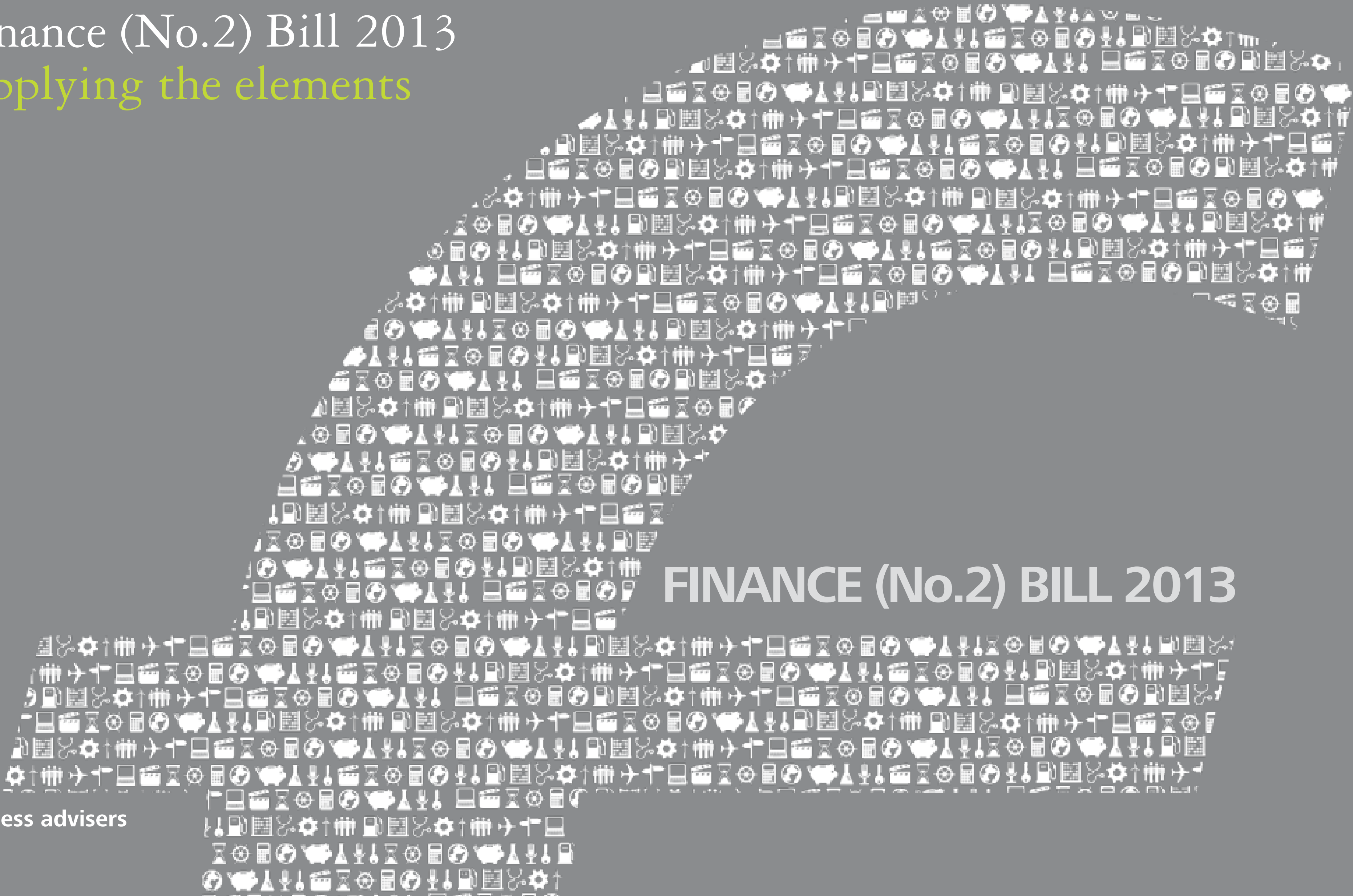
Deloitte.

Finance (No.2) Bill 2013

Applying the elements



Leading business advisers

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About Deloitte Tax

Deloitte is one of the largest providers of tax services in Ireland, with 220 dedicated professionals in 3 locations.

We are uniquely positioned as a firm in having a full Irish Tax Advisory presence in San Jose, New York and Hong Kong as part of the Deloitte centres of excellence platform. This platform has significantly enhanced our service offering to global multinationals including delivering an integrated cross border response on a real time basis.

We advise plcs and large corporates on their optimum business model in conjunction with our consulting and legal colleagues, leveraging off our deep industry expertise. We have a strong track record of successfully implementing and defending Business Model Optimisation structures that are fully aligned to the corporate strategy.

We also advise a large number of emerging companies with a high growth strategy in leveraging the positive tax attributes of Ireland as a hub location.

Our firm has won the 'National Transfer Pricing Firm of the Year' award for Ireland at the International Tax Review Awards in 2012 and 2013.

We provide:

- The full range of corporate tax services (including Transfer Pricing; M&A and Treasury/Leasing)
- Tax function design and overall tax risk assessment & mitigation advisory
- Indirect taxes (including customs and Relevant Contract Tax)
- Employment Tax and Workforce Services (including reward design and mobility process management and planning)
- Capital Tax Advisory (including stamp duty)
- Corporate Pensions advisory
- Advisory Services to Private Irish Businesses (including succession planning)
- Corporate and Legal Services (including company secretarial and payroll)
- R&D tax credit services

Section 1. Foreword

Finance (No.2) Bill 2013 was published on 24 October to bring into effect the Budget announced on 15 October.

The focus on employment and entrepreneurship is welcome. The measures introduced will have limited impact unless 'red tape' is eliminated and, in certain cases, enhanced over time.

The amendment with regard to 'stateless' companies is appropriately narrowly drawn so that Ireland's FDI tax package remains robust. We welcome the overall tax policy sentiment of "playing fair, but playing to win". This provides an excellent platform to continue to enhance our regime and provide the certainty Multinationals require.

The publication of the Bill some three months earlier than usual has meant that the usual raft of technical changes to tax legislation has not been included and indeed, we expect more to come.

There are likely to be further provisions introduced as the Bill progresses through the Oireachtas particularly at the Committee Stage which takes place from 26 to 28 November.

Therefore it will be late November/early December before all the provisions of the Finance Act will be known. We look forward to discussing them at the Deloitte Budget and Finance Bill seminar on 3 December.

A significant change that we anticipate will be introduced at the Committee Stage concerns the date to pay income tax and file income tax returns. Currently this is 31 October each year with an extension for those paying and filing using ROS until the middle on November. A consultation paper was issued in mid-October seeking views on bringing this forward to the end of June or the end of September. Our view is that whatever the date for filing the return, the payment of tax should remain as at present.

This publication provides an overview of the significant changes introduced in the Bill and our comments in relation to them. This year we have also included general perspectives on specific areas of interest including employee mobility, R&D tax credits, revenue audits and transfer pricing.

If you require any further details on how they may affect you, please contact either your usual Deloitte contact or the writer of the particular measure.

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Keep on the pulse with Deloitte analysis of Finance (No.2) Bill 2013

We welcome the overall tax policy sentiment of "playing fair, but playing to win". This provides an excellent platform to continue to enhance our regime and provide the certainty Multinationals require.

Section 2. Income Tax

Section 2. Income Tax

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OVERVIEW

On first read, whilst this is an austerity Finance Bill, it may not have seemed to be as painful as some would have imagined, with the confirmation that there would be no change to income tax and USC rates and the pro-business and pro-job creation tone to the measures. However, others will view some of the main income tax measures (excluding the Home Renovation Scheme and Living City Initiatives) as being harsh. Indeed the changes to the DIRT rate and the tax relief on medical insurance premiums almost raise as much as the bank and pension levies combined.

SUMMARY OF MEASURES

Removal of the Employment and Investment Incentive from the High Earners' Restriction for three years.

The Employment and Investment Incentive was previously a specified relief for the purposes of the High Earners' restriction. This would not make sense from a tax perspective for individuals who were already subject to the restriction (for example by having significant area based capital allowances) to invest in an Employment and Investment Incentive scheme.

Who will be affected?

Those who are subject to the High Earners' Restriction.

When?

Where the subscription for shares is made between 16 October 2013 and 31 December 2016.

Our view

The Employment and Investment Incentive has not been particularly popular when compared with the old BES scheme (a reason might be that only part of the relief is available when the investment is made).
Hopefully this removal from the High Earners' restriction will encourage further investment in the SME sector.

In addition the phasing out of the film scheme relief for individuals might see a move by individuals previously availing of this relief to Employment and Investment Incentive type investments.

Increase in DIRT and exit taxes on fund and life polices

The DIRT rate on Irish deposit interest will increase from 33% to 41% and the exit tax rates on Irish and foreign fund investments and life policies will increase from between 33% and 36% to 41% as well.

Tax rates on Personal Portfolio Life Policies and Personal Portfolio Investment Undertakings will increase from 56% to 60%. This tax rate increases to 80% where it is not correctly included in the tax return.

Who will be affected?

Those with deposit accounts, fund investments and life policies.

When?

1 January 2014.

Quick wins

If individuals currently have fund investments which are standing at a gain, they may wish to consider crystallising these gains before 1 January 2014 to lock in the lower rate of 36% and also consider restructuring their investments going forward.

Our view

While the increase in DIRT is in line with the Government's policy to decrease the level of savings and encourage consumer spending, it could be seen as affecting the elderly in particular who would tend to be more risk averse with their investments.

If an individual is generally paying tax at the standard rate (20%), deposit interest will now be taxed at more than double this rate. Therefore, for these individuals it may make sense for them to revisit the types of investment that they would normally consider.

The increase in the rate of exit tax will undoubtedly cause some investors to question whether the advantage of "gross roll up" outweighs the 8% difference between these investments and the current capital gains tax rate of 33%.

Relief was previously available in respect of interest paid on loans taken out to invest in a partnership. Tax relief is no longer available on loans taken out on or after the 15 October 2013.

Interest paid on loans taken out to acquire an interest in a partnership

Relief was previously available in respect of interest paid on loans taken out to invest in a partnership.

Tax relief is no longer available on loans taken out on or after the 15 October 2013.

Tax relief on loans in existence before 15 October 2013 will be phased out from 1 January 2014 so that no relief will be available with effect from 1 January 2017. The relief will be 75%, 50% and 25% of the interest relief that would previously have been available in tax years 2014, 2015 and 2016 respectively.

Who will be affected?

Those with loans to invest in partnerships.

When?

New loans made on or after 15 October 2013.

Existing loans on a phased basis from 2014 to 2017.

Quick wins

Individuals who are currently availing of this relief should take care that if they are considering refinancing any of these loans that they do not lose their existing tax relief by effectively creating a new loan.

Our view

The Minister commented that the phasing out of this relief was "for reasons of equity". It is assumed that the Minister was referring to the phasing out a number of years ago of the relief on interest paid on loans taken out to acquire an interest in a company.

Capping of tax relief on medical insurance premiums

Previously a tax credit of 20% was available on the total cost of the medical insurance premium without any cap (this was built into the price of the policy).

The Finance Bill has introduced a measure so that the tax relief will be capped for gross premiums in excess of €1,000 per adult and €500 per child.

Who will be affected?

Those individuals whose annual medical insurance premiums exceed certain amounts (€1,000 per adult and €500 per child).

When?

Policies renewed on or after 16 October 2013.

Quick wins

Individuals and companies that pay medical insurance on behalf of their employees should shop around for more competitive insurance.

Our view

The reduction in this relief may encourage further competition within the private health insurance market and indeed some health insurers have already started to reduce the prices of their policies and it may also encourage people to shop around for the best deals on the market.

This measure could be viewed as targeting the elderly since they tend to have increased levels of cover.

Changes to film relief

Previously tax relief was available for individual investors who made investments in qualifying films.

An individual could invest up to €50,000 and claim tax relief at their marginal tax rate on the investment. The typical return on such an investment was approximately €3,000.

The relief is a specified relief for the purposes of the High Earners' restriction.

The change to Film Relief was introduced in Finance Act 2013 whereby the relief will no longer be available to individual investors but instead it will be available to the film production company by way of a tax credit.

The Finance Bill now introduces a withholding tax on payments made to certain non-resident artistes in respect of artistic services (e.g. services of an individual, provided in Ireland, in giving a performance for film or television or any audio-visual content) by the special purposes companies that are set up solely for the purposes of film schemes.

