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Finance Bill 2017

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Contents

Overall Comments

On 19 October 2017, the Minister for Finance and Public Expenditure and Reform Paschal Donohoe introduced into the Dáil Finance Bill 2017. It has progressed through the various stages and has now been approved by the Dáil.

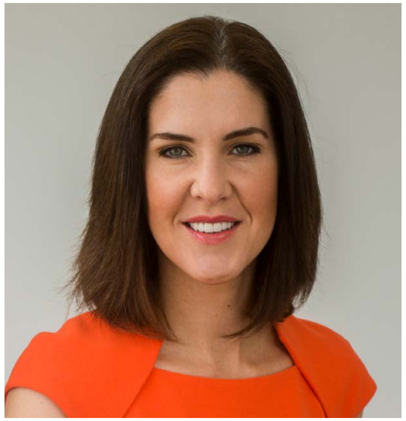
This year's Finance Bill held few surprises, providing for the enactment of measures announced in Budget 2018, which the Government hopes will address a broad array of challenges including stimulating residential housing supply, further "Brexit proofing" the economy and reducing the personal tax burden, all whilst being bound by limited fiscal space and EU budgetary rules.

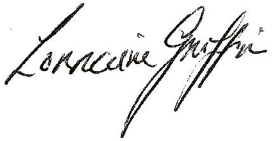
Please see below some of the key highlights to take note of in the Finance Bill 2017:

- A range of anti-avoidance measures are included, with a focus on Capital Gains Tax measures and reliefs for share sale transactions.
- There are important changes to the Capital Gains Tax group relief rules, aligning those to the Corporate Tax group rules, as well as technical changes to the s247 Corporate Tax rules for interest relief on qualifying loans.
- The introduction of the Key Employee Engagement Programme (KEEP), designed to assist SME's attract and retain top talent. Any gain arising on the exercise of qualifying share options will be subject to Capital Gains Tax at the time of disposal of the shares, in place of income tax, USC and PRSI at the time of exercise as is the general treatment for share option gains. The Department has noted that this relief is subject to State Aid approval.
- Amendments to various property related provisions including an increase on Stamp Duty on commercial property transactions and changes to Capital Gains Tax relief on certain land and buildings. The Finance Bill brings clarity on the transitional measures that will apply to contracts signed by Budget Day. An allowance for certain pre-letting expenses has also been introduced, and the Stamp Duty threshold to exempt certain leases from duty has also been increased.
- There are some technical amendments which are a tidy up of the rules that were introduced in last year's Finance Act focussing on investments in Irish real estate related assets by funds ("IREFs") and securitisations ("s110"). Many of those changes were already communicated in tax briefings issued by the Irish Revenue and therefore this is just the legislative change needed to bring them into law.
- A Committee Stage amendment removed the exemption from IREF withholding tax on certain payments derived from realised and/or unrealised gains on land and buildings held by an IREF for 5 years or more. The removal of this exemption becomes effective from 1 January 2019.
- The 9% VAT rate for the hospitality sector, which was introduced in 2011, will continue to apply. The only VAT increase announced by the Minister is that the VAT rate on the use of sunbeds will increase from 13.5% to 23%. The detail of the sugar tax was also confirmed, and the rate will be 30c per litre where the sugar content is at least 8g per 100ml and 20c per litre where the sugar content is between 5-8 g per 100ml.

For further details on the above and other new measures not included in Budget 2018, we invite you to view our articles analysing the Finance Bill on our website.

If you have any questions on what the Finance Bill means for you, your business or your family, please don't hesitate to speak with your usual Deloitte tax adviser or any member of the Deloitte tax team.





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Finance Bill 2017

Measures not announced in Budget 2018

Finance Bill 2017 contains some measures that were not announced on Budget Day. What’s new?

