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Finance Bill 2018.
Captured in full.

Contents

Overall comments

Finance Bill 2018, published recently on 18 October 2018, contains a number of key measures which will impact the taxation of both individuals and corporates in an Irish tax context. This includes measures to introduce new exit tax provisions in Ireland, Controlled Foreign Company legislation, as well as providing for the enactment of measures announced in last week's Budget 2019. The Finance Bill reflects the focus of Budget 2019 in addressing key themes, including the changing international tax environment, further "Brexit proofing" of the economy and reducing the personal tax burden; all whilst being bound by EU budgetary rules and asserting prudence on policy decisions and spending given greater levels of uncertainty from a global economic perspective.

A brief overview of key highlights in Finance Bill 2018 can be summarised as follows:

- The legislation to reflect changes to Ireland's exit tax regime, which became effective for transactions on or after 10 October 2018, is contained within the Finance Bill. It reflects that an exit tax of 12.5% will be charged on unrealised capital gains where a company migrates its tax residence from Ireland or where a company transfers certain assets outside of Ireland. Prior to this amendment, certain companies could leave Ireland and the scope of Irish tax without a charge to CGT on exit.
- Ireland's Controlled Foreign Company (CFC) legislation has been outlined in Finance Bill 2018. Deloitte submitted a detailed document to the Department of Finance in response to the CFC public consultation published in September. The EU Anti-Tax Avoidance Directive (ATAD) requires Ireland to introduce CFC rules that will be effective from 1 January 2019. The Finance Bill includes CFC rules that go beyond the standard required by the ATAD in certain areas, which we have highlighted previously should be considered from a competitiveness perspective.
- A number of amendments to the Key Employee Engagement Programme (KEEP) have been included in Finance Bill 2018, following on from the Budget 2019 announcements. Amendments have been made to the maximum ceiling on the annual market value of shares that may be awarded so that it is equal to 100% of the employee salary (up from 50%). In addition, the three-year limit has been extended to a lifetime limit and the amount of share options that can be granted under the scheme has been increased from €250,000 to €300,000. These changes are designed to assist indigenous SME companies attract and retain talent by further enhancing the KEEP incentive. The KEEP scheme subjects any gain arising on the exercise of qualifying share options to Capital Gains Tax at the time of disposal of the shares, in place of higher personal taxes at the time of exercise (as is the general treatment for share option gains).
- The income tax reliefs for investment in corporate trades have been overhauled in Finance Bill 2018, with a view to simplifying and overhauling the text of the legislative provisions, and introducing a range of changes to the operation of the Employment Investment Incentive (EII) and the Start-up Relief for Entrepreneurs (SURE). A Start-up Capital Incentive to allow tax relief to qualifying persons who invest in early stage start up ventures has also been included, which will run, along with the EII and SURE, to the end of 2021.
- The Finance Bill reflects changes to the tax relief on borrowings for landlords, such that interest relief on residential property lettings has been restored to 100% from 85% with effect from 1 January 2019 (accelerating restoration of the tax relief by 2 years). Accordingly, this will allow full tax relief for interest incurred on a loan to purchase, improve or repair a rented residential property.

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- The 9% VAT rate for the hospitality sector, which was introduced in 2011, was increased to 13.5% with effect from 1 January 2019. The increase will mainly impact hotels, other short term guest accommodation and restaurants, but it will also apply to other areas including cinemas, theatres, hairdressers, museums and art galleries. However, newspapers and sporting facilities have been excluded from the increase and will remain at the 9% rate.
- Finance Bill 2018 has amended rent-a-room relief included in section 216A TCA 1997 of the legislation whereby a room must be let for a period of greater than 28 consecutive days in order to qualify for this relief (subject to certain exceptions). This may impact individuals renting rooms on a short term basis.
- In line with recent years, the Finance Bill contains a range of targeted anti-avoidance measures, as well as a number of technical amendments to existing provisions.

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.

Finally, as in previous years, we will hold our Finance Bill event later in the year (on 5 December 2018) and hope to see many of you there.

