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Finance Bill 2015
Overall reaction

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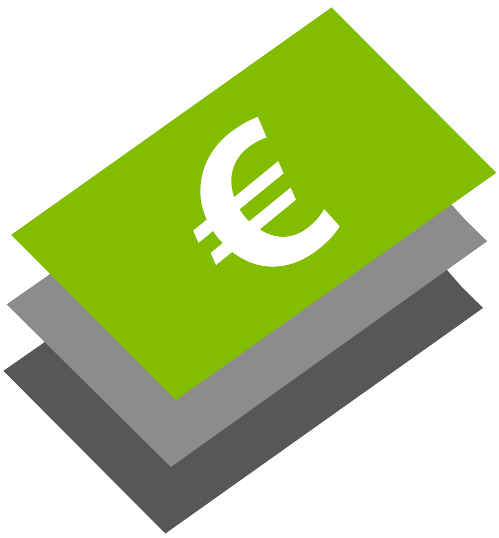

Finance bill 2015

Lorraine Griffin, Head of Tax at Deloitte, provides comment following the release of the Finance Bill

Finance Bill 2015, released on 22 October, contains the measures announced by Minister for Finance Michael Noonan in the 2016 Budget.

The Finance Bill didn't hold too many surprises and provided a range of measures announced in the Budget to stimulate the domestic economy. These included offering lower personal taxes (such as the cut in USC rates and changes in the USC entry point and rate bands, as well as introducing the Earned Income Tax Credit for the self-employed, among others), the extension of the startup relief for companies, the introduction of the Knowledge Development Box and various agri-sector reliefs. The only unexpected tax-raising measure was a new Petroleum Production Tax.

Deloitte welcomes the efforts made to address the tax treatment of entrepreneurs, such as the new 20 per cent CGT rate for qualifying disposals of business assets or shares. That being said, additional opportunities remain to enhance our tax system to stimulate entrepreneurship and the domestic economy, which hopefully will be addressed in successive Budgets.

Some of the other measures included:

- Doubling of the tax exemption for gift vouchers to employees next year, giving a tax-saving benefit to both employees and employers
- Enhanced Revenue powers to obtain information, and a range of targeted CGT anti-avoidance measures.

On a positive note for business in Ireland is the change in relation to the tax treatment of travel and subsistence expenses paid to non-executive directors. From 2016, these may be reimbursed tax-free for qualifying expenses of a non-resident non-executive who travels to attend board meetings in Ireland. This will be positive both for FDI investment into Ireland and for Irish companies that use foreign-based directors to bring additional expertise, insight and corporate governance to their organisation. It is a positive first step in modernising our employment tax regime for the 21st century work practices.

Lorraine Griffin

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Head of Tax

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Individuals and Indigenous business

Finance Bill 2015 provides for the changes to the rates and rate bands of the Universal Social Charge (USC), the introduction of the earned-income tax credit and the increase in the Capital Acquisitions Tax (CAT) threshold in the manner expected. It also gives effect to the extension of reliefs aimed at the agri-sector and new start-up companies and increases the eligible expenditure cap for film relief as announced in the recent Budget 2016.

The bill introduces a welcome new Capital Gains Tax (CGT) relief for entrepreneurs on disposals of certain qualifying business assets or shares in qualifying companies where those disposals take place on or after 1 January 2016. The new relief provides for a 20 per cent rate of CGT to apply on qualifying gains up to a lifetime limit of €1,000,000. Any gains thereafter will be taxed at the prevailing rate of CGT, which is currently 33 per cent. The taxpayer is required to have been a full-time working director of the business for at least three years prior to disposal and to hold at least 15 per cent of the ordinary share capital of a company carrying on qualifying activities, where applicable. This is certainly a step in the right direction in that it removes the requirement for an entrepreneur to have made a second successful disposal for the relief to apply. While it is a positive move, it is worth noting that it is still not really competitive with other countries, such as the UK's equivalent provisions that provide for a 10 per cent rate on gains of circa €10 million. Accordingly, more remains to be done in this area.

