Louise Kelly and Declan Butler, tax partners at Deloitte

Finance Bill rings through tax changes in the new year

Ireland's new Finance Bill means lots of changes in the areas of taxation for companies from January, but Deloitte is on hand to explain all, writes **Siobhán Maguire**

New legislation is on the way which will impact the taxation of both individuals and corporates in the Irish tax context.

The Finance Bill 2018, announced last October, will see the introduction of new exit tax provisions in Ireland and Controlled Foreign Company (CFC) legislation.

Louise Kelly, tax partner at Deloitte, said the bill would bring a lot of change to Ireland's tax rules next year and was a signifier of Irish rules syncing up with an ever-changing international tax environment.

"The legislation proposed for Ireland's new CFC rules will certainly be of interest for many multinational companies operating in Ireland," she said. "The EU Anti-Tax Avoidance Directive (ATAD) requires all member states of the EU to introduce or bring existing CFC rules in line with the directive by January 1, 2019."

Finance Bill 2018 provided draft legislation in respect of the CFC rules that will become effective from January 1. In some areas, the draft legislation goes beyond the standard required by the EU ATAD.

"Deloitte provided feedback to the Department of Finance on the proposed CFC rules in September via a public consultation," said Kelly.

"At that time, we noted that Ireland was adopting more onerous rules than needed and suggested a re-evaluation of some areas, including the use of a broader definition of 'control' than the ATAD required.

"In times of heightened international competitiveness and trade disputes, it is important that Ireland's CFC rules are not more onerous than needed. It should be noted that the Department of Finance does not expect to raise revenue from the introduction of CFC legislation. However, we have been working with our clients to help them assess any potential implications on their structure or any action required."

The government's announcement on budget day about the fast-tracking of the Finance Bill's exit charge tax will also have come as a surprise.

"It was announced that an exit tax charge at 12.5 per cent would apply to companies migrating out of Ireland, and that was effective from midnight on the night of the budget," said Declan Butler, tax partner at Deloitte.

"Previously, many multinational companies could exit without a charge, so its introduction was unexpected because it wasn't flagged in advance."

Butler said that many companies would have been able to claim an exemption from tax prior to this change, and that Ireland was not required to bring their domestic exit tax rules in line with EU ATAD standards until January 1, 2020. "It was 2020 that many companies were working towards in terms of planning for this exit tax," he said.

Reform seems to be the way of international taxation rules currently, with massive changes proposed in the way countries do business with one another and where digital companies and their tax payments are concerned.

Kelly said Ireland's 12.5 per cent corporation tax rate did not appear to be in any danger of changing, even against a backdrop of taxation amendments across Europe.

"The government has been quite clear that the 12.5 per cent rate won't change. We won't see it changing in the foreseeable future," she said.

Butler added: "We really don't see Ireland being forced to change the rate, but what is changing are the computation rules on which you pay the tax. This goes back to the global tax reset which was driven by OECD's and EU's agendas on large corporates, which were not seen as paying their fair share of tax. That has led to fundamental changes in global tax legislation."

One of the most recent changes in this regard concerns the Single Malt structure, a corporation tax loophole shut down by the government last month.

This is a tax avoidance mechanism used by multinational companies to reduce their corporate tax bill by using companies and tax laws in Ireland and Malta.

Personal tax rates are still extremely high here, and that doesn't help

The Double Irish was once the best-known legal tax avoidance structure available to US multinationals using Ireland. It was phased out in 2014, but within weeks a new structure, the Single Malt, was being talked of by tax advisers.

This loophole operated in a similar manner to the Double Irish, but instead of using a Caribbean island, the Mediterranean island of Malta and its double tax treaty with Ireland was used to cut the tax bills of big multinationals.

"The Irish revenue system would have been fully aware of the old non-resident Irish companies, and that led to the Single Malt structure, which has now gone," said Butler.

"In tax terminology, this is called a 'one-sided deduction', where one country allows a tax deduction for expenses payable to an entity in another country, but the other country does not tax the amounts. It led to a situation where the benefits of the so-called Double Irish could be maintained."

Both Kelly and Butler agreed that for Ireland to be as competitive a player as possible on the international taxation stage, changes must be introduced into our own tax system to encourage more talent into the country and have greater appeal for global companies setting up bases here.

While some of the recent international tax changes were necessary, they did have an impact on Ireland's competitiveness, said Butler.

"For example, personal tax rates are still extremely high here, and that doesn't help. As well as that, we have infrastructure issues and we are a small market in terms of getting the correct human resource skill-set. We don't have experts in as many fields as bigger countries have."

Butler said that the personal tax rates had to be addressed as that will determine interest from international companies and skilled employees and talent abroad.

"The tax advantage that could be obtained by multinational companies coming to Ireland has been reduced because of recent changes in the taxation system such as the removal of Double Irish and Single Malt," he said.

"It can be a challenge to attract key players to our country, because our personal tax rates are too high and that in turn poses challenges because our skill-sets are lower when compared to Britain and elsewhere in Europe. That is something we should be keeping in mind."

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