PMQ

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TAX PARTNERS

# Finance Act 2022

## A Comprehensive Commentary

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# Contents

# Introduction

**We are pleased to outline our commentary on Finance Act 2022 ("the Act") which was signed into law by the President on 15 December 2022.**

Welcome measures for businesses include the introduction of the Temporary Business Energy Support Scheme to provide support to businesses who have experienced significant increases in energy costs. On the personal tax side, the standard rate tax bands have been widened and personal tax credits, home carer credits, employee and earned income tax credits have all been increased.

***Measures of particular interest to companies which are included are:***

- The extension of the Knowledge Development Box (KDB) regime to the end of 2026 together with a proposed increase in the effective rate of tax on KDB profits from 6.25% to 10%.
- Changes to the manner in which R&D credits may be claimed which may result in relief being given over an extended period.

***Provisions of interest to employers and employees include:***

- The extension of the Foreign Earnings Deduction to the end of 2025
- The extension of Special Assignee Relief Programme to employees coming to Ireland up to the end of 2025.
- The implementation of measures to improve the Key Employee Engagement Programme (KEEP) originally proposed in 2019 together with further proposed improvements to the scheme.
- The increase in the annual amount of a tax-free benefit/voucher which can be given to an employee to €1,000.

***There are a number of measures of particular interest to farmers including:***

- The extension of CGT and stamp duty reliefs on farm consolidations
- The extension of stamp duty relief on transfers of land to young trained farmers
- The extension of enhanced stock relief for young qualified farmers and certain registered farm partnerships
- Accelerated capital allowances for expenditure on slurry storage

***The Act contains a number of measures for the property sector including:***

***For landlords/tenants:***

- A deduction may be claimed by landlords for certain expenditure on retrofitting residential premises
- There is an increase in the amount of pre-letting expenses deductible for residential properties
- A rent tax credit has been introduced for tenants
- The Living City Initiative has been extended to the end of 2027
- A vacant homes tax has been introduced.
- The Help to Buy scheme has been extended to the end of 2024

***For those involved in property development/construction:***

- A 3% levy on the supply of concrete products has been introduced
- The circumstances in which residential zoned land tax is not payable has been extended
- The extension of the circumstances in which a partial refund of stamp duty at 10% paid on bulk purchases of residential properties may be claimed.
- The extension of the period for which a partial refund may be claimed in respect of stamp duty on land which is subsequently developed for residential purposes
- The provision of a stamp duty refund scheme for the purchase of a residential unit subsequently sold to persons under affordable dwelling purchase arrangements.

# Business Taxation

## Temporary Business Energy Support Scheme

The Act provides for the introduction of the Temporary Business Energy Support Scheme (TBESS). The aim of the TBESS is to provide support to businesses who have experienced increases in electricity or natural gas energy costs. A claim can be made by a business under the TBESS if the following conditions are satisfied:

- The business being carried on is a trade or profession carried on wholly or partly in the State or is a charity or approved sporting body carrying on trading/professional activities which are exempt from tax (i.e. eligible businesses) (Credit and financial institutions are not eligible)
- Is tax compliant (i.e. eligible for a tax clearance certificate and compliant with payment and tax return obligations)
  **and**
- The business has experienced an increase of 50% or more in its electricity and/or natural gas average unit price

Under the scheme a claim can be made for 40% of the increase in energy bills. The increase must have occurred between the “claim period” and the “reference period”. A “claim period” is a calendar month in the period September 2022 to April 2023. (The Act provided for the final claim period to end on 28/02/2023. This was subsequently extended to 30 April 2023.) A reference period is the corresponding month in the previous year.

The Act provided for a monthly cap on claims of €10,000 per trade/profession. This was subsequently increased to €15,000 from 1 March 2023 onwards. Where a trade/profession is carried on at more than one location, the €10,000/€15,000 cap is per location subject to an overall monthly cap of €30,000 increased to €45,000 for claim periods from 1 March 2023. Details of the claimant will be published where the claim exceeds €100,000 for any claim period (or €10,000 per claim period where the business is engaged in farming, fishing or aquaculture).

A claim must be made no later than 4 months from the date on which the claim period for which the claim is being made, ends.

In order to make a claim under the scheme the business must be able to show that the average unit price for electricity or natural gas on the relevant bill has increased by more than 50% compared with the average price in a reference period. If this condition is satisfied the business can make a claim for 40% of its eligible costs. A claim for a temporary business energy payment (TBEP) must be made within 4 months from the end of the claim period (i.e. a claim for the period 1/9/22 – 31/5/23 must be made on or before 31 July 2023.)

An eligible business must register online via ROS for the scheme with Revenue.

The aggregate amount of relief which an undertaking can claim under the TBESS and in respect of aid granted under the EU Temporary Crisis Framework is:

- €250,000 for businesses which are active in the primary production of agricultural products.

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# Business Taxation

## Temporary Business Energy Support Scheme
*continued*

- €300,000 for businesses are engaged in the production, processing and marketing of fishery and aquaculture products, or
- €2m in any other case.

Finance Bill 2023 proposes to make the following changes to the TBESS, subject to obtaining state aid approval:

- The extension of the scheme to 31 May 2023
- Proposed reduction in energy costs threshold from 50% to 30% to apply for claim periods from 1 September 2022
- The period for which a claim under the scheme must be made is to be amended to 2 months after the scheme ends.

## Capital Sums for the sale of Patent Rights

Where a resident person sells patent rights (which is deemed to include the grant of a licence) for a capital sum the person is liable to income tax, or corporation tax in the case of a company, on the profit on the sale over a 6-year period. The person can, however, make an election for the amount taxable to be taxed in the year in which the sum is received. Where a non-resident person sells Irish patent rights they are also liable to income tax on any profit arising and in addition withholding tax applies to the payment. A non-resident can also elect for the amount taxable to be spread over 6 years.

The Act makes two changes to this legislation. It provides that where there is a sale of patent rights where the purchaser becomes entitled to have their title registered as applicant or owner of the patent in the Register of Patents under the Patents Act 1992, or similar legislation in another jurisdiction, any gain arising on the disposal will be liable to capital gains tax (CGT) rather than income tax. This measure was inserted to clarify that income tax treatment is not intended to apply to an outright sale of a patent. In addition the Act provides that group relief can apply to the sale of patent rights between group members which would otherwise be regarded as a disposal for CGT purposes. Where group relief applies the asset is deemed to transfer for such an amount that no gain or loss arises on the transfer.

These measures came into operation on 1 January 2023.

# Companies

## Employment Investment Incentive ("EII")

EII provides a means by which companies can raise funding by the issue of share capital. Under the scheme investors are entitled to a tax deduction for the investments made. In order for the relief to apply certain conditions must be satisfied by the company and the investors. The maximum investment for which relief is given is €250,000, or €500,000 if the shares are held for 7 years.

One of the conditions for the relief to apply is that the investor or an associate may not be connected to the company during the 2 year period before and the 4 year period after the shares are issued. A person is connected to the company if they have shares in the company. The definition of "associate" includes a partner of the individual. The Act provides that an individual will not be regarded as associated with a company simply because an associate has shares in the company and is a partner of the individual solely because they both have invested in a qualifying investment fund (i.e. a fund set up to invest in EII companies).

The EII company is required to issue a "statement of qualification" to an investor confirming the company is a qualifying company and the investment is a qualifying investment. Where the company ceases to be a qualifying company or an incorrect statement of qualification is issued, the company is taxable on the amount of excess relief given to the investor. A technical amendment was made by the Act to ensure that the amount on which the company is taxable equals the full amount of the excess relief given to investors for shares issued on or after 1 January 2022.