Further details with regard to the operation of succession farm partnerships were provided in the Finance Bill, as well. In summary, the partnership will be between at least two partners with provision for profit-sharing between the partners and for the transfer of the farm to the younger farmer. This transfer must take place within a period starting three years after the date of the application to register the partnership. An income tax credit of up to €5,000 per annum for five years will be allocated to the partnership and split in accordance with the profit-sharing arrangement between the partners. The legislation provides that the successor partner(s) in the partnership must be under the age of 40 years when the partnership is formed. These provisions are a follow-on from the measures introduced last year to encourage the early transfer of farms to the next generation and will be of significant benefit to the farming community.

A number technical amendments have been introduced in respect of pre-existing anti-avoidance measures.

The measures announced in the Budget and the additional measures contained in the Finance Bill give some element of relief to individuals and families, though they do not go as far as we would like in terms of easing the taxation burden on self-employed individuals or to encourage entrepreneurial activity. It is encouraging that for the first time, with the introduction of the earned income tax credit, steps are being taken to end the disparity between the taxation of the employed

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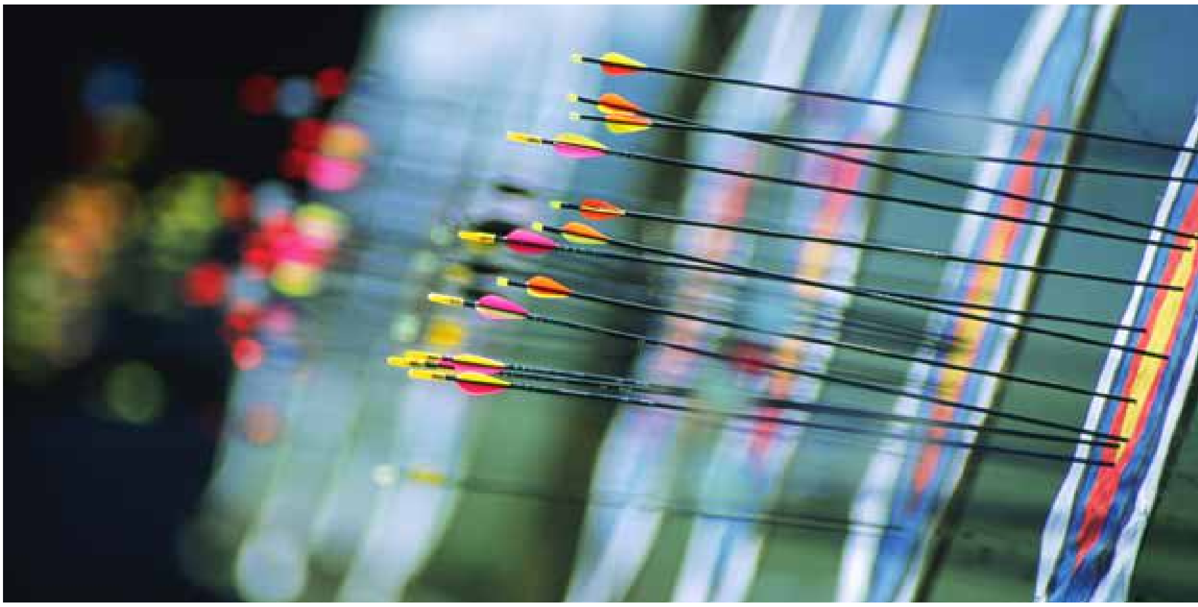

versus the self-employed, but there is more that needs to be done in successive budgets to achieve equality and fairness in the tax system. In addition, the effective level of CGT payable on the disposal of a successful business remains too high. Considering many relatively successful businesses will have a value in excess of €1 million, the entrepreneur will still suffer a significant tax bill on a disposal. While the Government have suggested that a relief similar to the UK may raise questions as to why entrepreneurs should be treated more favourably than those who receive salaries or dividends, this ignores the fact that in a lot of cases an entrepreneur has invested significant time and resources in a new business often without drawing any income from that business.

It is hoped that the imbalance that continues to exist between employees and the self-employed will be addressed by the next Government, and we welcome the positive message that the Minister conveyed in the Budget in respect of how this might be addressed in the future insofar as resources allow.

The bill introduces a welcome CGT relief for entrepreneurs on disposals of certain qualifying business assets or shares in qualifying companies

Transfer pricing

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As announced in the Minister's recent Budget speech, the Finance Bill (contained in Section 31) includes enabling legislation to facilitate the introduction of Country-By-Country Reporting ("CbC") into Irish domestic law.