- Enhancements to the competitiveness of Ireland’s regime in relation to corporate groups and group relief, including certain amendments to cater for Companies Act 2014
- Measures to facilitate the future enactment of the OECD BEPS Multilateral Instrument
- Transitional measures in relation to the increase in the stamp duty rate from 2% to 6% on non-residential property transfers
- Legislative provisions to capture existing Revenue practice on interest relief on funds borrowed to invest in or lend to other companies
- Measures proposed to clarify the corporation tax implications of the evolution of certain international and Irish accounting standards
- Increase in the stamp duty exemption threshold on residential leases from €30,000 to €40,000 per annum
- Enabling provisions to facilitate the operation of “real time” PAYE in the context of the PAYE Modernisation Programme
- Technical clarifications to legislation governing Irish Real Estate Funds and securitisation companies with investments in Irish real estate
- A range of anti-avoidance provisions, including capital gains tax measures, non-EU/EEA offshore settlements and reliefs for share sale transactions

Ireland Inc., FDI and Transfer Pricing

There are only a small number of corporate tax measures, and they have significance for Irish and inbound multinationals and large private groups.

Following the recommendation in the Coffey report, the law relating to the restriction of the intellectual property (IP) amortisation and related interest for IP purchased on or after 11 October 2017 is provided for in the Bill. In summary, 20% of the profits remain within the charge to Irish corporation tax thereby smoothing the claim for interest and tax amortisation over a longer period and ensuring that there is a minimum corporate tax take for the exchequer each year.

The provisions for adopting a new accounting standard or the adoption of an amendment to an accounting standard within an existing accounting framework have been clarified such that any income and expenses are adjusted; taxed or allowed respectively over a 5 year period. The 5 year period is consistent with the law introduced in 2005 and updated more recently. This will deal inter-alia with the adoption of the new revenue recognition standard in Irish company accounts, which some companies are early adopting this year and which results in amounts being categorised in reserves rather than the profit and loss account and also has impact on the computation of and deductibility of expenses. This applies as respects accounting periods beginning on or after the date of the passing of the Act which is effectively towards mid to end of December 2017.

Interest on financing has been the subject of much discussion over the last 12 months and the law is updated to formally recognise that groups have complex structures. Such structures typically involve multiple intermediary holding companies, either due to a requirement or practice in various countries where an M&A deal is taking place or indeed due to varying degrees of security being taken by different lenders on different tranches of financing. In tandem with this recognition, which is helpful, the anti-avoidance measures relating to recovery and deemed recovery of capital are extended to apply through the group. There is a proviso that if certain recoveries of capital is for bona-fide commercial reasons and does not have a purpose to avoid Irish tax, interest in the borrowing company will not be disallowed. There is a requirement to maintain appropriate records to support positions where strictly a recovery of capital could occur but the taxpayer is claiming non-applicability of this law. The law is effective for loans made or after 19 October 2017. Ireland has formally requested that the EU accept its current rules on interest deductibility as equally effective to those proposed in the EU ATAD for the transitional period until 2024 (or whenever the OECD BEPS Action 4 becomes a minimum standard, whichever occurs the earliest) thereby allowing a retention of these rules for the foreseeable future.

The Bill commenced the legislative procedure required to give effect in Irish law to the Multilateral Instrument (MLI) to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). The MLI provides a mechanism for countries to transpose recommendations made by the OECD BEPS project into existing bilateral tax treaties. The BEPS project made a series of recommendations for international tax changes to address aggressive tax planning, including specific recommendations for changes that should be incorporated into existing bilateral tax treaties. Each of Ireland's tax treaties will be modified where Ireland and the relevant treaty partner country have signed and ratified the MLI. Ireland signed the MLI on 7 June 2017 along with over 60 other countries.

The Bill further brings about changes to deal with certain provisions outlined in Companies Act 2014. It will be recalled that Companies Act 2014 was enacted on 1 June 2015. The amendments deal with the transfer of assets and liabilities of a 'transferor company' to a 'successor company' pursuant to a merger or division. The Bill's amendment ensures that the tax payment, filing and reporting obligations and liabilities of a transferor company will transfer to a successor company or companies following a merger or division undertaken in accordance with Part 9 of the Companies Act 2014.

The Bill also brings about a new provision that will also enable an appeal made by a transferor company to be treated as an appeal made by a successor company and any right of appeal in relation to an appealable matter conferred on a transferor company to be treated as conferred on the successor company. Technical amendments are made to update references to previous Companies Acts in tax legislation to the appropriate references in the Companies Act 2014. In addition certain substantive provisions were amended; for example a debt which is held by an original creditor and not regarded as a "debt on a security" is not a chargeable asset for Capital Gains Tax Acts purposes. The Bill ensures that a successor company shall be deemed to be the original creditor in respect of a debt where that debt is transferred from a transferor company as a result of a merger or division where the transferor company was the original creditor in respect of that debt. The amendment has effect from 1 June 2015 being the date on which the Companies Act 2014 was enacted. The stamp duty provisions to deal with the above are set out in the Real Estate section of this brochure.