The withholding tax rate will be at the standard income tax rate (currently 20%) of the VAT exclusive amount.

Who will be affected?

Those who invest in film relief schemes and film production companies that make payments to non-EU/EEA resident artistes.

For those individuals who wish to invest in films, 2014 could be the last full year in which to do so...

When?

1 January 2015 for the change to film relief and the film withholding tax is subject to commencement by Ministerial order.

Quick wins

For those individuals who wish to invest in existing schemes, 2014 could be the last full year in which to do so as the current year is almost over.

Our view

The change to Film Relief was introduced in Finance Act 2013 whereby the relief will no longer be available to individual investors but instead it will be available to the film production company by way of a tax credit.

There is some uncertainty for the film production companies at the moment as the details of how the tax credit will operate and more importantly when the tax credit will be paid have not yet been released and indeed it could be some time before this information is available.

Therefore, it remains to be seen if this new system will be as popular with the film production companies as the old one, where they effectively received the benefit of the relief up front.

This withholding tax appears to be in line with the Minister's speech in the Budget in which he stated that he intends to extend film relief to attract additional significant film production to Ireland by encouraging non-EU talent to work in Ireland on these films.

Summary of other measures

For individuals who are passive investors, leasing assets to manufacturing trades and claiming capital allowances on these assets, such capital allowances will be subject to the High Earners' Restriction.

Some individuals who are subject to the High Earners' Restriction and also paid tax in a foreign country (e.g. if they had significant rental income from a foreign rental property) found themselves in a position where they could not claim relief for the foreign tax paid even though they were subject to income tax in Ireland as a result of the impact of the High Earners' Restriction. A technical amendment in the Finance Bill appears to address this position with effect from 1 January 2014 so that these individuals may be able to claim credit for the foreign tax paid against their Irish payable. Interestingly the change is not retrospective.

The relief available to certain sportspersons at the time of retirement is now extended to include sportspersons who are resident in an EEA or EFTA country. Furthermore the Finance Bill now provides that a sportsperson's claim for relief will be based on the income arising in any 10 of the 15 years prior to retirement including the year of retirement. The relief looked back at income earned as early as 1990/1991. This is a fair measure as it allows the sportsperson to select the 10 highest paid years out of the last 15.

In previous years, the calculation of notional pay in respect of an employee's use of a company car was based on the measurement of miles requiring the employers to perform additional calculations to convert distances and usage into kilometres. The Finance Bill now provides the calculation to be based on the metric measurement of kilometres from 1 January 2014, eliminating the need for additional conversion calculations. However, this may involve some changeover on the part of employers.

> While the Government is still trying to balance its Budget in part by increasing taxes it is likely that this will be achieved by further curtailing tax reliefs.

In order to meet EU approval, a restriction to the 50 per cent rate of stock relief available to farmers has been introduced in the Finance Bill. Relief will be restricted to the de-minimis amount of €7,500 over a three year period. A further measure includes the inclusion of an additional three courses for the purpose of meeting the criteria necessary to be a qualifying Young Trained Farmer.

The Finance Bill confirms that the beneficiary of a state pension is taxable on their pension and any increase in their pension in respect of a qualified adult dependant.

Top slicing relief on all termination payments will be abolished with effect from 1 January 2014.

WHAT OUR EXPERTS SAY

Deloitte perspective

The main changes highlighted above are revenue raising measures with the increases in the DIRT and exit tax rates and the capping of tax relief on medical insurance premiums estimated to contribute almost €270m in a full calendar year. In contrast, the change to the Employment and Investment Incentive scheme in terms of the High Earners' restriction is only estimated to cost €1m in a full tax year. Given the current marginal income tax rates of 52% for the vast majority of employees and 55% for other individuals, it was difficult to see how these rates could be increased further and indeed it would be welcome, though probably unlikely in the short term, to see these rates coming down. Therefore, while the Government is still trying to balance its Budget in part by increasing taxes it is likely that this will be achieved by further curtailing tax reliefs. Considering that Budget 2014 was still an austerity budget, it is relatively fair in the overall scheme of things. However, this Finance Bill and the impact of last year's, including a full year's Local Property Tax and the PRSI changes for employees will need to be considered together to fully assess the impact on peoples' disposable income for 2014.

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Section 3. Corporation Tax

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OVERVIEW

The Bill contains positive measures that should benefit both multinationals and SMEs. These measures include a number of welcome improvements to the R&D Tax Credit Regime, in response to the recent review of the regime by The Economic and Fiscal Divisions of the Department of Finance. These changes should ensure that the Irish R&D Tax Credit Regime remains among 'best in class' internationally.

The introduction of measures to provide for a deferral of any exit tax arising when companies migrate to other EU or EEA Member States is in response to recent EU case law which held that similar provisions in The Netherlands were contrary to EU law.

The consultation process in relation to the Appeal system is welcome, but long overdue. It is hoped that the actual Appeal system reforms will provide greater certainty and transparency to taxpayers, a key ingredient in a fair tax system.

Some of the amendments to the foreign tax credit regime legislate for Irish Revenue's view on how the foreign tax credit regime should be applied in certain instances, preventing the creation on increase of losses.

Given the short timeframe between the announcement of the Budget and the publication of the Finance Bill, it is expected that further amendments will be introduced at the Committee Stage of the Bill.

SUMMARY OF MEASURES

Re-affirmation of 12.5% corporate tax rate

On Budget day, the Minister re-affirmed the Government's commitment to the 12.5% rate of corporation tax stating that the rate "will not change". This budget confirmation each year is important to both multinationals and the indigenous sector as it provides on-going certainty to corporate tax payers. Allied with numerous tax incentives, such as generous research and development tax credits, an intellectual property regime and a wide treaty network, Ireland remains a very attractive location for companies to set up and/or expand their business.

Quick win

Review your company's global activities to determine if your organisation is benefitting from Ireland's grant, tax and credit incentives.

Research & development credit regime

Earlier this year, The Economic and Fiscal Divisions of the Department of Finance carried out a review of the Irish R&D Tax Credit regime which was introduced almost ten years ago. The Economic and Fiscal Divisions' Report was recently published and concludes that the scheme has been a significant contributor to the growth in R&D activities in Ireland. In response to the Report, the Finance Bill contains the following positive measures in relation to Ireland's R&D Tax Credit Regime:

- The relief allows a credit for qualifying expenditure above the level incurred in 2003 (the base year). Following changes introduced by the last two Finance Acts, the first €200,000 of expenditure qualifies for the tax credit irrespective of the base year expenditure. This amount is now being increased to €300,000. However, more important is the Minister's stated intention to phase out the 2003 base year limitation over time.
- The limit on the amount of qualifying expenditure on R&D outsourced to third parties is being increased from 10% of internal expenditure to 15%.

The Bill also provides Irish Revenue with an ability to recover any tax foregone in respect of a R&D credit which was incorrectly claimed by a company and surrendered to a key employee, from the company rather than the key employee. In that case, where the R&D claim is found to be deliberately false or overstated, the company may be taxable on twice the amount of the credit which is aimed to act as a deterrent.

Who will be affected?

The above amendments, especially the intention to phase out the base year limitation will enhance Ireland's overall attractiveness to compete effectively for global R&D projects whilst also assisting SME's to obtain the benefit of expenditure incurred in the R&D process in areas where they have to purchase the skills and expertise from outside their organisation.

When?

The changes take effect for accounting periods commencing on or after 1 January 2014.

Quick Win

Review the activities undertaken by your company to ensure that all qualifying expenditure incurred is benefiting from the R&D credit regime particularly in light of these positive changes. Also ensure that all claims in respect of the year ended 31 December 2012 are made before 31 December 2013.

Finance Act 2013 introduced changes to the foreign tax credit regime in respect of foreign dividends in response to decisions by the European Court of Justice.

Our view

It is very welcome that the R&D Tax Credit Regime is being enhanced as it is an important cashflow tool for SMEs and can be an important deciding factor for multinationals choosing a location for R&D projects.

The Report compared the Irish R&D Credit Regime to similar regimes in a number of countries and found that it is among 'best in class' internationally. As countries continue to improve their tax regime, it is vital that the Irish R&D Tax Credit Regime remains competitive and therefore we welcome the enhancement of the regime in the Bill.

The Report states that the number of companies benefitting from the R&D credit has increased from less than 75 in 2004 to almost 1,500 in 2011. The annual cost of the scheme is estimated to have risen from €71 million to approximately €261 million over the same period. Given the significant cost of the regime, in recent times Irish Revenue have carried out a number of audits to ensure that the activities are qualifying R&D activities and that the credit is computed correctly. We expect Irish Revenue to continue to carry out a significant number of audits of R&D credit claims. Therefore it is important that you ensure that there is adequate documentation to support the nature of the activities and the computation of the credit.

It is clear that the R&D tax credit scheme positively impacts on the amount of R&D performed in Ireland and that increasing R&D in Ireland will have a positive effect on the economy. It would therefore follow that more companies should be encouraged to take up the scheme. The Minister is advocating that the base year be phased out over time and Deloitte would encourage this action to take place as early as possible. This would be of particular significance to multinationals that are currently penalised where they had high levels of R&D expenditure in 2003. The Report states that only 10% of companies surveyed have base year expenditure. The affordability of such a measure is a major consideration in the current climate; however the low number of companies impacted would indicate that the cost of taking such action is not prohibitive and a major administrative hurdle to join the scheme, mainly in relation to established indigenous companies, would be removed.

The measures included in the Bill requiring that any third parties engaged by Irish Revenue must abide by the same confidentiality provisions relating to the non-disclosure of taxpayer information that apply to Irish Revenue officers is of particular relevance to companies claiming R&D credits, given the use of independent specialists by Revenue.

Deferral of exit tax

In recent times, there have been a number of decisions by the European Court of Justice (ECJ) in relation to exit tax regimes. These include the National Grid Indus case, which held that the Dutch exit tax regime was contrary to the freedom of establishment principles set out in EU law. Similarly, the exit regimes in Spain and Denmark were held to be contrary to EU law. The European Commission had initiated infringement proceedings against Ireland in relation to its exit tax regime in January 2011.

In response to the recent ECJ decisions and those infringement proceedings, the Bill contains a number of measures to bring Irish legislation in line with EU law. In accordance with the existing exit tax regime, where a company ceases to be resident in Ireland, it is deemed to have disposed of, and reacquired immediately, before the migration, all of its assets at their market value at that time, subject to certain exclusions which are discussed below.

The Bill provides that companies which migrate their residence to another EU or EEA Member State may have the following options in respect of any taxable gain arising by virtue of the migration:

- Pay the tax in six annual instalments
- Defer the payment of the tax arising on the deemed gains until 60 days after the actual disposal of those assets. Where the assets are not disposed of within ten years of the migration, the tax becomes payable upon the tenth anniversary of the migration

The tax which has been deferred would become payable immediately upon the occurrence of any of a number of events such as the appointment of a liquidator to the company or the subsequent migration of the residence of the company outside the EEA.

Where the tax is deferred (until the disposal of the assets or by way of annual instalments), interest shall arise on the deferred tax throughout the period, commencing nine months after the migration date, where corporation tax applies or the 31st of October in the following tax year, where CGT applies.

Who will be affected?

Existing Irish legislation provides that an exit tax should not arise where a company migrates its tax residence from Ireland where certain excluded company conditions are satisfied. Therefore, given the broad exemptions available, the necessity to avail of this new exit tax provision should only arise in limited circumstances.

However, where the excluded company tests are not satisfied, these measures are helpful in allowing any exit tax which would otherwise arise to be deferred to a future time. Therefore, for example, Irish owned companies could avail of this provision on migrating to an EU or EEA State. While there may be commercial and other benefits from the migration, the imposition of interest on the deferred tax will reduce some of the benefits from the deferral mechanism, albeit a cashflow benefit should remain.

When?

The new measures come into operation on 1 January 2014.

Our view

The changes to bring the Irish exit tax regime in line with EU law are welcome if unsurprising given the recent case law and the fact that a number of other EU Member States including Luxembourg and France have amended their exit tax regimes to bring them in line with the recent caselaw.

Given the fact that the exit tax does not apply in many circumstances under the existing rules, the changes are likely to be of most relevance to indigenous companies. However the application of interest on any deferred tax, while in accordance with the National Grid Indus case, removes some of the benefits associated with the deferral.

Finance Act 2013 introduced changes to the foreign tax credit regime in respect of foreign dividends in response to decisions by the ECJ. Therefore, we can expect other changes to Irish legislation in the future where certain provisions do not comply with EU law, where there are ECJ decisions to support that position.

