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Paving the way

Finance Bill 2017

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Welcome

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On 19 October 2017, the Irish Government published Finance Bill 2017, the initial step in legislating for the measures announced last week by the Minister for Finance Paschal Donohue in the 2018 Budget. While the Bill is relatively short at 96 pages, it contains, in addition to the taxation measures announced in the Budget Speech, a number of provisions not previously announced. These provisions, although not entirely unexpected, include technical amendments to cater for Companies Act 2014 in certain circumstances, measures to legislate for pre-existing Revenue administrative practices and some anti-avoidance measures.

The need for consultation has been highlighted by the Government on several issues such as the proposals of the Coffey report and the plan to merge USC with PRSI. This acknowledgment recognises the important role that organisations across all sectors have in contributing to the discussion on the future direction of Ireland's tax regime.

Personal Tax Highlights

In the run-up to last week's Budget, all signs indicated that the Government was intending to alleviate the income tax burden on low to middle income earners. The Finance Bill achieves this in two ways: firstly, modest reductions in USC rates; and second, a €750 increase in the standard rate tax band, which means that the entry point to the 40% rate of income tax will increase from €33,800 to €34,550. While this is undoubtedly a positive move, it is still a very low entry point in comparison to international standards. Although the marginal tax rate on incomes up to €70,044 has fallen to 48.75% from 49%, it remains at 52% for earners over €70,044, which is a concern in terms of attracting highly skilled and senior-level individuals to Ireland.

In addition, the Finance Bill includes provision for an increase of €200 and €100 for the earned income tax credit and the home carer income tax credit, respectively. The increase in the earned income tax credit represents a further step in the phased approach to achieve parity with the PAYE tax credit.

As provided for in Finance Bill 2016, the DIRT rate on deposits is reduced by 2% to 37% in 2018, with further 2% annual reductions to come in 2019 and 2020.

Employment Taxes

An increase in the National Training Fund Levy by 0.1% per annum over the next three years was announced, which brings

the Levy from 0.7% to 1%. This increase is in line with a recommendation in the Cassell's report on higher education funding published last July. This is significant for employers as the Levy is a component part of the Employer PRSI charge. Therefore, employers are facing an increase in their PRSI costs from 10.75% to 11.05% by 2020.

As part of the Government's climate change policy, the Finance Bill introduces a 0% BIK rate to apply to electric cars for a period of one year. Electricity used in the workplace for charging vehicles will also not be considered a BIK. Given the current BIK rate on company cars, which generally is 30% of the open market value of the car, this incentive will likely result in a significant uptake in the use of electric cars on Irish roads.

The announcement that a working group will be established in relation to the amalgamation of the USC and PRSI over the medium term is to be welcomed. By announcing this consultation process, the Government is sending a signal that it is aware that it must ensure Ireland is an attractive location for key international talent and global businesses to relocate here after Brexit.

Stamp Duty

The Finance Bill legislates for the much debated revenue-generating increase in the stamp duty rate on transfers of non-residential property from 2% to 6%, in respect of instruments of transfer executed on or after 11 October 2017. While transitional measures have been provided for in respect of contracts entered into before 11 October, the window is relatively short, in that the conveyance/assignment of property must be executed before 1 January 2018 for the 2% rate to apply.

The rebate scheme announced in the Budget for stamp duty paid on land which is used to develop residential property within a specified period will be incorporated into the Bill during the Committee Stage.

Corporation Tax

One element of the Finance Bill that will have an immediate impact on companies is the re-introduction of the 80% income cap for Intellectual Property (IP) capital allowances. The provisions mean that, at a minimum, 20% of a company's IP trading profits will be subject to tax each year and any excess capital allowances above this amount will be carried forward for use in future years. The cap, however, only applies to claims made in respect of IP purchased on or after 11th October 2017. The change arises from a recommendation in the recent Coffey Report, which maintained that such a measure would help support the sustainability of Irish corporation tax receipts.

Section 247/249 TCA 1997 – Interest as a charge

The Finance Bill includes a provision designed to put on a legislative footing an administrative arrangement operated by Revenue, whereby relief was granted for interest under section 247 where the existence of double or multiple holding companies denied the availability of relief on a strict technical basis. Changes have also been made to s.249 TCA 1997, to align the recovery of capital provisions with s.247 TCA 1997.

Whilst the amendments are to be broadly welcomed, the measures are complex in nature. It is expected that Committee Stage amendments may be required to address some aspects of the new measures (further analysis on page 12-13).

Pre-letting expenses

In an effort to address the current shortage of houses in the rental sector, the Bill provides for the introduction of a new deduction for "pre-letting expenses" of a revenue nature incurred on a property that has been vacant for a period of 12 months or more. No deduction is available at present for such expenses. Under the new provisions, relief will be available for such expenses up to the end of 2021, subject to a limit of €5,000 per property.

VAT

The only change in VAT rates introduced by the Bill is an increase in the VAT rate on sunbed services from 13.5% to 23% with effect from 1 January 2018.

Despite much speculation, the reduced VAT rate of 9% for the hospitality and related services sector has been retained. While the Minister recognised that prices have risen in the sector in Dublin, he retained the reduced rate on the basis of the national interest.

Sugar Tax

The Bill provides for the introduction of a tax on sugar-sweetened drinks. A tax rate of 20c per litre applies where the sugar content is 5 or more grams of sugar per 100ml and 30c per litre for these drinks when they have 8 or more grams of sugar per 100ml. The levels of tax are comparable to the rates being introduced in the UK in April 2018 and our sugar tax is expected to be introduced at the same time, subject to State Aid approval.

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Agri Sector

A number or measures have been included in the Finance Bill impacting on the Agri Sector. These include amendments to ensure the letting of land for the production of solar energy will not affect entitlements to CAT agricultural relief and CGT retirement relief. Furthermore, despite the increase on the rate of stamp duty applicable to transfers of commercial properties, the lower stamp duty rate of 1% will continue to apply to transfers of agriculture property between close relatives until 2020.

Capital Gains Tax (CGT)

The Bill has legislated for an administrative practice operated by Revenue in respect of capital gains tax group relief, a relief which provides for the deferral of CGT where an asset is transferred within a group of companies. This amendment extends the scope of the CGT group relief provisions to include companies resident in countries with which Ireland has a double tax agreement. This amendment puts Revenue's administrative arrangement on a more formal footing and brings capital gains tax groups in line with loss groups.

Companies Act

The Finance Bill contains several measures required in order cater for the company law changes introduced in Companies Act 2014 ('the Act'). These are primarily related to the updating of references to the previous Companies Acts in the legislation. In addition, a number of changes have been made in respect of domestic mergers and divisions.

Key Employee Engagement Programme

The Finance Bill legislates for a new share option scheme, the Key Employee Engagement Programme ("KEEP"). The scheme is aimed at ensuring that unquoted SMEs can attract and retain key employees and allows employees, which satisfy the necessary conditions, to defer taxation on the receipt of share options until such shares are disposed of. The introduction of the scheme is subject to approval from the EU.

Multilateral Instrument

The Finance Bill provides the first step towards Ireland's ratification of the Multilateral Instrument ("MLI"). The MLI will provide the means by which Ireland's double tax treaties will be updated, obviating the need for individual bilateral negotiation. While no definitive timeline has been given as to when the ratification process is expected to finalise, it is anticipated that Ireland would ratify the MLI in early Autumn 2018, in order for the Convention to take effect from 1 January 2019.

Accounting Standards

The Finance Bill provides for an extension to the existing provisions on accounting transitional adjustments to ensure that, in all cases where companies move between accounting standards, the associated transition adjustment is covered for tax purposes. The provisions are also extended to give legislative support to existing practices regarding changes of accounting policy and the correction of accounting errors (further analysis on page 17).

Tax Administration and Revenue Powers

The Bill contains a number of compliance and administrative measures, which have been introduced in order to ensure compliance with both international tax transparency standards and the forthcoming General Data Protection Regulation ("GDPR").

