Finance Bill 2020
Recapturing Ireland’s future.
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In his Budget speech delivered on 13th October 2020, the Minister for Finance announced the single largest budgetary package in the history of the State. In light of the ongoing challenges presented by Brexit and the COVID-19 pandemic, the size and scale of Government response is unprecedented. Alongside the funding measures announced, the Minister also introduced a net tax package of €270million. Finance Bill 2020, published on 22 October 2020, provides the legislative basis for such tax measures.
It is unsurprising therefore that the measures contained in Finance Bill 2020 reflect the key themes of resilience and recovery alluded to by the Minister on Budget Day, with a particular focus on the international tax agenda, supports for business and environmental concerns.

The Bill includes measures such as:

- A range of measures to support Small and Medium Enterprises (SMEs) including revisions to the existing capital gains tax (CGT) entrepreneur relief and the introduction of the new COVID Restrictions Support Scheme ("CRSS") to provide targeted support for businesses impacted by COVID19 restrictions.
- Tax measures to address climate change including an increase in carbon tax.
- Relatively limited personal tax changes, reflective of the Minister’s speech regarding personal tax rates and rate bands, primarily focused on the Universal Social Charge.
- Measures to support and enhance Ireland’s “knowledge economy”; through a two year extension of the Knowledge Development Box regime.
- Amendments to Ireland’s intangibles tax regime (s.291A), such that assets qualifying for the IP tax depreciation regime, and acquired on or after 14th October 2020, will now fall fully within the capital allowances clawback regime. The position whereby a clawback of prior tax depreciation claimed did not arise once the IP assets had been held for more than 5 years has been withdrawn.
- Extension of the duration of the enhanced Help to Buy scheme until the end of 2021, previously introduced as a temporary measure. Reduction of the VAT rate relating to supplies in the tourism and hospitality industry (including entertainment services) from 13.5% to 9%, as announced on Budget Day.

In the prior year, Finance Act 2019 provided for the adoption of anti-hybrid rules. The anti-hybrid rules, required under the EU Anti-Tax Avoidance Directive, are complex in nature, and practical application of the rules can be challenging. Notwithstanding an extensive period of consultation in 2019 on the provisions, the complex nature of the rules has necessitated amendments introduced by Finance Bill 2020 to clarify operational aspects of the law.

A similar approach is evident with respect to the revised Irish transfer pricing regime, applicable from 1 January 2020. Finance Bill 2020 provides for additional amendments to the transfer pricing provisions and EU Mandatory Disclosure rules, to ensure that certain aspects of the legislation operate as intended.

Notably absent from the Finance Bill 2020 was any reference to interest restriction rules required as part of the EU Anti-Tax Avoidance Directive. Per the Minister’s speech on Budget Day, such rules are expected to be introduced by 1 January 2022.
Overall comments

Our view
Finance Bill 2020 is reflective of the policy decisions outlined by the Minister in his speech on Budget Day, and adopts the key themes of resilience and prudence in fiscal matters. Government focus is correctly on measures to protect lives and livelihoods, and this is not a time for austerity. These priorities have been generally reflected in the approach to tax measures adopted in Finance Bill 2020. The deferral of new rules to restrict tax relief for interest expense is welcome, given the potential impact on the cost of borrowing for business.

The enhancements to CGT entrepreneur relief and the introduction of the CRSS are particularly welcome in light of the challenges faced by SMEs due to the COVID19 pandemic, and reflect previous policy decisions to support such sectors. Equally, the reduction in the VAT rate for hospitality related sectors is an important measure to support key sectors of the economy.

In terms of the tax measures to encourage investment and employment, the enhancements contained in Finance Bill 2020 are welcome developments. There are also positive policy soundings on looking at further enhancements that can be made to investment incentives and the development of a digital gaming credit incentive. However, in light of the continuing high marginal tax rate faced by individuals, the taxation of work will remain a key policy area that will require focus in the years ahead.