Double tax relief

The Bill introduces measures which provide that where a company has suffered irrecoverable foreign tax for which it cannot claim foreign tax credit relief, and where for example, the company is loss making, the foreign tax cannot be used to create or increase the company's loss. This will apply for all types of income which have suffered tax in a country with which Ireland has a double taxation agreement, as well as interest and royalties from countries with which Ireland does not have a double taxation agreement. Irish Revenue have, in many instances, challenged cases where companies have sought to claim a tax deduction in such circumstances. In particular, deductions for foreign tax in respect of foreign branches where the Irish company is in an overall loss-making position have been challenged by Irish Revenue. The changes are aimed at putting Revenue's position to date on a legislative footing.

Who will be affected?

Companies in the financial services sector, in recent years, have encountered scenarios where they have suffered foreign tax in respect of their foreign branches or foreign interest income in cases where the company is overall in a loss position. The changes will impact their ability to take a tax deduction for the foreign tax going forward.

Many companies in the technology sector earning royalties will be impacted by these changes, particularly those in a start-up phase and likely to be generating losses.

When?

The changes apply to accounting periods commencing on or after 1 January 2014.

Our view

Arguably Irish Revenue's position on this is that while their aim is to ensure that double taxation does not occur, they will not allow companies to benefit from relief where there is no Irish taxable income to be offset by the foreign tax and therefore the deduction would create or increase a loss.

The comments in the Finance Bill Explanatory Memorandum refer to a 'clarification' to the rules. Therefore it is expected that Irish Revenue may hold their position in any previous cases that they have challenged.

Reform of the appeal system

The Minister for Finance has announced a reform of the appeal system for tax matters, including a reform of the role, function and structure of the Appeal Commissioners. A consultation paper has been published which sets out a number of options in relation to the structure and operation of the Appeal Commissioners. The proposals in relation to the determinations of the Appeal Commissioners are of particular importance as they would require that a written determination be published by the Appeal Commissioners in all cases within a reasonable timeframe, which would increase transparency and benefit taxpayers.

Who will be affected?

The reform would impact the Appeal System for all Irish taxes and therefore would be applicable to all taxpayers in Ireland.

> **The introduction of measures to provide a deferral of exit tax and to deal with 'stateless' companies are in direct response to recent EU case law and the focus on international tax planning by multinationals respectively.**

When?

A consultation process in relation to the proposed changes will run from 16 October 2013 to 16 January 2014. It is intended that changes will take place in 2014.

Our view

The reform of the Appeal System is very welcome and long overdue. Most taxpayers would understandably have a preference towards filing their tax returns and paying their tax on the basis that they would not at some subsequent point have to defend positions taken before the Appeal Commissioners. Increasingly taxpayers want certainty that the positions they have adopted in their tax returns are reasonable. Where they do have to go before the Appeal Commissioners they want to go through the process in a reasonable timeframe and costs should not be prohibitive. As set out in the consultation document, one of the objectives is that the Appeal Commissioners will manage the tax appeal process in a manner which is separate from Irish Revenue. The proposed changes which would require all decisions to be published should be of great assistance to taxpayers as it would allow taxpayers consider the impact of previous decisions on their particular circumstances when taking a position on a particular matter in their tax return. The proposed changes should also help expedite the process and therefore allow taxpayers who appeal a matter to reach a conclusion on that point within a more reasonable timeframe than is currently the case.

Confidentiality provisions

Finance Act 2011 introduced a specific provision to formalise the taxpayer confidentiality provision aimed at reassuring taxpayers that personal and commercial information revealed to Irish Revenue for tax purposes is protected against unauthorised disclosure. The Bill introduces a provision to ensure that the same confidentiality provisions that apply to Revenue officers should apply to any third parties engaged by Irish Revenue and therefore would have access to taxpayers' information.

We welcome these provisions as they provide additional comfort to taxpayers who are requested by Irish Revenue to provide certain confidential documentation, for example, as part of a Revenue audit.

Other measures

The Bill contains a number of other Corporation Tax measures including the following:

- The Bill provides that any securities issued by Irish Water on or after 24 October 2013 will not be chargeable assets for Irish Capital Gains Tax purposes. Also, withholding tax will not apply to any interest paid on such securities. It was anticipated that there would be a package of indirect tax measures included in the Finance Bill in relation to Irish Water. We expect these measures to be included in later drafts of the Finance Bill.
- The Finance Bill amends the group loss relief provisions which set out the conditions under which a parent company and its subsidiary company may form a group. In accordance with the amendment it clarifies the requirement for the subsidiary's direct parent company or indirect parent company to be quoted on a recognised stock exchange.
- As Ireland's double taxation treaty network continues to grow, the Finance Bill completes the ratification process for a first time double taxation treaty with Ukraine and the Exchange of Information Agreements with Dominica and Montserrat.

Ireland's international tax strategy

The publication of a policy statement by the Irish government on Ireland's International Tax Strategy is welcomed. The document was published to provide a clear and accurate picture of the Irish tax regime.

The document also sets out Ireland's International Tax Charter – a set of policy objectives and commitments for how the Irish Government will view and deal with a variety of international tax policy issues.

The role of Ireland's competitive tax system is recognised as an element of the Irish package to attract investment and the Government's commitment to the 12.5% rate is reiterated. It is credited as one of the cornerstones of the economic recovery strategy and a key factor in creating employment and generating economic activity.

The statement outlines that Ireland's tax system scores well in terms of good governance and transparency and outlines the existence of the following to support this assertion:

- A statute based 12.5% rate applied to a broad base
- A 25% passive rate
- 69 double tax agreements and 22 information exchange agreements
- One of the first countries to sign FATCA

- Mandatory disclosure rules
- A General Anti-Avoidance Rule since 1989

However, the existence of structures which have been very publically criticised in recent months are recognised as examples of legal but aggressive tax planning by international companies. It is acknowledged that this planning relies on mismatches between the tax rules of different countries and requires a coordinated international response which is being addressed through the OECD's Base Erosion and Profit Shifting project ('BEPS').

The statement outlines that Ireland is taking an active role in countering Aggressive Tax Planning in the following ways:

- Ireland's active role in the BEPS project and commitment to working with the OECD
- Building on the progress achieved during Ireland's presidency of the EU through continued participation in the EU Code of Conduct and the new EU Platform for Tax Good Governance
- Commitment to update the domestic legislation once the OECD work on automatic information exchange is completed, continued expansion of treaty and information exchange networks and perhaps most significantly of all, a change to domestic legislation in relation to company residence rules to tackle the ability of companies to be 'stateless' in terms of their tax residency.
- Engaging with developing countries both at an international level through the OECD and domestically through Irish Aid and Ireland's tax treaty policy
- Supporting country by country reporting in relation to work underway at the OECD and the EU
- Supporting automatic exchange of information to improve tax transparency

'Stateless' companies

While the Irish government is actively participating in BEPS and will move in line with the international community in terms of negotiation on and implementation of changes to tax law, there is one area of concern that the Irish Government has addressed in the Finance (No 2) Bill 2013 which links with the ongoing OECD work on BEPS in the areas of establishing international coherence and restoring international standards by addressing double non taxation achieved through residence arbitrage.

The Finance Bill amends the legislation in the area of corporate residence to ensure that an Irish incorporated company cannot be 'stateless', in terms of its place of tax residence due to a mismatch between Ireland's corporate residence rules and those of a treaty partner country.

The amendment has the effect of treating an Irish incorporated company that is managed and controlled in a treaty partner country as being resident in Ireland for corporation tax and capital gains tax purposes where the following conditions are satisfied:

- The company is not resident for tax purposes in the treaty partner country but would be so resident if it was incorporated in that country
- The company is not resident in Ireland for tax purposes because it is not managed and controlled in Ireland but would be so resident if it was managed and controlled in Ireland
- The company is not resident in any other territory, by virtue of the law of that territory

In terms of the potential impact for multinationals, it is our understanding that the tax residency change is targeted at, and will impact only a very small number of companies in Ireland, which are Irish registered and "stateless" companies.

Previously, Irish tax legislation has not treated Irish incorporated companies which are managed and controlled in a treaty partner country to be tax resident in Ireland. This amendment will apply to such companies and in practice it will be mainly relevant to Irish incorporated companies which are managed and controlled in the US, as the US is a treaty partner country.

The amendment will have effect from 24 October 2013 for companies incorporated on or after that date, and from 1 January 2015 for companies incorporated in Ireland before 24 October 2013. For those existing limited number of companies who will be impacted, there should be sufficient flexibility to restructure their arrangements.

Further changes to domestic legislation are likely in the coming years as a result of the BEPS project. Currently, there is a strong global political and public drive behind the process. It is likely that this pressure will remain and it would appear that change to international tax rules is likely in the coming years. However, due to the complexity and sensitivity of the matters for review under the BEPS project and the number of countries involved, the timetable put forward by the OECD may prove to be ambitious and the conclusion of concrete recommendations which have achieved international consensus may in fact be some time away.

WHAT OUR EXPERTS SAY

Deloitte perspective

Given the change in the timing to this year's Budget and Finance Bill, it was expected that the Finance Bill would be a low key event for corporates. That said, there are a number of welcome amendments to the R&D tax credit regime, which are in response to the review carried out by the Economic and Fiscal Divisions of the Department of Finance. The introduction of measures to provide a deferral of exit tax and to deal with "stateless" companies are in direct response to recent EU case law and the focus on international tax planning by multinationals respectively. However, it is expected that there will be further amendments introduced at the Committee Stage of the Bill.

Section 4. Real Estate and Construction

Section 4. Real Estate and Construction

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OVERVIEW

The measures that were introduced in the Budget and subsequently confirmed in the Finance Bill (in addition to the extension of the 7 year Capital Gains Tax exemption) combined with no further new employment tax increases will be welcomed by the real estate and construction sectors. The Government is committed to encouraging growth and the creation of jobs in this sector while operating within budgetary constraints. These measures, coupled with the additional €2bn of funding that NAMA has promised to deliver along with a comparable level of vendor capital, will hopefully drive further growth in this sector which has suffered so much over the last 5 years.

SUMMARY OF MEASURES

Home Renovation Scheme

The measure

The Scheme will operate by granting a tax credit in respect of qualifying work (which includes extensions, window fitting, plumbing tiling, plastering, etc) on an individual's principle private residence. The expenditure must be incurred between 25 October 2013 and 31 December 2015. The minimum spend is €5k and the maximum is €30k.

The tax credit is 13.5% which is the current VAT rate on most building works. So the maximum credit that would be available is €4,050 (i.e. €30,000 x 13.5%) and the minimum tax credit would be €675 (i.e. €5,000 x 13.5%).

The tax credit will be given over the two years after the year in which the work is carried out. For example, if the work is carried out in 2014, the individual would receive the tax credit spread over 2015 and 2016.

Who will be affected?

Homeowners who wish to repair, renovate or improve their principal private residence.

When?

2014 and 2015.

Quick wins

If individuals are considering renovating their own homes it may be worth carrying out the work between 25 October 2013 and 31 December 2015.

Our view

The Government's aim in relation to this scheme is to move activity out of the shadow economy. Judging by the costing of this scheme of €62m in the Summary of Budget Measures, this means that the Government are estimating that almost €460m would be moved out of the shadow economy in a full year which would be a substantial achievement. The introduction of this relief is a step in the right direction and hopefully it will assist unemployed construction workers to return to work. In addition, this will hopefully encourage some much needed activity in the home improvement sector.
It remains to be seen how successful this credit will be. However, given the increase in the DIRT rate, it may encourage homeowners to spend some of their savings on renovating their homes.

Extension of the Living City Initiative to other cities and widening of criteria

The measure

The Scheme operates by granting capital allowances to owner occupiers who carry out renovation work to certain residential properties and other individuals who carry out renovation work to commercial properties in special regenerations areas. For owner occupiers, the allowances are available at a rate of 10% per annum over 10 years and the allowances are available against total income. If the property is sold during the 10 year period, there is no clawback of allowances claimed. However, the purchaser cannot claim any allowances going forward.

For commercial premises, the allowances are available at a rate of 15% for the first 6 years and 10% in year 7. If the property is sold after the 7 year period there is no clawback of the allowances. The premises must be used for the retail of goods or the provision of services and it must be leased on an arm's length basis. The allowances under the Living City Initiative are subject to the High Earners' restriction.

Who will be affected?

