Finance Bill 2020

What the Finance Bill means for you and your business

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Think Beyond

Contents

Overview

Finance Bill 2020 sets out the legislative changes required to implement many of the Budget day announcements of 13 October last.

A number of the measures contained in this year's Bill are targeted at providing support to businesses that have been significantly impacted by COVID-19. The Covid Restrictions Support Scheme ('CRSS') provides for a payment to businesses whose turnover is severely impacted due to Covid restrictions. The temporary reduction in VAT for the hospitality and tourism sector will see the rate reduce from 13 ½ per cent to 9 per cent with effect from 1st November 2020 and is set to continue until the end of 2021. The extension of the debt warehousing measures to income tax will also provide self-employed individuals who have experienced a reduction in their income with welcome relief.

The Bill also confirms the unsignalled change made to the intellectual property capital allowance regime on Budget night and provides that capital allowances claimed on capital expenditure incurred on or after 14 October 2020 can now be clawed back regardless of when the assets are disposed of. The manner in which this change was announced and the lack of prior notice or consultation in the Corporation Tax Roadmap is disappointing.

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No Brexit-specific measures were introduced in the Finance Bill. It is expected certain measures aimed at maintaining the status quo in relation to tax will be dealt with in the General Scheme of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 which is to be brought before the Oireachtas in November of this year. However, one Brexit related change was made in response to the migration of shares and securities in Irish registered companies from UK based CREST to Belgian based Euroclear. Those amendments seek to ensure tax-neutrality upon the migration event and to maintain the status quo in relation to tax treatments post migration.

The employment and personal tax measures in the Bill are in line with those announced on Budget Day with small changes made to the USC bands, increases made to certain credits such as the Earned Income Credit for the self-employed and the extension of the Help to Buy Scheme. The Bill also sees amendments being made to the filing requirements associated with certain share schemes.

Climate action incentivisation measures involve tweaks to existing regimes by promoting the purchase of energy efficient equipment.

Regimes which are set to be extended under the Bill are the Knowledge Development Box ('KDB') and the Regional Film Development Uplift available in respect of certain film investments.

The stamp duty residential rebate scheme in respect of sites used for residential purposes is to be extended and the qualifying conditions slightly eased. The Bill seeks to extend certain Stamp Duty reliefs for farmers and provides for an increase in the flat rate addition for farmers not registered for VAT.

The Bill contains a number of technical amendments to the Controlled Foreign Company (CFC) provisions, the anti-hybrid provisions and the transfer pricing rules specific to 'Ireland to Ireland' transactions.

Other housekeeping measures include fully legislating for the changes made on Budget night to the tax treatment of transfers between certain foreign currency bank accounts, the introduction of provisions governing the procedure when a Tax Appeal Commissioner leaves their post prior to the appeal process having concluded and some welcome clarifications relating to DAC 6 reporting requirements.

Following its release, the Finance Bill will now go through a number of stages of review and approval before being signed into law in December. Therefore, the proposed amendments outlined in this document are still subject to change.

Domestic and International Large Corporates

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The main legislative changes likely to affect Domestic and International Large Corporates include the amendment of the balancing charge provisions in relation to specified intangible assets under Section 291A and further amendments to the Irish transfer pricing rules on certain non-trading transactions.

The Finance Bill contains a number of technical amendments, in areas such as the CFC provisions and anti-hybrid provisions, as well as the extension of certain reliefs, such as the Knowledge Development Box and the Regional Film Development Uplift applying to the Film Relief provisions. A number of amendments are also proposed relating to the post-Brexit migration of Irish listed shares to a new central securities depository, which may have practical implications for corporates that have issued such shares.

The key domestic and international corporates measures introduced in Finance Bill 2020

- Amendment to Section 291A balancing charge provisions in relation to capital expenditure incurred on the provision of specified intangible assets on or after 14 October 2020
- Amendment to the application of Ireland’s transfer pricing rules to non-trading transactions under Section 835E
- Amendment to the anti-hybrid legislation to provide that adverse unintended issues do not arise in certain circumstances
- Technical amendment to the interest charging provisions on the deferral of the Exit Tax under Section 629
- Amendment to the CGT provisions applying to the transfers of funds between foreign currency bank accounts under Section 541

- Amendment to the CFC provisions in relation to the removal of some of the exclusions from a CFC charge arising where the CFC is resident in a defined non cooperative jurisdictions
- Extension of the Knowledge Development Box provisions for a further 2 year period until 31 December 2022
- Amendment of the Film Relief provisions under Section 481 to provide for an additional year of the Regional Film Development Uplift at its peak rate of 5 per cent
- Various amendments arising from the migration from the CREST system to the new central securities depository (CSD) governed by Belgian law
- Amendments and clarifications to the EU mandatory disclosure legislation (DAC6)

Specified Intangible assets (291A TCA 1997)

A financial resolution was passed on 13 October 2020 amending Section 288(3C) TCA 1997 and the resolution has been reflected in the Finance Bill. Prior to this change, no balancing charge (i.e. a clawback of capital allowances previously claimed) arose if the specified intangible asset had been held for more than 5 years.

The amendment provides that all capital expenditure incurred on the provision of specified intangible assets on or after 14 October 2020 will be subject to a balancing charge on a subsequent disposal, regardless of when the balancing event may occur. In other words, all capital expenditure incurred on the provision of specified intangible assets on or after 14 October 2020 will be fully within the scope of the balancing charge rules. It is important to note that the amendment should not apply to capital expenditure incurred on the provision of specified intangible assets prior to 14 October 2020, which will continue to fall outside the scope of a balancing charge, where it has been held for more than 5 years.

Transfer Pricing rules (Section 835E TCA 1997)

Finance Act 2019 provided for an extension of Ireland's transfer pricing rules to cross border non-trading transactions and it included a new Section 835E, which had provided for an exclusion from those transfer pricing rules for certain domestic non-trading transactions. The Finance Bill 2020 has replaced Section 835E in its entirety and it aims to be more prescriptive in relation to the circumstances in which the domestic exclusion applies. These amendments apply for chargeable periods commencing on or after 1 January 2021.

The Finance Bill provides an amended definition of "qualifying relevant person" to clarify that a relevant person must have profits or gains or losses chargeable to tax under Schedule D, the computation of which directly takes account of the actual results of the arrangement. In addition, the definition is amended to outline when a party to certain loan arrangements will be regarded as a "qualifying relevant person". The new section sets out circumstances in which profits or gains or losses will be regarded as "taking account of the actual results of an arrangement".

These amendments will be very important for all companies that have non-arm's length transactions between members of their Irish group and who are seeking to rely on the domestic exclusion in not applying transfer pricing rules to those transactions.

Anti-hybrid rules (Section 835AA TCA 1997)

Anti-hybrid rules were introduced into Irish legislation by Finance Act 2019, in line with Ireland's commitments to implementing the EU Anti-Tax Avoidance Directive (ATAD). The anti-hybrid rules are aimed at preventing companies from benefiting from differences in the tax treatment of payments on hybrid financial instruments and on payments by or to hybrid entities. Section 20 of Finance Bill 2020 includes proposed technical amendments to the anti-hybrid rules in order to ensure that the rules operate as intended.

Finance Bill 2020 includes an amendment, which is intended to clarify that the anti-hybrid rules do not give rise to an adverse unintended issue in certain circumstances. The interaction of the existing legislation with simplification provisions under a foreign CFC regime, whereby certain intercompany payments are disregarded, could potentially give rise to unintended consequences under the existing legislation. The proposed amendment intends to provide that an Irish tax deduction is not denied in this scenario where no economic mismatch outcome arises. The amendment is intended to ensure that a position similar to Revenue's existing published guidance is now codified as part of the legislation.

The Bill also provides clarification in respect of the application of the payment to a hybrid entity provision where the participator/parent of the recipient of the payment is a tax exempt entity. The purpose of the amendment is to ensure that, in line with the BEPS Action 2 Report recommendations, only mismatches which are attributable to hybridity are neutralised by the Irish legislation.

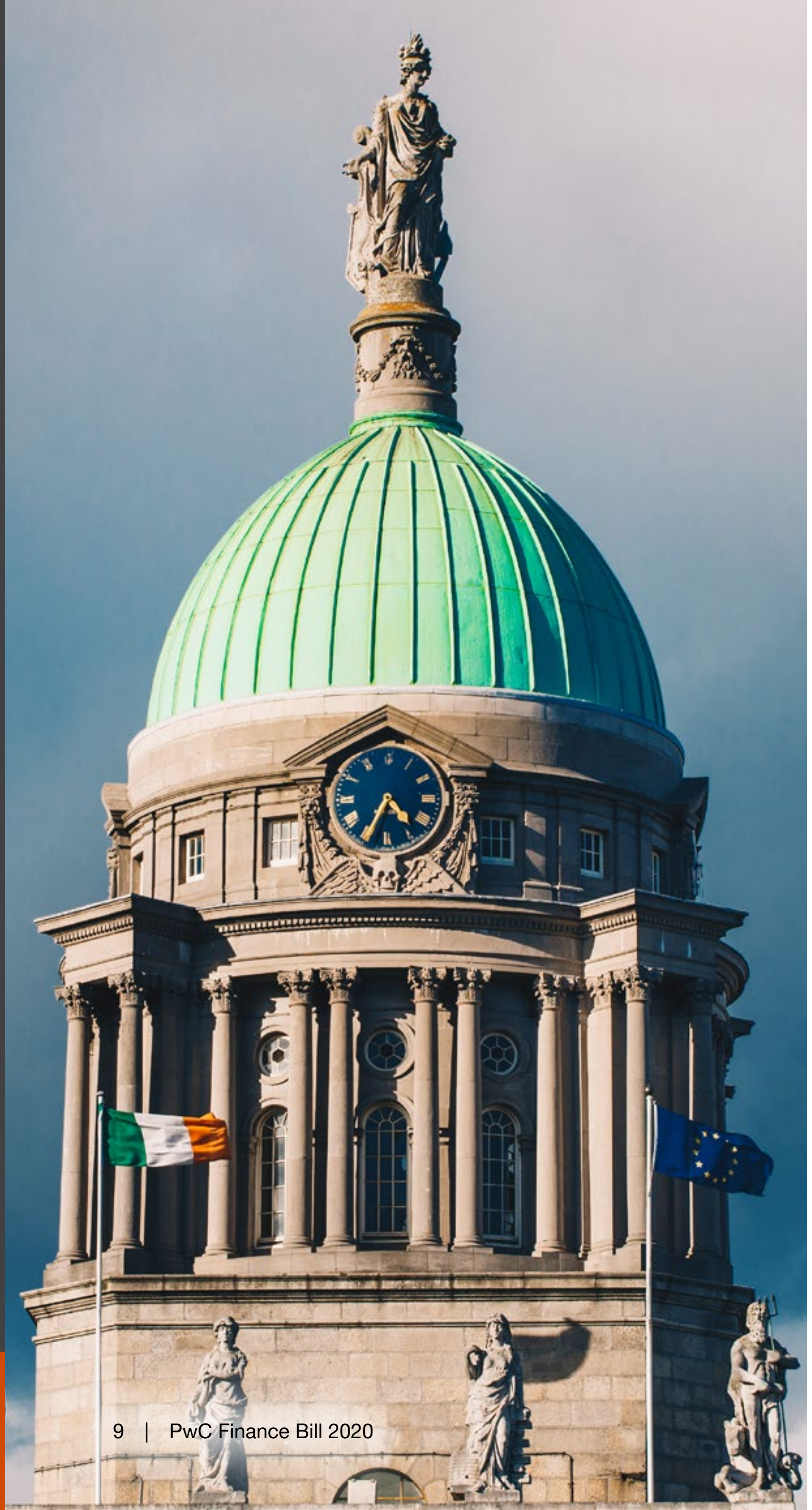
Many of the anti-hybrid provisions only apply to mismatches between associated enterprises. In this context, the Bill includes amending provisions relating to the timing of the test of association to address unintended consequences under the current legislation. The Bill also includes a proposed technical amendment to the definition of associated enterprises in order to ensure compliance with ATAD.

