Purcell McQuillan

TAX PARTNERS

Finance Act 2020

A COMPREHENSIVE COMMENTARY

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2020

PMQ

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Introduction

We are pleased to outline our commentary on Finance Act 2020 (“the Act”) which was signed into law by the President on 19 December 2020.

Business tax measures

The Act contains a number of previously announced measures to deal with the impact of restrictions imposed due to Covid-19 including:

- The introduction of the **Covid Restrictions Support Scheme (CRSS)** for businesses. Under this scheme businesses who have had to restrict access to their business premises due to Covid-19 restrictions may be entitled to claim weekly cash payments of up to €5,000.
- The extension of the **debt warehousing scheme**, under which businesses can defer tax payments for 12 months interest free, to income tax payments due under the self-assessment system.
- The **reduction in the VAT rate** applicable to the **tourism and hospitality sector** to 9% from 13.5% for a limited period.
- The enhancement of the **Help To Buy Scheme** and its extension to the end of 2021
- The **extension of the stamp duty refund scheme** for residential development to the end of 2022

Personal tax measures

No changes were made to personal tax rates or standard rate tax bands. The self-employed earned income credit has been increased from €1,500 to €1,650 for 2020 onwards, bringing it in line with the employee tax credit. It is unusual that this increase is effective from 2020 as typically such changes take effect from the following year. The dependent relative tax credit has also been increased from €70 to €245 but from 2021 onwards. Apart from these changes there have been no other changes to general personal tax credits or allowances.

No changes were made to the USC rates.
The 2% band has been widened slightly to ensure that individuals who receive a pay increase due to the increase in the National Minimum Wage from 1 January 2021 do not pay USC at a rate higher than 2%.

The relief whereby **individuals under 70 with income not exceeding €60,000** who have a full medical card pay USC at a maximum rate of 2% has been extended up until the end of 2022.

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Business Taxation

Covid-19 Measures

COVID RESTRICTIONS SUPPORT SCHEME

The Act makes provisions for a new scheme, the Covid Restrictions Support Scheme or CRSS, aimed at businesses who have been significantly affected by the measures introduced by Government to combat the spread of Covid-19. The scheme will operate from 13 October 2020 to 31 March 2021. The legislation does however make provision for the terms of the scheme to be altered, including the extension of the scheme, by order made by the Minister for Finance.

Therefore when considering CRSS you should be mindful of any changes that may have been made to the scheme since the Act was passed.

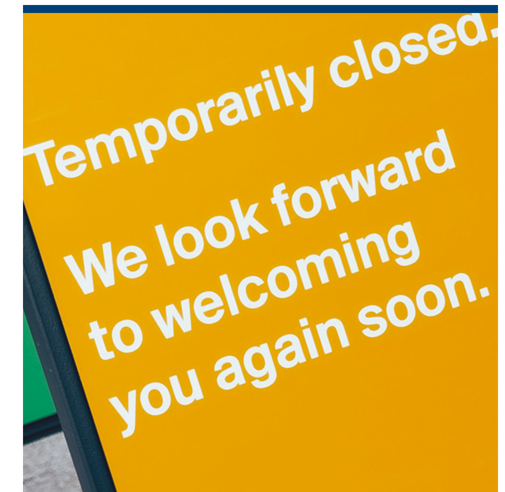
The scheme applies to businesses (companies, sole traders, partnerships) carrying on a trade (professions do not qualify) in a region which has been subject to restrictions imposed by Government to combat the spread of Covid-19. To qualify for benefits under the scheme, the business must have been required to prohibit or significantly restrict access of the public to its business premises because of the restrictions imposed by Government under the Plan for Living with Covid-19 and, as a result of having to restrict access to their business premises, the turnover of the business in the claim period must be less than 25% of its average weekly turnover in 2019. (For business start-ups post 26/12/2019 the comparison is with average weekly turnover before the introduction of the scheme on 13/10/2020.) In addition the business must satisfy the following conditions:

- The business must have satisfied its obligations with regard to VAT registration and the filing of VAT returns
- The business must have a tax clearance certificate
- The business must intend to carry on the business in the business premises after the restrictions have been lifted and would have carried on the business in the period if there were no restrictions in place

Under the scheme a business can make a claim for a payment, known as an "Advance Credit for Trading Expenses" (ACTE) equal to 10% of its average weekly turnover for 2019 (or 2020 for start-ups) up to €20,000 and 5% thereafter. The maximum weekly ACTE which can be claimed is €5,000 per business premises. Claims can only be made for a full week. Claims are made for individual business premises. Where a business carries on its trade from more than one business premises, turnover must be allocated among the business premises and claims are then separately made and determined for each separate business premises. Where a business carries on more than one business activity from a single business premises, only one claim for the ACTE is made.

A "business premises" is defined as a building or other similar fixed physical structure from which a business activity is carried on. It does not accordingly include mobile premises (e.g. taxis, vans) or non-permanent structures (e.g. market stalls) or outdoor activities (e.g. paint balling, golf courses).

The business is required to register online for the scheme and to file claims electronically via the Revenue online system ROS.



