What does Finance Act 2022 mean for you and your business?

Read our insights

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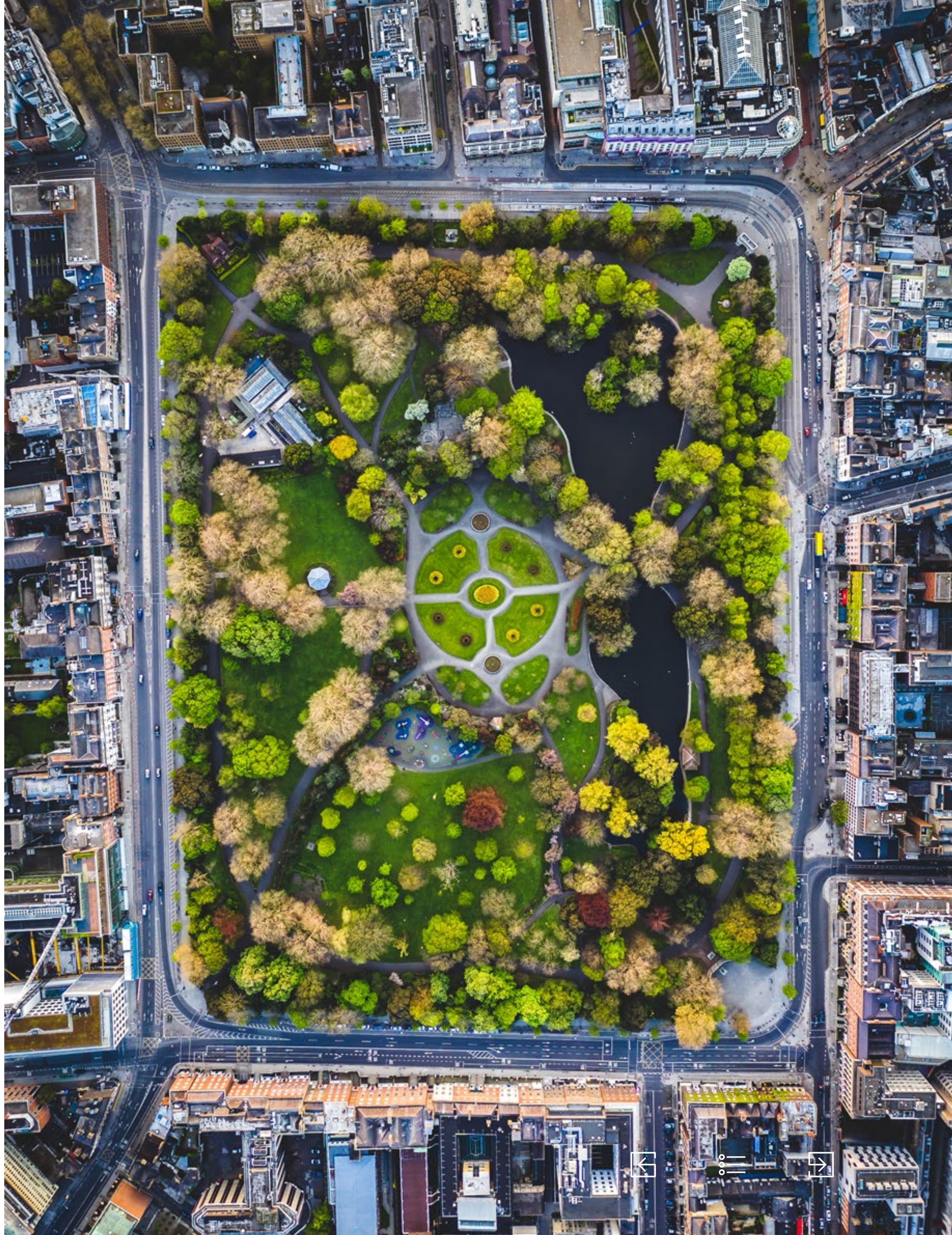

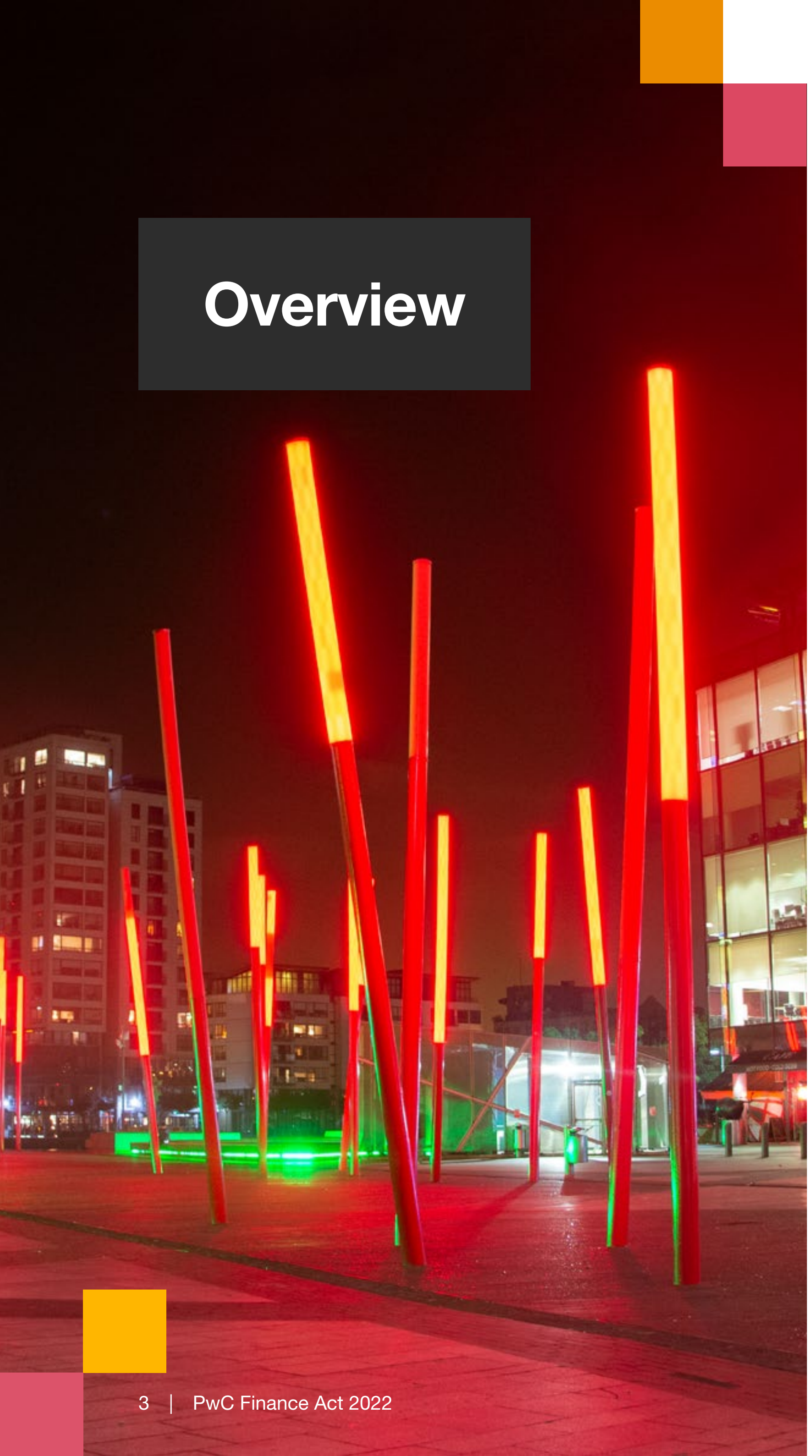

Overview

What does Finance Act 2022 mean for you and your business?

Finance Act 2022 (the Act) sets out the legislative changes required to implement many of the Budget day announcements of 27 September last including important R&D Tax Credit changes and extensions to certain reliefs. The Act also includes several measures which were not previously announced. Amongst these were pension changes, Stamp Duty changes in relation to multiple property purchases, the introduction of group relief on transfers of patent rights, offshore fund changes, technical amendments to the existing Interest Limitation Rules and amendments to the provision governing tax treatment of foreign exchange gains/losses on trade related bank accounts. Updates were also made to transfer pricing legislation whilst revised DAC7 related reporting requirements are proposed in relation to digital platforms.

Finance Act 2022, which was first published on Thursday 20 October 2022, was amended in a number of respects prior to its enactment on 15 December 2022. Amendments to the Bill as initiated are highlighted in red throughout this document.

R&D Tax Credit

In line with the announcement on Budget Day, the Act introduces changes to the operation of the R&D tax credit. Apart from affording greater flexibility for taxpayers in claiming the credit, the

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modifications respond to external changes such as the Pillar Two GloBE rules and changes to the US foreign tax credit regime. The changes provide for a three year fixed payment regime for R&D tax credits and the removal of limits to the amount of credits that can be claimed in cash.

Financial Services

The Act introduces additional reporting requirements for certain regulated products.

There are some significant financial services-related VAT changes.

Stamp duty changes are introduced which include a change to the rules linked to the electronic transfer of shares, as well as minor changes to the administration of banking and insurance levies.

The Act also seeks to clarify the tax treatment applicable to certain unit trusts.

Real Estate

The Help to Buy Scheme has been extended in its current form for a further two years to the end of 2024 whilst the Living Cities Initiative has been extended until 2027.

The threshold in relation to deductible pre-letting expenses for landlords has been increased to €10,000. The premises must now only be vacant for a period of six months to qualify (reduced from 12 months).

The exemptions from the application of the Interest Limitation rules have been expanded to include certain large-scale residential developments.

Amendments to the provisions applying to the taxation of non-resident landlords have been introduced. They require additional information to be returned to Revenue by tenants and collection agents in respect of tax that has been withheld on rental payments made to non-resident landlords.

A Vacant Homes Tax (VHT) has been introduced, which will apply to residential properties occupied for less than 30 days in a 12-month period.

Amendments have been made to the Residential Zoned Land Tax, which was introduced in last year's Finance Act. They will come into effect in 2024 for land that is within scope.

A 5% levy will be applied to certain concrete products from September 2023.

Changes to the Residential Stamp Duty Rebate scheme have been introduced, along with additional measures relating to the transfer of residential properties.

An annual tax credit has been introduced for individuals/couples paying rent on their principal private residence.

A Case V tax deduction is now available to landlords with rental residential property who undertake qualifying retrofitting works during the currency of a tenancy to improve the energy efficiency of the property. A deduction of up to €10,000 per property may be claimed for a maximum of two rental properties.

Interest Limitation Rules (ILR)

The Act proposes a number of welcome clarifying amendments to bring the legislation in line with guidance previously issued by Revenue. It also includes an update on the operation of the exemption for interest on legacy debt, to specify that a "first-in-first-out" basis applies where there is a repayment in respect of facilities that have a mixture of legacy debt and non-legacy debt. Taxpayers with legacy debt should consider the impact of this more restrictive approach.

The extension of the definition of long-term infrastructure projects to include large-scale residential projects is another welcome development that could increase the attractiveness of investment in this sector. Please refer to our Property insight for further detail.

Foreign exchange movements

The Act introduces an amendment to Section 79 TCA 1997 that is said in the explanatory memorandum to the Act to be an expansion of the definition of 'relevant monetary item' to include both trade debtors and trading bank accounts. The aim of the change is to allow foreign exchange gains or losses in respect of those items to be treated as part of trade profits or losses. The proposed amendment could be viewed as a clarification measure. Whilst the amendment is welcome, its application to trading bank accounts is limited in scope. Updated guidance is currently awaited.

Knowledge Development Box

The Knowledge Development Box (KDB) regime is to be extended for a further four years such that it can be claimed for accounting periods beginning before 1 January 2027. The effective tax rate on KDB profits is to increase to 10% from the current 6.25%. This amendment, which is subject to a Ministerial commencement order, is to prevent KDB profits from being adversely impacted when the Pillar Two Subject to Tax Rule (STTR) is introduced.

Climate Measures

As highlighted at Budget time, a new measure is also introduced to provide capital allowances for farmers on the construction of modern slurry storage facilities over an accelerated period of two years. This is subject to a Ministerial commencement order.

A deduction is also now available for residential landlords undertaking certain qualifying retrofitting works. Please refer to our Property insight for further detail.

As expected, Finance Act 2022 does not include the introduction of a windfall tax / solidarity contribution. We understand that the Government will continue to monitor progress at an EU level and have committed to proceeding with domestic windfall tax measures if EU measures do not materialise.

Employment & Personal Taxes

As well as legislating for increased tax thresholds, exemptions and bands, the Act legislates for the annual limit for the Small Benefits Exemption scheme to be increased from €500 to €1,000 and allows up to two vouchers to be provided to an employee each year up to the relevant cap from 2022.

