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Overall comments

Finance Bill 2019, published on 17 October 2019, provides the legislative framework for the tax measures announced in Budget 2020, along with some surprises in the form of new measures, which were not announced on Budget Day.

The backdrop of a potential no-deal Brexit has underpinned the budget planning approach for 2020, with Minister Donohue adopting a prudent approach to tax and spending measures. The Minister has sought to balance the economic risks presented by Brexit and wider global uncertainty, with the strong economic performance experienced in recent years in the Irish economy, including warnings around a potential for the economy to overheat. However, as things have transpired, Finance Bill 2019 dropped on the same day as the announcement that a new Brexit deal has been reached.

The international tax agenda, supporting business, environmental concerns and the housing market are reflected as key themes in the Finance Bill 2019. The Bill includes measures such as:

• A range of targeted tax measures to support business, with a particular emphasis on small and medium enterprises;
• Tax measures to address climate change, including an increase in carbon tax;
• Limited personal tax changes, reflecting modest changes to a small number of personal tax credits;
• A range of targeted anti-avoidance measures, including significant changes to the taxation of certain real estate funds;
• An increase in commercial stamp duty rates, along with an increase in the parent/child tax-free threshold for gift and inheritance tax purposes;
• Significant changes to Ireland’s transfer pricing regime, including documentation requirements, in line with OECD best practice; and
• Adoption of new legislation to incorporate anti-hybrid rules and a legislative framework for cross border mandatory reporting, in line with the requirements of the EU Anti-Tax Avoidance Directive.

A number of the measures, particularly those impacting on business, reflect policy decisions adopted following public consultation undertaken by the Department of Finance during 2019. However, many of these areas, in particular changes to Ireland’s transfer pricing regime and the manner in which the anti-hybrid rules will operate, are likely to be subject to further consultation and the publication of guidance from Irish Revenue in the months ahead.

Enhancements to the R&D Tax Credit regime for small and micro business, the Key Employee Engagement Programme (KEEP) and Employment Investment Incentive (EII) Scheme introduced by Finance Bill 2019, with a view to encouraging uptake in such schemes, while also promoting increased simplicity and flexibility are welcome, but could have gone further. The extension of a number of key tax reliefs, notably the Help to Buy Scheme for another two years until the end of 2021, and the SARP and FED reliefs to the end of 2022 are also welcome, but do not reflect any policy changes to enhance the nature of these existing reliefs.
Notably absent from the Finance Bill issued was any reference to interest restriction rules required as part of the EU Anti-tax Avoidance Directive. From a business certainty perspective, clarity as to the timing for implementation of these new rules would be welcome in due course.

**Our view**

Against the backdrop of Brexit, the Finance Bill 2019 reflects measures and an approach that was generally anticipated in advance of the Budget 2020 announcements – a requirement for prudence and caution. Minimal personal tax changes have been adopted, with the result that the high marginal tax rate faced by individuals and the taxation of work will remain key policy areas that require focus in the years ahead. The question will of course be raised, where a no deal Brexit is avoided, whether we will see a supplementary budget; although the Minister has been clear to date that this will not happen.

The extension (and enhancement in some instances) of key tax reliefs designed to support business has to be welcomed, but policy reform will be required going forward in order to really make a step change in supporting business and entrepreneurship. In particular, further enhancements to the R&D tax credit regime, the taxation of assignees/mobile talent, including broader share based reward reforms, and the taxation of entrepreneurs, are key areas that will require attention in the near term.

For corporate taxpayers generally, and certain real estate funds, early engagement with the key developments in Finance Bill 2019 will be an imperative in the coming months, to identify the specific impacts and new obligations arising.

For further details on the above and other new measures not included in Budget 2019, we invite you to view our articles and commentary 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 do not hesitate to speak with your usual Deloitte tax adviser or any member of the Deloitte tax team.

Lorraine Griffin
Head of Tax

Finance Bill 2019 contains details that were not included in the measures announced on Budget day, which include:

- **Transposition of EU anti-hybrid rules and mandatory reporting rules into Irish tax law**

- **Significant updates to Ireland’s transfer pricing rules, which will impact on certain types of arrangements that were previously not in scope**

- **Technical amendments to the provisions relating to the deductibility of bad debts and taxes on income in computing taxable trading profits**

- **Technical amendments to the “safe-harbour” rules applying to the management of non-Irish investment funds by regulated Irish managers and clarification of the tax treatment of investment limited partnerships**

- **Various measures to allow continued application of certain tax allowances, deductions and reliefs post-Brexit, particularly in a “no-deal” scenario**