Conclusion

Overall, the Finance Bill contains measures that have the effect of paving the way for Ireland's future while at the same time balancing the books and supporting economic growth. This has been achieved through a combination of measures, including modest reductions in the income tax burden on individuals, the introduction of a new share option scheme and the stimulation of the Irish housing market through a variety of targeted measures. The strong emphasis on consultation in respect of several areas is to be welcomed, as it provides stakeholders with the perfect opportunity to help shape the future direction of Ireland's tax policies.

Policy / International Outlook

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The publication of the Finance Bill allows policy statements made on Budget day take their first steps towards becoming a legislative reality. The short interval also allows us to focus on the many Budget documents released last Tuesday. When the Budget Speech, along with the accompanying documentation and now the Bill are taken together, they paint a picture of a first (small) step on a road towards a more competitive income tax regime and a BEPS compliant corporate regime. The Coffey report and current consultation should mean that there are few corporate tax surprises on the horizon while, from a personal tax perspective, the rate of change will likely depend on the size of the fiscal space (including the all-important hidden fiscal space) and any revenue raising rabbits that can be pulled out of hats over the coming years (see stamp duty in Budget 2018). The key aspect as ever though is the importance of engagement with the Department of Finance offering ample opportunity through consultations and their open door policy.

Nine days after the Budget, the Finance Bill allows us the opportunity to get under the hood of the measures proposed, take a look at the measures that were not mentioned by Minister Donohue and reflect more broadly on the tax policy agenda for the journey of Budgets we currently find ourselves on.

Intellectual Property Cap & Ireland's Commitment to Certainty

The reintroduction of the 80% cap within 291A has sound policy foundations. Increased levels of IP, will lead to increased profits in Ireland which result in an increased GDP and ultimately increased contributions to the EU. The question therefore arises as to how this is funded and to this end the cap makes sense. It was also important that Ireland cemented our commitment to certainty by not applying the cap to all IP but rather only IP purchased after Budget Day. The three Rs (rate, regime and reputation) are all, in their own way, reliant on consistency and, as such, this move was symbolically important in framing our policy objectives (for a technical analysis of the changes to 291A please refer to page 12)

Stamp Duty

The increase in stamp duty was the golden goose that gave Minister Donohue the flexibility he needed to meet the Budget targets. The increase aligns Ireland with international norms and the theory is that it brings in much needed revenue from a relatively buoyant sector. However, the increase from 2% to 6% for commercial property and other non-residential property assets is budgeted to yield €372m. This suggests that the market will amount to €9.3bn which when compared to the commercial property market in 2016, which amounted to €4.5bn, looks overly optimistic especially when consideration is given to the fact that many of the big ticket commercial properties have already been sold. If under scrutiny the projected yield is determined to be unrealistic could this put pressure on

other areas? This will be an important point to watch throughout the Finance Bill process and beyond.

Multilateral Instrument

A measure that was not announced on Budget Day but has appeared as expected in Section 72 of the Finance Bill was the first step towards Ireland's ratification of the Multilateral Instrument. Given the complexity of ratifying such a multifaceted and substantial convention, this was always likely to be a two-step process. All eyes will now be focused on when the ratification process is finalised. While there is no indication in the Bill and indeed no confirmation from the Department of Finance, the best guess would be that Ireland would ratify in early Autumn 2018 in order for the convention to take effect from 1 January 2019. The MLI is likely to have a significant impact on gaining access to treaty benefits for many companies and, as such, planning for the impact should start now.

A Road Map for the Future

The Coffey report has led to a clear roadmap for Ireland's corporate tax policy journey over the coming years. Helpfully along with the multitude of Budget documents released last week was a consultation on the majority of recommendations made by Seamus Coffey. This allows those effected the chance to provide feedback and make suggestions related to the measures which the Minister appears committed to introducing over the short to medium term.

Five of the consultation questions relate directly to transfer pricing with potentially the biggest changes coming in the form of the DEMPE functions concept contained in the intangibles chapter of the new transfer pricing guidelines and the suggestion to extend our transfer pricing rules to non-trading transactions. The former will result in groups needing to consider the level of "substance" they have related to their IP, while the latter will result in a significant change for the majority of groups operating in Ireland. Consideration of the impact of both needs to be considered in the context of other changes in the pipeline so that decisions can be made in a holistic manner.

The rest of the consultation, by and large, relates to Ireland's implementation of the Anti-Tax Avoidance Directive (ATAD). The first, and potentially biggest measure to be considered from this is the impending introduction of CFC rules (by 1 January 2019). The minimum standard outlined in the ATAD provides optionality for Ireland and the choices are complex. It goes without saying that it is imperative that Ireland adopt rules which satisfy the ATAD minimum standards but also do not impinge on true economic business activities – as such it is incumbent on all effected to get involved in the debate over the coming weeks and months.

Personal Taxes

There was a small reduction in the personal tax burden for all workers. The modest reduction in USC, along with the relatively small increase in the standard rate income tax band do again indicate that the political will is there to support a policy push towards lowering the tax burden of workers. The hope would be that this trend can and will continue over successive budgets and that the pace of change can increase as the status of our public finances continues to improve.

Private Business / Individuals

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The main area of interest for private businesses in Finance Bill 2017 was the introduction of the Key Employee Engagement Programme (KEEP). This is a welcome initiative aimed at SMEs who wish to grant share options to employees. This incentive will give SMEs the opportunity to offer share options to employees in a tax efficient manner which to date have been a costly and therefore unappealing way of rewarding employees. It is hoped that the introduction of the KEEP initiative will encourage more employers in the SME space to introduce share options to reward, incentivise and motivate staff which in the medium to long term should aid growth and increase levels of staff retention.

Key Employee Engagement Programme (KEEP)

KEEP is a new initiative which will apply to unquoted, trading companies that are Irish incorporated and Irish resident (or resident in the EEA but carry on a business in Ireland through a branch or agency). Certain trading activities are specifically excluded e.g. financial activities, dealing in or developing of land and professional services companies. The company must also come within the definition of an SME i.e. employ fewer than 250 people and have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million.

A qualifying company can grant share options to employees up to a total market value of €3m with the total market value of the share options granted to any one individual not exceeding €100k in any one tax year, €250k over three consecutive years or 50% of the individual's annual emoluments. KEEP will only apply to share options granted to full time employees or directors who spend a minimum of 30 hours per week working for the company.

The share options must be granted to the employees at market value and the main purpose of the scheme must be to recruit or retain employees. In order to qualify for the KEEP programme, the share options must be held for a minimum of 12 months before being exercised (with limited exceptions e.g. on death or a sale of the company), and must be exercised within 10 years of the date of grant.

The shares received on the exercise of the options must be ordinary shares and they must not carry any preferential rights e.g. to dividends or assets on winding up. In addition, the KEEP programme will not apply if the individual (either alone or with connected persons) can control directly or indirectly more than 15% of the ordinary share capital of the company.

Any gain realised on the exercise of an option granted on or after 1 January 2018 and before 1 January 2024 will be exempt from income tax. Capital Gains Tax will apply on any gain arising on the

subsequent disposal of the shares with the employees base cost being the actual amount paid for the shares on exercise of the options.

Accelerated capital allowances for certain energy efficient equipment

The scheme of accelerated capital allowances which provides a 100% up-front tax deduction for qualifying energy efficient equipment has now been extended to 31 December 2020. The scheme was originally introduced in 2008 for companies and, although it was extended last year to self-employed individuals, the scheme was due to expire on 31 December 2017. This is a welcome move and, coupled with the measures for farm land on which solar panels are installed, shows how tax measures can be used to promote energy efficiency and green energy.

Anti-avoidance for non-resident trusts and companies

These sections, which relate to gains or income made by non-resident trusts and companies, have been modified in the Finance Bill to bring them in line with EU law. Effectively, the sections have been amended to say that where a non-resident trust or company is carrying on a genuine commercial activity in a relevant EU Member State, the anti-avoidance sections of s579, s579A, s590 and s806 will not apply.

Domicile Levy

The domicile levy was introduced in 2010 and applies to Irish domiciled individuals who have worldwide income in excess of €1m, Irish property with a value of greater than €5m and an Irish income tax liability of less than €200,000. The Finance Bill has clarified that any capital allowances or losses will not be taken into account when calculating an individual's worldwide income.