The Special Assignee Relief Programme (SARP) has been extended through to the end of 2025 and the minimum income requirement will be raised from €75,000 to €100,000. There has also been a welcome extension of the Foreign Earnings Deduction (FED) relief to 31 December 2025.

The Cycle to Work Scheme has been extended to apply to cargo and e-cargo bicycles.

Measures are included to extend employer reporting responsibilities which would lead to additional administrative burdens for employers.

Pensions

The Act sees changes to the treatment of employer contributions to Personal Retirement Savings Accounts (PRSA) whereby the Benefit-in-Kind charge applying to employer contributions to PRSAs has been removed. This change has the key effect of increasing the scope for employer contributions into a PRSA - this is in line with the funding rules for occupational pension schemes.

The taxation of foreign lump sums has been the subject of significant debate following the withdrawal of the Revenue precedent that exempted lump sums payable from foreign pension schemes. A new taxation regime will apply in respect of foreign lump sums received on or after 1 January 2023, with taxation applying in a manner consistent to Irish lump sums.

Tax legislation has been introduced in respect of the operation of PEPPs. PEPPs are EU-wide pension products, designed to facilitate cross-border pension savings within the EU.

Sale of patent rights

The Act provides relief for intra-group transfers of patent rights in a similar manner to the relief which is available to intra-group transfers of patents or other assets.

The Act also confirms that the outright sale of a patent or a patent pending is not a sale of patent rights and, as a result, should be subject to Capital Gains Tax at 33% as opposed to corporation tax at 25%.

Transfer Pricing

For chargeable periods commencing on or after 1 January 2023, the definition of “Transfer Pricing Guidelines” has been updated such that Irish Transfer Pricing rules should be construed in accordance with the 2022 version (as opposed to the 2017 version) of the OECD Transfer Pricing Guidelines.

Temporary Business Energy Support Scheme (TBESS)

Where, amongst other things, a business experiences an increase of 50% or more in their electricity or gas bills when compared with the electricity or gas bill received in the same month in the previous year they may be eligible for a refund of up to 40% on the increase in electricity or gas prices. This is subject to a monthly cap of €10,000 per trade or profession. An increased cap of €30,000 can apply where a qualifying business has more than one MPRN/GRPN at different locations. An overall maximum payment limit also applies.

Employment Investment Incentive scheme

Finance Act 2022 corrects a technical anomaly that would disqualify investors from claiming tax relief on account of being deemed “connected” with the EII company, solely as a consequence of previous investments that another “partner” (or their relatives) had made.

Key Employee Engagement Programme (KEEP)

The promised changes referenced in Minister Donohoe’s speech on Budget Day were included at Committee Stage. Finance Act 2022 now reflects the commencement of some of the 2019 provisions on KEEP and introduces a number of other changes. Please refer to our Private Business/Individuals insight for further detail.

Film Relief

Film relief is to be extended by a further 4 years until 31 December 2028. This amendment will commence at a future date as it is subject to EU State Aid approval.

Digital Gaming Credit (Section 481A TCA 1997)

The digital gaming credit was introduced last year but, as the credit required EU State Aid approval, it was subject to a Ministerial commencement order. Finance Act 2022 has included a number of amendments to Section 481A to ensure compliance with State Aid requirements and to make minor technical corrections. The Ministerial commencement order was made in November 2022.

VAT measures

The main legislative changes introduced in the Act that impact on VAT include an extension to the exemption for management of funds to include EU based funds authorised by the competent authority in another EU Member State, the zero-rating of newspapers, the extension of the 9% rate on electricity and gas supplies to 28 February 2023, the zero-rating of hormone replacement therapy and nicotine replacement products and the removal of the zero-rate from products derived from milk.

Trade and Customs

The Act provides for the introduction of a new excise relief for small cider / perry producers and amends the thresholds applicable to the current excise relief for small independent breweries.

The Act also introduces a stand-alone section for excise within the tax-geared penalties regime and implements a legal basis for the imposition of penalties with respect to small errors.

The Act sets out the legislative position regarding the taxable value to be attributed to a bet where such a bet is on foot of an offer provided by a bookmaker.

Tax administration and Revenue powers

The Act provides a statutory basis for matters previously administered under the Code of Practice for Revenue Compliance Interventions, while also extending the time periods for certain actions to be taken in the tax appeal process.

DAC7 - Mandatory Exchange of Information for Digital Platform Operators and return of certain information by Reporting Platform Operators

Finance Act 2022 repeals and replaces the Finance Act 2021 provisions introducing EU tax transparency rules for digital platform operators (DAC7). DAC7 rules come into effect on 1 January 2023, with the first reporting obligation due on or before January 2024.

The Act also legislates for the transposition of the OECD published "Model Rules for Reporting by Digital Platform Operators".

Non-cooperative countries for tax purposes

The Act amends Section 835YA to account for the changes to the EU list of non-cooperative countries for tax purposes. It provides rules regarding the appropriate list to consider for a particular accounting period.

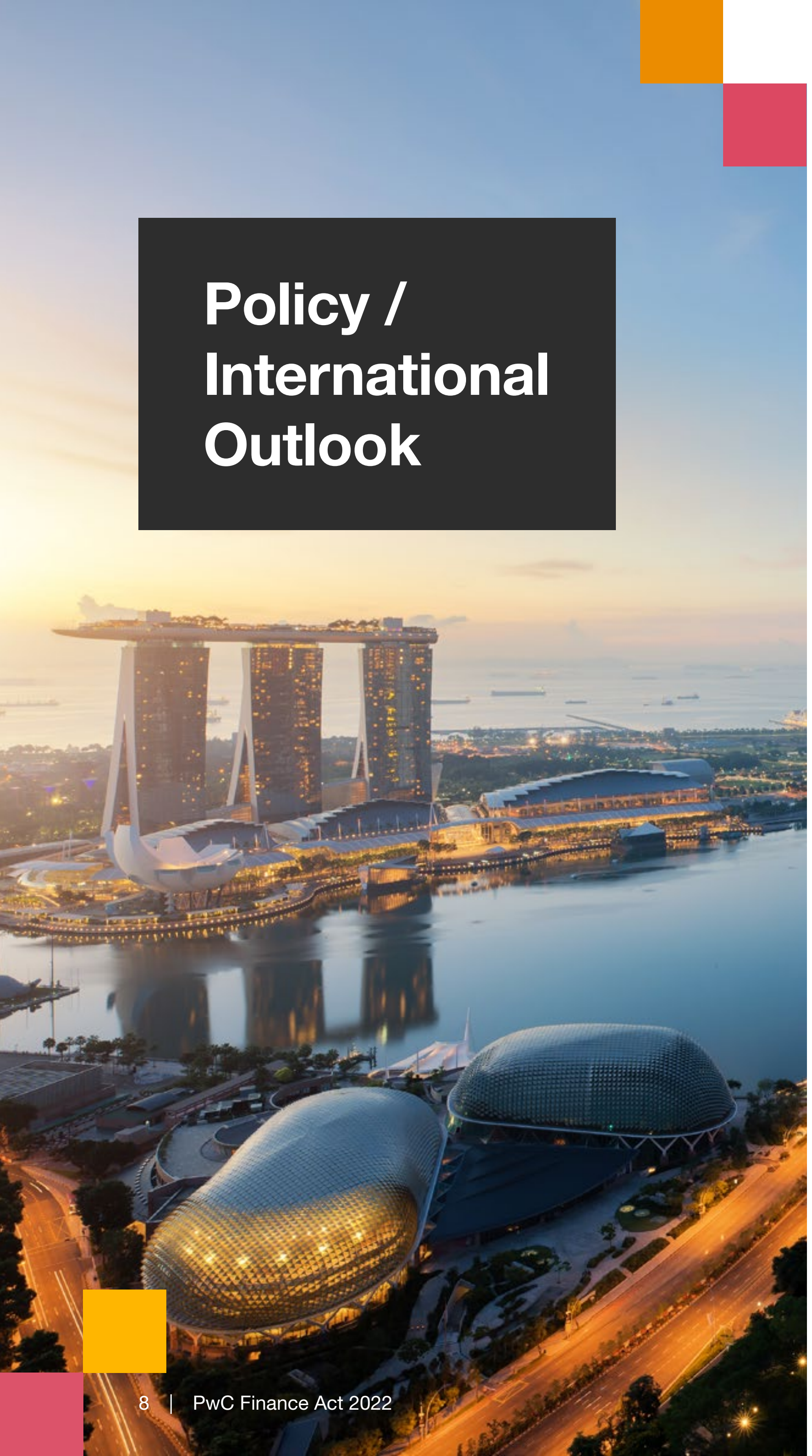
Protocols to Double Tax Treaties

The Act updates the list of Ireland's double tax treaties for new protocols with the Isle of Man and Guernsey.

Miscellaneous

Finance Act 2022 sets out an amendment which includes the National Standards Authority of Ireland (NSAI) within the list of specified non-commercial state sponsored bodies from certain tax provisions. As a result of this amendment, the NSAI is to be exempt from tax on certain income and gains.

In addition, Schedule 26A has been updated to reflect the Higher Education Authority Act of 2022 and its meaning of a designated higher education institution, and to add the Royal Irish Academy. These changes to Schedule 26A are subject to a Ministerial commencement order.



Policy / International Outlook

The impact and effect of international tax policy changes on Finance Act 2022

As has been the case for a number of years, international tax reform continues to shape domestic tax policy-making in Ireland.

The impact of international tax policy on Finance Act 2022 is seen primarily through the changes to the operation of the R&D tax credit. Apart from affording greater flexibility for taxpayers in claiming the credit, the modifications respond to external changes such as the Pillar Two GloBE rules and changes to the US foreign tax credit regime. A more detailed discussion of the changes may be found in our R&D insight.

Regarding Ireland's double tax treaties, the Act updates Ireland's double tax agreements with the Isle of Man and Guernsey by reference to new protocols in respect of those agreements.

Although international tax reform has not resulted in as many direct changes in this Finance Act compared to other years, we remind readers that there are a plethora of changes that remain to be implemented in future Finance Acts flowing from global tax reform and the EU tax reform agenda.

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The global tax reform landscape: significant developments in the pipeline

BEPS 2.0

In his Budget speech, the Minister reiterated Ireland's commitment to the BEPS 2.0 Two-Pillar solution and he confirmed that Ireland will continue to engage at OECD and EU level with a view to implementation thereof. In this regard, the Minister stated explicitly that a co-ordinated multilateral approach is optimal in ensuring that the international tax system keeps pace with changes in how business is conducted internationally. Depending on the outcome of ongoing political developments at EU level, the minimum effective tax rate as provided for under Pillar Two is due to be implemented with effect from 2024 onwards.

Regarding Pillar Two, at OECD level, the Global Anti-Base Erosion Rules Implementation Framework and a draft model tax treaty provision and associated commentary for the Subject to Tax Rule (STTR) will be released later this year.

One specific upcoming Irish legislative change associated with Pillar Two relates to the Knowledge Development Box (KDB), which encourages the development of intellectual property in Ireland. In the Budget, it was not only announced that the KDB would be extended for a further four years (see our insight here for a discussion in this regard), but also that the operation of the KDB will be impacted by changes in the international tax environment, specifically the STTR. In order to prepare for implementation of Pillar Two, legislation increasing the effective rate of the KDB to 10% will be introduced, to be brought into effect by Ministerial commencement order once agreement is reached at the OECD/G20 Inclusive Framework on STTR implementation.

Changes will also be made to the R&D tax credit to ensure it will be regarded as a Qualifying Refundable Tax Credit for Pillar Two purposes. Claimants will be able to claim the credit in three fixed payment instalments, as cash payments or as an offset against other tax liabilities.

In respect of Pillar One of BEPS 2.0, work on the model rules continues. Detailed provisions of the Multilateral Convention (MLC), which will drive the implementation of Pillar One, and its Explanatory Statement are expected to be completed so that a signing ceremony of the MLC can be held in the first half of 2023, with the objective of a 2024 entry into force.

Territorial system of double tax relief

Although, in our view, an opportunity was missed this year to introduce legislative changes that would move Ireland to a territorial system of double tax relief, the Minister has stated that serious consideration would be given to options in this regard, which would take place in conjunction with the ongoing work in relation to the introduction of Pillar Two of the Two-Pillar agreement. The Pillar Two rules are predicated on countries offering a participation exemption for some sources of income.

EU tax reforms

Aside from obtaining agreement on an EU Directive to transpose the global minimum tax of the Two-Pillar solution into Irish law, a number of EU proposals, which will likely result in significant legislative changes in Finance Bills in future years, are under development.

Early in 2021, the European Commission released its Communication on Business Taxation for the 21st Century. This release was essentially a roadmap detailing a series of initiatives of the European Commission to align the corporate tax framework with the new realities of the globalised and digitalised economy and to ensure that Member States' tax systems operate in a fair and efficient manner.

