Purcell McQuillan

TAX PARTNERS

Finance Act 2021

A COMPREHENSIVE COMMENTARY

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2021

PMQ

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Introduction

We are pleased to outline our commentary on Finance Act 2021 ("the Act") which was signed into law by the President on 21 December 2021.

BUSINESS TAX MEASURES

Welcome measures for businesses include;

- Improvements to the Employment Investment Incentive (EII) including removal of the requirement for 30% of funds to be spent before an investor can claim relief and providing for a window for investors capital to be redeemed without giving rise to a clawback. The scheme has also been extended to the end of 2024
- Subject to EU approval, the introduction of a corporation tax credit for digital games development companies
- The extension of the start-up relief for companies to the end of 2026 and the extension of the period for which the relief is given to 5 years
- An extension of the Employment Wage Subsidy Scheme (EWSS) until the end of April 2022
- The position with regard to the application of transfer pricing rules to Irish taxpayers has been clarified

Climate change measures which will impact on businesses include;

- Expenditure on energy efficient equipment operating on fossil fuel can no longer qualify for 100% capital allowances
- 100% capital allowances for expenditure on gas vehicles and refuelling equipment have been extended to expenditure on hydrogen-fuelled equipment and associated refuelling equipment. The period during which expenditure must be incurred to qualify for 100% allowances has also been extended to the end of 2024

Provisions of interest to employees include;

- Exemption from BIK charges for medical check-ups, Covid-19 tests and flu vaccines
- A tax deduction for a proportion of expenses incurred while working from home
- An increase in the BIK charged in respect of electric vehicles which cost in excess of €50,000

On the personal tax side there have been no changes to the tax rates however the standard rate tax band has been widened by €1,500 for single persons and €3,000 for jointly assessed couples. Personal tax credits have been increased by €50 for single persons and €100 for jointly assessed couples. The USC 2% band has been widened slightly. The Help to Buy Scheme has been extended, as enhanced under the Government's 2020 July Stimulus Plan, until the end of 2022. There have been a number of improvements to the pension's regime including the removal of the requirement to set up an Approved Minimum Retirement Fund where guaranteed income on retirement is less than a specific level.

The Act contains a number of measures for the property sector including the introduction of a residential land zoned tax for land which is suitable for residential development. The Act also extends the period for which relief for pre-letting expenses on vacant residential premises may be claimed.

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Business Taxation

Covid-19 Measures

COVID RESTRICTIONS SUPPORT SCHEME (CRSS)

The Covid Restrictions Support Scheme or CRSS, was introduced to support businesses who have been significantly affected by the measures introduced by Government to combat the spread of Covid-19.

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 Living with Covid-19 plan 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. To qualify under the scheme post 20 December 2021 the turnover period in the claim period must be less than 40% of the average weekly turnover in 2019.

Under the scheme a business can make a claim for a weekly 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.

The scheme was due to expire on 31 December 2021 but was extended by the Act to 31 January 2022 with the Minister for Finance having the power to extend the date further by the issue of a Ministerial Order (but to no later than 30 April 2022).

With the ending of most public health restrictions on 22 January 2022, businesses are no longer eligible under the scheme.

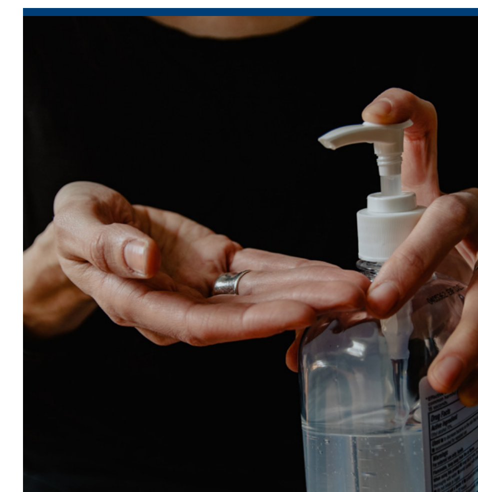
DEBT WAREHOUSING

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 could 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 scheme was subsequently extended to preliminary income tax payments for 2020 and 2021 and the balance of income tax due for 2019 and 2020.

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 2020/2021 is less than 75% of 2019's and the decrease is due to the restrictions imposed because of Covid-19.

On 21 December 2021 the Government announced the extension of the debt warehousing scheme by three months to include liabilities incurred in the 3-month period to 31 March 2022 for taxpayers eligible for Covid-19 support schemes (EWSS and CRSS).

A proprietary director (i.e. one with a 15% interest or more) is not entitled to a credit for tax deducted under the PAYE system in calculating the balance of their tax liability due for a year unless the tax has been paid by the company to Revenue. The Act provides that where a proprietary director



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Business Taxation CONTINUED

DEBT WAREHOUSING CONTINUED

(i.e. one with a 15% interest or more) is not entitled to warehouse the balancing payment due for 2020 preliminary tax for 2021 (because the 75% reduction in income test is not satisfied) but the company has availed of debt warehousing in respect of the PAYE due, then the director may warehouse tax arising due to the fact that they are not entitled to a credit for the PAYE withheld from their remuneration. Where the director avails of this measure, interest is not charged on the debt warehoused by the director provided the company honours its payments under the scheme.

EMPLOYMENT WAGE SUBSIDY SCHEME (EWSS)

Under this scheme employers receive a flat rate subsidy for each eligible employee. In addition a reduced rate of employer PRSI of 0.5% is charged on wages paid before 1 March 2022 which are eligible for the subsidy.

