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Finance Bill 2020

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Finance Bill 2020 published

On 22 October the Government published Finance Bill 2020 (as initiated). The Bill primarily seeks to implement the tax elements of Budget 2021 measures announced on 13 October last. However, in addition to clarifying aspects of the Budget 2021 announcements, it also contains previously unannounced measures, some of which are highlighted below.

Business taxes

COVID Restrictions Support Scheme

The Bill provides the details of the new COVID Restrictions Support Scheme (CRSS) targeted at businesses that are significantly impacted or have their premises temporarily closed due to the Government's 'Living with COVID-19' Plan. As outlined in Budget 2021 it provides for cash payments, based on 2019 average (VAT exclusive) weekly turnover computed in accordance with normal commercial accounting principles. The Bill provides that the CRSS may be available where relevant business activity in the claim period is 25% or less of the comparable turnover (up from the 20% level announced in Budget 2021).

Payments will be calculated based on 10% of the first €20,000 in average weekly turnover and 5% thereafter, up to a maximum of €5,000 per week. The rates can be reviewed and amended by the Minister for Finance pursuant to a review of CRSS and taking into account other relevant matters.

The weekly payments are advance credits for trading expenses. In computing the profits of the trade to which the impacted business activity relates for a chargeable period in which the claim commences, any tax deduction for trading expenses must be reduced by the amount of the advance credit.

Transfer pricing

Finance Act 2019 extended Ireland's transfer pricing rules to non-trading transactions but added a new exemption so that the rules would not result in deemed income taxable at 25% for which deductions were only available at the 12.5% rate. The wording in Finance Act 2019 was intended to respect EU rules on freedom of establishment but was open to a wide range of interpretations as to its scope. This piece of legislation is completely rewritten in Finance Bill 2020, to include some very prescriptive conditions that must be met for a transaction between two Irish parties to be exempt. Taxpayers should study this legislation closely – it provides welcome clarity, but some important anomalies remain.

Business taxes

Professional Services Withholding Tax (PSWT) modernisation

The Bill contains welcome enabling legislation to facilitate the move to an electronic system of accounting for PSWT. The relevant accountable person (for example a Government Department) will forward details of the payment and PSWT deducted electronically to the Revenue Commissioners. This will eliminate the current paper-based forms and should ensure faster crediting of tax deductions for payment recipients. The regime will be subject to a Ministerial Commencement Order.

Entrepreneur relief

The Bill introduces the changes announced in Budget 2021 in relation to holding qualifying shares for Entrepreneur Relief purposes. It applies for disposals made on or after 1 January 2021. The revised requirement to hold shares for any continuous 3-year period does not apply to sole traders who directly own a chargeable business asset used in their trades. The original requirement to own the (non-share) asset for 3 years must continue to be met in the 5 years immediately prior to the disposal.

Debt warehousing

Repayments of Temporary Wage Subsidy Scheme (TWSS)

The debt warehousing provisions have been extended to employers who are to repay excess amounts paid under the TWSS. Various conditions must be met to qualify including all relevant payroll tax returns must have been filed correctly and the relevant taxes paid. There is a concern that one incorrect or late payroll tax return may disqualify an employer from availing of debt warehousing.

2019 income tax balance and 2020 preliminary tax

Debt warehousing will be available to taxpayers required to file a personal tax return if, as a result of COVID 19 and the Government restrictions, the taxpayer's income for 2020 is less than 75% of his/her income for 2019 and the individual is unable to pay all or part of the 2019 income tax balance and/or 2020 preliminary tax.

The taxpayer must make a declaration to Revenue when filing the return for 2019. The extended tax return deadline of 10 December 2020 will continue to apply even where the tax liabilities are not paid.

The debt warehousing provisions will also apply to tax liabilities due next October where it can be shown the taxpayer's income for 2021 is also less than 75% of his/her income in 2019 as a result of COVID 19 and any Government restrictions in place in 2021.

Controlled Foreign Companies and non-co-operative jurisdictions

The Bill contains an amendment to the Controlled Foreign Company (CFC) rules to provide that the effective tax rate, low profit margin and low accounting profit margin exemptions shall not apply for accounting periods beginning on or after 1 January 2021 where the CFC is resident in a jurisdiction listed on the EU list of non-cooperative jurisdictions.