## Foreign Currency Gains and Losses

Generally gains and losses are only taxable/allowable when they are actually realised. Tax legislation contains specific rules with regard to the taxation of certain foreign currency gains and losses arising to a company. It provides that gains or losses arising on "relevant monetary items" and "relevant contracts" are included in calculating trading income whether they are realised or unrealised. Prior to the Act "relevant monetary items" was defined as money held or payable by the company for the purpose of its trade ("relevant contracts" are contracts entered into for the purpose of protecting relevant monetary items from losses due to changes in exchange rates) accordingly the definition did not include trade debtors. In practice, however, Revenue accepted that such foreign currency gains/losses on such items could be taxed/deducted when included in trade profits rather than when they were realised.

The Act amends the definition of "relevant monetary items" to include trade receivables and bank deposits where the bank account is used to lodge and disburse trading items. Unrealised foreign currency gains or losses on such items will now clearly be included in calculating trading profits.

The above change came into operation on 1 January 2023.

# Companies

## Knowledge Development Box

Finance Act 2015 introduced a Knowledge Development Box (KDB) regime in Ireland. Under the regime as introduced, 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 in 2023 but has been extended by the Act to accounting periods which commence before 1 January 2027.

The Act has amended the legislation to increase the amount of the qualifying profits liable to tax to 80%, from 50%, increasing the effective rate of tax on such profits to 10%. This amendment will only take effect on the issue of a Commencement Order by the Minister for Finance.

## Research and Development

### *Research and Development Tax Credit*

A company is entitled to claim a tax credit against its corporation tax liability of 25% of qualifying expenditure on research and development (R&D). Prior to the Act, a company could offset the credit against its corporation tax liability for the current and prior year period and could make a claim for a repayment of the excess remaining. The excess was repayable in three instalments as follows:

**(i)** 33% of the excess was repayable on filing a return for the accounting period in which the qualifying R&D expenditure was incurred

**(ii)** The balance was carried forward and 50% of the excess over the next years corporation tax liability then became repayable 12 months after the due date for the filing of return referred to in (i)

**(iii)** The excess of the balance over the corporation tax liability for the next accounting period then became repayable 24 months after the due date for the filing of the return referred to in (i).

The Act provides that with effect for accounting periods commencing on or after 1 January 2023 instead of firstly offsetting the R&D credit against corporation tax liabilities and making a claim for a repayment of the excess, the entire R&D credit will be repaid in three instalments as follows:

**(i)** The first instalment will be the greater of €25,000 (or if lower the amount of the credit) or 50% of the credit. Where the qualifying R&D expenditure is in relation to a building, the first instalment will be 50% of the credit.

**(ii)** The second instalment will be 3/5ths of the credit less the first instalment, and

**(iii)** The third instalment will be the balance of the credit not yet repaid.

The timing of the payment of the three instalments has not been changed, however, the Act now provides that a claim for a repayment shall be made within 48 months of when a "valid claim" has been made.

# Companies

## Research and Development *continued*

### *Research and Development Tax Credit* *continued*

The Act provides that a “valid claim” is one which is made in accordance with provisions of the legislation and in respect of which all information which Revenue may “reasonable require” to enable them to determine the extent of the credit due has been provided.

A company may elect to be repaid the instalment due or to offset it against its corporation tax liabilities.

As a result of the new provisions the period over which a profitable company will obtain relief for its R&D credits will be greatly extended. At present such a company would be entitled to offset the credit against current and prior year corporation tax liabilities and so where their R&D credit is less than these liabilities in effect relief for the R&D credit is given immediately. Under the new rules where the R&D tax credit exceeds €50,000 the company will only be able to offset a maximum of 50% of the R&D tax credit against its current corporation tax liability and will have to claim the remaining 50% over the next two years.

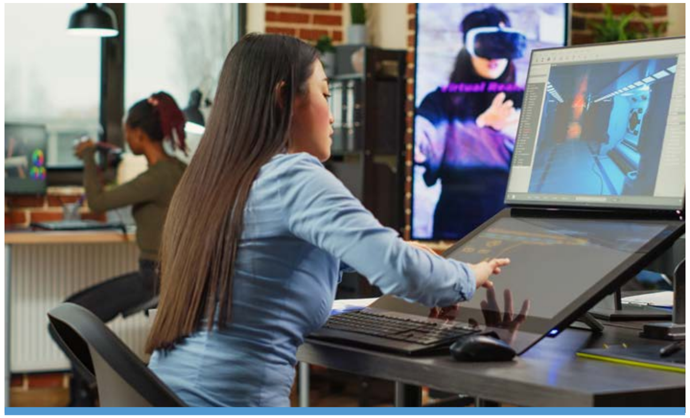
## Relief for Investment in Films

Corporation tax credits are given to film production companies provided certain conditions are satisfied. The tax credit given is 32% of the lower of the following:

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

Enhanced tax credits are given to companies which produce films in “assisted areas” i.e. areas designated under State aid regional guidelines.

The relief was due to expire at the end of 2024 but has been extended by the Act to the end of 2028. This amendment will only take effect on the issue of a Commencement Order by the Minister for Finance.



## Digital Games Corporation Tax Credit

Corporation tax credits are given to digital games companies provided certain conditions are satisfied.

The credit is 32% of the lower of the following:

- 80% of qualifying expenditure (i.e. expenditure on the design, production and testing of a digital game)
- Eligible expenditure (i.e. the portion of qualifying expenditure expended on development in the State or the EEA), or
- €25m

The Act makes a number of technical amendments to ensure compliance with State aid requirements and to make minor technical corrections.

Included in the clarifications made was to clarify that the requirement that a corporation tax return must have been filed only applies at the time of making a claim for a credit and that a company which is resident in an EEA State other than the State need only be carrying on business in the State at the time of making a claim.

A Commencement Order issued by the Minister for Finance provided that these changes came into operation on 1 January 2023.

# Employees

## Foreign Earnings Deduction

Employees who spend a significant amount of time working abroad in certain countries are entitled to a deduction of up to €35,000 from their taxable employment income. The deduction is available against income tax at the marginal rate but does not reduce PRSI or USC.

The relief was due to expire at the end of 2022 but has been extended to the end of 2025 by the Act.

## Key Employee Engagement Programme

Finance Act 2017 introduced the "Key Employee Engagement Programme" (KEEP), a scheme intended to allow small and medium sized enterprises to grant share options to employees in a tax efficient manner.

Except in the case of share options exercisable more than 7 years after the date of grant, generally an employee is not taxable on the grant of an option. When the option is exercised the employee is liable to income tax, USC and PRSI on the difference arising between the amount paid for the shares and the market value of the shares acquired. The income tax payable is reduced by any income tax paid on the grant of the option.

In the case of share options granted under KEEP, gains arising on the exercise of an option are exempt from income tax, USC and PRSI. For capital gains tax (CGT) purposes the employee is deemed to acquire the shares at their option price. In effect this means that gains arising on the exercise of an option are subject to CGT rather than income tax, USC and PRSI.

KEEP is only available to micro, small or medium sized enterprises (SMEs) and is not available to companies carrying on certain activities, namely, dealing in shares or financial assets, providing professional services, dealing in or developing land, building and construction activities or operations in forestry or the coal, steel or shipbuilding sectors. The option price for share options under KEEP must not be less than the market price of the underlying shares at the date of grant and may not be exercised within one year or more than 10 years after the date of grant.