CbC is an integral part of the OECD's work on Base Erosion and Profit Shifting ("BEPS") and the final report on Action 13 dealing with CbC and Transfer Pricing Documentation was issued earlier this month. Multinational companies with global revenues in excess of €750 million will be required to file a CbC report for accounting periods commencing on or after 1 January 2016. The deadline for filing the CbC report is 12 months after the end of the accounting period (i.e. 31 December 2017 for 31 December 2016 financial year-ends).

Consistent with the OECD's Action 13 final paper, the onus is on the ultimate parent company of the multinational group to file the CbC report with their local tax authority. Additional measures will be introduced to ensure filing by lower-tier group companies or local filing where the CbC report is not filed at the parent company level. The local tax authority with whom the CbC report is filed, will automatically share the data with other relevant tax authorities under exchange of information protocols within six months of the filing date.

Multinational companies, both Irish headquartered and foreign multinationals, with global revenues in excess of €750 million will be within scope of the new legislation.

The new measures will have an immediate impact on companies, as the first reporting period is only a few months away (i.e. accounting period beginning 1 January 2016). Companies affected by the new requirement should now assess the impact of this new filing requirement on their business and take immediate action to deal with this new requirement.

Affected companies should start considering the impact that this new reporting requirement will have for them in terms of: (i) who will be taking responsibility for collating the data; (ii) whether internal reporting systems can provide the necessary data or whether changes are required; and (iii) what will the data output look like and whether the allocation of group profits is consistent with the functional profile of the relevant group companies. Companies should consider undertaking a "dry run" of the CbC report now to understand what issues are likely to arise and plan ahead and deal with these issues before the first reports are filed.

The introduction of CbC reporting is one of the first BEPS actions to affect multinationals and the expectation is that significant resources will be required to ensure the data can be compiled, particularly in the first year. Going forward, tax authorities globally will get a more informed, broader view about a multinational group's operations and where profits are allocated. While the OECD have emphasised that the CbC report is to be used for assessing transfer pricing risks and not as a basis for proposing transfer pricing adjustments, only time will tell how individual tax authorities will use this information. At a minimum, we would expect that local tax authorities will raise queries once they review the CbC reports to assist in their understanding of the data and how it reconciles to information they already have, such as information from financial statements and tax filings.

The bill includes enabling legislation to facilitate the introduction of Country-By-Country Reporting ("CbC") into Irish domestic law

Ireland is one of the first countries to announce its intention to introduce CbC reporting into local law. CbC reporting will be included in the updated Chapter V of the next version of the *OECD Transfer Pricing Guidelines* which are expected to be released in 2016 or 2017. What is not included in the Finance Bill is details in relation to updating the Irish transfer pricing documentation requirements in line with the new two-tier Masterfile/Local File approach, as detailed in the Action 13 final report and new Chapter V. However, companies will still need to be aware of other local country documentation requirements, especially where the new OECD documentation approach will be adopted elsewhere, as there may still be a requirement to prepare a Masterfile and Local File for other jurisdictions. Unlike CbC, the Masterfile and relevant Local File(s) will be submitted to local tax authorities and not centrally filed.

Employment tax

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The main measure introduced from an employer perspective is in the area of expenses of travel for non-executive directors. Section 6 of Finance Bill 2015 has introduced a new section of legislation (Section 195B Taxes Consolidation Act 1997) that exempts expenses of travel and subsistence incurred by a non-resident, non-executive director solely for the purpose of attending meetings in his or her capacity as a director. The position for Irish-resident, non-executive directors remains the same, in that their expenses of travel to board meetings are taxable.

Separately, the small benefits exemption, which previously was based on a Revenue concession, is to be given a legislative basis. Section 112B of the *Taxes Consolidation Act 1997* introduces the concept of a "qualifying voucher" and exempts the benefit from the charge to tax. A qualifying voucher is one which is provided once in any year of assessment, cannot be converted into cash, and does not form part of a salary sacrifice arrangement. The voucher cannot exceed €500, which doubles the previous amount allowable of €250.