The Communication set a tax agenda with five key actions:

- **Action 1:** Table a legislative proposal for the publication of effective tax rates paid by large companies, based on the methodology under discussion in Pillar 2 of the OECD negotiations (by 2022). No developments in this area to date but expected soon.
- **Action 2:** Table a legislative proposal setting out union rules to neutralise the misuse of shell entities for tax purposes (commonly referred to as ATAD III). A draft directive was published for public comment in December 2021. Following public comment, there has apparently been a great deal of discussion at EU level on revising the draft directive, and a compromise text is expected to be issued with many changes. The timing of ATAD III remains unclear, with the original proposed 2024 start date now reportedly expected to be pushed back.
- **Action 3:** Adopt a recommendation on the domestic treatment of losses (alongside Communication). As yet, there have been no further developments on this Action.
- **Action 4:** Make a legislative proposal creating a Debt Equity Bias Reduction Allowance (DEBRA). A draft directive was published for public comment in May 2022.
- **Action 5:** Table a proposal for Business in Europe: a Framework for Income Taxation ('BEFIT'), which would move towards a common tax framework and provide for fairer allocation of taxing rights between Member States (legislation expected by Q3 2023).

Given the timelines for some of the above measures, we can expect to see these proposals requiring transposition in Irish Finance Acts over the coming two to five years.

Public country-by-country reporting

We were surprised that legislation to transpose an EU Directive 2021/2101/EU which requires public disclosure of income tax information by certain undertakings and branches (public country-by-country reporting) was not included in the Finance Act, given that the Directive needs to be transposed by 22 June 2023. However, given that the measure will not have a monetary consequence for impacted businesses, it may have been decided that separate legislation from the Department of Enterprise, Trade and Employment was a more appropriate route for transposition.

Changes to Ireland's double tax treaty network in the Act

The Act includes a clause that amends Part 3 of Schedule 24A to include two Protocols to the existing treaties with Guernsey and the Isle of Man. These amendments to Schedule 24A will have effect from the passing of the Finance Act, which will be the final step in the legislative and ratification procedure to ensure that these protocols will have the force of law.

We are here to help you

As the international tax landscape continues to break new ground, PwC Ireland and the PwC international network of firms will continue to stay abreast of global tax policy developments.

Businesses are set to face further years of uncertainty given the measures detailed above and will likely need multi-jurisdictional advice which PwC is well placed to offer.

We remain available to you should you wish to discuss how these changes will impact your business.

Climate Change / Environmental Taxes

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The impact and effect of Finance Act 2022 on Climate Change and Environmental Taxes

As a result of the war in Ukraine and soaring energy costs, Finance Act 2022 was focused on tackling the cost of living and it includes a number of very welcome measures in this regard. However, Finance Act 2022 can also be seen as a missed opportunity as more targeted measures could have been introduced to mobilise private investment in sustainable innovation and to drive the decarbonisation of our economy. Examples of such measures were included in our recent Pre-Budget submission: Keeping climate challenge in focus during unprecedented times.

Below are our key insights on the Climate Change and Environmental Tax measures introduced in Finance Act 2022.

Key environmental tax measures introduced in Finance Act 2022

- Finance Act 2022 introduces the Temporary Business Energy Support Scheme (TBESS) which will apply to qualifying businesses that satisfy a number of conditions, including a requirement to demonstrate increases of 50% or more on their electricity or gas bills when compared with the electricity / gas bill received in the same month in the previous year. Provision is also made for businesses that did not have an electricity or natural gas connection in the relevant month in the previous year.
- Where the business meets this threshold, they may be eligible for a refund of up to 40% on the increase in electricity or gas prices, subject to a monthly cap of €10,000 per trade or profession (an increased cap of €30,000 can apply where a qualifying business has more than one MPRN / GRPN at different locations). An overall maximum payment limit also applies.
- As referenced by Minister Donohoe on Budget Day, Finance Act 2022 did not contain any deferral or postponement of the Carbon Tax increases in Finance Act 2020 and an increase of €7.50 up from €41 to €48.50 per tonne of carbon dioxide emitted shall apply. This applies from 12 October 2022 for auto fuels and from 1 May 2023 for all other fuels.
- However, this carbon tax increase has been offset by a reduction to €0.001 of the National Oil Reserves Agency (NORA) levy for auto fuels through the Electricity Costs (Domestic Electricity Accounts) Emergency Measures and Miscellaneous Provisions Act 2022 which was approved by the Dail on 12 October 2022.
- Accelerated capital allowances for farmers on the construction of modern slurry storage facilities and a deduction for residential landlords undertaking certain qualifying retrofitting works were introduced at Committee Stage. The measure on slurry storage remains subject to a Ministerial commencement order.
- As expected, Finance Act 2022 did not include the introduction of a windfall tax / solidarity contribution. We understand that the Department of the Environment, Climate and Communications, as part of the implementation of Council Regulation (EU) 2022/1854, are currently working on measures to introduce a cap on all market revenues of non-gas electricity generators and a temporary solidarity contribution for companies active in fossil fuel production and refining.

Temporary Business Energy Support Scheme (TBESS)

Finance Act 2022 introduces the Temporary Business Energy Support Scheme (TBESS), a support scheme for qualifying businesses that carry on a trade or profession, including self-employed individuals and partnerships, who have suffered significant increases in costs for the metered supply of electricity or natural gas.

To be eligible to make a claim under the TBESS, a qualifying business must be able to demonstrate that the average unit price for electricity or natural gas on the relevant bill has increased by 50% or more when compared to the average unit price in the bill that was received for the same month in the previous year.

Amendments were made at Committee Stage to confirm that credit institutions and financial institutions are not qualifying businesses and are excluded from the scope of the scheme.

The legislation also includes provisions which will allow businesses that did not have an electricity or natural gas connection in the relevant month in the previous year to access the scheme. This will be based on data to be provided by the Sustainable Energy Authority of Ireland.

Where the 50% threshold is met and the business satisfies a number of other conditions (including a requirement to be tax compliant), the business will be considered a “qualifying business” and will be entitled to claim a Temporary Business Energy Payment of up to 40% of the increased cost of electricity or natural gas.

The support payment available in respect of electricity or natural gas costs is subject to a cap of €10,000 per trade or profession. This monthly cap can be increased to €30,000 where a qualifying business has more than one MPRN / GPRN at different locations.

Claims will be made on a self assessment basis and must be made within 4 months from the end of the relevant claim period.

There are provisions to recapture invalid claims or overclaims, including the application of interest and penalties.

Similar provisions to the Covid supports apply in relation to the publication of the names of claimants on the Revenue Commissioners website.

TBESS was initially to apply for the period from 1 September 2022 to 31 December 2022, but it has been extended to 28 February 2023 at Committee Stage in line with the extension of the Temporary Crisis Framework (“TCF”).

Based on changes made at Committee Stage to increase the payment limits, an overall maximum payment limit of €2,000,000 applies per undertaking carrying on one or more qualifying businesses (lower limits apply to businesses engaged in the primary production of agricultural products (€250,000) and in the production, processing and marketing of fishery and aquaculture products (€300,000).

The TBESS will operate until at least 28 February 2023, and may be further extended beyond this date (but no later than 30 April 2023) by Ministerial commencement order.

The scheme recently received State aid approval and is now open for registration on ROS.

Carbon Tax

As anticipated, Finance Act 2022 does not contain any deferral or postponement of the Carbon Tax increase provided for in Finance Act 2020 which will bring the rate up to €100 per tonne of carbon dioxide emitted by 2030.

The increase of €7.50 to €48.50 per tonne of carbon dioxide emitted shall apply from 12 October 2022 for auto fuels and from 1 May 2023 for all other fuels.

However, this carbon tax increase has been offset by a reduction of the National Oil Reserves Agency (NORA) levy from its current rate of €0.02 per litre to €0.001 per litre through the Electricity Costs (Domestic Electricity Accounts) Emergency Measures and Miscellaneous Provisions Act 2022 which was approved by the Dail on 12 October 2022.

This reduction should ensure that consumers should not see any additional increases in fuel costs.

Natural Gas Carbon Tax

Updates were made to the Act at Committee Stage to introduce new reliefs for Natural Gas Carbon Tax where it is shown to the satisfaction of Revenue to have been supplied for use:

- in the production of horticultural produce in one or more than one glasshouse of a total area of not less than a quarter of an acre, or
- in the cultivation of mushrooms in one or more than one building or structure of a total area of not less than 3,000 square feet

These new reliefs are subject to Ministerial commencement order.

We are here to help you

Whether you are concerned about the impact of the Finance Act changes on your business or you’d like to seek tax advice around your decarbonisation journey, our Energy, Utilities and Resources tax group is here to support you. Contact us today.

Domestic and International Large Corporates

The key measures introduced in Finance Act 2022 that are likely to affect domestic and international corporations

The main legislative changes introduced in Finance Act 2022 that are likely to affect domestic and international corporations include amendments to the Research & Development tax credit and an extension of the Knowledge Development Box and film tax credit regimes.

There were also a number of other technical amendments contained in Finance Act 2022 that may be relevant for domestic and international corporations.

The key measures impacting domestic and international corporates in Finance Act 2022 are as follows:

- Changes to Ireland's double tax treaty network
- Amendments to the Research & Development tax credit

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- Technical amendments to the Interest Limitation Rules
- The extension of the Knowledge Development Box
- The extension of the film tax credit (subject to a Ministerial commencement order)
- Technical amendments to the digital gaming credit legislation
- New definition of "relevant monetary item" relating to the tax treatment of foreign exchange gains/losses of trading companies
- Legislative changes with respect to the treatment of capital sums received from the sale of patents and patent rights
- Updating the definition of "Transfer Pricing Guidelines"
- Mandatory Exchange of Information for Digital Platform Operators and return of certain information by Reporting Platform Operators (DAC7)
- Updating the list of non-cooperative jurisdictions for tax purposes to reflect new EU lists
- Miscellaneous legislative updates

Our analysis

Policy / International Outlook

As outlined in the Minister's Budget 2023 statement, international tax reform continues to shape domestic tax policy making in Ireland. The Minister signalled that options for the introduction of a territorial exemption would be seriously considered in conjunction with the ongoing work to implement Pillar Two. This is particularly relevant to domestic and international large corporations.

Finance Act 2022 updates the list of Ireland's double tax treaties for new protocols with the Isle of Man and Guernsey, which will be of particular relevance to international large corporations with operations in these territories.

Please refer to our Policy/ International Outlook insight for further analysis.

Research and Development tax credit

Finance Act 2022 has introduced a number of changes in relation to the Research and Development tax credit, and in particular, the tax payable portion. These changes have been made in light of US foreign tax credit reform and the ongoing work to implement Pillar Two. Please refer to our R&D insight for further analysis.

Interest Limitation Rules

Following on from the introduction of Interest Limitation Rules (ILR) in the prior year's Finance Act, the changes in this year's Finance Act seek to ensure that the ILR and associated preliminary tax rules operate as intended.

This includes a clarification of the operation of the exemption for interest on legacy debt, to specify that a "first-in-first-out" basis applies where there is a repayment in respect of facilities which have a mixture of legacy debt and non-legacy debt, i.e. where a partial repayment is made on a mixture of legacy and non-legacy debt, that repayment shall be treated as a repayment on legacy debt in priority to non-legacy debt.

Other technical changes to the ILR legislation include broadening the existing definitions for a "consolidating entity" and "interest equivalent", and amendments to how the ILR legislation interacts with interest provided under Section 291A (capital allowances on qualifying intangible assets). In addition, the "Group EBITDA" and "group exceeding borrowing costs" definitions have been expanded to reflect the possibility that a taxpayer could form its own worldwide group or form part of a worldwide group.

Of note, the definition of "large scale asset" has been expanded to include a large-scale residential development within the meaning of the Planning and Development Act

2000, approved by a planning authority under s34 or s170 of that Act. Please refer to our Property insight for further analysis.

Preliminary tax rules are to be amended to cater for the effects of disallowable amounts in certain instances.

Knowledge Development Box

There have been changes to the Knowledge Development Box ('KDB') in Finance Act 2022. Firstly, the KDB was due to expire at the end of 2022, but the Act provides that the KDB will be extended for a further four years such that it can be claimed for accounting periods beginning before 1 January 2027.

Secondly, the Act reduces the benefit of the KDB by increasing the effective tax rate on KDB profits to 10%, rather than the current 6.25%. This amendment is to prevent KDB profits from being adversely impacted when the Pillar Two Subject to Tax Rule (STTR) is introduced.

These changes are subject to a Ministerial commencement order to be issued by the Minister for Finance and will apply by reference to the STTR implementation.

Film Relief (Section 481 TCA 1997)

Finance Act 2022 has provided for an extension of the relief provided under Section 481 by a further 4 years until 31 December 2028. This is a welcome amendment to the legislation and should provide some much needed certainty to those operating in the audiovisual industry with long production cycles. This amendment will commence at a future date as it is subject to EU State Aid approval.