Lastly, the Bill brings about an anti-avoidance measure into the Capital Gains Tax exemption on the disposal of certain shareholdings (s626B Taxes Consolidation Acts 1997). The amendment ensures that money or other assets which are transferred to a company prior to a disposal of shares in that company in order that the value of shares will be derived mainly from those assets will not be taken into account in determining whether the value of the shares disposed of is derived from those assets. This applies to disposals made on or after 19 October 2017

Whilst the Finance Bill did not contain any specific transfer pricing measures, the Minister had published an update on Ireland's international tax strategy as part of the Budget earlier this month. A significant aspect of the update related to the announcement of a consultation period to run to the end of January 2018 which will review how the recommendations in the Coffey Report will be implemented into Irish tax law. A number of the recommendations related to transfer pricing, including:

- Implementing Action 8 to 10 and the remaining parts of Action 13 of the OECD BEPS reports;
- Extending transfer pricing rules to non-trading and capital transactions;
- Removal of the current exemption (SME exemption) for certain small and medium sized enterprises; and
- Repealing pre 1 July 2010 grandfathered arrangements and bringing them within the scope of transfer pricing law.

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Our view

If implemented in future tax law changes, the transfer pricing recommendations represent a significant refinement of Ireland's existing transfer pricing laws. The implementation of Action 8 to 10 will have a significant impact for groups that hold intellectual property assets in Ireland or who are considering on-shoring such assets in Ireland. Ensuring the appropriate level of substance in Ireland in terms of key decision-makers and personnel who have the capability to manage and control the risks of exploiting such activities is key. Other business activities such as centralised procurement and treasury operations in Ireland will also need to be aware of the impact of Action 8 to 10 on current transfer prices.

The recommendation relating to updating Ireland's transfer pricing documentation rules to the new OECD two-tier Master File and Local File approach presents a new compliance requirement for groups operating in Ireland. The level of detail which needs to be included in the new OECD two-tier documentation goes far beyond what groups currently include in documentation and is likely to mean significant resources will need to be devoted to align to the new documentation approach. Consideration should be given to introducing an exemption for groups under a certain monetary threshold from having to prepare full OECD documentation. A number of other jurisdictions have already adopted this approach.

Some of the other recommendations, including removal of the SME exemption and bringing pre 1 July 2010 arrangements within the scope of Ireland's transfer pricing regime, are likely to have a disproportionate impact on smaller corporate groups. On that basis, the impact on smaller taxpayers should be considered in terms of cost and time needed to implement such changes and balance any final decision on potential tax revenues that could be expected to be generated for the Exchequer.

With respect to the expansion of Ireland's transfer pricing laws to non-trading and capital transactions, it is noteworthy that other parts of Ireland's tax laws already include measures with comparable concepts to the arm's length principle which deal with such transactions, in particular capital transactions, and therefore any consideration of whether additional measures are needed should form part of the review process.

Aside from law on transfer pricing and other OECD and EU measures that are to be introduced in the coming years within the various timetabled deadlines and subject to the form as indicated by the outcome of consultation on The Coffey report, there is likely to be more tightening and clarification of past practice codified into law such that we are likely to see a more comprehensive and codified act.

Individuals and Entrepreneurs

In the area of personal taxation, the majority of the measures provided for in the Bill were already announced in the Budget Statement. There are however a small number of additional measures included in Finance Bill 2017 that were not announced in the Budget. These measures include the following:

- There are some amendments to stamp duty young trained farm provisions dealing with relief on the transfer or purchase of farm lands. There is a new requirement that the young trained farmer will need to submit a business plan to Teagasc and also come within the definition of "micro, small and medium enterprises" under Regulation (EU) No 702/2014.

- Provision is made for changes to certain anti-avoidance measures relating to offshore settlements and companies. These sections deem the income and gains of those structures to be the income and gains of Irish resident individuals in certain circumstances. Previously if the foreign structure carried on a genuine economic activity in a relevant Member State and the tax payer could evidence that the assets were not transferred with a main purpose being to avoid a liability to tax, then the deeming provision did not apply. The change now only requires the taxpayer to evidence that a genuine economic activity is carried on by the structure in a relevant Member State (essentially an EU or EEA Member State). These qualifying provisions to the anti-avoidance measures were initially introduced to ensure the anti-avoidance measures comply with EU law, but it appears they required further amendments to become compliant.

