020. Upon receipt of this data, the minister may amend the scheme to ensure it continues to fulfil the aims of the scheme as set out above. The estimated cost according to the minister's budget speech was at least €40 million for each week Ireland is at Level 3 in every county.

Eligibility

The scheme will apply to businesses operating in sectors that are impacted by the Government's Covid-19 restrictions. In order to qualify for the scheme:

- The individual, partnership or company must be carrying on a business which is taxable under Case I of Schedule D (therefore it will not apply to not for profit businesses or investment businesses).
- The business, consisting of the sale of goods and services, must be carried on from a fixed business premises.
- Customer access to the business premises must be prohibited or significantly restricted as a direct result of the Government's Covid restrictions.
- The turnover of the business for the period of the restrictions must not exceed 25% of the average weekly turnover (an increase from the 20% originally proposed in the minister's Budget speech).
- The claimant must intend to carry out the business activity once the relevant restrictions have been lifted.
- The claimant must have complied with all VAT registration and return obligations.
- The claimant must hold a valid tax clearance certificate.

Once the above conditions are met, the 'qualifying person' should apply on the Revenue Commissioners' Online Service ('ROS') to be registered for the CRSS, complete an electronic form containing certain information (tax registration number, description of business activity, average weekly turnover, etc.) and make a declaration that they satisfy the conditions set out above. The claim must be made within 8 weeks of the commencement of the period to which the claim relates (i.e. within 8 weeks of the restrictions being imposed), unless the date on which the qualifying person became registered for the scheme falls after the expiry of this eight week period; if so, the qualifying person has three weeks from the date they are registered in which to make the claim. The legislation provides that a new claim must be made by the qualifying person every three weeks the restrictions are in place (as each Covid restrictions period is deemed to last a maximum of three weeks for CRSS purposes).

Revenue will notify a person if they deem them not to be a qualifying person for the purposes of the CRSS. The person may make an appeal to the Appeal Commissioners within 30 days of the notice. If the appeal is upheld, the qualifying person will have 8 weeks from the date of the determination in which to make their claim.

Where the business' activity consists of both qualifying and non-qualifying elements or where there is more than

Alan Bromell
Partner

James Kelly
Partner

one business premises from which the activities are carried on, the portion of the trade which is attributable to the each business activity/premises should be apportioned on a 'just and reasonable basis'.

Operation of the CRSS

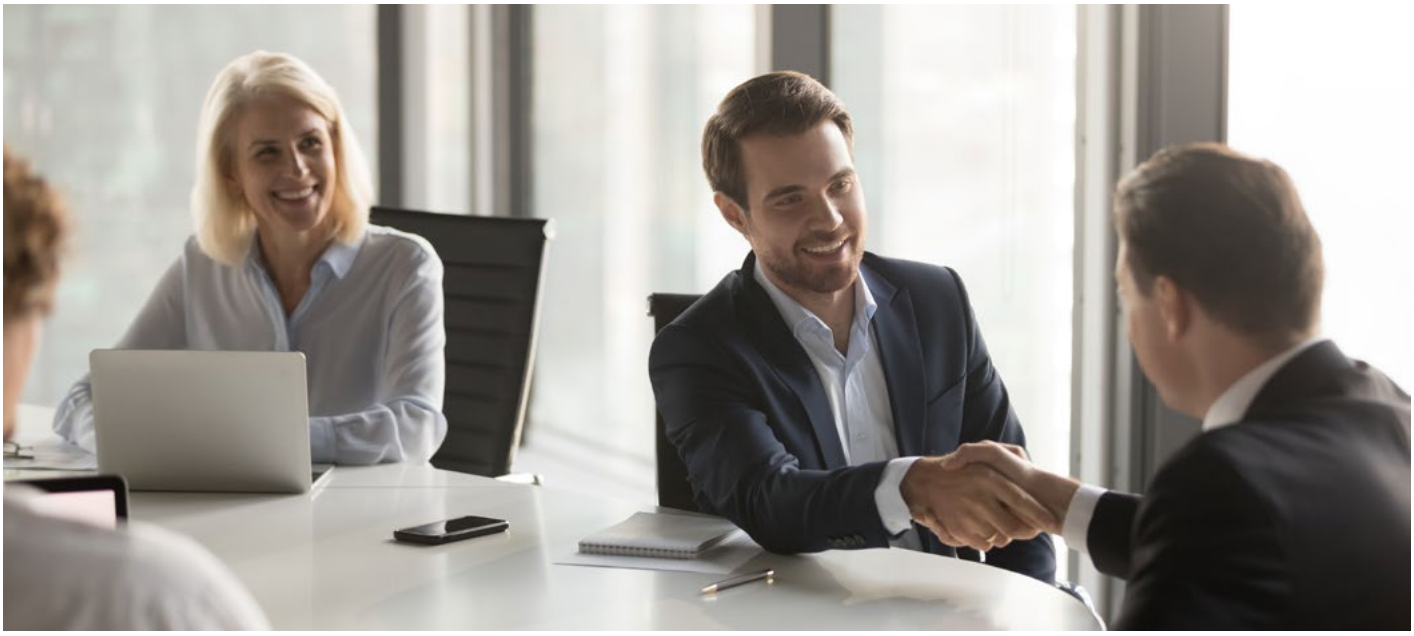
Once these conditions are satisfied, the qualifying person can make a claim to Revenue for a cash payment (similar to the TWSS scheme). Payments will be calculated based on the business' average weekly turnover, as calculated under generally accepted accounting principles (turnover recognised due to changes in accounting policy is specifically excluded, however). For businesses which commenced their relevant business activity before 26 December 2019, their average weekly turnover will be calculated by reference to the period commencing 1 January 2019 and ending on 31 December 2019. For businesses which commenced their relevant business activity on or after 26 December (but before 13 October 2020), their average weekly turnover will be calculated by reference to the period beginning on the date they commenced trading and ending on 12 October 2020. Business activities which commenced after 12 October 2020 are not eligible for the CRSS. The amount paid, subject to a maximum limit of €5,000 per week, will be the number of full weeks in the period in which a claim is made (as noted previously, each individual claim period can last no longer than three weeks), multiplied by the sum of:

- 10% of the business' first €20,000 of average weekly turnover, and
- 5% of any excess.

In order to take account of the fact that businesses may incur additional costs in respect of the re-opening once the relevant restrictions are lifted, an election can be made to include the week after the relevant restrictions cease as part of the claim period. The qualifying person will be eligible to include this additional week in their claim if they have made a claim in respect of a continuous period of at least three weeks (including any previous claim periods) and the restrictions cease to apply. In order to be eligible for the additional week's payment, the qualifying person must also resume operating from their business premises "within a reasonable period of time" from the date the restrictions cease. Claims for payment in respect of this additional week must be made no later than 8 weeks from the date on which the relevant restrictions cease to apply.

Where a qualifying person carries on more than one relevant business activity from the same premises and a claim is made in relation to more than one activity, the maximum claim is set at €5,000 per week. In the case that qualifying businesses are carried on in partnership, the lower of the above calculation and the €5,000 weekly limit is split between all of the partners, based on the profit share of the individual partners. In these circumstances, the precedent partner should make the claim on behalf of the partnership. After doing so, he/she must provide a statement to each of the partners setting out the relevant details of the claim (e.g. the portion of ACTE allocated to each

Donal Thomas
Partner



partner, etc.). As each partner is deemed to have made a claim, the relevant penalties for deliberately or carelessly making incorrect returns apply to each individual partner.