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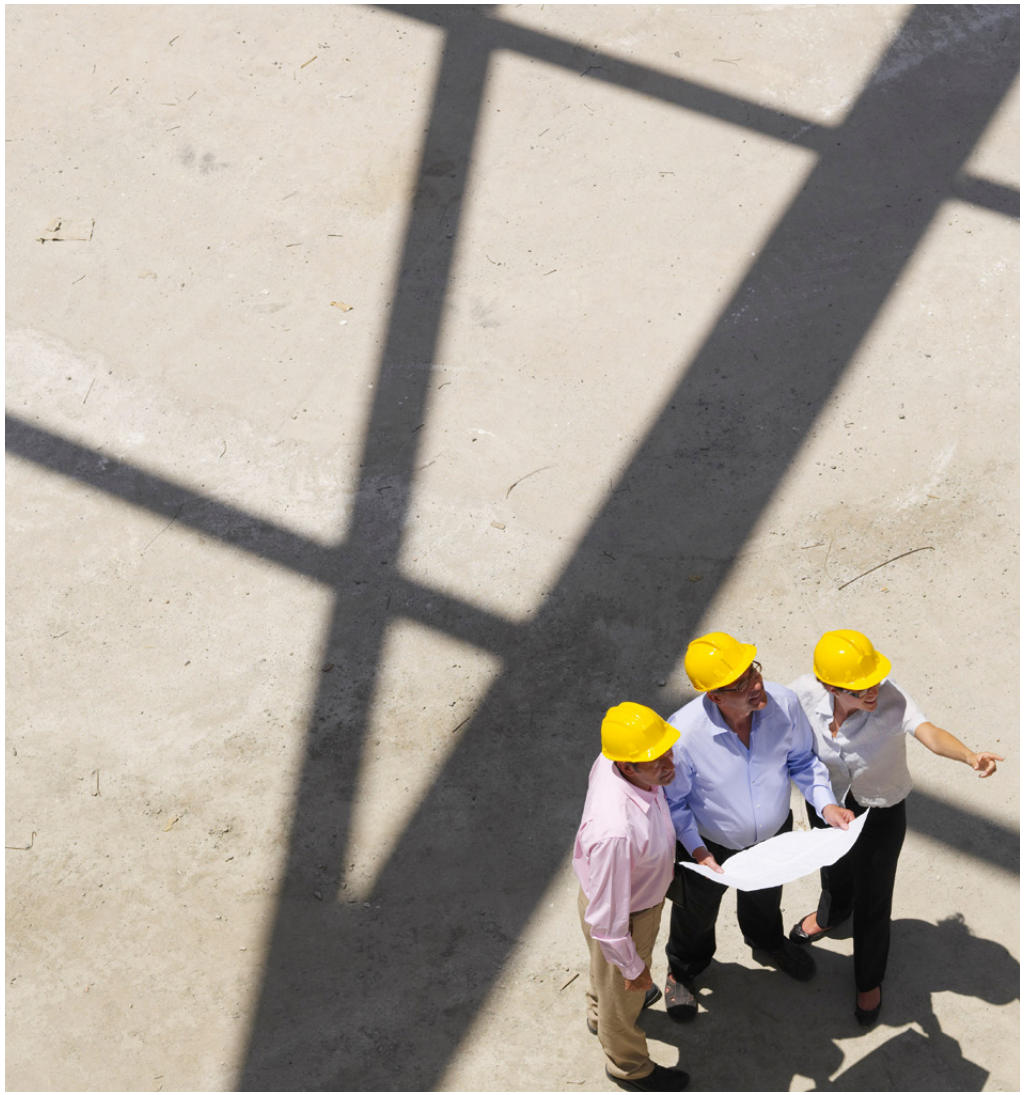

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Measures not announced in Budget 2019

Finance Bill 2018 contains some measures that were not announced on Budget Day, which include:

- Technical amendments to facilitate PAYE modernisation
- Increase in the value of specific tax credits, reliefs and rate bands to resolve "Week 53 payday" issues
- Introduction of minimum continuous rental period of 29 days to qualify for Rent-a-Room relief
- Amendment to income tax relief for investment in certain corporate trades under the Employment Investment Initiative (EII) and Start-Up Relief for Entrepreneurs (SURE)
- Extension of anti-avoidance measures applying to certain loans made by close companies
- Technical amendments to clarify the operation of the relief for capital expenditure on certain intangible assets (S291A)
- Extension of CGT relief on disposal of a site to a child to include the child's spouse or civil partner
- Measures to ensure compliance of certain agri-taxation provisions with EU State Aid rules
- Extension of 4 year time limit on tax assessments in cases of bilateral Mutual Agreement Procedures between Ireland and its tax treaty partners

Ireland Inc., FDI and Transfer Pricing

As expected, following the announcement of Budget 2019, there were a number of corporate tax measures included in Finance Bill 2018 that will have significance for Irish and inbound multinationals and large private groups.

As a result of the financial resolutions published following Budget 2019, changes to the exit tax provisions took effect from 10 October 2018. In line with ATAD Article 5, the exit tax will seek to tax unrealised gains arising where a company migrates or transfers assets offshore such that they leave the scope of Irish taxation. As confirmed in the financial resolutions, the rate of the exit tax is 12.5%. However, the legislation also includes an anti-avoidance provision that seeks to apply the capital gains tax (CGT) rate (currently 33%) rather than the 12.5% rate where the transfer / migration forms part of a transaction to dispose of the asset and the purpose of the transaction is to benefit from the 12.5% rate rather than the CGT rate.