Deferral of Exit tax (Section 629 TCA 1997)

An ATAD-compliant Exit Tax regime was introduced by Finance Act 2018. The Finance Bill includes a technical amendment to the Exit Tax provisions in Section 629(9) TCA 1997. The amendment relates to interest on deferred payments of the Exit Tax. Companies have the right in certain circumstances to pay the Exit Tax in equal annual instalments over five years and interest applies over the period of deferral. A resolution was passed on 13 October 2020 which makes a technical amendment to the interest charging provision and this resolution has been reflected in the Finance Bill. According to the Minister for Finance in his Budget speech, the amendments ensure the calculation of interest on instalment payments operates as intended.

CGT treatment of debts (Section 541 TCA 1997)

A financial resolution was passed on 13 October 2020 amending Section 541 which sets out the capital gains tax treatment of debts and this resolution has been reflected in the Finance Bill. The change to Section 541 applies as respects disposals made on or after 14 October 2020.



A deposit or lodgement of money with a bank gives rise to a debt owing from the bank to the depositor of that money. Transfers of funds between foreign currency bank accounts (within the same bank or transfers to other banks) are regarded as disposals for CGT purposes. The change to Section 541 sees the introduction of subsection 6A, which will provide that transfers from a bank account to which Section 541(6) applies into another bank account in the same currency will no longer give rise to chargeable gains or allowable losses for CGT purposes where the transfer takes place on or after 14 October 2020.

CFC rules (Section 835YA TCA 1997)

As part of the implementation of the Anti-Tax Avoidance Directive, Ireland introduced Controlled Foreign Company rules with effect from 1 January 2019. The rules are intended to target the artificial diversion of profits to low-tax jurisdictions. Where the rules apply, income of an offshore entity can be attributed to its Irish parent company. There are a number of exclusions from the CFC change. The Finance Bill proposes an amendment to certain of these exclusions such that they will not apply for an accounting period of a CFC where that CFC is resident in a jurisdiction that is listed in Annex 1 of the "EU list of non-cooperative jurisdictions for tax purposes - Report by the Code of Conduct (business taxation) suggesting amendments to the Annexes to the Council conclusions of 18 February 2020". The amendment is to take effect in respect of accounting periods of the CFC beginning on or after 1 January 2021.

Knowledge Development Box (Section 769Q TCA 1997)

The Knowledge Development Box provides an effective 6.25% corporation tax rate on profits arising from qualifying assets (including copyrighted software and patented inventions) where some or all of the related R&D is undertaken by the Irish company. The Finance Bill has amended the Knowledge Development Box provisions so that the relief will be extended for a further 2 year period until 31 December 2022. It was hoped that a public consultation would be undertaken to identify any limitations with the relief and to ensure that any necessary amendments can be made to encourage further uptake of the scheme. However, this public consultation does not appear to be forthcoming.

Film Relief (Section 481 TCA 1997)

Finance Act 2018 provided for increased relief for films substantially produced in an "assisted region", which is known as the "Regional Film Development Uplift". For claims made on or before 31 December 2020, the Regional Film Development Uplift operates to increase the rate of the credit by 5% to 37%. A reduced uplift applies for claims made in 2021 and 2022. As flagged on Budget Day, the film industry is in one of the many sectors badly affected by COVID-related shut-downs, and as a result, much of the planned incentive effect of the Regional Film Development Uplift of 5% for 2020 has been lost. The Finance Bill has amended the scheme to provide for an additional year at its peak rate of 5 per cent. The Regional Film Development Uplift will now be in place until 31st December 2023.

Migration from CREST

At present, shares in Irish listed companies that are held in dematerialised form and traded in Dublin or London are settled through the CREST system operated by Euroclear UK & Ireland Limited which acts as the required central securities depository (CSD) for such companies.

As a result of Brexit, Euroclear UK & Ireland Limited will cease to be an authorised CSD and Irish issuers currently using the CREST system will need to migrate to a new system. This new system will result in all shares previously held in CREST being held by a nominee of Euroclear Bank, who will hold these on trust for the underlying investors and issue them with contractual rights representing those shares. The contractual rights are governed by Belgian law.

Various amendments are proposed by the Finance Bill in response to the migration to the new Belgian CSD. An amendment is made to confirm that the migration of shares to the new CSD shall not be treated as a disposal for capital gains tax purposes. Further amendments are made to the capital gains tax legislation to effectively treat the disposal of a contractual right in the same manner as a disposal of the underlying share in the listed company. The Dividend Withholding Tax legislation is also to be amended to allow an Authorised Withholding Agent to continue to receive dividends on a gross basis following migration.

EU mandatory disclosure legislation (DAC6)

The Bill contains some welcome amendments and clarifications to the EU mandatory disclosure legislation (DAC6). In particular, the amendments put on a legislative footing the confirmation included in Revenue's guidance that a filing exemption may apply to an intermediary where that intermediary has evidence that a filing has been made by an intermediary in another Member State. The requirements for an exemption to apply to a relevant taxpayer are also widened. These provisions are very helpful and should limit unnecessary duplication of reportable transactions across the EU. Amendments have also been made to ease the notification requirements for intermediaries seeking to rely on reporting exemptions due to legal professional privilege.

The Bill sets out a number of arrangements that are specifically exempted from the application of Hallmark A3 (relating to the use of standardised documentation and structures). This provides certainty for taxpayers who implement such arrangements, many of which are already subject to Revenue oversight and approval. Again, this exemption had been referenced within the Revenue guidance. However, the list of specific schemes included within the Bill is not as exhaustive as that contained in guidance and it is not clear what the rationale here is to exclude references to certain exemptions and reliefs from the legislation.

An amendment is also made to the provision which states that any person who obtains or seeks to obtain a tax advantage from a reportable cross-border arrangement shall be a reportable person for the purposes of Part 41A to specify that this applies only to an Irish tax advantage.

Professional Services Withholding Tax

Section 13 of Finance Bill 2020 sets out some revisions to the Professional Services Withholding Tax (PSWT) regime. PSWT has existed for many years and it imposes an obligation on accountable persons (such as Government Departments and Local Authorities) to deduct tax at the standard rate of income tax when making relevant payments to companies and individuals in respect of particular professional services furnished by them.

The detailed amendments contained in Section 13 of Finance Bill 2020 are intended to accommodate the modernisation of the regime by facilitating the use of electronic means for the transfer of information, data and returns. A number of other small technical amendments are also made by Section 13.

The commencement of the provision is subject to a Ministerial Commencement Order.

Policy / International Outlook

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There was little announced in terms of the international tax landscape in Finance Bill 2020. However, the Minister for Finance did react to external forces and prepared the ground for BEPS 2.0, the CT Roadmap and the newly formed Commission on Taxation.

The most significant change is to the intellectual property regime. It will operate to remove a provision whereby there was no clawback of IP amortisation relief claimed following a five year period of ownership. It will apply normal balancing charge principles on any disposal of qualifying intellectual property.

The manner of this change and the lack of prior notice or consultation in the CT Roadmap is concerning and disappointing.

Key measures in the Finance Bill that relate to international tax

- The unsignalled change to the IP depreciation regime to introduce clawback provisions and apply normal balancing charge principles on any disposal of qualifying intellectual property.
- An announcement that the corporation tax roadmap will be released shortly. It will give more clarity on interest limitation rules, a possible territorial regime and anti-hybrid rules.
- The establishment of a Commission on Welfare and Taxation to review all existing tax measures and expenditures, a practice that is common in similar sized economies in the OECD.

S291A and intellectual property

The change to S291A will result in a change to the intellectual property depreciation regime. It will operate to remove a provision whereby there was no clawback of IP amortisation relief claimed following a five year period of ownership. The amendment provides that all capital expenditure incurred on the provision of specified intangible assets on or after 14 October 2020 will be subject to a balancing charge on a subsequent disposal, regardless of when the balancing event may occur.

The amendment should not apply to capital expenditure incurred on the provision of specified intangible assets prior to 14 October 2020, which will continue to fall outside the scope of a balancing charge, where the asset has been held for more than 5 years.

Corporation tax roadmap

The announcement of the corporation tax roadmap is to be welcomed as there is a need to address the calls for a consultation process around Ireland moving to a territorial tax regime and the introduction of a participation exemption for dividends.

The introduction of a participation exemption would increase Ireland's competitiveness for FDI and bring us into line with the likes of Luxembourg, the UK and the Netherlands. We expect the roadmap will also confirm the manner in which the interest limitation rules will be introduced as part of next year's Finance Bill.

On the whole, we appreciate that the level of international tax uncertainty makes it difficult for the Government to provide clarity to business. But where certainty can be provided, it must be provided.

It is needed not only for those businesses already established in Ireland, maintaining employment and looking to new markets, but also those considering Ireland as a potential entry point to the EU market and beyond.

Private Business / Individuals

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Although the focus of Budget 2021 was on Government spending commitments, Finance Bill 2020 contains useful tax measures which SMEs and their owners should benefit from. These include the COVID Restriction Support Scheme (CRSS) payment to traders impacted by COVID-19, a tweak to CGT Entrepreneur Relief and an income tax warehousing regime for the self-employed.

The most resilient SME is usually the one that combines the experience of the founder with the energy and ambition of the next generation. In this regard, amending the tax system to facilitate and support the transition of ownership to the next generation has never been so important. We are therefore disappointed that no changes in this area appear in Finance Bill 2020.

The Minister said in his Budget speech that he would look to see how the Employment Investment Incentive (EII) could be enhanced. We look forward to seeing the outcome of this review since private sector investment is such a critical component of SME funding. This, together with various government supports, could ensure the survival of the most cash-starved SMEs.