This cash payment is referred to as an 'Advance Credit for Trading Expenses' (ACTE) relating to the period (no earlier than 13 October 2020) in which the restrictions are effective. The amount will be taken into account when computing profits and gains of the trade under Case I of Schedule D as a reduction of deductible trading expenses. This should only result in additional income tax or corporation tax being payable where the business is profitable in the relevant chargeable period. It will reduce any trading losses carried forward when the business is loss-making in the period so effectively it is being treated as a taxable subsidy.

The names and addresses of all businesses who receive payments under the CRSS will be published on the Revenue website. Where there is an incorrect or invalid claim, tax (but not PRSI or USC) will be levied based on the amount incorrectly claimed and interest will also apply. Where the Covid restrictions cease earlier than expected and a qualifying person overclaims as a result, Revenue can recover the excess amount. Where this is recovered within a reasonable period of time, no additional liability should arise for the qualifying person. However, interest may accrue from the day after the specified period ends.

The Revenue Commissioners have provided an overview and examples of the application of the CRSS on their website.

KPMG view

The CRSS is a very welcome development to impacted businesses, albeit somewhat limited. However, it must be considered in the context of a package of measures which includes the existing wage subsidy scheme and the reduced 9% VAT rate for the hospitality and tourism industries.

It is hoped that the measures announced by the minister will help to prevent the closure of businesses which operate in the sectors most exposed to Covid-19, allowing them to operate successfully once the relevant restrictions have been lifted.

Entrepreneur's Relief

Qualifying entrepreneurs pay a special CGT rate of 10% when they dispose of certain business assets. The full rate of 33% applies to gains above the lifetime limit of €1 million. This relief also applies to shares in a qualifying company.

In respect of a sale of shares in a qualifying company, the change introduced in the Finance Act would see a taxpayer meet the required holding period where they owned 5% or more of the shares of that company for at least three continuous years in any period. Previously, it was necessary to own 5% of more for a continuous three period in the 5-year period falling immediately

Brian Brennan
Partner

before the disposal. The change will provide more flexibility for working entrepreneurs to qualify for the relief as they can now qualify even where their stake has fallen below 5% in the years leading up to the disposal. For example, an entrepreneur who has owned 5% of a company for a continuous three-year period can now dispose of a 2% interest, continue to own the remaining 3% for (say) 4 years, and then dispose of the remaining 3% with both sales qualifying for entrepreneur relief. The second sale of 3% would not have qualified previously.

This measure will apply to disposals made on or after 1 January 2021.

It will still be necessary for a vendor of shares to have been an employee or director of the company who has spent at least 50% of their working time for 3 continuous years, out of the 5 years falling immediately before the disposal, in service to the company in a managerial or technical capacity.

The required holding period has not changed for asset sales by individuals operating as sole traders or in partnership.

The retention of Entrepreneur relief and the change introduced in the Finance Act should be welcomed. However, it is disappointing that the Government has decided to retain the current rate of Capital Gains Tax whilst omitting to introduce any significant improvements for entrepreneurs and SMEs. It is hoped that the new Commission on Taxation might produce further initiatives which help stimulate this vital segment of the economy and that such initiatives will be taken up by the Government in a meaningful way.

Capital Gains Tax – foreign currency deposits

The transfer of a foreign currency bank deposit out of a bank account is regarded as a disposal of a "debt" within the charge to Capital Gains Tax in most circumstances.

The changes in the act clarify that where the foreign currency balance is moved by a person to another account belonging to the same person (either with the same or different bank) and it remains in the same foreign currency, the disposal is treated as having been made in exchange for consideration that gives rise to neither a gain nor loss for that person.

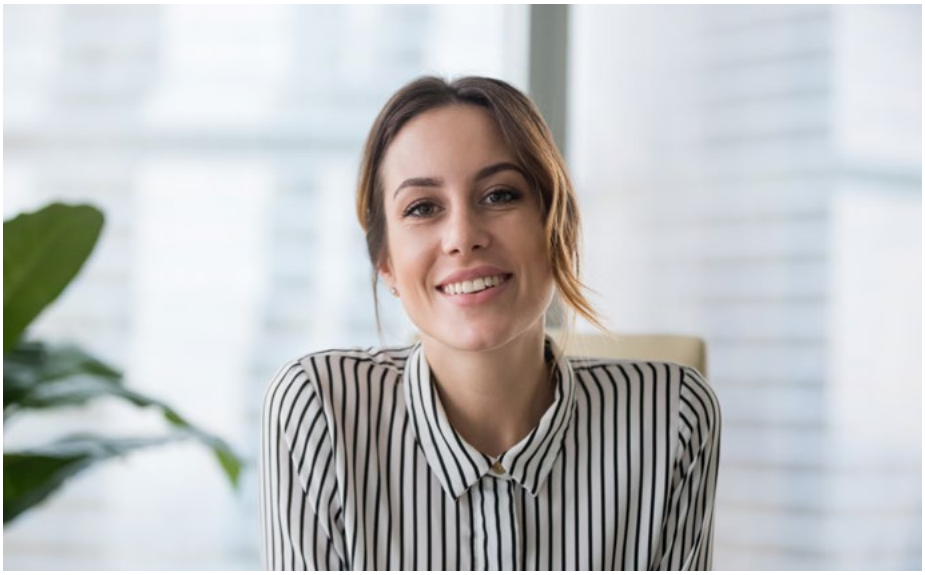
The main purpose of this change would appear to be to prevent the realisation of an allowable loss from currency speculation where the deposit is transferred between bank accounts but is not truly divested of.

The change also clarifies that, for any future disposals of the foreign currency deposit to another person, the effect of any transfers, to which the above provisions apply, is ignored in determining the tax-deductible cost of that foreign currency deposit for Capital Gains Tax purposes. These changes will apply to disposals made on or after the date of passing of the Finance Act.

Professional Services Withholding Tax (PSWT)

PSWT is a 20% withholding tax deducted by State and Semi-State bodies ('accountable persons') from payments for certain professional services. The Finance Act provides for the modernisation of the PSWT system to facilitate the electronic submission of information, data and returns but subject to a Ministerial Commencement Order.

The act makes provision for an online 'PSWT service' to be provided by the Revenue Commissioners. As part of this electronic PSWT system, accountable persons will have two filing requirements in respect of PSWT as follows:



Damien Flanagan
Partner

Ken Hardy
Partner

Payment notifications

The accountable person is required to obtain the following details in respect of the professional service provider ('specified person'):

- Their income tax/corporation tax/ partnership tax number (if Irish resident or if they have a permanent establishment or fixed base in Ireland) and their VAT number (if relevant); or
- Their country of residence, foreign tax reference number and their address and contact details (if not Irish resident).

The accountable person will then be required to submit a payment notification to Revenue using the PSWT service each time they make a payment for professional services to the specified person. The payment notification will need to specify the following information:

- The name and address of the specified person
- The specified person's tax reference number
- The amount of the relevant payment
- The amount of PSWT deducted from that payment
- The date on which the payment was made

Revenue will issue a payment notification reference number to the accountable person in acknowledgement of the notification.

The accountable person then needs to provide relevant details to the specified person including the payment notification reference number, where requested.

The due date for the electronic submission of the monthly return and for remitting the PSWT collected to the Revenue will be the 23rd day of the following month.