Other provisions include the implementation of the reduced Universal Social Charge rates announced in the Budget, increased Revenue powers to obtain information about taxpayers and some minor changes to the list of relevant authorities who can provide for employment law compensation payments exempt from income tax.

Companies that have non-resident, non-executive directors will be affected, as will employers who provide one-off small benefits to their employees.

The above changes come into effect from 1 January 2016. However, in the area of non-executive directors' expenses, there is uncertainty whether companies should follow this approach for 2015, given the clear aim and intention of the new legislation. Companies should review their position in relation to these expenses and discuss with their advisers in relation to next steps.

The change to the small benefits exemption should encourage employers to look at their use of such awards as there are significant employer PRSI savings for large companies, while providing employees with a tax-free benefit.

With the Budget providing for a €75 million increase as a result of increased Revenue audits, it is no surprise that enhanced Revenue powers, allied with enhanced technology and data analytics capabilities, were included in the Finance Bill. Employers should review their PAYE payroll compliance position and conduct a formal review to ensure that they can appropriately deal with any potential Revenue audit.

The change regarding the expenses of non-resident, non-executive directors is a positive provision for FDI investment into Ireland and provides certainty and a practical solution for companies that use foreign-based directors in order to bring additional expertise, insight and corporate governance to their organisation.

There were no provisions dealing with "normal place of work" and an opportunity was therefore missed to address growing confusion in this area

It does create an anomaly that Irish non-executive directors will potentially be treated differently to non-resident directors. For example, an individual travelling from Galway to Dublin is taxable on such expenses, whereas an individual travelling from San Francisco to the same meeting would not be taxable on similar types of expenses. It will be interesting to see if this is reviewed as the Finance Bill progresses through the various legislative stages.

Overall though, this clarity around expenses is a positive step for Ireland Inc and will be welcomed, particularly by the FDI community, but also by the many large Irish companies who utilise the expertise of foreign-based non-executive directors.

There were no provisions in the Finance Bill dealing with the concept of the "normal place of work" and an opportunity was therefore missed to address growing confusion in this area due to new ways of doing business, such as remote working. The absence of any positive administrative changes to the SARP regime is also unfortunate.

Real Estate

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As expected, there are no significant changes included in the Finance Bill for the real estate and construction sector. There was an opportunity to reduce VAT on housing for a period, but unfortunately this has not materialised.

A number of welcome, but minor, changes affecting the sector have been included in the Finance Bill, including the extension of the Home Renovation Scheme until 31 December 2016 and the extension of the Employment and Investment Incentive (EII) scheme to certain upgrade works on nursing homes and other residential care units.

The Home Renovation Scheme provides a tax credit to certain landlords and homeowners who spend between €4,406 and €30,000 on renovating or improving their properties. It was originally intended that the scheme would cease at the end of 2015, but the Finance Bill proposes to extend it until December 2016. This is a positive step in terms of employment in the sector.

The extension of the EII scheme provides that companies that already own and operate nursing homes can raise EII funding in order to extend the nursing homes or residential care units associated with that nursing home. This is a welcome development and should result in additional space being available to meet demand in this area together with providing finance to meet regulatory standards.

An amendment has been included to the effect that a vendor of houses or apartments with a consideration of less than €1 million is not required to obtain a CG50 tax clearance certificate. The amendment increases the threshold from €500,000 to €1 million. This is certainly a welcome change, but in our view does not go far enough. The purpose of the tax clearance procedure is to ensure that non-resident vendors cannot escape Capital Gains Tax, but in practice the procedure applies to all sales over €500,000 regardless of whether the vendor is resident or non-resident. In our view, this results in an unnecessary administrative burden that should be addressed in the future.

Non-residents are subject to Irish CGT on the disposal of shares deriving their value or the greater part of their value from Irish land and buildings. Section 34 of the Finance Bill amends section 29 to counter a scheme whereby cash is transferred to a company prior to a disposal of shares in that company so that at the time when the shares are disposed of, the value of those shares is derived mainly from cash rather than land or buildings situated in this country.

The Finance Bill does not in our view go far enough to assist with the undersupply of housing and other issues facing the sector

The powers of Revenue to request certain information of property agents/managers, the HSE and local authorities has been extended. In particular, Revenue can request property agents to provide the tax reference number of landlords and the Local Property Tax (LPT) number in respect of any property managed. Revenue can also require the HSE and local authorities who pay rent or rent supplement to provide the LPT number in respect of each property in respect of which it pays rent or rent supplement.