For further details on the above and other new measures included in Finance Bill 2020, we invite you to view our articles and commentary analysing the Bill on our website.

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

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Details not announced in Budget 2021
Finance Bill 2020 contains details that were not included in the measures announced on Budget day, which include:

- **Technical updates to transfer pricing, anti-hybrid, controlled foreign company and mandatory reporting regimes to ensure that the relevant provisions operate as intended.**

- **Amendments to broaden the reporting requirements of employers in respect of share awards to employees and directors.**

- **Increase in Bank Levy rate to maintain a consistent yield to the Irish Exchequer.**

- **Provisions to modernise the Professional Services Withholding Tax regime, (subject to Ministerial Commencement Order).**

- **VAT measures granting Revenue the power to require non-established traders to appoint a tax representative with joint and several liability.**

- **Increase in the rate of encashment tax to 25% with an exemption for Irish companies within the charge to Irish corporation tax.**

- **Amendments to facilitate increased efficiency in the tax appeals process.**

- **Consolidated amendments relating to the post-Brexit migration of Irish shares and securities to an EU central securities depository.**
Individuals

The Finance Bill implemented many of the announcements made in the Minister’s Budget Speech in respect of individual taxation and entrepreneurs.
These include the following:

- The increase in the earned income tax credit to €1,650
- The amendment to CGT entrepreneur relief to provide that relevant individuals who held shares in a company can qualify for the relief if they owned those shares in any three years prior to the disposal (subject to all other conditions being met)
- The support scheme for business impacted by Covid restrictions referred to as the Covid Restrictions Support Scheme or “CRSS”. The scheme will apply where business can show that their turnover has fallen to a level where it is no more than 25% of the average weekly turnover of the business in 2019 (or 2020 in the case of a new business). A claim can be made of up to 10% of the first €20,000 of average turnover plus 5% thereafter, up to a total refund of €5,000
- By way of example, a business that is closed due to Covid restrictions for a period of 6 weeks, which had an average weekly turnover in 2019 of €15,000 should be eligible for a refund of €9,000 (i.e. 10% of €15,000 multiplied by the 6 week closure period)
- Tax debt warehousing has been extended to include the balance of income tax due by relevant individuals for 2019 and also preliminary tax for 2020. Warehousing can apply where it can be shown that the individuals 2020 income is reduced by at least 25% compared to their 2019 income. No interest is payable for the first year following the filing deadline. A rate of 3% per annum applies thereafter (rather than the 8% that would normally apply)
- In respect of capital acquisitions tax it will now be mandatory that a CAT return be filed in all situations where agricultural relief or business relief is being claimed, even where the taxable value of those benefits does not exceed 80% of the tax free threshold. Generally, a CAT return is only required to be filed where the taxable value of gift or inheritance exceeds 80% of the relevant tax free threshold for CAT
- Stamp duty farm consolidation relief has been extended to 31 December 2022 to come in line with the equivalent provisions for capital gains tax

Individuals

Our view
Overall there were very few surprises in the Finance Bill with respect to individuals and entrepreneurs. Most of the measures announced in the Budget have been provided for largely as expected, other than a number of technical changes to various provisions. The Minister announced in the Budget that a review of the employment incentive and investment scheme would take place to ensure it is fit for purpose. No provision has been made in the Finance Bill in this regard but we look forward to the outcome of this review.

Given the current funding difficulties that many businesses are facing, it would have been welcome to see provision for incentives for investors to invest in business in the SME sector in the short to medium term. Such incentives might include a reduced rate of CGT for gains arising on such investments. Obtaining bank financing is a considerable challenge for many businesses at the moment and so incentivising investors with funds...
available to invest in our domestic economy through the SME sector would have been a welcome development.

The introduction of CRSS is a welcome measure and will provide vital funding support for hard hit business. Such business are under huge pressure to meet funding requirements such a loan/rental costs and so the availability of funding through CRSS will provide an element of welcome relief.