There were no amendments to the above provisions in the Finance Bill. However, in line with the ATAD provisions, the Finance Bill also provides that in cases where the exit is to an EU / EEA State, the payment of the exit tax may be deferred and paid in instalments over 5 years. This development is welcome.

In summary, it is expected that the exit tax change could impact multinational groups who may have been engaged in group restructuring on the back of last year's US tax reform, the adoption of ATAD measures across the EU as well as preparing for Brexit.

Finance Minister Paschal Donohoe published Ireland's Corporation Tax Roadmap in September. Since the publication of the Roadmap and the subsequent CFC Feedback Statement, taxpayers have been aware that CFC rules in line with Option B under ATAD Article 7 will take effect from 1 January 2019. The Minister confirmed as part of his Budget speech that the CFC rules will apply for accounting periods beginning on or after 1 January 2019, therefore providing companies with non-calendar year ends some additional time to assess the impact of the new CFC regime and take action accordingly.

As was expected, the CFC rules have been included in the Finance Bill. A number of areas in the CFC Feedback Statement went beyond ATAD and it was hoped that comments made by taxpayers and stakeholders as part of the subsequent consultation process last month would be taken on board and further clarification provided in Finance Bill 2018.

It is welcome that some updates to the draft legislation in the CFC Feedback Statement have been adopted into the Finance Bill.

In particular, the specific removal of reference to the CFC rules applying to 'cash box' companies is welcome, as this was not provided for in ATAD. The updated CFC legislation now provides for double tax relief and exemptions for CFC's with low profits or a low profit margin. In addition, the definition of accounting profit provides welcome clarification in terms of the charge not being applicable to capital gains / capital losses or certain distributions. Finance Bill 2018 also includes a grace period for the application of the CFC rules for newly-acquired CFC's where specific conditions are met.

While all these measures, many of which are provided for in the ATAD provisions, are welcome, there are still certain aspects of the CFC legislation that go beyond what is in ATAD.

In particular, Finance Bill 2018 provides, like the draft legislation in the CFC Feedback Statement did, that the CFC rules will apply where not only a controlling company carries out significant people functions in the State, but where a controlling company or a 'connected company' carry out significant people functions in the State. Thus, this is wider than the provisions

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of ATAD. In addition, the control test includes both a present and future right to direct the company's affairs, unlike ATAD which only looks for a present right to control. While engaging in "best practice" is essential to maintain our international reputation, by agreeing to non-mandatory or more onerous provisions such as these may be seen as contrary to our competitive offering as a location for FDI.

In summary, and in particular given that there are still some deviations from the provisions of Article 7 of ATAD, multinational groups will need to carefully consider the impact of the CFC legislation.

The Bill also brought about the extension of the start-up relief regime until the end of 2021 which is welcome as it is often of benefit to MNCs setting up operations in Ireland for the first time.

In relation to the existing intellectual property amortisation provisions, additional clarifications have been provided for in Finance Bill 2018 in terms of the application of the 80% cap introduced in Finance Act 2017. In particular, this is relevant where a company has incurred capital expenditure on a specified intangible asset or assets both before and on or after 11 October 2017.

While the Finance Bill did not contain specific transfer pricing measures, it had been flagged in advance that Ireland is committed to a review and update of its transfer pricing rules in line with international best practice. A public consultation will commence in early 2019 to allow stakeholder input into the proposed changes to Ireland's transfer pricing law as proposed by The Coffey Review.

Aspects of transfer pricing regulations that are subject to review and potential updates in next year's Finance Bill may include:

1. Removal of grandfathering for transactions the terms of which were entered into before 1 July 2010.
2. Removal of the SME exemption which allows certain companies to fall outside Ireland's transfer pricing documentation requirement.
3. Application of transfer pricing rules to non-trading and capital transactions.
4. Aligning Ireland's transfer pricing law to the latest version of the OECD Transfer Pricing Guidelines which were issued in July 2017 which include the principles in Action 8-10 of the BEPS project dealing with aligning transfer pricing outcomes where value is created and Action 13 enhanced transfer pricing documentation standards.
5. Introduction of transfer pricing rules for the taxation of branches in Ireland in line with the Authorised OECD Approach ("AOA").

Other aspects which may be dealt with in next year's legislative changes include incorporating OECD guidance issued in 2018 relating to:

1. The latest, (and probably final), OECD discussion draft dealing with the application of the transactional profit split method which was issued in June 2018.
2. Guidance for tax authorities dealing with hard to value intangibles issued in June 2018.

Both discussion drafts are intended to supplement the new OECD Transfer Pricing Guidelines and will be incorporated into the next consolidated update of the Guidelines.