Overall, while there are a number of welcome changes, the Finance Bill does not in our view go far enough to assist with the undersupply of housing and other issues facing the sector. While tax reliefs in themselves may not solve the issues facing the sector, they can acts as part of a stimulus on the road to recovery.

Pensions

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There was no amendment to the Pension changes that had been previously outlined in the Budget. Therefore, the following will come into effect following passage of the Finance Bill:

- All State Pensions will increase by €3 per week
- The Pension Levy will not continue into 2016
- The reduction in the Universal Social Charge (USC) will make personal pension contributions more tax efficient for employees and the self-employed alike.

There was also a welcome addition regarding employer contributions to Personal Retirement Savings Accounts (PRSAs) no longer creating a Universal Social Charge (USC) liability for the employee. This change is something we called for in our pre-Budget submission and, while it is welcome, in our opinion it does not go far enough. Employer contributions to a PRSA will still reduce an employee's annual personal funding capacity, making an occupational pension scheme still the superior pension vehicle. In addition, this change does not apply to the self-employed. Indeed, it is unfortunate that instead of closing the gap between pension-related tax relief afforded to employees and the self-employed, this change further widens the gap.

Broadly speaking while the changes that have been introduced are largely positive, it is disappointing that the Government did not address easing the connected party rules, introduce Approved Retirement Fund (ARF) access to Buy Out Bonds which originated from Defined Benefit schemes, index the Standard Fund Threshold (SFT) or Personal Fund Threshold (PFT) in line with inflation or enhance the tax-efficient pension funding options of the self-employed. Over the longer term, it is hoped that the Government will deliver a roadmap for reform of the Irish pensions system to ensure the long-term viability of Irish pensions and the retirement income they provide.

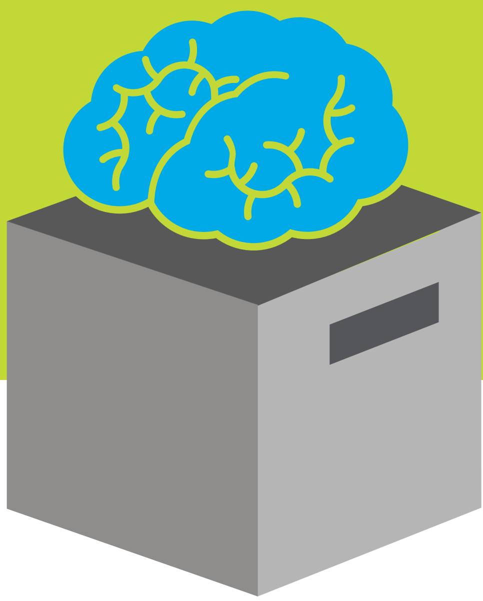
Employer contributions to a PRSA still reduce an employee's personal funding capacity, making an occupational pension scheme still the superior vehicle

Multinational companies/ Knowledge development box

Finance Bill 2015 introduced the Knowledge Development Box (KDB), which was announced by Minister Noonan in Budget 2016. Some key features of the new regime are as follows:

- Qualifying activities for the purposes of the KDB regime will be regarded as a specified trade. In allocating income and expenses to the specified trade, such allocation must be made on a just and reasonable basis. In the case of embedded royalties, an apportionment of income must be made based on the portion of the underlying value that is attributable to the 'qualifying asset'.

  In our view, this may prove to be extremely challenging to apply in practice given the subjective nature of attributing value to a specific IP component forming part of a product or service. While formal transfer pricing only applies to companies within scope, the basis for attribution of profit suggests use of a transfer pricing method to determine the value split
- Interestingly, provision is made that the specified trade shall be treated as a separate trade for certain purposes, but not s291A TCA 1997. Opportunities may exist for otherwise 'trapped' losses in onshore IP trades to be utilised against KDB profits
- Provision is made for certain assets to be grouped together as a 'family of assets' where it is reasonable to conclude that that it would not be possible for the company to determine the overall income or expenditure attributable to an individual IP asset – again this, in our view, is another subjective measure that may be difficult to apply in practice
- The 6.25 per cent effective rate is achieved through the granting of a special deduction of an amount equal to 50 per cent of specified profits. Provision is made in order that this enhanced deduction cannot increase the repayable R&D credit that would otherwise be available
- Documentation requirements are introduced to provide that appropriate documentation will need to be kept demonstrating the basis of any KDB claim – this will underpin the importance of having appropriate TP documentation in place for companies availing of the KDB
- The rules regarding qualifying IP assets are somewhat relaxed for smaller companies with qualifying IP income of less than €7,500,000.