- **Updated anti-avoidance measures for securitisation companies**

- **BIK incentives from 2023 on fuel efficient non-commercial vehicles provided by employers**

- **13.5% VAT charge to apply to the sale of oral food supplements from 1 January 2020**
Individuals

Budget Measures
Finance Bill 2019 makes provision for the measures announced in Budget 2020, such as the increases in the following:

- The earned income tax credit to €1,500.
- The home carer tax credit to €1,600.
- The CAT class A threshold (the tax free threshold on gifts and inheritance passing from parents to children) to €335,000.
- Dividend Withholding Tax (“DWT”) on dividends paid from Irish companies to 25% from 1 January 2020 (the rate will increase further in line with the individual’s tax rate from 1 January 2021 onwards).

Extension of reliefs as a result of Brexit
The Finance Bill also attempts to extend certain legislative provisions to certain situations that might be affected by Brexit that were not already covered under the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019.

Non-resident individuals are not normally entitled to tax credits. However, existing legislation extends the entitlement to tax credits to non-resident individuals who are citizens or a resident of an EU Member State. Finance Bill 2019 will extend this relief to non-resident individuals who are citizens or a resident of the United Kingdom. This change will come into effect when the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 takes effect.

High Earners Restriction Relief – technical amendment
Certain high income individuals were restricted from claiming certain reliefs (e.g. capital allowances on certain property incentives, exempt patent income dividends) but could carry these reliefs forward and claim them in subsequent years. The relief was only available to offset against certain types of income (e.g. the relief could not be offset against offshore fund income or gains). Finance Bill 2019 proposes to allow these individuals to offset this relief against offshore fund income or gains.

Capital Gains Tax
As provided in the Budget, Farm restructuring relief from capital gains tax (e.g. on selling and purchasing or exchanging parcels of land to bring them closer together) has been extended to 2022 with no changes to relief.

Capital Acquisitions Tax
Introduction of eProbate
At the moment, when an individual wishes to extract a grant of probate/letters of administration in the event of an individual’s death, they must file a document called an Inland Revenue Affidavit which sets out a list of the deceased’s assets, liabilities and other information.

Finance Bill 2019 provides, subject to the introduction of regulations in this regard, for the introduction of an electronic version of the Inland Revenue Affidavit which will mean it no longer needs to be sworn in front of solicitor. This should simplify the exchange of information between the Probate Office and the Revenue Commissioners.

Dwelling House Relief
Previously, where an individual was inheriting multiple properties on the death of another individual and one of those properties qualified for dwelling house relief, the fact that the individual was inheriting other residential properties did not affect the availability of the relief.

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However, Finance Bill 2019 proposes to change this position so that if an individual inherits an interest in more than one residential property, they will not be entitled to claim dwelling house relief in respect of any property.

Our view

There is nothing of particular significance for individuals in the Finance Bill that was not already contained in the measures announced in the Budget. Budget 2020 was significantly affected by the possibility of a no-deal Brexit. However, given the fact that a deal has now been agreed between the prime minister of the UK and the EU leaders (subject to UK parliamentary approval), it will be interesting to see whether any additional measures will be brought in through the Finance Bill before it is enacted.

The technical amendment in relation to the High Earners relief is interesting as, for these individuals, it will bring the effective tax rate on offshore fund income and gains down to just under 33%. Given that it is 12 years since this legislation came into effect a very limited number of individuals are likely to benefit from this amendment.

The dwelling house relief from Capital Acquisitions Tax has been restricted even further by Finance Bill 2019 and one wonders if the relief is achieving its aim any longer. The purpose of the relief was to ensure that a person’s home was not subject to tax on any gift/inheritance. However, the recent changes to the relief have made it virtually unusable. Consequently, we would encourage a review of the relief in its current form.
Real Estate

Help to Buy Scheme
The Help to Buy scheme, is an effective tax rebate of up to €20,000, which can be claimed towards a deposit, for first time buyers of newly built houses, is to be extended in its current format, until 31 December 2021.

Living City Initiative
The Living City initiative is a tax relief that is available for refurbishments or conversion work on properties in designated areas of certain cities. The relief, which had been due to expire on 4 May 2020, has been extended until 31 December 2022.

Stamp Duty Increase on commercial property
The increase in the rate of stamp duty on commercial property from 6% to 7.5% is effective from midnight on Budget Day 8 October, subject to the following transitional measures included in the Finance Bill:

- The 6% rate will continue to apply to instruments executed before 1 January 2020, where a binding contract was entered into before 9 October 2019 and is accompanied by a statement to certify this.