The OECD issued a further non-consensus draft in September 2018 dealing with financial transactions. It is the first specific guidance provided by the OECD on the transfer pricing aspects of financial transactions including treasury activities, intra-group lending, hedging, cash-pooling, guarantees and captive insurance. Although this is a non-consensus draft, the principles contained therein provide insight on how the transfer pricing aspects of financial transactions will be dealt with within the framework of the 2017 OECD Transfer Pricing Guidelines going forward.

Our view

The Irish tax landscape is changing and aligning with all European Member States as a result of the EU ATADs and therefore in respect of CFC rules, anti-hybrid rules, exit tax, interest limitation rules and GAAR.

As multinational companies manage the adoption of these changes across multiple jurisdictions, obtaining certainty is key. In relation to the adoption of CFC rules, it is important that taxpayers continue to assess the potential implications of such rules on their groups and in particular given some of the provisions in Finance Bill 2018 go beyond ATAD.

For other measures that will be implemented in the coming years, we await further details of the consultation processes outlined in the Roadmap and look forward to engaging in this process in the coming months. We urge taxpayers to continue to participate in these processes through ourselves or industry groups.

Whilst the Finance Bill issued does not contain any specific transfer pricing changes, the introduction of the new CFC regime will apply transfer pricing principles to determine the charge to tax where significant people functions relating to underlying assets and income have a nexus in Ireland.

Next year's Finance Bill will be the first fundamental change to Ireland's domestic transfer pricing regime since the introduction of the law in 2010. Globally, transfer pricing is one of the main tax issues facing companies with new OECD guidance, local country practice and heightened controversy part of the day-to-day matters which stretch the resources of many companies. The public consultation, as discussed in the Roadmap will commence in early 2019. This will provide an opportunity for stakeholders to provide input before next year's Finance Bill and also provide a sense of what changes are likely to happen. It is likely that most of the proposed changes in the Coffey Report will be implemented and therefore companies need to review their current arrangements and put in place a plan to identify risk areas in their businesses and deal with them accordingly.

Individuals and Entrepreneurs

Finance Bill 2018 makes provision for the measures announced in Budget 2019 in the area of personal taxation and entrepreneurs in a manner that has resulted in few surprises. These measures are included in our Budget summary.

There were, however, a number of measures that have been included in the Finance Bill that were not announced on Budget day. As was flagged in the Budget, detailed changes to the Employment and Investment Incentive (EII) and Start-up Relief for Entrepreneurs (SURE) schemes are being introduced with a view to addressing a number of issues, namely:

- The administration of the scheme,
- Small enterprise exceptions,
- Accessibility of the provisions.

An on-going criticism in recent years has been that the legislation and administration were not seen as being user friendly and prolonged delays in obtaining approvals from Revenue were often reported. With a view to streamlining the operation of the scheme, a self-certification process for companies and investors is being introduced. Where it is found that a company has incorrectly self-certified, any clawback of the relief would apply at the company, rather than the investor, level. Whereas, to the extent that an investor incorrectly self-certifies then any tax recouped would be from the individual investor.

These appear to be sensible changes and should simplify matters in many cases.

In respect of the operation of the scheme, there have been a number of further changes, including:

- The scheme will now allow for the issuance of preference shares to investors,
- Anti-avoidance provisions will apply to deny relief where there are mechanisms put in place to limit the risk of the investor in making the investment,
- The trigger point at which claims can be made are to be tied to the use of at least 30% of the funds for relevant
- Where a company raises funds via EII, the limitation on that company being able to list its shares publicly is to be removed,
- Certain restrictions on investors in the form of designated funds or non-resident individuals from investing in such companies operating an EII scheme are to be removed to allow a greater scope for company investment even where such investors may not benefit from tax relief.
- The revised legislation provides more detail on the requirement that both initial and follow on investments must be based on a business plan. Although the specific qualifying criteria have not been altered, current legislation refers the reader to the relevant EU Directive, whereas the revised legislation specifically includes the condition that investment must have been foreseen in the original business plan. The revised legislation also goes one step further than the Directive and sets out what should be included in this original business plan.
- Finally, provision is also being made to allow for relief for certain investments in micro companies/small start-up enterprises by certain connected persons. A lifetime limit of €500,000 is to be applied to such companies under this provision.

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Our view

Any measures to simplify and increase the efficiency of these schemes to make investment easier are welcomed. In particular, the introduction of self-certification is a positive development which should now avoid the time delays which many were experiencing under the current approval process. However, although there is a significant body of new legislation in the Bill, there do not appear to be any significant inherent changes. Given the frequent comparisons which are made with the UK equivalent schemes, there is still much work to be done to bring the Irish regime in-line with those across the water.