The key private business measures introduced in Finance Bill 2020

- **CGT Entrepreneur Relief:** Relaxation of the 5% shareholding test which in practice will most likely benefit key management who hold a minority shareholding.
- **COVID Restriction Support Scheme (CRSS):** A payment of up to €5,000 per week for trading businesses that are forced to temporarily close or to operate at significantly reduced levels because of COVID-19 restrictions (generally Level 3, 4 or 5) that either prohibit, or

significantly restrict, customers of the business from accessing the premises in which the business is carried on.

- **Self assessment – Extension of the tax warehousing provisions:** The tax warehousing provisions were extended to the income tax liabilities of certain self employed individuals. These provisions allow certain taxpayers to defer the payment of their 2019 balance of tax and 2020 preliminary tax liabilities.

CGT Entrepreneur Relief

Finance Bill 2020 contains a minor change to the 5% shareholding requirement for CGT Entrepreneur Relief. This relief provides for a reduced CGT rate of 10% on the first €1m of qualifying gains.

Previously an individual was required to hold at least 5% of the shares in a qualifying company for a period of at least three out of the five years immediately prior to a disposal. The amendment provides that the qualifying shareholding requirement can be met where an individual holds at least 5% of the shares in a qualifying company for a continuous period of at least three years at any time prior to the disposal. The amendment will apply to qualifying disposals from 1 January 2021.

The change will most likely benefit key management who may have originally received a small minority shareholding and are at risk of dilution to less than 5% through the issue of new shares. The change is less likely to benefit company founders who generally hold well in excess of 5% of the company at the point of sale.

All other elements of the CGT Entrepreneur Relief remain unchanged. This means that in order to qualify, individuals must still work for the relevant business

for a continuous period of at least three out of the five years immediately prior to the disposal.

In the context of CGT amendments, it might have been preferable to see a reduction in the headline CGT rate of 33% (one of the highest in the OECD) and the reintroduction of CGT rollover relief, which would allow shareholders to defer the incidence of CGT if they reinvest the sales proceeds into a new business. Measures such as these would encourage the recirculation of capital which is very much needed at this time.

COVID Restrictions Support Scheme

Two new sections provide for the Covid Restrictions Support Scheme (CRSS), which is a targeted support for businesses significantly impacted by restrictions introduced by the Government under public health regulations to combat the effects of Covid-19. It will operate from 13 October 2020 to 31 March 2021 and there is provision for the Minister for Finance to vary aspects of the scheme by Ministerial Order.

The CRSS provides support for businesses that are forced to temporarily close or to operate at significantly reduced levels because of Covid-19 restrictions (generally Level 3,4 or 5) that either prohibit, or significantly restrict, customers of the business from accessing the premises in which the business is carried on.

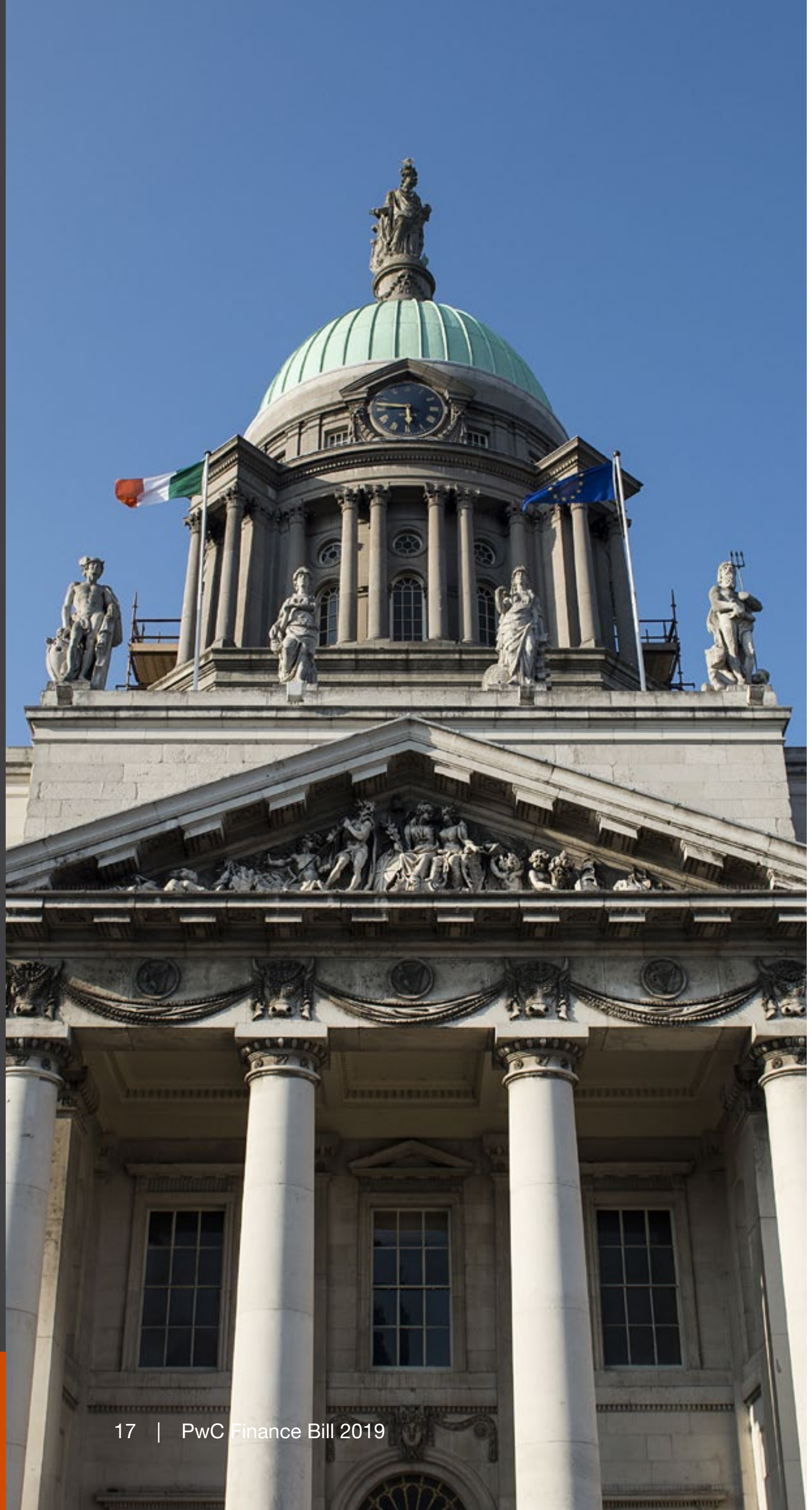
The scheme is available to affected unincorporated persons (sole traders or partnerships) and companies that carry on a trade from a business premises located wholly within a COVID-19 restricted area. To qualify, the turnover of the business in the period for which the restrictions are in operation needs to have reduced by more than 75% compared to 2019 levels. Or to be precise the businesses turnover can be no more than 25% (up from 20% announced on Budget day) of an amount equal to the average weekly turnover of the business in 2019 multiplied by the number of weeks in the period for which a claim is made.

Qualifying taxpayers will be able to make a claim for an amount equal to 10% of their average weekly turnover in 2019 up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000, for each week that their business is affected by the COVID-19 restrictions. The Bill also caters for more recently established businesses that did not trade throughout 2019.

Payments made under the CRSS are claimed through the ROS account of the business and are referred to as “an advance credit for trading expenses”.

Although the payment is not to be treated as taxable income, the mechanics of the CRSS are such that it is effectively taxable (in most instances). This is due to the fact that, for tax purposes, any trade related expenditure that would otherwise be allowable is reduced by the amount of the advance credit for trading expenses received. To illustrate, a business that has €8,000 in allowable expenses and receives a €5,000 CRSS payment will end up having net tax allowable expenses of €3,000. A similar business that had tax allowable expenses of only €4,000 would have its tax allowable expenses reduced to zero but should not be taxed on the excess of €1,000.

Tax compliance is an important feature of the CRSS so only businesses that have an up to date tax clearance certificate and comply with their Value-Added Tax



obligations can participate. Similar to the EWSS/TWSS a list of claimants will be published on Revenue's website.

This is a very welcome initiative for struggling businesses but we are concerned that there are a huge number of SMEs that may not satisfy the "75% reduction in turnover" test and may therefore miss out on this lifeline.

Self-assessment – Extension of the tax warehousing provisions

The self-assessment income tax provisions dealing with the due dates for paying preliminary tax and the final instalment of tax, together with the imposition of interest on late payments, have been relaxed for the 2019 and 2020 tax years in response to COVID-19.

What this means is that the tax warehousing scheme will be extended to self-employed persons in respect of their 2019 income tax payments and 2020 preliminary tax payments. This will allow the self-employed to defer the payment of these liabilities for a period of one year with no interest applying, with a 3% rate applying thereafter.

To avail of this measure, the taxpayer's income for 2020 needs to be at least 25% lower than their income for 2019 as a result of Covid-19 restrictions. The Bill also caters for individuals who were not self-assessed in 2019.

We expect that this will be a welcome relief for many.

Financial Services

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Ireland's Finance Bill 2020 ("the Bill") contains the legislative changes required to give effect to the Budget Day announcements made last week, as well as supplementary provisions not specifically addressed by the Minister in his Budget 2021 speech. From a Financial Services (FS) perspective, in contrast to last year, the Bill contains little by way of material legislative reform, which will be welcome news to the sector. That said, there have been a number of technical amendments across a broad range of topics, as well as some notable omissions, which will be of interest to FS clients.

Also included in the Bill, but not specifically detailed in this sectoral summary are amendments relating to the operation of Irish CFC rules, Transfer Pricing, Exit tax and the unsignalled change to the Section 291A capital allowance regime announced on Budget day.

The key financial services measures introduced in Finance Bill 2020

- The Bill contains some welcome amendments to both the Irish anti-hybrid rules and EU mandatory disclosure legislation. A number of matters which had been flagged by industry/included within Revenue guidance have now been put onto a legislative footing which will give more certainty to taxpayers.
- No property sector specific measures have been included in the Bill, with the exception of the extension to the stamp duty residential refund scheme. While this will be welcome news to the sector, it may also be perceived as a missed opportunity to "tidy up" some legacy issues.
- It is positive to see a number of legislative provisions included in the Bill which provide enhanced legislative certainty to taxpayers.

Provisions relating to the migration from CREST to Euroclear, insurance regulations and the applicability of fixed charges on book debts will be welcomed. In direct contrast, the update to stock lending and repurchase transactions legislation does not go far enough to address the issues raised by industry.

- The Bill also contains a number of other independent technical amendments including changes to the area of encashment taxes, the bank levy and certain reporting requirements for payment card providers. These will unlikely be of broad application but will nonetheless be be of interest to some specific sub sectors.
- In the context of Brexit, it is disappointing to see that the legislative updates omitted from the draft 2020 Brexit Omnibus Bill have not been addressed in the Bill. Also, a number of new potential stimulus measures which would have been helpful in attracting more business to Ireland in the wake of Brexit have not been included in the Bill.