The Finance Bill includes provisions to ensure that stamp duty of 2% applies where land is subsequently used for residential development in accordance with the stamp duty refund scheme.

Anti Avoidance for Real Estate Funds and REITs
Real Estate Funds
The measures included in the Finance Bill for Irish real estate funds, are targeted at what are termed aggressive activities, including the use of excessive interest charges to avoid the payment of tax in respect of profits from Irish property.

Anti-avoidance measures are being introduced to address these issues. These include the following:

01. Amendment to the IREF tax calculation to ensure that any gains which are reflected in the market value of the unit, but not in the accounts of the IREF, are subject to IREF tax;
02. The introduction of limitations on interest expenses based on debt to property cost and on an income to interest ratio. The disallowed amount would be charged to income tax in the IREF. A charge to income tax will apply where

A. The aggregate of the specified debt exceeds an amount equal to 50% of the cost of the IREF assets (based on a formula applied to property financing costs) and/or
B. The profit to financing cost ratio, i.e. interest cover, is less than 1.25:1;
03. Any other amount expensed in the accounts of the IREF must be incurred wholly and exclusively for the purpose of the IREF business and any excessive amounts are charged to tax in the hands of the IREF;
04. A charge to tax is introduced at the fund level in certain holder of excessive rights situations.

Changes 1 to 3 are effective from midnight on 8 October 2019

REIT’s
In addition a number of amendments are made to the REIT framework to ensure that the appropriate level of tax is being collected from the regime, as follows:

01. Expenses in calculating profits available for distribution must be wholly and exclusively for the purpose of the REIT business, and any excessive amounts are chargeable to tax in the REIT.
02. The distribution of proceeds from the disposal of a rental property will be subject to dividend withholding tax upon distribution.

03. Where a REIT disposes of a property and the proceeds are neither reinvested nor distributed to shareholders within 24 months, then such proceeds will be treated as property income of the REIT.

04. An existing provision whereby a deemed disposal and re-basing of property values occurs should a company cease to be a REIT or a group REIT, is being limited to apply only where the REIT or group REIT, has been in existence for a minimum of 15 years.

Changes 2 to 4 are effective from midnight on 8th October 2019.

Our view
The extension of the Help To Buy scheme, in its current format, is welcome but it would have been helpful if it was announced earlier so people can plan ahead rather than rush to meet the deadline.

This measure, together with retaining the 2% rate of stamp duty on residential property, are the most positive aspects for Real Estate.

However the stamp duty increase on commercial property to 7.5% across all commercial property irrespective of value could well impact the market and the expected yield is very optimistic, (it would take €9.4bn additional sales to raise €141m budgeted). We can’t see it happening.

In general the Budget and Finance Bill has proved a disappointment for investors in commercial property, putting Ireland very high up the chart in terms of transaction costs for commercial. Small investors will have to price chip to cover the additional cost or may reconsider.

The changes to both REIT’s and Real Estate Funds come at a time when stability and certainty of tax position is of the utmost importance and thus such tinkering with the provisions may discourage further investment in such vehicles.

For individual landlords there is nothing of significance in the Budget or Finance Bill to encourage them to remain in the rental sector, High personal tax rates remain coupled with a serious regulatory regime that needs external management and thus cost.

In terms of house building, the larger institutional Private Rental Schemes are the main source of activity in the market which is welcome and is a longer term investment providing annuity income to these pension funds and related institutional investors.
Indirect Tax (VAT)

**Food Supplements**
The Finance Bill provides that, effective 1st January 2020, the VAT rate of 13.5% will apply to the sale of a range of oral food supplement products. The Department of Finance press release issued on 16th October 2019 confirmed that the current zero-rate for certain foods for specific groups (such as infant formula, baby food, diet-related foods) and for fortified foods enriched with vitamins and/or minerals would be protected. Unfortunately the Bill does not define what is meant by ‘food supplements’.

This measure has no impact on the current application of the zero-rate to human oral medicines that are licensed by the HPRA, such as folic acid and other vitamin and mineral products.

**VAT Deductions: Transfers of Business**
The Bill expressly removes the entitlement of a business to deduct the VAT incurred on services directly associated with a transfer of business, with Revenue taking the position that the deduction entitlement is covered elsewhere in VAT legislation.

**Indirect Tax Climate changes**
Under measures announced in the Budget and now contained within the Finance Bill, effective from 1st January 2021 only those owners of commercial vehicles with a CO2 threshold of less than 140 g/km, down from 156g/km, will now be entitled to a VAT deduction.