Individuals

On the area of individual taxation, the following additional points should be noted:

- Changes have been announced in respect of the Capital Acquisitions Tax dwelling house exemption. The exemption was hugely curtailed in recent years and broadly only applies to inheritances of homes where the beneficiary was residing with the owner of the property at the time of their death (with some minor exceptions). A further, albeit much more minor restriction is now proposed. In order to avail of the relief, the beneficiary cannot have an interest in another dwelling at the date of an inheritance of the home. The proposed change will deem the individual to have a beneficial interest of a house that is held on a discretionary trust, where the individual is a settlor and beneficiary under the trust. Legally, a beneficiary under a discretionary trust would not ordinarily be so entitled to the assets but this legislation deems them to be.
- Changes are to be made to the rent a room relief provisions. Currently, relief of up to €14,000 for rental income on the letting of a room in your home is available, subject to certain conditions being met. As a result of the change, restrictions on the relief are to apply in the case of short term lettings of less than 29 consecutive days. This is seen as a measure to target short term leisure type lettings, largely arranged via online booking sites. There are certain exemptions from the short term lettings provisions to allow for respite care arrangements, foreign students and "digs" arrangements.
- A lifetime cap of €70,000 is to apply to young trained farmers who avail of stamp duty relief, stock relief for income tax purposes and relief under the Succession Farm Partnership provisions in line with EU legislation.
- In the case of CAT reliefs and exemptions, the 4 year time limit for raising additional assessments is to change such that the 4 years will run from the latest date on which the conditions necessary to avail of the relief or exemption have been satisfied. This is a considerable departure from the current position and puts a much greater obligation on taxpayers to retain relevant records should they need to challenge any such additional Revenue assessment. In effect, for taxpayers where relief is claimed it extends the time limit to 10 years after the benefit.
- In certain cases where a CGT liability and a CAT liability arise on the same event, (e.g. a parent making a gift of shares to a child), a credit for the parent's CGT is available as an offset against the CAT liability of the child. The relief is clawed back if the asset is disposed of within 2 years of the transfer. This restriction will now not apply in the case of a gift of a life assurance policy where that policy must be encashed within the 2 year period.
- CGT relief on the disposal of a site to a child for the purposes of that child constructing a principal residence is to be extended to include spouses or civil partners of that child.

This amendment is to deal with a practical issue where a couple are likely to need to raise a mortgage to build a house on the site. Banks would require such mortgages to be taken out in joint names, and thus require the site to be held in joint names.

The additional matters provided for in the Finance Bill that were not announced in the Budget will not impact a great number of people but could have significant consequences for those to whom they do apply. The extension of powers to Revenue to raise assessments in the area of capital acquisitions tax beyond the normal 4 year limit puts further restrictions on the ability of families to transition wealth and add to the significant restrictions imposed in recent years. By granting Revenue the ability to raise additional assessments beyond the standard 4 years puts an additional burden on taxpayers and will require such individuals to retain records for much greater periods.

The purpose of young trained farmers' relief is to incentivise young farmers to get involved in farming and support them in the earlier years. It is also to encourage the early transfer of lands to the next generation. With the change in the commercial rate of stamp duty to 6% last year, this lifetime threshold will mean the transfer of an average sized farm to a young trained farmer will use up most or all of the threshold in one transaction making transition much more challenging.

Our view

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

Financial Services

The Irish economy continues to perform strongly with growth rates that are higher than elsewhere in the EU and a decreasing unemployment rate. However, there are many challenges including Brexit, US tax and many Irish domestic challenges including housing. Against that backdrop, Ireland needs to vigilantly seek to maintain and enhance its international competitiveness while also cooperating with tax reform which is taking place internationally. The Department of Finance published the Finance Bill today which includes a number of proposed changes which are important to the financial services industry. Some of those changes are addressing amendments required under the Anti-Tax Avoidance Directive (ATAD) and were flagged in our recent Budget. Those changes include:

(i) As was expected, the Finance Bill includes the detail in respect of the proposed Controlled Foreign Company (CFC) rules which will be effective from 1 January 2019, in line with requirements of the ATAD.

Broadly in order to be considered a CFC, an Irish resident company (or companies) must control more than 50% of the relevant foreign entity. Also the actual corporate tax paid by the relevant entity for an accounting period must be less than half the corporate tax that would have been paid by the relevant entity on its profits if they were taxed in accordance with the Irish corporation tax system. The proposed rules can attribute undistributed income arising from non genuine arrangements put in place for the essential purpose of obtaining a tax advantage. Broadly, an arrangement is regarded as non genuine to the extent that a company would not own the assets or would not have undertaken the risks which generate its income if it were not for the controlling company undertaking the significant people functions or key entrepreneurial risk taking functions (KERTs) relevant to those assets and risks. The income to be included in the tax base of the taxpayer entity shall be limited to amounts generated through the assets and risks which are linked to significant people functions or KERTs carried out by the controlling company. The proposed rules provide for foreign tax credit relief in respect of the tax paid by the foreign entity on its chargeable income in its country of residence / location.