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Business Taxation CONTINUED

COVID RESTRICTIONS SUPPORT SCHEME CONTINUED

A claim must be made no later than 8 weeks from the beginning of the claim period. A claim period is a period for which restrictions are in place. Accordingly where a business has more than one business premises located in different geographical regions, each business premises may have a different claim period. If a business has applied for registration under the scheme within the 8-week period but the registration is not completed within the 8-week period, the period within which a claim can be made is extended to 3 weeks after registration.

For tax purposes the ACTE is treated as reducing the expenses of the business which would otherwise have been tax deductible.

A taxpayer has the right to appeal to the Appeal Commissioners where Revenue determine that they are not entitled to benefits under the scheme.

EMPLOYMENT WAGE SUBSIDY SCHEME

The Act makes a number of changes to the employment wage subsidy scheme (EWSS) as follows:

Proprietary directors

The Act amends the EWSS legislation to provide that a proprietary director who was on the payroll at any time in the period 1 July 2019 to 30 June 2020 and was paid emoluments in that period which were notified to Revenue, can receive payments under the scheme.
Such a person can however only receive payments from one company of which they are a proprietary director.
A definition of "proprietary director" is included being, as for other tax purposes, a person who is able to control more than 15% of the ordinary share capital.

Changes in the scheme from 1 January 2021

To qualify under the scheme from 1 January 2021 the employer must demonstrate that by reason of Covid-19 and the disruption caused thereby, there will be at least a 30% reduction in the employer's turnover or customer orders for the period 1 January to 30 June 2021. Whether or not there has been a 30% reduction is determined by reference to the period 1 January 2019 to 30 June 2019. The wage subsidy payment under the scheme from 20 October 2020 to 31 March 2021, when the scheme is due to expire, will be:

Employee gross weekly wage	Subsidy payable
Less than **€151**	Nil
From **€151 to €202.99**	€203.00
From **€203 to €299.99**	€250.00
From **€300 to €399.99**	€300.00
From **€400 to €1,462**	€350.00
More than **€1,462**	Nil

The Act also brings forward the date on which EWSS payments will be made from as soon after the due date for filing the monthly payroll return to as soon after the due date for making a payroll submission (i.e. the payment date will be the 5th of the month rather than the 14th).

The subsidy was due to be reduced from 1 February however since the Finance Act has been signed it has been agreed that the above rates will continue to apply up to 31 March 2021. As with CRSS, you should check to see if any changes have been made to EWSS before taking any action.

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Business Taxation CONTINUED

EXTENSION OF DEBT WAREHOUSING

Also included in the Government's July Jobs Stimulus plan to stimulate the economy following the effects of measures introduced to restrict the spread of Covid-19, was a debt warehousing scheme for VAT and PAYE liabilities. Under the scheme, introduced by the Financial Provisions (Covid-19) (No. 2) Act 2020, businesses can defer the payment of VAT and PAYE liabilities incurred during the period when restrictions applied for a period of 12 months after trading recommences. No interest is charged during this initial 12-month period. At the end of the 12-month period, the debts may be further deferred under a phased payment arrangement during which interest at 3% will be charged.

The Act extends the debt warehousing scheme to preliminary tax income tax payments due for 2020 and the balance of income tax due for 2019 when filing a return for 2019. A person can qualify for debt warehousing of income tax payments where, as a consequence of the effect on their income of Covid-19, they are unable to pay their income tax liabilities. A person is deemed to be unable to pay their liabilities because of the effect of Covid-19 where their total income for 2020 is less than 75% of 2019's and the decrease is due to the restrictions imposed because of Covid-19. The relief is claimed when filing a return for 2019.

Debt warehousing will also apply to preliminary tax payments due for 2021 and the balance of tax due for 2020 if total income in 2021 is expected to be less than 75% of 2019's and the decrease is due to the restrictions imposed because of Covid-19.

The Act also extends the debt warehousing scheme to excess Temporary Wage Subsidy Scheme (TWSS) payments refundable by employers.

TAXATION OF PANDEMIC UNEMPLOYMENT PAYMENTS

The Act specifically provides that the pandemic unemployment payment, payable from 13 March 2020, and the Covid-19 pandemic unemployment payment, payable from 5 August 2020, are liable to income tax and USC. This provision takes effect from the date the payments were first payable.

Other Business Measures

CAPITAL ALLOWANCES - ENERGY EFFICIENT EQUIPMENT

Capital allowances of 100%, instead of the usual 12.5%, of expenditure on certain energy efficient equipment may be claimed in the year in which the expenditure is incurred. The period during which expenditure must be incurred to qualify for 100% allowances has been extended by the Act from 31 December 2020 to 31 December 2023.

PROFESSIONAL SERVICES WITHHOLDING TAX (PSWT)

Government departments, state bodies, local authorities and the HSE are required to deduct tax at the standard rate (20%) from payments made for certain professional services. The recipient is entitled to a tax credit for the tax withheld or, where certain conditions are satisfied, may make a claim for an interim refund of tax withheld.

The Act contains provisions for the payor to submit a payment notification to Revenue electronically each time a payment is made from which PSWT is deducted. In addition provision is made for all PSWT returns to be filed electronically. These measures will only come into effect on the issue of a Commencement Order by the Minister for Finance.