Annual PSWT returns

Furthermore, the accountable person will be required to electronically file annual returns detailing all relevant payments and PSWT deducted during the tax year. The return is to be filed by 23 February of the following year and should contain the following details:

- All amounts of PSWT deducted from relevant payments made during the year
- All amounts of PSWT remitted by the accountable person to Revenue during the year
- Any amounts of PSWT owed by the accountable person in respect of relevant payments made during the year

In addition, a return including details of relevant payments made and PSWT deducted and remitted will also be required to be submitted for the period from 1 January 2021 to the date of the Ministerial Commencement Order. This return is due to be filed on the 23rd day of the month following the date of the Commencement Order.

Emissions based limits for expenditure incurred on passenger cars

In general, a tax deduction is available for expenditure incurred on motor vehicles via wear and tear allowances over an eight-year period. The amount of allowable expenditure on passenger cars (other than commercial vehicles) is determined based on the CO2 emission level of the car.

In addition, tax relief is available for expenditure incurred in hiring a motor vehicle for use in a trade. The relief is restricted based on the CO2 emission level of the car.

The Finance Act updates the existing legislation to bring the CO2 emission categories for the abovementioned reliefs in line with the new EU emissions testing regime.

These new categories will apply to expenditure incurred from 1 January 2021 except in cases where a contract for hire of a car is entered into, and the first payment under that contract is made, prior to that date.

Paul O'Brien
Partner

Restructuring of charities

Tax relief may only be given in respect of donations to charitable bodies where they have been designated as an 'eligible charity' by Revenue. For these purposes, a charitable body must have had tax exempt status for at least two years before a donation to that charity will qualify for such tax relief.

The Finance Act provides that, where one or more charitable bodies, who have met the abovementioned two-year requirement, are restructured into another body such that there is then one amalgamated body, the amalgamated body will be treated as having met the two-year requirement.

Knowledge Development Box and Capital Allowances

Knowledge Development Box

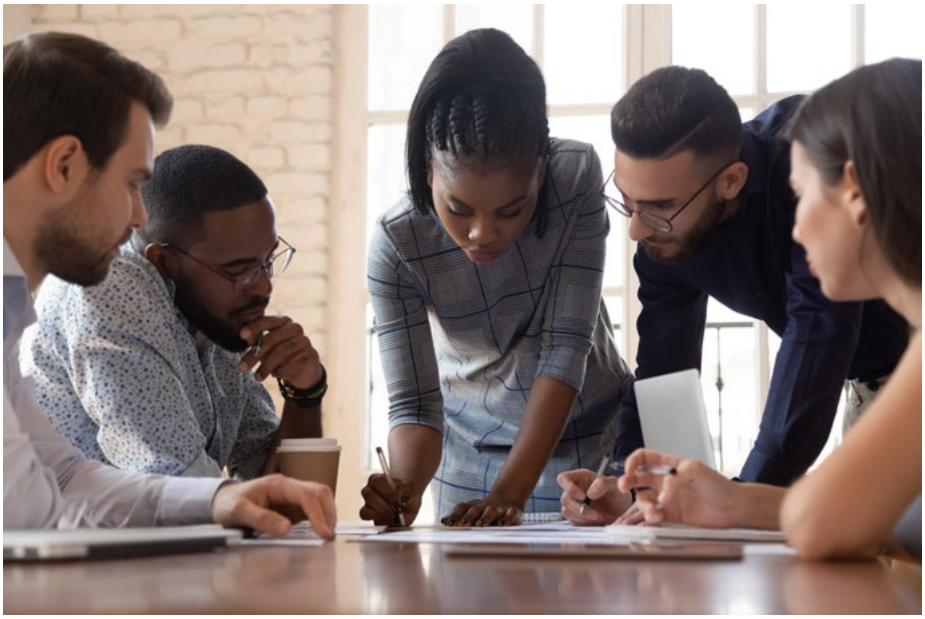
Following the announcement in Minister Donohoe's Budget 2021 speech with respect to the extension of Ireland's Knowledge Development Box regime, Finance Act 2020 sets out that companies may continue to avail of KDB relief up to and including accounting periods commencing before 1 January 2023.

This is a two-year extension of the previous 'sunset clause'. We would hope for a further extension in relation to the KDB scheme prior to the expiration of the revised 'sunset clause'.

We welcome this update and believe that it demonstrates the Government's commitment to Ireland's knowledge economy and the importance of fostering innovation within industry.

Accelerated Capital Allowances for 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, Finance Act 2020 extends the ACA regime by three years with claims continuing to be available up to accounting periods ending 31 December 2023.

Minister Donohoe also mentioned in his Budget speech that the energy efficiency criteria for the scheme will be re-assessed over the coming year to ensure the categories of equipment availing of the scheme remain appropriate and reflect the most up-to-date efficiency standards. We would expect that a revised list of energy-efficient equipment could be published by Sustainable Energy Authority of Ireland to include the additional types of equipment that the minister referred to.

We welcome this commitment to maintaining and updating the ACA scheme into the future.

Agri-business measures

Flat rate VAT for unregistered farmers

As noted in the Indirect Taxes section, the flat rate VAT addition that is available to unregistered farmers will increase from 5.4% to 5.6% from 1 January 2021. The flat rate addition compensates unregistered farmers for VAT on their farming costs.

The Finance Act also provides for a number of stamp duty measures to support the agricultural sector:

Consanguinity relief

Stamp duty consanguinity relief is designed to facilitate and encourage intergenerational farm transfers. This relief reduces the stamp duty rate from 7.5% to 1% on the transfer of agricultural land to close relatives, provided certain conditions are met.

This relief was due to expire on 31 December 2020, but the Finance Act provides for the extension of the relief for a further three years until the end of 2023.

Camilla Cullinane
Partner

Farm consolidation relief

Stamp duty farm consolidation relief provides for a reduced rate of stamp duty of 1% (compared to 7.5%) where a farmer disposes of and purchases land and/or exchanges land with another farmer in order to consolidate an existing farm. Stamp duty at 1% is applied to the excess of the value of the land acquired over the value of the land disposed of, where the acquisition and disposal take place within a 24 month period. In order to avoid a clawback of the relief, the land acquired must be retained by the purchaser for a period of five years from the date of the transfer.

The relief is designed to encourage the consolidation of farm holdings in order to improve the operational efficiency and viability of farms.

This farm consolidation relief was due to expire on 31 December 2020. However, the Finance Act provides for the extension of the relief for a further two years until the end of 2022. This coincides with the expiration date of the equivalent CGT farm consolidation relief.

Accelerated wear and tear allowances

The act includes new measures regarding accelerated wear and tear allowances for certain farm safety equipment and modified equipment for farmers with disabilities. The relief applies to qualifying equipment acquired between 1 January

2021 and 31 December 2023. Qualifying equipment includes but is not limited to:

- Hydraulic linkage arms mounted tractor jacking systems
- Chemical storage cabinets
- Animal anti-backing gates
- Access lifts, hoists or integrated ramps to farm vehicles
- Modified seating or controls for farm vehicles to enable operation by a disabled person.

The accelerated wear and tear allowances can be claimed at a rate of 50% per annum, instead of 12.5% per annum. In order to avail of the accelerated allowances, the following conditions must be satisfied:

- The taxpayer must be carrying on a trade of farming within the charge to income tax or corporation tax. For this purpose, the definition of farming does not extend to the leasing of farmlands.
- The taxpayer must make an application to the Minister for Agriculture, Food and Marine ("the Minister") for a "qualifying certificate" in respect of the equipment purchased. The application shall be made on a prescribed form and should include the following details:
  - A description of the equipment and the purchase price of same
  - The name and address of the applicant
  - Other details to be specified in the form to allow the Minister to determine if a "qualifying certificate" should be issued
- Where the aggregate expenditure on qualifying equipment in a year does not exceed €5million (excluding VAT), the Minister may issue the qualifying certificate if he deems it appropriate based on the information provided in the specified form. The "qualifying certificate" will include details of the qualifying equipment, the qualifying expenditure, a unique sequential

certificate identification number and the name and address of the person to whom the certificate is issued.