The proposed legislation includes a number of exemptions / exclusions, including (1) where the accounting profits of the controlled foreign company are less than 10% of its relevant operating costs, (2) (a) the accounting profits are less than €750,000 and non trading income is less than €75,000 or (b) the accounting profits are less than €75,000, (3) in certain instances there will a 12 month exempt period beginning when a company first becomes controlling in relation to the foreign company and (4) it is reasonable to consider that the arrangements would be entered into by persons dealing at arm's length or the arrangements are subject to Ireland's transfer pricing legislation.

In a number of respects, the proposed rules go beyond ATAD for example, the broader definition of control and in our view it is important that the rules do not extend beyond the ATAD in order to maintain Ireland's competitiveness.

(ii) As a result of the ATAD Ireland is required to introduce a more extensive exit tax. The ATAD requires Member States to introduce the exit tax no later than 1 January 2020. Given this, the decision to accelerate the introduction of the legislation to 10 October 2018 was a surprise, as taxpayers would have assumed that the exit tax would be introduced on 1 January 2020.
While Ireland has an existing exit tax regime, the introduction of the ATAD exit tax regime will see a significant widening of the application of exit tax. A 12.5% tax rate will apply to latent market value gains on asset transfers including, for example, where a taxpayer transfer assets from a permanent establishment to its head office (or vice versa) or to another foreign permanent establishment, or transfers the business carried on by a permanent establishment outside of Ireland or alternatively migrates its tax residence out of Ireland. While the timing of

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the introduction of this law will be a surprise, it was lobbied for that the rate of exit tax be set at 12.5% and therefore the proposed rate is in line with what industry would have hoped for. The Finance Bill provides that where an asset is transferred into Ireland from another EU Member State and the ATAD exit tax has been charged in that country, the base cost of the asset for Irish tax purposes shall be the market value base cost as established under the laws of the other EU Member State.

The Bill also provides that the exit tax can be paid in 6 instalments over a 5 year period where certain conditions are satisfied. In addition, provision is made so that the exit tax due from a company can be recovered from another Irish resident company within the same group or from a controlling director who is resident in Ireland for tax purposes.

Our view

As a result of ATAD, in this year's Finance Bill we are seeing the introduction of CFC law in Ireland for the first time. CFC rules are traditionally a feature of territorial regimes. As Ireland currently has a worldwide tax regime, CFC law has not been introduced to date, however, the corporation tax Roadmap has flagged up that a consultation period will be launched in early 2019 seeking input on the options of moving to a territorial regime or a simplification of our double tax relief rules. In a number of respects, the proposed rules go beyond ATAD and in our view it is important that the rules do not extend beyond the ATAD in order to maintain Ireland's competitiveness. The acceleration of the introduction of the ATAD exit tax to midnight on Budget night was certainly unexpected. Public consultations will be held on many of the other proposed changes as a result of ATAD over the coming months and it is important that all interested stakeholders actively contribute to the debate.

Real Estate

Landlords - Interest Relief on residential property restored to 100%

The restriction on interest relief on money used to buy residential property has been eliminated. Accordingly, from 1 January 2019, 100% of interest payable will be available as a deduction against rental income from residential property whereas currently it is 85% of interest payable.

Tax relief on transfer of site to a child for house construction

This is an amendment proposed to a relief from Capital Gains Tax on the transfer of a site by a parent (or both parents simultaneously) to a child of the parents or one of the parents or on the transfer of a site by a civil partner (or both civil partners simultaneously) to a child of either civil partner, where the transfer is to enable the child to build his or her home on the site.

The area of the site must not exceed 1 acre and the value of the site must not exceed €500,000, and the relief is clawed back if the child has not constructed the house and lived in the house as his or her main residence for a period of 3 years. The amendment is proposed so that both a child and his or her spouse/civil partner may avail of the relief. The amendment will apply to disposals made on or after 1 January 2019.

Rent a room relief

The existing relief provides for the exemption of payments up to €14,000 in a year received by individual householders for room rental in their own homes, known as "rent-a-room relief".

It is proposed to introduce a minimum rental period of 29 days. The proposal will not affect the relief for respite care, exchange language students or where the person uses the room as digs for a minimum of 4 consecutive days per week for not less than 4 consecutive weeks.

Stamp Duty relief on transfer of farmland

A number of amendments are proposed to this existing relief including a provision in relation to the qualifying conditions applying to a person who is to be treated as a 'young trained farmer' after the date of execution of the instrument transferring the land and who can claim a repayment of stamp duty.

It is proposed to extend the period for which the stamp duty relief will apply for an additional 3 years. Subject to a Commencement Order, the relief will apply to conveyances executed on or before 31 December 2021 instead of 31 December 2018.