The Finance Bill also legislates for the Budget’s increase of carbon tax of €6 per tonne which increased the price of diesel and petrol from midnight on Budget day, although hauliers will benefit from an increase in the diesel rebate scheme to offset against the increase in carbon tax. The corresponding increase applying to other fuels, including home heating oil, are effective from May 2020.

A new Nitrogen Oxide tax introduced by the Bill will replace the existing 1% diesel surcharge and will apply to the purchase of all passenger vehicles emitting nitrogen oxide from January 2020.

Vehicle Registration Tax reliefs for conventional and plug in hybrids will be extended to 2020, subject to CO2 emission thresholds specified in the Bill.

**Excise Duties**
The Finance Bill also provides for changes to the duty on tobacco products (50c on pack of 20 cigarettes in most popular price category with a pro rata increase on other tobacco products) which took effect the day following the budget.

**Other Measures Within the Finance Bill**
- To prohibit the use of marked gas and oil (fuel to be used for commercial purposes) for private pleasure navigation.
- To give legislative effect to the increase in the small brewer excise duty relief which allows small breweries produce 50,000 hectolitres per annum (increased from 30,000 hectolitres) of alcohol related products and to avail of a 50% relief on excise duties applying to these products.
- To provide for a relief from betting duty for the first €50,000 of income for bookmakers.

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Our view

Food Supplements
While an increase in any VAT rate is never welcome, the measure within the Finance Bill will add to the uncertainty over which food supplements are to be charged to VAT at 13.5%. This measure was designed to replace an ageing concession which was felt by Revenue and industry to be no longer fit for purpose as advances in food supplement science had resulted in different rates of VAT applying to what many industry and consumers alike perceived to be similar type-products.

While the Department of Finance press release issued yesterday stated that the current zero-rate for certain foods for specific groups (such as infant formula, baby food, diet-related foods) and for fortified foods enriched with vitamins and/or minerals would be maintained, the absence of a definition of “food supplements” means the Bill fails to give the hoped for legislative certainty lobbied for by the food supplement industry. The fear is that without a legislative definition uncertainty will still prevail in the industry with any new Revenue guidance simply being viewed as one concession replacing another, with industry once again turning to the Courts as the final arbiter of what constitutes a ‘food supplement’.

VAT Deductions: Transfers of Business
On the face of it, by deletion of a specific provision Revenue appear to be curtailing the ability to take a full deduction of VAT in respect of services directly related to the transfer of a business where that transferred business was otherwise VATable. Revenue have stated that the deleted provision has proved to be unnecessary as the entitlement to deduct is already provided for elsewhere in the VAT Act. However, the risk is that where a business took a full deduction of VAT relating to, for example, the sale of a tenanted property under the transfer of business relief where either the property asset itself would have been VATable or the rentals were VATable, the VAT on such costs is no longer 100% deductible falling instead to be treated as an overhead with deductibility based on the general overhead recovery rate.

Carbon Taxes & Excise
While these measures support the government’s Climate Action Plan, for many the increases in carbon taxes will be higher than stated once VAT is added. With the decrease in the level of CO2 emissions to 140g/km, fewer business owners of cars will be eligible for a deduction of the 20% maximum of the VAT incurred, with the future of this limited VAT deduction entitlement becoming increasingly uncertain. With a lead-in time of just over 14 months, those with cars on order for 2020 will still be able to avail of the 20% VAT deduction for cars under the 156g/km CO2 level.

Legislative Changes Expected Before 2020: Reforms to Intra-EU Trade
While not contained within the current draft of the Finance Bill, a number of changes will be made to VAT law effective 1st January 2020 to fortify the current VAT system relating to intra-EU trade. These provisions, which implement the domestic leg of EU-wide VAT harmonisation proposals, will affect goods under call-off stock arrangements and will also impact on the evidence that traders need to avail of the zero-rating for cross-border sales.

First, the Irish rules around call-off stock, whereby a supplier in one Member State moves its own goods to a warehouse in another Member State for onward sale to a locally identified customer there, will be clarified. An Irish supplier moving goods to another Member State in similar circumstances should face comparable local measures.

Further changes will amend VAT legislation to clarify the rules governing intra-EU chain transactions, how intra-EU movements of goods are to be documented, and to strictly align the availability of the zero-rate for intra-EU sales of goods to the supplier being in possession of a valid VAT registration number provided by the EU based customer.