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The KDB will be relevant for all companies that acquire or develop qualifying IP assets, namely patented inventions or copyrighted software programmes.

Companies should now seek to determine whether the KDB will be relevant for their business and, where applicable, seek to tailor their internal systems to activate the necessary capabilities that will be required to capture the data needed to compute the KDB relief that may be available. The tracking and tracing and documentation requirements are, in our view, extremely onerous and this should be factored into the decision as to whether to claim relief under the KDB or to avail of existing alternative reliefs that may be available.

The introduction of the Irish KDB regime is welcome, although the narrow scope of IP assets that qualify for the regime ultimately will result in limited uptake outside of the patented pharmaceutical industry and technology sectors, and potentially will be of more benefit to the indigenous sector than the MNC sector.

The constant weekly focus on tax internationally through the OECD's BEPS process and the EU's own agenda means that Ireland must walk a fine line between its commitment to engagement on the various Actions that it has demonstrated so far and its ability to attract and maintain new investment. To date, Ireland has had great success in doing so. The KDB is, however, unlikely to be of benefit to FDI and in contrast may be of significant benefit to indigenous industry and entrepreneurs, both deepening and widening that pool. However, as a solution for medium- to long-term FDI, further work needs to be done on what is potentially available for global companies, such that investment is not diverted to competitor countries such as Singapore.

The narrow scope of IP assets that qualify for the KDB regime will result in limited uptake outside of the patented pharmaceutical industry and technology sectors

Financial Services

Attracting talent to Ireland is and will continue to be crucial to the future growth and success of the financial services sector in Ireland. It will be even more so in a post-BEPS environment where substance and having the right people located in Ireland will be important factors. When considering to locate in a particular country, senior executives clearly consider a number of criteria and high on the list is the rate of personal tax. Given this, the proposal to decrease the rates of the Universal Social Charge (USC), while not specifically targeted at such individuals, is helpful in reducing the overall effective rate of personal tax in Ireland. However, more needs to be done in this area to ensure that Ireland succeeds in attracting senior executives and is considered an attractive location when compared to other competing countries.

Non-executive directors (NEDs) also serve a vital function on Boards of Irish companies in respect of enhancing and maintaining good corporate governance and regulation. It is important that our tax code does not deter experienced individuals from assuming these critical positions. Irish companies need to be able to attract high-calibre non-executive directors in this area. The financial services industry has for some time now lobbied for an amendment to the law in respect of expense payments for NEDs. Given this, the proposed amendment to the law such that expenses of travel and subsistence incurred by non-resident non-executive directors for the purposes of attendance at relevant meetings should be exempt from income tax and USC is a very welcome change. It does, however, create an anomaly that Irish non-executive directors will potentially be treated differently to non-resident directors.

The banking sector, which is just beginning to emerge from what was a well-documented difficult period, will not be pleased to see the proposed extension of the banking levy to 2021, which was announced in the Budget. However, there is a positive change for banks seeking to raise debt which constitutes Tier 1 capital for regulatory purposes under the Capital Requirements Regulation. In the past, Irish Revenue have taken the position that interest on debt which constitutes Tier 1 capital from a regulatory perspective is not tax deductible. The Finance Bill is introducing law which means a coupon in respect of Additional Tier 1 instruments should be regarded as interest and shall not be regarded as a distribution. The proposed amendment brings legislative clarity to the tax treatment of such Tier 1 capital instruments and is an amendment that will benefit the banking industry.