The measures to support tax payers through the tax warehousing provisions are welcome. Cash flow is an acute issue for many people at the moment, particularly business owners who have been impacted by Covid restrictions. As such being able to warehouse tax liabilities even for the short term is a welcome relief to many. However, for some people who have significantly reduced income in 2020, they might opt to pay their preliminary tax based on 90% of the current year rather than basing it on 100% of 2019. As such they may have little to no preliminary tax liability for 2020 and so the impact of the warehousing scheme may be minimal for some.

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Global Mobility & Employment Taxes

There are several annual reporting obligations for employers who operate share schemes for their employees which are normally due by 31 March following the end of the relevant tax year.
Finance Bill 2020 extends the scope of the reporting requirements for employers to include:

- awards given to directors and employees in the form of a cash equivalent of shares;
- where a discount on shares is provided.
- This is in addition to the existing technical requirements to report share awards made to employees and directors which currently are processed through payroll.

The Finance Bill provides for mandatory electronic reporting of the information in a format prescribed by Revenue.

The Finance Bill also amends the existing reporting requirements for the award of convertible securities, restricted shares and forfeitable shares to provide for mandatory electronic reporting of these awards.

Our view
This amendment means that all share award and cash equivalents are now reportable to Revenue.

Employers have been required to provide information in relation to share option awards in electronic format on Form RSS1 for a number of years. The extension of mandatory electronic reporting to other share awards is therefore unsurprising and is a further step in the digitisation of Ireland’s tax system.

In general, Revenue have not expected share award plans which are accounted for through the PAYE system to be reported separately. It remains to be seen whether the administrative burden on employers will be increased by extending the reporting on Form RSS1 to include share awards which have already been taxed via payroll.

Unfortunately the Finance Bill did not make any amendment to the Key Employment Engagement Programme (KEEP) to encourage a wider uptake of the scheme or make any broader changes to the taxation of share schemes for domestic and foreign MNCs who do not fall within the criteria for KEEP. In the current climate this may have been wishful thinking but it is hoped that the Government may focus on the area of reward in the future.
Global Mobility & Employment Taxes

Covid Employer Supports
The Finance Bill amends the Emergency Measures in the Public Interest (Covid-19) Act 2020 to include proprietary directors within the Employment Wage Subsidy Scheme (EWSS) from 1 September 2020.

In the July Jobs Stimulus Package the government announced that they would defer or warehouse unpaid VAT and PAYE debts arising from Covid-19 for a period of 12 months after the business reopens therefore no interest will be charged during this time. In addition, a lower interest rate of 3% p.a. will apply to the repayment of the warehoused debts after that date. Finance Bill 2020 provides that these warehousing provisions will apply to excess Temporary Wage Subsidy Scheme Payments (TWSS) received by an employer which must be refunded to Revenue.

All taxpayers dealt with in Revenue’s Personal and Business Division will automatically qualify for the warehousing arrangements. Other employers must notify Revenue to advise that they cannot repay the TWSS.

It is important that taxpayers continue to file returns for all taxes and maintain current tax payments in order to avail of the reduced interest rates.

Our view
The blanket exclusion of proprietary directors from the EWSS scheme had been widely criticised by business owners. In a welcome move the Minister for Finance announced last August that the wage subsidy would be payable in cases where the proprietary director actively worked in the impacted business. The Finance Bill now gives legislative effect to this change and provides that the subsidy may be paid in respect of a proprietary director who was on payroll in the period from 1 July 2019 to 30 June 2020.

At a time when employers are dealing with the impact of Level 5 restrictions on their businesses they may also be faced with the news that they have been overpaid subsidies under TWSS when Revenue completes the reconciliation process in the next few weeks. The inclusion of the excess TWSS payments in the tax warehousing arrangements will provide a measure of relief for employers in these difficult times.