Anti-hybrid rules – technical changes

As required by the EU Anti-Tax Avoidance Directive, Ireland has already introduced anti-hybrid rules with effect from 1 January 2020. These rules are highly technical in their content, which is intended to guard against tax planning through the structuring of transactions in a manner that is treated differently according to the tax law of two or more jurisdictions. Finance Bill 2020 includes some technical changes to these rules, which:

- Correct a definition in the the meaning of "associated enterprises" so as to align more closely with the Directive
- Clarify at what point in time the test of "associated enterprise" needs to be applied (e.g. change of ownership situations)
- Confirm that the special rule for "worldwide taxation" situations extends to CFC rules, not just branches and hybrid entities
- Clarify that the mismatch rule for payments to a hybrid entity does not apply where there is in effect no mismatch because the participator in the hybrid entity is based in a zero tax jurisdiction

Employer taxes

Share incentive plans and employer reporting requirements

Employers are required to report to Revenue details of share awards given to employees in a Form RSS1 or another prescribed return by 31 March following the tax year in which the award is made. The reporting obligation will now extend to awards given in the form a cash equivalent of shares or where a discount on shares is provided.

Currently the Form RSS1 must be submitted to Revenue electronically and legislation has been updated to reflect this.

Personal taxes

USC

The reduced USC rate of 2% will continue to apply until the end of 2021 for full medical card holders under the age of 70 years whose individual annual income does not exceed €60,000.

COVID-19 Pandemic Unemployment Payment (PUP)

The PUP has been added to the list of taxable social welfare payments, such as the illness benefit, and job seekers benefit. Whether the individual will be subject to income tax is dependent on the individual's level of income for the year.

Exemptions

The Bill also expands the income tax exemption made by the Child and Family Agency to include Home Sharing Host Allowance payments made to carers by the Health Service Executive (HSE).

A payment of Mobility Allowances by the HSE will also not be liable to tax (irrespective of when it is or was paid).

Financial services

Encashment Tax

The Bill introduces several amendments to the existing encashment tax regime. The proposed legislation includes an exemption from the operation of encashment tax on payments to Irish tax resident companies which are within the charge to corporation tax in respect of such payments. This is a welcome change to provide symmetry of treatment with other withholding taxes for corporates.

The rate of encashment tax to be deducted is increased from 20% to 25%, effective from 1 January 2021.

In an update to the filing requirements for withholding agents, provision is made for the return to include details of the names and addresses of the persons to whom the agent is paying the income, together with the amount and type of income and the tax deducted. However, this expansion of reporting will only come into effect on the issuance of a Commencement Order by the Minister for Finance.

Bank Levy

The bank levy has been amended to protect the targeted yield to the exchequer in 2021 of €150m per annum. 2019 will serve as the base year for the levy calculation, with the rate increasing from 170% to 308% of DIRT.

Solvency II Directive

The Bill provides for updates to the Irish Taxes Consolidation Act 1997 to reflect Ireland's transposition of the Solvency II Directive, removing references to regulations which are no longer in place and introducing references to the updated regulation. The legislation is effective from 1 January 2021.

Payment Card Providers – Return of information

The Bill introduces provisions to allow Revenue and the Minister for Finance to introduce regulations requiring that payment card providers make a return of information in respect of certain cross-border payments, subject to certain de minimis thresholds. The proposed legislation is focused on payments made online or over the phone, by means of a payment card, by persons with an address in Ireland to a person outside of Ireland. The information to be returned will include a range of details of the payment, the payee and the payee's bank details.

Post Brexit migration of shares to the EU Central Securities Depositary

The Bill provides for several technical amendments arising from Brexit and the migration of shares and securities in Irish registered companies from a central securities depositary in the UK to one in Belgium. The technical amendments are there to facilitate tax neutrality on migration and maintaining the same status post migration. The legislative updates cover dividend withholding tax, capital gains tax, capital acquisition tax and the offshore funds regime. The legislation will come into effect on the issuance of a Commencement Order by the Minister for Finance.

Capital taxes

Stamp Duty

A technical amendment is introduced to ensure that the higher non-residential stamp duty rate (currently 7.5%) applies (as opposed to the 1% rate) in the case of a cancellation scheme of arrangement where the shares in the target company derive the greater part of their value from Irish non-residential real estate acquired with the sole or main object of realising a gain from its disposal, realising a gain when developed or held as trading stock. The Bill intends that the anti-avoidance provisions imposing the higher rate of stamp duty will take precedence over the provisions dealing with cancellations of schemes of arrangement in cases where both sections apply.