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Business Taxation CONTINUED

Companies

INTANGIBLE ASSETS

Capital allowances may be claimed in respect of capital expenditure incurred by companies on certain intangible assets ("specified intangible assets"). Unlike other assets, there is no balancing charge (i.e. clawback of allowances) where the asset is sold after 5 years. The Act removes the exemption from a balancing charge for expenditure incurred on intangible assets on or after 14 October 2020.

KNOWLEDGE DEVELOPMENT BOX

Finance Act 2015 introduced a Knowledge Development Box (KDB) regime in Ireland. Under the regime, only 50% of "qualifying profits" from certain intellectual property are liable to corporation tax resulting in an effective 6.25% rate of tax on such profits. The regime was due to expire at the end of 2020 but has been extended by the Act to accounting periods which commence before 1 January 2023.

SHARE AWARDS

Employers are required to file a return with Revenue in respect of shares awarded to employees. The requirement to file a return has been extended by the Act to share awards given in the form of a cash equivalent or to where a discount on shares is given. In addition returns are now required to be filed electronically.

RELIEF FOR INVESTMENT IN FILMS

Up until 2015, tax relief for investment in films was given to persons investing in qualifying film companies (i.e. a company set up to produce and distribute a qualifying film). With effect from 2015 a new system of tax relief was put in place under which a corporation tax credit is given to film production companies. The tax credit given is 32% of the lower of the following:

- Eligible expenditure
- 80% of the cost of production
- €70m

Finance Act 2018 introduced an enhanced tax credit for films which are produced in "assisted areas" i.e. areas designated under State aid regional guidelines. The enhanced tax credit was 37% for claims made before the end of 2020 and reduced to 35% for claims in 2021 and 34% for claims in 2022. The Act extends the periods for which the enhanced credit will be available, as follows:

- 37% for claims made on or before 31 December 2021
- 35% for claims made in 2022
- 34% for claims made in 2023

The relief is due to expire at the end of 2024.

CONTROLLED FOREIGN COMPANIES

Finance Act 2018 introduced for the first time Controlled Foreign Companies legislation into Irish law to comply with an EU Directive on "laying down rules against tax avoidance practices that directly affect the functioning of the internal market" (the "Anti-Tax Avoidance Directive").

The provisions apply where a company is a "controlled foreign company" (CFC). A company is a CFC if it is not resident in the State and is controlled by a company, or companies, resident in the State. A CFC charge arises where a CFC has undistributed income in an accounting period and significant decision-making functions (referred to as "relevant Irish activities") in relation to the CFC have been carried out in Ireland by the controlling company. Where the charge arises a portion of the undistributed income of the CFC is attributed to the Irish controlling company.

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Business Taxation CONTINUED

CONTROLLED FOREIGN COMPANIES CONTINUED

The charge does not apply in the following circumstances:

- The Irish tax which would be payable on the profits if they were within the charge to Irish tax is not greater than twice the amount of the foreign tax paid by the CFC on the profits
- The accounting profits of the CFC are less than 10% of its operating costs
- The accounting profits of the CFC are less than €75,000 or
- The accounting profits of the CFC are less than €750,000 and non-trading profits account for less than €75,000 of those profits

The Act provides that with effect for accounting periods beginning on or after 1 January 2021 these exemptions will not apply where the CFC is included in the EU list of non-cooperative jurisdictions for tax purposes.

EXIT TAX

An exit tax charge arises in the following three cases:

(1) A company resident in an EU member State other than the State, transfers assets from a permanent establishment in the State to its head office or to a permanent establishment in another country.

(2) A company resident in an EU member State other than the State, transfers a business, including its assets, carried on by a permanent establishment in the State to its head office or to a permanent establishment in another country

(3) A company ceases to be resident in the State and becomes resident in another country.

Where the exit tax charge arises, the company is deemed to dispose of its assets and immediately reacquire them at their market value. Any gain arising is generally liable to tax at 12.5%. There are certain exceptions from the charge including for land in the State, shares deriving their value from land in the State and assets which are used for a permanent establishment in the State.

The tax is payable 9 months after the event which triggers the charge, if the gain is liable to corporation tax, or 31 October in the following year if the gain is liable to capital gains tax. An election can be made in certain circumstances to defer the payment of the tax over 6 years.

The Act contains a technical amendment confirming that simple interest at .0219% per day is payable on the balance outstanding at any point in time.

This provision applies to tax remaining unpaid on or after 14 October 2020.

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Transfer Pricing

Transfer pricing legislation was first introduced into Ireland by Finance Act 2010 with effect from 1 January 2011. Under this legislation profits arising from a trade or profession may be adjusted where transactions on a non-arms' length basis have taken place between associated persons. For this purpose, persons are associated if one is a company and either the other person controls the company or else both are under control of the same person. Profits can only be adjusted for transactions involving the supply or acquisition of goods, services, money, or intangible assets. Profits will only be adjusted where the acquirer is trading in Ireland and the price paid is greater than an arm's length price or the supplier is trading in Ireland and the price paid is less than an arm's length price. The original legislation did not apply to non-trading transactions and to small or medium sized companies (SMEs) i.e. those with less than 250 employees and either a turnover of less than €50m or assets of less than €43m.