Digital Gaming Credit (Section 481A TCA 1997)

The digital gaming credit was introduced last year, but as the credit required EU State Aid approval, it was subject to a Ministerial commencement order. Finance Act 2022 has included a number of amendments to Section 481A to ensure compliance with State Aid requirements and to make minor technical corrections. The Ministerial commencement order was made in November 2022.

Foreign exchange

Section 79 of TCA 1997 (Section 79) provides that foreign exchange movements on "relevant monetary items" are, for corporation tax purposes, to be treated as part of profits or losses of a company's trade rather than treated as capital gains or capital losses. Finance Act 2022 makes an amendment to Section 79 that is said in the explanatory memorandum to the Act to be an expansion of the definition of "relevant monetary item" to include both trade debtors and trading bank accounts with the aim of allowing foreign exchange gains or losses in respect of those items to be treated as part of trade profits or losses. Such items are often potentially capable of being so treated under first principles and under certain interpretations of the existing version of Section 79. As such, the proposed amendment could be viewed as a clarification measure. Whilst the amendment is welcome, its application to trading bank accounts is limited in scope. It was hoped that an amendment would be made to the Act at Committee or Report Stage to address this but no amendment was ultimately made. Updated guidance is currently awaited.

Sale of patent rights (Section 757 TCA 1997)

Finance Act 2022 includes welcome technical amendments with respect to the treatment of capital sums received for the sale of patent rights. The amendments provide relief for intra-group transfers of patent rights in a similar manner to the relief which is available to intra-group transfers of patents.

Finance Act 2022 also includes a technical amendment which confirms that the outright sale of a patent or a patent pending is not a sale of patent rights and, as a result, should be subject to Capital Gains Tax at 33%. The sale of patent rights for a capital sum is subject to corporation tax at 25%.

Transfer Pricing

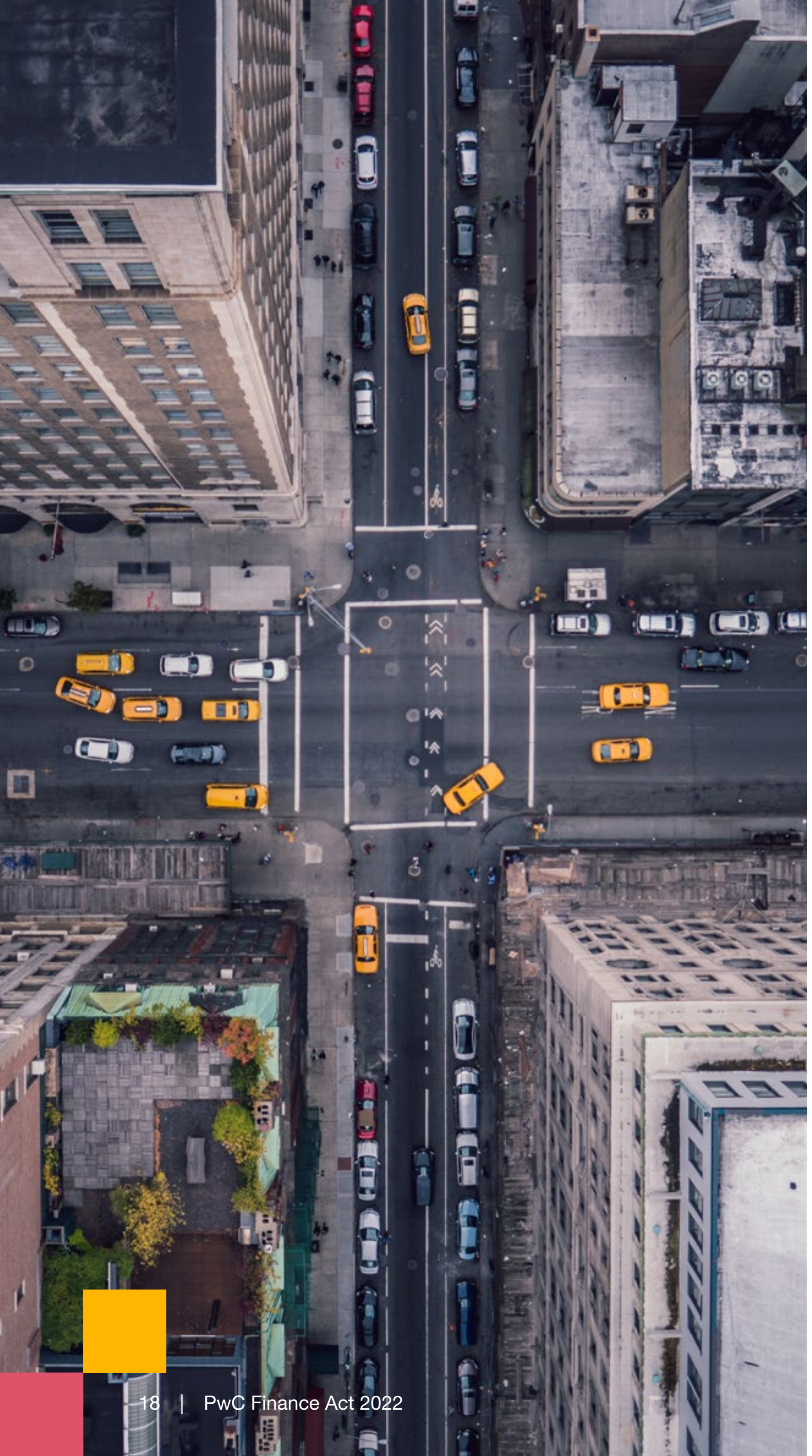
For chargeable periods commencing on or after 1 January 2023, the definition of "Transfer Pricing Guidelines" has been updated such that Irish Transfer Pricing rules should be construed in accordance with the 2022 version (as opposed to the 2017 version) of the OECD Transfer Pricing Guidelines.

DAC7 - Mandatory Exchange of Information for Digital Platform Operators and return of certain information by Reporting Platform Operators

Finance Act 2021 introduced rules to provide for the transposition of new EU tax transparency rules for digital platform operators (DAC7) into Irish law. These rules aim to provide EU Member States' tax authorities with the information necessary to ensure the enforcement of tax rules regarding commercial activities performed with the intermediation of digital platforms and to introduce standardised reporting requirements that should reduce the administrative burdens on digital platform operators. Finance Act 2022 repeals and reinstates these rules to ensure that domestic legislation effectively transposes DAC7 into Irish law.

Under the revised rules, when enquiring into transactions for DAC7 purposes, the Revenue Commissioners shall have access to data collected for anti-money laundering and terrorist financing reasons.

During 2022, the OECD published "Model Rules for Reporting by Digital Platform Operators". Finance Act 2022 legislates for the transposition of these rules into Irish law. These rules provide for the introduction of reporting obligations for digital platform operations and shall come into operation at such date as the Minister for Finance appoints. However, under DAC7 the



rules come into effect on 1 January 2023, with the first reporting obligation due on or before January 2024.

At Committee Stage, a new provision was introduced to deal with some administration matters relating to joint audits. Where certain conditions are met, a foreign tax official may be present at and participate in an administrative enquiry being carried out by an authorised Revenue officer.

Non-cooperative countries for tax purposes

Finance Act amends Section 835YA to account for the changes to the EU list of non-cooperative countries for tax purposes. Since Finance Act 2021 was signed, the EU Council has twice updated the list of non-cooperative countries (generally referred to as 'blacklist' or 'greylist' countries), firstly in February 2022 and more recently on 12 October 2022. The amendment ensures that companies should refer to the appropriate list for their particular accounting period.

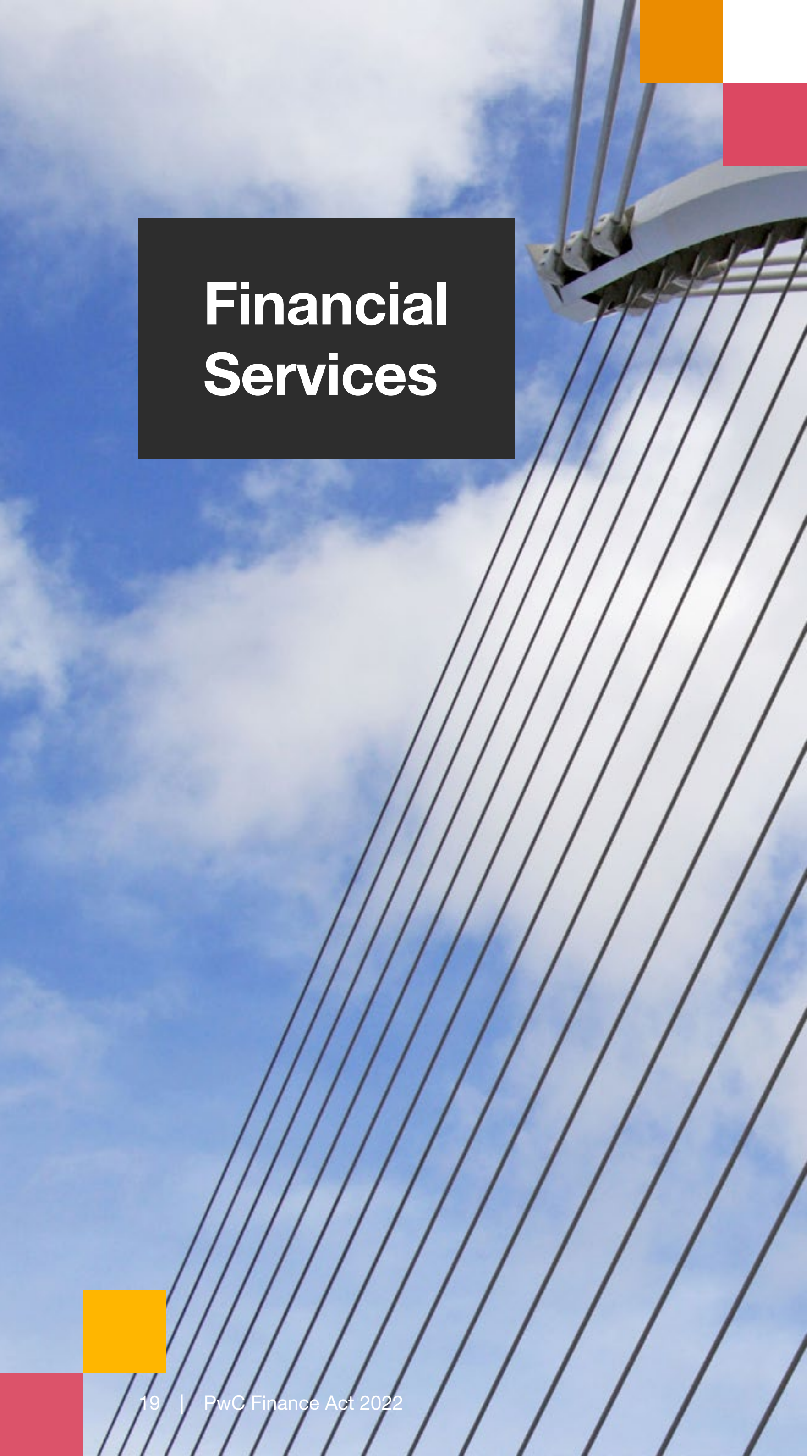
Miscellaneous

Finance Act 2022 sets out an amendment which includes the National Standards Authority of Ireland (NSAI) within the list of specified non-commercial state sponsored bodies from certain tax provisions. As a result of this amendment, the NSAI is being made exempt from tax on certain income and gains.

In addition, Schedule 26A has been updated to reflect the Higher Education Authority Act of 2022 and its meaning of a designated higher education institution, and to add the Royal Irish Academy. These changes to Schedule 26A are subject to a Ministerial commencement order.

We are here to help you

Finance Act 2022 contains many important changes that will have implications for domestic and international corporations. We are available to assist you with any queries you have on how they could impact your business.



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What Finance Act 2022 means for the financial services industry

Finance Act 2022 contains the legislative changes required to give effect to the announcements made by the Minister for Finance on Budget Day, as well as supplementary legislative changes not addressed by the Minister in his Budget speech. Following the significant legislative reform presented over the past number of years, the Act is light by comparison. That said, it includes a number of surgical changes that could have a significant impact for financial services taxpayers with certain fact patterns.

From a financial services perspective, the key measures introduced in the Act include the following:

- Amendments to clarify the tax treatment of foreign currency.
- A number of minor clarifications to the Interest Limitation Rules, which align legislation with guidance.
- Additional reporting requirements for certain regulated products.
- Some significant financial services-related VAT changes.
- Stamp duty changes, which include a change to the rules linked to the electronic transfer of shares, as well as minor changes to the administration of levies.
- Additional measures, including clarification relating to the taxation of unit trusts and the operation of the Employment Investment Incentive.