Capital Acquisitions Tax

The Finance Bill makes some minor amendments to the Capital Acquisitions Tax (CAT) dwelling house exemption. This relief essentially exempts an inheritance of the family home (and a gift in some limited circumstances) from CAT where a number of conditions are met. The changes clarify that, firstly, a liability to inheritance tax will not arise where a donor dies within two years of making a gift to a dependent relative. Secondly, in the case of both gifts and inheritances, a property transferring to a dependent relative does not need to be the principal private residence of the donor to qualify for the exemption.

The Finance Bill also exempts Retirement Annuity Contracts (RACs) and Personal Retirement Savings Accounts (PRSAs) that are deemed to vest on the owner's 75th birthday from CAT. The reason for this amendment is to prevent a double tax charge (i.e. income tax and CAT) that would have arisen otherwise.

Domestic and International Large Corporates

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Finance Bill 2017 provides for the re-introduction of the 80% cap for Intellectual Property capital allowance claims which was one of the Coffey report recommendations. A number of complex measures have been introduced to Ireland's interest deduction rules to deal with the position of multi-layered holding companies. In the area of capital gains tax, relieving measures in respect of the intra-group transfer of assets have also been legislated for to encompass companies resident in any country with which Ireland has concluded a double tax agreement. In addition, an anti-avoidance measure is to be added to the substantial shareholdings exemption which applies to disposals by companies of qualifying shares. This is aimed at countering any scheme involving the transfer of cash or other assets by a connected person to the company prior to a disposal of its shares in order to meet the relevant conditions.

Intellectual property related changes

The Finance Bill has introduced two amendments to the Irish IP tax amortisation provisions and one update to Ireland's Knowledge Development Box ("KDB") regime.

The change of most interest to business is the expected re-introduction of the 80% cap on the ability of a company to utilise IP tax amortisation and related interest in one year. The Bill provides that amortisation and the related interest in respect of capital expenditure incurred on IP acquired on or after 11 October 2017 will be restricted to 80% of a company's overall profits from its IP activities in any one year, with any excess interest and amortisation carried forward indefinitely for offset against such profits in the future. These proposed amendments do not place such a cap on the amortisation and interest in respect of capital expenditure incurred on IP acquired before that date, which would continue to be available for offset against all profits from the relevant IP activities of the company in any one year.

The other minor amendments (1) seek to clarify that IP tax amortisation can apply to a company which solely carries on IP related activities, and (2) restrict certain losses that can be claimed against profits of KDB trade in any one year.

Section 247/249

Section 20 of the Finance Bill contains detailed measures which seek to put on a legislative footing an administrative practice which has existed for many years. It pertains to relief for interest under section 247 TCA 1997 in respect of a loan used to acquire or lend to a holding company that directly owns shares in a trading company. The relief had been extended by way of administrative practice in certain circumstances where the loan was used to acquire or lend to a holding company which did not own the shares in the trading company directly but indirectly through one or more intermediate holding companies. The position has now been enshrined into section 247 TCA 1997.

While the amendments are welcome in principle, they will lead to some difficulties in practice. For example, they only have

application to the extent that the acquired entity and each intermediate holding company (or companies) exists for bona fide commercial reasons and not as part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax. This represents a very high benchmark for taxpayers to satisfy and, in the context of many mergers and acquisitions, it will also lead to many problems in terms of understanding the Target group's motives for the establishment of the various holding companies above the trading entities. The position would also be accentuated in circumstances where the Target group has changed ownership on a number of occasions over the course of time.

Lending to another entity which owns a trading company (or companies) through an intermediate holding company (or companies) is permissible under the new provisions but it only provides relief where the money is used for the purposes of "acquiring and holding" stocks, shares or securities in trading companies. The exact scope and intention of the use of this term will need to be understood following consultation with Revenue as it could potentially cause practical difficulties in satisfying the test in the context of refinancing situations.

Detailed and complicated provisions have also been introduced with regard to recovery of capital in light of the amendments made to section 247. The recovery of capital provisions aim to restrict the level of interest deductions available to an investing company (that is, the company claiming relief under section 247) in particular circumstances. In summary, under the new provisions, an investing company will be deemed to have recovered capital (and thereby will have an interest restriction) where (A) the investee company recovers capital from an intermediate holding company or (B) where an intermediate holding company recovers capital from another company in which it directly owns more than 50% of the ordinary share capital. These provisions are complex and some concerns exist about the potential multiplicity of recoveries of capital which could arise on a single recovery of capital event where a chain of intermediate holding companies exist. This matter will need to be clarified with Revenue.

Some carve-outs from the recovery of capital provisions in circumstance (B) above are contained in the new measures. These carve-outs are generally consistent with those which exist for other holding companies and they generally apply where the funds from the recovery are used in repaying loans or for reinvestment purposes. However, new carve-outs have been introduced for certain intermediate holding companies which transfer all of their assets and liabilities to another intermediate holding company, and the transfer is made in the course of the first intermediate holding company being dissolved with or without going into liquidation. It is subject to the transfer being for bona fide commercial reasons and not part of any scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax. The elect-out provisions available in the context of share for share exchanges have also been extended to intermediate holding companies. These carve-outs are very welcome.

Section 20 also contains provisions to provide relief in circumstances where capital has been previously recovered and

which may be the subject of a subsequent recovery under the new or existing recovery of capital provisions for holding companies. In such circumstances, the provisions allow for an exclusion of the capital previously recovered. A notice in writing to the Revenue Commissioners is required. Some elements of this relieving provision will need to be clarified with Revenue as there are some uncertainties as to how exactly the relieving provisions will apply in practice.

It is possible that Committee Stage amendments may be required to address some of the matters referenced above.

As mentioned above, the new measures are only of relevance where the loan is used to acquire or lend to a company that ultimately owns trading companies so it does not extend, for example, to situations where entities ultimately owning real estate are acquired. In addition, it is stated that the provisions only apply in respect of loans made on or after 19 October 2017.

Section 626B anti-avoidance measure – asset "flooding"

Section 626B TCA, 1997 provides for an exemption from capital gains tax for Irish resident companies which make disposals of qualifying shareholdings in subsidiaries which are tax resident in an EU or treaty country (including Ireland), where either the subsidiary itself or the group as a whole are regarded as trading. The relief does not apply where the shares being disposed of derive the greater part of their value from certain assets situated in the State (e.g. land, buildings, minerals or exploration rights hereinafter referred to as "relevant assets"). Section 23 of Finance Bill 2017 introduces an anti-avoidance measure aimed at countering any scheme involving the transfer of cash or other assets by a connected person to a company prior to a disposal of shares in that company so that, at the time when the shares are sold, their value is derived mainly from assets other than "relevant assets".

The legislative amendment is designed to combat the "flooding" of a company with non-relevant assets in an effort to ensure that it does not derive the greater part of its value from assets such as land and buildings in Ireland and would therefore potentially be eligible for section 626B relief as a result. The amendment seeks to ensure that money or other assets transferred under such a scheme or arrangement prior to a disposal of shares in that company will not be taken into account in determining whether the value of the shares disposed of are derived from relevant assets. The amendment will apply to disposals made on or after 19 October 2017.

This amendment follows on from a similar Finance Act 2015 amendment to section 29 TCA 1997 which sought to prevent non-residents using similar "flooding" arrangements to escape a charge to Irish tax on the disposal of companies which would otherwise have derived the greater part of their value directly or indirectly from Irish land or buildings.

CGT Group Relief – extended meaning of "group of companies"

Section 617 TCA, 1997 provides relief from CGT (by way of deferral of the gain) on the transfer of assets, other than trading stock, within a "group of companies". As things stand, a "group of companies" for the purpose of CGT group relief under section 617 only includes companies resident in Member States of the EU and to companies resident in Member States of the EEA with whom Ireland has a tax treaty (namely, Norway and Iceland). However, there has been an administrative practice operated by Revenue which acknowledged the potential to extend the relief afforded by section 617 to companies resident in certain territories outside the EU\EEA.