The Finance Act 2019 rewrote the existing transfer pricing legislation with the intention of extending the scope to non-trading transactions and ultimately to SMEs.

Under the revised legislation profits or gains may be adjusted for any arrangement involving:

- The supply or acquisition of goods, services, money, assets (including intangible assets), or anything of commercial value
- Where the acquirer and supplier are associated and
- The profits of either the acquirer or supplier are within the charge to Irish tax

Where the consideration for an acquisition is greater than an arms' length price the profits, gains or losses of the acquirer are adjusted and when the consideration for a supply is for less than an arms' length price the profits, gains or losses of the supplier are adjusted.

The amended legislation provided however that profits or gains would not be adjusted for transactions undertaken in the course of non-trading activities between persons where both parties are within the charge to Irish tax. Thus, for example, under the legislation as amended by Finance Act 2019 no adjustment would be made for interest free loans between Irish resident companies where lending is not part of the lender trade or for say below market lettings between Irish resident companies. The Act limits the circumstances in which domestic non-trading transactions fall outside the scope of the transfer pricing legislation to transactions where consideration of more than a nominal amount is charged.

With regard to loans, the Act provides that domestic loans will only remain outside the transfer pricing legislation if the loan is regarded as a "qualifying loan arrangement". For a loan to be a "qualifying loan arrangement" the following conditions must be satisfied:

- The person making the loan does so otherwise than in the course of a lending trade.
- The recipient of the loan must be a company which exists wholly or mainly of carrying on a trade, whose income consists wholly or mainly of rent from Irish properties or be a holding company of such a company.
- The recipient company must be within the charge to Irish corporation tax.
- In the case of a loan to a holding company, the lender must be a company.
- If the loan is by an individual, the individual must be Irish resident, if it is by a company it must be within the charge to Irish corporation tax.

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Business Taxation CONTINUED

Transfer Pricing CONTINUED

- The borrowing company must be entitled to a deduction for interest paid in calculating its trading or rental profits
- In the case of a borrower which is a holding company, the funds must be used to lend to another person or to acquire ordinary shares in another company. Where the funds are lent to another person the lender must be liable to tax on any interest received. If the funds are on lent to an associated company, interest at an arms-length rate must be charged. Where the funds are used to acquire shares in another company, that company must exist wholly or mainly to carry on a trade, or its income must consist wholly or mainly of rent from Irish properties. Furthermore the borrower and company whose shares are acquired must be associated after the acquisition of the shares. In addition within a three-year period the borrower must receive dividends of more than a nominal amount from the company.
- The arrangement must be entered into for bona fide commercial reasons and not as part of a tax avoidance scheme

Unpaid debts which arise from the acquisition of goods, services, or assets under an arrangement to which the transfer pricing provisions apply are treated as loans to the extent the goods/services/assets supplied were supplied otherwise than in the course of the supplier's trade. For such debts to remain outside the scope of the transfer pricing legislation the conditions to be a "qualifying loan arrangement" set out above must be satisfied.

The new provisions will not come into effect until the issue of a Commencement Order by the Minister for Finance. It is speculated that there may be changes to the proposed legislation before it is enacted.

Farming

FARM SAFETY EQUIPMENT - ACCELERATED CAPITAL ALLOWANCES

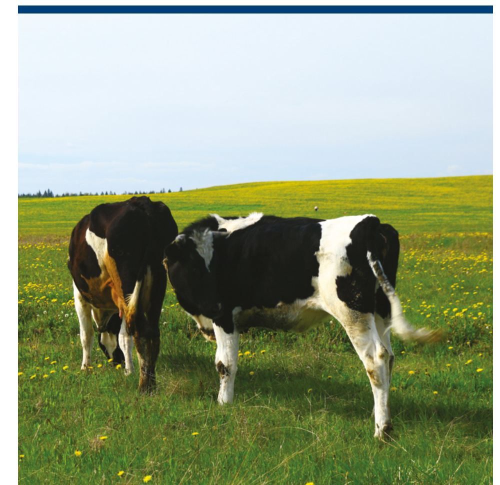
Like any other business, farmers are entitled to claim capital allowances of 12.5% per annum of the cost of farm equipment. The Act provides that capital allowances may be claimed at 50% per annum on certain farm safety equipment which is set out in the legislation. The equipment which qualifies for the increased rate of capital allowances include items such as chemical storage cabinets fitted with locking devices and vented to prevent build-up of fumes; animal anti-backing gates and adaptive equipment such as access lifts or hoists to facilitate farmers with disabilities.

To qualify for the accelerated rate of capital allowances, the farmer must apply to the Minister for Agriculture, Food and the Marine, for a certificate confirming that the equipment acquired by the farmer is qualifying equipment.

The maximum cumulative expenditure which qualifies for relief is €5m. However the aggregate amount of tax relief obtained by any person under the scheme cannot exceed €500,000. In practice this means that only farming companies, which only pay tax at 12.5%, can qualify for relief on expenditure of up to the maximum amount. For an individual farmer who pays tax at the top rate of 55% the maximum expenditure which will qualify for relief will be circa €1.2m.