- However, where the aggregate expenditure on the qualifying equipment in a year exceeds €5m, a "qualifying certificate" may only be issued on qualifying expenditure up to €5m.

The total tax value of relief that may be granted to a person under this section shall not exceed €500,000.

By 28 February each year, the Minister will provide Revenue with details of all qualifying certificates issued in the preceding year.

Where the Minister decides not to issue a qualifying certificate or issues a qualifying certificate specifying an amount of qualifying expenditure that is less than the purchase price of an item of equipment, the Minister shall notify the taxpay of that decision and the taxpayer can choose to appeal the decision within 21 days of the date of the notification. The provisions set out that the notification of appeal shall be accompanied by a fee, to be determined by the Minister.

Furthermore, details of appeals may be published by the Minister.

The relief will not be available where the taxpayer is:

(i) part of an undertaking that is not an SME,

(ii) an undertaking in difficulty (i.e. an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly go out of business in the short or medium term, there are certain financial metrics that can be used to define this which are set out in Section 2.2. of the Rescuing and Restructuring Guidelines), or

(iii) an undertaking which is subject to an outstanding recovery order following a decision by the Commission of the European Union that it claimed illegal State Aid.

Where the tax value of relief claimed by a person in respect of qualifying equipment exceeds €60,000 in the current and previous chargeable periods, then Revenue may publish details regarding that taxpayer and the relief claimed.

This relief is subject to a commencement order by the Minister.

Film corporation tax credit relief (FCTC)

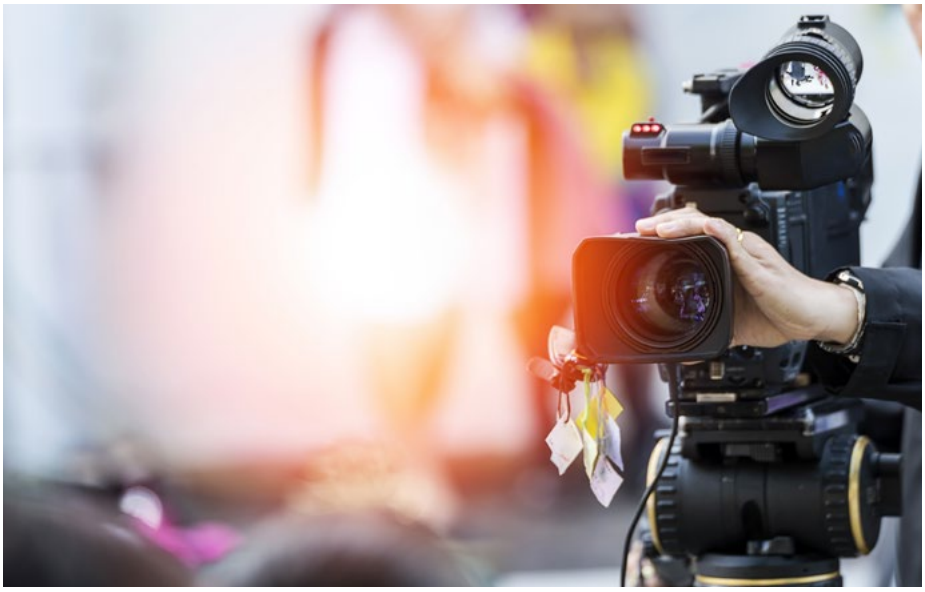
A reimagined film corporation tax credit (FCTC) relief was introduced in Finance Act 2013 to promote the Irish film industry by encouraging investment in

Irish-made films. The scheme provides relief in the form of a corporation tax credit related to the cost of the production of certain films. The relief is due to expire on 31 December 2024.

The minister previously introduced a time-limited, tapered regional uplift of 5% for productions made in areas designated under the state aid regional guidelines to support the development of film production outside of the main production hubs. The FCTC regional uplift was due to expire in 2022. The minister announced in the Budget that the FCTC regional uplift will be extended by one year to 2023 given that the intended incentive effect of the relief in 2020 was largely eroded by Covid-19 related production shut-downs and this extension has now been reflected in the Finance Act.

Where the regional film development uplift applies, the FCTC relief will now be available at the following rates for the following periods:

- 37% for claims made on or before 31 December 2021;
- 35% for claims made after 31 December 2021 but on or before 31 December 2022;
- 34% for claims made after 31 December 2022 but on or before 31 December 2023; and
- 32% for claims made after 31 December 2023 (no regional uplift applies)



International Tax

Andrew Gallagher
Partner

Orla Gavin
Partner

Intangible Asset Allowances

Ireland's intangible asset regime was introduced in Finance Act 2009 and allows a company to claim capital allowances (tax deductible amortisation) on the cost of acquiring a broad range of intellectual property assets for the purposes of its trade.

As announced in the Budget, the act provides that capital expenditure incurred on qualifying intangible assets on or after 14 October 2020 will be fully within the scope of balancing charge rules. This means that irrespective of how long these assets are held, a balancing charge may arise on their disposal or where they cease to be used for the purposes of a trade. As this is unlikely to affect the many intangible assets that naturally depreciate, this amendment is not expected to result in significant additional tax revenue but was introduced to ensure Ireland's intangible assets regime remains competitive, legitimate and sustainable.

Exit Tax

In line with the EU Anti-Tax Avoidance Directive, Ireland amended its exit tax rules in 2018. Two technical amendments were also introduced as part of Finance Act 2019 and further technical amendments are contained in Finance Act 2020.

The exit tax applies by deeming a market value disposal of assets where the assets are taken out of the Irish tax net without triggering a taxable event.

For certain exits to EU/EEA countries, a company can elect to defer the payment of the exit tax and pay the tax in equal instalments over five years, with statutory interest chargeable for that period. The act clarifies that the statutory interest on any exit tax that is unpaid on or after 14 October 2020 is to be calculated on the full outstanding balance and not by reference to the amount of any single instalment due.

CFC changes

The act proposes a technical change to Ireland's Controlled Foreign Company ('CFC') tax regime. The general thrust of the CFC regime is to assess an Irish company with a tax charge based on an arm's length measure of the undistributed profits of a foreign subsidiary that are attributable to the

Anna Scally
Partner

activities of 'Significant People Functions' carried on in Ireland.

There are a number of exemptions from the charge under the CFC rules, including where the essential purpose of the arrangements is not to secure a tax advantage.

The proposed change eliminates some of the exemptions included in the legislation for subsidiaries that are resident in territories which are on the EU's list of non-cooperative jurisdictions for tax purposes (which currently includes American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu).

With effect from 1 January 2021, subsidiaries tax resident in those locations cannot avail of the 'Effective tax rate exemption', 'Low profit margin exemption' or 'Low accounting profit exemption' from a CFC charge. The other exemptions included in the CFC legislation continue to apply if relevant.

Anti-hybrid rule changes

The act proposes some technical changes to Ireland's anti-hybrid tax rules. The anti-hybrid rules were introduced in Finance Act 2019 as part of the EU's Anti-Tax Avoidance Directive ('ATAD') requirements to counteract non-taxation outcomes from payments made under cross-border arrangements between associated enterprises which result in deduction without inclusion or double deduction outcomes.