Under the KEEP scheme there are restrictions on the amount of share options which may be granted to a single employee. The market value of the shares underlying the total Options granted to an employee cannot exceed €100,000 in any one tax year, the amount of the individual's emoluments for the tax year or €300,000 over a lifetime. There is a limit on the amount of unexercised that a company can have at the date of the grant of a share option. Prior to the Act, at the date of the grant of the share option, the company could not have issued unexercised share options with a market value in excess of €3m.

Finance Act 2019 made a number of changes to the KEEP scheme which were due to come into effect on the issue of a Commencement Order by the Minister for Finance. This commencement order was never issued. However, the Act now provides for the changes made by the Finance Act 2019 to come into effect from 1 January 2023. These changes are as follows:

- The scheme has been extended to share options over shares in a wider range of holding companies.
- It is no longer a requirement for the employee to work full-time in order to qualify for the scheme, and
- Shares no longer have to be newly issued shares in order to qualify.

### *Extension of type of holding companies which qualify*

Prior to the Act in order for options over shares in a holding company to qualify for KEEP the company's business had to consist "wholly" of holding shares in a single qualifying company (i.e. a company which otherwise satisfies the conditions under KEEP). In addition, the shares in the qualifying company had to be directly held and it also had to be a 100% subsidiary. The Act extends KEEP to holding companies which satisfy the following conditions:

- The company must not be under the control of another company.
- The company must not carry on a trade.

# Employees

## Key Employee Engagement Programme *continued*

### *Extension of type of holding companies which qualify* *continued*

- The company's business must consist wholly or mainly (i.e. more than 50%) of holding shares directly in qualifying subsidiaries (i.e. companies who satisfy the conditions for KEEP to apply to options over their shares) and indirectly in other subsidiaries. A company is a subsidiary if the holding company holds more than 50% of the company's share capital.
- The business of the group, excluding the holding company, must consist wholly or mainly of carrying on a trade.

As can be seen from the above, options over shares in a holding company can now qualify for KEEP where the holding company has more than one subsidiary or has indirect subsidiaries. However, it should be noted that in order to qualify for relief under KEEP the employee or director must be employed by/work for a qualifying subsidiary i.e. a directly held subsidiary. Furthermore, the holding company cannot also be a trading company.

### *Extension of KEEP to part time employees*

Prior to the Act only individuals who were full-time employees or directors of the qualifying company, who were required to devote substantially the whole of their time (at least 30 hours per week) to the service of the company could qualify for the relief. The Act provides that employees or directors of a qualifying company who are required to work at least 20 hours a week for a qualifying company or to devote not less than 75% of their working time to the qualifying company are eligible.

In addition to implementing the Finance Act 2019 changes, the Act has made the following additional changes to the scheme:

- The market value of the unexercised options that a company can have at the date of the grant of a share option has been increased from €3m to €6m.
- The provisions have been extended to apply to share options granted before 1 January 2026
- CGT buyback treatment (see below) can apply to shares purchased or redeemed by the issuing company.

These additional changes will only come into operation on the issue of a Commencement Order by the Minister for Finance.

### *CGT buyback treatment*

Generally where a company purchases or redeems its own share capital, any excess amount paid over the nominal value of the share is subject to income tax, PRSI and USC in the hands of the recipient. Where certain conditions are satisfied the recipient is instead subject to CGT on any gain arising on the disposal of shares on a buyback/redemption. One of the conditions to be satisfied is that the buyback must be made in order to benefit the trade of the company. The Act provides that CGT treatment can apply to the redemption/buyback of shares acquired by way of options granted under the KEEP scheme even if the trade benefit test is not satisfied.

## Relevant Tax on Share Options

Where an employee exercises a share option under a non-approved share option scheme, the employee is liable to income tax, USC and PRSI on the gain arising. Relevant Tax on Share Options (RTSO) must be paid by the employee within 30 days of exercising such a share option. The RTSO is the amount of income tax, USC and PRSI due by the employee on the gain.

With effect from 1 January 2023, the Act reduces the rate of interest payable on the late payment of RTSO to .0219% per day from .0322%, bringing the rate in line with the rate of tax payable on other underpayments of income tax. In addition from 1 January 2023 the Act provides that tax geared penalty provisions which apply to the non-filing, late filing, or filing of incorrect returns will also apply to the return required to be filed when paying RTSO.

# Employees

## Special Assignee Relief Programme

Under the special assignee relief programme (SARP) an employee who comes to work in the State can claim exemption from income tax on 30% of their employment income in excess of a certain amount, up to a maximum of €1m income, for a 5-year period. In order to qualify for the relief, the employee must have a certain minimum salary, have worked for the employer in question for at least 6 months outside the State and have come to work in the State at the request of the employer for at least 12 months.

Prior to the Act the relief did not apply to individuals coming to Ireland after 2022. The Act has extended the relief to individuals coming to Ireland in 2023, 2024 and 2025.

Prior to the Act the amount exempt from income tax was 30% of employment income in excess of €75,000. The Act provides that for employees who arrive in the State in any of the tax years 2023 to 2025 the employee must have a minimum basic salary of €100,000 and the relief given will be 30% of employment income in excess of €100,000.

In addition the Act provides that for individuals who arrive in the State in the years 2023 to 2025 in order for the individual to qualify for the relief they must have a PPS number and the employer must have complied with provisions under the Income Tax (Employments) Regulations 2018 which require employers to provide Revenue with certain details regarding new employees.

## Benefits in Kind

### *Employer contributions to a PRSA or PEPP*

Prior to the Act there was a difference in the tax treatment of contributions made by an employer to an occupational pension scheme and to a PRSA. Contributions by an employer to an occupational pension scheme did not give rise to any taxable benefit (BIK) charge for the employee, however, employer contributions to a PRSA were not exempt from BIK. Where a PRSA contribution gave rise to a BIK charge for an employee the amount of the BIK charge was deemed to be a pension contribution paid by the employee for which the employee was entitled to a tax deduction, subject to the limits which restrict the amount of pension contributions for which an employee is entitled to a tax deduction. An employee is entitled to deduct pension contributions equal to a % of their earnings. The applicable % depends on the age of the employee. While the deemed pension contribution made by the employee would eliminate the BIK charge for income tax purposes, the employee would be liable to USC on the amount of the BIK. In addition because the amount of the BIK was deemed to be a pension contribution made by the employee it restricted the tax deducted available to the employee.

The Act provides that with effect from 1 January 2023 contributions by an employer to a PRSA, and also to a PEPP (see below under Pensions) will be treated in the same way as employer pensions contributions to an occupational pension scheme i.e. employer contributions will not give rise to a taxable BIK for employees. Employer contributions will be ignored for income tax and USC purposes.

# Employees

## Benefits in Kind *continued*

### *Returns by employers*

The Act contains provisions which will require employers to make a monthly return, in electronic form, to Revenue giving details of the following provided to employees:

- Tax exempt vouchers or benefits
- Daily allowances for remote working
- Travel and subsistence payments

The provisions will not come into operation until the issue of a Commencement Order by the Minister for Finance.