- The Committee Stage saw an amendment to counter the position whereby cash is extracted from a closely held company by redeeming shares. Its intent is to reduce the shareholder's allowable cost for income tax purposes in the redeemed shareholding in certain instances where a share for share exchange has previously occurred. In the past, where a shareholder had disposed of shares in the first company to a second company as consideration for shares issued in the second company then the base cost of those shares for income tax purposes would generally have been the market value of the shares at the time of the exchange. An additional amendment was brought about to counter transactions where a shareholder in a closely held company enters into arrangements with another closely held company for the disposal of shares where the consideration for the disposal is effectively sourced from that disposing shareholder's company. The amendment ensures that the consideration received for the disposal is treated as a distribution and subject to income tax. The Minister noted as part of the Report Stage debate that guidance would be forthcoming on this amendment given its potentially broad application.

- CGT farm restructuring relief applies where land is sold or exchanged by a farmer with a view to acquiring other lands in closer proximity to the farmer's main holding (essentially rationalisation of farm land holdings). The acquisition of the new lands must occur within 24 months of the disposal of the original lands. In relation to farmers who have claimed relief from CGT under the restructuring relief since 1 July 2016, they must now provide certain information to Revenue to enable Revenue determine the level of tax that would have arisen had the relief not applied. This measures is being introduced to comply with State Aid publication requirements.

- A new provision provides stamp duty relief for certain farm consolidation transactions, broadly being transactions where a farmer sells agricultural land and subsequently engages in the purchase of other qualifying agricultural land for the purposes of consolidating the farmer's holding. Amongst other conditions, the relief will not apply unless appropriate certification is obtained. The relief provides for stamp duty at a rate of

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1%, payable on the amount of the value of the qualifying land purchased over and above the value of the qualifying land sold.

- A measure introduced in the Bill amends an anti-avoidance provision in respect of tax relief where an individual earns rental income from the lease of farmland. There are a number of qualifying conditions to be met before the relief applies, together with other existing anti-avoidance provisions.
- Changes have been made where non-residents dispose of shares in a company where the shares in that company derive the greater part of their value from Irish land, minerals or exploration/exploitation rights ("relevant assets"). Finance Act 2015 introduced an anti-avoidance measure to prevent the introduction money to the company so as to ensure it did not derive the greater part of its value from relevant assets. This measure will now be extended to include introducing assets, other than just money, to the company.
- Entrepreneur relief allows a reduced 10% rate of Capital Gains Tax which applies to the first €1 million of gains on disposal of qualifying business assets by individuals. Unfortunately this was not extended in this year's Bill. Rather certain restrictive measures were introduced to include, inter alia, where an individual disposes of certain assets to a company with which the individual is connected and other anti-avoidance provisions unless the disposal is for bona fide commercial reasons and not part of an arrangement, one of the main purposes of which is tax avoidance. Similar restrictions have been applied to retirement relief for CGT purposes.
- The Committee Stage brought about changes to the Employment and Investment Incentive Scheme (EIIS) and are effective in respect of shares issued on or after 2 November 2017. The changes were introduced to ensure that the EII provisions are in accordance with the European Commission General Block Exemption Regulations (GBER), which require that risk finance aid schemes such as the EIIS should be restricted to independent private investors and do not provide relief to persons with close connections to the undertaking. The amendment means that only independent private investors, within the meaning of GBER, are eligible for relief under EII. Individuals can no longer claim relief under EII for investments made in a company to which they are connected.