EU Anti Tax Avoidance Directive Measures: Anti-hybrid Rules

The Bill introduces some technical amendments to the anti-hybrid rules introduced into Irish legislation by Finance Act 2019. The changes are surgical in nature but will be welcomed by FS taxpayers as they provide additional clarity on the operation of some key provisions. The technical amendments have been flagged by industry and their inclusion reinforces the consultative approach by the Irish Department of Finance and is supportive of their pledge to maintain stability and certainty in an ever-evolving tax landscape.

Most notably, the Bill contains provisions which clarify the application of the associated enterprise test in the case of consolidated groups and crucially a welcome amendment to the timing of the test itself, applying it at the time of the deduction or payment rather than at the time the transaction was entered into.

The extension of S.835AB TCA 1997 to include hybrid entities which are subject to a CFC or foreign company charge will also be welcomed by taxpayers. This provision seeks to ensure the effective interaction between the anti-hybrid rules and a jurisdiction which operates a worldwide system of taxation and it's expansion provides greater clarity for taxpayers.

It is also positive to get legislative clarity that a hybrid mismatch outcome will not arise in a situation where a payment is made to a hybrid entity, where a "participator" is a tax exempt entity.

EU mandatory disclosure legislation (DAC6)

The Bill contains some welcome amendments and clarifications to the DAC 6 legislation.

A number of matters which had been included within Revenue guidance have now been put onto a legislative footing which will give more certainty to intermediaries and taxpayers. However, the list of specific schemes which are excluded from the application of Hallmark A3 (relating to the use of standardised documentation and structures) included within the Bill is not as exhaustive as that contained in guidance and the rationale for this is not immediately clear. There are also a number of positive changes in the context of a relaxation of notification requirements for intermediaries seeking to rely on reporting exemptions due to legal professional privilege, together with clarifications provided on the scope of Irish taxes falling within the disclosure regime.

Further detail is set out on page 10.

Property related measures

No property sector specific measures have been included in the Bill, with the exception of the extension to the stamp duty residential refund scheme which was announced in the Budget. While this will be welcome news to the sector given the rate of reform over the last number of years, it may also be perceived as a missed opportunity to "tidy up" some legacy issues linked to the legislation catering for REITs and IREFs.

Additional Measures relevant to FS

Capital gains tax treatment of debts

Changes to Section 541 TCA 1997 were announced by the Minister on Budget day, and given immediate legislative effect by way of Financial Resolution. They have been flagged as an anti-avoidance measure designed to prevent the creation of artificial CGT losses, by means of foreign currency transfers between bank accounts held by the same person. Further detail on the additional technical provisions included in the Bill on this area is set out on page 8.

Stock lending and repurchase transactions

The Bill contains some very minor technical amendments to legislative provisions on stock lending and repurchase transactions.

The legislation, introduced as part of Finance Act 2019, was intended to put the Statement of Practice previously in place on a statutory footing but there were some deviations noted. Unfortunately the changes introduced do not bring any further clarity on the issues previously raised, which may be seen as a missed opportunity.

Migration from CREST to Euroclear

The Bill also contains legislation required to facilitate the migration from CREST to Euroclear which will be of particular interest to clients with listed entities within the FS space.

Further detail is set out on page 10.

Encashment Tax

Amendments have been made to the provisions for Encashment tax, which must be deducted by Irish banks or other paying agents on public revenue dividends and overseas dividends paid to Irish residents. The rate of tax will increase from 20% to 25% with effect from 1 January 2021. A new exemption for payments to Irish companies will also apply from that date. This is a welcome change in line with other similar exemptions. The Bill provides for some additional detail to be included in the annual returns and increased record keeping requirements, although these changes are subject to Ministerial Order.

Bank Levy

The rate of the Bank levy has been further increased from 170% to 308% of the DIRT paid in the 2019 base year. This measure, which is effective for payments due in 2021 and subsequent years, has been introduced in order to maintain the tax raised at a level of €150 million.

Reporting requirements for Payment Card Providers

The Bill provides for new reporting requirements for issuers of payment cards with respect to online transactions between Irish consumers and overseas businesses. This applies to transactions on cards issued to persons whose postal address is within the State to payees located outside of the State. The provisions include specific exemption thresholds and Revenue powers in respect of these reporting obligations. These provisions are subject to Ministerial Order.

Fixed charges on book debts

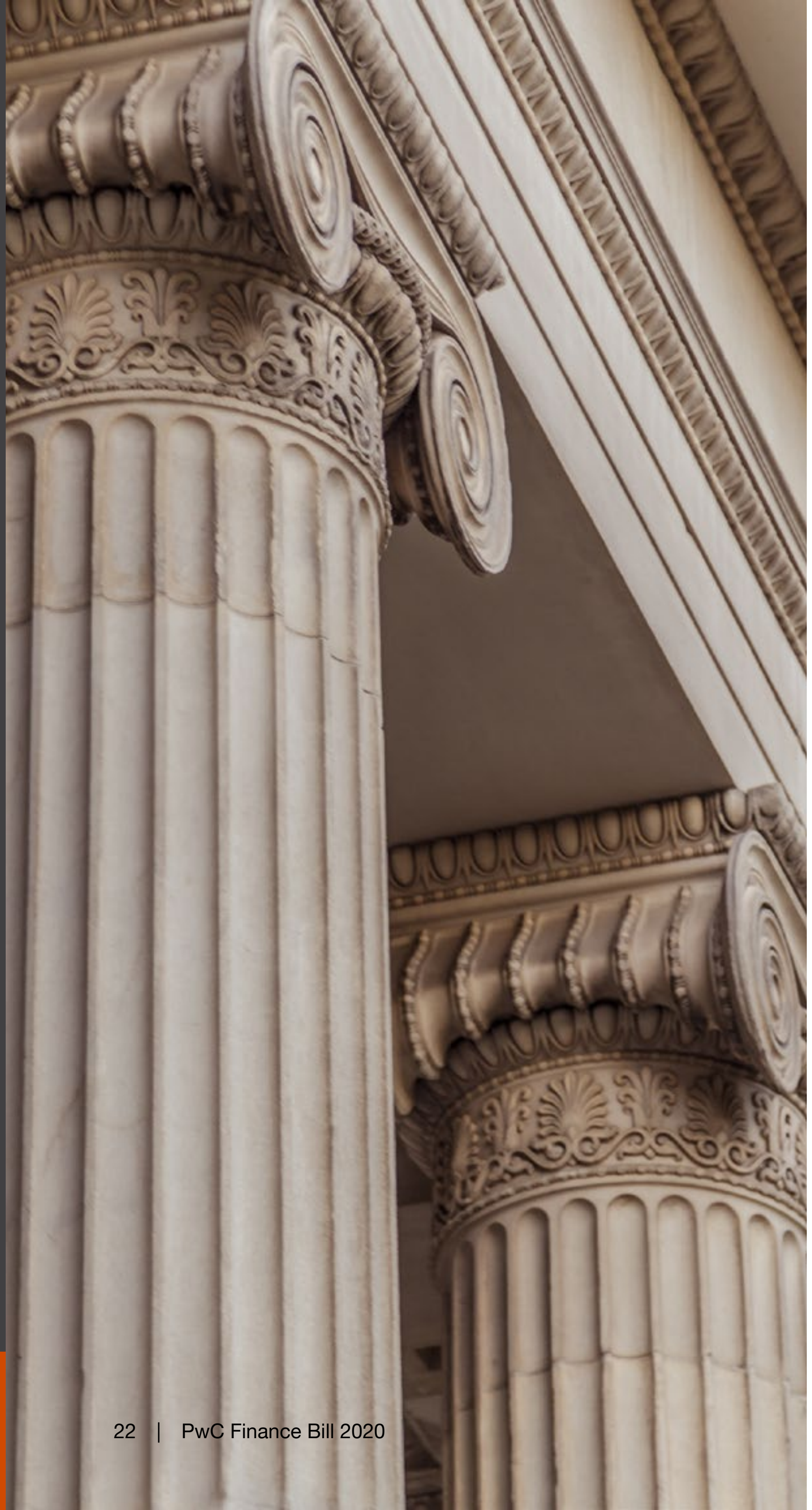
Changes were introduced as part of Finance Act 2019 to extend the notification procedures for fixed charge holders to transferees. The Bill has reorganised the legislative provisions but no substantive changes to the operation of the legislation have been noted.

Insurance regulations

Updates have been made to the definition of insurance companies under the corporate tax and stamp duty tax heads to reflect Ireland’s transposition of the Solvency II Directive and bring the definitions in the tax legislation in line with Solvency II.

What is not in the Bill

Of equal interest to FS clients will be what is not included in the Bill. As asserted in our Budget 2021 commentary, Brexit has created both challenges and opportunities for the FS sector in Ireland. It is disappointing in this regard to see that the legislative updates omitted from the draft 2020 Brexit Omnibus Bill have not been addressed in the Bill.



Specifically, the provisions which facilitate double tax relief are relevant across all FS sub-sectors and it was hoped these would be addressed. Other areas such as the technical amendments to the provisions relating to the Interest and Royalties and Parent/ Subsidiaries Directive would avoid an unnecessary administrative burden for clients. There are also a number of specific provisions which are important to Life Assurance Companies, Irish Real Estate Funds and Irish Section 110 companies, selling into or being funded from the UK, that have not been addressed. While the updates required are surgical in nature, they are very important for taxpayers operating in this space. Consequently, a number of FS taxpayers will be anxiously awaiting the publication of the 2020 Brexit Omnibus Bill in the hope that these measures will be addressed therein.

Furthermore, a number of potential new measures in the FS space would have been helpful in attracting more business to Ireland after Brexit. Surgical changes to existing legislation would have been an excellent starting point in pursuit of economic stimulus.

It was disappointing in this context to note the lack of attention to provisions such as the expansion of the existing S.1035A TCA 1997 regime which removes a potential liability to Irish tax that might arise to a non-resident fund who avails of the services of an Irish investment or asset manager and improving our carried interest regime, particularly as it relates to ESG investments. Again, this may be perceived as a missed opportunity by industry.

Employment and Individual Taxes

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The majority of legislative measures in Finance Bill 2020 in relation to employment and individual taxes mirror the announcements on Budget day. It includes provisions relating to USC band changes, increases to certain credits such as the Earned Income Credit for the self-employed and the Dependent Carer Credit and extension of the Help to Buy Scheme. Other measures not previously announced include new and amended provisions relating to share schemes. In addition to Finance Bill changes, Tax and Duty Manual Part 05-02-13 in relation to e-Working and Tax has also been updated by Revenue.

The key employment and individual tax measures introduced in Finance Bill 2020

- Finance Bill 2020 includes legislation to enact Budget day announcements including changes to USC bands, the Dependent Carer Credit, the Earned Income Credit for the self-employed and the Help to Buy Scheme.
- The Bill puts on a legislative footing the fact that the Pandemic Unemployment Payment is to be considered taxable for individuals. It also includes changes announced on Budget day to the Employment Wage Subsidy Scheme and Tax Warehousing Scheme.
- The Bill also includes mandatory reporting and mandatory electronic reporting for certain employee share schemes.