### *Tax Free Vouchers/Benefits*

The Act provides that with effect from 1 January 2022 an employer may give an employee a tax-exempt voucher or benefit up to the value of €1,000 per annum. A maximum of two tax exempt vouchers/benefits may be given in any one year. The cumulative value of both vouchers/benefits cannot exceed €1,000. Prior to the Act the maximum annual tax-exempt voucher/benefit which could be given was €500 and only one tax free voucher/benefit per annum could be provided. Only vouchers which can be used to purchase goods or services may be provided i.e. vouchers which may be redeemed for cash cannot be provided. The voucher/benefit must not be provided as part of any salary sacrifice scheme.

### *Exemption for cost of cargo bicycles*

An employer can provide an employee with a bicycle valued at up to €1,250 or e-bicycle valued at up to €1,500 without giving rise to a taxable benefit for the employee. The Act extends this exemption from benefit in kind (BIK) charge for costs of up to €3,000 incurred by an employer in the provision of a cargo bicycle for an employee. A cargo bicycle is a bicycle with an additional carrier designed for transporting goods or passengers.

The exemption applies from 1 January 2023.

# Transfer Pricing

## Transfer Pricing

Transfer pricing legislation was first introduced into Ireland by Finance Act 2010 with effect from 1 January 2011. Under the 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 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 original legislation only applied to trading transactions. Finance Act 2019 rewrote the original transfer pricing legislation extending the scope to non-trading transactions and ultimately to SMEs. The legislation extending the provisions to SMEs will only come into effect on the issue of a Commencement Order which has not yet been issued.

The legislation provides that transfer pricing rules are to be construed in accordance with 2017 OECD Guidelines and other guidance issued by the OECD. The Act amends the legislation to replace the reference to the 2017 OECD Guidelines with more recent Guidelines issued by the OECD in 2022. This amendment applies for accounting periods beginning on or after 1 January 2023.

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# Farming

## Capital Gains Tax Relief for Farm Restructuring

Relief from capital gains tax (CGT) applies for the sale or exchange of farm-land where Teagasc has certified that the sale or exchange has taken place for farm restructuring purposes. Full relief applies where the purchaser price exceeds the sale price and partial relief applies where the purchase price is lower. Prior to the Act the first purchase or sale had to take place on or before 31 December 2022 (the next sale or purchase must occur within 24 months of the first). The Act extends the period during which the first sale or purchase of land must take place to 30 June 2023 from 31 December 2022.

A Commencement Order issued by the Minister for Finance provided that these changes came into operation on 1 January 2023.

## Slurry Storage Facilities - Accelerated Capital Allowances

Farmers are entitled to claim capital allowances over 7 years in respect of expenditure on the construction of farm buildings and on plant and equipment. The allowances of 15% of the qualifying expenditure are given in the first 6 years and 10% in year 7.

The Act provides that where a farmer incurs expenditure on certain specified buildings or equipment for the purpose of slurry storage instead of capital allowances being given over 7 years they will be given over 2 years, with an allowance of 50% of the qualifying expenditure being given in each year. In order to qualify for the accelerated allowances, the Act provided that expenditure must be incurred in the period 1 January to 30 June 2023. Finance Bill 2023 proposes to extend the period for which accelerated allowances may be claimed for slurry storage facilities and farm safety equipment to 31 December 2025.The type of expenditure for which the accelerated allowances will be available is set out in the legislation. For most categories of expenditure the works in question must be constructed in accordance with specifications to be approved by the Minister for Agriculture, Food and the Marine.

The accelerated allowances are not available to persons which are regarded as an “undertaking in difficulty” under EU rules. Only micro, small or medium-sized enterprises will qualify for the accelerated relief. A medium sized company is one with less than 250 employees and either a turnover of less than €50m or assets of less than €43m.

The aggregate amount of tax relief obtained by any person under the scheme cannot exceed €500,000. In practice this means that farming companies, which only pay tax at 12.5%, can qualify for relief on expenditure of up to €4m and individual farmers who pay tax at the top rate of 55% the maximum expenditure which will qualify for relief will be circa €900,000.

A Commencement Order issued by the Minister for Finance provided that these changes came into operation on 1 January 2023.

# Farming

## Stamp Duty

Relief from stamp duty applies to transfers of land to “young trained farmers” where certain conditions are satisfied. The relief was due to expire on 31 December 2022 and was extended by the Act to 30 June 2023. Finance Bill 2023 proposes to extend the expiry date to 31 December 2025. Where the farmer does not initially qualify for the relief because they do not hold one of the necessary qualifications, a refund may be claimed subsequently provided certain conditions are satisfied. One of these conditions is that the required educational qualification is obtained with 4 years (subject to the issue of a Commencement Order by the Minister for Finance). Finance Bill 2023 proposes to extend the relief to 31 December 2025.

### *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 2022 but has been extended by the Act to 30 June 2023 (subject to the issue of a Commencement Order by the Minister for Finance). Finance Bill 2023 proposes to amend this to say the educational qualification must be obtained within 3 years.

***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.***

## Stock Relief

Where the value of a farmer’s closing stock exceeds the value of opening stock, the farmer is entitled to claim stock relief of 25% of the increase. Farmers, age 35 or under, with certain agricultural qualifications (“qualifying farmers”) are entitled to claim enhanced stock relief of 100% of the increase in stock values in the accounting year for a four-year period. The amount of the relief cannot exceed €40,000 in any year or €70,000 over the four-year period. This enhanced stock relief was due to expire on 31 December 2022 but was extended by the Act to farmers who first become a qualifying farmer on or before 30 June 2023. A qualifying farmer is entitled to the enhanced stock relief for the year in which they become a qualifying farmer and for the subsequent three years so an individual who becomes a qualifying farmer in 2023 will be entitled to enhanced stock relief for the years 2023 to 2026. Finance Bill 2023 proposes to extend the relief to farmers who first become a qualifying farmer on or before 31 December 2024.

In addition, farmers in certain registered farm partnerships are entitled to enhanced stock relief of 50% of the increase in stock values for a three-year period. The stock relief granted over the three-year period cannot exceed €15,000. This enhanced stock relief was also due to expire with effect for accounting periods ending on or before 31 December 2022 but was extended by the Act to accounting periods which end on or before 30 June 2023. Finance Bill proposes to extend the relief to accounting periods which end on or before 31 December 2024.

A Commencement Order issued by the Minister for Finance provided that these changes came into operation on 1 January 2023.

# Property

## Deduction for Retrofitting Expenditure

The Act provides for a tax deduction for expenditure of up to €10,000 incurred on a let residential premises in order to improve the energy efficiency of the premises. The expenditure must be carried out in the period 1 January 2023 to 31 December 2025 and the claimant must receive an approved retrofitting grant ( the Individual Energy Upgrade grant, the One Stop Shop Service grant or any other grant administered by the Sustainable Energy Authority of Ireland which is designated by Revenue for the purpose of the relief.) The deduction is given in the year after the expenditure is incurred.

The work must be carried out by a qualifying contractor and the tenancy must be registered with the Residential Tenancies Board (RTB). The property must be rented out when the expenditure is incurred and for the following 2 years. If the property ceases to be let within 2 years, the relief is clawed back unless the property is re-let or is actively marketed for rent at market rent without any conditions being attached to the proposed letting which are unreasonable or designed to impede a letting.

The landlord must be LPT compliant in respect of the property in order to qualify for the relief.

A deduction can only be claimed in respect of expenditure on no more than two properties. Where the expenditure is on two properties the total tax deduction is limited to €10,000.

## Pre-Letting Expenses for Residential Properties

With certain limited exceptions, revenue expenses (for example repairs) incurred before a property is first let are not deductible in calculating taxable rental profits. Finance Act 2017 introduced an exception to this rule for pre-letting expenses of up to €5,000 for residential properties which were vacant for the 12 months prior to being let. The expenses must be such that if the property were let the expenses would be tax deductible. The relief is clawed back if the claimant ceases to let the property within 4 years.