To qualify under the scheme the employer must demonstrate that by reason of Covid-19 and the disruption caused thereby, there is at least a 30% reduction in the employer's turnover or customer orders. For pay dates between 1 July 2021 and 30 April 2022, this reduction is determined by comparing turnover/customer orders for 2021 with those for 2019.

The scheme was due to expire on 31 December 2021 but was extended by the Act to 30 April 2022 to employers who were registered for EWSS on 31 December 2021. On 21 December 2021, in light of public health restrictions announced on 17 December 2021 which were to continue until 22 January 2022, the Minister for Finance announced that certain employers who were impacted by the restrictions, who were previously eligible for EWSS but who were not eligible on 31 December 2021 could qualify under the scheme.

The conditions which must be satisfied in order for these employers to qualify are:

- They previously qualified for EWSS between 1/9/2020 and 31/12/2021 and
- Turnover for the period 1/12/2021 – 31/1/2022 is expected to be at least 30% less than in the period 1/12/2019 – 31/1/2020
- The reduction is due to a disruption of normal operations caused by Covid-19

The Act provides for a phased reduction in the amount of the EWSS payments with reductions being made with effect from 1 February and then 1 March. On 21 January 2022, the Government announced that for businesses affected by the restrictions which applied between 20 December 2021 and 22 January 2022, the scheme would be extended by one month to 31 May 2022.

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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 equipment must be included on a list of energy efficient equipment maintained by the Sustainable Energy Authority of Ireland (SEAL). The expenditure must be incurred on or before 31 December 2023 in order to qualify for the relief.

GAS VEHICLES AND REFUELLING EQUIPMENT

Capital allowances of 100%, instead of the usual 12.5%, are available for expenditure on vehicles fuelled by natural gas, liquefied natural gas or biogas and on refuelling equipment. Only vehicles which are not usually used as a private vehicle will qualify. Vehicles which are used to hire to the public or used as transport for members of the public will not qualify. Vehicles must be unused and not second-hand.

RECORDS

Persons carrying on a trade or profession or who are within the charge to tax on income other than employment income, are required to maintain records to enable a true tax return to be filed. "Records" are broadly defined to include linking documents (defined as meaning documents drawn up in the making up of accounts and including calculations linking the records to the accounts). The Act amends this legislation to provide the definition of records also includes records and linking documents relating to any claim for allowances, deductions, reliefs or credits. Generally records must be kept for at least 6 years after the completion of the transactions to which they relate or if a return is filed late, for 6 years after the end of the year in which the tax return was filed. In the case of records relating to a claim for allowances, deductions, reliefs or credits, the transaction to which they relate are deemed to take place at the end of the year to which the claim relates.

This provision comes into effect from 1 January 2022.

Companies

EMPLOYMENT INVESTMENT INCENTIVE (EII)

The 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. Prior to Finance Act 2019, relief was given in two instalments. A tax deduction of 30/40ths of the investment was given in the year the investment was made and 10/40ths in the fourth year. For 2020 onwards the maximum investment for which relief is given is €250,000 or €500,000 if the shares are held for 7 years. In addition, for shares issued after 8 October 2019, full relief will be given for the investment in the year in which the investment is made instead of being given in two instalments.

The relief was due to expire at the end of 2021 but has been extended by the Act to the end of 2024. In addition the Act makes a number of changes to the EII as follows:

Withdrawal of 10/40ths of relief

As set out above, prior to Finance Act 2019 relief was given in two instalments. In order for the second instalment (10/40ths) of the relief to be given certain conditions had to be satisfied. The Act in effect reinstates this rule by providing that 10/40ths of the original relief given will be clawed back if the number of qualifying employees and emoluments of qualifying employees has not increased over the 3- year period commencing when the EII investment was made.

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Other Business Measures CONTINUED

EMPLOYMENT INVESTMENT INCENTIVE (EII) CONTINUED

A "qualifying employee" is an employee, other than a director, who works on average for 30 hours a week and whose employment is capable of lasting at least 12 months. Alternatively, a company can avoid the 10/40ths clawback if its expenditure on research, development, and innovation has increased in the same period. Where the clawback arises the company is assessed to tax on the amount of the relief withdrawn and not the investor.

The clawback provisions apply to shares issued on or after 1 January 2022.

CAPITAL REDEMPTION WINDOW

Where an EII investor receives value (e.g. a return of capital, a loan repayment) from the EII company during its "compliance period" this will give rise to a clawback of EII relief. A company's compliance period is generally a period beginning 2 years before the EII shares are issued and ending 4 years after. A clawback of relief for an EII investor can also arise where a company returns capital to a non-EII investor during the compliance period. The legislation however provides that a return of capital to a non-EII investor during the company's compliance period will not give rise to a clawback of EII relief where the most recent EII funding was 18 months prior to the return of capital and EII funding is not sought within 12 months after the return of capital. This period is known as the "capital redemption window".

The Act now provides for a capital redemption window for EII investors.