For the investment management industry, there are a number of favourable amendments

The Finance Bill also introduces legislation to give effect to country-by-country reporting, which is one of the key measures which is being introduced as a result of the OECD's BEPS project. Multinational companies, both Irish-headquartered and foreign groups with Irish operations, with global revenues in excess of €750 million will be required to file a country-by-country report for accounting periods commencing on or after 1 January 2016. The €750 million threshold will be applied on a preceding year basis. The first reporting will be the 2016 financial year. The deadline for filing the country-by-country report is 12 months after the end of the accounting period, for example, 31 December 2017 for 31 December 2016 financial year ends. Companies should be considering the impact the increased transparency will have and whether internal systems and processes will need to amended to meet the increased reporting requirements. Importantly, groups and companies will need to consider the commercial implications that this increased transparency will entail; in particular, in terms of the increased tax scrutiny from domestic and foreign tax authorities.

The introduction of the new Knowledge Development Box (KDB), where qualifying profits will be subject to tax at a 6.25 per cent rate, is something that financial services companies should consider. The KDB will be implemented in accordance with the OECD's 'modified nexus' approach. Broadly, qualifying expenditure means expenditure on a qualifying asset that is incurred in carrying out research and development activities in an EU Member State. Qualifying assets in this regard includes copyrighted software and patented inventions. The amount of income qualifying for relief is based on a proportion of the qualifying expenditure divided by the overall expenditure incurred to develop the IP asset. Qualifying expenditure is boosted by an additional

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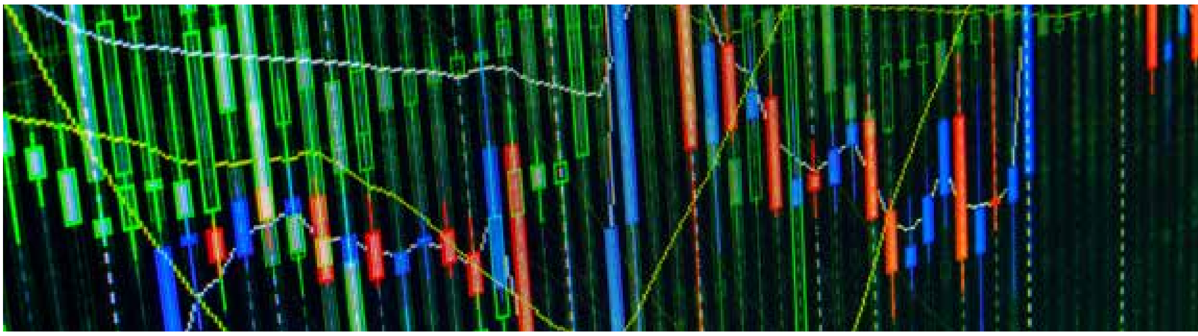

uplift, which provides that qualifying expenditure may be increased by the lower of either 30 per cent of such expenditure or the aggregate of acquisition costs and group outsourcing costs. While the relevant assets and expenditure qualifying for relief may not be as broad as hoped for, the benefits that the Irish tax regime offer in relation to intellectual property and research and development have not in all cases been maximised by the financial services sector. For example, the fintech sector is one which continues to show growth and is projected to be a strong growth area in financial services in the future in Ireland, and it has the potential to harness the tax benefits of the Intellectual Property and R&D regime in Ireland.

For the investment management industry, there are a number of favourable amendments. The bill includes an amendment broadening the definition of "collective investment undertaking" to include authorised Irish Collective Asset-management vehicles (ICAVs) to ensure the Ireland/USA Double tax agreement applies to such vehicles. An amendment to Section 1035A is also included to clarify that a non-resident investor in an Alternative Investment Fund (AIF) will not be brought within the charge to Irish tax in respect of profits or gains arising from the fund as a result of the AIF being managed by an Irish AIF manager. Separately, an anti-avoidance law is being introduced to ensure that CGT reconstruction relief and group relief are not available where assets are transferred into an ICAV (which benefits from the "gross roll up" regime where tax is applied at the investor level rather than the fund level). This is aimed at preventing the avoidance of CGT by transferring assets to such entities.

The aviation leasing industry continues to be an important and growing sector in the context of the financial services industry in Ireland. The introduction of industrial building allowances for buildings for the purposes of the maintenance, repair, overhaul or dismantling of aircraft should further enhance an already attractive regime which exists for the aviation leasing industry in Ireland.