The Act has increased the amount of expenditure which qualifies for relief from €5,000 to €10,000 and reduces the period for which the property must have been vacant from 12 months to 6 months.

The new limits apply in relation to properties let on or after 1 January 2023.

## Rent Tax Credit

The Act provides for an annual tax credit for rent paid. The tax credit is 20% of the lower of the rent paid or €5,000 in the case of a married couple and €2,500 for a single person i.e. a maximum credit of €1,000 for a married couple or €500 for a single person.

The credit may be claimed in respect of rent paid for:

- A principal private residence (PPR)
- Use of a residential property to facilitate attendance at a trade, profession, employment or approved course*
- The use of a residential property by a child as their PPR to facilitate their attendance at an approved course*

**** Approved courses are those for which a credit may be claimed for third level fees i.e. broadly undergraduate courses of at least 2 years duration or post graduate courses of at least 4 years duration undertaken at a university or similar institution.***

The credit may only be claimed in respect of a tenancy which has been registered with the RTB or a licence for the occupation of a room where there is no requirement for the licence to be registered with the RTB. Where the landlord and tenant are related, the credit may only be claimed where it is in respect of a tenancy registered with the RTB and the tenant is not a child of the landlord.

The credit may not be claimed by tenants in receipt of certain housing support payments or where the landlord is a Housing Association or Approved Housing Body or held by a Government Minister or Commissioner of Public Works in their official capacity.

The rent credit may be claimed in respect of the years 2022, 2023, 2024 and 2025.

# Property

## Living City Initiative

The Living City Initiative was provided for in Finance Act 2013 to encourage the regeneration of Georgian areas of towns and cities. The scheme came into operation on 5 May 2015. Under the scheme as originally introduced relief is given over 10 years for expenditure by owner occupiers on the conversion and refurbishment of certain houses constructed pre 1915. In addition, capital allowances are given over 7 years for expenditure on the refurbishment or conversion of such houses by lessors and on the refurbishment or conversion of certain commercial premises.

The Act provides that for expenditure incurred by an owner occupier in 2023 and subsequent years instead of relief being given for the expenditure over 10 years, relief will be given over 7 years with 15% of the expenditure being deductible in the first 6 years and 10% in year 7. In addition, where the individual has insufficient income to get full relief in any year the excess may be carried forward and deducted from the individual's income in subsequent years. However, no deduction will be allowed for any carry forward amount after 10 years.

The scheme was due to end on 31 December 2022 but has been extended by the Act to 31 December 2027.

## Defective Concrete Products Levy

The Act provides for a "defective concrete products levy" to be payable on the supply of certain concrete products. The stated intention of introducing the levy is to raise revenue to contribute towards the funding of the Defective Concrete Blocks Grant Scheme. (This scheme which was introduced to provide financial support to homeowners whose properties were damaged due to the use of concrete blocks containing excessive mica or pyrite.) The levy is 3% of the market value of the product. The concrete products to which it applies to products that contain concrete and ready to pour concrete which are required to comply with certain EU standards.

The levy will only apply to the first supply and the supplier is required to register for the levy with Revenue before the first supply. A return must be filed and the levy paid within 23 days after the end of the accounting period in which the supply occurs. Returns must be filed electronically.

The levy will apply to the first supply of concrete products on or after 1 September 2023.

# Property

## Residential Zoned Land Tax

"Residential zoned land tax" was introduced by Finance Act 2021. The tax is 3% of the market value of the land and will be payable annually. It applies to land which is zoned as being suitable for residential development. The land must be serviced land, zoned for residential use and must not be subject to conditions which may impact on its ability to be used to provide housing on the land (e.g. land which already has existing housing on it or that is used for infrastructure purposes (e.g. utilities) or for community or recreational purposes).

Local authorities are required to publish a map of land within its area which may be subject to the tax. The maps will be updated annually. The first map had to be published no later than 1 November 2022. Landowners were entitled to lodge an appeal against inclusion in the map to the local authority no later than 1 January 2023. They could also request a change in the zoning status of their land.

The owner of a site which is subject to the tax is required to register as owner of the site with Revenue.

For land zoned before 1 January 2022, tax will be charged from 2024 on the liability date (i.e. 1 February 2024). For land zoned on or after 1 January 2022, tax is charged in the 3rd year after the land comes within the scope of the tax. The valuation date is 1 February in the year in which the land first comes within the charge to the tax. Sites must be revalued every three years. Owners will be required to file a return and pay the tax on 23 May in the year and also to register with Revenue as the owner of a site within the scope of the tax. Unpaid tax and interest will become a charge on the land. A surcharge of up to 30% may apply if the land is undervalued. If an owner does not register with Revenue as a site owner and tax and interest due in respect of the site exceeds 110% of the market value of the site, the Minister for Public Expenditure and Reform can apply to the High Court to have the land become the property of the State.

The tax is deferred while ongoing residential development of the site is taking place and is not payable where the development is completed prior to the expiry of planning permission. Where the development is not fully completed when planning permission expires, some relief is given. The Act provides that in the latter case, the site owner must amend all previous returns in respect of which a deferral was claimed and interest will be charged on tax deferred.

The Act also provides for the tax to be deferred where a person makes an application to retain an unauthorised development on the land or is making an appeal regarding same. Where ultimately the person is granted permission to retain the development no tax is payable for the period after which the application to retain the development was made. Any tax previously paid may be reclaimed. If ultimately permission to retain the development is not granted returns filed in which the deferral was claimed must be amended and interest will be charged on the late payment of the tax.

# Property

## Residential Zoned Land Tax *continued*

The Act also provides that residential zoned land tax will not be payable where a site, or part of a site, is subject to a lease (of less than 35 years) which was entered into prior to 1 January 2022 and which precludes the owner of the site from carrying out development on or to the site. Where the contract only affects part of a site, tax is payable in respect of the site which is not affected by the contract. The lease must have been entered into for bona fide commercial reasons and not as part of a scheme or arrangement to avoid tax.

In addition, to the changes above, the Act makes a number of minor amendments to the legislation including:

- It provides that where the owner of the site makes an application to a local authority to change the zoning of a site that they should have evidence to prove their ownership of the land.
- In preparing final maps local authorities should take account of determinations made to retain unauthorised developments.
- Where a person fails to register as owner of a site they will be subject to a fixed penalty of €3,000.
- The tax is not deductible in calculating profits or gains for income tax, corporation tax or capital gains tax or in calculating amounts liable to USC. The tax may not be deducted from the amount of the domicile levy.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

## Stamp Duty on Acquisition of Bulk Residential Properties

A 10% rate of stamp duty is payable on acquisitions of 10 or more residential units in a 12-month period. The provisions do not apply to purchases of units in apartment blocks.

The Act provides that in determining if 10 or more residential units have been acquired in a 12-month period, partial interests acquired are to be taken into account. In addition, no account is to be taken of acquisitions by a home reversion firm (i.e. firms that enter into home reversion agreements with home owners. Under a home reversion agreement a lump sum is paid to the home owner and in return the home reverts to the home reversion firm at a future date.)

These changes came into effect from the date of the passing of the Act, 15 December 2022.