Foreign currency: computation of income and gains

Section 79 TCA 1997 (Section 79) provides that foreign exchange movements on 'relevant monetary items' are, for corporation tax purposes, to be treated as part of profits or losses of a company's trade rather than treated as capital gains or capital losses. Section 31 of Finance Act 2022 makes an amendment to Section 79 that is said in the explanatory memorandum to the Act to be an expansion of the definition of 'relevant monetary item' to include both trade debtors and trading bank accounts with the aim of allowing foreign exchange gains or losses in respect of those items to be treated as part of trade profits or losses. Such items are often potentially capable of being so treated under first principles and under certain interpretations of the existing version of Section 79. As such, the proposed amendment could be viewed as a clarification measure.

Its application to trading bank accounts is limited in scope. It was hoped that an amendment would be made to the Act at Committee or Report Stage to address this but no amendment was ultimately made. Updated guidance is currently awaited.

Interest Limitation Rules

The Act proposes a number of clarifying amendments to bring the legislation in line with guidance previously issued by Revenue, which are welcome for the financial services industry.

It also includes an update on the operation of the exemption for interest on legacy debt, to specify that a "first-in-first-out" basis applies where there is a repayment in respect of facilities that have a mixture of legacy debt and non-legacy debt. Taxpayers with legacy debt should consider the impact of this more restrictive approach.

The extension of the definition of long-term infrastructure projects to include large-scale residential projects is a welcome development that could increase the attractiveness of investment in this sector. Please refer to our Property insight for further detail.

Additional reporting requirements for certain regulated products

The Act provides for additional annual reporting requirements for exempt unit trusts (EUTs), common contractual funds (CCFs) and investment limited partnerships (ILPs).

As EUTs, CCFs and ILPs are not currently required to submit accompanying financial statements, Irish Revenue has no standard visibility on the type of investments held within these funds. The intention to update the reporting requirements to capture this high-level detail would be less of an administrative burden on filers in

comparison to facilitating the submission of tagged financial statements.

The additional reporting requirements are broadly minimal, with the exception of reporting detail on the nature of assets held by the fund during the year of assessment confirming the fund's investment strategy.

The Act also provides for the introduction of a €3,000 penalty where the management company of a CCF or the partners of an ILP fail to submit an annual statement or submit an incomplete or incorrect annual statement. This brings it in line with the current regime applicable to EUTs.

VAT and financial services

Section 110 companies

VAT legislation currently provides that the management of an undertaking that is a qualifying company for the purposes of Section 110 of the Taxes Consolidation Act 1997 is VAT exempt. The Finance Act provides that, from 1 March 2023, this VAT exemption will not apply to Section 110 companies that hold plant and machinery. As a result, the management of a Section 110 company that holds aircraft would be taxable. This change should not cause any issues for the aircraft industry as typically, Section 110 companies that hold aircraft are engaged in fully VATable activities and can therefore deduct any VAT incurred on a management charge. Notwithstanding this, there could be an irrecoverable VAT cost arising where the Section 110 holds financial assets and also aircraft as VAT recovery would be restricted.

Management companies that are currently providing exempt management services to Section 110 companies would need to review their supplies and determine whether the exemption is still applicable. Such companies could see an increase in VAT recovery and therefore, a lower cost of providing their services where the exemption no longer applies.

EU funds

Under existing Irish VAT legislation, the management of certain financial funds—including Undertakings for the Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIF)—as defined under Irish legislation, is VAT exempt. The Finance Act extends this exemption to equivalent funds (UCITS and EU AIFs) authorised by the competent authority of another EU Member State.

This measure will negatively impact on the VAT recovery position of Irish fund managers and administrators that currently treat the management of non-Irish EU-based funds as taxable services outside the scope of Irish VAT, with full VAT recovery on related costs incurred. Following this amendment, VAT on costs incurred in relation to the management of such funds would not be deductible.

Agency services

Irish VAT legislation currently provides that agency services in respect of the management of certain qualifying funds (e.g. UCITS) are VAT-exempt. The Finance Act includes provisions to remove this exemption, bringing Irish legislation in line with the EU VAT Directive.

Stamp duty amendments

Electronic transfer of shares

The Act contains an ostensibly benign change to the rules for stamp duty on electronic transfers of shares, but the change could have broader implications. Currently, stamp duty on electronic transfers of shares through securities settlement systems only applies to transfers of interests in "dematerialised securities". The proposed change is that stamp duty will now instead apply where "an interest in securities is transferred by electronic means". This raises a concern that certain electronic transfers of Irish shares that are not currently treated as stampable by the Revenue Commissioners (e.g. shares held in settlement systems other than Euroclear Bank Belgium and CREST) could now be subject to stamp duty. Transfers of Irish shares quoted in the US, which are settled in DTC, should not be impacted by this provision as the exemption for transfers of "American Depositary Receipts" should still apply to such shares.

Bank and insurance levies

The Act also contains minor amendments to the provisions included in Finance Act 2021 for the modernisation of banking levies, which were to be subject to Ministerial commencement orders. The modernisation provisions will now commence on 1 January 2023, but with carve-outs permitting the current system to continue to 31 January 2023 for levies on cash/combined cards and to 31 January 2024 for the levies on credit/charge cards. The definitions of credit institutions and financial institutions for the purposes of these levies are also to be amended.

Provisions for the modernisation of the system for collecting levies from authorised health insurers are also contained in the Act.

Additional measures relevant to financial services

Offshore fund clarification

The Act provides clarification that an authorised unit trust, the general administration of which is carried on in Ireland, will not be treated as an offshore fund solely where its trustee is resident in another EU/EEA Member State and provides its trustee services through an Irish branch.

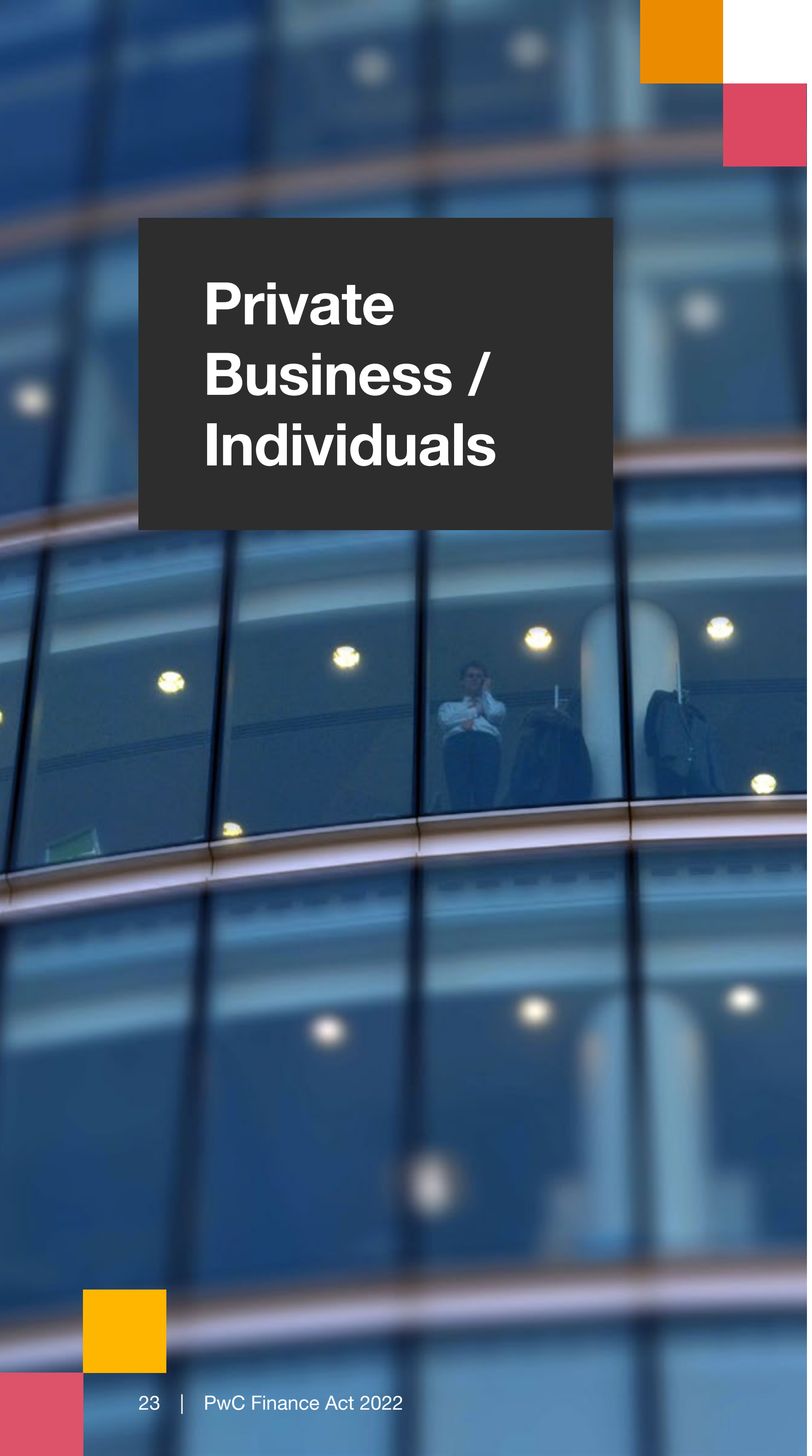
Qualifying investors and the Employment Investment Incentive

For the purposes of the Employment Investment Incentive, an individual will not be a qualifying investor if that individual (or an associate of the individual) is connected with the company.

The Act includes an amendment that disapplies the connected person rule in respect of persons who are partners solely as a result of being partners in a partnership constituting a qualifying investment fund.

We are here to help you

We would be happy to discuss the implications of Finance Act 2022 for your business. Please reach out to the PwC Financial Services Tax team for any help you require. Contact us today.



Private Business / Individuals

What Finance Act 2022 means for Private Business

Finance Act 2022 included a number of welcome measures targeting rising costs. However, opportunities were missed in the areas of CGT (one of the highest in Europe) and enhancements to support investment in private businesses and for entrepreneurs.

The key private business measures introduced in Finance Act 2022

- The introduction of the Temporary Business Energy Support Scheme (TBESS) to support trading businesses and certain exempt bodies.
- The correction of a technical anomaly under the Employment Investment Incentive (EII) scheme and some changes related to the issue of tax certs and clawbacks.
- Some changes to capital taxes but unfortunately none related to the transfer of business assets.
- Changes to the Key Employee Engagement Programme (KEEP) as announced in the Minister's speech on Budget Day.

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Temporary Business Energy Support Scheme

Finance Act 2022 introduces the Temporary Business Energy Support Scheme (TBESS), a support scheme for qualifying businesses that carry on a trade or profession, including self-employed individuals and partnerships, who have suffered significant increases in costs for the metered supply of electricity or natural gas.

Amendments were made at Committee Stage to confirm that credit institutions and financial institutions are not qualifying businesses and are excluded from the scope of the scheme.

To be eligible to make a claim under the TBESS, a qualifying business must be able to demonstrate that the average unit price for electricity or natural gas on the relevant bill has increased by 50% or more when compared to the average unit price in the bill that was received for the same month in the previous year.

The legislation also includes provisions which will allow businesses that did not have an electricity or natural gas connection in the relevant month in the previous year to access the scheme. This will be based on data to be provided by the Sustainable Energy Authority of Ireland.

Where the 50% threshold is met and the business satisfies a number of other conditions (including a requirement to be tax compliant), the business will be considered a “qualifying business” and will be entitled to claim a Temporary Business Energy Payment of up to 40% of the increased cost of electricity or natural gas.

The support payment available in respect of electricity or natural gas costs is subject to a cap of €10,000 per trade or profession. This monthly cap can be increased to €30,000 where a qualifying business has more than one MPRN / GPRN at different locations.

Based on changes made at Committee Stage to increase the payment limits, an overall maximum payment limit of €2,000,000 applies per undertaking carrying on one or more qualifying businesses (lower limits apply to businesses engaged in the primary production of agricultural products (€250,000) and in the production, processing and marketing of fishery and aquaculture products (€300,000).

The TBESS will operate until at least 28 February 2023, and may be further extended beyond this date (but no later than 30 April 2023) by Ministerial commencement order.

The scheme recently received State aid approval and is now open for registration on ROS.

Claims will be made on a self assessment basis and must be made within 4 months from the end of the relevant claim period.

In summary, this is a targeted measure which was introduced with the aim of reducing the impact of energy inflation for trading and professional services businesses. The relief operates on a look-back basis but the availability of the relief on deemed amounts is very welcome and should enable new businesses that have not been in existence for the previous 12 months to avail of the scheme.

Employment Investment Incentive scheme

Last year’s Finance Act included a very welcome amendment to open up the Employment Investment Incentive (EII) scheme to include “qualifying investment funds” which captures limited partnership structures established either under the Limited Partnership Act 1907 or the Investment Limited Partnership Acts 1994. It has been encouraging to see new activity in this space.