Owner occupiers who wish to renovate and live in certain residential (effectively Georgian and now Victorian) properties

These measures will hopefully drive further growth in this sector which has suffered so much over the last 5 years.

and others who wish to renovate certain commercial properties

When?

Subject to EU approval

Quick Wins

As this relief is subject to EU approval, it may be worth holding off commencing any such renovations until EU approval has been granted.

Our view

The relief is one of the few property based capital allowances schemes still available. The extension of the relief to include Cork, Galway, Kilkenny and Dublin and the widening of the criteria to include buildings constructed prior to 1915 are certainly welcome. However, as this relief will be restricted to special regeneration areas and property developers will not be able to avail of the relief, it remains to be seen how successful this relief will be.

Start Your Own Business scheme

The measure

This Scheme will operate by granting a two year exemption from income tax (subject to a maximum of €40,000 per annum) to individuals who have been unemployed for at least 15 months when they commence their own unincorporated businesses.

Who will be affected?

Those individuals who have been unemployed and on the live register for at least 15 months and who want to start their own unincorporated businesses

When?

New business set up between 1 January 2014 and 31 December 2016.

Quick wins

If individuals are considering starting their own unincorporated businesses it may be worth postponing this until 2014.

Our view

The aim of this scheme, in addition to the Home Renovation Scheme, is to encourage individuals who may be operating in the shadow economy currently to move into the mainstream. It is clear that the Government sees this as an important part of the Irish economy in the future. This is a very welcome development and again will hopefully lead to increased employment in the construction sector.

WHAT OUR EXPERTS SAY

Deloitte perspective

Both the Living City Initiative and the Home Renovation Scheme will assist with job creation and will also encourage certain individuals to become more tax compliant if they want the additional work that will arise as a result of the scheme. A number of construction workers who are unemployed should be attracted to the €40,000 income tax exemption for earnings as a result of the Start Your Own Business scheme.

However the bigger picture shows that there is a lack of housing stock given the small number of new units that have been built since 2006. Some commentators are suggesting that another property bubble could arise if measures to have more units constructed do not materialise. Indeed, the 80% windfall tax on rezoning of land introduced in 2009 should likely be a starting point in terms of reviewing the effectiveness of this measure as this tax is undoubtedly hindering any sales of land due to rezoning.

In addition, there is a serious lack of commercial office space of scale in the capital which needs to be addressed. It is likely a Real Estate Investment Trust ("REIT") which was introduced in last year's Budget may be better placed to address this issue in that it should have better access to funding and no doubt the government and IDA should welcome this.

Section 5. Financial Services

Section 5. Financial Services

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OVERVIEW

The Government's on-going commitment to the 12.5% corporate tax rate and support of foreign direct investment into Ireland is welcome. We also acknowledge the work done by the Minister in previous Finance Acts to introduce new measures and refine existing legislation to further enhance Ireland's competitiveness when it comes to attracting investment in the financial services sector. That said, however, it is vitally important that we continue to innovate, introduce new financial products and and incentivise businesses not only to locate here, but to retain what they have.

Other than the change to foreign tax credits, there is a notable absence in this year's Finance Bill of major changes that might enhance the Financial Services environment. By way of contrast, the UK, for example, has been very forthright in its desire to ensure that financial services is a key plank of its future development by introducing new products and an enhanced framework to assist in the development of financial services companies. This is highlighted (amongst other things) in the "UK Investment Management Strategy" issued by HM Treasury in March 2013, where they outline the specific steps/initiatives they are committed to in order to rebuild their share of the global investment management business. Included in that strategy is a focus on tax changes which the UK have already started to implement in the last few months.

It is important that each year there is something new and impactful in the Finance Bill for Financial services. financial services companies operate on a global basis and are constantly monitoring where the best opportunities are for building out their businesses. Having a location that provides a positive, dynamic, innovative and appropriate framework is key. There is something very powerful in being able to market Ireland globally where there are positive changes in our tax framework – all in keeping with the Ministers focus on rate, reputation and regime.

SUMMARY OF MEASURES

Double tax relief on equipment lease rentals

Measure:

In a welcome move for Irish resident lessors, the unilateral credit relief provisions, which allow such lessors to claim a tax credit for withholding tax suffered on lease rentals received from non-treaty countries, have been enhanced.

Any excess credits which cannot be utilised by the lessor in the year in which the income is earned, due to an insufficiency of income, may now be carried forward and treated as unilateral credit relief in the subsequent period, to be offset against corporation tax arising on leasing income from such non-treaty sources from which tax has been withheld.

When?

Applies to accounting periods beginning on or after 1 January 2014.

Who will be affected?

This will have a significant impact on Irish lessors, in particular lessors of aircraft, leasing to non-treaty jurisdictions.

Our view

With Ireland being the premier global location for aircraft leasing, there is good news for the leasing sector. This carry forward mechanism has long been sought by the industry, and it is likely to have a significant impact for many aircraft lessors, as well as large and small ticket lessors and vendor financing operations.

Double tax relief on foreign income

Measure:

Amendments are being made in the Finance Bill to ensure that a reduction in foreign income for excess foreign tax suffered which cannot be claimed as a credit, does not result in creating a loss on the foreign income. In that context, the maximum amount of the foreign tax deducted cannot be greater than the relevant foreign income.

When?

Applies to accounting periods commencing on or after 1 January 2014.

Who will be affected?

Financial services operations with excess foreign tax greater than the Irish measure of the relevant foreign income.

Our view

This has been a contentious issue for a number of years, and Revenue have challenged taxpayers where they have sought to claim a foreign tax deduction and create or increase an allowable loss. This amendment will put on a legislative footing Revenue's view on the matter, and should bring certainty on the issue going forward. Whilst Revenue have indicated that this Finance Bill amendment is clarifying the position, the question still remains as to the actual position for prior years.

Financial services companies operate on a global basis and are constantly monitoring where the best opportunities are for building out their businesses. Having a location that provides a positive, dynamic, innovative and appropriate framework is key.

Bank levy

Measure:

The Government has decided that the banking sector should make an annual contribution of €150 million to the Exchequer for the period from 2014 to 2016. This levy is being introduced on the same basis as the levy which yielded over €100 million each year from 2003 to 2005. The contribution from each institution will be 35% of the DIRT paid by them in 2011 and is intended to reflect the role played by the banking sector in the financial crisis.

Who will be affected?

The bank levy introduction will clearly affect the major banks, and could have significant implications for their profitability.

When?

The levy is payable on 20 October 2014, 2015 and 2016.

Our view

With the bank guarantee having ceased in March 2013 (together with fees that were paid for the guarantee), the introduction of the bank levy was well flagged. Similar levies are in place in other EU Member States including France, the Netherlands and the UK. Whether the burden of the levy will be absorbed by the institutions themselves or passed on to customers in the form of higher loan interest rates, remains to be seen. However, it is clear that although this levy is expected to generate significant revenue for the Exchequer, it does so at the expense of the profitability of banks operating in Ireland.

NAMA losses

Measure:

The 50% restriction on the amount of prior year trading losses a NAMA participating bank can set off against trading profits has been removed.

Who will be affected?

This change will impact banks and other financial institutions which have tax losses forward, but only to the extent they are participating banks, which means Bank of Ireland and AIB.

When?

Applies to accounting periods commencing on or after 1 January 2014.

Our view

This is a welcome measure for the banks, who will now be in a position to claim full relief for losses incurred in their banking activities over the past number of years, once they return to profitability. The abolition of the restriction protects the value of deferred tax assets, improves capital ratios and thereby enhances Ireland's stake in both banks.

Withholding tax on savings and investments

Measure:

Following rate increases in the last two Finance Acts, the trend continues with an increase in the rate of retention tax that applies to deposit interest, and the rates of exit tax that apply to life assurance policies and investment funds to 41%.

In the case of life assurance policies and investment funds, which previously withheld tax at 33% or 36%, depending on the frequency of the payments in question, the new rate of 41% will apply to all payments to investors, regardless of the frequency of those payments.

Who will be affected?

The changes will affect all individuals and many others with cash on deposit with Irish banks, and those Irish residents invested in Irish domiciled funds and with life assurance policies.

However, the changes will also affect the banks and other savings providers who are required to collect such tax, and also the fund administrators and other institutions charged with updating the systems and other records to ensure compliance with this rate change.

When?

The increased rates will apply to payments/deemed payments made on or after 1 January 2014.

Our view

Ireland has a higher than average rate of savings. With a view to encouraging the taxpayer to increase retail spending, savings income is targeted with an increase in DIRT and the exit tax/tax on payments from life and investment funds, by 8% from 33% to 41% from 1 January 2014 (an increase from 36% to 41% for exit tax). In 2009, the rate of DIRT/tax on payments from life and fund products was 25%. The change to 41% gives rise to an increase over that period of 64% (a rate increase of 16%). The rate applicable to Personal Portfolio Investment Undertakings/Life Policies increases from 50% to 60%, but increases to 80% where the payment

has not been correctly included in the income tax return.
The increase in administration, and the cost of implementing the systems and other changes, brought about by these rate increases will have implications for a wide range of financial institutions and their service providers.

Interest withholding tax

Measure:

One of the positive changes that will affect financial services includes a practical change in relation to interest withholding tax.

Who will be affected?

Irish resident companies paying annual interest to other Irish group companies (51% relationship).

When?

Interest paid on or after 1 January 2014.

Our view

This change is unlikely to have a significant impact on Irish treasury companies, many of which are still required to withhold tax on interest paid cross border to a related company that is neither within the EU nor in a country with which Ireland has a double tax treaty, where a tax deduction is taken for that interest. We would have preferred to see the Finance Bill introduce a wider exemption, whereby group interest payments would not subject to the 20% Irish withholding tax where the interest payments are taxed in the recipient country in their entirety i.e. 100% of the payment is taxed and the tax rate in that jurisdiction is not zero/exempt.

Pensions

Measure:

The 0.6% stamp duty levy on pension fund assets is to increase to 0.75% for the year 2014. The levy will be reduced to 0.15% for 2015.

The standard fund threshold has been reduced from €2.3m to €2m with effect from January 2014.

Who will be affected?

While changes to the pension rules are often seen as affecting the individual, there is also an impact on the asset managers and pension providers.

When?

The changes take effect from 1 January 2014.

Our view

There were also a number of negative changes to pensions, including the decrease in the standard fund threshold from $2.3m to $2m (effectively restricting tax relief on pensions delivering an income exceeding €60,000 per annum).
The introduction of a new pension levy is clearly not a welcome development and a reversal of previously stated policy to end the levy in 2014. The overlapping of the pension levies for 2014 has shocked the industry - there will now be a tax take of 0.75% of pension assets in 2014, at a time of generally low investment returns. This will undermine individuals' confidence in retirement savings as pensions are increasingly subject to double taxation during the investment accumulation period and ultimate drawdown. Government policy has clearly been stated as to increase participation levels in private pension arrangements, but this action will undermine that goal.
While changes to the pension rules are often seen as affecting the individual, there is also an impact on the asset managers/pension providers/insurance companies who over the years have seen a dramatic reduction in pension investment therefore impacting their business in a real way.

Medical insurance relief

Measure:

The amount of the medical insurance premium on which tax relief at source will be available will be capped at €1,000 per adult and €500 per child.

Who will be affected?

This is likely to have a significant impact on many individuals, families, and on the medical insurance providers operating in Ireland (see below).

When?

This applies to all relevant medical insurance contracts entered into or renewed on or after 16 October 2013.

Our view

In his Budget, the Minister stated that the intention of this measure was to "restrict the exposure of the Exchequer in relation to premiums paid for 'gold plated' medical insurance policies, while not affecting the majority of individuals who avail of more standard levels of medical cover."
However, as tax relief is operated on the gross premium and not on a net basis, and as there are likely to be a significant number of policyholders paying a gross premium in excess of the €1,000 limit, it is expected that this will have a far wider impact than anticipated by the Minister. With a reduction in tax relief, and a resulting increase in the cost of health insurance for many policyholders, the industry expects to see more and more individuals and families opt not to take out health insurance policies in the future, which would have a negative impact for the profitability of health insurers.

WHAT OUR EXPERTS SAY

Deloitte perspective

A somewhat quieter than normal Finance Bill for the financial services sector. Hopefully, the committee stage amendments may change this. Some of the measures which we would have liked to have seen introduced in order to further boost the competitiveness of the financial services industry in Ireland include the following:

- Solvency II has led to restructuring of international insurance and reinsurance operations, and changes to the law on the taxation of foreign branch profits would be beneficial. In particular, we would like to see an option to elect for a foreign branch profit exemption and the alignment of the Irish and foreign basis of taxation of branches.