The Finance Bill makes provision for the implementation of the following measure that were announced by the Minister for Finance in his Budget Statement:

- An increase in the standard rate band for income tax of €750 to €34,550 for single earners. For married one-income couples, the standard rate band increases from €42,800 to €43,550.
- The USC 2.5% rate is to be reduced to 2%. The ceiling for this band is to be increased to €19,372 from €18,772. The 5% rate is to be reduced to 4.75%. Thus, the marginal rate of tax on incomes up to €70,044 will be 48.75% going forward.
- Increase in the home carer tax credit from €1,100 to €1,200
- Increase in the earned income tax credit from €950 to €1,150
- Medical card holders with income of up to €60,000 will continue to pay USC at the lower rate (now 2%) for a further two years.
- Expenses incurred prior to the letting of a property are to be allowed as a deduction for tax purposes. This applies for properties that have been unlet for 12 months or more. If the property is removed from the rental market within 4 years then the relief will be clawed back. A cap of €5,000 will apply per property.
- Agricultural land used for solar panel purposes (covering up to 50% of the land) will qualify for CAT agricultural relief and CGT retirement relief
- Consanguinity relief for inter-family farm transfers, which applies stamp duty at a rate of 1%, is to continue.

Our view

The Budget and subsequent Finance Bill made a number of minor provisions to the area of personal taxation. However, most of the measures have limited impact. There has been no movement in relation to key personal taxation areas such as CAT thresholds and the additional USC levy for self-employed individuals. The failure to introduce changes in these areas is disappointing but it is hoped measures might be introduced in the near future perhaps following the conclusion of the USC/PRSI review.

Financial Services

There have been a number of financial services companies that have announced that they intend to locate in Ireland or expand operations, those companies include JP Morgan, Bank of America, Barclays, TD Bank, Beazley, Chaucer, Standard Life and Legal & General. However the competition is fierce and there have been a number of high profile financial services groups that have chosen other European locations such as Frankfurt, Paris or Luxembourg. While at this stage many companies have made their decision on where they intend to locate, there are a number of companies that are still considering the matter. Also international tax changes in the context of BEPS (including transfer pricing) and the ATAD mean that now more so than ever there is an increased focus on having the appropriate people and substance located in country. Therefore it is important that Ireland's tax strategy is formulated so that the regime is competitive and provides incentives for businesses to locate in Ireland.

Businesses require as much as is possible stability and certainty in tax policy and therefore while there may not be significant room, given budgetary constraints, to introduce new incentives, at a minimum we should be aiming to maintain those principles.

Last year's Finance Act introduced new legislation broadly to provide for a level of taxation on funds (Irish Real Estate Funds) and s110 companies whose assets derive value from Irish land and buildings. This year's Finance Bill includes a number of 'tidy up' amendments to the Irish real estate funds legislation including amending the definition of instances in which an IREF is not required to withhold tax including in the case of ARFs, AMRFs and PRSAs. An amendment introduced at Committee Stage proposes to remove the exemption from Irish Real Estate Fund (IREF) withholding tax on certain payments that derive from realised and/or unrealised gains on land and buildings held by an IREF for 5 years or more. The removal of this exemption becomes effective from 1 January 2019. It appears that this amendment is intended to complement other Finance Bill measures targeted at increasing the supply of residential development land, albeit that the exemption itself was not expected to be widely used. Advance clearance procedures are introduced for situations where a refund of tax withheld would be made and the Finance Bill provides for MiFiD regulated intermediaries to make a declaration on behalf of pension funds, charities and credit unions. It is also proposed that funds may have to provide their financial statements in electronic format to revenue, this change would be introduced on a phased basis. The s110 changes which were introduced last year in respect of certain assets including loans which derive their value from Irish land or buildings have been extended in this year's Finance Bill to shares which derive their value from Irish land or buildings.

In a welcome move the definition of a capital gains tax group has been extended to companies which are resident in double tax treaty countries and now broadly brings the definition in line with the existing definition which applies for group loss relief purposes.

In respect of companies claiming interest as a charge, the position where there are a number of holding companies is clarified in this year's Finance Bill. Amendments are included to extend the interest relief to instances where a loan is used to acquire shares in, or in certain circumstances, lend to a holding company that indirectly holds ordinary shares in a trading company, through one or more intermediate holding companies. This is an amendment that has been lobbied for extensively and it is positive to see the position clarified as a result of this legislation.

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Companies have over the last number of years and will continue to have to contend with changing accounting standards and how those new accounting standards will impact their corporation tax liability. Legislation is to be introduced to address the tax impact of changing accounting policies, accounting standards and the correction of errors. In the case of a change in accounting policy, standards or error the retrospective effect of the change will be taxable or deductible to the extent it has not otherwise been brought into account. In the case of a change in accounting standards or an amendment to such standards, the change will be spread over a 5 year period.