- Finance Bill 2020 does not contain any additional reliefs to support the significant number of employees who are now working from home. However, Revenue have updated their guidance in relation to e-Working and Tax to clarify the ability to claim broadband costs.

COVID-19 measures

Finance Bill 2020 confirms that the Pandemic Unemployment Payment and COVID-19 Pandemic Unemployment Payment is a taxable emolument for income tax purposes.

While not specifically in the Finance Bill, the Employment Wage Subsidy Scheme was recently amended to bring it in line with amendments to the Pandemic Unemployment Payment, bringing the top rate of payment back up to €350 per week for employees who earn over €400 per week. The revised scheme will run to the end of January 2021.

Finance Bill 2020 also provides for the inclusion of certain proprietary directors within the Employment Wage Subsidy Scheme from 1 September 2020.

The provisions have also confirmed the extension of the tax warehousing scheme to include repayments of Temporary Wage Subsidy Scheme (TWSS) funds owed by employers. The scheme will operate on a similar basis to the existing warehousing scheme for employer PAYE and VAT liabilities and will only apply to employers who as a consequence of COVID-19 are unable to pay their relevant tax and who have filed all relevant PAYE and TWSS returns. All SMEs whose tax affairs are dealt with in Revenue's Business Division or Personal Division will qualify automatically and others will need to contact Revenue. The Bill also provides for the warehousing of "COVID-19 income tax" which relates to the 2019 income tax liability and 2020 preliminary tax liability for the self-employed.

Personal tax thresholds, exemptions and credits

Finance Bill 2020 includes the changes to USC bands as announced in Budget 2021 to take into account recent increases in minimum wage. The Dependent Carer Credit is increased to €245 and the Earned Income Credit for the self-employed is increased to €1,650.

The Help to Buy scheme in its current enhanced format has also been extended to the end of 2021. Under the provisions, the current expiry date on the availability of the enhanced relief of 5% of purchase price or €20,000 to 10% of purchase price or €30,000 has been extended from 31 December 2020 to 31 December 2021.

Share awards

Finance Bill 2020 provides for mandatory reporting of information by employers in relation to awards of shares to directors and employees, except where the employer is already obliged to report the information. It also extends the scope of reporting to include awards given in the form of cash or where a discount on shares is provided and mandatory electronic reporting. The Bill also continues the moves in recent years towards e-filing of awards under share plans by providing for mandatory e-filing of restricted share, forfeitable share and convertible securities plans in a format to be prescribed by Revenue.

Remote working

While employees will broadly welcome the supports for businesses announced in Budget 2021, and by extension for their jobs, the vast majority would have liked further support when it comes to working from home. Unfortunately, Finance Bill 2020 does not contain additional reliefs to support the significant number of people who are now working remotely however Revenue have updated the Tax and Duty Manual Part 05-02-13 in relation to e-Working and Tax. The key changes and clarifications include:

- Where an expense is shared the cost can be apportioned based on the amount paid by each individual.
- Capital items such as laptops, computers, office equipment and office furniture purchased by an employee are not considered a tax deduction for income tax.
- A deduction for 30% of broadband expenses incurred from 2020 onwards for the duration of the pandemic only, can be claimed for days working from home.
- The normal place of work during the period of COVID-19 continues to be the office.

We await the report from the inter-departmental group tasked with developing the country's remote working strategy. Further measures to support working from home arrangements, which are likely to continue for many months to come, would be welcome

Agri Business

The Finance Bill 2020 made a few welcome changes in the tax issues affecting the farming community and agri-business, but which will have relatively little impact on the sector at this time. It extends some reliefs from Stamp Duty and increases the flat rate of VAT for unregistered farmers. Farmers will benefit from the increase of €150 in the earned income credit for all self-employed individuals.

They should also benefit from the extension of the deadline on incurring expenditure and avail of accelerated capital allowances on energy efficient equipment.

But the big issue is Brexit and the potential impact on agri-business in the event of no deal. The Finance Bill does not contain any specifics in relation to the one issue that will have the greatest impact on the sector in the near future.

The key agri-business measures introduced in Finance Bill 2020

- Extension of the 1% Stamp Duty rate for acquisitions of farm land in connection with farm consolidation, from 31 Dec 2020 to 31 Dec 2022

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- Extension of the expiry date for the reduced 1% rate of Stamp Duty (Consanguinity Relief) for transfers between blood relatives from 31 Dec 2020 to 31 Dec 2023.
- Increase in the flat rate of VAT for non-registered farmers from 5.4% to 5.6%.
- Although not directly aimed at the agri-business sector, there is an extension of the deadline to 31 December 2023 for incurring capital expenditure on energy efficient equipment that can benefit from accelerated capital allowances.

Farm Consolidation

A 1% Stamp Duty rate for farm consolidation is being extended to 31 December 2022. This was introduced in 2017 as part of a policy which the Minister described as encouraging farmers to consolidate their holdings, and increase the efficiency and viability of their farms. The extension is designed to mirror the expiry date for the CGT relief for farm consolidation.

Consanguinity Relief

Around the time that the rate of Stamp Duty on farm land increased in line with commercial property (now 7.5%), an extension of the relief known as Consanguinity Relief was announced. This relief limits the rate of Stamp Duty on transfers of farm land between certain blood relatives to 1% and tends to be extended periodically. Again, this year, the Finance Bill extends the expiry date - this time until 31 December 2023. It would be preferable to have this relief placed on a permanent footing. It encourages the transfer of farms to the next generation and would remove the uncertainty around succession where a transfer can sometimes happen a little earlier than desired simply to avoid an excessive Stamp Duty charge that might otherwise arise.

Flat rate of VAT

This was the one surprising change announced by the Minister on Budget Day and confirmed in the Finance Bill. Notwithstanding the fact that we have had a stable 23% basic rate of VAT for a number of years and the fact that the rate has been temporarily reduced to 21% as a result of COVID19 measures, the flat rate of VAT that non-registered farmers can charge has been increased marginally from 5.4% to 5.6%. It is a small change but welcome nonetheless.

The Green Agenda

The Minister promised in his Budget speech that he would be introducing a review of the scheme of accelerated capital allowances for energy efficient equipment and a review of the kinds of equipment that will qualify. The only change in the Finance Bill is an extension of the deadline for incurring capital expenditure on such equipment to 31 December 2023 but does not contain any details of what is envisaged in the wider review of this scheme. Ireland has made significant commitments to reductions in greenhouse gases and the agri sector will make a significant contribution towards meeting those targets. But that commitment is likely to involve large capital expenditure on equipment to manage and control emissions of greenhouse gases. It is to be hoped that the promised review will recommend extending the accelerated capital allowances scheme to cover this kind of emissions control expenditure by the agri sector.

Brexit

Brexit will have a significant impact on the agri-business sector. This includes the potential imposition of tariffs that would directly impact on farm incomes in a no-deal scenario and the additional compliance burden on businesses that export to or import from the UK. In fairness, the Finance Bill could not include specific provision for support to the sector because, at the date of publication, the outcome of the EU/UK talks is still not determined. Only when we see the form of a new trade deal, if any, with the UK will we be able to determine the extent of the likely impact on the sector and consider what measures need to be introduced to provide direct support for farm incomes and other supports across the sector as a whole.

VAT

Some of the key changes in Finance Bill 2020 relate to VAT rate changes, a number of which were flagged in the recent Budget.

One significant new measure is the ability of Revenue (with certain exceptions) to require a non-EU established taxpayer to appoint a Tax Representative. The Tax Representative will have joint and several liability for the taxpayer's VAT debt.

There are also a number of technical amendments and definition changes.

The key VAT measures introduced in Finance Bill 2020

- The reduction of the VAT rate from 13.5% to 9% for certain services in the hospitality sector.
- Other VAT rate changes include the application of the standard rate to all candles from 1 Jan 2021 (previously white cylindrical candles qualified for the zero-rate) and the application of the reduced rate of 13.5% to certain sanitary products from 1 January 2021.
- The Bill contains provisions which will enable Revenue to require that a non-EU established business appoint a tax representative to be responsible for the payment of

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the VAT due and payable by the non-EU business. This provision does not apply to non-established businesses registered in Ireland through the Mini One Stop Shop regime (MOSS) nor will it apply where there is a legal instrument relating to mutual assistance in place with the country where the trader is established.

- The Bill puts on a statutory footing the zero-rate for PPE and other equipment for use in the delivery of Covid related health care services.
- The Bill contains some definition amendments to align Irish VAT legislation with EU VAT legislation.
- The Bill contains a provision to increase the farmer's flat rate addition from 5.4% to 5.6% from 1 January 2021.

Reduction in VAT rate for the hospitality sector

The Bill will reduce from 13.5% to 9% the rate of VAT that applies on the supply of restaurant and catering services, guest and holiday accommodation and entertainment services such as admissions to cinemas, theatres, museums and fairgrounds. It will also apply to hairdressing and the sale of certain printed matter such as brochures, maps and programs. This rate reduction applies from 1 November 2020 to 31 December 2021.

The existing 9% rate which applies to magazines and newspapers and to the provision of sporting facilities will be unaffected by this measure.

What does this mean for your business?