The relief is only available to SMEs.

The new provisions will apply to expenditure incurred in the period 1 January 2021 to 31 December 2023 but will not come into effect until the issue of a Commencement Order by the Minister for Finance.



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Business Taxation CONTINUED

Financial Services

ENCASHMENT TAX

Persons entrusted with the payment of dividends out of public revenue (i.e. government interest or dividends and foreign public authorities) and dividends of a non-resident body are required to withhold encashment tax from payments made. At the moment encashment tax is deductible at the standard rate of income tax, 20%. With effect from 1 January 2021 encashment tax is being increased to 25% to bring it into line with the rate of dividend withholding tax which was increased to 25% with effect from 1 January 2020.

The Act also provides for an exemption from encashment tax for payments to companies within the charge to corporation tax on the amount received. This provision will not come into effect until the issue of a Commencement Order by the Minister for Finance.

REPORTING OF CREDIT AND DEBIT CARD PAYMENTS

The Act contains provisions whereby the Revenue may, with the consent of the Minister for Finance, issue regulations which will require credit and debit card payment providers to make returns of cross border payment card transactions. The latter are any payments made using a debit or credit card where the recipient of the payment is located outside the State.

MIGRATION FROM CREST TO EUROCLEAR

At the moment the central securities depository (CSD) for Irish shares and securities is CREST which is located in the UK. As a result of the UK leaving the EU, Irish shares will migrate to Euroclear Bank by the end of March 2021. The Act contains a number of provisions to ensure there are no unintended tax consequences arising from this migration. These include the following provisions:

- The migration of shares/securities from Crest to Euroclear will not be a disposal for CGT purposes
- Where a person under CSD rules holds an interest in shares/securities by way of a co-ownership interest in a fungible pool of underlying shares (a “co-ownership interest”), a disposal of such a co-ownership interest will be treated as a disposal of the underlying shares
- References in tax legislation to quoted shares will be deemed to include co-ownership interests
- The dividend withholding tax (DWT) legislation is amended to ensure the current position whereby authorised withholding agents can received dividends without deduction of DWT, will continue.
- Capital acquisitions tax legislation is amended to ensure that where shares are held either by way of co-ownership interest or a share which represents ownership of an underlying share that there will be a look through to the underlying share in determining whether the asset is situated in the State. The definition of shares is also extended to include any legal or equitable interest or rights to a share.
- Stamp duty legislation is amended to ensure that all transfers of “dematerialised securities” remain within the charge to stamp duty. Dematerialised securities are securities where there is no physical share certificate or other physical document indicating ownership of the security.

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Personal Taxation

Income Tax Rates and Credits

No changes have been made to the 40% higher and 20% standard rates of tax or to the standard rate tax band.

The earned income credit, which may be claimed by self-employed and proprietary directors who are not entitled to the employee tax credit, has been increased from €1,500 to €1,650 for 2020 and subsequent tax years and is now the same as the employee tax credit.

The dependent relative tax credit has been increased from €70 to €245 for 2021 and subsequent tax years. An individual who maintains an elderly or incapacitated relative, a widowed parent, or a child who is required to live with them because of the individual's age or incapacity, is entitled to claim this credit. The person in respect of whom the credit is claimed must not have income exceeding a specified limit.

There have been no other changes to tax credits.

Universal Social Charge

No changes were made to the USC rates. The band within which USC is paid at 2% has been widened by €610 with a corresponding reduction in the 4.5% band. This change has been made to ensure that individuals who receive apay increase due to the increase in the National Minimum Wage from 1 January 2021 do not pay USC at a rate higher than 2%.

The relief whereby individuals under 70 with income not exceeding €60,000 who have a full medical card pay USC at a maximum rate of 2% has been extended up until the end of 2022.

Help to Buy Scheme

Finance Act 2016 introduced a Help to Buy scheme to provide assistance to first time purchasers buying or building a dwelling. Under the scheme individuals who have not previously purchased or built a dwelling can claim a rebate of income tax and DIRT paid for the four previous years. The rebate which may be claimed is the lesser of:

- €20,000
- The amount of income tax (i.e. not USC or PRSI) and DIRT paid by the individual for the four preceding years or
- 5% of the "purchase value" of the qualifying dwelling. The purchase value of a dwelling is the price paid or the in the case of a self-build, the mortgage provider's valuation of the dwelling.

The rebate does not apply where the cost/valuation of the dwelling exceeds €500,000.

The scheme is due to expire on 31 December 2021.

As part of Government's July Jobs Stimulus plan to stimulate the economy following the effects of measures introduced to restrict the spread of Covid-19, temporary enhancements to the Help to Buy scheme were introduced for the period 23 July to 31 December 2020 by the Financial Provisions (Covid-19) (No. 2) Act 2020. For this period, the rebate claimable was increased to the lesser of:

- €30,000
- The amount of income tax and DIRT paid by the individual for the four preceding years or
- 10% of the "purchase value" of the qualifying dwelling.

The Act has extended the period during which the enhanced rebate may be claimed to the end of 2021.