Finance (Covid-19 and Miscellaneous Provisions) Act 2021 introduced measures providing for a partial refund of stamp duty paid in respect of a residential property at the 10% rate where, within 24 months, the purchaser enters into a qualifying lease of the property. A "qualifying lease" is a lease of not less than 10 years entered into with a local authority or approved housing body for the purpose of providing social housing. The legislation also provided for a partial refund of stamp duty paid at the 10% rate where within 6 months the property is designated as a cost rental dwelling under the Affordable Housing Act 2021.

The Act repeals this legislation and provides replacement legislation which extends the circumstances in which a partial refund will be given to include:

- Where a residential unit is registered as a designated centre under the Health Act 2007 within 18 months. A designated centre is a centre which provides residential care for older persons, persons with disabilities and special care units for children and young people.
- Where a residential unit is registered as a children's residential centre under the Child Care Act 1991 within 18 months.

The refund given is the difference between stamp duty at 10% paid in respect of the property and the stamp duty which would have been payable if the 10% rate had not applied. There is a clawback of the relief if the residential unit ceases to satisfy the conditions which entitled the purchaser to the refund (i.e. ceases to be let to a local authority, ceases to be a cost rental dwelling/designated centre/child residential centre). The clawback is tapered depending on the amount of the 10-year period which has expired.

These measures will only come into operation on the issue of a Commencement Order by the Minister for Finance.

# Property

## 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 30 months. Prior to the Act the relief would only apply if construction commenced before 1 January 2023. The Act extends the cut-off date by which construction operations must commence to before 1 January 2026.

## Stamp Duty Refund Under Affordable Dwelling Purchase Arrangements

The Act provides for full stamp duty refund in respect of the purchase of a residential unit where the purchaser enters into an agreement with a local authority for the sale of the unit to a eligible applicant nominated by a local authority. An eligible applicant is someone assessed by the local authority as being eligible for an affordable dwelling purchase arrangement. The refund applies regardless of whether stamp duty was paid at 1%, 2% or 10%.

This provision will only come into operation on the issue of a Commencement Order by the Minister for Finance.

## Vacant Homes Tax

The Act provides for a "vacant homes tax" to be paid in respect of residential properties which are in use as a dwelling for less than 30 days in a "chargeable period". The vacant homes tax is 3 times the amount of LPT payable in respect of the property before taking into account any adjustment to the LPT rate made by a local authority.

Vacant homes tax is payable in respect of "chargeable periods" i.e. a 12-month period commencing on 1 November. The person liable to pay the tax and file a return in relation to the tax is the person who owns the property on the first day after the end of the chargeable period. For example if a property is not in use as a dwelling for at least 30 days in the period 1 November 2022 to 31 October 2023, the person who owns the property on 1 November 2023 is the person required to file a return and pay the tax due. The vacant homes tax payable in respect of the period 1 November 2022 to 31 October 2023 will be 3 times the LPT payable in respect of the property for 2023 calculated as if no adjustment to the rate of LPT had been made by the local authority.

Vacant homes tax is not payable in respect of a property which would otherwise give rise to a charge to the tax if any of the following circumstances apply:

- No LPT was payable in respect of the property;
- The property was let for at least 30 days in the chargeable period under a tenancy which was required to be registered with the Residential Tenancies Board (RTB); or
- The property was sold in the chargeable period.

The tax must be paid on or before 1 January following the end of the chargeable period and a return filed on the 7th day after the end of a chargeable period. The first chargeable periods commenced on 1 November 2022 so the first chargeable period for which vacant homes tax becomes payable will end on 31 October 2023. Vacant homes tax due in respect of this period must be paid on or before 1 January 2024 and a return filed on or before 7 November 2023. A surcharge will apply for the late filing of a vacant homes tax return. The surcharge is 5% of the tax where the return is filed within two months after the due date or 10% of the tax where the return is filed more than two months late. Interest at .0219% per day will apply to the late payment of the tax.

An exemption from vacant homes tax may be claimed in a number of circumstances including:

- The person liable to the tax died in the chargeable period or the previous 12 months and immediately prior to their death had occupied the house as their sole or main residence

# Property

## Vacant Homes Tax *continued*

- A Grant of Representation to the estate of the person who had occupied the property as their sole or main residence prior to their death issues in the chargeable period or before the chargeable period and administration of the estate was not completed during the chargeable period
- The property was being actively marketed for sale at a market price and there were no conditions attaching to the sale which might impede or disrupt the sale
- The property was being actively marketed for rent and there were no conditions attaching to the proposed letting which might impede or disrupt the negotiation of a letting
- Occupation of the property is prohibited by Court Order
- The property underwent structural works, substantial repairs or substantial refurbishment for at least 6 months in the chargeable period. The works must have been carried out without undue delay. In addition, one of the following two conditions must be satisfied:
  - A registered professional must certify that it would have been unsafe to occupy the property while the work was being carried out and if planning permission was required for the work it must have been obtained before the work commenced.;
  - The cost of the work carried out must amount to at least 1/5th of the market value of the property before the work commenced.
- The property was not occupied for at least 30 days as a dwelling by reason of the person who is liable to the tax having ceased to occupy the property as a consequence of mental or physical infirmity. The person must have occupied the property as their sole or main residence immediately before they ceased to occupy it.
- The person liable to the tax is an “implementation body” within the meaning of the British-Irish Agreement Act 1999.

The new legislation provides for Revenue to keep a register of vacant homes which will include details of the properties and the persons liable to tax in respect of those properties as Revenue considers appropriate.

Under the new legislation Revenue may request a person to provide information to them for the purpose of establishing whether the property was in use as a dwelling for less than 30 days in the chargeable period. They may also require a person to provide records demonstrating that the property was in use as a dwelling for at least 30 days in the chargeable period. The legislation provides that records demonstrating the property was in use as a dwelling for at least 30 days may include utility bills, waste collection bills, evidence of short term lettings, or a statutory declaration saying the property was in use for 30 days or more as a dwelling.

Vacant homes tax is not deductible in calculating profits or gains liable to income tax, corporation tax or capital gains tax. Legislation regarding appeals against assessments which apply to income tax also apply to vacant homes tax.

# Personal Taxation

## Income Tax Rates and Credits

The standard rate tax band has been widened by €3,200 for single persons and married couples with one income and by €6,400 for married couples with two incomes.

Personal tax credits have been increased by €75 for single persons and €150 for married couples. The employee tax credit and the earned income tax credit have also been increased by €75 each and the home carer credit by €100.

## Universal Social Charge

No changes were made to the USC rates. The band within which USC is paid at 2% has been widened by €1,625 with a corresponding reduction in the 4.5% band. This change has been made to ensure that individuals who receive a pay increase due to the increase in the National Minimum Wage from 1 January 2023 do not pay USC at a rate higher than 2%.

The relief whereby individuals 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 2023.

## 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. As part of the 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 by the Financial Provisions (Covid-19) (No. 2) Act 2020 which were subsequently extended to the end of 2022. Under the enhanced scheme the rebate claimable is 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 rebate does not apply where the cost/valuation of the dwelling exceeds €500,000. A mortgage of at least 70% of the purchase price or self-build value must be taken out.

The scheme was due to expire on 31 December 2022 but has been extended, as enhanced, to the end of 2024. In addition, the Act has extended the scheme to the purchase of a building, not previously used as a dwelling, by a first time purchaser under an affordable dwelling purchase arrangement and a direct sales agreement under the Affordable Housing Act 2021.

The above changes came into operation on 1 January 2023.