A company can redeem or acquire shares held by an EII investor where the compliance period for those shares has ended even though there may be other shares in the company for which the compliance period has not ended, provided the following conditions are satisfied;

- The most recent EII investment in the company was more than 18 months prior to the redemption/acquisition
- Elimination of 30% rule
- No EII investment is made in the company within 12 months of the redemption/acquisition and
- No EII investment is made by that investor in the company within a 5 year period after the date of the redemption/acquisition

ELIMINATION OF 30% RULE

An EII investor is only entitled to claim EII relief when a Statement of Qualification (SOQ) has been issued by the company. Prior to the Act a company was not entitled to issue this statement until it had spent at least 30% of the EII funds raised. The Act deletes the requirement that 30% of the EII funds must be spent before the SOQ can be issued and provides that a SOQ may not be issued more than 4 months after the end of the year in which the shares are issued.

INVESTING VIA QUALIFYING INVESTMENT FUNDS

An investor may also claim EII relief where an investment is made through a designated investment fund. A "designated investment fund" is a fund established under irrevocable trusts for the sole purpose of investing in EII companies. The Act now extends the relief to investments made via "qualifying investment funds". A "qualifying investment fund" is a limited partnership or investment limited partnership which satisfies certain conditions. It is not a requirement that the qualifying investment fund have as its sole purpose investing in EII companies.

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Companies

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
- €70m

Enhanced tax credits are given to companies which produce films in "assisted areas" i.e. areas designated under State aid regional guidelines. The Act amends the definition of "eligible expenditure" to include expenditure incurred on the provision of labour only services by an individual for the purposes of the production of the film.

This amendment comes into operation on 1 January 2022.

DIGITAL GAMES CORPORATION TAX CREDIT

The Act provides for a corporation tax credit (a "digital games corporation tax credit") which may be claimed by a digital games development company.

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)
- €25m

The digital games development company must be;

- Resident in the State or resident in the EEA and carrying on business in the State through a branch or agency
- Carrying on a trade of developing digital games to be made available wholly or mainly to the public on a commercial basis
- Has filed a tax return in relation to the qualifying period
- Is not an undertaking in difficulty as defined in EU Guidelines

In order to qualify as a "digital game" the game must;

- Integrate digital technology
- Incorporate in digital form text/sound/still images/ animated images (at least 3 of the latter)
- Be capable of being published on an electronic medium and
- Controlled by software enabling the person playing the game to interact with the dynamics of the game (including providing feedback to the person, enabling the person to have control over elements of the game and to adapt elements of the game)

The game must not be produced solely or mainly as part of a promotional or advertising campaign or as a game of skill or chance for the purpose of winning a prize. The company must apply for an interim certificate from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media in respect of a digital game which is to be developed or a final certificate in relation to a digital game that has been developed. In determining whether to issue a certificate the Minister is required to consider not only whether the game is, or will be when completed, an eligible game but must also have regard to the contribution which the development of the game is expected to make to the promotion and expression of Irish and European culture.

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Companies CONTINUED

DIGITAL GAMES CORPORATION TAX CREDIT CONTINUED

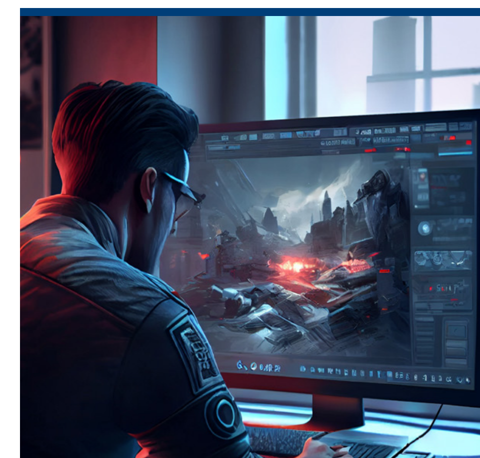
A claim for the credit cannot be made unless the company has received an interim or final certificate. The claim for a credit must be made within 12 months of the accounting period in which the expenditure is incurred. Relief may not be claimed in respect of expenditure for which relief has been claimed under the Film tax credit regime or under the provisions which give relief for expenditure on R&D. A claim may not be made unless the qualifying expenditure is at least €100,000. The new provisions will only come into effect on the issue of a Commencement Order by the Minister for Finance.

DOMESTIC MERGERS

The Act provides that where a wholly owned subsidiary transfers all its assets and liabilities to a parent company as a result of a merger by absorption provided for in the Companies Act 2014, the parent company will not be treated as having disposed of its shares in the subsidiary company. This provision comes into operation on 1 January 2022.

RELIEF FROM TAX FOR CERTAIN START-UP COMPANIES

The relief from corporation tax for the first three years which is available to certain trading companies which was due to expire at the end of 2021 has been extended to 31 December 2026. In addition the three-year period for which the relief is given has been extended to five years for companies which commence to trade on or after 1 January 2018.



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Employees

BENEFITS IN KIND (BIK)

Electric vehicles

Finance Act 2017 provided an exemption from Benefit in Kind (BIK) charges in 2018 for electric vehicles provided to employees. Finance Act 2018 subsequently extended this exemption to the end of 2021, but restricted the full exemption to cases where;

- The original market value (OMV) of the vehicle does not exceed €50,000 or
- The OMV exceeds €50,000 but the vehicle was first provided to the employee during the period 10 October 2017 to 9 October 2018

For 2021 where the OMV of the vehicle exceeds €50,000, the BIK charge is calculated by reducing the OMV of the vehicle by €50,000. Finance Act 2020 extended the relief for a further year to the end of 2022.

The Act provides for a reduction of the €50,000 amount by which the OMV is reduced to €35,000 for 2023, €20,000 for 2024 and €10,000 for 2025 and subsequent years.