The purpose of the amendments is to ensure that the anti-hybrid rules operate as intended by:

- clarifying the definition of associated enterprises where one of the entities is not consolidated under relevant accounting rules,
- amending provisions relating to the timing of the test of association so that entities that are not associated at the time of payment and also at the time a deduction arises are not included,
- providing that certain anti-hybrid rules do not apply where there is no economic mismatch outcome because a charge to tax arises under a Controlled Foreign Company regime, and
- clarifying the application of one of the anti-hybrid rules where the participator is a tax-exempt entity.

The proposed changes take effect from 1 January 2021.

Property & Construction

Tim Lynch
Partner

It is clear Covid-19 has had a significant impact on projects, productivity and viability in the sector. The Government has introduced several targeted extensions to various schemes to take account of both the delays being experienced by the construction industry and the current housing crisis.

Help to Buy

The Help to Buy relief for first-time buyers has been extended to the end of 2021. The relief had been enhanced as part of the July Stimulus Plan with effect from 23 July 2020 and had been due to end this year.

The enhanced relief provides for a refund of the lower of:

- 10% (previously 5%) of the cost of a new house,
- €30,000 (previously €20,000), and
- the income tax paid by the buyer for the previous four tax years.

To qualify for the relief, the value of the house must be no more than €500,000 and the mortgage on the property must amount to at least 70% of the value of the property.

In our view, this scheme has played a key role in increasing the level of construction of new homes in Ireland and in that regard, the extension of the enhanced scheme is warranted and beneficial.

Stamp Duty Refund Scheme for residential development

The Stamp Duty Refund Scheme for residential development was introduced in Finance Act 2017. It provides for a refund mechanism to reduce the effective stamp duty rate for qualifying residential developments to 2%, where higher stamp duty had been paid on the acquisition of the land.

The scheme was designed to incentivise residential development. However, the conditions to meet this refund scheme are onerous and subject to relatively tight time limits for both commencing and completing the development of the residential project. Satisfying these time limits has been made even more

Jim Clery
Partner

Carmel Logan
Partner

challenging by the impact of Covid-19 on construction activity.

The scheme was due to expire for new construction commencing after 31 December 2021 but has now been extended by one year to 31 December 2022. In addition, the previous requirement that the development be completed within 24-months of commencement has been extended by 6 months.

The extension of the scheme and the period in which the development must be completed are welcomed and will hopefully ensure that developers impacted by Covid-19 closures and delays can still avail of the relief.

The refund scheme applies to both the construction of one-off houses as well as multi-unit developments that can involve a portion of commercial development. To date only approximately 8% of applications relate to multi-unit developments. Further changes to enhance the availability of the relief for multi-unit developments would be of considerable assistance.

Scheme of arrangement and certain shares deriving value from non-residential property

A scheme of arrangement is a mechanism in Irish company law which is often used in large mergers and acquisitions involving Irish companies to mitigate some of the administrative burden. Typically, a scheme of arrangement involves making a payment to the shareholders of the target company on the cancellation of their shares. Finance Act 2019 introduced the application of stamp duty to such arrangements by treating the document effecting the acquisition of the target as if it were a conveyance of the target company's shares. The party making the payment for the cancellation of the shares is liable for the stamp duty.

Generally, the transfer or conveyance of shares in an Irish company is subject to stamp duty at the rate of 1% of the market value of the shares. However, stamp duty can apply at the current non-residential rate of 7.5% to an agreement to transfer certain shares, units or partnership interests where:

- the shares, units or interests derive their value or the greater part of their value from non-residential immovable property,
- the purchase results in a change in direct/indirect control over the immovable property,
- the company/IREF/partnership acquired or developed the land with the sole or main object of realising a gain, or the property was held as trading stock, and
- the agreement giving effect to the change of control is not otherwise chargeable to stamp duty.

The act includes a technical amendment to provide that in cases where both the above provisions apply, the latter shall have priority such that the 7.5% rate will be charged.

Financial Services

Gareth Bryan
Partner

Kevin Cohen
Partner

Encashment Tax

Coupons such as interest, dividends, or other annual payments payable out of, or in respect of, stocks, funds, shares, or securities of any non-Irish resident persons which are entrusted to persons based in Ireland for encashment for payment to Irish resident persons may be subject to 'encashment tax'. Under these rules, where an agent in Ireland is so entrusted with the encashment of such coupons, it is obliged to deduct income tax from such coupons and account for it to the Revenue Commissioners.

Tax rate

Under the current rules, the rate at which encashment tax is applied is based on the standard rate of income tax (currently 20%). Similar to changes to dividend withholding tax enacted as part of Finance Act 2019, the Finance Act proposes an increase in the rate of encashment tax to 25%, with effect from 1 January 2021. As encashment tax is creditable against the recipient's Irish income tax / corporation tax liabilities with any excess being refundable, this increase will represent an incremental cash-flow cost for taxpayers rather than an absolute cost.

Exemption for companies

The encashment tax legislation empowers the Revenue Commissioners to relieve agents of their obligation to deduct encashment tax on payments to Irish residents in certain circumstances. In this regard, the Revenue Commissioners currently exempt payments to Irish investment undertakings, banks, building societies, credit unions, life-assurance companies, pension schemes, securitisation vehicles and charities.

The act introduces a statutory exemption from encashment tax for payments made to companies who are beneficially entitled to and within the charge to corporation tax in respect of those payments. The exemption will come into operation on 1 January 2021 and is a welcome change to the encashment tax rules which represent an administrative simplification and will eliminate cash flow cost for these companies.

Information returns and requirement to keep records

Finally, the act amends the record keeping requirements and information reporting returns which agents are required to make to the Revenue Commissioners. The changes include a requirement to automatically report details such as the name and address of the recipient of a payment the amount and type of the payment, and the amount of tax deducted from the payment. These changes are subject to the issue of a Ministerial Order which should hopefully provide sufficient lead time to implement any systems changes which may be needed.

Bank Levy

The Finance Act includes provisions to increase the rate at which the bank levy is charged from 170% to 308% of DIRT payable in the base year 2019.

This charge is intended to preserve the existing contribution of €150 million paid by the affected financial institutions for 2021.

The rate of 308% applies for the 2021 payment due on 20 October 2021. The previous rate of 170% still applies for the 2020 payment which was due on 20 October 2020.

Returns of certain payment card transactions

The Finance Act gives powers to the Revenue Commissioners to issue regulations which require debit and credit card issuers to make returns in respect of online debit or credit card payments to non-residents. The aim of the provision is to enable the Revenue Commissioners identify payees who may have an obligation to pay Irish

Joe O'Mara
Partner

Brian Daly
Partner

tax and file certain Irish tax returns so as to ensure their compliance with those obligations. The section includes penalties for enforcement and non-compliance with the requirements.

The provisions will come into effect following the issue of regulations by Revenue. The regulations will also outline the information which is to be included in the returns.

Insurance

There were a number of updates to corporation tax and stamp duty legislation to reflect Ireland's transposition of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) (also referred to as the "Solvency II" Regulations). The Solvency II framework sets out strengthened requirements around capital, governance and risk management in all EU authorised (re) insurance undertakings along with introducing increased regulatory reporting requirements and public disclosure requirements.

The proposed amendments update the relevant references in legislation as required by removing references to revoked regulations, maintaining references which are still required and inserting references to the updated regulations. These amendments will come into operation on 1 January 2021.