It was disappointing that the Finance Bill did not include any measures in relation to the various employment related Covid concessions which have been introduced over the last few months. The Special Assignee Relief Programme is a valuable relief that encourages skilled individuals to relocate to Ireland by providing an income tax exemption for earnings in excess of €75,000 up to a cap of €1m. As a result of remote working arrangements individuals may now find it difficult to avail of some of the technical conditions of the relief and it is uncertain whether any relaxation of these conditions will apply. In relation to the wider employment tax matters employers and employees alike would appreciate some clarity on when these concessions are likely to end.
Foreign Direct Investment & Transfer Pricing

Ireland Inc. and Foreign Direct Investment
From a corporate tax perspective, Budget 2021 made it clear that international tax developments at EU and OECD level continue to dominate the corporate tax agenda.
The Minister of Finance noted in his speech that further work is needed at international level and he expects that this work will reach a crucial stage next year, where decisions will be needed and the future direction of the global and European corporate tax landscape will be decided upon.

Although Budget 2021 did not provide for any new EU/OECD measures to be transposed into Irish tax legislation by way of Finance Bill 2020, the Minister did signal a number of updates to our existing legislation to ensure our existing rules are fully consistent with international best tax practice. As expected, these changes, which are of relevance to Ireland Inc., are now included in Finance Bill 2020.

IP Allowance Regime
The existing rules which provide tax relief on the acquisition of qualifying intellectual property (i.e. S291A Relief) have been amended in Finance Bill 2020 to ensure that Ireland’s tax regime for intellectual property, remains in line with international standards. Prior to this amendment, where a company disposed of, or ceased to use a qualifying intangible asset in the trade, more than 5 years after the beginning of the accounting period in which the asset was first provided for the trade, a balancing charge would not arise. Finance Bill 2020 provides for an amendment to these rules such that disposals of any assets, which were acquired on or after 14th October 2020, will now be subject to a balancing adjustment to effectively claw back relief previously given where the proceeds received exceed the tax written down value. Such a move aligns the IP allowance regime with other forms of relief for capital assets. In light of the financial resolutions published following Budget 2021, this amendment to our IP allowance regime is effective from 14th October 2020.

Finance Bill 2020 also provides for the extension of the Knowledge Development Box (KDB) in line with the announcement in Budget 2021. The KDB, an OECD-compliant intellectual property regime, which was introduced in 2016 will be extended for a further two years until 1 January 2023.

Other EU Anti-Tax Avoidance (ATAD)/OECD measures
A measure previously transposed into Irish tax law was the ATAD-compliant Exit Tax regime. This regime introduced by Finance Act 2018 provides for an Exit Tax to be imposed on capital gains arising on certain transfers of assets between jurisdictions and where a company ceases to be Irish resident for corporation tax purposes. In line with the announcement made in Budget 2021, Finance Bill 2020 includes a technical amendment to the Exit Tax legislation to ensure that provisions relating to the calculation of interest on instalment payments of Exit Tax operate as originally intended. In light of the financial resolutions published following Budget 2021, this technical amendment is effective from 14th October 2020 and applies in respect of Exit Tax which remains unpaid on or after 14th October 2020.

Finance Bill 2020 has also amended the Controlled Foreign Companies (CFC) rules introduced into Irish tax legislation by Finance Act 2018, by inserting a new section, which provides that certain exemptions (i.e. the effective tax rate exemption, the low profit margin exemption and the low accounting profit exemption) which can apply to exempt a charge arising under the CFC rules, will not apply for an accounting period of a CFC where that CFC is resident in a jurisdiction which is listed on the “EU list of non-cooperative jurisdictions for tax purposes”. This new section will take effect in respect of accounting periods of CFC’s beginning on or after 1 January 2021.

Foreign Direct Investment & Transfer Pricing
An amendment has also being made in Finance Bill 2020 to the anti-hybrid rules, which were introduced by Finance Act 2019 in line with Ireland's commitments to implementing the EU ATAD. The amendments ensure that the anti-hybrid rules operate as intended by: amending a technical error in the definition of associated enterprises to ensure compliance with ATAD; amending provisions relating to the timing of the test of association to address unintended consequences of the current legislation; providing that certain anti-hybrid rules do not apply where there is no economic mismatch outcome because a charge to tax arises under a CFC regime, and clarifying the application of one of the anti-hybrid rules where the participator is a tax exempt entity.