Legislation is also proposed in respect of foreign tax credit relief for Life Assurance Companies. In a move which reflects Revenues current view, it is proposed that foreign tax credit relief will not be available for a life assurance company if the foreign tax is suffered on income that forms part of the policyholder business.

As expected the first step to give effect in Irish law to the Multilateral Instrument, which will broadly introduce amendments to give effect to a number of BEPS measures, is also included in the Finance Bill. The amendment will allow for an Order to be made to give legal effect to the Multilateral Instrument.

In the main this year's Finance Bill includes a number of 'tidy up' amendments however there are some welcome changes particularly in the context of the extension of the definition of capital gains tax groups and the amendments to the interest as a charge provisions.

Given budgetary constraints the room for the government and department of finance to introduce significant change in this year's Finance Bill is restricted. However from an 'Ireland inc' perspective we must always be cognisant that when companies are considering relocating, for example from the UK or alternatively where they are considering new investment or expansion, countries are compared across a matrix under a number of different factors. That matrix generally assesses countries across a number of different factors. Regulation, the regulatory regime and the local regulators approach is often a critical factor for financial services companies when they make a decision on where to locate. Other factors are also important including tax and therefore it is important that the government is constantly monitoring how Ireland scores on the matrix of relevant factors, when compared with the other competing countries and whether there is more we can do or what changes should be considered in respect of the factors where we don't score as well as we should.

Real Estate

Stamp Duty rate increase on commercial property, and other property related measures.

The rate of stamp duty on commercial property has been increased from 2% to 6% with effect from midnight on 10 October 2017 subject to transitional measures provided in the Finance Bill as follows:

To avail of the 2% rate, purchasers must have binding contracts in place before 11 October 2017 and the instruments for the transfers must be executed before 1 January 2018. The instrument must contain a statement to this effect. It is a revenue offence where an incorrect statement is furnished.

Stamp Duty Refund
The Report Stage amendments provide for a stamp duty refund in respect of land used for the development of houses. The refund provisions are complicated, but they apply to residential development that comprises construction operations which commence within 30 months following execution of the instrument. The 'commencement notice' must be pursuant to building regulations, and acknowledged by a building control authority. The project must be completed within two years of the 'commencement notice' if a clawback is to be avoided.

Assets transferred between family members
Consanguinity relief for transfers of property between certain relatives is changed from half of the normal rate of stamp duty which would otherwise apply, to a fixed rate of 1% of the market value of the property being transferred. The Bill also extends the consanguinity relief provisions for a further 3 years to 1 January 2021 and removes the age limit of 67 years for availing of the relief. This is to encourage gifts and sales of farmland to family members who do not qualify for the exemption available under the Young Trained Farmer scheme.

There is an increase proposed for the threshold below which certain residential leases are chargeable to stamp duty from €30,000 to €40,000. These are leases for an indefinite term or not exceeding 35 years. Commercial lease premiums are subject to the increased stamp duty rate of 6%.

Assets transferred intra Group
Associated Companies Relief for transfers of property (real estate and any other property subject to Stamp Duty) between associated group companies has been amended to allow stamp duty relief on mergers of companies by absorption. This means that the normal 2 year clawback period for retaining the group relationship will be disapplied where a company is merged by absorption where the transferor is dissolved and liquidated and where the transferee holds the beneficial interest in the property for 2 years. It is also subject to certain anti avoidance provisions.

Stamp Duty reorganisation reliefs have also been amended to take account of a merger that is undertaken in accordance with the Companies Act 2014.

Capital Gains Tax Relief on land and buildings
This is a relief from Capital Gains Tax in respect of land or buildings which were purchased in the EEA area between 7 December 2011 and 31 December 2014 where such land or buildings are held for a minimum period of 7 years.

The proposal in the Bill is to give effect to the announcement in the Budget statement to grant a full exemption from Capital Gains Tax if the taxpayer has acquired the land or buildings within the required period and owned it for at least 4 years and no more than 7. Where a building is owned for more than 7 years the relief is tapered. For example if the asset is owned for 8 years before disposal, 7/8ths of the gain would be exempt.

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The amendment is proposed to apply to disposals made on or after 1 January 2018.