MEDICAL CHECK-UPS

The Act provides an exemption from benefit in kind (BIK) charge for costs incurred by an employer for a medical check up for an employee. The employee must be required to undergo the check-up under the terms of their contract of employment or alternatively the check-ups must be made available to all employees. The exemption only applies to one check-up per annum, unless the employee is required to undertake the check-up under the terms of their employment. The exemption does not apply to other health expenses incurred by an employer for an employee. The exemption applies with effect for 2021 and subsequent years.

COVID-19 TESTS

The Act provides an exemption from a BIK charge for costs incurred by an employer in connection with the provision of a Covid-19 test for an employee where the test is necessary for the performance of the duties of the employment and the tests are made available to all employees. Covid-19 tests in this context include PCR tests and rapid antigen tests. The exemption applies with effect for 2021 and subsequent years.

FLU VACCINES

The Act provides an exemption from a BIK charge for costs incurred by an employer, or reimbursed by an employer, in the provision of a flu vaccine where the vaccine is made available generally to all employees. The exemption applies with effect for 2021 and subsequent years.

REMOTE WORKING

Relief for expenses incurred in working from home

The Act contains provisions allowing an employee working from home to claim a tax deduction for a proportion of expenses incurred for electricity, heating or an internet service in the person's home. The deduction which may be claimed is 30% of annual expense incurred allocated pro-rata to the number of days in the year the employee spends working from home. For example if the total costs incurred in the year are €2,000 and the employee works from home for 185 days in the year, a tax deduction of €304 may be claimed (i.e. €2,000 x 185/365 x 30%).

In order to make a claim the employee is required to provide full details, including a copy of the service provider's statement, to the Revenue via Revenue's online system ROS. The statutory relief applies for the year 2022 and subsequent years. A reduced form of relief is concessionally available for 2021.

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Transfer Pricing

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 (referred to as the "domestic exemption"). 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.

Finance Act 2020 limited 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. In addition Finance Act 2020 introduced specific requirements to be satisfied in order for loan arrangements to qualify for the domestic exemption. The amendments proposed by Finance Act 2020 were due to come into operation on the issue of a Commencement Order by the Minister for Finance. This order was never issued.

Finance Act 2021 has rewritten the domestic exemption provision. Under the rewritten provisions, the domestic exemption will apply where both parties are chargeable to Irish tax in relation to the transaction in question. A party is regarded as chargeable to tax in respect of a transaction where no consideration is charged where if consideration had been charged it would have been taken into account in calculating profits, gains or losses liable to tax in Ireland. In the case of the supplier, the profits, gains/losses in question must not be profits, gains or losses arising from a trade or profession. This means that the exemption will not apply where the supply in question is made in the course of a trade

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Transfer Pricing CONTINUED

TRANSFER PRICING CONTINUED

however it can apply to a supply received in the course of a trade. Where one of the parties is an individual they must also be tax resident in Ireland.

The domestic exemption will only apply to an arrangement which is entered into for bona fide commercial reasons and will not apply to arrangements entered into where the main purpose, or one of the main purposes of which is to avoid tax. The exemption will not apply where an amount greater than the actual consideration is taken into account as expenditure or expense or in calculating capital allowances.

The new rules will apply with effect for chargeable periods commencing on or after 1 January 2022.

Transfer pricing rules have not yet been extended to SMEs. While Finance Act 2019 did include provisions for extending transfer pricing to SMEs, the legislation will only come into effect on the issue of a Commencement Order which has not yet been issued.

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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. Finance Act 2020 provided for capital allowances to 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 includes 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.

In order 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 provisions 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 which has not yet issued.

The Act provides that the applicant must provide their tax reference number when applying for a certificate confirming the equipment is qualifying equipment.

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 2021 and has been extended to 31 December 2022.

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. Stock relief was due to expire on 31 December 2021 but has been extended by the Act to 31 December 2024.

Farmers, aged 35 or under, with certain agricultural qualifications 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. 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 on 31 December 2021 but has been extended to 31 December 2022 by the Act.

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Property

NON-RESIDENT CORPORATE LANDLORDS

With effect from 1 January 2022 the Act provides that a non-resident company with rental income in the State will be liable to corporation tax on such income instead of income tax. This has the effect of increasing the rate of tax payable on such profits from 20% to 25%. In addition it means that such companies will also be subject to the interest limitation rules due to come into effect from 1 January 2022 (see "Anti-Avoidance and EU Reporting" below).

Such companies will also be subject to corporation tax rather than capital gains tax on gains arising on the disposal of Irish rental property. The effective rate of tax on such gains will however remain at 33%.

Where such a company was entitled to claim capital allowances in respect of expenditure prior to 1 January 2022 and a balancing allowance or charge arises in respect of such allowances on or after 1 January 2022, the balancing allowance/charge is reduced to reflect the fact that the allowance/charge will be deductible/chargeable at 25% whereas relief for the capital allowances would have been given at 20%.

The company will be allowed to carry forward rental losses incurred while within the charge to income tax and offset them against rental profits liable to corporation tax. There is no restriction on the losses carried forward to reflect the differential in the income tax and corporation tax rates.

The Act provides that where such a non-resident company comes within the charge to corporation tax from 1 January 2022 and has an accounting period ending on or before 30 June 2022, preliminary tax for that period will be due and payable not later than 21 June 2022, or 23 June 2022 if the company pays preliminary tax online via ROS.