In this regard, section 26 of the Finance Bill legislates for existing Revenue practice and formally extends the meaning of "group of companies" for the purpose of CGT group relief to include companies resident in countries with which Ireland has a double tax agreement. Following the *FCE Bank* case, a similar amendment was made in Finance Act 2012 to the group loss relief provisions for corporation tax purposes and the section 26 amendment is intended to put capital gains tax groups on an equal footing with loss groups.

In order to be eligible for group relief, as before, the asset being transferred must be within the charge to Irish tax in the hands of the recipient company immediately after the transfer. The extended meaning of "group of companies" does not alter this existing requirement.

Where a member of a "group of companies" leaves that group within a period of 10 years of having acquired an asset from a company which was a member of that group a charge to tax known as a de-grouping charge can arise under section 623 TCA, 1997. The extension of the meaning of "group of companies" in the Finance Bill for the purposes of granting relief under section 617 also extends to the meaning of "group of companies" for de-grouping purposes under section 623. This has the effect of aligning the relieving provision with the clawback provision and, all else being equal, from the passing of the Bill into law, a group will remain a group for CGT group relief purposes provided the companies within that group remain tax treaty resident.

Companies Act / Accounting Related Changes

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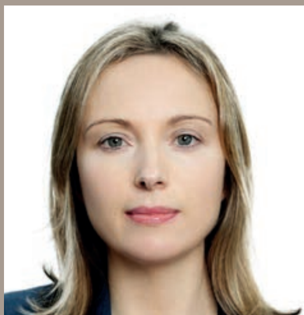

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The Finance Bill includes a number of measures which are intended to update the tax legislation to deal with changes occurring in the areas of company law and accounting. These include, in particular, measures to provide relief for domestic mergers and divisions which are now facilitated under Companies Act 2014 and to deal with accounting transition adjustments which can arise where there is a changes in accounting standards within an existing framework.

Companies Act 2014

The Bill contains a number of measures required in order to deal with company law changes introduced in Companies Act 2014 ('the Act'). Many amendments are made to update references to the previous Companies Acts in the legislation. In addition, changes are made in respect of domestic mergers and divisions which are now facilitated under the Act.

Domestic Mergers and Acquisitions

Stamp Duty

The relieving provisions for transfers of assets between closely related companies and for reconstructions and amalgamations of companies have been amended to enable mergers under the Act to fall within these reliefs.

In the case of mergers by absorption, i.e. where a 100% subsidiary is merged into its parent, associated companies relief from stamp duty will be available on the transfer of assets under the merger, on the proviso that the transferred property must be held by the surviving company, and the beneficial ownership of the surviving company must remain unchanged, for a period of at least two years from the date of transfer.

In the case of a merger by acquisition or a merger by formation of a new company, each of which would involve a share issue to the member(s) of the target company/ies, relief from stamp duty on reconstructions or amalgamations will be available on the transfer of assets, subject to certain administrative provisions in the relieving legislation being satisfied.

In addition, in order to clear up any confusion as to whether there is actually any stampable instrument in certain Companies Act mergers, the Bill intends to amend the legislation to designate the merger resolution (for a summary approval procedure merger) or the court order to be a stampable instrument.

Capital Gains Tax

A number of amendments are also made to the CGT provisions. These amendments apply to disposals occurring after 1 June 2015.

Firstly, s541 deals with the treatment of debts for CGT purposes. Under this section, where the original creditor disposes of a debt (which is not a debt on a security), no chargeable gain or allowable loss arises on the disposal. An amendment is made ensures that, where a debt transfers in the course of a merger or division and the transferor company was the original creditor, the successor company is also deemed to be the original creditor for the purposes of s541.

Secondly, an amendment is made to s587 which deals with schemes of reconstruction and amalgamation. Where a scheme involves the issue of shares by one company to the shareholders of another company in proportion to their existing shares (which are either retained or cancelled), the shareholder is not treated as disposing of their old shares or acquiring new shares for CGT purposes. The amendment confirms that references to shares being cancelled for this purpose includes shares which are extinguished in the course of a merger or division. A similar amendment is made to the anti-avoidance measures contained in s625 which operate to impose a tax charge in certain circumstances where a company leaves the group within 10 years of a reconstruction or amalgamation.

Finally, an amendment is made to s615 which operates to treat the transfer of assets as occurring at no gain/no loss where a company makes a qualifying transfer of the whole or part of its business to another company. The amendment confirms that the section applies to assets transferring in the course of a merger or division where the transferor company carried on a business immediately before the merger or division.

Capital Acquisitions Tax

CAT business relief on a gift or inheritance of shares can be withdrawn in certain circumstances. The Finance Bill makes an amendment to this legislation with the intention of ensuring that a withdrawal of CAT business relief does not arise on a merger or a division.

The Bill also makes an amendment to the CGT / CAT offset relief. The intention of this amendment is to prevent a withdrawal of the relief as a result of a merger or a division.

Compliance and Administrative Matters

A new Chapter is to be added to Part 21 of the TCA. This Chapter deals with administrative matters which arise due to the fact that the transferor company dissolves on the merger or division. It provides that the transferor company's tax payment, filing and reporting obligations and liabilities transfer to the successor company. Where the transferor company is entitled to a repayment of tax, the repayment may be made to the successor company. An appeal made by the transferor company is treated as an appeal made by the successor company and any right to appeal conferred on the transferor company is treated as conferred on the successor company. These provisions have effect from 1 June 2015 and therefore apply to mergers and divisions which have taken place to date under the Act.

Accounting - Section 76A

Currently section 76A TCA 1997 and Schedule 17A operate to deal with the taxation of accounting transition adjustments which can occur when a company begins to prepare its accounts in accordance with 'relevant accounting standards' as defined from another basis. This covered situations where, for example, a company moves from old Irish GAAP to either IFRS or to current Irish GAAP. It does not cover transitions between 'relevant accounting standards' (e.g. from current Irish GAAP to IFRS). Similarly, it does not deal with situations where a company changes from one accounting standard to another accounting standard within the same overall accounting framework.

The latter point, in particular, can give rise to significant difficulties for some groups - for example, in the context of companies applying IFRS which will shortly transition to the new accounting standard on Revenue Recognition. As IFRS and Irish GAAP continue to evolve and develop - manifested by the publication of new accounting standards - this area is likely to become significantly more prevalent in the future.

Section 19 of the Finance Bill, as initiated, deals with the above areas by amending section 76A TCA to apply to circumstances involving:

(I) the adoption of an accounting standard for the first time as well as a move to a new accounting framework,

(II) a change in accounting policy other than on the adoption of an accounting standard for the first time, and

(III) the correction of an accounting error.

With regard to (I), a "transitional adjustment" is ascertained upon the change in the accounting framework or adoption of the new accounting standard which is then taxed or deducted (as appropriate) over a 5 year period following the transition.

With regard to (II) and (III), the amendments are effectively intended to give legislative support to existing practices regarding changes of accounting policy and the correction of accounting errors. In those cases, the amount representing the retrospective effect of a change in accounting policy or the correction of a material or fundamental error which is reflected in opening reserves is taxable or deductible (as appropriate) in computing profits for Case I / II purposes in the earliest accounting period following the change in accounting policy or correction of the material or fundamental error.

Where the accounting error is neither material nor fundamental, the amount posted to the P&L account is taxable or deductible in computing the profits or gains for Case I / II purposes in the accounting period to which the error relates and the tax return for that accounting period must be amended accordingly.

The provisions introduced by section 19 of the Finance Bill apply as respects accounting periods beginning on or after the date of passing of the Act. To avail of the measures contained within section 19, a notification is required to be made to the Revenue Commissioners in writing on or before the statutory date for the filing of the tax return specifying the company's election to apply the measures. Given the context for their introduction, the amendments are very welcome indeed.

Agri Sector

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The Bill contains three measures that are specific to the Agri Sector; one involving a new reporting requirement related to farm restructuring relief and two which contain details of the extension of certain reliefs from Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT) announced on Budget Day for land that is leased for the installation of solar panels. The Agri sector will also benefit from changes to the 7-year rule for CGT and from exceptions to the new Stamp Duty rate of 6% - details of those changes are covered on pages 21-22.