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Personal Taxation CONTINUED

Miscellaneous Income Tax Changes

Exemption for payments by TUSLA

Finance Act 2019 provided for an exemption from income tax for certain payments made by statutory agencies which were previously exempt by concession. The Act extends the statutory exemption to payments made by the HSE to "Home Sharing Host Allowances" paid to carers.

Exemption for Mobility Allowance payments

The Act provides an exemption from tax for payments made to individuals before and after 1 January 2021 under the Mobility Allowance scheme operated by the HSE.

Capital Acquisitions Tax

RATES AND THRESHOLDS

There has been no change to the rate of capital acquisitions tax (33%) or to the tax-free thresholds.

REQUIREMENT TO FILE A RETURN

A person is required to file a capital acquisitions tax return if required to do so by Revenue or where the cumulative value of gifts received from persons to whom the same tax-free threshold applies*, exceeds 80% of the relevant tax-free threshold in question. The Act extends the requirement to file a return to the following regardless of whether the 80% limit has been exceeded:

- Gifts of agricultural property or
- Gifts of business property which qualifies for business relief.

* For example, a tax-free threshold of €335,000 applies to gifts or inheritances from a parent. A capital acquisitions tax return must be filed when a child has received cumulative taxable gifts or inheritances of €268,000 from their parents.

Capital Gains Tax

REVISED ENTREPRENEUR RELIEF

Revised entrepreneur relief, introduced by Finance Act 2015, provides for a 10% rate of CGT to apply to gains (up to a cumulative amount of €1m) arising on disposals of certain business assets and shares in certain companies. One of the conditions which must be satisfied for a gain on the disposal of shares to qualify for the relief is that the individual must have owned at least 5% of the ordinary share capital for a continuous period of at least 3 years in the 5 years prior to the disposal. The Act amends this provision so that the relief can apply where the individual has held the shares for a continuous period of at least 3 years at any time prior to the disposal.

The new provision applies to disposals on or after 1 January 2021.

ANTI-AVOIDANCE

A debt is an asset for CGT purposes and the repayment of the debt is a disposal of an asset. Where however a debt is repaid to the original creditor no chargeable gain arises for CGT purposes. Foreign currency in a bank account is a debt owing to the customer by the bank. The conversion of foreign currency would constitute the disposal of a debt which would potentially be exempt from CGT under this provision. Accordingly to ensure that gains arising on currency speculation are not exempt from CGT, legislation provides that the exemption does not apply to the disposal of foreign currency in a bank account.

The Act amends this anti-avoidance measure further to provide that no chargeable gain or allowable loss will arise for CGT purposes where foreign currency is transferred by a person from one bank account to another. This is to ensure that no chargeable gain or allowable loss will arise for CGT purposes where no actual gain or loss has arisen.

The new provision applies to disposals made on or after the passing of Finance Act 2020.

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Personal Taxation CONTINUED

Stamp Duty

FARM CONSOLIDATION RELIEF

Where a disposal of land qualifies for a "Farm Restructuring Certificate"* for capital gains tax farm consolidation relief, a 1% rate of stamp duty applies to the transfer instead of the normal 7.5%. This relief was due to expire at the end of 2020 but has been extended by the Act to the end of 2022.

STAMP DUTY REFUND FOR RESIDENTIAL LAND

There is a stamp duty refund scheme in respect of a purchase of land which is subsequently developed for residential purposes. Under the scheme a claim may be made for a refund of 11/15ths of the stamp duty paid at 7.5% (or 2/3rds where stamp duty at 6% was paid on the acquisition). A claim for a repayment can be made provided construction operations commence within 30 months of the acquisition of the land and are completed within 2 years. Prior to the Act the relief would only apply if construction commenced before 1 January 2022.

The Act extends the period within which the construction must be completed to qualify for the refund, from 2 years to 30 months and extends the final cut-off date within which construction operations must commence for a further year to 1 January 2023.

CONSANGUINITY RELIEF

In the past the rate of stamp duty applicable to transfers between relatives was reduced to 50% the normal rate. This general relief was abolished for transfers from 2015 other than transfers of farmland. With effect from 1 January 2015 stamp duty has continued to be payable at 1% on transfers of farmland between relatives where the following conditions are satisfied:

- The transferee is an individual who farms the land or who leases it for at least 6 years to someone who farms the land.
- The transferee/lessee who farms the land must hold certain agricultural qualifications or must spend not less than 50% of their normal working time farming land (including the land transferred to him), and
- The land must be farmed on a commercial basis.

The relief was due to expire at the end of 2020 but has been extended to transfers which take place before 1 January 2024.

* A Farm Restructuring Certificate is a certificate issued by Teagasc certifying that the sale or exchange of land in question has been undertaken for farm restructuring purposes.

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Personal Taxation CONTINUED

Changes to the Appeals System

At present the Appeal Commissioners may dismiss an appeal where a party fails to comply with a direction which they have given to the party requiring them to provide certain information/documents or to attend a case management conference. The Act provides that the Appeal Commissioners may also dismiss an appeal where a party fails to comply with a direction given by them to provide a statement of case or an outline of the arguments to be made at a hearing.