- To further enhance Ireland's competitiveness as a key global centre for aircraft leasing, the pooling of foreign tax credits relating to cross-border leasing income received, and the carry forward of excess credits should be introduced.

- In order to enhance Ireland's competitiveness for FDI, a full participation exemption regime for foreign dividends should be introduced to replace the current foreign tax credit regime.

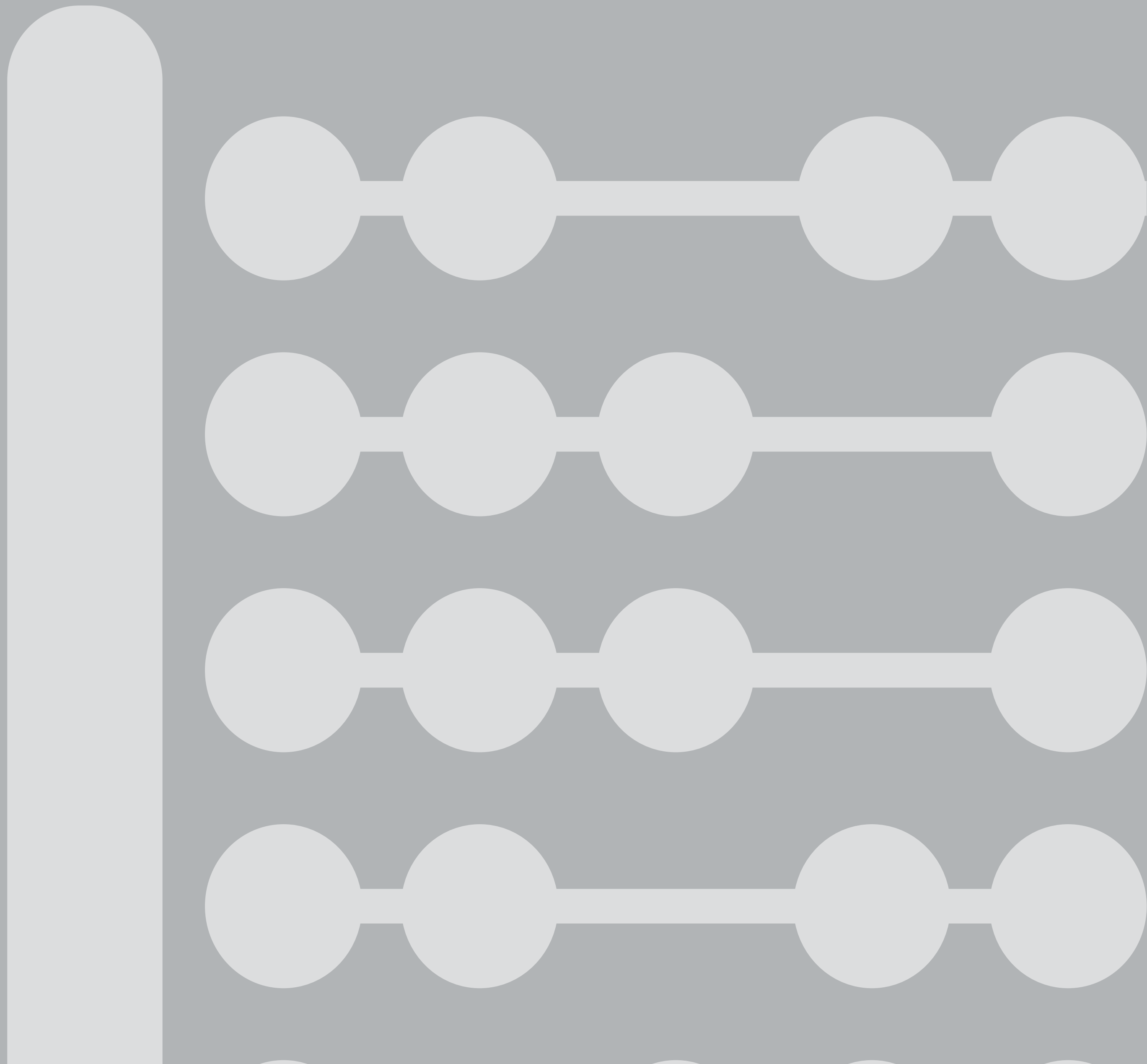
- The introduction of the SARP programme in Finance Act 2012 was a helpful step towards encouraging employers to relocate senior employees to Ireland.

- This effectively removed a relief that was introduced in 2010, however there are a number of practical suggestions which we believe would make it more attractive and more effective - including the application of SARP to new hire employees; removing the requirement that the individual is not tax resident elsewhere and the requirement that the relevant employer prior to the employee's move to Ireland is incorporated and tax resident in a treaty country; extension of the relief to include relief from USC and PRSI; and some amendments to the thresholds and rate of relief. In particular, the imposition of upper thresholds and the reduction of the relief from 50% to 30% are problematic as it means that the relief can be of limited benefit in attracting very senior employees from major financial services companies. These are the key decision makers in organisations who often have significant influence as to where new work streams and the associated employment opportunities will be located. These are precisely the kind of individuals that we are currently trying to attract to Ireland.

- The foreign earnings deduction (FED) for individuals should be extended to other key financial services locations around the world, and the amount of the relief should be increased.

Other changes we would have like to have seen in the Finance Bill for the Financial Services sector include the introduction of a corporate fund vehicle for which US investors can "check the box" for US tax purposes, and the removal of withholding tax on interest for treasury/cash pooling entities (regardless of the location of the recipient). Many of these changes have been sought by the financial services industry for some time.

Section 6. Capital Tax



Section 6. Capital Tax

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OVERVIEW

Individuals can breathe a sigh of relief that there has been no increase in Capital Gains Tax or Capital Acquisitions Tax – which had been a recurring trend since the 2008 Finance Act.

On a positive note, a number of CGT reliefs have been introduced or extended, including an incentive for entrepreneurs to reinvest in new trading activities.

In addition, the extension of the 7 year CGT relief for properties will continue to assist the national deleveraging process by promoting property investment.

The stamp duty exemption for companies that choose to list on the Enterprise Securities Market is of assistance in reducing their equity funding costs and also compares favourably with the 0% stamp duty rate applying on London's Alternative Investment Market (AIM).

SUMMARY OF MEASURES

Capital Gains Tax Incentives

Entrepreneur relief

A re-investment relief is provided in the form of a tax credit where an individual has already paid CGT on a disposal of assets and invests in a new business venture. The individual must be actively engaged in the business either directly operating it in a self-employed capacity or having a controlling interest in a company where they are a full time working director. The activities that qualify are the same as those for the Enterprise Investment Incentive Scheme.

The credit allowed is the lower of the tax paid on the original asset disposed or 50 per cent of the CGT due on the disposal of the new business. The basis under which the credit system will apply as a result of the 50 per cent restriction means based on the current tax rate of 33% that a minimum amount of CGT equal to an effective rate of 16.5% is paid. In a case where the 50% restriction does not arise as the original CGT paid is the lower amount, while full credit is given for the tax previously paid, the effective rate of tax on the subsequent disposal will be in excess of 16.5%. Thus, at best, the relief provides for an effective tax rate of 16.5% on the disposal of the new investment. Further conditions that apply in order to avail of the credit are such that the new business assets must have been acquired at a cost of not less than €10,000 and must have been held for a minimum period of three years.

Example 1

Asset sold in January 2011 - a charge to CGT of €2 million arises. New business assets acquired in January 2014 and sold in February 2017 with a CGT charge of €6 million arising. A credit of €2 million is given against the CGT liability which arises in February 2017. The effective tax rate is 22.%.

Example 2

Asset sold in January 2012 - a charge to CGT of €3 million arises. New business assets acquired in January 2015 and sold in July 2018 with a CGT charge of €5 million arising. A credit of €2.5 million is given against the CGT liability which arises in July 2018. The effective tax rate is 16.5%.

Who will be affected?

Entrepreneurs investing in new businesses, who have suffered CGT on an original disposal and hold the new business interest for at least 3 years.

When?

Investments made from 1 January 2014 to 31 December 2018. T disposal of the original assets which give rise to the credit must have taken place on or after1 January 2010.

Our view

This relief is a positive move which encourages entrepreneurs to invest in business activities. However, rather than having to wait until the new interest is disposed of in order to benefit from the relief, individuals may be more incentivised to invest if the rate of tax applicable on the previous gain was deferred or indeed if the rate applicable was lower.

> One would question whether the right balance has been struck between encouraging entrepreneurship versus making a passive property investment.

Extension of CGT Relief for properties

The extension of the CGT relief for certain properties purchased and which are held for at least 7 years is being extended to the end of 2014.

Who will be affected?

Prospective property investors acquiring Irish assets and/or Irish resident investors acquiring assets within the EEA. This relief is also of assistance to vendors and financial institutions in their attempts to attract purchasers as part of deleveraging process.

When?

The relief will continue to apply until 31 December 2014.

Our view
This measure was initially introduced to kick start the property market and its extension is welcomed.

Retirement Relief Extension

A version of this relief introduced in 2007 provides for relief from CGT on the transfer of land to a child where the land had been leased at any time in the 15 years prior to the disposal.

The relief has been further extended to include disposals of leased farmland where the land is leased to the same person for at least 5 consecutive years and the subsequent disposal of the farmland is to a person other than a child of the individual disposing of the land.

Who will be affected?

Farmers seeking to avail of CGT relief with respect to disposals of leased land.

When?

Disposals made from January 2014.

Our view
This is a positive measure as the move is designed to ensure that older farmers (who meet the conditions) who have leased their land will not be prevented from claiming retirement relief on a subsequent disposal of their land to a non-child.

Young Trained Farmers Relief

This relief has been extended to include 3 more qualifying courses to the list of relevant qualifications required in order to avail of the 100% rate of Stock Relief and stamp duty relief for the acquisition of agricultural properties.

Who will be affected?

Individuals qualifying for Young Trained Farmers Relief.

When?

From 1 January 2014.

Our view
A small measure which slightly broadens the criteria for stamp duty exemption but may encourage more individuals to acquire agricultural property and to promote agricultural activities.

Share Transfers on the Enterprise Securities Market

An exemption from stamp duty has been introduced in respect of share transfers on the Enterprise Securities Market of the Irish Stock Exchange.

Who will be affected?

Any share transfers executed in respect of the enterprises securities market of the ISE.

When?

From 1 January 2014.

Our view
The application of the stamp duty exemption for companies that choose the Enterprise Securities Market in Dublin is a measure which competitively puts ESM on an equal footing with London's AIM.

Capital Gains Tax Anti-Avoidance

Restriction on base cost in cases of debt write off

Where the cost of acquisition of an asset or any deductible enhancement expenditure relating to that asset was funded by way of borrowed money, and all or part of that debt is released then the acquisition cost or enhancement expenditure is reduced by a corresponding amount.

In addition, where an asset is disposed but the debt is released in a subsequent tax year, since the full cost base would originally have been claimed the subsequent debt write off is treated as a chargeable gain.

Example 1

Asset has a base cost of €20 million with debt secured on it of €15 million. Debt of €3 million is released. The base cost is reduced by a corresponding amount to €17 million.

Example 2

Asset has a base cost of €10 million with debt secured on it of €8 million. The asset is subsequently sold for €7 million. One year later the balance of the debt of €1 million is written off. This is treated as a chargeable gain in the hands of the vendor.

Who will be affected?

Tax payers restructuring their debt which involves a combination of a debt write off with or without an associated disposal of the asset to which the debt relates will have a reduction in their allowable cost for CGT purposes which may result in assets being disposed of becoming taxable or a reduction in the level of capital losses available for carry forward.

When?

The provision will have application from 1 January 2014

Quick Wins

If engaged in a debt restructuring process which may involve a disposal of property there is a window of opportunity to maximize the level of deductible expenditure incurred by way of ensuring that the asset disposal and associated debt write off both occur no later than 31 December 2013.

Our view

Although unexpected, this is a predictable change as prior to this an investor may have had the dual benefit of a historically high base cost which was maintained/preserved while also benefiting from a debt write off. The measure is equitable in that it only allows you to claim as a deduction the real economic cost incurred in acquiring the asset.

WHAT OUR EXPERTS SAY

Deloitte perspective

The move to incentivise entrepreneurs to invest in business ventures is a welcome development. However its focus clearly benefits those who have already disposed of assets as opposed to those establishing their first enterprise.