Farm restructuring

This relief was first introduced in FA 2013. It provides relief from CGT on a sale or exchange of farm land that takes place for the purpose of farm restructuring. The relief is subject to various conditions including the production of a certificate from Teagasc to the effect that the sale and purchase or exchange meets all of the conditions set out in guidelines. There is provision for apportionment of the relief where the value of the parcels of land being exchanged are not equal. There are also clawback provisions where the newly acquired land is disposed of within 5 years.

The Bill does not make any changes to the amount of relief that is available, the circumstances in which the relief will apply or the conditions for qualifying for the relief. However, it does introduce a new reporting obligation on the person who is entitled to the relief. For all disposals of qualifying land on or after 1 July 2016 the person who is entitled to the relief must provide information relating to the sale or exchange to Revenue in a format to be determined by Revenue. The details include the person's name and address as well as details required to enable Revenue to calculate the amount of CGT that would otherwise have been payable. This new requirement is related to State Aid rules and will enable Revenue to calculate the cost of this relief.

The provision in the Bill does not contain any time limit for the filing of this information with Revenue. It is also notable that the responsibility for calculating the amount of the tax that is relieved seems to rest with Revenue. It may be that further amendments to this provision will be introduced which will include a time limit and (possibly) a requirement for a calculation of the CGT that is being relieved to be included in the person's annual tax return.

Solar Panels

In his Budget speech, Mr Donohoe mentioned that he would be introducing measures to extend the definition of assets that can benefit from CGT Retirement Relief and CAT Agricultural Property Relief to include land that is leased on which solar panels have been installed.

Retirement relief from CGT applies when a person makes a disposal of certain qualifying assets. The basic rule for the land is that, to be a qualifying asset, the land must have been owned and used for

farming (by the person making the disposal) for a minimum period of 10 years up to the date of disposal. There are exceptions to this rule for land that is let prior to disposal provided the person can show that the 10 year ownership and use test has been met prior to the first letting.

However, this exception stipulates that if the disposal is to someone other than a child of the person making the disposal, the land must have been let to a person for the purpose of farming. (This 'farming' test is not required when the disposal is to a child).

What the Bill is proposing is that if the land is being disposed of to someone other than a child, and if the land had been let prior to the date of disposal, then, the leased land may still benefit from retirement relief provided the area of the land on which solar panels are installed does not exceed 50% of the total area of leased land.

The new rules will apply for disposals of leased land on or after 1 January 2018.

A similar change is being introduced in relation to Agricultural Property Relief from CAT. Agricultural Relief from CAT means that when a person receives a gift or inheritance of Agricultural Property, the market value of the property may be reduced by 90% for the purpose of determining the amount of CAT to be paid. 'Agricultural Property' includes agricultural land. Recent changes to the rules for Agricultural Relief mean that the person receiving the assets must be able to show that he/she is a 'farmer' as defined. In addition to being able to show that after taking the gift or inheritance, the person's assets comprise at least 80% in the form of agricultural property, the person must be able to show that he/she is a qualified farmer. This can be satisfied (a) by way of academic qualifications, (b) by way of a working time measure or (c) by leasing the whole or substantially the whole of the land for a period of 6 years to a qualifying farmer (i.e. someone who meets either test (a) or (b)).

Where a person chooses to lease the agricultural land, the Bill provides two measures of relief

- land on which solar panels are installed may still be regarded as agricultural land, and,
- the 'farmer' test can now be met if some of the land is leased for installation of solar panels.

Similar to the CGT changes, the relief will not apply where solar panels have been installed on more than 50% of the land that has been leased. There is a clear contradiction here between the 50% limit and the requirement set out in the main relieving provision, for "the whole or substantially the whole" of the land to be leased AND that the land must be leased to a qualifying farmer. The Bill provides that where the land has been leased on which solar panels have been installed, the lessor is deemed to meet these two requirements.

Finally, the Bill provides that this solar panel relieving provision will not apply if the remaining part of the land has not been leased to a qualifying farmer.

Property

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The property-related measures included in the Finance Bill are broadly in line with the changes announced in last week's Budget. The increase in the rate of stamp duty applying to the transfer non-residential properties to 6% is substantial for the industry. It is likely to result in price adjustments and reduce activity in the market. The reduction in the holding period required to avail of the CGT exemption for properties acquired between 2011 and 2014 is welcome and should result in an increase in the supply of properties. A number of anticipated technical amendments have also been included in relation to the Irish Real Estate Fund regime (introduced in last year's Finance Act). The measures are welcome and address deficiencies in the drafting of the current rules. There are also a number of measures targeted at relieving pressure in the residential owner-occupier and rental sectors which are welcome.

Mortgage Interest Relief – section 6

The Finance Bill has confirmed the tapered extension of mortgage interest relief for homeowners who bought homes between 2004 and 2012. As announced on Budget Day, the tax relief will be abolished on a phased basis with the amount of qualifying interest being restricted to 75% for 2018, 50% for 2019 and 25% for 2020, of the interest paid on a qualifying loan.

Pre-letting expenditure on rented residential property- section 12

Finance Bill 2017 proposes to introduce a new section, 97A, to the Taxes Consolidation Act ("TCA") which provides for a new time limited deduction for certain pre-letting expenditure incurred in respect of previously vacant residential premises. A tax deduction (up to a maximum of €5,000 per vacant premises) will be available in respect of expenses incurred on a residential premises that has been vacant for at least 12 months and is rented to tenants during the period from the passing of the 2017 Finance Act to 31 December 2021. The expenditure will be deductible provided it is incurred in the 12 month period prior to the residential property being let and the expenditure would qualify for a deduction if it had been incurred during the period of letting.

The measures announced also include a claw back provision whereby any deduction claimed will be clawed-back if, within 4 years of the first letting, the property ceases to be a residential premises.

Irish Regulated Funds – section 16

In last year's Finance Act a new taxation regime was introduced for Irish regulated funds deriving more than 20% of their value from Irish land or buildings. Maintaining the certainty of this new regime is vital for investor confidence. Finance Bill 2017 contains a number of welcome measures to clarify the availability of access to exemption from the operation of withholding tax by an Irish real estate fund in a number of instances. We welcome these clarifications and continued certainty of regime -please see page 26-27 for our analysis of the detail.

Section 110 Companies- section 17

Last year's Finance Act introduced a limitation in respect of profit participating

interest deductions for s110 companies carrying on a 'specified property business'. The Finance Bill provisions propose to extend this interest limitation to s110 companies deriving returns from shares in a company deriving the greater part of their value from land or buildings in the State. The detail of these amendments is set out on page 27.

Persons chargeable – section 22

An amendment has been introduced to section 29 TCA 1997 which determines the charge to Irish capital gains tax. Under the current provisions, a non-resident person is subject to Irish capital gains tax on the disposal of certain specified assets, including land or buildings located in the State or shares deriving the greater part of their value from such assets, but with an exclusion for shares quoted on a stock exchange. Finance Bill 2017 narrows the exclusion in respect of quoted shares such that it will only apply to quoted shares that are actively and substantially traded on such stock exchange.

Finance Act 2015 introduced anti-avoidance measures which aimed to prevent the introduction of cash into a company to eclipse the value of Irish real estate held to prevent a charge to capital gains tax arising for a non-resident on the disposal of that company. Finance Bill 2017 extends these anti-avoidance measures to include assets other than cash.

The above amendments apply to disposals made on or after 19 October 2017.

Deduction from consideration on the disposal of certain assets – section 24

Anti-avoidance provisions, similar to those introduced into section 29 (Persons chargeable) in Finance Bill 2015 and the further measures discussed above in relation to Finance Act 2017, are also being introduced in relation to section 980 TCA 1997 which provides for a withholding tax on the disposal of certain specified assets (e.g. land or buildings in the State or shares, other than shares quoted on a stock exchange) by the purchaser where a tax clearance certificate is not provided by the vendor. Finance Bill 2017 requires, in respect of the exclusion for shares quoted on a stock exchange, that these shares must be actively and substantially traded on a stock exchange. Furthermore, where money or other assets are transferred to a company prior to a disposal of shares in that company, these assets will not be taken into account when calculating whether the value of the shares disposed of is derived from those assets.