PMQ

# Personal Taxation

## Miscellaneous Income Tax Changes

### *Exemption for incorrect birth registration payment*

The Act provides for an exemption from income tax for a payment known as the "Ex Gratia Payment in Respect of an Incorrect Birth Registration". This payment is made by the Minister for Children, Equality, Disability, Integration and Youth to individuals who have been the subject of an incorrect birth registration for the purposes of the Birth Information and Tracing Act 2022 which has been confirmed by the Child and Family Agency. The exemption only applies up to a maximum of €3,000 per individual.

The payment is exempt from income tax and USC.

### *Exemption for payments under Covid-19 Death in Service Ex-Gratia Scheme*

The Act provides for an exemption from income tax and USC for a payment made by the Minister for Health under the Covid-19 Death in Service Ex-Gratia Scheme for Health Care Workers.

### *Exemption for Covid-related Lay-off Payments*

The Redundancy Payments (Amendment) Act 2022 was enacted to provide for payments to employees who were made redundant following a period of lay-offs due to Covid-19 restrictions. As a result of such lay-offs the statutory redundancy payments subsequently payable to employees were reduced because lay-off periods are not regarded as periods of service in calculating redundancy entitlements. Under the Redundancy Payments (Amendment) Act 2022 a new State funded payment known as the "Covid-19 related lay-off payment (CRLP) is made to the employee in respect of the lay-off period. The Act provides for an exemption from income tax for CRLP.

The payment is exempt from income tax and USC. The exemption cames into operation on 19 April 2022.

### *Exemption for profits from the production, maintenance and repair of certain musical instruments*

The Act provides for an exemption from income tax for profits of up to €20,000 per annum derived by an individual from the production, maintenance or repair of certain early Irish harps, Irish lever harps and uileann pipes. An individual who claims the relief is required to file a tax return under the self-assessment system. The relief does not apply to income received as an employee.

The payment is exempt from income tax and USC. The relief applies for the tax years 2023, 2024 and 2025.

# Pensions

## Lump Sums from Foreign Pension Arrangements

The Act contains provisions to bring the taxation of pension lump sums received from non-Irish pension schemes into line with the taxation of lump sums received from Irish pension schemes.

Accordingly, with effect from 1 January 2023 an individual who receives a pension lump sum from a non-Irish pension scheme can claim exemption from tax on up to €200,000. Amounts received in excess of €500,000 will be taxed as follows:

- The first €300,000 in excess of €200,000 will be taxed at 20%
- The balance will be subject to tax at the individual's marginal rate of income tax and USC.

The above reliefs are lifetime amounts and in determining whether the limits have been exceeded, lump sums received from Irish schemes are aggregated with those from non-Irish schemes.

## Pan-European Personal Pension Product

The Act contains rules for the taxation of and for reliefs relating to Pan-European Personal Pension Products (PEPPs). A PEPP is a personal non-occupational pension product provided for by EU Regulations. In essence like a PRSA, a PEPP is a product based on a contract between an individual and a PEPP provider and is in the form of an investment account. Features of a PEPP are as follows:

- There are a greater number of potential providers of PEPPs than for PRSAs.
- Costs and fees of a PEPP must not exceed 1% of the accumulated capital. PEPP providers are required to provide a Key Information Document (KID) giving information about fees and costs as well as standardised pension benefits statements during the product lifetime.
- A PEPP has an EU passport which means that it can be marketed in different EU member states.
- Providers can offer PEPPs on a pan-European basis. This means that a PEPP investor can continue contributing to the same product after changing residence in the EU.

Like other pension funds, growth within the PEPP is exempt from tax and tax relief is given to contributors

The taxation measures provided for PEPPs are similar to those for PRSA's. Relief for contributions by the holder are given on the same basis as for PRSA's (i.e. relief is given as a deduction from earnings and is calculated by reference to the amount of the individuals net relevant earnings subject to an annual earnings cap of €115,000. The amount of the allowable contribution varies from 15% to 40% of earnings depending on the age of the contributor.) There is also tax relief for employer contributions to a PEPP for an employee.

The above changes came into operation on 1 January 2023.

# Capital Acquisitions Tax and Capital Gains Tax

## 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 which apply to gifts or inheritances from persons other than a parent.

### *Changes in Succession Act*

The Birth Information and Tracing Act 2022 amended the Succession Act 1965 to provide that a person will have succession rights in relation to their "social" parents in addition to their succession rights in relation to their birth parents. The Act has made a number of changes to capital acquisitions tax legislation to take account of the changes to the Succession Act as follows:

- The definition of a "child" has been amended to include an "affected person" as defined in the Succession Act (broadly a person where the name of a person other than their mother was entered on the register of births as their mother, as a result of misleading or incorrect information)
- All references to "father", "mother" or "parent" in the legislation will be deemed to include a reference to a "social father", "social mother" or "social parent". The latter three being the parents entered on the birth register as the affected person's parents.
- In determining the relationships which apply to an affected person (i.e. whether someone else is related to them) the relationship is determined in accordance with section 4B of the Succession Act as inserted by the Birth Information and Tracing Act 2022. Broadly this means that relationships are determined in the same manner as if they would have if the social parents were the birth parents (e.g. a child of a social parent will be treated as a sibling of an affected person).

The legislation is also amended by the Act to provide that where a person receives a gift or inheritance from someone whose relationship to them has been determined accordance with section 4B of the Succession Act, they can make an election as to whether or not the relationship as so determined is to apply for the purpose of calculating tax due. For example, if a person were to receive a gift from a social parent they need to make an election for the gift to be treated as having been received from a parent so that the higher tax free threshold will apply in calculating tax due on the gift. Once this election is made it will apply to all gifts or inheritances received from the same person i.e. in this case if the person were to subsequently receive an inheritance from their social parent, this would also be treated as having been received from a parent for the purpose of calculating tax due.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

## Capital Gains Tax

There have been no changes to the standard rate of CGT which remains at 33% or to the 10% rate of CGT which applies to the disposal of certain business assets and shares in trading companies.

# The Appeal System

## Case Stated for High Court

A party to a case taken to the Appeal Commissioners, who is dissatisfied with a determination made, may make an appeal on a point of law to the High Court. In order to make this appeal the party gives a notice in writing to the Appeal Commissioners requiring them to state and sign a case for the opinion of the High Court.

The case stated should contain:

- The Appeal Commissioners material findings of fact
- An outline of the parties' arguments
- The case law relied upon
- The determination and the reasons for arriving at the determination and
- The point of law on which the High Court's opinion is sought.

Prior to the Act the notice to the Appeal Commissioners had to be provided within 21 days of the issue of the Appeal Commissioner's determination. The Act extends the time limit within which the notice to the Appeal Commissioners must be provided to 42 days.

The Appeal Commissioners are required to send to the parties a draft of their case stated within 3 months of receiving notice to prepare a case. Prior to the Act the parties then had 21 days to make representations to the Appeal Commissioners regarding the draft case stated. The Act extends the time limit within which representations to the Appeal Commissioners can be made to 42 days.

The above change came into effect from the date of the passing of the Act, 15 December 2022.

# Anti-Avoidance and EU Reporting

## Interest Limitation Rules

Finance Act 2021 brought into Irish law the Interest Limitation Rules contained in the EU Anti-Tax Avoidance Directive I (ATADI). The aim of these provisions is to prevent companies shifting profits between jurisdictions through the use of excessive interest expense deductions.