Finance Act 2022 now includes an amendment aimed at correcting a technical anomaly that would disqualify investors in qualifying investment funds from claiming tax relief on account of being deemed

"connected" with the EII company, solely as a consequence of previous investments that another "partner" (or their relatives) had made in the company. The anomaly should now be addressed because a "partner" for the purpose of the relevant section will now only encompass individuals who are separately in partnership with each other in a true commercial/trading sense.

Finance Act 2022 also amended the information that needs to be reflected in tax certificates (known as a "statement of qualification") to reflect the fact that tax relief can be granted on either an upfront basis (for shares issued after 8 October 2019) or in tranches (for shares issued on or before 8 October 2019).

The provisions dealing with the withdrawal of tax relief by way of the imposition of a corporation tax change (under Case IV of Schedule D) on the EII company is also amended to reflect the fact that tax relief may have been granted either upfront or in tranches.

Capital Acquisitions Tax ("CAT")

The Act widened the definition of a 'child' in response to the recent amendments to the Succession Act 1965 made by the Birth Information and Tracing Act 2022. It is now possible for impacted individuals to make an election as to the relationship to apply for CAT purposes where a person takes a taxable benefit from his or her birth parents or from his or her social parents.

Furthemore, banks now also have a statutory obligation to provide information in relation to a deceased person's accounts to the person applying for probate in relation to the deceased's estate or to an agent acting on their behalf.

KEEP

We have previously highlighted the need to improve the KEEP scheme so that the scheme is opened up to more private businesses. Based on amendments made at Committee Stage, Finance Act 2022 now reflects the commencement of some of the 2019 provisions as follows:

- the extension of the relief to companies that operate through certain group structures
- allowing part time employees to qualify for relief and facilitate the movement of employees between group companies

The provision to extend the KEEP scheme to existing shares as well as new shares has been removed from the 2019 provisions and instead is included in the “new” provisions which will be subject to a Ministerial commencement order. The “new” provisions introduced include the following:

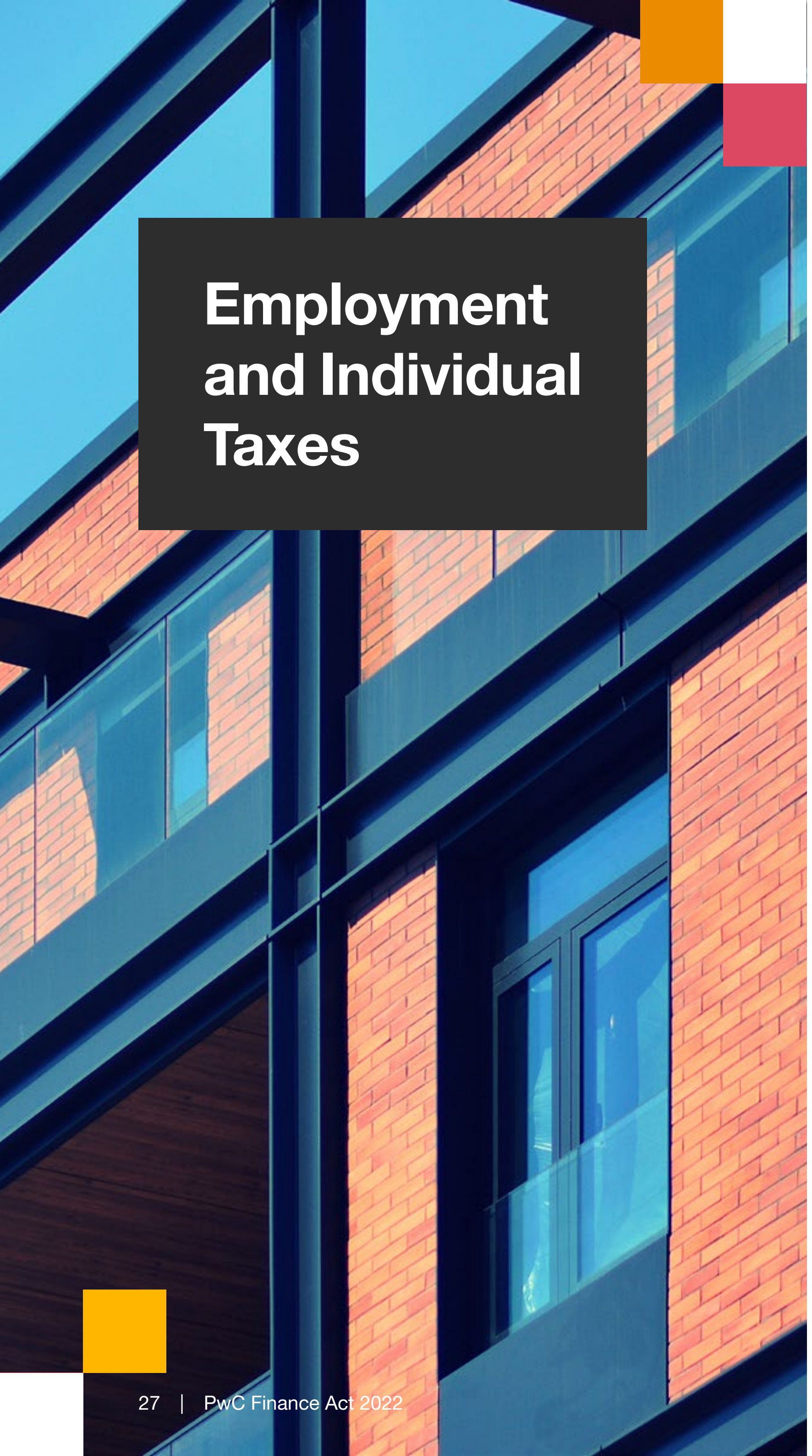
- extension of the relief to 1 January 2026
- CGT treatment to apply on the buyback of KEEP shares which, under normal rules, would be taxed as income.
- an increase in the total market value of the issued but unexercised qualifying share options of the company to €6m (currently €3m).

Whilst the introduction of these provisions is very welcome as it would give flexibility to companies, the changes to the scheme have been disappointing. A KEEP participant will have to exercise their option in order to become a shareholder in the company at a time when there may be no liquidity event and under current share buyback rules, shares need to be held for 5 years before they can be redeemed/ sold back to the company. This brings the total holding period to 6 years from the date of grant to the disposal of the shares.

The changes introduced in Finance Act 2022 are a step in the right direction and it is hoped that these changes will encourage more companies to grant options under the scheme and avail of the relief, however, some further enhancements will be required in order for the scheme to reach its full potential.

We are here to help you

Whether you are concerned about the impact of the Finance Act changes on your business or you would like to seek tax advice around supporting your business journey, we can help to distil the Finance Act 2022 measures down to what they mean for you and/or your business. Please do not hesitate to get in contact with us to find out more.



Employment and Individual Taxes

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What Finance Act 2022 means from an employment and personal tax perspective

From an employment and personal tax standpoint, the majority of the legislative actions contained in Finance Act 2022 were aligned to announcements made on Budget Day. The measures set out in Budget 2023 aim to put some money back in the pocket of taxpayers and to contribute towards the increased costs of living.

The Act includes provisions in reference to an increase in the standard income tax rate bands, personal tax credits and a slight increase to USC rate bands.

The Act aims to address the lack of affordable housing by extending the help-to-buy scheme until 2024 and creating a new rental tax credit.

There were welcome changes to the Small Benefits Exemption scheme, which will now increase to an annual limit of €1,000 per employee effective from 2022, as well as the extension of SARP, FED and KEEP to the end of 2025.

Interestingly, the Act includes measures that could ultimately impose additional monthly reporting responsibilities on employers in reference to non-taxable remuneration items such as tax free expense reimbursements. This aligns with Revenue's focus on obtaining real time data to increase compliance surrounding employer-provided benefits.

The key employment and individual tax measures measures introduced in Finance Act 2022

- In a welcome change, the Small Benefits Exemption scheme has increased by €500 to €1,000 per year for up to two vouchers/gifts.

- The Cycle to Work Scheme has been extended to include cargo and e-cargo bicycles.
- Amendments have been proposed to legislate for an income tax exemption for the Covid-19 Related Lay-off Payment.
- A further measure was added at Report Stage to provide an exemption for payments under Covid-19 death in Service Ex-Gratia Scheme for Health Care Workers.
- Additional monthly employer reporting obligations on non-taxable remunerations items have been included but thankfully, this section is subject to a Ministerial commencement order to allow for stakeholder engagement.
- As announced on Budget Day, SARP has been extended to the end of 2025 which should help businesses in attracting staff from overseas.
- The FED relief has also been extended to the end of 2025.
- In reference to personal taxes, the Standard Rate Cut-Off Point has been increased by €3,200. The personal tax credit, employee PAYE and earned income tax credit have been increased by €75 each.
- There has been an increase in the 2% threshold for USC.
- The Help to Buy Scheme has been extended to the end of 2024. This will be a significant help to people struggling with high property prices and increasing mortgage interest rates.
- Renters will get a welcome €500 tax credit starting in 2022 which will hopefully ease the strain of increasing rental costs.

Employee benefits

The Special Assignee Relief Programme (SARP) has been extended through to the end of 2025. The minimum income requirement has been raised from €75,000 to €100,000 effective for individuals arriving in Ireland after 1 January 2023. The programme is key to attracting senior executive staff to Ireland and, in turn, increasing investment in Ireland from overseas. There has been no change to the requirement that the employee must work for the employer overseas for at least 6 months prior to their move to Ireland and, as such, this relief will likely still not aid domestic Irish small to medium enterprises in attracting talent from overseas. A specific reference to the requirement to have a PPSN is also noted in the draft legislation.

There has also been a welcome extension of the Foreign Earnings Deduction (FED) relief to 31 December 2025 which provides relief to Irish tax residents who spend time working abroad in specified countries.

The annual limit for the Small Benefits Exemption scheme has increased from €500 to €1,000. The scheme now allows employers to provide up to two vouchers to an employee each year up to the relevant cap. The increase is effective from 2022 and is a welcome measure for employers who are currently trying to support employees with the rising cost of living in the short-term.

The Cycle to Work Scheme has been extended to apply to cargo bicycles and e-cargo bicycles (pedelec configuration). Where the expense relates to a cargo bicycle the amount applicable for relief will be up to €3,000 (currently €1,250 for pedal bikes and €1,500 for a pedelec bike).

Redundancy Payments

The Act includes amendments to provide an exemption to income tax for a payment known as Covid-19 Related Lay-off Payment (“CRLP”) which was legislated for under the

Redundancy Payments (Amendment) Act 2022. The payment is made to individuals who lost the opportunity to accrue reckonable service due to layoffs as a result of Covid-19 related restrictions during the period 13 March 2020 to 31 January 2022. The tax exemption applies to payments made on or after 19 April 2022.

Employer Reporting

The Act has included measures to impose additional reporting responsibilities to employers. Employers are to be responsible for electronic reporting of certain 'reportable benefits' which are not subject to PAYE withholdings. The 'reportable benefits' are the remote working daily allowance, benefits provided under the Small Benefit Exemption scheme and travel and subsistence payments where no tax is deducted.

Reporting will be required on a monthly basis aligned to the standard payroll process under Real Time Reporting.

The measures are subject to a Ministerial commencement order to allow some time for stakeholder engagement.

These measures are likely to put additional pressure on employers to have systems in place to accurately monitor and track non-taxable benefits provided to their employees.

These measures are significant and reinforce Revenue's focus on obtaining real time data from employers with regard to employee benefits. When we consider this in conjunction with Revenue's updated compliance intervention framework (effective from 1 May 2022) and their recent updated guidance on self-corrections, qualifying disclosures or Revenue initiated compliance interventions for employment taxes/PAYE (effective from 26 September 2022), it signals a shift by Revenue in reviewing employers' PAYE affairs on a real time basis going forward.

As such, it will be even more important for employers to have adequate controls and systems in place to monitor and track all benefits provided to employees.

Personal tax thresholds, exemptions and credits

The Act includes the increase of €3,200 to the Standard Rate Cut Off Point as announced in Budget 2023. This is the highest single increase in rate bands in the last decade and results in a tax saving of €640 for a single individual with income of €40,000 or more.

There was also a small increase in the 2% threshold for USC from €21,295 to €22,920 to reflect the increase to the minimum wage that will take effect at the start of 2023. Full-time employees receiving the minimum wage will continue to be exempt from USC's highest rates due to the expansion of the USC band.