In addition given the relative performance of certain asset classes over the last number of years and with some investors having capital losses forward, in practice the relief may have limited application.

As is well publicised, there is a 10% rate of CGT for entrepeneurs in the UK. As an alternative, a measure of a similar nature may have had broader application here in Ireland, in particular in encouraging first timers in an entrepreneurial endeavor.

Prospective investors will have to consider the relative benefits of the reinvestment credit and the 7 year CGT exemption for investing in property. The right decision will be very much down to each individual but we would question whether the right balance has been struck between encouraging entrepreneurship versus making a passive property investment.

On a separate capital taxes note, it is welcomed that the Minister has not gone for a further short term gain by increasing the rates of CGT or CAT to the detriment of the longer term survival of family businesses. The fact that there has been no curtailment of reliefs is also positive.

Section 7. Indirect Tax

Section 7. Indirect Tax

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OVERVIEW

The retention of the 9% VAT rate for the hospitality sector remains the highlight of the Budget measures. Interestingly, the Finance Bill removed the original expiry date of the relief which was 31 December 2013 and did not replace it with another. Does this indicate that the Government sees this as a measure which is here to stay? If so, this would be welcome news for all in the industry.

On a less positive note, it is proposed to claw back VAT input deductions from businesses which do not pay their suppliers for the goods or services for which they were invoiced within 6 months. At first blush this change seems minor and even beneficial to businesses

There is now an incentive to creditors to pay within 6 months or suffer a claw back of VAT on the unpaid invoice. On the other hand however, businesses are now required to monitor their accounts payable processes and adjust their VAT input deduction if they do not pay within 6 months. It is important to note that ultimately, if payment is made subsequently, the VAT adjustment can be reversed.

From a wider policy perspective, the VAT input change in the Finance Bill is actually the continuation of an unwelcome trend whereby the State, through a series of similar tax measures, is actually putting itself in a position to take an ever greater preferential share of the assets of distressed businesses.

The measure will place a further tax liability on the distressed business itself which will then often have to be settled as preferential debt by a liquidator or receiver. This in turn reduces the money available to unsecured creditors.

This approach must surely be questionable in circumstances where the State is actually in a far better position to bear a loss than the vast majority of businesses, some of whom may even be put out of business by virtue of bad debts. Perhaps there should be some debate about this matter.

SUMMARY OF MEASURES

Obligation to pay back VAT input deduction if the invoice is not paid within six months

Who will be affected?

All businesses.

When?

From 1 January 2014, for invoices issued on or after that date.

Our view

The measure requires the businesses to monitor their accounts payable and to adjust VAT input deduction if the invoice is not paid within six months. This will provide some incentive for people to pay their invoices but at the same time will require systems to be put in place to deal with the adjustments. The measure will add further tax liabilities to distressed or insolvent businesses and provide a means for the State to collect the debts as preferential debt. This is questionable in circumstances where the State is often in a much better position to bear the loss than the individual business.

The raising of the cash receipts basis threshold for VAT from €1.25m to €2m

Who will be affected?

Businesses with turnover of €2m or less which do not currently account for VAT on a cash receipts basis. Businesses can, using this provision, account for VAT on the basis of their cash receipts as distinct from paying VAT on invoices which have not necessarily been paid. This measure relieves cash flow costs associated with paying over VAT on invoices before the cash has been received from the business's customers.

When?

The measure comes into effect on 1 May 2014 and businesses should apply well before that date to ensure that the relief is effective as early as possible after its introduction.

Our view

Given the significant increase in the threshold this measure extends this VAT cash flow relief to a much greater number of small businesses and is very welcome in an economy where credit can still be very difficult to get for smaller enterprises.

> The significant increase in cash receipts threshold is very welcome in an economy where credit can be very difficult to get for smaller enterprises.

The increase in the farmer's flat rate addition from 4.8% to 5%

Who will be affected?

This measure benefits most farmers regardless of the scale of their enterprise if they are not registered for VAT. In a very unusual feature of the VAT system these farmers are allowed to charge and retain for themselves a flat rate of VAT, which will now increase from the current rate of 4.8% to 5% on their supplies of produce to other VAT registered businesses. This charge compensates farmers for the VAT they incur on many of their costs which, under the flat rate VAT scheme, they cannot recover.

When?

The rate increase will apply from 1 January 2014.

Our view

This is a welcome boost for farmers and those farmers contemplating significant sales to VAT registered businesses in late December could consider postponing these sales until early January to avail of the increased VAT rate.

Reduction of the Air Travel Tax to zero

Who will be affected?

Airlines and air passengers.

When?

The measure is effective from 1 April 2014

Our view

This measure has been heavily lobbied for by the airline industry which has convinced the government that its reduction of the Air Travel Tax to zero will have a beneficial effect on the number of tourists and travellers to the country. Airlines have already announced increased flights in response to the effective removal of the tax and the Minister has indicated that he will review the success or otherwise of the measure in due course. Hopefully the measure will be successful in increasing the number of travellers and there will be a net gain to the exchequer.

Increase in the VAT rate for sale and hire of horses and greyhounds used outside the context of farming. The rate will increase from the current 4.8% to 9%. Increase in the VAT rate on insemination services for these animals will increase to the 13.5% rate.

Who will be affected?

Farmers and the bloodstock industry

When?

The measure will come into effect on 1 May 2014.

Quick win

Consideration should be given to advancing sales to pre 1 May 2014 where possible.

Our view

This adjustment in VAT rate was forced on Ireland by the European Court following infraction proceedings by the European Commission challenging the 4.8% rate applied by Ireland. The Court found that Ireland could not apply the 4.8% rate on these animals because they were not intended for use as food. There was a degree of scepticism around this decision and these changes represent the minimum necessary by the Government to comply with the European Courts judgment. While unwelcome for the affected sectors there will be some relief that the minimum changes necessary to comply with the judgment were made.

WHAT OUR EXPERTS SAY

Deloitte perspective

The VAT changes in the Budget were generally positive for business. The increase in VAT on horses and greyhounds was forced on the Government by a judgment of the European Court against Ireland and was expected in the industry. The signals are that the Government intends to do the minimum necessary to comply with the judgment which will be welcomed by those affected.

A debate needs to be had about the State taking an ever greater share of the proceeds from insolvent businesses. While no one can doubt the need for the State to collect taxes, measures which extract tax payments from insolvent businesses as preferential debt directly impact small businesses which are losing out entirely to the State and to the other preferential creditors. This often directly results in the party who is least able to afford it to bear a loss, the unsecured small trader who supplied to the insolvent business, bearing a total loss on their debt and on occasion being put out of business as a result. The interests of the State should be balanced against the rights of the individual.

Section 8. Pensions

Section 8. Pensions

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OVERVIEW

The Finance Bill confirms the Budget announcement of an additional Pension Levy of 0.15% for both 2014 and 2015. This is on top of the existing Pension Levy of 0.6% for 2014.

The increase and time extension of the pension levy sends a negative signal for pension savers at a time where public policy has in most other respects been to broaden supplementary pension coverage. Pensions are taxable for the most part when they are ultimately paid out, so the levy results in a form of double taxation that adversely affects those prudent enough to have pension arrangements.

The levy is a tax that only impacts private sector pension savers and is a retrospective tax that has most impact on those closest to retirement who have built up larger pension entitlements over their working lifetimes. It is a tax on capital that bears no relation to income earned or unearned in the current tax year.

Notwithstanding the adverse nature of the pension levy, it must be still stressed that pension saving up to the levels allowable under the Standard Fund Threshold remains a particularly attractive means of long term saving, particularly when considered against the increased DIRT rates and the addition of PRSI liabilities on all unearned income for those under state pension age.

SUMMARY OF MEASURES

Reduction in the Standard Fund Threshold (SFT) from €2.3 million to €2.0 million

Who will be affected?

Individuals who already have, or are likely to accumulate over their lifetime, pension assets on a Defined Contribution (DC) basis of over €2 million or become entitled to a Defined Benefit (DB) pension in excess of €60,000 per annum.

Employers will also be impacted in so far as they may need to review the effectiveness of their remuneration policy for those who now or may prospectively exceed the reduced tax effective pension caps.

When

The reduction in the SFT will take effect from January 2014 although the full impact for this with DB pensions above €60,000 will only bite on a gradual basis as the 20:1 multiplier is retained for that part of the pension built up prior to 2014. Pre-existing Personal Fund Thresholds will also be maintained.

Our view

Given the clear statement of intention in last year's Budget to cap tax support for pensions of up to €60,000 per annum, the implementation mechanism outlined in this year's Budget is to be broadly seen as a pragmatic and workable mechanism. The rebalancing of the treatment across DB and DC pension arrangements to make it more equitable is to be welcomed.

Individuals with DC pension assets above €2 million, who are in a position to do so, should consider crystallising their pension assets prior to 2014 in order to benefit from the current level of tax advantaged lump sums and to avoid the new pension levy.

Otherwise, those who do not have an existing Personal Fund Threshold (PFT) but have accrued pension assets above €2 million, or with an accrued DB pension benefit above €100,000 per annum, should apply for a PFT within 12 months from the date that the proposed electronic system is set up by the Revenue Commissioners. This will ensure protection of the accrued benefits up to a maximum of €2.3 million.

Whilst not strictly a legislative requirement, it might be prudent for DB pension scheme administrators to record the value of all individual accrued pension entitlements as at 1 January 2014 for potential future use.

All higher earning individuals will need to reconsider the appropriateness of any further AVC contributions and/or the value of future pension benefit accrual. Employers will also need to reconsider the effectiveness of their pension arrangements for higher paid employees and may need to make amendments or alternative arrangements.

> The overlapping of the pension levies for 2014 is most unwelcome - there will now be a tax take of 0.75% of pension assets in 2014, at a time of generally low investment returns.

A new pension levy of 0.15% of pension assets will apply in 2014 and 2015. This is on top of the existing pension levy of 0.6% of pension assets which will also apply in 2014.

Who will be affected?

All private sector pension fund assets will be subject to the new pension levy. In some cases, employers may make additional pension contributions to absorb the levy, but for the vast majority of scheme members, it will mean a reduction in their benefits (DB) or fund (DC).

When

The existing levy is based on the value of pension assets as at 30 June each year.

Retirement assets held in an ARF or those that have been used to purchase annuities are not subject to the pension levy.

Our view

The introduction of a new pension levy is clearly not a welcome development and a reversal of previously stated policy to end the levy in 2014. It also could be a very open ended exposure for pension assets as despite the Minister saying that it would apply for 2014 and 2015, he also stated that its purpose is to "help fund the Jobs Initiative and to make provision for potential State liabilities which may emerge from pre-existing or future pension fund difficulties".

The overlapping of the pension levies for 2014 is also most unwelcome - there will now be a tax take of 0.75% of pension assets in 2014, at a time of generally low investment returns. This will undermine individuals' confidence in retirement savings as pensions are increasingly subject to double taxation during the investment accumulation period and ultimate drawdown. Government policy has clearly been stated as to increase participation levels in private pension arrangements, but this action will help undermine that goal.

WHAT OUR EXPERTS SAY

Deloitte perspective

Each Finance Bill introduces new changes to the rules for pension schemes and seems to introduce new charges or levis on pension fund assets. This creates considerable uncertainty for both the pension fund managers and administrators and for those currently or considering investing for their pensions in retirement.

At a time when the Government is encouraging people to take ownership of the their own retirement funding, it is hoped that they will set out their long term strategy so that all concerned can plan for their retirement with some certainty.

Section 9. Transfer Pricing

Section 9. Transfer Pricing

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UNDER THE MICROSCOPE

The Finance Bill has no specific amendments to Ireland's transfer pricing regime. However, the allocation of profit to each jurisdiction in which a group operates is under more scrutiny than ever. The OECD is considering this issue in detail and has an action plan in place. Revenue authorities throughout the world are making more adjustments to transfer pricing which can involve Irish groups either having detailed discussions with foreign Revenue authorities or with the Irish Revenue seeking to make corresponding adjustments in Ireland. Furthermore, the Irish Revenue have themselves begun looking at the prices at which Irish companies trade with their overseas affiliates.

The international environment

In July 2013, the OECD released its Action Plan on Base Erosion and Profit Shifting ("BEPS") identifying a number of actions some of which relate to transfer pricing. The report expresses concern that the current transfer pricing guidelines place too much emphasis on legal structures which can "separate income from economic activities" rather than on the underlying reality of a multinational group.