Finally, the EU mandatory disclosure regime which was introduced into Irish tax legislation in Finance Act 2019 and which requires intermediaries and taxpayers in certain circumstances to make a return to Irish revenue of information regarding cross-border arrangements has been updated in Finance Bill 2020. This update is to provide clarification on a number of points, such as: the taxes which are within scope of the regime; the availability of a filing exemption where another intermediary files the same information in another member state; the circumstances in which a person who obtains or seeks to obtain a tax advantage from a reportable cross-border arrangement will be a chargeable person; and where the reporting obligations fall when an intermediary is exempt from filing due to legal professional privilege.

Our view
While the impact of the new amendment to our IP allowance regime (i.e. S291A Relief) should not stand as a barrier to companies carrying on activities associated with the effective management of intellectual property, and puts intangible assets on an equal footing with plant and machinery assets, it does represent a tightening of the rules in comparison to previous years. Nevertheless, Ireland remains a competitive location for the carrying on of activities in connection with intellectual property and will likely continue to be able to compete on the world stage for foreign direct investment. It is also welcomed that the Finance Bill confirms that the new rules will only apply with respect to acquisitions of IP on or after 14th October 2020 as this gives certainty to taxpayers with respect to existing intangible assets.

Transfer Pricing
The main transfer pricing changes which impact taxpayers were introduced last year as part of the modernisation and broadening of the Irish TP rules, which applies for accounting periods commencing on or after January 2020.

Finance Bill 2020 does include some further updates to those rules, specifically dealing with the rules around how certain Irish domestic transactions may be exempt from the new TP rules. This has been an area of significant doubt for taxpayers (as to how the exemption would apply) and the new rules are the latest attempt to provide clarity. These amendments apply for chargeable periods commencing on or after 1 January 2021. In addition, separate guidance from Irish Revenue is also expected before the end of 2020.
With regard to the KDB, this regime supports businesses in retaining and exploiting qualifying assets developed through R&D activities, and will likely play a key role in further developing the knowledge economy as we move into a post COVID-19 world. While the uptake of the KDB since its introduction has been limited, we nevertheless welcome the extension of the relief, in part to give companies a greater opportunity to consider its usefulness and also in gathering data and feedback on the scheme for future consultation.

The technical amendments made in Finance Bill 2020 to Ireland’s Exit Tax regime, the CFC regime and the Anti-Hybrid Rules further demonstrate Ireland’s ongoing commitment to ensuring our existing rules are fully consistent with international best tax practice, whilst also ensuring that Ireland remains competitive.

The Irish transfer pricing continues to be a key focus area as a result of the new rules and updated guidance on the interpretation of the rules. It is important that taxpayers continue to assess the potential implications of these new rules and in particular given the provisions now included in Finance Bill 2020. Finally, the postponement of the introduction of an interest limitation rule as well as reverse hybrid rules until Budget 2022/Finance Bill 2021 is welcomed as it should ensure a comprehensive consultation process with legislators and stakeholders on a complex issue. Continued consultation, dialogue and innovation with respect to the overall tax framework in Ireland will be critical in the years ahead, particularly if we are to compete on the world stage for foreign direct investment.
Indirect Tax (VAT)

The main changes proposed in the Finance Bill are to the rates of VAT that apply to a variety of transactions.
Indirect Tax (VAT)

As announced in the Budget from the 1 November 2020 until 31 December 2021 the reduced VAT rate of 9%, down from 13.5%, will apply to various services in the hospitality and tourism sector including restaurant and catering services, holiday/ hotel accommodation and entertainment services such as admission to cinemas, theatres, museums, fairgrounds and amusement parks. It will also apply to hairdressing services and the sale of certain printed matter such as brochures, maps and programmes.