With all Member States being required to enact these provisions from that date such clarity should limit the amount of disputes between both suppliers and customers, and suppliers and tax authorities. However, their implementation could also result in immediate VAT issues for Irish businesses that in January 2020 will have stock physically located elsewhere in the EU under existing call-off or consignment stock arrangements. Moreover, while businesses should use these changes as an opportunity to standardise internal controls throughout the EU the new rules of evidence could reduce flexibility and result in a possible requirement for immediate changes to current supply chains, IT systems and accounting processes. For further details on these changes please see our more detailed article on 2020 EU VAT Reform.
Entrepreneurs

The Department of Finance published the Finance Bill today which included a number of provisions to support domestic entrepreneurship; however it cannot be said that the provisions introduced would be commensurate with any material changes which would greatly enhance the businesses driven by our entrepreneurs. As announced in the Budget, changes shall be made to a number of schemes of relevance to our domestic entrepreneurs such as the research & development regime and a newly reformed EII scheme.

The research and development tax credit system has been reformed to include the following detailed measures:

- The R&D tax credit has increased from 25% to 30%
- The addition of an enhanced method to calculate the payable element of the R&D tax credit, based on twice the current year payroll liabilities.
- Pre trading research and development expenditure shall now qualify for an R&D tax credit. This credit is limited to offsets or repayments calculated by reference to payroll tax (PAYE and USC) and VAT liabilities for the same period.
- The allowable limit on R&D expenditure outsourced to universities or institutes of higher education has been increased from 5% to 15%.
- Capital expenditure on buildings or structures, which are used for scientific research, can qualify for an allowance noting that where a company may qualify for a scientific capital allowance and the R&D tax credit, then both reliefs cannot be claimed in respect of the same expenditure.
- The following anti-avoidance provisions will apply:
  - Grants funded by any State Body and/or the European Union must be deducted from qualifying R&D expenditure.
  - Where a payable amount or amount surrendered to a key employee is later withdrawn, then it is not permissible to use any offset of losses or credits to shelter the clawback of such an amount.
  - The penalty application in respect of an R&D tax credit over claim is aligned to the penalty procedures for other credit over claims.
  - Companies which outsource to third parties are obliged to notify the third parties in advance of, or on the day of, payment, if a given company intends to make a claim for the R&D tax credit.

Last year’s Finance Bill introduced a newly revamped Employment and Investment Incentive (EII) which has received another makeover in last week’s budget. The enhancements to the initiative which were announced in Budget 2020 seek to incentivise entrepreneurs and encourage investment in SMEs. From a cash flow perspective, investors will warmly receive the changes made to the timing of the relief which has altered to the provision of a full relief being made available in the first year of investment (as opposed to an initial relief of the qualifying investment made available in the tax year in which the investment is made, with a further relief given after Year 3 subject to certain conditions.) This takes effect from 8 October 2019.

The additional changes include:

- From 2020, a maximum investment relief amount allowed has been increased from €150,000 to €250,000 in respect of a four year investment and €500,000, where the length of the investment is 10 years.
- Further technical amendments have been provided under Finance Bill 2019, the purpose of which is to ensure that the conditions in relation to investments made prior to Budget day will continue to apply and, secondly, that the anti-avoidance clawback provisions also apply to investments to be held for ten years.
Managers of a designated fund are obliged to return details of holdings of eligible shares, within 30 days of receiving the statement of qualification from a qualifying company.

Further, where a company buys back, redeems or repays any shareholder for shares in the company using EII investments within the compliance period, then there will be a reduction in the relief granted to all EII investors as a result.

Our view

The changes to the research and development tax credit are specially aimed at assisting smaller companies and serve to promote activity in the indigenous sector. Further, we welcome the changes to the EII scheme which have enhanced the relief from its reformed state in last year’s Finance Bill. Providing for a full tax relief in the year of investment will be well received by eligible investors along with the increased annual investment limit and the incentives for long term investors.
Global Mobility, Immigration and Employment

Key Employee Engagement Programme
The introduction of the Key Employee Engagement Programme (“KEEP”) in Finance Act 2017 was heralded as a welcome move to incentivise Small & Medium-Sized Enterprises (“SMEs”) to attract and retain staff in a tax efficient manner. This scheme allows employees to defer the tax on the exercise of share options until the point of sale whereby the gain is taxed at capital gains tax rates instead of income tax rates. We understand the take-up has been very low and the Department of Finance launched a consultation process in 2019 to see how KEEP could be improved. The Minister announced changes to KEEP in Budget 2020. The Finance Bill confirms these changes:

- The scheme will apply to qualifying group company structures allowing options over shares in the employer company or in a qualifying parent company,
- It will permit the use of existing rather than just new shares; and
- The hours required to be worked by an individual have been reduced from 30 hours per week to either 20 hours per week or at least 75% of the individual’s working time.