The Action Plan's transfer pricing recommendations concentrate on aligning profits with value creation and with a focus on appropriate compensation for key people functions rather than financial contributions and contractual assumption of risks. Specifically, actions 8 to 10 of the plan deal with the following:

- Intangibles
  - adopt a clear, broad definition of intangible property ("IP")
  - ensure that profits associated with IP are allocated according to value creation
  - develop rules for transfers of hard-to-value IP
  - update guidance on cost contribution arrangements
- Developing rules to ensure that inappropriate returns do not accrue due solely to contractually assumed risks or provided capital.
- Developing rules to prevent BEPS by engaging in transactions that would not occur between third parties.

The report calls for a collaborative, multi-state effort to address BEPS and notes that unilateral actions could lead to further mismatches, additional disputes and increased uncertainty. This approach is sensible in that dealing with perceived aggressive tax planning is best addressed by a concerted international effort. Ireland's response will form part of a joint international effort to deal with the issues arising from the report. The International Tax Strategy document published by the Department for Finance as part of Budget 2014 sets out Ireland's commitment to participating in OECD and EU initiatives.

As Ireland's transfer pricing regime follows the OECD Transfer Pricing Guidelines, any changes to the guidelines arising from the BEPS work will have an impact for companies operating here.

Irish companies with transactions with affiliates abroad are finding that there has been a significant increase in foreign tax authority scrutiny and audits which result in transfer pricing adjustments being imposed. This results in the increase in requests for competent authority relief under a tax treaty (or EU Arbitration Convention) in Ireland for such adjustments. This results in a time consuming and expensive exercise to ensure that relief is obtained in Ireland. Accordingly, groups need to review their existing transfer pricing models to ensure they are sufficiently robust to withstand tax authority challenges.

While the Finance Bill makes provision to deal with "Stateless" companies, it is not envisaged that this will have much of an impact on a group's transfer pricing.

Irish revenue scrutiny

In late 2012, Irish Revenue commenced their Transfer Pricing Compliance Review ("TPCR") checks on a number of companies who filed corporate tax returns for accounting periods ending in 2011. This initial check focused on 12 companies in various sectors. Taxpayers were invited to self-review their transfer pricing with related parties and report back to Irish Revenue within a set timeframe with information to demonstrate that transactions with related parties meets the arm's length standard. With the 31 December 2012 corporation tax returns recently filed, we expect a second tranche of letters to issue by Irish Revenue shortly. Companies need to ensure that they have sufficient information available to be in a position to respond to TPCR requests such as having available transfer pricing reports that document related party transactions with affiliates and economic analysis demonstrating that the pricing of transactions is at arm's length. The TPCR checks are not formal tax audits but can progress to full audits where the outcome of the TPCR process is not satisfactory from an Irish Revenue viewpoint.

> The changes taking place outside Ireland at OECD, EU and local country level will have a definite impact. Now is the time to position for potential changes...

WHAT OUR EXPERTS SAY

Deloitte perspective

The foregoing requires groups to review their current operating models and identify potential changes required to ensure that they will be prepared for any future amendments.

The first action point could be to ensure that board members, finance and tax departments are fully briefed so that they can properly state the group's tax position. The top 10 points to consider are set out in Exhibit 1. This could immediately address any comments in the media on the group's tax policy.

It may then be appropriate to consider areas where some changes might be required, such as:

- Conducting an analysis to justify current tax strategy
- Change from commissionaire to buy-sell arrangements
- Introduce revised financial arrangements
- Removal of hybrid instruments

The implementation of such changes may include:

- Revising legal agreements
- Closure / establishment of legal entities
- Relocating key personnel to ensure sufficient substance in jurisdictions where the group operates
- Changes in IT and accounting systems
- Internal communications and policy updates
- Updating transfer pricing documentation

Conclusion

The changes taking place outside Ireland at OECD, EU and local country level will have a definitive impact on a group's transfer pricing policy in the medium to long term. Now is the time to address the impact of such changes on the business and be positioned to meet such challenges once international law and domestic tax law change. The timeframe for implementing change should not be underestimated, particularly as the first outputs of BEPS are less than 12 months away.

EXHIBIT 1

1. What is our current tax strategy? Can we articulate our strategy and are we ready to defend it if needed? Will it be considered "fair" as well as "legal" in the current political and media environment?
2. Are there any elements of our current tax strategy that we would be uncomfortable to explain to the media? If so, what are these strategies worth and can we replace them?
3. What would be the impact of an attack by the media or politicians on our tax strategy?
4. What taxes do we pay currently? It is useful to be able to state the total tax paid and to be able to break this down to compare taxes that are a cost of the business (e.g. corporation tax, employer PRSI, property taxes, etc.) and taxes that we collect from others (e.g. VAT, PAYE, etc.).
5. Can we explain why we pay low or no taxes in any jurisdiction (e.g. due to losses forward, government incentives, tax depreciation, etc.).
6. Prepare a short brief containing the points above that all Executives can refer to if they are asked.
7. How might the potential changes to international tax standards being considered by the OECD affect our business? Can we cost them in terms of potential impact to our effective tax rate, compliance costs and cash taxes paid?
8. Can we replace any of our less robust structures to strengthen our position? What would the cost be to implement these changes?
9. Can we build additional flexibility into our planning so that we can react to changes in international tax rules as they arise?
10. In the current public and political environment, is tax adequately represented in the decision-making forums of our business?

Section 10. Revenue Audit

Section 10. Revenue Audit

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OVERVIEW

While the current state of the public finances is improving, it is still a matter of serious concern. Given this situation there is considerable pressure on the Revenue to maximise tax collection. One of Revenue's methods of pursuing this aim is through its Revenue audit programme. Under our self-assessment tax system returns are processed by Revenue on a non-judgmental basis. However, Revenue must review a sample of returns filed in order to preserve the integrity of the system. Generally, this is done by way of a Revenue Audit. In 2012, Revenue carried out 9,066 audits yielding €359 million in tax, interest and penalties. This is an average of €39,600 per audit. Our recent experience is that Revenue are increasing their activity in this area, so the number of audits they will carry out is likely to increase in the future, particularly for taxpayers dealt with by Large Cases Division.

Current areas of particular focus by Revenue when carrying out audits include the following:

Employee or self employed

Revenue are reviewing the tax status of individuals providing services and being treated as self-employed with payments to them not being subjected to the deduction of PAYE/PRSI/USC. Revenue's focus to date has concentrated mainly on medical and dental locums and pharmacists. However, it is certain that Revenue's attention will spread to other sectors.

Anybody who is paying individuals for services without withholding PAYE/PRSI/USC and has any doubt as to the tax status of those individuals should review the position. If Revenue were to successfully argue that an individual who was treated as self-employed is in fact an employee for tax purposes the person who made payments to them will be liable for the taxes etc. that should have been deducted along with interest and penalties.

'One man' companies

Quite a number of individuals who provide services particularly in the IT and pharmaceutical sector do so through the medium of a company in respect of which the individual is likely to be the only employee. Revenue have recently undertaken a major project in which they are reviewing the tax returns of 'one man' companies with a particular focus on the expenses being claimed as deductible for tax purposes. Revenue's experience has been that in a significant number of cases the expenses claimed were excessive and did not pass the test of being 'wholly and exclusively' laid out for the purposes of the company's trade. A number of companies have made very significant settlements with Revenue in this area.

Not for profit organisations

A significant number of not for profit organisations are exempt from tax on their income, as they qualify for exemptions such as the charitable or sporting exemptions. However, organisations benefitting from these exemptions may have an obligation to comply with other areas of tax legislation such as PAYE, VAT and Relevant Contracts Tax. Revenue have recently reviewed tax compliance in a number of organisations such as semi-state bodies, sporting organisations, schools and charities. For example, Revenue recently examined payments made by schools to sports coaches, music teachers, dance teachers etc. Where payments were made to such individuals without deduction of payroll taxes, Revenue have successfully argued that for tax purposes these individuals were employees and the taxes etc. which were not deducted had to be paid by the schools along with the interest and penalties.

Our experience

In our experience, Revenue collect relatively little income tax or corporation tax as a result of Revenue audits. Liabilities generally arise in relation to PAYE/PRSI/USC and VAT. In relation to payroll taxes and VAT, the most common areas where taxpayers are found wanting includes:

- Incorrect calculations of benefits in kind
- Payment of expenses to employees
- Treating individuals as self-employed rather than employees
- Applying incorrect VAT rates and reclaiming VAT which cannot be recovered, e.g. petrol, entertainment

Research and development (R&D) tax credits

Revenue have increased their examination of the R&D tax credit claims, this involves a review of the calculation, request for 'self reviews' and full technical audits. Companies who claim R&D tax credits must retain records to satisfy both the science and accounting tests. Recent

> Don't pay the tax man more than he is owed. Have a health check, you'll feel better after it.

figures provided by Revenue suggest companies are failing both of these resulting in substantial repayments of tax along with interest and penalties. More information on the Revenue's review of the R&D credits can be found elsewhere in section 11 of this publication.

Be prepared

Where, as a result of a Revenue audit, Revenue uncover tax underpayments the consequences can be both expensive and result in bad publicity. Obviously the tax liability must be paid to Revenue along with interest at the rate of 10% per annum and penalties of possibly up to 100% of the tax underpaid may also be applied. In addition, details of any settlements made with Revenue may be published in its tax defaulters list. 'Taxpayers' should consider undertaking a review or 'health check' of their tax compliance procedures. Such a review will identify weaknesses in the procedures and enable them to be rectified. At Deloitte we have a dedicated tax risk management team specialising in carrying out tax reviews under all tax heads.

Revenue powers

Practically every Finance Act provides Revenue with additional powers to assist in its campaign to detect and deter tax evasion. The Minister indicated in the Budget that he would introduce measures to assist the Revenue in detecting VAT fraud. This is not in the Finance Bill as initiated but we anticipate that it will be introduced into the Bill at the Committee Stage. These measures include a requirement for taxpayers who have claimed VAT input credit on the supply of goods or services, but who have not paid for them within six months to repay the VAT to Revenue.

Appeal commissioners

The Minister announced that he would carry out a review of the appeals process in tax matters. The Department for Finance has issued a consultative document inviting submissions by interested parties by 16 January 2014. One of the principal criticisms of the appeals system is that the appeal commissioners do not make available to the public details of their decisions. Obviously Revenue have knowledge of all appeal commissioner's decisions as they are a party to each appeal. Hopefully this defect will be rectified as a result of the review process and decisions of the appeal commissioners will be made available to all interested parties.

Conclusion

The foregoing illustrates the wide range of areas where Revenue have found taxpayers not to be fully compliant with their tax obligations. Others include the incorrect operation of PAYE on directors' fees and expense payments for international mobile employees. Through our involvement with our clients we are aware of the changes in the Revenue's areas of scrutiny and the options available to resolve any issues when they are discovered. It is better that a tax payer identifies the issues before the Revenue make any enquiries and our team has the specialist expertise to identify in advance the areas where action is required and resolving any issues with Revenue.

Section 11. R&D Tax Credits

Section 11. R&D Tax Credits

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PREPARING FOR SUCCESS

An engineer's perspective

Ireland's research and development ("R&D") tax credits provide companies with an outstanding opportunity to reduce the cost of carrying out development work by up to 25%. The incentive is one of the ways that the Government assists Irish companies maintain their competitiveness in the face of global competition.

Earlier this year, the Department for Finance initiated a review to evaluate the scheme on its 10th anniversary. Companies, advisors and industry representatives provided their views and the Department's report, 'Review of Ireland's Research and Development Tax Credit 2013', was published in conjunction with Budget 2014. A number of the conclusions of the review concurred with Deloitte's clients' experiences:

- The scheme is viewed very positively by claimant companies
- R&D tax credits have a major impact in attracting FDI into Ireland in the technology space
- Irish multinational subsidiaries are made more competitive in vying for R&D projects which can be placed in any of several international location
- The benefits of performing R&D in Ireland cascades down through the business and economic environment in Ireland, and contributes to growth in Ireland's manufacturing

The report notes that a comparative analysis was undertaken between Ireland's R&D tax credit offering and international counterparts, and concluded that Ireland stands shoulder to shoulder with the schemes offered by most other developed countries. This is reassuring, in that we have a scheme that other countries are seeking to match, but it also demonstrates that if we are to continue to realise the benefits outlined above, Ireland's R&D tax credit regime must continue to evolve and compete in the global domain.