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.

There is an exception to this rule for pre-letting revenue expenses of up to €5,000 per property where the following conditions are satisfied;

- The property was not occupied for the previous 12 months.
- The property is let for residential purposes.
- The expenditure would have been deductible if it had been let when the expenses were incurred.

The relief is clawed back if the claimant ceases to let the property within 4 years. At the moment the exception only applies to expenditure incurred on or before 31 December 2021. The Act extends the period in which the expenditure must be incurred to qualify for the relief to the end of 2024.

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Property CONTINUED

RESIDENTIAL ZONED LAND TAX

The Act provides for a "residential zoned land tax" to apply 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). The tax will be 3% of the market value of the land and will be payable annually.

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 must be published no later than 1 November 2022. Landowners will be able to lodge an appeal against inclusion in the map to the local authority no later than 1 January 2023. They can also request a change in the zoning status of their land.

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.

STAMP DUTY ON ACQUISITION OF BULK RESIDENTIAL PROPERTIES

Provisions were introduced by way of a Financial Resolution passed by the Dáil on 19 May 2021 which provided for a 10% rate of stamp duty to be payable on multiple purchases of 10 or more residential houses in a 12-month period. The provisions do not apply to purchases of apartment blocks.

The Act amends the legislation to confirm that the increased stamp duty rate will apply where the residential units are acquired indirectly, e.g. via the purchase of shares in a company owning the property. In addition the Act provides that the higher rate will not apply to the acquisition of residential units where they are leased on the day the unit is acquired to certain social housing providers.

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Personal Taxation

INCOME TAX RATES AND CREDITS

The standard rate tax band has been widened by €1,500 for single persons and €3,000 for jointly assessed married couples.

Personal tax credits have been increased by €50 for single persons and €100 for married couples. The employee tax credit and the earned income tax credit have also been increased by €50.

UNIVERSAL SOCIAL CHARGE (USC)

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 a pay increase due to the increase in the National Minimum Wage 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 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. 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 and extended to the end of 2021 by Finance Act 2020.

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 2021. The Act has extended the period during which the enhanced rebate may be claimed to the end of 2022.

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Personal Taxation CONTINUED

PENSIONS

The Act makes a number of changes to the rules governing pensions schemes as follows:

Death in Service

Firstly the Act provides that the rules of an occupational pension scheme can now provide that on the death of an employee, pension benefits provided to the employee's spouse, children or dependants may be provided by transferring funds to an approved retirement fund (ARF). Up until now benefits could only be paid in the form of a pension annuity. Where funds are transferred to an ARF, all the rules and conditions relating to ARFs will apply.

Removal of 15-year rule on transfer of funds to PRSA

At the moment the rules of an occupational pension may allow a member on the termination of the scheme or when they change employment to transfer their entitlements under the scheme to a PRSA provided the employee has been a member of the scheme for 15 years or less. The requirement that the employee cannot have been a member of the scheme for 15 years or more has been deleted with effect from 1 January 2022.

Removal of Approved Minimum Retirement Fund (AMRF) requirement

At the moment on retirement an individual can take up to 25% of their pension fund as a tax-free lump sum and invest the balance of the fund in an ARF/AMRF. If an individual is under 75, they cannot transfer funds to an ARF unless they have a guaranteed annual income of at least €12,700 per annum. If the individual does not have this level of guaranteed annual income, they must transfer the balance of the fund, or €63,500 if less, to an AMRF or use it to purchase an annuity or a combination of these two. An AMRF becomes an approved retirement fund (ARF) when the individual reaches age 75, dies or obtains a guaranteed income of at least €12,700 per annum. Only 4% of the capital of an AMRF may be withdrawn annually.

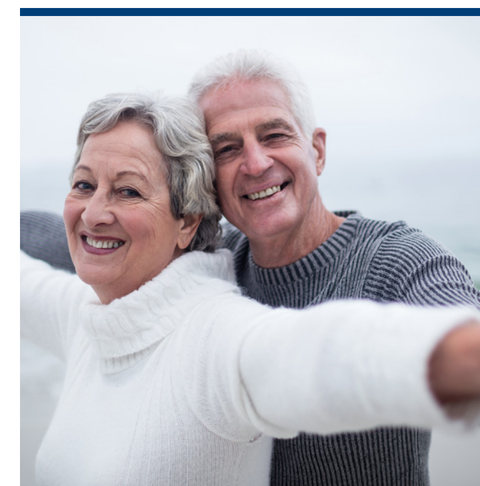
With effect from the passing of the Act, there is no longer any requirement for funds to be transferred to an AMRF. With effect from 1 January 2022 existing AMRFs will convert to ARFs.

MISCELLANEOUS INCOME TAX CHANGES

The Act provides an exemption from income tax for income of up to €200 per annum earned by an individual from the micro-generation of electricity. Micro-generation of electricity means the use of renewable, sustainable or alternative forms of energy to generate electricity at the residence of the individual.

THE PANDEMIC PLACEMENT GRANT

The Act provides for an exemption from income tax for a grant known as the Pandemic Placement Grant which is paid periodically to certain nursing and midwifery students. The exemption only applies up to a maximum of €1,200 per student and will apply for 2021 and 2022 only.