The Act also provides for how an appeal is to be dealt with where an Appeal Commissioner ceases to be an Appeal Commissioner before the appeal process is completed. When an Appeal Commissioner which has dealt with an appeal vacates the office the new process is as follows:

- Where the hearing has commenced but is not completed or has been completed but a determination has not been issued, the appeal will be reheard or adjudicated on without a hearing. Whether the appeal is reheard or not will be decided by another Appeal Commissioner
- Where the appeal has been heard and a determination has been issued but any of the steps in stating a case for the opinion of the High Court on the determination remain outstanding, a notice will be served on the parties asking them to state which of the following options they would prefer:
  - **(i)** A rehearing of the appeal by another Appeal Commissioner
  - **(ii)** The appeal to be adjudicated on by another Appeal Commissioner or
  - **(iii)** The remaining steps in stating a case for the opinion of the High Court to be made by another Appeal Commissioner.

If the parties do not agree on how to proceed option (iii) will apply. However where option (iii) applies the High Court may decline to deal with the case on this basis and may require a rehearing.

The Act also sets out the circumstances in which an appeal may be made against the imposition of the surcharge for the late filing of a return. The circumstances in which such an appeal can be made are restricted to:

- Circumstances in which an individual is deemed to have filed a return late because they file an incorrect return, fail to correct an error in a return, do not file a return electronically when required to do so or fail to provide additional information requested
- There is a dispute over the date on which the return was filed.

The above changes will take place from the date of passing of Finance Act 2020.

Entitlement to interest on refunds

The Act provides that where a taxpayer makes an appeal against an assessment and makes a payment in connection with that appeal, if the taxpayer subsequently becomes entitled to a repayment on the determination or settlement of the appeal, the taxpayer will not be entitled to interest on the refund.

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Anti Avoidance and EU Reporting

Changes to the EU Mandatory Disclosure Regime

Finance Act 2019 incorporated into Irish legislation amendments to the EU Directive on Administrative Cooperation in the Field of Taxation (often referred to as DAC6) aimed at tackling what was perceived as aggressive cross border tax planning arrangements.

Under the new provisions introduced by Finance Act 2019, certain persons (“intermediaries”) are required to make a return to Revenue when a “reportable cross-border arrangement” is implemented or made available for implementation. Information reported to the Revenue Commissioners will be disclosed by Revenue to the tax authorities of the relevant EU Member State.

A “reportable cross-border arrangement” is a cross-border arrangement which contains one of the “hallmarks” set out in the Directive. Broadly a cross-border arrangement is an arrangement concerning one or more EU Member States or an EU Member State and a non-EU Member State where the participants in the arrangement are not resident in the same jurisdiction, are resident in more than one jurisdiction or carry-on business through a PE in another jurisdiction.

The “hallmarks” set out in the Directive are characteristics or features which an arrangement must have to be a reportable arrangement. Some hallmarks will only be taken into account where it can be established that the main benefit, or one of the main benefits which a person might reasonably expect to obtain from the arrangement is obtaining a tax advantage. Other hallmarks are reportable regardless of whether the arrangements involve obtaining a tax advantage.

The Act clarifies a number of items in the legislation as follows:

- The definition of “taxes” to which the legislation applies (they do not include VAT, social security contributions, fees for documents issued by public authorities and duties such as consideration for public utilities).
- It is confirmed that an intermediary is not required to report an arrangement where they have been notified in writing by another intermediary involved in the transaction, that the required information has been reported to the Revenue in another jurisdiction.
- It is confirmed that a person will only be regarded as coming within the self-assessment system where the tax advantage obtained is in respect of a tax which is under the care of the Revenue Commissioners.

The Act provides that certain arrangements will not be regarded as reportable arrangements. These are arrangements which fall within the hallmark of having substantially standardised documentation and where the main benefit of the arrangement is obtaining a tax advantage. They include:

- Qualifying salary sacrifice arrangements
- The disposal/occupation of woodlands to which exemption from tax applies
- Pension schemes
- Revenue approved profit-sharing schemes, share ownership trusts, savings related share option schemes, certified contractual savings schemes and share option schemes

Such schemes must not be tax avoidance schemes for the exemption from reporting to apply.

The above changes will take place from the date of passing of Finance Act 2020.

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Anti Avoidance and EU Reporting

Hybrid Mismatches

Finance Act 2019 brought into Irish law anti-hybrid rules provided for in the EU Anti-Tax Avoidance Directive II (ATAD2). The purpose of the ATAD is to counteract planning undertaken by large multinational companies designed to exploit the differences in tax rules of different countries. The legislation aims to deal with hybrid mismatch outcomes in relation to payments (e.g. interest and royalties) between entities located in different jurisdictions.

What is a hybrid?

A hybrid arises where two countries characterise an entity, a payment or business activities differently for tax purposes. For example, an entity would be regarded as a hybrid entity where it is characterised as opaque in one jurisdiction but look through in another jurisdiction. A payment which is regarded as interest in one jurisdiction but as a tax-exempt distribution or dividend in the other jurisdiction would be a hybrid payment.

What is a hybrid mismatch outcome?