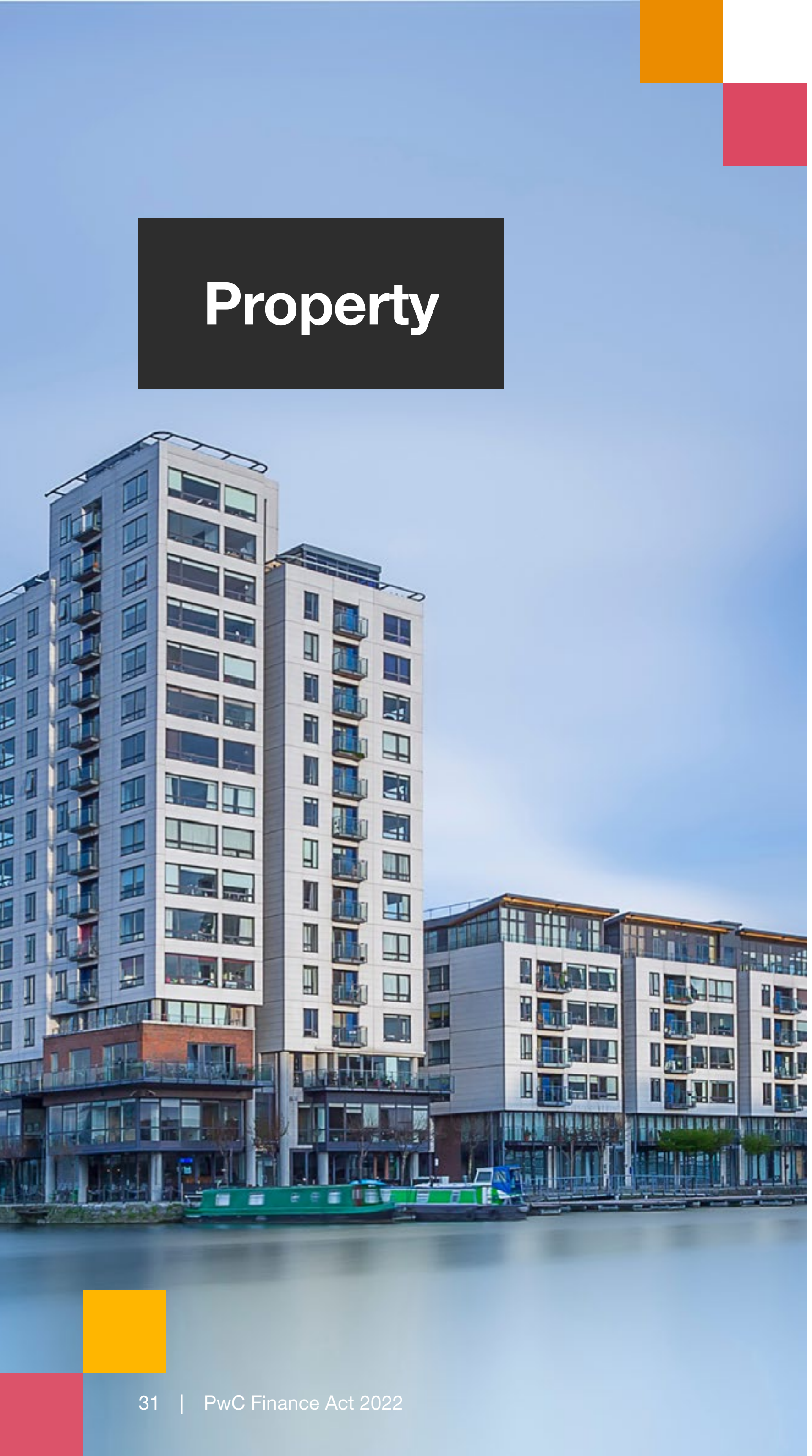
Employers will welcome the fact that there has been no increase to employer PRSI rates, although these may yet come at a later date as part of the Government's medium-term roadmap for personal tax reform.

The Personal, PAYE, and Earned Income Credit for the self-employed increased by €75 to €1,775 each. The Home Carer tax credit is also increased by €100 to €1,700.

A rental tax credit up to €500 (20% of the qualifying payment up to €500) has been introduced from 2022 to 2025. A welcome development is that the credit will not only be available to individuals for their primary residence and a residence to facilitate work/college but also to parents for qualifying children who are attending college (provided conditions are met). The Act also increases the eligible expenditure limit for pre-letting expenses for landlords to €10,000 and halves the vacancy period to six months.

We are here to help you

Finance Act 2022 comes at a time when individuals, families and businesses are struggling with rising inflation and cost of living increases. Although there were some small wins in the employee benefits space, the Act introduces increased reporting obligations for employers to manage. PwC are here to help you understand what the Act means for you and your business.



Finance Act 2022: key real estate measures

Finance Act 2022, which was announced on 20 October 2022, includes a range of legislative measures that will impact on the broader property sector, from a new Vacant Homes Tax to the provision for a new Defective Concrete Products Levy and much more besides. In this insight, we outline the key real estate related aspects of Finance Act 2022 and provide in-depth analysis of the respective sections.

The key real estate measures introduced in Finance Act 2022 are as follows:

- The Help to Buy Scheme has been extended in its current form for a further two years to the end of 2024.
- The Living Cities Initiative has been extended until 2027.
- The threshold in relation to deductible pre-letting expenses for landlords has been increased to €10,000.

The premises must now only be vacant for a period of six months to qualify (reduced from 12 months).

- The exemptions from the application of the Interest Limitation rules have been expanded to include certain large-scale residential developments.
- Amendments to the provisions applying to the taxation of non-resident landlords have

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been introduced. They require additional information to be returned to Revenue by tenants and collection agents in respect of tax that has been withheld on rental payments made to non-resident landlords.

- A Vacant Homes Tax (VHT) has been introduced, which will apply to residential properties occupied for less than 30 days in a 12-month period.
- Amendments have been made to the Residential Zoned Land Tax, which was introduced in last year's Finance Act. They will come into effect in 2024 for land that is within scope.
- A 5% levy will be applied to certain concrete products from September 2023.
- Changes to the Residential Stamp Duty Rebate scheme have been introduced, along with additional measures relating to the transfer of residential properties.
- An annual tax credit has been introduced for individuals/ couples paying rent on their principal private residence. Further details on the precise measures introduced are contained in our Employment and Individual Taxes insight.
- A deduction for residential landlords undertaking certain qualifying retrofitting works was introduced at Committee Stage.

Our analysis

Help to Buy Scheme

The enhanced Help to Buy relief, first introduced in July 2020, has been extended in its current form for a further two years to 31 December 2024.

The scheme provides relief to first-time buyers in the form of a rebate of income tax, including DIRT, paid over the previous four tax years. The maximum rebate available is the lower of:

- €30,000, or
- the amount of income tax and DIRT paid in the previous four years, or
- 10% of the purchase price or valuation of a self-build.

Relief is capped at €30,000, a maximum house price of €500,000 and a minimum loan-to-value of 70%.

At Committee Stage, the definition of 'qualifying residence' was extended to include a building which was not at any time used as a dwelling and was purchased by a first-time buyer in accordance with an affordable dwelling purchase arrangement and a direct sales agreement.

Living City Initiative

The Living City Initiative has been extended for a further five years to the end of 2027. It provides tax relief for money spent on refurbishing or converting residential or commercial properties in the six designated special regeneration areas within Cork, Dublin, Galway, Kilkenny, Limerick and Waterford. Qualifying expenditure incurred on refurbishment or conversion work carried out up to the extended termination date of 31 December 2027 may qualify for tax relief under the scheme.

In addition, the relief available to owner-occupiers will be accelerated so that it can be claimed as a deduction from total income of 15% of the total eligible expenditure in each of the first six years and 10% for the seventh year rather than the current rate of 10% each year for ten years. It is also proposed to

allow carry-forward of any excess relief available to owner-occupiers where it cannot be absorbed in a year up to a maximum of ten years after the expenditure is incurred.

Pre-letting expenditure on rented residential property

Finance Act 2017 introduced a deduction for certain pre-letting expenditure incurred in respect of previously vacant residential premises. As announced on Budget Day, Finance Act 2022 increases the tax deduction available to landlords to €10,000 (up from €5,000) and reduces the period during which a premises is required to be vacant in order to qualify for the relief to six months (previously 12 months). The updated provisions will apply to lettings that occur on or after 1 January 2023.

The aim of these provisions is to encourage owners of vacant residential property to bring that property into the rental market.

Deduction for retrofitting expenditure on rented residential property

A new Case V tax deduction will be available to landlords with rental residential property who undertake retrofitting works during the currency of a tenancy which are aimed at improving the energy efficiency of the premises. A deduction of up to €10,000 per property may be claimed for a maximum of two rental properties. The landlord must have received an approved retrofitting grant from the Sustainable Energy Authority of Ireland (SEAI) for the works in question and works carried out and certified in a year of assessment can be claimed against Case V rental income in the following year.

The scheme will run for a three year period from 1 January 2023 to 31 December 2025.

Several conditions apply including that the property must remain as a rental property for a period of two years after the work has been carried out. The landlord must be LPT compliant, have tax clearance and be registered with the Residential Tenancies Board.

Interest Limitation

The Act updates the definition of *"long-term infrastructure project"* to include the provision, upgrade, operation or maintenance of a large-scale residential development. A large-scale residential development is broadly defined as follows:

- the development of 100 or more houses (adding additional student accommodation does not "taint" this condition).
- the development of student accommodation that includes 200 or more bed spaces (adding additional non-student accommodation dwellings does not "taint" this condition).

At least 70% of the floor space used for the development must be taken up by houses or student accommodation, as applicable. The development must also be approved by the relevant planning authority.

This is a very welcome amendment, which should help mitigate the potential negative impacts of the interest limitation rules on the construction of residential developments.

Rents payable to non-residents

The Act amends section 1041 of the TCA 1997, which provides the taxation procedure that applies to rental income and other lease income received by a non-Irish resident person in respect of property located in the State. A tenant making a payment to a non-resident landlord is required to deduct a sum equal to income tax at the standard rate (currently 20%) and remit that amount to the Revenue Commissioners using a R185 form.

The first part of the amendment provides that the person making the payments will also be required to give certain information as required by Revenue, including:

- the name and address of the non-resident person and the address of the property in respect of which the payment is made;
- the unique identification number assigned to the property for the purposes of Local Property Tax (LPT);
- the date the payment is made to the non-resident person and the gross amount of the payment; and
- the amount withheld from the payment.

The second amendment relates to "collection agents", (resident persons acting on behalf of the non-Irish resident person) who are chargeable and assessable for the income of the non-Irish resident person by virtue of section 1034 TCA 1997. Under the proposed amendment, collection agents will be relieved of the obligation of being chargeable and assessable for the income of a non-resident landlord if the collection agent deducts withholding tax from rental payments and remits that tax to Revenue, and gives Revenue certain information related to the payments similar to that outlined in the bullet points above.

The amendment is subject to a Ministerial commencement order.

Vacant Homes Tax

The Act introduces a VHT, which will apply to residential properties occupied as a dwelling for less than 30 days in a chargeable (12-month) period. Each chargeable period will commence on 1 November and end on 31 October of the following year. The first chargeable period commences on 1 November 2022.

The tax will apply to properties that are residential properties for the purposes of the Local Property Tax. In other words, the VHT will apply only to habitable residential properties. It should not apply to derelict or uninhabitable properties.

The amount of VHT payable for a chargeable period will be three times the base amount of LPT payable in respect of the property for the year in which the chargeable period ends. The liability to VHT will not be adjusted by the local adjustment factor as decided by local authorities.

Exemptions

A number of exemptions are catered for in the legislation. Excluded from the application of the tax are properties that, for example, are actively being marketed for sale or rent, are undergoing structural works or refurbishment, or in respect of which the occupant is recently deceased.

A VHT return will be required to be filed on or before 7 November after the end of the chargeable period.

The payment date for VHT will be the following 1 January. No tax deduction is allowable for the VHT.

The tax will operate on a self-assessment basis with property owners obliged to determine whether they are liable for VHT for a chargeable period and to satisfy their pay and file obligations. The draft legislation provides for penalties, interest and a late filing surcharge to be applied in cases of non-compliance. Where more than one person is a chargeable person in relation to a residential property on the relevant date, those persons shall be jointly and severally liable for the vacant homes tax payable in relation to the property.

Residential Zoned Land Tax

The Residential Zoned Land Tax (RZLT) was introduced in Finance Act 2021 and will apply to owners of serviced and undeveloped land that has been zoned for residential use. For land that is within the scope of the regime, an annual 3% tax will apply based on the market value of the land at the valuation date. The first valuation date is 1 February 2024 and will apply to land that was zoned for residential use and serviced prior to 1 January 2022. For land that is zoned for residential use and serviced on or after 1 January 2022, the RZLT will be first due in the third year after it comes within scope. The tax will continue to be payable each year in respect of the land unless a deferral of the tax applies or the land ceases to be liable to the tax.