We discuss the specific R&D provisions in the Finance Bill in our corporation tax overview, but it is worth mentioning here that it is encouraging to see the Government has reacted to the findings of the report, and is, once again, implementing positive changes.

Popularity of the scheme and the increase in governance

The figures in the report show that the number of companies benefiting from R&D tax credits has risen from 75 in 2004 to over 1,400 in 2011, and the cost to the exchequer rose from €70 million to €261 million over the same period. This has inevitably led to an increased requirement to ensure that the scheme is being correctly utilised.

It has always been the case that a thorough awareness of the technical and financial criteria is vital in the preparation of accurate claims and that the claim process should be a collaboration between a company's technical and financial staff.

Revenue is understandably scrutinising more claims and we are increasingly seeing requests for supporting information on both the financial and technical basis for claims. In light of this it is worth companies ensuring that they pay particular attention to the recurring themes where Revenue place specific attention:

- The project activities must meet the science and technology test and competent professionals in the relevant industry should acknowledge it to be technologically challenging
- The start and end of the technological uncertainty must be identified. Only the expenditure between these points in time can qualify
- Ensure that only expenditure associated with the carrying on of the R&D is included in the claim and project or company expenditure which doesn't contribute to the resolution of the technological uncertainty is excluded
- That the projects are carried out in a planned and systematic manner which can be demonstrated by the documentation prepared at the time the work was being carried out

Although filing a claim is as simple as including or amending the figures in the corporation tax return, Revenue expect all companies to have documentation available which was created throughout the R&D project and supports the claim figures. We often find that documentation created to follow a company's product or process development procedures and management accounts provides such evidence. However, the information captured is often not in the same terminology that directly corresponds to the definitions in the legislation and Revenue's guidelines. Thus a separate analysis is required to

There are things that can be done to make the process of preparing R&D tax credit claims more accurate, more straight forward and potentially more beneficial.

map the information to the claim.

Our experience is that summary documentation of the claim can provide the linkage or mapping between the contemporaneous project documents and the science and accounting tests. Having these summary reports completed when the claim is filed ensures that a company can respond promptly to an information request from Revenue. The documents are also prepared to a timetable which can match the finance and technical teams' availability.

As an engineer I can appreciate that the process of retrospectively gathering evidence to support a claim is distracting from the work of developing and launching new technology, products and processes. However there are things that can be done to make the process of preparing R&D tax credit claims more accurate, more straight forward and potentially more beneficial.

Firstly, the project leaders and technical teams should be aware of what distinguishes R&D from routine development or scientific work. All engineers and scientists will have their own opinions on what R&D is, but this needs to be recalibrated when assessing a project for R&D tax purposes, so that all projects which qualify are included and projects/activities without the correct technical basis are identified and excluded. Again, as an engineer who is specialised in R&D tax credits, having an upfront conversation with the technical and scientific teams involved in the project can quickly cut through the complexity of the issues at hand, helping identify what projects can qualify and those which cannot. This also provides comfort that the technical teams' discussion of the project supports the basis for an R&D tax credit claim. When Revenue audit a claim they nominate independent technical experts to assess projects claimed. The process requires that businesses discuss the project in some detail with Revenue's technical specialists who then forms an opinion on the extent to which a project meets the requirements of the scheme. Therefore, there is significant merit in having quality conversations with R&D tax credit specialists with the requisite technical and scientific background at both the start and the end of the R&D project so as to eliminate at the start of the project any unnecessary collation of information on non-qualifying R&D activities but also to ensure the gathering of correct data to support the subsequent claim and its ultimate validation.

When planning a project's resources, it is worth considering how the project is staffed i.e. using employees or agency provided staff. Agency staff expenditure is classed as sub-contracted R&D and as such falls within the limitations applied, whereas qualifying expenditure on employee salaries is not limited.

Where possible, it is wise to capture a project's status against the R&D tax criteria whilst the project is in progress. This can often be done at project gateway or status reviews from the outset of the project. If an initial gateway can briefly capture the scientific or technological uncertainties and advances for the project, subsequent gateways can then record if the uncertainty is resolved or not and who in the team contributed and to what extent their time was spent working on them. The gateway status is the basis of the salary calculations and a link to the specific activities in reaching the gateway when compiling the claim and the summary documentation.

Finally, the project and financial summary information should be described in a way which aims to align with Revenue's requirements rather than hoping that Revenue will be able to understand a project from a company's perspective.

Conclusion

We find that where summary documents clearly describe the projects claimed and the expenditure and methodology relating to those claims - it makes it much easier to validate that the claim is appropriate and reasonable.

It should also mean that when Revenue call to understand what's behind the number in the tax return, there is much less reason to be nervous!

Section 12. Mobility and Global Employer Services

Section 12. Mobility & Global Employer Services

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A NEW ERA

"Right time, right place, right people equals success" is a quote which has universal application in both life and business. Any business strategy will require putting the right talent in the right position at the right time. Increasing globalization is resulting in an increased level of mobility within organisations, which creates significant challenges in ensuring that this objective is met, particularly at the right cost."

A global mobility vision

Effective global mobility requires an integrated approach between Human Resources (HR), Business Divisions and Finance to ensure mobility is aligned with the organisation's overall business strategy. The starting point will be the development of a new vision for global mobility. HR is there to support growth by managing talent within the context of the business strategy and providing the right mix of career opportunities and rewards. As a result HR will be an integral part in both the development and implementation of the global mobility vision.

The vision will be driven by the organisation's business strategy for the medium to long term which may, in an Irish context, include expansion into growth markets in Asia Pacific, Latin America and Continental Africa. Emerging markets present their own challenges, many of which can be effectively addressed if the global mobility vision is clearly communicated.

Are existing policies fit for purpose?

One key element following on from the vision is to consider whether existing policies are aligned to business and talent strategies.

Historically companies have adopted a one-size-fits-all approach to mobility, with the same policy applying to all, irrespective of the value of the assignment or the individual's level within the organisation. This approach can result in high costs that may be impossible to rationalize.

The new era of global mobility may require greater flexibility. Consideration could be given to aligning assignment compensation packages to an individual's level within the business or to the objectives of the assignment. Flexibility may be required to allow for exceptions on a commercial business perspective but exceptions should only be considered where there is governance over such exceptions. Too often, companies have allowed exceptions to become the norm, resulting in inflated compensation packages. Organisations need clarity on the policies it wishes to implement, for which people and in what scenarios, while having a degree of flexibility which allows key talent to be placed in the desired location and position at the desired time.

In line with the new era of mobility a new way of selecting the right employees for assignment is through data analytic approaches – the ad hoc way of choosing assignees based on word of mouth or those that volunteer is on the decrease. Employers are deploying more sophisticated techniques using data from within their HR and performance management systems to choose the right talent for assignments leading to a greater degree of success.

Mobility policies – old and new

In addition to new methods of selection, new types of international assignments are emerging to allow for a broader range of business and development goals. These new policies must also seek to address the changing needs of employees, as well as employers, particularly when seeking to move people to potentially less attractive locations. Examples from the global mobility spectrum, old and new, include:

Equalisation: The traditional arrangement whereby the individual pays the same tax on their stay at home income as they would have paid if they remained in their home country. Employees are "no better and no worse off" from a tax perspective under this arrangement.

Localisation: This is a transfer to a local employment contract in the host country. This can be beneficial to the employee in assignments to lower tax cost jurisdictions, and indeed the employer where the employer social security cost is lower. This is generally only suited to longer term moves but can be effective in placing key talent in lower tax jurisdictions which may be less attractive to the individual, and indeed their family.

Local plus: A local plus arrangement transfers individuals abroad with the intent of having them establish permanent

> **Tax is one of the biggest expenses associated with international assignments. It cannot be eliminated but tax planning can save a company significant amounts.**

residence in the new country. While this is akin to a localisation it typically includes a greater level of support to help the employee to integrate into the host country. Additional supports are particularly important for an employee with a family as they may be somewhat isolated while the employee settles into their new role. Spousal unrest in a new location can be one of the factors which may contribute to an unsuccessful move.

Nomadic policy: Global nomads are people who move from one international assignment to another with no expectation of returning to their original home country. Rather than tax equalising such an individual to the "home" country they may be offered a net pay arrangement. This can effectively break the link to the home country and allow easier movement of the individual in the future. Irrespective of the equalisation policy, there are a range of compensation considerations that arise, in particular pension and social security arrangements – this is however a separate discussion.

Others include commuter assignments and phased transfers.

Tax considerations

Tax is one of the biggest expenses associated with international assignments and should be considered upfront as part of the assignment type selection. Companies and employees may be subject to tax in several different countries, including the host country, home country, and any country the employee travels to for work-related activities. Tax cannot be eliminated but tax planning can save a company significant amounts. For example, certain countries have specific provisions in relation to the valuation of the taxable benefit derived from housing provided to an employee. This can significantly reduce the tax cost relating to an assignment. For example, it is possible in Japan for a company to impose a de minimus "legal rent" that would reduce the tax burden significantly. In other countries, arranging for the lease to be between the company and the landlord can deliver savings. The key is to consider what works in each particular country while not moving away from the compensation which is provided under a particular policy.

Travel to a third country (or multiple locations) for work while on assignment in a particular location can trigger tax in these countries. Tax treaties generally protect against this but only where the relevant conditions are satisfied – awareness of the rules in this area coupled with upfront knowledge on the roles individuals will fulfil is key in managing this so that exemptions are available. The treaties are of relevance for short term assignments with 183 days being the "magic number". Caution is required! The 183 day treaty test may be over a 12 month period meaning that a 7 month assignment spread over 2 tax years may trigger a tax obligation in the host country.

Conclusion

If I had to condense this to one word it would be planning - plan a vision, plan the supports around that vision in terms of policy and process, plan the communication of that vision to all stakeholders and ultimately plan for success through effective global mobility. Long term success will also require planning for the individual's development while overseas and ultimately their redeployment home or elsewhere – that however is a discussion for another day.

Section 13. Tax Rates and Credits

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Rate bands	Budget 2014	2013
Standard tax rate	20 %	20 %
Single/Widowed	€32,800	€32,800
Married	€41,800	€41,800
Married (two incomes)	€65,600	€65,600
One Parent	€36,800	€36,800
Higher tax rate	41 %	41 %
In all Cases	Balance	Balance

Universal social charge for employees	Budget 2014	2013
Income < €10,036	0%	0%
Income €0 to €10,036	2%	2%
Income €10,037 to €16,016	4%	4%
Income > €16,016	7%*	7%*

*70 years or over maximum rate is 4% where income does not exceed €60,000

Universal social charge for self-employed	Budget 2014	2013
Income < €10,036	0%	0%
Income €0 to €10,036	2%	2%
Income €10,037 to €16,016	4%	4%
Income > €16,017 - €100,000	7%*	7%*
Income > €100,000	10%**	10%**

**70 years or over maximum rate is 4% where income does not exceed €60,000*

*** 70 years or over will pay at a rate of 7% Maximum*

Income tax allowances	Budget 2014	2013
	€	€
Employed carer re Incapacitated individual (allowed at marginal rate)	50,000	50,000

Exemption limits	Budget 2014	2013
Age exemption limits (65 years and over)	€	€
Single/Widowed	18,000	18,000
Married	36,000	36,000

Income tax credits	Budget 2014	2013
Personal credit	€	€
Single	1,650	1,650
Married	3,300	3,300
Widowed	1,650	1,650
PAYE credit	1,650	1,650
Widowed without dependent child	540	540
One parent family	0	1,650
Single person childcarer *	1,650	0
Dependent relative	70	70
Incapacitated child	3,300	3,300
Carers credit	810	810
Age credit		
Single/Widowed	245	245
Married	490	490
Widowed with dependent child		
1st year following bereavement	3,600	3,600
2nd year following bereavement	3,150	3,150
3rd year following bereavement	2,700	2,700
4th year following bereavement	2,250	2,250
5th year following bereavement	1,850	1,850
Blind person		
Single	1,650	1,650
Married couple, both blind	3,300	3,300

**can be claimed by principal carer only*

Budget 2014 and 2013

PRSI and levies	Budget 2014	2013	
Employer	Rate %	Rate %	Ceiling
PRSI	7.80	3.55	18,512
PRSI	10.05	10.05	No limit [1]
Training fund levy	0.70	0.70	No limit [2]
Employee	4.00	4.00	No limit
Self employed and proprietary directors	4.00	4.00	No limit

[1] applied to all income where earnings are in excess of €18,512

[2] applied irrespective of earnings

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