A hybrid mismatch outcome occurs where as a result of the different characterisation of an entity, payment or business activity, a deduction is being given in one jurisdiction without a corresponding taxable receipt in the other jurisdiction (a deduction without inclusion mismatch outcome) or where a deduction is being given in more than one jurisdiction without the corresponding income being included in more than one jurisdiction (a double deduction mismatch outcome).

Under the legislation, mismatch outcomes are dealt with in two ways.

(1) In the case of a deduction without inclusion mismatch outcome, if Ireland is the paying State a tax deduction is not given in Ireland. If, however, Ireland is the payee State and the paying State has not denied a tax deduction for the payment then the income will be taxed here.

(2) In the case of a double deduction mismatch outcome, if the State is the not the State where the payment is sourced, the State will not give a deduction for the payment in question. Where the State is the State where the payment is sourced and the other State has not denied a deduction under an equivalent legislative provision, then the State will deny a tax deduction for the payment.

The rules with regard to payments generally only apply to cross border payments between associated entities. However in the case of hybrid financial instruments, where a deduction without inclusion mismatch outcome arises, there is no requirement for the payer and payee to be associated.

The legislation also provides for withholding tax mismatches and “structured arrangements” (i.e. arrangements designed to give rise to mismatch outcome or where the mismatch is priced into the transaction).

The Act contains a number of technical amendments to this legislation the aim of which is as follows:

- Ensure the definition of associated enterprise is in line with ATAD2
- To provide that enterprises will not be regarded as associated where they are not associated at the time of the payment or when a tax deduction for the payment arises
- To provide that in certain circumstances the hybrid rules will not apply where a charge arises under the Controlled Foreign Company legislation
- To provide that a payment to a hybrid deduction without inclusion mismatch outcome will not arise where the participator is tax exempt

These changes apply with effect from 1 January 2021.

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VAT

Changes in VAT Rates

Reduction in VAT rate for tourism and hospitality sectors

For the period 1 November 2020 to 31 December 2021 the rate of VAT applicable to the tourism and hospitality sectors has been reduced from 13.5% to 9%. The reduced rate will apply to the following for this period:

- Restaurant and catering services and food supplied via vending machines (excluding alcohol and soft drinks)
- Take away food
- Printed matter such as brochures, maps, catalogues (the 9% rate already applies to newspapers)
- Admission to shows, theatres, cinemas, museums, art galleries and other cultural events, amusement parks, fairgrounds, and open farms
- Guest or holiday accommodation
- Hairdressing services

VAT rate on sanitary products, candles and supplies of Covid-19 related equipment

The rate of VAT on certain sanitary products is to be reduced to 13.5% with effect from 1 January 2021.

The standard rate of VAT (21% until 28 February 2021) will apply to all candles with effect from 1 January 2021. Currently certain white candles qualify for the 0% rate of VAT.

The temporary 0% rate of VAT which applies to supplies of equipment to the HSE, hospitals, nursing homes and general practitioners which are used to combat Covid-19 (e.g. personal protection equipment, ventilators, hand sanitiser) will be extended provided EU approval is received.

VAT rate on supplies of guest accommodation

At the moment supplies of guest accommodation, excluding rooms in a hotel or guest house, are liable to VAT at the reduced rate of VAT (13.5% temporarily reduced to 9% see above) where the accommodation is let on a “short term basis”. This is defined in regulations as lettings which are unlikely to exceed 8 consecutive weeks. Lettings in excess of 8 consecutive weeks would therefore be exempt from VAT. The circumstances in which the reduced rate of VAT applies to the provision of such accommodation has been amended and is no longer restricted to lettings on a short-term basis. Accordingly the reduced rate of VAT should apply to all supplies of holiday or guest accommodation regardless of the period of occupation.

Increase in flat rate addition for farmers

With effect from 1 January 2021 the “flat rate addition” rate will be increased from 5.4% to 5.6%. The flat rate addition is a payment made to non-VAT registered farmers to compensate them from VAT paid on goods and services acquired in the course of their farming activities which they are unable to recover.

Changes in VAT Definitions

The definition of immovable goods and restaurant/catering have been amended to bring the definitions in Irish legislation in line with the definitions in EU Directives.

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VAT

Requirement to appoint a Tax Representative

The Act contains a provision whereby the Revenue may serve a notice on a VAT registered person requiring them to appoint a representative who is established in the EU. This representative will be jointly and severally liable with the VAT registered person for the payment of VAT due by the VAT registered person. The notice may only be served on a person who does not have an establishment in the State, other than persons who are registered to pay Irish VAT under the Mini One Stop Shop scheme. *

Where a notice is served on a person, they must provide details of the tax representative appointed within 21 days. A penalty of €4,000 can apply for failure to comply with such a notice.

This provision will take effect from the date of the passing of Finance Act 2020.

* The MOSS scheme is a scheme for persons who supply telecommunications, broadcasting, and electronic services to private individuals. In the absence of the MOSS scheme suppliers would be required to register for VAT in each EU state in which these services are supplied. Under the scheme the supplier only has to register for VAT in one Member State.

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The above is intended as a general guide to the measures announced in Finance Act 2020. No action should be taken on the basis of the above without obtaining professional taxation advice.

If you have any queries please do not hesitate to contact Purcell McQuillan Tax Partners Ltd on 01 668 2700.

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