Local property tax and vacant site levy

The Minister announced in the Budget in relation to the local property tax, which is to be rebased on 2019 valuations, next year, that any future changes will be moderate and affordable. So far, no changes have been included in the Finance Bill.

The Vacant Site Levy which can apply to sites which have the potential to provide housing to meet local housing need and demand was not mentioned.

This is a serious issue for developers and for the purchasers of houses who will end up paying the levy through the cost of their house. The Minister had previously announced in his last Budget that the levy rate of 3% which will apply from 1 January 2019 for property which has been held in 2018, will be increased to 7% for each subsequent year. The vacant site levy rules are contained in the Urban Regeneration and Housing Act 2015.

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Our view

Given the budgetary constraints, there were no significant measures in terms of taxation on property announced in the recent Budget and this has been borne out in the Finance Bill 2018 as initiated.

The previously announced restoration of 100% interest relief for landlords against rental income from houses, and the amendment to the relief from capital gains tax on a site transfer to a child for house construction are unlikely to significantly impact the housing crisis.

In relation to rent a room relief, which Revenue state is an incentive to increase the supply of residential accommodation for rent, there is a proposal to introduce a minimum rental period of 29 days, designed to expressly exclude short-term lettings (presumably Airbnb and the like), from the incentive.

There has been a lot of discussion around bringing vacant property into the market and some commentators had called for a low capital gains tax rate to be considered to free up some units into the market. This has not materialised in the Finance Bill.

In terms of attracting labour back from abroad, there are no incentives or help to attract people back and the reality is that in order to deliver so many units, we will need more tradesmen and some of these people are those who left some years ago. At a minimum, some have called for the costs of relocation (perhaps capped) to be tax deductible from future income.

There had been calls for some other incentives around VAT reduction / refunds to those who invest but likewise hasn't been included in the Finance Bill as initiated.

So on balance, no significant changes in the market from a tax perspective and it remains to be seen how the funds allocated to housing will be deployed and at what pace.

Global Mobility & Employment taxes

Key Employee Engagement Programme

The Key Employee Engagement Programme (KEEP) for SMEs was introduced in Finance Act 2017. This scheme allows employees to defer the tax point on share options from exercise to the point of sale whereby the gains is taxed at Capital Gains Tax rates instead of Income Tax rates.

In Budget 2018, the Minister acknowledged that the take up of the scheme by SME employers was less than expected. The lack of take up is due to the legislation governing the scheme proving to be unworkable for many SMEs. In an effort to increase the take up of the scheme to assist SMEs attract and retain talent the Minister announced changes to KEEP in Budget 2019. The Finance Bill confirms these changes:

- the ceiling on the maximum annual market value of share options that may be granted is increased to 100% of the employees emoluments (up from 50%) but subject to an overall lifetime cap;
- the three year limit of €250,000 has been removed and replaced by a lifetime limit; and
- the overall value of KEEP options that may be given to a director or employee is €300,000.
- Implementation of these changes remains subject to Ministerial Order.

Our view

It is welcomed that the Minister has taken some action to seek to make the KEEP scheme more attractive to employers by increasing the maximum value of share options that may be granted to an employee in one year to 100% of the employee's emoluments. However, this is still not in line with the equivalent UK scheme which does not restrict the award to a percentage of an employee's emoluments.

The replacement of the 3 year limit of €250,000 with a lifetime limit of €300,000 is a puzzling move and will make the scheme less attractive to SMEs.

Disappointingly, the Finance Bill does not contain any additional measures in relation to KEEP. The Minister has not addressed some of the other conditions which have proved to be the main blockers in relation to the take up of the scheme; namely the broad definition of companies excluded from KEEP and the need for the options to be over shares in the employing company rather than the parent company.

It was also hoped that the Minister would introduce a mechanism to agree the valuation of a company with Revenue and thereby reduce the current administration costs for SMEs. Overall, it is difficult to see the changes introduced leading to an increased take up of the scheme.

Yet again the Minister has 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. One such area of consideration would be to remove the application of USC and PRSI from Revenue approved share plans to encourage greater take up of these all-employee plans. It is hoped that there would be a continued focus by the Government on the area of reward in 2019.

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Other areas

Revenue's real-time payroll reporting initiative, known as PAYE Modernisation, is addressed in the Finance Bill to the extent that the legislation is being updated to refer to the new Income Tax (Employments) Regulations 2018, as opposed to the predecessor regulations. There is also a new requirement for employers to file a monthly Universal Social Charge ("USC") return, in line with the current requirement to file an income tax return.