Fixed charge on book debts

Existing legislation provides that, where a person has a fixed charge over the book debts of a company and the company has unpaid tax liabilities, the charge holder can be made liable for the tax of the company up to the amount paid by the company to the charge holder in discharge of its debt from the proceeds of those book debts. The charge holder's liability can be limited where they notify the Revenue of the existence of the charge within 21 days of its creation, or within 21 days of the transfer of the fixed charge to a new holder of the charge.

The Finance Act includes provisions to re-organise the relevant section into a more coherent manner but do not make any substantive change to the operation of the section.

Brexit – migration from CREST to Euroclear

The act makes a number of amendments to the Taxes Consolidation Act 1997 and the Capital Acquisitions Tax Act 2003 in preparation for Brexit.

As a result of Brexit, shares and securities in Irish registered companies will be required to migrate from a central securities depository (CSD) in the UK (CREST) to a CSD in Belgium (Euroclear). The future settlement of trades in such shares and securities will take place in Euroclear.

The amendments included in the act seek to ensure that the migration is tax neutral and that certain tax treatments are preserved post migration. In doing so, the act amends a number of provisions relating to capital gains tax, dividend withholding tax, and capital acquisitions tax. The act also confirms that the indirect holding of interests in shares and securities in Euroclear will not be regarded as a material interest in an offshore fund.

The Committee Stage Amendments to the Act compliment provisions that were included in the Act as initiated through a number of technical changes to the Stamp Duty Consolidation Act – again the changes seek to ensure that the migration is tax neutral and that existing stamp duty treatments are preserved post migration. The amendments also clarify the meaning of shares for the purposes of the migration.

The provisions are subject to a ministerial commencement order.

The end of the Brexit transition period on 31 December 2020 will result in a significant number of other changes. The Government recently brought forward a specific bill (commonly referred to as the Brexit Omnibus Bill) which, similar to the above, seeks to preserve the status quo across a wide range of areas, including certain taxation measures. We will continue to publish updates in respect of these matters.

Indirect Taxes

David Duffy
Partner

VAT

VAT rate changes

The Finance Act includes legislative changes confirming the VAT rate reduction from 13.5% to 9% announced in the Budget for certain goods and services mainly in the tourism and hospitality sectors. The supplies affected by this change include certain food and beverages supplied in restaurants, take-aways and as part of a catering service; admissions to certain attractions including cinemas, museums and exhibitions; hotel, guesthouse and other holiday or guest accommodation; hairdressing services; and supplies of certain printed matter. This reduction will take effect from 1 November 2020 and is due to expire on 31 December 2021.

The act also contains other VAT rate measures including:

- The temporary zero-rate of VAT, which currently applies to supplies of equipment to help combat Covid-19 made to the HSE and other healthcare facilities is extended to 30 April 2021 in accordance with a recent European Commission decision.
- The VAT rate applicable to the supply of certain sanitary products will be reduced from the standard rate to the reduced rate of VAT of 13.5% with effect from 1 January 2022.
- The standard rate of VAT will apply to sales of all candles with effect from 1 January 2021. This will remove the 0% rate of VAT which currently applies to certain white cylindrical candles.

As announced in the Budget, the flat-rate addition payable to farmers who are not VAT registered will increase from 5.4% to 5.6% with effect from 1 January 2021.

Tax representative

The act proposes to give the Revenue Commissioners the power, where they believe it necessary, to issue a notice to a non-Irish trader requiring that trader to appoint a tax representative who is located in Ireland or another EU Member State. This tax representative would be jointly and severally liable for any Irish VAT due by that non-Irish trader. The non-Irish trader would have 21 days from the receipt of the notice to provide the Revenue Commissioners with details of its appointed tax representative. Failure to comply with the issue of such a notice would result in a penalty of €4,000 for the non-Irish trader. Non-Irish suppliers who only pay Irish VAT through the Mini One Stop Shop (MOSS) would not be affected by this measure.

Other measures

The act contains a number of measures intended to bring the definitions in Irish VAT law more closely in line with EU VAT law and case-law of the Court of Justice of the EU. This includes broadening the scope of holiday and guest accommodation in all or part of a house, apartment or similar establishment subject to the reduced rate of VAT (9% from 1 November 2020). This would remove the current legislative test which specifies that the reduced rate of VAT only applies to such accommodation where it does not exceed or is unlikely to exceed 8 consecutive weeks. This may result in certain supplies in the holiday and guest accommodation sector being subject to VAT which was not previously the case.

The act also includes technical changes to bring the definition of catering and restaurant services and immovable goods more closely in line with the EU Directive.

Excise duties

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

- Confirmation of the announcement in the Budget of an increase in excise duty on a packet of 20 cigarettes by 50 cents (including VAT), with pro-rata increases on other tobacco products. This increase took effect from midnight on Budget Day.
- Confirmation of the increase announced in the Budget in carbon tax applying to oil, solid fuel and natural gas from €26 to €33.50 per tonne of CO2 emitted. This increase applied to auto fuels with effect from midnight on 13 October 2020 and will apply to non-auto fuels from 1 May 2021. The act also provides for annual increases in carbon tax of €7.50 per year up to 2029 and of €6.50 in 2030, to achieve a target of €100 per tonne of CO2 emitted by 2030.
- A measure to waive the excise duty due on the renewal of certain intoxicating liquor licences in the licensing year 2020/2021. This arises from the Government's decision to provide a support package for pubs, bars and nightclubs considering the impact of Covid-19 on their businesses.

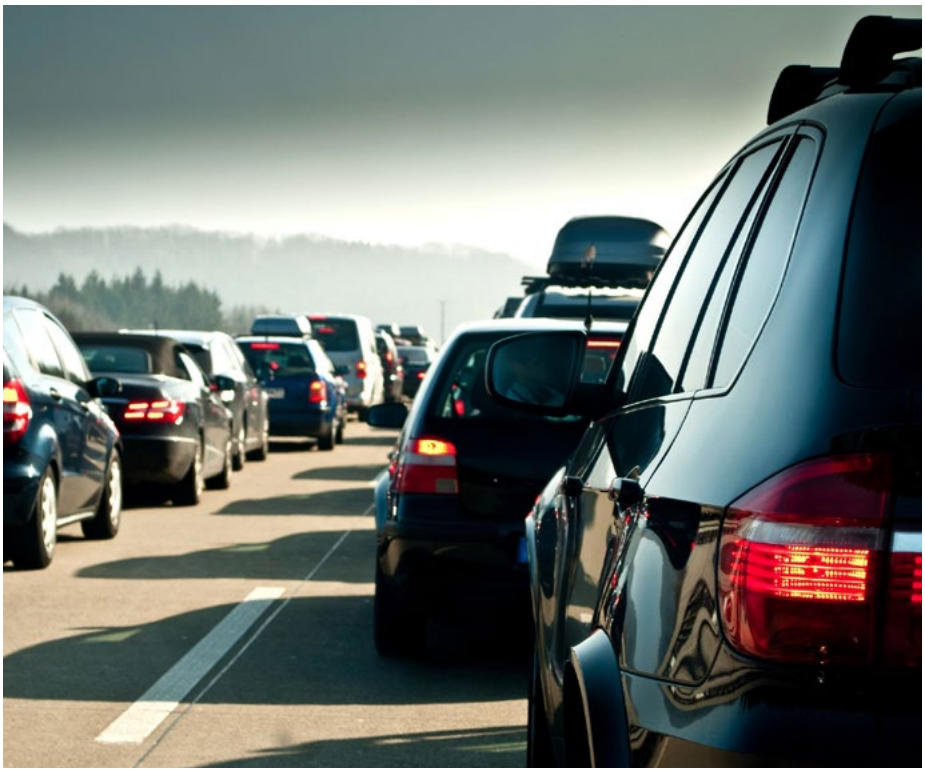
Glenn Reynolds
Partner

Vehicle Registration Tax (VRT)

The act confirms the measures announced in the Budget to introduce a new table for calculating VRT on passenger and light duty vehicles from 1 January 2021. The purpose of the new charging table is to adapt the charging provisions for the new CO2 emissions test for passenger cars, known as Worldwide Harmonised Light Vehicle Test Procedure (WLTP). The new table reflects the new rates applicable to WLTP CO2 emissions. The existing 11 band table for VRT is to be replaced with a 20-band table and the new VRT rates will range from 7% to 37% compared to a current range of 14% to 36%.

