Budget 2016 - an opportunity that is ours to miss

TOM MAGUIRE and DARYL HANBERRY analyse the 'golden opportunity' presented by the upcoming budget.

This year, the Department of Finance ran three consultations in respect of the Knowledge Development Box (KDB), the taxation of entrepreneurs and the tax treatment of travel and subsistence expenses. All three have significant potential impact on the ability to attract investment into and to stimulate investment within the country. Their extent will be determined by the Minister's Budget speech. Deloitte made submissions and recommendations in respect of the three consultations, outlining the importance of these matters.

The matter of the KDB was discussed in September's issue and it's clear from the Department's feedback statement that the Irish legislation will follow OECD's nexus approach. While this approach favours countries with large R&D capacity, it disadvantages smaller countries like Ireland. Our submission noted the importance that the KDB apply to the broadest possible base with a highly competitive rate in order to sustain Ireland's position in the FDI environment. However, the Department of Finance said that they are continuing to engage with the OECD so that the KDB can meet its key objective of being the most competitive in class, within the agreed international parameters for fair tax competition in this area. That said, the reference in that statement to a continued review of the assets that will form part of that box is to be welcomed.

One of the key themes surrounding Budget 2016 is that of taxing entrepreneurs and our submission highlighted a number of suggestions regarding such activities including financing same. An alternative to debt funding could be to introduce a special loan-finance arrangement, whereby individuals could lend money to SMEs in the EU (based on the EU definition of an SME) and provided certain safeguards are in place (e.g. market interest rates, etc.); then the individual would be taxed on the coupon received at the standard rate of income tax (i.e. 20 per cent) as opposed to the marginal rate of income tax (i.e. up to 55 per cent). This alternative funding option for SMEs is suggested in that while the Employment and Investment Incentive is a welcome source of finance for SMEs, the reality is that, from an investor's perspective, the shares acquired under this scheme rank behind trade creditors on liquidation.

Tom Maguire

Daryl Hanberry

A key recommendation in our submission for the tax treatment of travel expenditure is in relation to non-executive directors (NEDs). Given the vital function that NEDs serve on Irish boards in respect of enhancing and maintaining good corporate governance and regulation, it is important that our tax code does not deter such individuals from assuming these critical positions. For Irish companies to demonstrate that they are implementing best-in-class standards of corporate governance and regulation, the composition of NEDs who sit on Irish corporate boards must also be aligned to this 'best-in-class' concept. In addition, global expertise brings additional commercial benefits for the relevant company, such as an increased focus on export-led growth. We are of the view that both resident and non-resident NEDs should be treated equally in respect of the tax treatment of travel expenses as NEDs, regardless of their residency, as they both play an integral role in the commercial development of an enterprise and in the operation of effective corporate governance and regulation.

While the marginal rate of income tax was reduced to 40 per cent in 2015, Irish individuals who invest in certain investment products (Irish and overseas funds) are subject to income tax on both income and gains from these funds at a rate of 41 per cent. Where individuals invest in certain funds for periods in excess of eight years, a tax charge arises on the increase in the value of that investment regardless of the fact that the investment has not been realised. This charge does not arise for non-resident investors, nor is there any loss relief where the value of the investment has fallen over the eight-year period. We would like to see the Minister review the taxation of investment funds for Irish-resident investors.

In the previous budget, it was confirmed the pensions levy would be abolished following the last payment in 2015. The pensions levy places a burden on some pension savers who are attempting to prudently save for an income in retirement and also works to discourage further pension provision at a time when there is a considerable gap between individuals' expected retirement income and the actual income pensioners are realistically likely to receive. This will ultimately lead to a heavier reliance on the Irish State to fund retirement incomes and should be addressed, as some other countries have done, before it is too late.

The exchequer numbers are good, and so we would like to see the Minister outline a road map for reductions in tax for individuals based in Ireland to less than 50 per cent and to align the application of the Universal Social Charge between the employed and self-employed. This budget represents a golden opportunity to set Ireland on a path towards a brighter future and is ours to miss - the Finance Bill beckons!

Tom Maguire is partner - Tax Policy and Technical Services and Daryl Hanberry is tax partner at Deloitte.