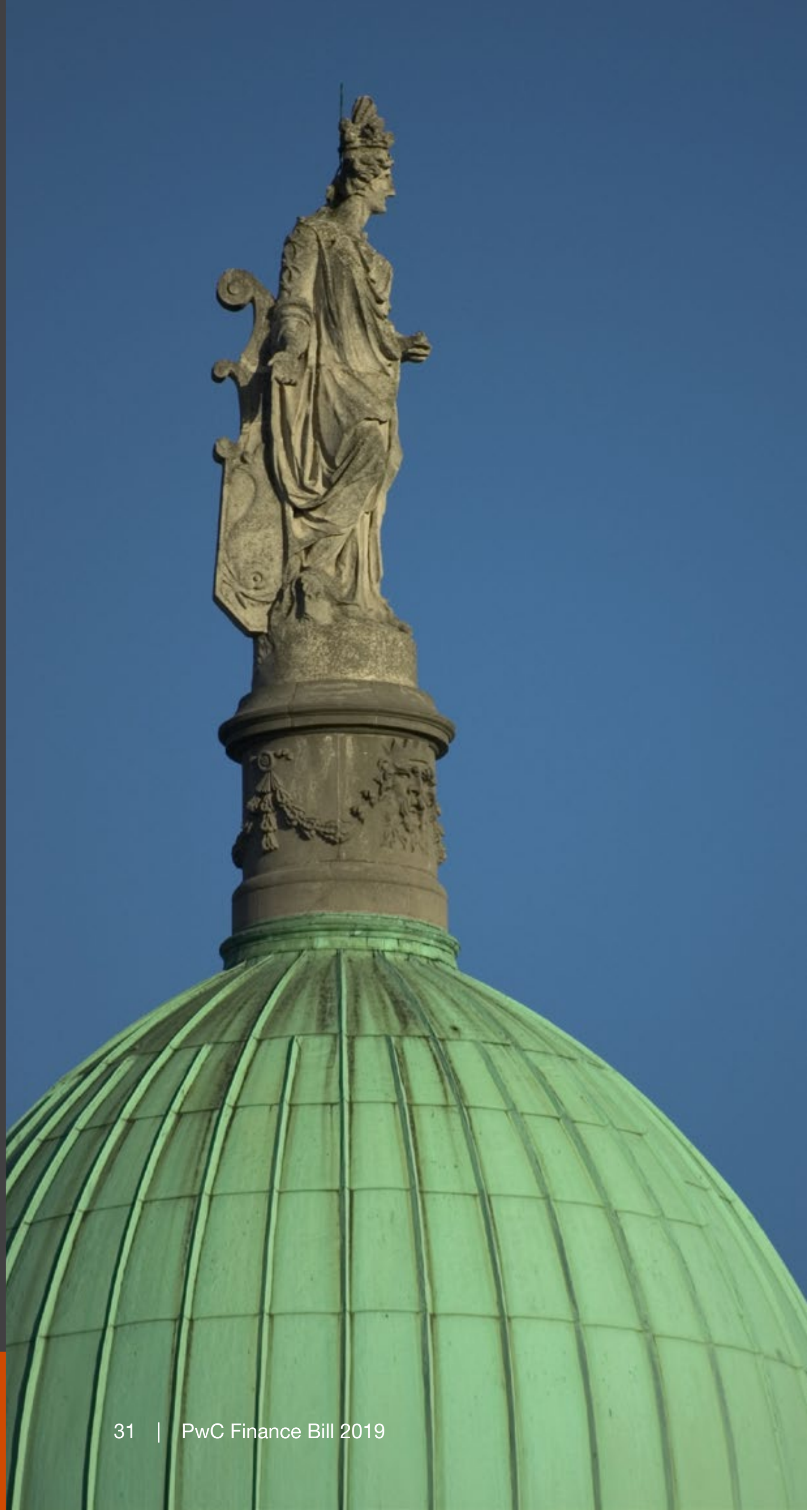
This VAT reduction has been well flagged and is greatly welcomed by a hospitality sector which is struggling with the impact of Covid-19. It adds to the benefit for businesses of the reduction of the standard rate of VAT from 23% to 21% from 1 September 2020 to 28 February 2021.

Other VAT rate changes

- The VAT rate on the supply of white, cylindrical candles is being increased from 0% to the standard rate (currently 21%) with effect from 1 January 2021.
- The Bill introduces provisions which will apply a reduced 13.5% rate of VAT from 1 January 2021 to menstrual cups, menstrual pants and menstrual sponges. Sanitary towels and sanitary tampons will remain zero-rated.
- The temporary VAT rate for the supply of personal protection equipment and other items and equipment supplied to the HSE and other health care services for use in the delivery of Covid-19 health care services is being put on a statutory footing. The zero-rate will continue until 31 October 2020 and will be extended by the Minister for Finance where the European Commission adopts a decision to extend the relief.
- A zero-rate is being introduced with effect from 1 July 2022 for the supply of goods or services intended for use by the armed forces of an EU Member State when those armed forces take part in a defence effort carried out under the EU common security and defence policy.

Appointment of a tax representative

The Bill contains provisions which grant Revenue the power to serve a notice on certain non-EU established persons requiring them to appoint an EU tax representative who shall be liable for payment of VAT due and payable in Ireland by the non-EU person. The power will only apply where the person is established in a non-EU jurisdiction which does not have a legal instrument relating to mutual assistance for the collection of taxes similar in scope to that



provided for between EU Member States. In addition, the power to require a person to appoint a tax representative does not apply where the non-EU established person has opted to apply the Mini-One Stop Shop (MOSS) scheme.

What does this mean for your business?

This is an important anti-avoidance measure. Although the Bill does not contain details on the rationale for introducing these measures, with the UK becoming a non-EU jurisdiction from 1 January 2021 the provisions do give Revenue an additional tool to enforce VAT compliance on UK (and other non-EU established persons).

Alignment of Irish VAT legislation with the EU VAT Directive

The Bill contains a number of provisions to align the language of Irish VAT legislation with the EU VAT Directive (which has direct effect in Ireland). These include alignments in the following areas:

- The definition of “immovable goods”
- The definition of the supply of restaurant and catering services
- The definition of the supply of guest and holiday accommodation have been amended
- The definition of the zero-rate that applies to the supply of services relating to vessels and aircraft.

What does this mean for your business?

Although stated in the explanatory memorandum that these changes are to align Irish VAT legislation with the Directive, any change to the wording of VAT legislation, particularly the definitions of goods and services that qualify for reduced rates of exemptions, can impact on the VAT rate applicable to the supply of those goods and services. Businesses in the food and drink industry, providing holiday accommodation and providing services to vessels and aircraft should review the categorisation of their offerings in light of the definition changes.

Trade, Customs and Excise

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As set out in the Budget, the Finance Bill confirms the increases announced by the Minister on Budget day. Specifically it confirms the increases in the rates of tobacco products tax, with an increase amounting to 50 cent on a packet of 20 cigarettes on a VAT inclusive basis, with pro rata increases on other tobacco products. Furthermore, the minimum excise duty rate on cigarettes is now increased and applies at a rate of duty applicable to a packet of cigarettes sold at €11.50.

In addition, and in line with the Government's decision to provide Covid 19 government support to the hospitality sector including pubs, bars and nightclubs, the Finance Bill waives excise duty payable on the renewal of certain excise licenses in the years 2020 and 2021 and also includes a waiver of excise duty due on the renewal of certain dance licences and certificates of registrations for clubs for 2020.

As is often the case with the Finance Bill, the Government has taken the opportunity to amend certain excise legislation to take account of certain procedural aspects of excise administration. Changes include:

- The Finance Bill gives effect to amendments to an EU Directive and introduces an exemption on excisable products delivered to NATO forces and from 1st July

2022 an exemption on excisable products delivered to the forces of other EU Member States undertaking common defense efforts.

- The Finance Bill also provides an amendment to existing legislation which amends the definition of a ‘registered consignor’. The amendment to the definition brings Irish legislation into closer alignment with the provisions of the EU General Excise Directive.
- Finally, the Finance Bill introduces a provision with respect to excise appeals. The change provides that where a taxpayer appeals an assessment for the payment of excise duty and in conjunction with that appeal makes a payment of such excise duty to Revenue and is subsequently successful in that appeal, the taxpayer will not be entitled to interest on the amount repaid.

Climate Change / Environmental Taxes

Finance Bill 2020 sets out minor amendments to existing legislation to address climate change. The increases in Carbon Tax and changes to Vehicles Registration Tax (VRT) and the motor tax regime are not unexpected and were flagged in the Tax Strategy Paper released prior to Budget day, in addition to being referred to in the Ministers speech.

The extension of the accelerated capital allowances scheme for energy efficient equipment is a positive move, as the current arrangements were due to expire on 31 December 2020. Current legislation gives authority to SEAI to maintain the list of energy efficient equipment which it can update from time to time.

The release of the Climate Action Bill and establishment of the Climate Action Council are setting the scene for future, more transformative, plans in the area of decarbonisation.

Climate change measures introduced in Finance Bill 2020

- Carbon taxes: Finance Bill 2020 sets out the announced increases in carbon tax including the 10-year trajectory for increases in rates.
- Amendment to the calculation of Vehicles Registration Tax ('VRT') and motor tax: Finance Bill 2020 sets out a new regime for VRT and motor tax which is expected to give a more robust identification of the CO2

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emissions that are emitted from a vehicle, thus contributing to the climate change agenda.

- Accelerated Capital Allowances for Energy Efficient Equipment: The existing scheme for accelerated capital allowances, included in s285A TCA 97, offers 100% tax deduction for expenditure on certain energy efficient equipment. This results in an upfront cash advantage for choosing the energy efficient option when purchasing equipment. The Finance Bill changes include an extension of the time period for claims to 31 December 2023.

Carbon taxes

As referenced in the Budget speech, the Government is aiming to increase the price of carbon tax to €100 per tonne of CO2 by 2030.

Mineral Oil Tax

The Finance Bill provides for 10 annual increases to rates of the carbon component of mineral oil tax. This first increase had an immediate effect from 14 October 2020 which was also announced on Budget Day and will apply to remaining fuels from 1 May 2020.

The immediate change applies to petrol, aviation gasoline, and heavy oil used as a propellant or for air navigation or for private pleasure navigation.

For example, petrol in the "Light Oil" category is now subject to Mineral Oil Tax at €619.36 per 1,000 litres.

The rates for all other fuels for example, liquefied petroleum gas, will increase from 1 May 2021. In addition, the provisions relating to horticultural relief from Mineral Oil Tax are amended to reflect the increase in the carbon charge component to heavy oil and liquid petroleum gas.

Natural Gas Carbon Tax

The Finance Bill provides for annual increases in the rate of natural gas carbon tax from May 2021 to May 2030. Based on the carbon increase outlined above, the rate of Natural Gas Carbon Tax per megawatt hour will increase from €5.22 to €6.06. This increase will apply from 1 May 2021.