The Bill contains a number of proposed changes that were not in the Budget. Effective from the 1 January 2021 the VAT rate that applies to certain sanitary products (menstrual caps, pants and sponges) will be reduced from 21% to 0% which is also the rate that applies to sanitary towels and tampons.

Also, the current Revenue concession that extends the 0% rate of VAT to the supply of certain equipment for use in the delivery of Covid-19 to the HSE and certain medical facilities is being formally introduced into legislation. The 0% rate will also apply to sales to NATO forces and effective from June 2022 to supplies to the armed forces of EU countries undertaking a common defence effort under the EU’s Common Security and Defence Policy.

In terms of a VAT rate increase all candles will become liable to VAT at the standard rate, currently 21%, effective from 1 January 2021 which will be an increase for the limited range of candles that currently qualify for 0% VAT.

The support provided to non VAT registered farmers to compensate them for the fact that they cannot recover VAT on their costs, known as the flat-rate addition, will be increased from 5.4% to 5.6% effective from 1 January 2021.

Excise Duty/VRT/ Motor Tax

The Finance Bill provides for the increase in Excise on tobacco products announced in the Budget notably a 50 cent increase in a packet of 20 cigarettes with pro-rata increases in other tobacco products. The minimum rate for cigarettes will amount to the equivalent Excise Duty on a packet of 20 cigarettes thus discouraging the sale of cigarettes in smaller quantities.

The Bill also covers increases in the Carbon Tax element on a range of energy products as announced in the budget including mineral oil, natural gas and solid fuels. Duty on motor fuels was increased from the night of the Budget while other increases will take effect from 1 May 2021.

Waivers of Excise Duty on the renewal of certain liquor licences in the year 2020/2021 are to be implemented in light of the trading difficulties arising from Covid-19.

VRT on motor cars is to be adjusted further under the existing Nitrogen Oxide charging table in accordance with government’s intention to increase taxation on older or dirtier cars. The purpose of the revision is to ensure that CO2 values of used car imports will be aligned with the WLTP test applied to all new cars from the beginning of next year.

Changes are also being made to Excise relief on electric vehicles including the abolition of the relief on electric vehicles with an Open Market Selling Price in excess of €50,000.

Motor tax is also being changed as announced in the Budget and will increase motor tax on cars which are most pollutant. However, rates will remain unchanged for cars in the pre-2008 engine sized regime and most cars in the post-2008 regime apart from the most pollutant. New and second-hand cars registered in the State from 1 January 2021 will effectively be subject to rates based on the new WLTP emissions test.
Our view
We welcome the reduction in the VAT rates for the hospitality and tourism sector and the reduction to 0% in the VAT rate applies to certain sanitary products which should reduce the costs of those products for consumers though only from 1 January 2021. Rather than delay the benefit for those consumers we would ask the Minster to reduce the rate on the sanitary products effective from the 1 November.

The 1 November is the date that the main VAT rate for the hospitality and tourism sector will be reduced from 13.5% to 9%. However, it will have very limited immediate impact due to the Covid restrictions and the benefit will only be felt when the restrictions are lifted and affected businesses can fully reopen for trade. For those businesses the fact that the 9% VAT rate will apply until the 31 December 2021 is welcome however, the economic devastation that Covid has wreaked on the hospitality and tourism sectors provides a very convincing argument for extending the period of the 9% rate beyond the proposed date of 31 December 2021. As we enter into a further period of lockdown we would ask that the Minister consider that the 9% rate would apply at least until the 31 December 2022.

We also welcome the increase in the flat rate addition which should benefit non VAT registered farmers.

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Finance Bill 2020 contains some surprises for certain areas of the financial services sector that were not announced on Budget day.
Financial Services

Bank Levy
Broadly, there is a fixed annual levy of €150 million imposed on certain financial institutions. For the year 2021, the levy is computed in reference to DIRT paid in 2019. To maintain the €150 million yield in 2021, the levy has been increased. Finance Bill 2020 increases the bank levy to 308% of the DIRT paid in the 2019 base year (from its current rate of 170%).