Again, these amendments apply to disposals made on or after 19 October 2017.

Miscellaneous exemptions for certain kinds of property – section 27

Finance Act 2017 extends section 613 TCA 1997 which provides for miscellaneous exemptions from capital gains tax to include amounts received by way of compensation under the 2017 Voluntary Homeowners Relocation Scheme (which is administered by the Commissioner of Public Works in Ireland). The amendment provides that compensation received under this scheme on or after 19 October 2017 will be exempt from capital gains tax.

Relief for certain disposals of land or buildings – section 28

As announced in Budget 2018, Finance Bill 2017 contains provisions reducing the holding period for investors who availed of the capital gains tax exemption applying to land or buildings acquired in the period 7 December 2011 to 31 December 2014, from 7 years to 4 years. The capital gains tax exemption will apply to disposals made on or after 1 January 2018. We anticipate that this will result in increased market activity. While this is a welcome measure in terms of potentially increasing supply of land / housing into the market, it is the case that, due to the stamp duty changes mentioned below, the benefit of the exemption may be partially clawed-back through price adjustment.

Stamp duty changes

One of the most significant changes in relation to property concerns the increase in the rate of stamp duty applying to the transfer of non-residential property – please see page 22 for our analysis in detail.

Stamp Duty

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As announced in the Budget, the rate of stamp duty on transfers of non-residential property has increased from 2% to 6% from 11 October 2017. However, the Bill includes transitional measures whereby the 2% rate will still apply to transfers where a binding contract was entered into before 11 October 2017, provided the transfer is completed before 1 January 2018. The rebate scheme announced in the Budget for stamp duty paid on land acquired to develop residential property will be included in the Bill during the committee stage. The special 1% rate of stamp duty on transfers of farm land between close relatives is to be preserved until the end of 2020, and the requirement for the transferor to be under 67 years of age is to be abolished. The Bill also introduces stamp duty relief for transfers of assets under domestic mergers and legislates for an existing Revenue practice in relation to not pursuing a clawback of relief claimed on transfers between companies, where the transferor company is subsequently liquidated.

Property measures

Increase in stamp duty rate on non-residential property

As indicated in the Budget, the stamp duty rate on transfers of non-residential property has increased from 2% to 6%, in respect of instruments of transfer executed on or after 11 October 2017.

Non-residential property is not limited to land and commercial buildings, it also includes business assets such as debtors / loans, goodwill, prepayments, benefit of contracts, tenant fixtures, cash on deposit, IP, and any other Irish intangibles (although exemptions may be available for certain of these assets).

The rate of stamp duty on residential property remains unchanged, at 1% for the first €1m of consideration / value, and 2% on any excess over €1m.

As expected, transitional measures have been included in the Bill in respect of transactions entered into before 11 October 2017. Where a binding contract to acquire land or commercial buildings was entered into before 11 October, the 2% rate of duty will still apply to the acquisition provided a conveyance / assignment of that property is executed before 1 January 2018. This is a relatively short transition period, so it will important to keep an eye on that clock to ensure any land / commercial deals struck before 11 October are completed by year-end. Also, and importantly, this transitional treatment will only apply where the transfer deed includes a statement certifying that the instrument was executed solely in pursuance of a binding contract entered into before 11 October 2017. The precise wording of this certificate is to be specified by the Revenue Commissioners, but has

not been released at the time of writing.

Missing from the Bill are the provisions for the stamp duty rebate scheme announced in the Budget, whereby developers who acquire land and commence residential property development within 30 months of acquisition will be entitled to a stamp duty rebate. However, these provisions will be included at the committee stage of the Bill.

Leases

The Bill confirms that the stamp duty increase from 2% to 6% also applies to premiums paid on leases of non-residential property executed on or after 11 October 2017, but again subject to the above transitional provisions.

In addition, to reflect rising rental prices, the Bill raises the exemption threshold for leases of residential property to come within the charge to stamp duty from €30,000 to €40,000, so any lease of residential property for a term not exceeding 35 years or for an indefinite term will be exempt from stamp duty provided the annual rent does not exceed €40,000. This change will come in from the date of the passing of the Finance Act.

Farming land

The Bill extends the availability of a special 1% stamp duty rate on transfers of farming land between close relatives to the end of 2020, and also removes the requirement that the transferor must be under 67 years of age (the age restriction will be removed from the date of the passing of the Finance Act). Certain other conditions must still be satisfied for this relief to be available, such as the transferee (or a lessee of the transferee) farming the land for at least 50% of their normal working time, or holding an appropriate agricultural qualification.

To address EU State Aid rules, the relief available for transfers of land to young trained farmers will now require the young trained farmer to submit a business plan to Teagasc, and to come within the meaning of "micro, small and medium-sized enterprises" in the 2014 EU Regulations on aid in the agricultural and forestry sectors.

Mergers and liquidations of companies

The relieving provisions for transfers of assets between closely related companies and for reconstructions and amalgamations of companies have been amended to enable mergers under the Companies Act 2014 to fall within these reliefs. These are detailed on pages 15-16.

Lastly, the Bill contains a provision which will put on a statutory footing the existing Revenue practice of not pursuing a clawback of associated companies relief in the case of liquidations. Where associated companies relief has been claimed on a transfer and the transferor is liquidated within two years, the normal requirement to remain associated for two years in order to avoid a clawback of the relief will not apply provided the liquidation is for bona fide commercial purposes, not for the avoidance of tax, the transferred property remains with the transferee for two years, and the ownership of the transferee remains unchanged for two years.

Employment Taxes / Individual Taxes

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The Finance Bill 2017 contains a number of changes to the taxation of certain employer provided benefits. It also provides detailed information in relation to the changes to the PAYE system in advance of the introduction of Real Time Reporting which will come into effect from 1 January 2019.

The most positive developments from an individual perspective were the reductions in the USC rates and the €750 increase to the standard rate income tax band.

From an employer perspective, phased increases to the employer PRSI charge from 10.75% in 2017 to 11.05% in 2020, will result in increased payroll costs.

Another development for employers and individuals coming down the track is the establishment of a working group to plan for the amalgamation of the USC and PRSI.

Income Tax and USC

The standard rate income tax band for all earners will increase by €750 meaning the amount of income taxable at the 20% tax rate for a single person increases from €33,800 to €34,550 and from €42,800 to €43,550 for a married couple with one spouse earning. The confirmed USC rates and bands for 2018 (with a comparison to 2017) are as follows:

2018 Bands	Rate	2017 Bands	Rate
€0 - €12,012	0.5%	€0 - €12,012	0.5%
€12,013 to €19,372	2%	€12,013 to €18,772	2.5%
€19,373 to €70,044	4.75%	€18,773 to €70,044	5%
€70,045 and above	8%	€70,045 and above	8%
€100,000 and above*	11%	€100,000 and above*	11%

*Self-employed income only

'Home Carer' and 'Earned Income' tax credits

The Finance Bill 2017 confirms the increase to the 'home carer' tax credit to €1,200 for 2018 (up from €1,100 in 2017) and the 'earned income tax credit' for self-employed individuals to €1,150 (up from €950 in 2017).

Increase in employer contribution to National Training Fund levy

As announced in Budget 2018, the National Training Fund Levy will increase by 0.1% per annum over the next three years, bringing the Levy from 0.7% to 1%. As the Levy is a component part of the employer PRSI charge, this means that employer PRSI will increase by 0.1% per year for the next 3 years, going from 10.75% to 11.05% in 2020. This change will be included in the upcoming Social Welfare Bill.

Extension of mortgage interest relief

Mortgage interest relief, which only applies to mortgages taken out on or before 31 December 2012, was due to end on 31 December 2017. Relief will now be extended for another three years for owner occupiers who took out qualifying mortgages between 2004 and 2012.

Tapered relief will apply - 75% of the existing 2017 relief will be continued in 2018, 50% in 2019 and 25% in 2020. The relief will cease from 2021.

Company cars and vans

A temporary BIK exemption is being introduced for employer provided electric vehicles (cars and vans) for next year only. Electrical charging points provided for use in the workplace for charging electric vehicles will also be exempt from a BIK charge, provided all employees and directors of the company can avail of the facility. These interim measures are intended to allow time for a comprehensive review of the taxation of employer provided vehicles, the results of which may mean further changes in next year's Finance Bill.