Voluntary Homeowners Relocation Scheme
A new relieving provision provides that where a homeowner receives compensation under the Voluntary Homeowners Relocation Scheme from 19 October 2017 onwards, then no chargeable capital gain will arise.

Vacant Site Levy
The Vacant Site Levy can apply to sites which have the potential to provide housing to meet local housing need and demand. It is calculated on the market value of a site determined by the local authority.

The Minister announced that the levy rate of 3% which will apply from 1 January 2019 for property which has been held in 2018, will be increased to 7% for each subsequent year. The vacant site levy rules are contained in the Urban Regeneration and Housing Act 2015.

Landlords - Interest Relief and Pre-Letting expenses on rental residential property
The restriction on interest relief on money used to buy residential property will continue on a phase basis so that 85% of interest payable which otherwise would be allowed, is available as a deduction against rental income received, from 1 January 2018 and 90% for 2019, 95% for 2020 and 100% et seq. for 2021.

Pre-letting expenses relief is proposed in the Bill. This is to encourage owners of vacant residential property to bring the property into the rental market. The relief applies to property vacant for 12 months or more. There is a cap of €5,000 per property. The relief will be clawed back if the property ceases to be a residential property within 4 years of first letting.

Gym / Crèche Capital Allowances
Amendments introduced at Report Stage provide for accelerated capital allowances where an employer incurs expenditure on the construction of certain buildings used for providing either childcare facilities or certain fitness centre to employees. In addition certain releifs apply for expenditure on plant used in such activities.

Overview
The Bill includes transitional provisions for the increase in the rate of stamp duty for commercial property from 2% to 6%.

Essentially where a contract is binding before 11 October 2017 and the instrument is executed before 1 January 2018, the lower 2% rate of stamp duty will apply for the purchaser.

On balance and in line with our predictions, the Bill as it relates to Property, contains little in terms of tax measures. The stamp duty increase may bring more share sales to avail of the lower rate. The stamp duty refund scheme may provide some relief in respect of the housing market. It remains to be seen what impact this will have on the market.

A lot of property has been bought over the past 4 years and many are now in asset management mode. A lower rate of duty in our view would have been more measured and would assist in keeping ourselves competitive in the Real Estate international markets.

There was no movement in VAT, no change in the interest relief for rented residential, no deduction for LPT all of which were flagged for discussion by many commentators.

The proposed change in the 7 year capital gains tax exemption for investors which allows an exit after 4 years, which will help straddle the exit for some investors who want to sell earlier.

Global Mobility and Employment Taxes

Key Employee Engagement Programme
The Finance Bill contains details in relation to the new Key Employee Engagement Programme (KEEP) for SMEs which was unveiled in the budget. The scheme will be available for qualifying options granted during the period 1 January 2018 to 31 December 2023, subject to EU approval, which we understand is in advanced state. The main features of KEEP include:

- The company must be an unquoted trading company with less than 250 employees and either an annual turnover of not more than €50m and/or an annual Balance Sheet total not exceeding €43m at the date of creating the option.
- The company must be Irish incorporated and resident or resident in an EEA State but carrying on a business in Ireland through a branch or agency.
- Excluded trades include a broad range of financial activities, professional services and building & construction trades.
- Open to full time employees or directors who devote at least 30 hours per week for the company. However excludes any employee or director owning more than 15% of the share capital of the company.
- The option must be granted at market value to qualify for a tax deferral.
- The value of options that can be granted to an employee or director cannot exceed €100,000 in any one year, €250,000 over a 3 year period or 50% of the individual's annual emoluments in the year in which the option is granted.
- Provided the qualifying option is not exercised for 12 months post grant tax will be deferred until the point of sale, at which point Capital Gains Tax will apply.
- The total market value of the issued but unexercised options of the company must not exceed €3m at the date of creating the option.

While the detail will be positively received by private Irish companies and their employees, there are a number of challenges. One of the main issues in relation to KEEP will be the requirement for the company to carry out a valuation of the shares at the grant date to ensure that the options are granted at market value. There will be demand here for an approval process from Revenue to provide certainty to employers.

It will be important for companies to properly manage the scheme so as to ensure that they do not breach the overall limit of €3m in unexercised options or the individual employee limitations. The scheme requires annual reporting by 31 March following year end and failure to comply with this will mean the company is no longer qualifying and result in income tax on exercise of the options.