Capital Acquisitions Tax (CAT)

CAT tax return filing obligation for gifts or inheritances of agricultural or relevant business property

Previously an individual was only required to file a CAT return when the taxable value of the current gift or inheritance along with all previous gifts and inheritance since 5 December 1991 in same exemption threshold class exceeded 80% of the exemption threshold amount.

A CAT return must now be filed by a person in receipt of a gift or inheritance of agricultural property or relevant business property to which the relevant agricultural or business reliefs apply.

CAT returns and Revenue enquiries and assessments

The 4-year period where Revenue is able to make enquiries on CAT returns will now commence on the later of:

- 31 December in the year the CAT return is submitted, or
- The date the CAT return is submitted in respect of discretionary trusts, or
- Where an exemption or relief is claimed in the return, the end date of the period any conditions must be met to qualify for the exemption or relief

Revenue will also be able to raise an assessment, a correcting assessment or additional assessment in respect of a CAT return for a 4-year period commencing on the later of:

- 31 December in the year the CAT return is submitted, or
- The date the CAT return is submitted in respect of discretionary trusts

Where Revenue believes fraud or neglect has occurred, they have powers to raise an assessment at any time outside the above 4-year period. These powers have now been extended where an event occurs after the submission of the CAT which alters the position.

A claim for a refund of CAT can now be made within 4 years from 31 December in the year the CAT return is submitted.

Indirect taxes

VAT representation

Irish VAT legislation does not currently impose a requirement on non-established traders to appoint a tax representative. The Finance Bill, as currently drafted, permits Revenue to require certain non-established traders to appoint an EU tax representative, where it is necessary to do so for the protection of tax revenue. The tax representative would be jointly and severally liable for its client's Irish VAT liabilities. Such representation services can be costly to taxpayers.

Taxpayers established within the EU or Norway, or non-EU business operating within the EU via the Mini One Stop Shop scheme, should be exempt from this measure.

The proposed change is not surprising given the current financial climate as this measure will enable Revenue to recoup unpaid VAT from a second party where it has not been possible to claim VAT payment from the taxpayer.

Many EU Member States already require non-established entities to appoint tax representatives indicating a Community-wide move to eliminate VAT avoidance by non-established traders.

The Bill contains several other indirect tax measures. These will be covered in a separate VAT Alert.

Miscellaneous

DAC 6 Mandatory Disclosure Rules

Finance Act 2019 transposed into Irish domestic law the amendments made to the EU Directive on Administrative Co-operation which apply mandatory disclosure provisions to certain cross-border transactions (DAC 6). The reporting of transactions was due to commence from 1 July 2020, but first reports have been deferred until early 2021.

The Bill makes some technical clarifications. These include clarification that where legal professional privilege applies the intermediary's obligation is to inform relevant taxpayers of their obligations and not other intermediaries. It also puts on a statutory footing the filing exemption for certain classes of arrangements (as listed in a new Schedule) involving the use of standardised structures or documentation.

Tax Appeals

The Bill makes several changes relating to tax appeals.

The length of time between an appeal hearing and a determination by an Appeal Commissioner can be significant. The Bill provides for the circumstances where an Appeal Commissioner vacates office prior to delivering a determination after a hearing has commenced. It allows another Appeal Commissioner to either adjudicate on the case without a hearing or request that it be reheard. Where the vacation of office arises after delivering a determination but prior to completion and signing of a case stated for the High Court a number of options will be available. Where there is no agreement between the parties, another Appeal Commissioner may take the necessary steps to state and sign a case for the opinion of the High Court although the High Court will have discretion as to whether to accept the case without a rehearing.

Where an appellant does not comply with a direction of the Appeal Commissioners to submit a statement of case or an outline of arguments to progress an appeal, the Appeal Commissioners will now have the power to dismiss an appeal. Any adverse impact on Revenue for failing to comply with a similar direction is unclear.

The Bill will limit the grounds for appealing the imposition of a self-assessment late filing surcharge to specific aspects, namely, whether the return was filed correctly or the date the return was filed. It will remove an independent general right of appeal on grounds of dissatisfaction despite taxpayers agreeing with the factors giving rise to the surcharge. Computational errors, independent of the circumstances around the return itself, may not form grounds for appeal and will need to be addressed outside of the appeal system. Any restriction of appeal rights is unfortunate. Without the benefit of a crystal ball, it is not possible to say that the remaining grounds of appeal will be enough in all cases.