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Capital Acquisitions Tax (CAT)

RATES AND THRESHOLDS

There has been no change to the rate of Capital Acquisitions Tax (CAT) at 33% or to the tax-free thresholds which apply to gifts or inheritances from persons other than a parent. A person is required to file a CAT 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.

Finance Act 2020 extended the requirement to file a return to;

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

Revenue can require a disponer (i.e. the person who has provided a gift or inheritance) of a gift or inheritance to file a return where the 80% threshold, referred to above, is exceeded in relation to a particular gift/inheritance recipient. The Act provides that Revenue can now require a disponer to file a return where they have made a gift of agricultural property or business property which qualifies for business relief even where the 80% threshold is not exceeded.

This provision applies with effect from the date of the passing of the Act on 21 December 2021.

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

WINNINGS FROM BETTING, LOTTERY AND GAMES WITH PRIZES

The Act has extended the exemption from capital acquisitions for winnings from betting, lotteries and games with prizes to include non-cash as well as cash winnings/ prizes.

This provision applies with effect from the date of the passing of the Act on 21 December 2021.

CAPITAL GAINS TAX (CGT)

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.

PRINCIPAL PRIVATE RESIDENCE RELIEF

Full relief from CGT is given for gains arising on the disposal of a person's principal private residence provided the individual has occupied the house as their residence for the entire period of ownership (or the entire period excluding the last 12 months of ownership). Partial relief is given where the house was not occupied as the individual's principal private residence for the entire period of ownership.

The Act provides that where an individual disposes of their principal private residence by way of a lottery or game with prizes and the proceeds of the lottery or game exceeds the market value of the house, relief from CGT will be restricted to the amount which would have been given if the house had been disposed of for its market value.

The new provisions come into operation on 1 January 2022.

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The Appeal System, Penalties and Publication

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 notice to the Appeal Commissioners must be provided within 21 days of the issue of the Appeal Commissioner's determination.

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 Appeal Commissioner had 3 months from the day of receipt of a notice requiring a case to be stated to prepare the case. Within that time they had to provide the parties with a copy of the case stated and give the parties 21 days to make representations regarding the case. The Act provides that a draft of the case stated must be sent to the parties within 3 months of receipt of the notice requiring a case to be stated and within 21 days the parties may make representations. At the end of that 21-day period the Appeal Commissioners have 21 days to complete and sign the case stated and send it to the parties.

PENALTIES FOR MAKING INCORRECT RETURNS OR FAILING TO MAKE CERTAIN RETURNS

Tax legislation provides for penalties equal to a percentage of the underpaid tax where an incorrect return or no return is filed. The percentage penalty which applies depends on whether the behaviour giving rise to the incorrect or non-filing of the return was deliberate or careless, whether a qualifying disclosure was made by the taxpayer in respect of the underpaid tax and whether the taxpayer co-operated with any Revenue investigation/inquiry. The legislation which sets out the penalties which apply where incorrect returns or no returns are filed has been rewritten for direct taxes and VAT. **However it remains substantially the same apart from the following;**

- Puts on a statutory footing Revenue practice whereby no penalty is charged where an underpayment arises due to a technical adjustment or innocent error
- Puts on a statutory footing Revenue practice whereby no penalty is charged where the tax default is below €6,000 and due to careless behaviour
- Removes the restriction on making a qualifying disclosure in respect of offshore matters

Where a return has not been filed the penalty which applies is based on the tax paid before notification of a Revenue inquiry or investigation. Previously it was based on the tax paid before commencement of a Revenue inquiry or investigation.

While the penalty legislation for CAT and stamp duty was not rewritten similar amendments were made to allow for the changes set out above except that the Stamp duty legislation was not amended to provide for no penalty in the case of an underpayment due to technical adjustment or innocent error.

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The Appeal System, Penalties and Publication CONTINUED

PUBLICATION OF TAX DEFAULTERS

Tax legislation provides that Revenue are required to publish on a quarterly basis details of taxpayers on which a fine or penalty has been levied and where a settlement has been agreed with Revenue in respect of underpaid tax. The legislation sets out the circumstances in which a settlement will not be published. This includes where a settlement does not exceed a monetary amount or where a qualifying disclosure is made by the taxpayer.

The following are the key changes made to the legislation;

- Settlements will be published where incorrect refunds are claimed (previously on settlements relating to underpaid tax were published)
- Prior to the Act a settlement of below €35,000 (which included interest and penalties) would not be published. Now a settlement will only be published if the amount of the tax underpaid, or refund overclaimed, exceeds €50,000
- In order to be published a settlement only has to include tax and a penalty. Previously in order to be published a settlement had to include tax, interest and a penalty
- Any part of a settlement that does not attract a penalty will not be published
- Any fixed penalty related to tax liabilities will be published
- Settlements in relation to surcharges will be published
- Additional details to identify the taxpayer will be published including any trading name or previous names used

The new provisions apply to defaulters' lists published for the three months from 1 January 2022 and subsequent three-month periods.

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Anti-Avoidance and EU Reporting

ATTRIBUTION OF PROFITS TO A BRANCH

Tax legislation provides that an Irish branch of a non-resident company is liable to corporation tax on trading income arising directly or indirectly through the branch and on any income from property or rights used by, held by or for the branch. Prior to Finance Act 2021 tax legislation did not set out the manner in which the income attributable to a branch should be determined. The Act now provides that the income attributable to a branch shall be the amount which it would have earned if it were a separate and independent company engaged in the same or similar activities under the same or similar conditions. In attributing income to a branch, the new provisions state that this shall be done following the guidance on the attribution of profits to permanent establishments set out in the OECD 2010 Report on the Attribution of Profits to Permanent Establishments (the "authorised OECD approach guidance").