The act also confirms that the Nitrogen Oxide (NOx) surcharge bands introduced in Budget 2020 will be adjusted from 1 January 2021 so that higher NOx emitting vehicles are subject to higher rates of VRT. The lowest NOx surcharge band will now be 0 – 40 mg/km (formerly 0 – 60 mg/km) and the middle band will be 41 – 80 mg/km (formerly 61 – 80 mg/km).

The act confirms the adjustment of the existing VRT relief for certain electric vehicles from 1 January 2021. Electric vehicles with an Open Market Selling Price (OMSP) of up to €40,000 will continue to be granted the relief up to €5,000. Electric vehicles with an OMSP in excess of €40,000 but less than €50,000 will receive a reduced level of relief. Vehicles with an OMSP of or in excess of €50,000 will no longer receive VRT relief.



Motor Tax

The act confirms the introduction of a new motor tax rates table that will apply to cars that are first registered in the State from 1 January 2021 with a WLTP CO2 value. Cars first registered in the State up to the end of 2020, or from January 2021 which only have the old 'New Europe Driving Cycle' ('NEDC') figure, will be subject to motor tax in line with the current NEDC motor tax table. The current NEDC CO2-based table is being amended with higher rates for the most pollutant cars. Pre-2008 registered cars, which do not have CO2 emissions information, will continue to be taxed according to their engine size.

Transfer Pricing

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The Finance Act includes provisions to ensure that certain aspects of the revamped transfer pricing regime introduced in Finance Act 2019 operate as intended by the legislators.

In order to do this, the act includes a complete rewrite of the rules under which certain domestic transactions were exempt from the application of the transfer pricing provisions. It had been understood that the law as introduced last year was intended to provide an exemption in respect of certain domestic transactions in line with transfer pricing regimes in other countries.

While some of the changes seek to provide more clarity on the circumstances in which a taxpayer can avail of this domestic exemption, a number of more substantial changes have also been introduced.

The first significant change is that the new rules, as drafted, preclude the domestic exemption applying for transactions other than certain loans where the consideration payable between the related parties is 'not greater than a nominal amount'.

This is likely to result in many transactions (e.g. a company's free use of a premises owned by its parent) that were previously thought to be outside the scope of the Irish transfer pricing regime now being brought within scope simply because an above nominal amount has not been charged.

Unhelpfully, the act does not provide any guidance on what is meant by a 'nominal amount'. While this would clearly not appear to require a benchmarking exercise to determine an arm's length price, this test appears very subjective. This is particularly the case when considering the pricing of loans in the current low interest rate environment. It is hoped that some clarity will be achieved through Committee Stage amendments to the act.

The new rules also include more specific criteria in order for loan arrangements to qualify for the domestic exemption.

While the law is now at least clear that the exemption can apply to a 'non-trading' loan between two companies that are within the charge to corporation tax, the qualifying conditions are narrower than previously appeared to be the case.

The act defines a 'qualifying loan arrangement' where the domestic exemption can apply as requiring a borrower:

a) which exists wholly or mainly for the purposes of carrying on a trade or trades that are chargeable to Irish tax,

b) whose income consists wholly or mainly of profits or gains chargeable to tax as Irish rental income, or

c) whose business consists wholly or mainly of the holding of shares directly in a trading or rental company as set out above.

In each of the cases above, there are now a number of conditions to be met by the borrower in respect of the use of the borrowed funds and the circumstances in which the borrower is chargeable to Irish tax. In particular, it is a requirement that the full amount of any interest that could have been charged would be taken into account in the tax return of the trading and rental borrower, and also that the holding company borrower must use the loan to acquire or subscribe for shares and also be in receipt of dividends above a nominal amount within a three year period.

These amendments apply for chargeable periods commencing on or after 1 January 2021. Consequently, any arrangements in place from this date (whether agreed before or after 1 January 2021) where the domestic exemption is claimed will need to be reviewed on a case-by-case basis in light of the new provisions.

The revised domestic exemption for Section 835E included in the Act is proposed to be amended in the course of the Committee Stage.

A new provision is introduced to confirm that where an Irish tax resident individual provides a loan to a company that uses the funds for the purposes of its trade or in the course of Irish rental activities then the exemption in Section 835E may apply. The change also provides that certain loans to a holding company of a Case I / Case V company may qualify. It is unclear how the tax provisions which treat certain interest payments to individuals as distributions interact with these provisions for Case I/Case V companies as there is a requirement for the 'full amount' of the interest that could have been charged to be taken into account in the borrower. In addition, loans to a holding company of a holding company of Case I / Case V companies do not qualify for relief.

There is also a change introduced that provides for an exemption in the case of a 'debt' left outstanding. Where an amount of money is owed by an acquirer to a supplier, which arose directly from the supply of goods, services or other assets, then the debt may be treated as a qualifying loan arrangement (as defined) and the exemption under Section 835E can potentially apply.

The Committee State Amendments also clarify that a loan to a holding company that is used to repay an original loan, where the original loan would have met the conditions of being a qualifying loan arrangement as set out in Section 835E, may also qualify for relief.

While the changes are welcome, it should be recognised that the law as currently drafted brings many wholly domestic transactions within the scope of transfer pricing.

The act includes a proposal that the commencement of the proposed section 835E will now be subject to Ministerial Order. This means that section 835E (as introduced in Finance Bill 2020) has been deferred and the law as introduced last year in Finance Bill 2019 remains the relevant legislative framework for assessing whether or not the exemption can apply for certain qualifying "Irish-to-Irish" transactions.

Mandatory disclosure & Appeals

Nancy Fallon
Partner

Changes to the domestic mandatory disclosure regime and EU mandatory disclosure regime

Domestic mandatory disclosure regime

The domestic mandatory disclosure regime places an obligation on certain advisers and taxpayers to make notifications in respect of transactions which have as a main benefit the obtaining of a tax advantage and which meet certain criteria. Where such notifications are not made or are made late, penalties apply. The Finance Act includes some amendments to the calculation of such penalties; there is no significant change.

EU mandatory disclosure regime

Finance Act 2019 gave effect to provisions in the sixth EU Directive on Administrative Co-operation in tax matters (DAC6). DAC6 introduced a new EU-wide mandatory disclosure regime in respect of reportable cross-border arrangements which meet certain conditions and where the first step of which was implemented on or after 25 June 2018.

The Finance Act includes a number of amendments to clarify the application of certain elements of the regime. The act includes clarifications in relation to the taxes which come within the scope of the regime (to which there has been no change), the exemption from the requirement for intermediaries to report arrangements in multiple jurisdictions, the reporting obligations of taxpayers and the reporting obligations where legal professional privilege applies.

In addition, the Finance Act includes a list of 'specified arrangements' which will not be reportable under the regime, including (but not limited to) certain share schemes, pension schemes and salary sacrifice arrangements all of which have been approved by Revenue and where such arrangements are not tax avoidance transactions.