The Finance Bill confirmed the small adjustments announced in the Budget in the context of income tax. The standard rate tax band is increasing by €750 to €35,300 for single individuals and to €44,300 for married one earner couples. The band ceiling for the 2% USC rate is increasing by €502 to €19,874 and the 4.75% USC rate is being reduced to 4.5% which applies to income in the €19,875 – €70,044 band. In addition, there is a welcome increase in the value of the earned income credit from €1,150 to €1,350 (although there is still some way to go to achieve parity for the self-employed with the €1,650 PAYE credit available to employed workers) and in the home carer's credit from €1,200 to €1,500.

As announced in Budget 2018, the National Training Fund levy will increase from 0.8% to 0.9% from 1 January 2019. This is in effect an increase in employer's PRSI from the current rate of 10.85% to 10.95%. This rate will increase by a further 0.1% in 2020 to 11.05%.

The Minister also announced that the 0% benefit-in-kind rate introduced in last year's Budget for electric vehicles is being extended for a period of 3 years. Interestingly, a threshold is being introduced on the Original Market Value ("OMV") of the electric vehicle of €50,000, meaning that electric vehicles with an OMV of greater than €50,000 will be subject to the benefit-in-kind rules by reference to the amount by which the OMV exceeds the €50,000 threshold.

The Finance Bill includes additional measures to exempt members of the Permanent Defence Forces from tax on certain benefits, including healthcare and certain qualifying accommodation.

There are also favourable changes to the capital allowances regime for employers who provide childcare facilities and fitness centres, which complements an existing relief from BIK for employees.

Our view

It was hoped that the Finance Bill would contain some additional clarity with respect to PAYE Modernisation, particularly in respect of the penalty regime that may apply to any reporting errors or omissions, and the ability to self-correct without penalty. As things currently stand, the level of penalty is €4,000 per reporting failure. This is effectively on a per employee basis, which means an error for companies with a large workforce could have sizeable implications. We do expect additional guidance from Revenue in advance of the 1 January 2019 implementation date, which may address this issue.

With respect to the reductions in tax and USC, the combined effect of these changes for a single person paying the marginal tax rate is worth €290 per annum, or less than €6 per week. Unfortunately, the marginal tax rate of 52% is unchanged, and remains among the highest in the OECD. The Minister has yet to provide any update on the work of the group announced in Budget 2018 to consider the merger of PRSI and USC, and it is unclear if or when we will see the marginal rate addressed.

Ireland's ability to remain competitive in attracting talent continues to be undermined as a result of the retention of a disproportionately high rate.

Indirect Tax (VAT)

The main VAT change announced in the Budget was an increase from 9% to 13.5% in the VAT rate that applies to hotel and other holiday accommodation services, catering and restaurant services, hairdressing services, cinemas, art galleries, theatres and the sale of horses other than sales to farmers. This rate increase will come into effect from 1 January 2019 and was enacted by the Dail by way of a financial resolution. The Finance Bill includes a technical change to reflect this amendment.

Additionally, the Finance Bill provides that the 9% rate will apply to books, magazines, and periodicals supplied electronically over the internet which are currently liable to VAT at the 23% rate. The 9% rate will not apply where the publication is mainly devoted to advertising or the content is mainly music or video.

The Bill also contains a number of Excise duty changes. Certain drinks become liable to the Sugar tax unless the calcium content is at least 119 milligrams per millilitres. Betting duty will increase from 1% to 2%, again effective from the 1 January 2019 and the rate of betting intermediary tax payable by remote betting intermediaries will increase from 15% to 25%.

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.

The bill also made various changes to the VRT rules including changes to the definition of CO2 emissions to reflect the introduction of a new emission measurement system. The changes also provide for an increase of 1% on each of the CO2 bands for most diesel vehicles. In addition, car hire businesses and driving schools will suffer an additional increase in VRT costs as there will be a change to the calculation of their VRT with the removal of a long standing relief from VRT on VAT on the purchase price of the vehicle.

Our view

While the tourism industry has reacted very strongly to the increase in the 9% VAT rate and has said that it will have a major negative impact on the sector the increase in the rate was not unexpected following a review of the rate by the Department of Finance which stated that demand for hotel accommodation and restaurant services was not expected to be materially affected by an increase in the VAT rate. The review anticipated that the increase in the VAT rate would impact more on profitability of businesses, rather than prices charged to customers. Also, the Department stated that the 9% rate was regressive benefitting better off households disproportionately more than worse off households.

Critically, the increase in the 9% VAT rate will not have any impact on the already high rents being charged in the residential letting market as, in contrast to holiday type accommodation, that accommodation is exempt from VAT. It is also welcome that the 9% rate will continue to apply to newspapers and sporting facilities.

The reduction in VAT rate on e-publications is welcome and will mean that magazines and periodicals will be liable to VAT at the same 9% rate whether they are supplied electronically or in print form. However, in contrast books sold over the internet will be vatable at 9% while books in print format will be liable at 0%. We would suggest that the VAT rate on e-books is reduced to 0%.

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