Under the new rules a relevant entity's (i.e. a company or interest group) deduction for "exceeding borrowing costs" is restricted to 30% of EBITDA. Broadly this is the excess of its interest expense over interest received. If the entity's interest expense is less than its interest income the entity is said to have "interest spare capacity". Interest spare capacity can be carried forward and used in future years to reduce the entity's disallowable interest where the entity exceeds its 30% threshold. If interest spare capacity is not used within a 60-month period it is lost. The interest limitation rules do not apply where the entity's exceeding borrowing costs do not exceed €3million for the accounting period or to "standalone" entities (i.e. entities with no group or associated entities). Interest on certain legacy debts is ignored.

Where exceeding borrowing costs exceed 30% of EBITDA, the excess is the "disallowable amount". This amount can be carried forward and claimed in future years where the company does not breach the 30% limit in that year. Where exceeding borrowing costs do not exceed the 30% limit the difference is known as "limitation spare capacity". Like interest spare capacity, limitation spare capacity can be carried forward and used to reduce disallowable amounts in future accounting periods.

A company can elect to be part of an interest group in which case interest limitations (EBITDA and exceeding borrowing costs) are calculated at a group level. In such cases the €3million limit applies to the group as a whole. An interest group consists of companies within the charge to corporation tax in the State that are part of the same worldwide group. A worldwide group consists of entities included in the same consolidated accounts. Where a company elects to be part of an interest group the election applies for a three year period.

Where an entity is part of a worldwide group and it can show that the ratio of the entity's equity to assets is 98% or more of the group's ratio the interest limitation rules do not apply.

Where an entity is part of a group and the group's exceeding borrowing costs as a % of group EBITDA is greater than 30%, the entity can make an election to calculate its disallowable costs based on this higher % rather than 30%.

The Act contains a number of technical amendments to ensure the interest limitation and associated tax rules operate as intended including:

- Clarification of the operation of the exemption for interest on legacy debt where debts are repaid (i.e. a first in first out basis applies where there is a mixture of legacy and non-legacy debts.
- Clarification that a company can be treated as part of a group for interest limitation purposes even if it is not included in the group consolidated accounts where it has been excluded on materiality grounds.

The amendments apply for accounting periods commencing on or after 1 January 2023.

## EU Mandatory Disclosure Regime

The Act provides additional powers to Revenue to enter a premises or place of business of a taxpayer or intermediary for the purpose of enquiring into and determining whether information was correctly included or excluded from a return. Under the new provisions, where Revenue are of the view that a reportable cross-border arrangement has hallmarks concerning automatic exchange of information and beneficial ownership registers, they will also have access to data collected for anti-money laundering or terrorist financing reasons and also to the Central Registers of Beneficial Ownership for companies, Irish collective asset management vehicles, credit unitions, trusts and unit trusts.

This change came into effect from the date of the passing of the Act, 15 December 2022.

# Anti-Avoidance and EU Reporting

## Reporting Requirements for Digital Platform Operators

Finance Act 2021 incorporated into Irish legislation amendments to the EU Directive on Administrative Cooperation, referred to as DAC7. The provisions impose requirements on digital platform operators who are resident in the State, incorporated in the State or have a place of management in the State but not being a non-union platform operator, to register with Revenue and collect and report information on sellers offering certain services.

The Act replaces and updates the legislation to ensure the automatic reporting obligations placed on digital platforms under DAC7 is implemented effectively. Under the updated legislation Revenue also has the power to access data collected for money laundering and terrorist financing reasons when enquiring into transactions that involve obscuring the beneficial ownership of assets for the purpose of reporting under DAC7. This change came into effect from the date of the passing of the Act, 15 December 2022.

The Act also transposes into Irish legislation OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy and the Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods “Model Rules”.

The Model Rules introduce reporting requirements for digital platform operators relating to sales made via digital platforms. The new reporting requirements will not come into operation until the issue of a Commencement Order by the Minister for Finance.

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# VAT

## Vat Rate Changes

### *Reduced VAT rate for gas and electricity*

The temporary 9% reduced VAT rate which has applied to supplies of gas and electricity since 1 May 2022 was extended by the Act until 28 February 2023. Finance Bill 2023 proposes to extend the period for which the reduced rate will apply to 31 October 2023.

### *Increase in flat rate addition for farmers*

With effect from 1 January 2023 the "flat rate addition" rate is reduced from 5.5% to 5%. 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.

### *Extension of the 0% rate of VAT*

From 1 January 2023 the 0% rate of VAT has been extended to:

- Newspapers, including electronic newspapers, other than those predominantly devoted to advertising
- Medicine used for human oral consumption or non-oral consumption when supplied for the purpose of hormone replacement therapy or nicotine replacement therapy
- Automated external defibrillators
- Sanitary towels, sanitary tampons, menstrual cups, menstrual pants and menstrual sponges

The 0% rate of VAT will no longer apply to "preparations and extracts derived from milk".

### *Exemption for medical care services*

The Act refines the definition of professional medical care services which qualify for exemption from VAT. Previously, in terms of who the services must be provided for, all legislation said was that the exemption applied to "professional medical care services recognised as such by the Department of Health and Children". In Revenue Guidance it was stated that it was Revenue's view that for the exemption to apply the services had to be provided by practitioners registered to practice by virtue of various Irish legislation covering medical practitioners, nurses and health and social care professionals. The Act now sets out the specific persons by whom the services must be provided for in order to qualify for the exemption being registered members of a designated profession within the meaning of the Health and Social Care Professionals Act 2005, registered medical practitioners and registered midwives and nurses.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

### *Exemption for cost sharing groups*

An exemption from VAT applies to supplies between members of certain independent groups of persons carrying on activities in the public interest. The Act amends the exemption to allow it to apply to members who carry on both exempt and non-exempt activities.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

### *Exemption for managing certain investment undertakings*

The exemption from VAT for the management of certain investment undertakings has been extended by the Act to include the management of certain funds (UCITS and AIFs) authorised by EU Member States other than Ireland.

The Act also deletes the exemption for agency services provided in connection with the management of certain investment undertakings.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

In addition, the exemption which applied to the management of section 110 companies has been narrowed to exclude section 110 companies which hold qualifying assets which consist of plant and machinery. This provision came into operation on 1 March 2023.

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# VAT

## Vat Rate Changes *continued*

### *Exemption for dealing in shares*

Financial services consisting of the issue, transfer or otherwise dealing in shares are exempt from VAT. Prior to the Act where these services were provided in connection with new shares the exemption did not apply. The Act now extends the exemption to new shares.

VAT legislation also provided a deduction for VAT incurred on costs incurred in connection with the issue of new stocks, shares and debentures for the purpose of raising capital. This measure has been deleted by the Act. A deduction may, however, continue to be available for such VAT costs under general principles.

The above changes came into effect from the date of the passing of the Act, 15 December 2022.

### *VAT registration for intra-Community trade*

The Act provides that where a person has registered for VAT solely for domestic trading and subsequently commences intra-Community trading, the person must notify Revenue within 30 days of commencing such trade. Intra-Community trading means the supply of goods to a person registered for VAT in another EU State and the acquisitions of goods from persons registered for VAT in another EU State.

The above change came into effect from the date of the passing of the Act, 15 December 2022.

### *Revenue powers*

The Act contains measures which give Revenue the power to request information from financial institutions in Ireland where a request for such has been received from a tax authority in another country. A penalty of €4,000 can be levied where the financial institution does not comply with a request for information.

The above change came into effect from the date of the passing of the Act, 15 December 2022.

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TAX PARTNERS

The above is intended as a general guide to the measures announced in Finance Act 2022. 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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