Encashment Tax
There has been some changes made in the area of encashment tax. Firstly, with effect from 1 January 2021, the rate of encashment tax is increased from 20% to 25%. This brings encashment tax in line with the rate of DIRT which was increased last year in Finance Act 2019.

In addition, Finance Bill 2020 provides an exemption to encashment tax for Irish tax resident companies who are beneficially entitled to that income and are (or will be) within the charge to corporation tax in respect of that income. This exemption also applies with effect from 1 January 2021.

Finally, Finance Bill makes provision for certain details that need to be included with the encashment tax return and the details to be retained by the chargeable person. However, these particular changes will only come into operation following a Ministerial Order.

Returns of certain payment card transactions by payment card providers
Finance Bill introduces a reporting obligation on “payment card providers” in relation to certain cross-border payment card transactions which are broadly returns in respect of online credit or debit card payments to non-resident businesses.

Payment Card Providers include licensed banks, payment institutions and the Post Office Savings Bank who broadly issue debit and credit cards. The reporting obligations are detailed and require regulations to be provided by the Revenue Commissioners.

CFC rules
Finance Act 2018 introduced Controlled Foreign Companies (CFC) rules into Irish tax law which applied for accounting periods commencing on or after 1 January 2019. Certain exemptions from CFC rules were available where certain conditions were satisfied.

However, for accounting periods commencing on or after 1 January 2021 some of these exemptions (effective tax rate exemption, low profit margin exemption and low accounting profit exemption) will not apply where that CFC is resident in a jurisdiction which is listed in the EU list of non-cooperative jurisdictions.

As at 22 October 2020, the countries on this list include American Samoa, Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Anti-Hybrid Rules
Finance Bill 2020 makes a number of amendments to ensure that the anti-hybrid rules operate as intended.
Financial Services

These include revisions to the definition of “associated enterprises”, including provisions which consider the timing of the hybrid payments to avoid unintended consequences of existing legislation, and providing that certain anti-hybrid rules do not apply where there is no mismatch outcome due to the application of a CFC tax charge.

Finally, where payments to a hybrid entity arise in circumstances where there is a deduction without inclusion (D/NI) mismatch outcome, Finance Bill 2020 clarifies that a mismatch shall not arise where the participator is an entity that is exempt from tax on profits or gains in that territory.

Domestic Mandatory Disclosure Reporting
The domestic mandatory disclosure rules (“MDR”) are existing provisions which require the disclosure by “Promoters” of certain “Disclosable Transactions” which fall within certain classes of “Specified Transactions” which allow a person to obtain a “Tax Advantage”. Disclosure must be made to Revenue of such transactions and penalties apply where there is failure to comply with these obligations.

Finance Bill 2020 seeks to clarify the date from which such penalties are calculated.

EU Mandatory Disclosure Reporting (DAC6)
DAC 6 was transposed into Irish tax law in Finance Act 2019 and has retroactive application in respect of arrangements entered into after 25 June 2018. Under DAC6 intermediaries and/or taxpayers are required to make a DAC6 disclosure return to Irish Revenue in relation to reportable cross border arrangements.

Finance Bill 2020 makes a number of welcome amendments to the legislation governing DAC6 including clarification on reporting exemptions for intermediaries and the production of a schedule of arrangements that may use standardised documentation but which are not reportable under Hallmark A.