Implementation of these changes remain subject to Ministerial Order.

Our view
It is welcomed that the Minister is taking some action to make the KEEP scheme more attractive to employers. The reduction in the number of hours an individual is required to work for the company should allow the relief to be availed of by part-time workers. It is positive that the options can be over shares in the employer company or in its qualifying parent company. However, it is a requirement that the holding company is not trading and that its business consists wholly or mainly in holding shares in subsidiaries as defined. In addition it is a requirement that the activities of the group as a whole must consist wholly or mainly of qualifying trades. Where any excluded activity is carried on within a group it may be challenging to satisfy this condition. It is disappointing that there is no indication of a move towards providing a safe harbour in relation to share valuations. We recognise that Revenue may not wish to formally approve valuations on an ongoing basis for KEEP. However as an alternative, we recommended in our response to the KEEP consultation that Revenue develop and issue guidance on appropriate valuation methodologies to support SME companies in adopting KEEP. In the absence of such guidance companies may see the cost of valuations, which are required at the outset and on the grant of new tranches of options, as too high to allow them to utilise KEEP.

The Minister did not make any announcements regarding some of the other conditions which have proved to be the main blockers to take up of the scheme; namely the broad definitions of companies excluded from the KEEP scheme, certainty around exit mechanisms and the limitation by reference to a percentage of remuneration.

The Minister has again this year not taken the opportunity to announce any broader changes to the taxation of share schemes, which will be disappointing for domestic and foreign MNCs who do not meet the SME thresholds. However, it would be hoped that there would be a continued focus by the Government on the area of reward in 2020.
Other Areas
The Finance Bill extends the Special Assignee Relief Program (SARP) to 2022.

As announced in budget 2018, the National Training Fund levy will increase from 0.9% to 1% from 1 January 2020. This is in effect an increase in employer's PRSI from the current rate of 10.95% to 11.05%.

The Bill provides for the extension of the 0% benefit-in-kind rate for electric cars to 2022. The Finance Bill includes provisions to introduce an environmental rationale for benefit-in-kind for cars from 2023. The legislation outlines the percentage of the Original Market Value of the car which will be taxable based on the individual's mileage and the CO2 emissions of the car. The benefit in kind on vans will increase from 5% to 8% with effect from 2023.

Our view
Interestingly the new provisions in respect of employer provided cars provide for a reduced benefit in kind for more fuel efficient cars. Legislation drafted in 2008, whose implementation remains subject to Ministerial order, proposed retaining the current rate of BIK for cars with up to 120g/ km CO2 emissions while increasing the rate for cars with higher emissions. The new provisions should incentivise employees who utilise lower fuel emission cars. Under current rules the BIK rate for an employee with 28,000 km is 24 per cent whereas this could reduce to 18 per cent for cars up to 59g/km CO2 emissions.

It is disappointing that there is no reference to a reinstatement of the long-standing practice of treating not more than 30 workdays of employees of foreign businesses as being incidental and exempt from payroll withholding. This change would provide much needed certainty to companies and would enhance Ireland’s attractiveness for businesses considering locating here as a result of Brexit and other global economic conditions. As it has not been included in the Finance Bill we hope it will come by way of updated guidance from Revenue before the end of 2019. In the absence of this change there will be a significant administrative burden on employers from 2020 who have business visitors to Ireland.
Finance Bill 2019 contains the provisions to transpose the anti-hybrid rules that were largely contained in ATAD2 and that were required to be introduced by 1 January 2020. The transposition of these rules had been the subject of a public consultation launched by the Department of Finance in November 2018, as well as a feedback statement in July 2019 which responded to submissions made by interested parties.

Broadly, the anti-hybrid rules apply to transactions between “associated enterprises” and aim to prevent taxpayers from exploiting differences in countries’ tax systems by obtaining a double deduction for the same expense or by securing non-taxation of income that has been deducted for tax purposes elsewhere. The two key ways in which the anti-hybrid rules achieve this are by either disallowing the expense deduction by the payer or by imposing taxation of the income in the hands of the recipient. The anti-hybrid rules will apply to payments made or arising on or after 1 January 2020.