Where an appeal is determined in favour of a taxpayer, the taxpayer currently may be entitled to interest on any repayment. The Bill removes an entitlement to interest on any repayment of the excess over the taxpayer's assessment. This might occur where a taxpayer makes a payment on foot of a Revenue assessment 'without prejudice' to the outcome of an appeal.

Anti-avoidance

The Bill confirms the anti-avoidance measure announced on 13 October last with respect to disposals of foreign currency held in a bank account. With effect from 14 October 2020, any gain or loss arising on the transfer of a balance or other account held by the same person in the same currency with the same or other bank will not be regarded as a chargeable gain or an allowable loss. Foreign currency bank account transactions will now need to be even more carefully managed from a Capital Gains Tax perspective.

What's next

The next stage of the process at which amendments may be tabled is the Select Committee Stage, which is expected to commence on 17 November next. Tax Alerts on selected measures may issue over the coming weeks as the Finance Bill progresses towards enactment. It is expected that this Finance Bill will be enacted by the end of 2020.

Rates at a glance 2021

	2021
Income tax rates	
Standard	20%
Marginal	40%
Standard rate bands	
Single	€35,300
Married/civil partnership (two incomes)	€70,600
Married/civil partnership (one income)	€44,300
Single parent	€39,300
Income tax credits	
Single	€1,650
Married	€3,300
Single person child carer tax credit (primary carer only)	€1,650
PAYE	€1,650
Earned income credit (2020: €1,500)	€1,650
Age credit - single (married x2)	€245
Medical insurance relief max premium - adult/child	€1,000/€500
Home carer credit	€1,600
Dependent relative tax credit (2020: €70)	€245
Income tax age exemption	
Single and widowed	€18,000
Married (either spouse aged 65 or over)	€36,000
Rent-a-room relief	€14,000

Preferential loan specified rates - benefit-in-kind	
Qualifying home loans	4%
All other loans	13.5%

	2021
Electric vehicles - benefit in kind	
(capped at €50,000 of OMV, regardless of when vehicle first provided for use)	0%
Small benefit exemption	
Single non-cash voucher	€500
Universal Social Charge	
Earnings	
0 to €12,012*	0.5%
€12,012 to €20,687 (2020: €12,012 to €20,484)	2%
€20,687 to €70,044** (2020: €20,484 to €70,044**)	4.50%
€70,044 to €100,000	8%
PAYE income > €100,000	8%
Self-employed income > €100,000	11%

**Exempt if income < €13,000*
***Reduced rate 2% for persons holding medical card and/or aged 70, where income < €60,000*

PRSI rates	
Employer	
Standard rate	11.05%
Lower rate	8.8%
Weekly lower rate limit (2020: €395)	€398
Employee	
PRSI	4%
Weekly PRSI threshold (tapering relief available)	€352
Self-employed	
PRSI	4%
Minimum contribution	€500

	2021
Pensions	
Annual earnings cap	€115,000
Marginal rate deduction	40%
Tax free lump sum limit	€200,000
Standard fund threshold	€2,000,000
DIRT	
Deposit accounts	33%
Investment funds	41%
Local property tax	
Market value < €1m	0.18%
Excess value > €1m	0.25%
Capital gains tax	
Standard rate	33%
Withholding tax rate	15%
Annual exemption	€1,270
Entrepreneur relief (up to €1m chargeable gains)	10%
Capital acquisitions tax	
Standard rate	33%
Thresholds	
Group A	€335,000
Group B	€32,500
Group C	€16,250
Stamp duty	
Residential property	
First €1m	1%
Excess over €1m	2%
Non-residential property	7.5%

	2021
Corporation tax rates	
Standard rate	12.5%
Higher rate on passive income	25%
Knowledge Development Box rate	6.25%
Exit tax*	12.5%

**Applies to unrealised capital gains where companies migrate/transfer assets offshore such that they leave the scope of Irish tax*

VAT rates and limits	
Standard rate (reverting to 23% on 1 March 2021)	21%
Reduced rate	13.5%
Reduced rate (certain goods and services, extended to hospitality and tourism sector from 1 November 2020 to 31 December 2021)	9%
Farmer's flat rate (2020: 5.4%)	5.6%
Distance selling limit	€35,000
Registration limit - taxable goods	€75,000
Registration limit - taxable services	€37,500
Cash receipts basis limit	€2,000,000
Dividend Withholding Tax	
Dividend Withholding Tax	25%
Carbon taxes	
Per tonne/CO2 (2020: €26) To be increased incrementally each year to €100 per tonne/ CO2 by 2030	€33.50

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