Health and dental policies for employees of health or dental insurers

Following a Revenue review, employees of health or dental insurers who are provided with a free or discounted health or dental insurance policy will now be taxable on the market value of the policy less any tax relief at source that would have been claimable and any amount paid by the employee. Similarly, employees will also be taxable on free or discounted policies provided to family members.

Preferential Loan Arrangements

Where an employee receives an interest free loan or a loan with an interest rate lower than a specified amount from his/her employer which is not made in the normal course of business, the employee is deemed to have received a taxable BIK on the difference between the amount of interest actually paid and the interest that would be payable at the specified rate. The Finance Bill 2017 introduces a technical amendment to ensure that a loan where no interest is paid is regarded as a preferential loan and thereby subject to BIK taxation.

There are no changes to the specified interest rate for qualifying home loans at 4% and 13.5% for all other loans.

Key Employee Engagement Programme (KEEP)

A new Key Employee Engagement Programme (KEEP) provides for advantageous tax treatment on share options for employees of SMEs from 1 Janaury 2018 to 31 December 2023, subject to EU approval. Further details are contained in the Private Business section of this document.

PAYE – Real Time Reporting

Finance Bill 2017 sets out the main changes necessary to underpin the introduction of Real Time Reporting (RTR) on 1 January 2019.

One of these is a change to the basis of taxation under which PAYE will apply, from an earnings basis to a receipts (or a real time) basis. This will apply for emoluments paid on or after 1 January 2018. Transitional arrangements are included for emoluments which may have been taxed in 2017 (on an earnings basis) but are then received (and taxed) in 2018. This is a significant change, with potential relevance for PAYE taxpayers in receipt of bonuses which may be earned in one period but paid in another. There may also be implications for globally mobile employees, coming to or leaving Ireland.

At a practical level, RTR will look like this:

1. On or before payment of emoluments to employees, an employer will notify Revenue of:
   - the amount of emoluments being paid
   - the date of payments
   - the income tax deductible.
2. Revenue may issue a statement summarising the total amount of income tax deducted.
3. A return will be made by the employer by the 14th day of the following month specifying the total income tax deducted (where the statement issues from Revenue, this will be deemed to be a return for this purpose).
4. Payment is due to the Collector General by the 23rd of that month (where the employer pays and files via ROS).

Some points of particular interest, include the fact that:

- the submission date for the small and irregular benefits return has been brought forward by 23 days (from 15 February to 23 January)
- in general, provisions allowing Revenue to estimate tax have been removed – going forward, Revenue will issue assessments, rather than estimates
- provisions are included outlining the obligations on an employer in the event of a persistent technology systems failure.

No changes have been made to the penalty regime as it applies to RTR.

Finally, a new provision has been included for the recoupment, on a grossed-up basis, of income tax where PAYE is not operated by an employer. This has been a point of discussion in recent Revenue audit cases. It will apply from 1 January 2018.

Financial Services

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Apart from the property changes, which are analysed on page 20, the Finance Bill contained few financial services specific provisions. The main provisions are:

- The denial of relief for foreign tax incurred by a life assurance company on "policyholder profits",
- The exclusion from a chargeable event for exit tax purposes of the assignment of a life policy as security for a mortgage to a S110 company,
- Amendments to the new tax regime for IREFs to provide further clarity to investors, and,
- An amendment to the new rules introduced last year in respect of S110 companies such that shares that derive the greater part of their value from Irish land or buildings now come within these rules.

These provisions are discussed further below.

In addition to the above, there were several fine tuning legislative measures that could have been addressed in this year's Finance Bill and it is disappointing that these have not been addressed. However, as an overall comment, this year's Finance Bill continues to reinforce that the Irish corporate tax regime is stable and reliable for the financial services sector which is a strong and important message as Ireland continues to attract Brexit impacted businesses.

Details

Life Assurance companies

Section 14 of the Finance Bill contains two main changes for the life assurance industry.

Relief is denied for foreign taxes incurred in relation to policyholder profits either by way of a credit or a deduction. This change impacts both the calculation of the Irish tax liability under the Old Basis Business and New Basis Business rules.

The practical implications for life assurance companies will need to be considered in detail. In particular there is a danger that this could lead to anomalous situations where life assurance companies are denied a deduction for foreign taxes and, as a result, are subject to Irish corporation tax on policyholder profits.

The second change included in Section 14 provides that the assignment of a life policy as security for a mortgage to a qualifying company within the meaning of Section 110 TCA 97 will not be regarded as a chargeable event for exit tax purposes.

Irish real estate funds ("IREFs")

In last year's Finance Act a new taxation regime was introduced for Irish regulated funds deriving more than 20% of their value from Irish land or buildings. Maintaining the certainty of this new regime is vital for investor confidence. The amendments proposed in the Finance Bill are all measures designed to give further clarity to investors and in many cases put Revenue practice on a legislative footing.

Firstly, provision is made for an

exemption from the operation of withholding tax on payments by IREFs to certain categories of investor:

- Approved retirement funds
- Approved minimum retirement funds, and
- Vested personal retirement savings accounts

Secondly, provision is made to prevent a double charge to IREF withholding tax in a situation where one sub-fund in an umbrella scheme invests in another sub-fund in the same umbrella scheme.

Thirdly, provision is made for an advance clearance system which allows investors who would be in a position to claim a full refund of tax suffered, to apply to Revenue for upfront clearance and to receive payments gross of tax. This will prevent a negative cashflow impact that could otherwise arise if exempt investors suffered withholding tax and were out of funds until their refund claims were processed by Revenue.

Finally, provision is made for intermediaries to complete declarations on behalf of certain exempt investor classes including pension funds, charities and credit unions.

Section 110 companies

In last year's Finance Act a new set of rules was introduced in respect of s110 companies.

Broadly, the business of a s110 company that was impacted by the changes, referred to as 'specified property business', was that part of the s110 company's activity that involves the holding, managing or both the holding and managing of so-called 'specified mortgages'. A specified mortgage was defined as a loan or "specified agreement" deriving its value, or the greater part of its value, from land in the State (meaning the Republic of Ireland).

This part of the s110 company's business is to be treated as a separate business from any other business the company may carry on and, with certain exceptions, no interest above an arm's length rate will be deductible in computing the taxable profits of that part of the business. The profit calculated will be taxable at the 25% rate of corporation tax.

The current Finance Bill proposes to extend the definition of specified mortgage to include shares in a company deriving the greater part of their value form land or buildings in the State. The interest deduction available against any gain realised by a s110 company on the disposal of shares in a property holding company would under these provisions be limited to an arm's length rate, with the remaining gain taxable at 25%.

This provision has effect in respect of interest paid by a s110 company on or after today, 19 October 2017. There is some uncertainty as to how this will be applied in practice and further clarification is expected.

Other miscellaneous matters

Other minor matters dealt with in the Finance Bill provide that investment undertakings will be required to file iXBRL accounts, which is in line with most other companies, and to allow the National Treasury Management Agency the option to credit interest earned on deposits directly to the Exchequer rather than through the Capital Services Redemption Account.

VAT

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Finance Bill 2017 contains some limited amendments to the VAT legislation.

Educational services

Amendments are being made to the scope of the VAT exemption which applies to children's or young people's education, school or university education and vocational training or retraining services. These amendments will be effective from the date of passing of the Act.

The scope of this exemption had been reconfigured in Finance Act 2015 with the unintended effect of the amendments being that certain providers of bona fide vocational services potentially were not exempt.

The intention of the amendments in Finance Bill 2017 is to clarify that bodies providing vocational training or retraining services, as well as providers of certain defined education and training courses, continue to qualify for VAT exemption.

The amendments also allow Revenue to introduce additional regulations, if required, to define the conditions under which training services may be treated as vocational training services for the purposes of VAT exemption.

Sunbed services

As announced in the Budget, the VAT rate on the provision of sunbed services is increasing from the reduced 13.5% rate to the standard 23% rate. This change will be effective from the date of passing of the Act.