Similarly, while well flagged, the modernisation of Ireland’s transfer pricing rules is wide ranging and fundamental and will be of interest to all financial services groups (even those with solely Irish members). In the context of securitisation (S110) companies specifically, while the new rules and requirements will apply to such entities, there is an important exclusion in respect of profit participating notes issued by such entities. This prevents a direct conflict in legislation and instead, additional anti-avoidance provisions are being introduced in S110 to protect against abuse of the regime.

Section 845C has been updated to extend the definition of Additional Tier 1 instruments (“AT1”). This amendment seeks to extend the treatment afforded to AT1 instruments to comparable instruments (which have equivalent characteristics to AT1 instruments).

This follows a consultation earlier in the year on the matter and this amendment to the definition in Finance Bill is in line with expectations following the Tax Strategy papers released by the Department of Finance in July (i.e. Corporation Tax: Tax Strategy Group – 19/01). Extending the current tax treatment to all instruments with similar characteristics to AT1 instruments in the Irish system is unlikely to have a significant impact as it is expected that few entities would be in a position to issue such hybrid instruments. It was noted in the Tax Strategy papers in July that the general consensus of the submissions (from the consultations) is that contingent convertibles (“CoCos”) with similar features to AT1 instruments, but which are not issued as AT1 capital instruments, are unlikely to be a feature of the Irish market. As such, no potential negative consequences of the proposed amendments were identified as a result of the consultation.

A number of technical updates have also been made in the Finance Bill that may impact on investment funds and their investment managers. The existing “safe harbour” rules for regulated Irish managers of non-Irish resident investment funds have been updated to replace references to regulatory provisions that have been amended or superseded over recent years. The Bill also contains a technical update to the relevant tax legislation applicable to Investment Limited Partnerships to recognise the legal and commercial functioning of such partnerships.

Finance Bill has introduced legislation in respect of the Irish tax treatment of stock borrowing and repurchase agreements. Previously, the tax rules governing such transactions has been contained in Statements of Practice.

All financial services participants will note the transposition of EU mandatory reporting rules (known as DAC6) into Irish tax legislation. While
the Finance Bill provisions largely mirror the Directive. Revenue guidance on the regime will be vital to the scope and responsibilities of industry stakeholders in the implementation of the regime.

**Our view**

The anti-hybrid rules and the modernisation of transfer pricing rules have both been well flagged for a number of years, although given their complexity, the way in which these rules have been transposed into Irish tax law will require detailed consideration by all financial services participants. The impact is likely to be different depending on the nature of a company’s activities and counterparties. In particular, the potential impact on “orphan” S110 companies that have issued profit participating notes of the new anti-avoidance provisions (including changes to the “specified person” definition) should be considered in detail.

While the extension of the definition of AT1 instruments is a welcome clarification, the amendment is unlikely to have a significant impact given the rarity of such instruments in the Irish market.

The investment management community will welcome the clarifications to the Investment Limited Partnership regime, the long-awaited updates to the “safe harbour” rules and the introduction of legislation on stock borrowing and repurchase transactions. As well as bringing welcome clarity in their own right, they are likely to help to avoid unintended consequences of the anti-hybrid rules.
As expected, Finance Bill 2019 included a number of corporation tax measures. These measures will have significance for Irish and inbound multinationals and some private groups.

The deadline is looming for implementing into Irish taxation legislation additional changes arising from OECD and EU proposals. Over the last year, the Department of Finance have continued to engage with stakeholders and taxpayers on these developments by way of consultations and feedback statements. Thus, it is with no surprise that we see details of measures such as the updated transfer pricing provisions and the introduction of anti-hybrid rules in Finance Bill 2019.

Budget 2019 saw the introduction of exit tax rules effective from 10 October 2018. In light of the financial resolutions published following Budget 2020, technical amendments to our exit tax provisions were effective from 9 October 2019. The first amendment extends the charge to Irish exit tax to the transfer of business / business assets of Irish permanent establishments of companies resident in any jurisdiction, not just EU Member States. The second amendment relates to the charge to exit tax where a company migrates tax residence from Ireland. It clarifies that the time of the deemed disposal for exit tax purposes is the time immediately before the company ceased to be Irish tax resident to avoid any arguments that the deemed disposal occurs once the company has left the Irish tax net. These provisions were, as expected, also included in the Finance Bill.

The EU's Anti-Tax Avoidance Directives (ATAD) require domestic law changes effective from 1 January 2020 in relation to certain hybrid mismatches. Following a consultation earlier in the year and the recent release of an additional feedback paper by the Department of Finance, it is with no surprise that the anti-hybrid rules have been included in the Finance Bill. In summary, these rules cover situations such as those where one jurisdiction sees an instrument or entity different to the way we see it such that it results in a tax advantage. For example where a group gets a double deduction for an expense or where a group gets a deduction for an expense but the corresponding amount is not taxed anywhere. If not already started to date, taxpayers will need to carefully consider the impact of these anti-hybrid rules on their groups.