While the suite of clarifications is helpful, there continues to be a need for further guidance and clarification in relation to the practical application of the regime.

Revenue Tax Appeals Process and Collection of Taxes

Finance Act 2020 has introduced several changes to the current tax appeals process and the collection of taxes.

Tax Appeals Process

The various amendments in relation to the tax appeals process include:

- The extension of the circumstances in which an appeal can be dismissed by the Appeal Commissioners to include scenarios where the appellant has not addressed directions made by the Appeal Commissioner requesting them to provide a 'statement of case' or 'outline of arguments'; and

Cillein Barry
Partner

- The introduction of procedures to deal with an Appeal Commissioner vacating their office during the appeal process. This includes procedures for what should happen when an Appeal Commissioner vacates office prior to a determination being made in relation to an appeal and where the appeal case has been determined and sent to the High Court for stating and signing.

Given the current backlog in hearing cases at the Appeal Commissioners a number of temporary Appeal Commissioners have been appointed. Therefore, it is not surprising that measures are being introduced to try to ensure that the required legal process can continue without unfairly impacting the parties involved when the Appeal Commissioner who adjudicated the case leaves their office.

The act includes an amendment to restrict the circumstances in which a late filing surcharge can be appealed. It outlines that a late filing surcharge can only be appealed in certain circumstances, such as where there is a dispute about whether the return was filed correctly, whether the information contained in the return is correct or the date on which the return was submitted to Revenue.

Interest on repayments to taxpayers

The current legislation provides that Revenue have to pay interest at the rate of 0.011% per day (c. 4% per year) on tax refunds in certain limited circumstances. This general rule applies across most tax heads including corporate tax, income tax, CGT, stamp duty, CAT, VAT and excise duty.

The act introduces a change that further limits the requirement for Revenue to pay interest on refunds of tax. It applies to refunds arising from the tax appeal process. In many cases a taxpayer, even where they are appealing a tax assessment, will pay the tax on account to minimise the amount of interest on underpayment that could arise if they are unsuccessful. This new change provides that where a taxpayer appeals an assessment raised by Revenue but has made a payment of the disputed tax to Revenue, the taxpayer will not be entitled to interest on the refund of the tax if they subsequently win the appeal.

Given the appeal process in Ireland can take many years, this change is one-sided as Revenue have received the tax paid on account by the prudent taxpayer and therefore, have the benefit of the cash, possibly for many years. It seems inequitable that reciprocal treatment would not apply i.e. where a taxpayer loses a case at appeal and has not paid the tax on account up to that point, no interest should arise.

Tax Rates and Credits 2021

Personal income tax rates (unchanged)

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

* €44,300 with an increase of €26,300 maximum

Personal tax credits (changed)

Single person	€1,650
Married couple/civil partnership	€3,300
Single person child carer credit	€1,650
Additional credit for certain widowed persons /surviving civil partner	€1,650
Employee credit	€1,650
Earned income credit (increased)*	€1,650
Home carer credit	€1,600

* The increased credit will apply for 2020 also. Applies to self employed income and certain PAYE employments not subject to the PAYE credit

Help to Buy Scheme (increased)

Income tax rebate, capped at €30,000, for first time buyers of a principal private residence. The relief is 10% of the house value (capped at €400,000). No relief for houses valued greater than €500,000. Claimants must take out a mortgage of at least 70% of the purchase price. The scheme only applies to new builds, self builds or a converted building not previously used as a dwelling and not to second hand properties. The scheme is in place until 31 December 2021.

Capital gains tax (unchanged)

Rate	33%
Entrepreneur relief (reduced rate)*	10%
Annual exemption	€1,270

* Relief remains capped at lifetime limit of €1m chargeable gains

Local Property Tax (varying rates) (unchanged)

Market Value less than €1,000,000*	0.18%
Market Value greater than €1,000,000:	
- First €1,000,000	0.18%
- Balance	0.25%

* Market Value less than €100,000 - calculated on 0.18% of €50,000. Market Value €100,000 - €1,000,000 assessed at mid-point of €50,000 band (i.e. property valued between €150,001 and €200,000, assessed on 0.18% of €175,000).

- Applies to residential (not commercial) properties. Exemptions for houses in certain unfinished estates and newly constructed but unsold property.
- 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%
- LPT liability for 2021 will continue to be based on the value of the property as at 1 May 2013. Revaluation for LPT has been deferred to 1 November 2021

Value Added Tax (changed)

Standard rate/lower rate	23%*/13.5%
Hospitality and tourism**, newspapers, electronically supplied publications and sporting facilities	9%
Flat rate for unregistered farmers (rate increased)	5.6%
Cash receipts basis threshold	€2m

* Temporary decrease in standard rate from 23% to 21% from 1 September 2020 to 28 February 2021
** 9% rate to apply to hospitality and tourism sector from 1 November 2020 to 31 December 2021

Dividend Withholding Tax (unchanged)

Rate	25%*

* The modified DWT regime which was to be introduced from 1 January 2021 has been 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 (unchanged), Universal Social Charge (changed)

	%	Income
Employer	11.05%	No limit
	8.8%	If income is €398 p/w or less
Employee* (class A1)		
PRSI	4%	No limit*
Universal Social Charge	0.5% (unchanged)	€0 to €12,012**
	2.0% (unchanged)	€12,013 to €20,687***
	4.5% (unchanged)	€20,688 to €70,044****
	8% (unchanged)	> €70,044

* Employees earning €352 or less p/w are exempt from PRSI. In any week in which an employee is subject to full-rate PRSI, all earnings are subject to PRSI. Unearned income for employees in excess of €3,174 p.a. is subject to PRSI. Sliding scale PRSI credit of max. €12 per week where weekly income between €352 and €424
** Individuals with total income up to €13,000 are not subject to the Universal Social Charge
*** Increase in upper limit of the 2% band from €20,484 to €20,687
**** Reduced rate (2.0%) applies for persons over 70 and/or with a full medical card, where the individual's income does not exceed €60,000

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

	%	Income
PRSI	4%	No limit*
Universal Social Charge	0.5% (unchanged)	€0 to €12,012**
	2.0% (unchanged)	€12,013 to €20,687***
	4.5% (unchanged)	€20,688 to €70,044****
	8% (unchanged)	€70,045 to €100,000
	11% (unchanged)	> €100,000

* Minimum annual PRSI contribution is €500
** Individuals with total income up to €13,000 are not subject to the Universal Social Charge
*** Increase in upper limit of the 2% band from €20,484 to €20,687
**** Reduced rate (2.0%) applies for persons over 70 and/or with a full medical card, where the individual's income does not exceed €60,000

Tax relief for pensions (unchanged)

- Tax relief for pensions remains at the marginal income tax rate
- The Defined Benefit pension valuation factor is an age related factor that will vary with the individual's age at the point at which the pension rights are drawn down
- Except where a Personal Fund Threshold applies, the Standard Fund Threshold is €2m

Capital acquisitions tax (unchanged)

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

Corporation Tax rates (unchanged)

Standard rate	12.5%
Knowledge Development Box rate	6.25%
Land (not fully developed) and non-trading income rate	25%
Exit tax*	12.5%

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

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.

Stamp duty - residential property (unchanged)

1% on properties valued up to €1,000,000

2% on balance of consideration in excess of €1,000,000

Deposit Interest Retention Tax (unchanged)

DIRT	33%*

* 41% rate remains for exit taxes on financial products

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