Sugar Tax and other Measures

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The Finance Bill provides further detail on the application of a new tax, known as Sugar Sweetened Drinks tax, which was first announced in Budget 2017, and again in Budget 2018. Sugar Tax is expected to be introduced from April 2018.

This tax will take the form of an excise tax and will be collected and administered by the Revenue Commissioners. An excise tax of any nature can often be burdensome with many compliance requirements to be adhered to. On review of the initial legislation, it's very technical in nature, with many references to other related Irish and EU legislation, and the application of customs legislation. We encourage companies, who may be subject to this tax, to pay careful consideration to the scope and applicability of the tax, and the associated administrative requirements. We set out below some further high level details of the tax.

Scope of Sugar Tax

- beverages containing added sugar which are prepacked and ready to consume;
- prepacked concentrated substances in liquid or solid form and which require preparation before consumption by the final consumer;
- beverages prepared from concentrated substances and which are ready to consume.

Such beverages include:

Fruit and vegetable juices, containing added sugar; and

Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other non-alcoholic beverages (except non-alcoholic beer, alcohol free wine, soya based beverages, beverages based on nuts, cereals or seeds and milk based products.)

The determination of whether the product is subject to sugar tax is by reference to EU customs tariff classification codes. This determination can often be complex, and we recommend that close scrutiny is given to this area when determining whether a product is included or excluded from the scope of the sugar tax.

The provisions of the legislation contain certain exclusions, which include food supplements and products produced by certain small producers. In order to be regarded as a small producer, there are certain specific criteria that must be met, including a maximum annual production of 13,000 litres, and supply of the product directly to the final consumer or to a local retail establishment (not more than 100km from the place of manufacture) directly supplying the final consumer.

The legislation determines who is regarded as being a supplier and what is regarded as being a supply. In summary, the tax will apply on the first supply of relevant beverages within the state where the sugar content of the beverage product is in excess of 5 grams or more per 100ml. There are certain exclusions provided for in the legislation, including;

- The supply or self-supply of a beverage prepared from a prepacked concentrated sugar sweetened drink for private domestic use,
- The supply of sugar sweetened drinks between related companies, or
- The supply of a beverage prepared from a prepacked concentrated sugar sweetened drink which has already been supplied in the State;

Applicable Rates

Rates	*Sugar Content*
€0.30 per litre	Drinks with a sugar content of 8g or more per 100ml
€0.20 per litre	Drinks with a sugar content of greater than 5g but less than 8g per 100ml.

The legislation introduces certain reliefs for products exported and repayment of tax for returned sugar-sweetened drinks.

Administrative elements

The Finance Bill provides for certain requirements regarding the registration of suppliers and exporters, the lodging of returns, time limits for payments, reliefs, penalties, etc. Returns are required on a bi-monthly basis, by the end of the month following the accounting period in which the product was supplied.

We expect secondary legislation to be introduced to provide further detail on the operation of and compliance with these administrative measures.

This legislation will come into effect by Ministerial Order but we expect that the effective date will be 1 April 2018. We are seeking clarification on when we can expect the secondary legislation to be introduced. We hope within the secondary legislation to see further simplifications, including for example, deferred payment facilities.

Next Steps

Companies who may be affected by this tax include, manufacturers, bottlers, distributors, wholesalers and certain retailers. For those companies that are affected we would recommend the following:

- determine whether you are a taxable person;
- understand whether your products meet the scope of the sugar tax;
- assess whether any supplies are exempt and/or qualify for any reliefs;
- consider administrative requirements associated with compliance with this new tax, including relevant registrations, tax payments and preparation & lodging of returns.

Other measures

Tobacco

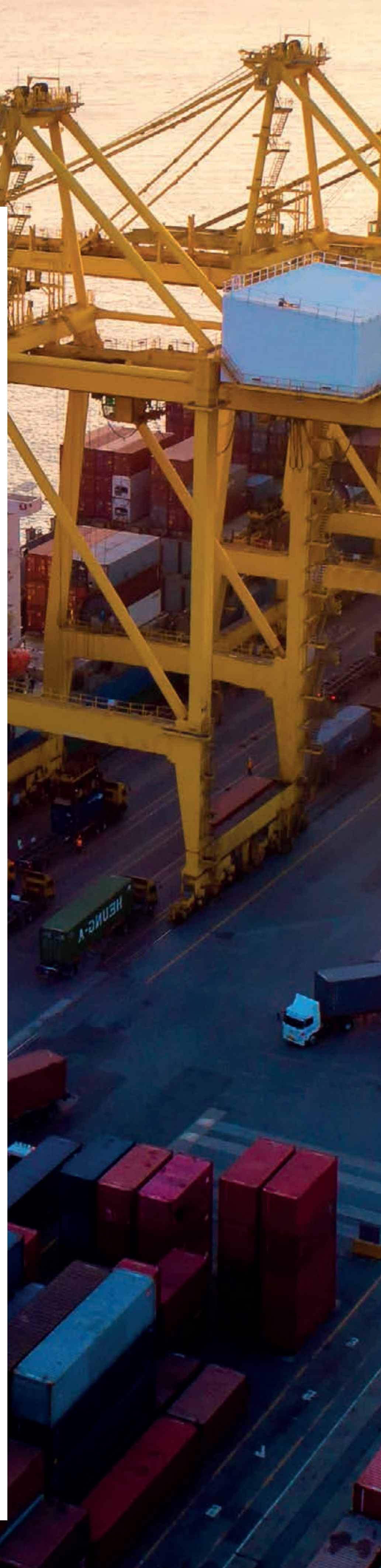
- As mentioned in the Budget, excise on tobacco products will increase by €0.50 on a pack of 20 cigarettes with a pro-rata increase on other tobacco products.

Mineral Oil

- Qualifying road transport operators, who are regarded for the purposes of European Commission Guidelines on State Aid as an undertaking in difficulty, are excluded from eligibility for a partial relief of Mineral Oil Tax for auto-diesel.

VRT

- The definitions of "category A" and "category B" vehicles have been amended and now specify additional qualifying criteria.
- A new definition has been inserted for "BE" bodywork code.
- An export repayment scheme exists to allow for the repayment of a certain portion of VRT on vehicles exported from the State. Finance Bill 2018 inserts an additional provision to ensure that the amount of VRT repaid does not exceed the amount of VRT originally paid on the vehicle.



Tax Administration & Revenue Powers

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This year's Finance Bill contains three main compliance and administrative changes relating to reforms under the tax appeals process, Revenue powers, and provisions governing the use of and access to taxpayer information.

Appealable Matters

Section 67 and Schedule 3 of the Bill provide for what is essentially a 'tidy-up' of a number of appeals provisions throughout the Taxes Act 1997, and includes a number of consequential amendments arising from the reform of the tax appeals process as introduced in *Finance (Tax Appeals) Act 2015*.

Revenue Powers

Earlier this year, the *Global Forum on Transparency and Exchange of Information for Tax Purposes* conducted a peer review of Ireland's implementation of international information exchange standards. On foot of recommendations arising from this review, Section 70 of the Bill introduces a number of amendments in relation to Revenue powers.

The changes relate to Revenue's ability to request third parties to provide them with information relating to a taxpayer:

- The amendments to sections 902 and 906A TCA 1997 mean that Revenue are no longer required to disclose the identity of the taxpayer when requesting information from a third party. These amendments seek to avoid unnecessary breaches of data confidentiality.
- The amendments to sections 902A and 908 TCA 1997 relate to situations whereby Revenue can apply to the High Court for an order which precludes the third party from disclosing such an information request to the taxpayer. The Bill eases the conditions for Revenue to make such an application, allowing it in such cases where a disclosure to the taxpayer "would lead to serious prejudice to the proper assessment or collection of tax".

Use of, and access to, taxpayer information

The Bill contains a new provision which will govern the use of and access to taxpayer information to ensure that Revenue legislation is compatible with the new EU *General Data Protection Regulation* (GDPR). The new provision ensures that the processing of taxpayer information carried out by Revenue will have a clear legal basis, whilst also safeguarding taxpayers' rights as regards the use of, retention and accuracy of such information.

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