Migration of shares to the EU Central Securities Depository (CSD)
A number of technical updates have also been made in the Finance Bill which relate to the post-Brexit migration of Irish shares and securities to the EU Central Securities Depository (CSD) following the move of the EU CSD from the United Kingdom to Belgium. The amendments have been made in respect of the migration of shares and securities in Irish registered companies to ensure tax-neutrality of the migration event and providing for the new CSD arrangements in relation to DWT and to maintain the status quo in relation to certain tax treatments following the migration. A Ministerial Order is required for the amendments to come into operation.
Our view
The amendments to encashment tax provisions were unexpected but provide some clarity. This is of particular interest where certain financial institutions, paying agents, custodians and brokers may be moving to Ireland as a consequence of Brexit and who are now within the remit of encashment tax. While the amendment provides some clarity for companies who are beneficially entitled to such dividends and are subject to tax on same, the amendment does not appear to clarify the position for an Irish resident custodian, stockbroker, investment firm who may receive payments from an Irish resident superior custodian in respect of their client funds. Further amendment is likely to be required such that the exemption is extended to persons who are in receipt of the income on behalf of others also.

Last year’s Finance Bill had introduced legislation in respect of the Irish tax treatment of stock borrowing and repurchase agreements. Previously, the tax rules governing such transactions had been contained in Statements of Practice. The rules introduced previously had unintended consequences and further amendment was expected by the industry in Finance Bill 2020. It is disappointing that clarifications sought by the industry have not been reflected in Finance Bill 2020.

While the DAC6 amendments provide some helpful clarifications further guidance is still required from Irish Revenue particularly as the first DAC6 filings are quickly approaching in early 2021.
Real Estate
Help to Buy scheme
The expiry date for the enhanced relief available on the Help-to-Buy scheme has been extended by 12 months to 31 December 2021. This provides for an effective tax rebate of up to €30,000 which can be used by first time buyers in the purchase of new homes.

Stamp duty refund scheme
As announced on Budget day, the current scheme which allows for a partial refund of stamp duty on land used for residential development has been extended by one year to include developments commencing on or before 31 December 2022. The time allowed between commencement and completion of construction has also been extended from 24 months to 30 months.

VAT on hospitality and tourism
The bill provides for a reduction in the VAT rate applicable to this sector of 13.5% to 9%. The commencement date for this reduction is 1 November 2020.

Accelerated capital allowances scheme
Section 285A currently allows for a full write off of capital expenditure in the year incurred on certain qualifying energy efficient items. This scheme has been extended by a further 3 years to 31 December 2023.

Real Estate

Our view
It was a quiet Finance Bill today from a real estate perspective with no surprises.

The extension of the enhanced Help to Buy scheme by one year is helpful as it should give first time buyers the time to assess opportunities in the market without the need rush what is, for most, a life changing decision.

The widening of the stamp duty refund scheme is positive for property developers who in some cases had found it difficult to complete within the two year construction period allowed. Extending the scheme by a further year also aligns with the wider policy of addressing what remains a national housing crisis.

Further support was offered today to hoteliers, restaurateurs and other hospitality sector participants by way of a 4.5% reduction
in VAT. In what has been an extraordinarily difficult year it is good to see these difficulties acknowledged in today’s bill.

Some of the most positive notes from today’s bill are things which didn’t happen:

There was no introduction of the ATAD interest limitation rules which is welcome. We would hope that consultation over the next year can be used to ensure the introduction of such rules do not disproportionately impact on real estate participants who by their nature are highly leveraged.

There was no change to the 1%/2% rate of stamp duty applicable to residential property. There were no surprises either for institutional investors. Following on from the significant changes announced in the prior year there were no new provisions announced for IREFs or REITs. The absence of surprises in this regard will be welcome to existing market participants.

On a more disappointing note, there was no acknowledgement in the Budget or Finance Bill of the Covid anomaly faced by individual landlords. Landlords that have agreed to defer the collection of rent must pay the tax due on that rent when it arises rather than when it is received. Landlords in these circumstances therefore face an additional tax cost at a time when they may not have actually received the rent. Unfortunately, bad debt relief will not alleviate the position as the deferral is not a bad debt within the meaning of this relief. We would hope that before the Finance Act is signed this point could be considered and amended to ensure the position is fair to both landlords and tenants.
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