Solid Fuel Carbon Tax

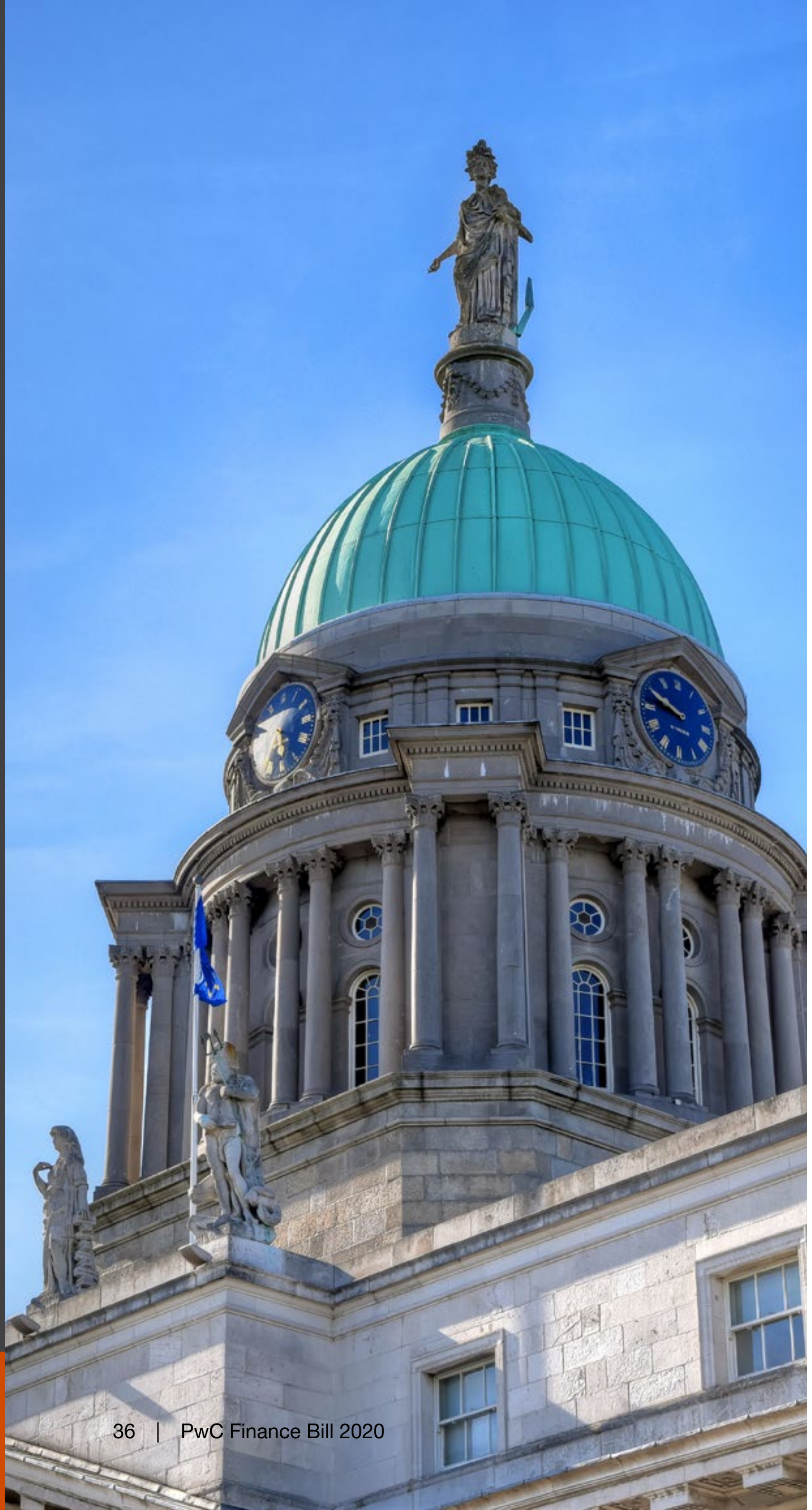
The Bill confirms an increase in the rates of Solid Fuel Carbon Tax for coal and peat. For example, the rate of tax for coal will increase to €88.23 per tonne. These increases will apply from 1 May 2021.

Vehicles Registration Tax

Finance Bill 2020 sets out a new structure for calculating VRT. It is based on emission performance levels which are much closer to actual performance levels. The system to be adopted is the Worldwide Harmonised Light Vehicle Test Procedure (WLTP). It will be adopted from 1 January 2021 and is expected to give a more robust identification of the CO2 emissions that are emitted from a vehicle.

The amended table will reflect the new rates applicable to WLTP CO2 emissions. A formula will be applied to the emissions of cars tested under older emissions standards before the rate of tax due is established from the table.

Finance Bill 2020 amends the existing Nitrogen Oxide (NOx) charging table such that the lowest band will now be 0 – 40 mg/km (formerly 0 – 60 mg/km) (€5 per mg/km or mg/kWh) and the middle band will be 41 – 80 mg/km (formerly 61 – 80 mg/km) (€15 per mg/km or mg/kWh). The remainder



above 80 mg/km is subject to €25 per mg/km or mg/kWh.

Revenue released e-Brief No. 191/20 on 20 October 2020 which sets out changes to the tax and duty manual for the VRT regime. However, we note this does not include Finance Bill changes at the date of this publication.

An amendment has also been introduced to adjust the relief applicable to certain electric vehicles. Vehicles with an Open Market Selling Price (OMSP) of up €40,000 will be granted relief of up to €5,000. Vehicles with an OMSP of greater than €40,000 but less than €50,000 will receive a reduced level of relief. Reliefs have been removed for any electric vehicles above €50,000.

In addition, Section 34 of the Finance Bill means that all new cars which are registered in the State will be subject to tax based based on an increased number of emissions bands.

Energy efficient equipment

The existing scheme for accelerated capital allowances, included in s285A TCA 97, offers a 100% tax deduction for spending on certain energy efficient equipment. This results in an upfront cash advantage for businesses that choose the energy efficient option when purchasing equipment. The Finance Bill extends the time period for claims to 31 December 2023.

High-level figures provided by the Revenue Commissioners suggest there were around 600 transactions with a tax saving of €3.5m in 2018 under the scheme. Micro-businesses and SMEs accounted for €2.6m of this amount.

The Budget speech suggested that the scheme would be expanded.

The current drafting of s 285A gives authority to the SEAI to update the list as required. The expansion of this scheme will be key to ensuring buy-in from a wider range of organisations, from MNCs to the micro and SME sector.

However, there are some limitations to be addressed in this regard:

- Difficult to track energy savings and consequently the efficacy of the scheme on improving energy efficiency in businesses. Ireland is required under the Energy Efficiency Directive to validate any energy savings under the scheme.
- There is an administrative burden on the taxpayer to track energy savings.
- As technology develops, the ACA scheme must also ensure products and equipment listed remain “best in class”.

Brexit

Brexit was one of the dominant themes in Budget 2021. While the successful negotiation of a zero tariff Free Trade Agreement between the European Union and the United Kingdom is the result that all Irish businesses crave, a significant change to the trading relationship with the United Kingdom is imminent regardless of the outcome.

The most significant disruptor will be in the area of customs, with many businesses facing a myriad of new requirements and paperwork. The Government is somewhat hamstrung in terms of tax mitigation measures it can introduce as the competence for customs and trade policy lies with the European Commission. As such, in Budget 2021 we saw targeted spending and support measures introduced to bolster the most impacted sectors of the economy.

While there are no specific measures in the Finance Bill 2020 targeted at the impact of Brexit, in September 2020 the Government published the General Scheme of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020, (the ‘2020 Brexit Omnibus Bill’). It is expected to be brought before the Oireachtas in November. The Bill looks to address a wide range of issues likely to arise for citizens and businesses from the end of the transition period. Part 8 deals with Taxation and it aims to maintain the status quo in relation to the operation of many key tax measures which require residence of the EU or the

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European Economic Area ('EEA'). A number of important measures are, however, absent from the draft Bill and these have been raised with the Department of Finance. We have highlighted these below. These measures have equally not been covered in the Finance Bill.

Key Brexit themes in Budget 2021

- Budget 2021 was based on the assumption of a disorderly Brexit, that no trade deal would be agreed and that the EU and UK would be trading on WTO terms.
- Recent Budgets provided extensive provisions for Brexit support measures and targeted measures had previously been introduced in the July Jobs Stimulus package such as the €20 million Brexit support package for businesses to help them prepare for the impact of Brexit on Customs requirements.
- A commitment from the Government to access the Brexit Adjustment Reserve was announced earlier this summer by the European Council.

A Budget against the backdrop of Brexit

The further extension of Brexit support packages announced for business is welcome, with €340m available to support customs compliance activities, hiring 500 additional frontier staff and the improvement of infrastructure at Irish ports and airports. While perhaps we might have expected more specifics on Brexit support measures, the Budget provided for a flexible €3.4bn recovery fund which will be used to stimulate demand in the economy. Part of this recovery fund will be used to support government decisions next year which may need to be taken to stimulate domestic demand and mitigate the impacts of Brexit and COVID-19 on the economy.

The British Government has stated its intent to disregard parts of the Northern Ireland Protocol, threatening to undermine progress made between the UK and EU on the future trading relationship.

Cross Border movement of Goods – Planning for Day 1 Readiness

With negotiations now recommencing but a deal yet to be concluded, companies need to consider and plan for Day 1 Readiness (1 January 2021) and the basis of the 'future trading relationship' for the movement of cross border goods. Regardless of the outcome, there are certain important elements which cannot be overlooked and we recommend immediate actions are taken, with delay in preparations no longer being an option.

- Companies who will be importing and exporting should ensure relevant UK and EU Economic Operators' Registration and Identification (EORI) numbers are in place so that products can continue to move between the UK and EU.
- Importers and exporters should also ensure that there is some way to connect with the Customs Authorities in order to file customs declarations and will need to appoint a customs broker to prepare and file customs declarations through the UK and EU customs authorities' systems.
- Companies will need to ensure that there is a method in place to pay any customs duties arising. The rate of duty arising on goods depends on their customs classification and, as

such, companies will need to confirm the commodity codes for all goods moving into and out of the UK and vice versa.

- The UK has released its draft tariff schedule which defines the duty rate applied to goods entering the UK from third countries. Should the EU and UK fail to ratify a Free Trade Agreement before 1 January 2021 many products shipped from Ireland and other EU Member States to the UK may be subject to customs duty. Companies should take this time to reassess the impact of these additional customs duties on their business.

Another challenge for Irish business is the use of the UK as a landbridge (i.e. products transiting through the UK en route to/from Ireland), sourcing products through the UK from countries with which the EU currently has an FTA or storing and distributing non-EU goods (e.g Chinese or US manufactured goods) from a UK warehouse. All these supply chain models have different and significant customs compliance requirements. In addition to increased compliance costs, there is a risk of 'double duty' where appropriate duty mitigation measures are not put in place. For Irish businesses, there will be a strong reliance on UK partners to facilitate such measures. Without such cooperation, Irish businesses face further increased costs.

In light of the requirement of the customs authorities to maintain the integrity of the EU Customs Union and impose a border of 'some kind', dealing with customs formalities will be a challenge for many companies. One of the biggest challenges businesses will need to address while preparing for Brexit is access to customs and trade knowledge while building a robust corporate

customs function infrastructure to support products crossing international borders.

Finally, issues other than customs cannot be overlooked and appropriate consideration needs to be given to VAT, people, regulatory, supply chain and Northern Ireland.

Taxation Measures

In the wider tax space, the fact that the UK is no longer a member of the EU or the EEA will impact on the application of many tax provisions to the extent that they involve UK resident companies or individuals.

The 2020 Brexit Omnibus Bill amends many of these provisions to widen their scope to include residents of the UK. As noted above, however, a number of important tax measures are absent from the Bill. These include:

(1) Double Tax Relief under Schedule 24 TCA 97

The application of a number of provisions in Schedule 24 will be restricted in circumstances where a UK company is no longer resident in the EU or the EEA.

An important issue in this context is the potential non-application of Schedule 24 Paragraph 9I which provides for an additional foreign tax credit to Irish parent companies in respect of dividends received from UK resident companies in certain circumstances. This could impact both UK investments and also investments in other jurisdictions via a UK intermediate holding company.

(2) Section 110 Companies with Specified Property Business

Section 110 companies which hold financial assets that are secured over Irish property may avail of a tax deduction for interest accrued on their profit participating debt finance in certain limited circumstances only. One such circumstance is where the recipient is a company carrying on genuine economic activities which is formed, authorised or resident under the laws of a “Member State”, being an EU or EEA jurisdiction.