The new provisions also contain additional requirements with regard to branch records. The new provisions state that a company carrying on a trade in the State through a branch is required to have available such records as may reasonably be required to demonstrate that the branch income has been determined in accordance with the new provisions. The new provisions set out the requirements of these records. The records must be made available to Revenue on receipt of a written request and must be available for an accounting period by the return filing date for that accounting period. The new record requirements do not apply to medium enterprises where the income attributable to the branch for the accounting period is less than €250,000 or to small enterprises.

The new provisions apply with effect for accounting periods commencing on or after 1 January 2022. The provisions will only apply to small or medium-sized enterprises on the issue of a Commencement Order by the Minister for Finance.

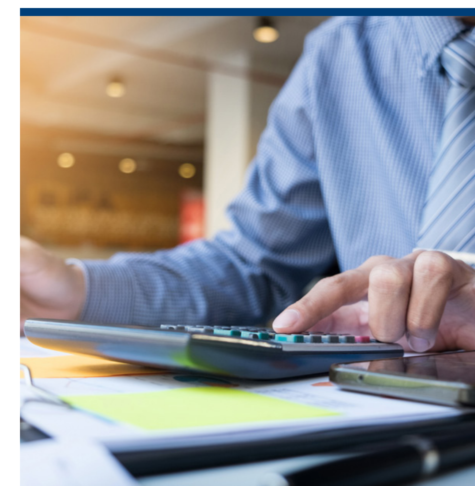
CONTROLLED FOREIGN COMPANIES

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.

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



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Anti-Avoidance and EU Reporting CONTINUED

CONTROLLED FOREIGN COMPANIES CONTINUED

Finance Act 2020 provided 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. The Act amends the section to ensure that for accounting periods beginning on or after 1 January 2022 the relevant EU list is that published in October 2020.

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 case of a double deduction mismatch outcome, if the State is 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).

In addition to making a number of technical amendments to the legislation to ensure the rules operate as intended, the Act inserts new provisions dealing with "reverse hybrid mismatch outcomes". A "reverse hybrid" is an entity established in the State which is not liable to tax on its profits or gains because it is regarded as a "look through" entity for Irish tax purposes i.e. its profits or gains are treated as accruing to the participators in the entity.

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Anti-Avoidance and EU Reporting CONTINUED

HYBRID MISMATCHES CONTINUED

At the same time the participators in the entity are not liable to tax on the profits or gains of the entity in their jurisdiction because the profits/gains are regarded as accruing to the entity rather than its participators.

A reverse hybrid mismatch outcome arises where some or all of the profits or gains of the reverse hybrid, attributable to a "relevant participator", are not subject to either domestic or foreign tax. A "relevant participator" is a participator who, together with any associated entities, owns more than 50% of the reverse hybrid. This would include a participator with greater than 50% of the voting rights of the entity and one who is entitled to more than 50% of the entity's profits. Where a reverse hybrid mismatch outcome arises the reverse hybrid will be liable to corporation tax in the State in the same manner as if it were a tax resident in the State.

The provisions do not apply if the relevant participator is not liable to tax on their profits in the foreign jurisdiction because either the foreign jurisdiction exempts the relevant profits from tax or does not generally impose foreign tax. The provisions also do not apply to collective investment schemes as defined in the legislation. To come within the definition of a collective investment scheme in the legislation the scheme must be widely held and hold a diversified portfolio of assets.

These technical amendments apply to payments made or arising on or after 1 January 2020. The provisions regarding reverse hybrids apply to tax periods commencing on or after 1 January 2022.

INTEREST ON INTRA-GROUP BORROWINGS

Tax legislation contains anti-avoidance provisions which deny tax relief for corporation tax purposes for interest on borrowings from a connected party which were used to acquire an asset from a connected company. These provisions are amended to extend the definition of a loan to include promissory notes and any other agreement or arrangement having a similar effect and to extend the provisions to loans taken out to refinance such loans.

The new provisions come into operation on 1 January 2022.

INTEREST LIMITATION RULES

The Act contains provisions bringing 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. An entity's "net interest equivalent" is its interest expense deducted in calculating relevant profits less interest income included in calculating relevant profits. Interest expense and interest income include amounts which are economically equivalent to interest (interest equivalents) and other costs incurred in raising finance. Where an entity's net interest equivalent is a positive amount (i.e. interest expense exceeds interest income) this is referred to as the entity's "exceeding borrowing costs". 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.

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Anti-Avoidance and EU Reporting CONTINUED

INTEREST LIMITATION RULES CONTINUED

Interest on certain legacy debts are not included in calculating an entity's net interest equivalent.

EBITDA is "relevant profits" plus "net interest equivalent" (see above) plus capital allowances plus interest on legacy debt not included in net interest equivalent.

"Relevant profits" are the amount of profits on which corporation tax is charged. These profits are after taking into account reliefs which are given on a value basis (i.e. by reducing tax liabilities) such as trading charges and current year trading losses, but before taking into account reliefs which are given by way of a tax credit (e.g. R&D tax credits). Losses carried forward or back from another accounting period are not taken into account. Interest expenses relating to certain long term infrastructure projects are excluded in calculating exceeding borrowing costs. Accordingly any income or expenses relating to such projects are excluded from EBITDA. Where profits include income taxed at 25% they are adjusted by 25/12.5, to give an amount of income which if it were taxed at 12.5% would result in the same tax liability. The same adjustment is made to expenses deductible against income liable at 25%.