PAYE Modernisation
In advance of the introduction of a real-time PAYE system under the PAYE modernisation project, a number of technical measures have been introduced with most taking effect from 1 January 2019 with a couple of exceptions.

In particular, PAYE is now moving from an earnings basis to a receipts basis with effect from 1 January 2018. For most employees, this will have no effect. However, for cross border workers this is a significant change and the timing of introduction may create challenges for employers of such workers. It will potentially create planning opportunities for those mobile workers.

In addition, where PAYE is not operated correctly, there will now be a legislative basis from 1 January 2018 to recoup these taxes on

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a grossed-up basis. This places a potentially significant cost for errors by employers with regards to PAYE.

Other areas

The bill confirms the reduction of the USC rates of 2.5% to 2% and 5% to 4.75%. It also confirms the increase in the band ceiling for the 2% rate by €600 to €19,372. Unfortunately the higher rate of 8% is unchanged which means the marginal rate of tax remains at 52%. These changes do little to address the progressivity of the system and while the Minister announced in the budget a working group to consider the merger of PRSI and USC it is unclear if or when we will see the marginal rate and progressivity addressed. Although all workers will be affected by the adjustment in USC rates the ability of Ireland to attract talent and remain competitive so as to capitalise on the opportunities presented by Brexit will not be improved as a result of the retention of a 52% marginal rate.

The National Mitigation Plan on climate change includes a pledge to effectively electrify the entire 2 million-strong Irish car and van fleet by 2030. In keeping with this policy the bill introduces a 0% benefit-in-kind rate for electric vehicles for 2018. In addition there is an exemption, which is not limited to 2018 as yet, from benefit-in-kind for electricity used for such vehicles where all employees and directors can avail of the facility. The Minister stated in the budget speech that this is intended to allow for a review of benefit-in-kind on vehicles with a view to informing decisions for the next budget. We await with interest the outcome of this review. The UK moved to an emissions based system in April 2002 with significantly lower benefit-in-kind rates for lower emission cars and a 0% benefit-in-kind rate for electric cars applied for a 5 year period from 6 April 2011 up to 5 April 2015. While Finance Act 2008 set out an emissions based system for Ireland it did not propose to reduce the benefit-in-kind rate for lower emission cars but proposed increased rates for those with higher emissions. This legislation is subject to Ministerial Order and has not to date been introduced. It is hoped that the proposed review allows for an extension of the 0% rate for electric vehicles.

Indirect Tax

The main change in the Finance Bill is the introduction of a sugar tax for suppliers of sugar sweetened drinks. The tax will apply at a rate of 20c per litre where the sugar content is 5 grams or more but less than 8 grams per 100 ml and 30c where the sugar content is 8 grams or above. The person liable for the tax will be the business that first supplies the drinks in Ireland. As the tax applies to drinks that are consumed in Ireland it will not apply to exports out of Ireland. The introduction of the legislation is due to be effective from 1 April 2018. However, it will only come into effect on the issue of a commencement order which allows for the tax to become effective on a date on or after 1 April 2018.

The tax aims to reduce juvenile obesity and is being viewed as a trial tax to see whether taxes, such as this, can change consumer behaviour to benefit public health. If it is successful further taxes will follow.

On the VAT front there were two minor changes. The first is in the same vein as the sugar tax and targets the use of sunbeds which have been linked to greater instances of skin cancer. The bill provides that, effective from 1 January 2018, the standard rate of VAT, currently 23%, will apply to sunbed services instead of its present VAT rate of 13.5%.

Additionally, a change was made to the 2015 amendment to the VAT exemption for providers of vocational training. The VAT exemption, which had applied to private bodies providing such training before 2015, has been restored albeit with some strings to be attached. There is a clear indication that regulations as to the conditions under which private providers can qualify for VAT exemption are to be introduced. Private providers will have to wait to see what these conditions are before knowing whether they qualify or not. In any event it is clear that the change will have the effect of broadening the categories of business that can benefit from the exemption that applies to vocational training and retraining services.

We welcome the fact that the VAT exemption has been broadened which means that at least some private providers will be able to compete with public sector providers on an equal footing. VAT exemption continued to apply to public sector providers of vocational training following the 2015 change which was placing many private sector providers at a considerable disadvantage in competing for business in State and financial sectors. Hopefully the regulations will not dilute this otherwise welcome development.

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