Institutional investment from UK pension funds and international funds with UK sponsors and managers represents a significant portion of the investment capital utilised in Ireland for key infrastructure projects. To protect this key source of foreign capital and stimulate future investment, we would like to see amendments to permit Irish securitisation vehicles to continue to avail of a tax deduction for interest accrued and paid on debt financing to UK resident recipients.

(3) Providing Certainty to Irish Life Assurance Companies with UK Resident Policyholders

Currently, Irish life assurance companies selling directly into the UK market and with UK resident policyholders are permitted to avail of the tax documentation exemption under Section 730D(2A) for Irish exit tax purposes. This exemption permits life assurance companies, on approval by Revenue, to not have to obtain individual non-Irish residency declarations for each customer where such policy has been written through a branch of the Irish company in an EU or EEA country or the policy has been written on a freedom of services basis from Ireland and the policyholder is an EU or EEA resident. If such exemption does not apply and such documentation is not in place, Irish exit tax is required to be operated.

This measure should not pose any risk to the Irish Exchequer and avoids administrative burden for Irish Revenue given the likelihood of refund reclaims under the UK-Ireland DTA.

Such measures are critical to ensure Ireland as a world-class hub for financial services given many UK businesses in this sector have reorganised to ensure continued access to EU markets post Brexit and the importance of the UK market for Irish financial services.

(4) Facilitating Irish-UK Transactions

The provisions of Part 21 Chapter 1 of the TCA include a number of relieving measures relating to Mergers, Divisions and Transfers of Assets involving companies of different Member States. These include CGT relief in respect of transfers of Irish development land in the course of a reconstruction or amalgamation and in respect of mergers by absorption. The provisions apply only where the companies are EU-resident. It has therefore been requested that the definition of 'company' in Section 630 be amended to continue to include a company that is resident in the UK.

We await publication of the 2020 Brexit Omnibus Bill and we would hope that these measures will be addressed.

Conclusion

As Ireland continues to grapple with the ongoing challenge of COVID-19, focus has understandably shifted away from Brexit and the potential economic impact it may have. However, as we continue to move towards the expiration of the transition period of the withdrawal of the UK from the EU, now is the time to assess your business and be fully Brexit ready. PwC continues to advise and assist clients on all aspects of their Brexit readiness plans and to help meet the challenges to come. To learn more about how PwC can advise and guide your business through the challenges ahead, contact us today.

Tax Administration and Revenue Powers

Finance Bill 2020 introduces a number of amendments to the appeals process.

The Bill expands an Appeal Commissioner's powers to dismiss an appeal where a taxpayer does not comply with their directions and introduces procedures that apply if an Appeal Commissioner vacates their office before the appeal process is completed. These procedures are to be welcomed as there are a number of Temporary Appeal Commissioners. The Bill also introduces various amendments relating to Revenue powers, the most notable in respect of Capital Acquisitions Tax.

Key appeals, tax administration and Revenue powers measures introduced in Finance Bill 2020

- The extension of the Appeal Commissioners' powers to dismiss appeals where directions provided by them to provide certain information, a statement of case, or an outline of arguments have not been met by a taxpayer.
- The introduction of provisions which lay out how an appeal should proceed if the Appeal Commissioner hearing the appeal vacates their office before the appeal is determined or before a case stated is submitted to the High Court, where requested.
- The appeal may be reheard or adjudicated upon without a hearing, as decided by one or more Appeal Commissioners in such circumstances.

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- The extension of the time limits available to Revenue to raise enquiries or assessments in respect of CAT returns.
- The introduction of regulations which could require credit / debit card issuers to file returns in respect of cross-border payments
- The extension of the tax-geared penalty regime to monthly PREM returns.
- Finally, the introduction of a provision prohibiting the payment of interest in connection with repayments of tax arising from successful appeal cases.

Extension of the Appeal Commissioners' powers to dismiss an appeal

Finance Bill 2020 gives an Appeal Commissioner the power to dismiss an appeal where a taxpayer does not comply with their directions to submit information required to progress the appeal. In particular, an Appeal Commissioner may dismiss an appeal if a taxpayer fails to comply with a direction

1. to submit information or documentation, accounts, returns, computations, explanations, or other information they consider relevant to decide an appeal;
2. to submit a statement of case (brief grounds of appeal and other information);
3. to submit an outline of arguments (the relevant arguments for the appeal)

The deadlines for making submissions can be tight and extensions to deadlines will not always be granted. It will be more important than ever that case management is at the forefront of taxpayers' minds during the appeals process.

Appeal Commissioner vacating office before completion of appeal

Where a hearing has commenced but is not completed, or a hearing is completed but a determination has not been made, the Appeal Commissioners have the option to rehear the appeal as if a previous hearing had not taken place or to determine the case without a hearing.

Where an appeal has been determined and a 'case stated' for an appeal to the High Court has been requested but not been completed, another Appeal Commissioner may rehear the appeal; adjudicate on the appeal without a hearing; or proceed with the completion of the 'case stated'.

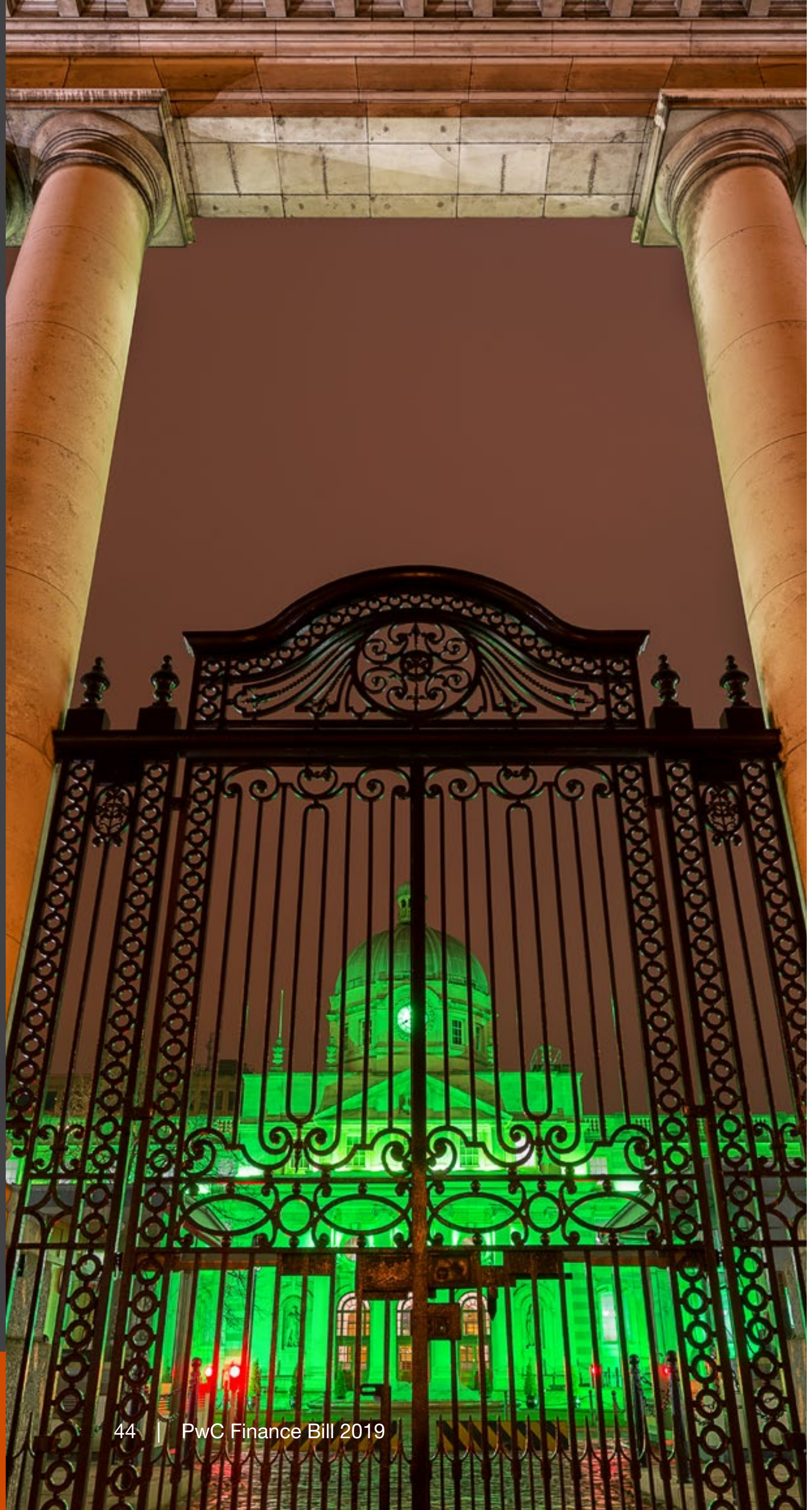
The High Court is given the discretion not to deal with such a 'case stated' where it considers that justice would not be served by its doing so and may instead order that the appeal be reheard by the Appeal Commissioners.

CAT Time Limits

The Finance Bill provides for amendments to the standard 4 year time limits in which Revenue may make enquiries into, or raise an assessment in respect of, a CAT return.

Currently, Revenue cannot commence enquiries into, or raise an assessment in respect of, a CAT return more than 4 years after the date on which the return was received by Revenue (subject to certain statutory exclusions).

The Bill extends the time limit available to Revenue through an amendment which provides that the 4 year period commences from 31 December in the year in which the return was received. In situations where a relief was claimed, the time limit period will be 4 years from the date on which the conditions attaching to that relief were required to be satisfied (even if this exceeds the amended 4 year time limit as outlined above).



In the case of certain inheritances, the 4 year period will be from the date in which the CAT return is received.

As regards time limits applying to claims for repayments of CAT, the Bill has amended this date from 31 October to 31 December. As such, any claims for repayments of CAT must be made within 4 years from 31 December in respect of the year to which the repayment relates.

Third Party Returns

Section 59 of the Bill has inserted a new provision which could impact credit/debit card issuers. The section provides that Revenue can make regulations which would require certain card issuers to provide information to Revenue in relation to card payments made to non-resident businesses.

Extension of tax-geared penalty regime to monthly PREM returns

The Bill has extended the application of tax-geared penalties under Section 1077E TCA 1997 to include situations where a taxpayer fails to file a monthly return, or files an incorrect monthly return, under the new real-time reporting regime.

Non-payment on interest on appeal cases

Section 67 of the Bill has inserted a new provision in relation to the payment of interest in connection with an assessment which has been successfully appealed.

This insertion provides that in situations where a case is at appeal, and where a taxpayer has made a payment on account in respect of the tax which is the subject of that appeal, the taxpayer will not be entitled to interest on the repayment of the tax if they are successful in their appeal.

Fixed charge on book debts – re-organisation of section

Last year's Finance Act introduced an amendment to S1001(3)(c) TCA 1997 to allow new fixed charge holders to notify Revenue of the creation or transfer of the charge within 21 days of the date of transfer.

This year's Bill has made some minor amendments to S1001 TCA 1997, although the amendments do not change the operation of the Section.

Think Beyond

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