The Finance Bill also confirms the introduction into Irish law of the revised Directive on Administrative Co-operation, which implements the OECD Common Reporting Standard (CRS), which will impose reporting obligations on financial institutions broadly to report information in respect of non-resident account holders from relevant countries, similar to requirements that apply in the context of existing FATCA reporting. The proposed amendment also provides for the repeal of the legislative provisions relating to the EU Savings Directive (the repeal to come into operation by Ministerial Order).

Overall, a number of amendments have been introduced that have been lobbied for, which is a positive step. In addition, the bill also includes a number of new anti-avoidance measures that are of relevance to the financial services industry.

Ireland needs to ensure that the environment that we offer is attractive to the financial services industry and compares favourably to competing jurisdictions in the context of a number of factors including for example talent, regulation, technology and infrastructure. The tax regime, both at a personal and corporate level, also plays an important role as part of that overall environment. In the context of personal tax, we need to ensure that the effective rate of personal tax is competitive and attractive so that Ireland is top of the list when senior executives are considering where to relocate. From a corporate tax perspective, while the 'headline' rate is important, the overall tax regime and the benefits the regime offers needs to be supportive of business, while also acknowledging that the tax environment in a post-BEPS world may be different to that which has previously applied.

Indirect taxes/VAT

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All private sector providers of educational services outside of a formal classroom setting will be affected by the Finance Bill

There was one VAT change of significance in particular in the Finance Bill, detailed below, and a range of minor indirect tax changes.

VAT Exemption for Educational Services

All private sector providers of educational services outside of a formal classroom setting will be affected by the Finance Bill. The VAT exemption that applies to educational services, vocational training and retraining has been modified to significantly limit the VAT exemption applicable to educational services provided by the private sector outside of a class room setting. The unheralded change will initially hit vocational training and education provided by the private sector and results in the application of VAT at 23 per cent, whereas these services were exempt from VAT before. While there is a provision to allow VAT to be applied to the public sector, if the change results in distortion of competition to the detriment of the private sector this change will inevitably lead to the erosion of VAT exemption on vocational education across the private and public sector.

Businesses that avail of the exemption should establish whether their educational activities will continue to be exempt from VAT. Where the exemption does not apply, they will have to register for VAT, with all that that involves. Additionally, those business will have to revisit their pricing structure to take account of the requirement to charge their customers VAT.

This will have a major impact for those business that will no longer be able to avail of the VAT exemption and will drive up costs for students. It will also be a barrier to those seeking to develop this sector.

Other measures - Oil and Gas

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An Oireachtas report published in May 2012 reviewed the oil and gas industry to ensure that it would benefit the Irish people and to balance the need to incentivise the industry with the tax take for the community. This change in tax law legislating for a new tax called Petroleum Production Tax (PPT) has its origins in that report and increases the effective Irish tax rate on petroleum production companies, in respect of authorisations first awarded after 18 June 2014. It replaces the Profit Resource Rent Tax. Almost all of the definitions contained in tax law to date flow through into this law. PPT is computed on a field-by-field basis.

The maximum marginal tax take combining existing corporation tax of 25 per cent and PPT will be 55 per cent. The tax is structured such that there is a minimal PPT payment of five per cent of gross revenue net of transportation costs in each year of production.

Companies affected include petroleum production companies. The question is: What will be the incremental tax take under these new provisions as notwithstanding significant advances in technology for petroleum production? Vast areas of the Irish offshore remain both available and very difficult for the industry to explore. Industry knowing the best areas to target will be an important determinant for seeing incremental tax take flow into the Exchequer.

Companies affected should build into their cash flow-modelling and projections the additional tax cost for the purposes of projecting margin, adherence to debt covenants and, depending on the impact, may need to consider further their refinancing plans.

It is an interesting time for the Irish government to introduce such additional tax. When the global energy and resource companies are under substantial financial pressure worldwide, due to the paradigm shift in pricing of oil in the last two years and with no substantial short- to medium-term price increase likely, there are concerns about their ability to repay debt on borrowings and indeed to refinance their large asset bases, which refinancing is linked to the market price expectation and cost base. Additional tax places a further cost burden in a time of considerable stress.

The maximum marginal tax take combining existing corporation tax of 25 per cent and PPT will be 55 per cent

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