With the current date for the UK to leave the EU being 31 October 2019 and given that outcome of the UK’s withdrawal still unclear, it is with no surprise there were some measures to do with Brexit announced. In summary a number of measures were included in the Finance Bill to ensure that certain provisions of our taxation legislation will continue to apply post Brexit and in particular in the event of a disorderly exit of the UK from the EU.

Given that many jurisdictions have similar R&D tax credit regimes to our Irish regime, further enhancements to our R&D tax credit regime are important from a competitiveness perspective. As was expected following announcements in Budget 2020, the Finance Bill also includes certain enhancements to our R&D tax credit regime. Many of the enhancements apply to small and micro companies. However, there are additional changes to the R&D tax credit regime that apply to all companies including that the
allowable limit on R&D expenditure outsourced to universities or institutes of higher education has increased from 5% to 15%.

As was signalled in the Budget, the increase in dividend withholding tax from the current rate of 20% to a new rate of 25% was included in the Finance Bill. With a range of exemptions at both domestic, EU and treaty level available for dividends paid to corporate shareholders, it is expected that the improved cash flow expected because of this will be driven from dividends paid to individuals.

Some other measures announced include confirmation that there will be amendments to our tax legislation such that taxes on income are not deductible in computing the amount of profits or gains chargeable to tax under Case I or II of Schedule D. In addition, there are also new measures to take account of accounting developments such that the provisions define the term “doubtful debts to the extent that they are respectively estimated to be bad” for corporation tax purposes. Finally, there are also measures included in relation to certain pension payments paid pursuant to a scheme of reconstruction, under a merger, division or joint venture.

**Significant update to transfer pricing rules**

Finance Bill 2019 includes the legislation to update Ireland’s transfer pricing rules. The changes represent a significant broadening of the scope of the rules and also align them with the latest OECD principles.

The new rules include the formal adoption of the latest (2017) version of the OECD Transfer Pricing Guidelines and broadens the scope of transfer pricing in Ireland to cover the following:

- Non-trading transactions (exemption for Irish domestic transactions, subject to certain anti-avoirdance rules);
- Arrangements that had previously been considered grandfathered (i.e., pre- 1 July 2010 arrangements when Ireland first introduced specific transfer pricing rules);
- Capital transactions for computations of capital allowances and chargeable gains (where the market value is over €25 million); and
- Transactions within SME groups (with transfer pricing documentation requirements for SMEs subject to ministerial order).

The updated transfer pricing rules apply for chargeable periods commencing on or after 1 January 2020 and, in respect of claims for capital allowances, where the related capital expenditure is incurred on or after 1 January 2020.

The new rules introduce more prescriptive transfer pricing documentation requirements, namely the need to prepare a Local file (revenue threshold of €50 million) and a Master file (revenue threshold of €250 million) in line with Annex I and II of Chapter V of the 2017 OECD Transfer Pricing Guidelines. These documents may be requested by Irish Revenue in the course of an audit and the taxpayer has 30 days to provide. There is higher rate of penalty for taxpayers who fail to comply with a request to provide transfer pricing documentation to Irish Revenue. In particular, failure to provide a Local File within 30 days of request will incur a penalty of €25,000 plus €100 per day thereafter. Failure to provide other information on transfer pricing arrangements to a Revenue officer when requested, will incur a penalty of €4,000.

The Irish tax landscape continues to change as a result of the OECD and EU proposals. As multinational companies manage the adoption of these changes across multiple jurisdictions, obtaining certainty is key. In relation to the adoption of the new measure, including the anti-hybrid and mandatory disclosure rules, it is important that taxpayers continue to assess the potential implications of such rules on their groups in particular given the provisions included in Finance Bill 2019.

What is clear is that the Irish tax landscape will continue to change at an unprecedented pace. For other measures that will be implemented in the coming years, such as the interest limitation rules, we would welcome continued engagement with the Department of Finance in the coming months. We would also encourage taxpayers to continue to participate in these processes.

As a consequence of the transfer pricing changes, a number of transactions that were outside the rules are now caught and groups will have to ensure the pricing is consistent with the arm’s length principle. Further, a review of historic pricing arrangements is highly recommended to ensure the arrangements are consistent with the latest OECD guidance. Finally, group companies will be required to prepare formal Irish transfer pricing documentation for the first time.
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