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 €3 million 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.

RELIEFS

The equity ratio rule

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. Group in this context consists of members who are included in the same consolidated accounts. Companies who are part of the same corporation tax loss group can be included.

GROUP RATIO

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

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Anti-Avoidance and EU Reporting CONTINUED

EXCLUSIONS

The interest limitation rules do not apply where the entity's exceeding borrowing costs do not exceed €3million for the accounting period. In determining if the €3million limit is exceeded interest which is deductible against profits taxed at 25% or which is taxable at 25% is reduced by 12.5/25.

The interest limitation rules do not apply to standalone entities. A standalone entity is one which is resident in the State, is not a member of a worldwide group, has no associated entities and does not have a permanent establishment in any country other than the State.

Broadly entities are associated with each other if one has a 25% interest in the other or both are part of the same group for the purpose of preparing consolidated accounts.

The new rules apply to accounting periods ending on or after 1 January 2022.

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 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.

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Anti-Avoidance and EU Reporting CONTINUED

REPORTING REQUIREMENTS FOR DIGITAL PLATFORM OPERATORS

The Act incorporates into Irish legislation amendments to the EU Directive on Administrative Cooperation, referred to as DAC7. The provisions impose on 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 reporting rules apply in respect of platforms who allow sellers to connect with customers to provide the following:

- The sale of goods
- The rental of property
- The provision of personal services (i.e. time or task based work carried out online or physically offline after having been facilitated via a platform)
- The rental of transport information to be reported regarding the sellers includes:
  - Names, addresses, tax reference numbers, VAT number
  - Date of birth
  - Business registration numbers
  - Financial account identifiers
  - Address and land registration number of properties listed
  - Number of days properties were let for
  - Consideration paid
  - Fees, commissions or taxes withheld or charged by the platform

The new provisions will only come into effect on the issue of a Commencement Order by the Minister for Finance.

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VAT

VAT RATE CHANGES

Reduced 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 was reduced from 13.5% to 9% by Finance Act 2020. The reduced rate will continue to apply until 31 August 2022 under the provisions of the Finance (Covid-19 and Miscellaneous Provisions) Act 2021.

The reduced rate applies 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
- Hair dressing services
- Increase in flat rate addition for farmers

With effect from 1 January 2022 the "flat rate addition" rate is reduced from 5.6% to 5.5%. The flat rate addition is a payment made to non-VAT registered farmers to compensate them for VAT paid on goods and services acquired in the course of their farming activities which they are unable to recover.

The Act provides that during the period 12 December 2020 to 31 December 2022, the supply of Covid-19 vaccines and services closely linked to those vaccines and Covid-19 in vitro diagnostic medical devices, and services closely linked to those devices, will be zero rated.

Also supplies of goods or services to the European Commission or an agency or body established under EU law to be used in the fight against Covid-19 are zero rated. The importation of such goods by the European Commission or an agency or body established under EU law are exempt from VAT. These provisions apply with effect from 1 January 2021.

NON-REFUNDABLE DEPOSITS

Where a customer pays a deposit in respect of a future sale of goods or services, where VAT is chargeable on the proposed future supply of goods or services, VAT is also chargeable on the deposit paid. Prior to the Act where a deposit was retained by a supplier because of a customer cancellation, as no supply of goods or services happened the deposit was not liable to VAT. Accordingly the supplier was entitled to reclaim the VAT already paid on the deposit. The Act deletes the latter requirement. Accordingly with effect from 1 January 2022 a supplier is no longer entitled to reclaim VAT accounted for in respect of deposits retained due to customer cancellations.

VAT GROUPS

Under VAT legislation Revenue can deem persons established in the State who are closely bound by financial, economic and organisations links to be treated as a single person, or VAT group, for VAT purposes. Members of a VAT group are not required to issue VAT invoices in respect of inter-group transactions, other than for certain property transactions and while all members are jointly and severally liable for any VAT underpaid, only one company in the group is required to file VAT returns and make VAT payments for the group.

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VAT CONTINUED

VAT GROUPS CONTINUED

The Act amends the legislation to provide that at least one member of the group must be VAT registered in order for there to be a VAT group, previously the legislation only required at least one person to be carrying on a business, which could have meant a person supplying VAT exempt services. In addition, Revenue are required to notify each person in the group when their group registration is cancelled. The Act deletes the provision whereby the date from which the group registration is cancelled could not be earlier than the date of the notice.

The Act also provides that where there has been a significant change in the financial, economic and organisational links between the persons in the group, the group member responsible for filing the group VAT returns is required to notify of this change within 30 days of the end of the VAT period in which the change has happened. In addition, they are required to notify Revenue where a person in the group ceases to be established in the State or if the requirement that at least one member of the group must be VAT registered is not met. Again this notification must be made within 30 days of the end of the VAT period in which this change of circumstance has occurred. A penalty of €4,000 can apply for failure to make the latter notification. An additional €4,000 penalty will apply for each subsequent VAT period for which the failure to make the notification continues.

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The above is intended as a general guide to the measures announced in Finance Act 2021. 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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