The Finance Act has introduced a number of operational and administrative amendments to the RZLT provisions, including:

- a deferral of RZLT arising on land that is currently subject to certain unauthorised non-residential uses (e.g. being used to carry out a trade or profession and is not considered vacant or idle), but an application has been made for retrospective authorisation of the development for that use pending the decision of the relevant planning authority;
- a deferral of RZLT where a landowner brings an appeal or judicial review against a refusal of retrospective authorisation of a development, pending the determination of same;
- an exemption from RZLT where landowners are precluded from developing land within the scope of the tax due to contractual obligations entered into prior to 1 January 2022. The exemption applies for the duration of the contractual obligations that existed prior to 1 January 2022;
- the introduction of a €3,000 penalty for failing to register for RZLT; and
- a restriction in the deductibility of RZLT for the purposes of the universal social charge and the domicile levy. Existing provisions mean that RZLT is currently not deductible in relation to income tax, corporation tax and capital gains tax.

Concrete Products Levy

The Act introduces a defective concrete products levy, which will come into effect from 1 September 2023. The levy will apply to a defined list of certain concrete products that are used for any purpose (i.e. residential or commercial development). The levy will be calculated at 5% of the open market value of the concrete products.

Prior to making the first supply of a concrete product, chargeable persons will be required to register with Revenue and will be required to file a return within 23 days from the end of an accounting period (for example, the return for the six months ended 30 June 2024 would be due on 23 July 2024). While the first accounting period will run from 1 September 2023 to 31 December 2023, subsequent accounting

periods will be for a duration of six months.

Stamp Duty

As announced in the Budget, the 11/15 stamp duty rebate scheme that is available where non-residential land is acquired and then developed residentially is to be extended by three years. It will now be available where construction commences, subject to a Ministerial commencement order or seven-day notice, on or before 31 December 2025 (and subject to the other conditions of the rebate).

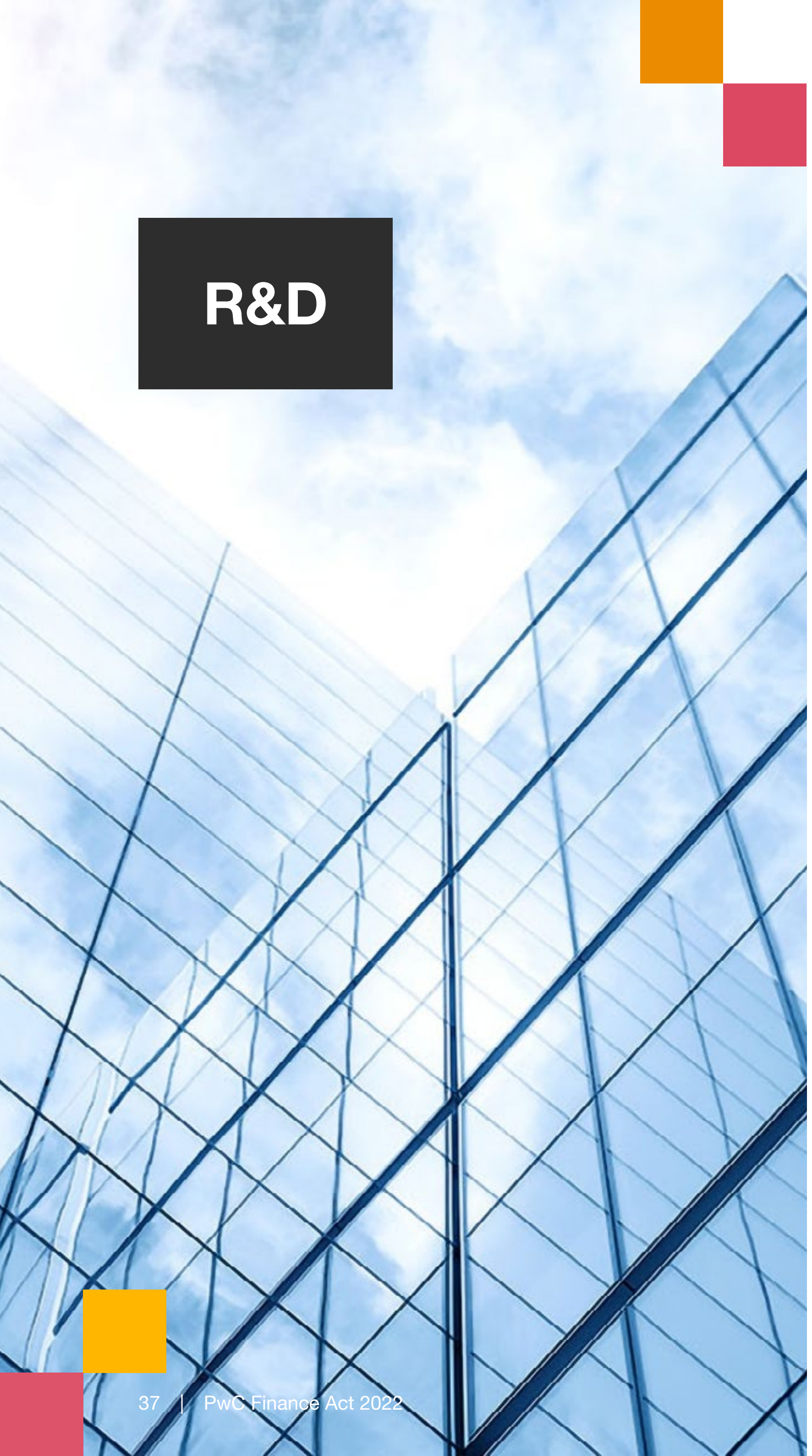
The Act contains a new provision for a full repayment of stamp duty where a residential unit is acquired, with either the standard 1% or 2% duty or the 10% duty being paid on the acquisition, and the unit is then sold under a "direct sales agreement" to an eligible applicant nominated by a housing authority in accordance with the Affordable Housing Act 2021. The sale/conveyance of the property must take place within the 12-month period commencing on the day after the acquisition of the property.

The Act provides for the repeal of the existing Sections 83E and 83F of the Stamp Duty Consolidation Act 1999, which provide for rebates of the greater part of the 10% stamp duty paid on bulk residential property acquisitions where the units are either subsequently leased to a housing authority or approved housing body, or where the units are put to use as cost rental dwellings. These sections are being repealed as their provisions will be contained in the new Section 83DB, along with some additional rebate provisions in respect of the 10% stamp duty provisions.

We are here to help you

PwC continues to be at the forefront of consultations with the Department of Finance and Revenue on key tax issues affecting the Irish real estate sector, both directly and through relevant industry bodies.

Please get in touch with us for further insights. We would welcome feedback from you on issues that are impacting your business and on matters that may help in continuing to shape the policy agenda for the Irish real estate sector.



R&D

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How does Finance Act 2022 alter the operation of the R&D tax credit?

As announced by Minister Donohoe in his Budget, the Finance Act is introducing changes to the operation of the R&D tax credit. These changes focus on how companies can claim the benefit of the R&D tax credit and are being introduced to meet the requirements of international tax reforms.

The changes introduced in the Act are as follows:

- A new three-year fixed payment regime is being introduced for claiming the R&D tax credit. Under this new regime, a company can claim the R&D tax credit in cash in three fixed instalments, or a company can specify that any part of each instalment be offset against other tax liabilities of the company.
- The caps on payable R&D tax credit claims will no longer apply.
- Transitional measures have been introduced for a period of one year to smooth out the transition to the new three-year fixed payments regime.
- Companies can claim at least the first €25,000 of an R&D tax credit as payable in the first year. This will benefit companies with particularly small R&D tax credit claims.
- Companies will have the ability to claim pre-trading expenditure as a payable credit over a three-year period from when a company commences to trade.

Our analysis

The backdrop to the introduction of these changes is international tax reform. The new regime means that companies will claim the credit in three fixed payment instalments. These instalments can be claimed as cash payments or as an offset of other tax liabilities. The regime provides for 50% of the credit to be payable in instalment one, three-fifths of the balance of the credit in instalment two and the balance remaining in instalment three. This differs from the current regime where a company utilises their R&D tax credit in the first instance to reduce their corporation tax liability.

The removal of the limits on payable R&D tax credits is a positive change. Companies will no longer have to undertake complex calculations to determine the cap that applies to their payable claims. This will help companies realise value for R&D tax credit claim amounts that were previously capped in a more accelerated manner. This may be particularly relevant for companies making large capital R&D investments in Ireland.

Two specific changes will benefit small and medium-sized companies. The first is that €25,000 of any R&D tax credit claim will be payable in the first year of a claim. This will help cash flow for companies with small R&D tax credit claims. In addition, companies that incur R&D expenditure in pre-trading periods will be able to claim a payable credit for this when they begin to trade.

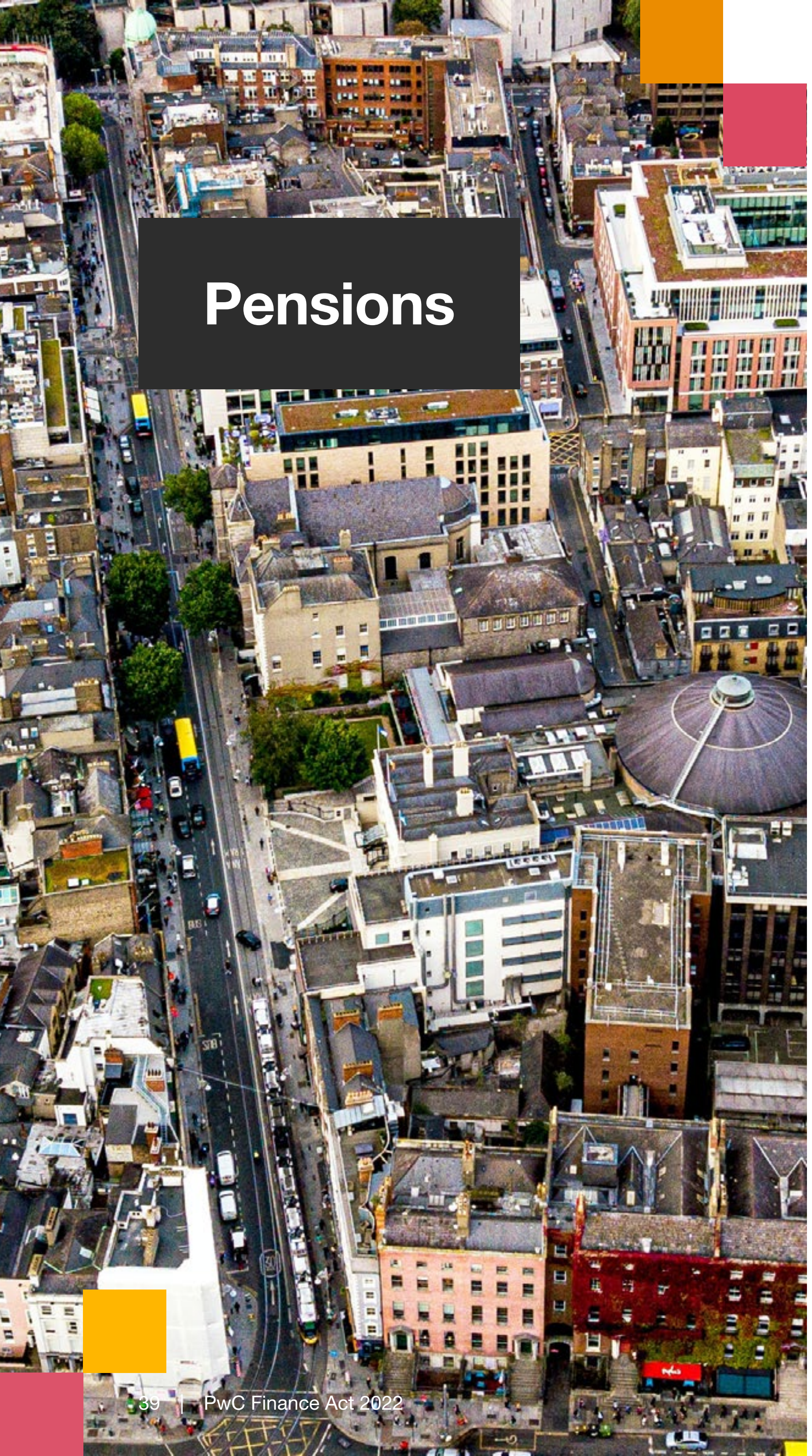
The new regime is being introduced with effect for accounting periods commencing on or after 1 January 2022. Transitional rules also apply, which allow companies to make a claim under the current regime for accounting periods beginning on or after 1 January 2022 but no later than 31 December 2022. This essentially provides for a one-year transition period to the new regime. The transitional rules also permit payable R&D tax credit instalments that are carried forward from accounting periods that commenced before 1 January 2022 (i.e. payable instalments two and three) to be claimed in the accounting period commencing on or after 1 January 2022. This allows these instalments carried forward under the current regime to be dealt with in 2022 tax returns.

Amendments were made to the Act at Committee Stage to deal with the interaction of the credit with a company's preliminary corporation tax obligations. It is now confirmed that, where a company elects to offset an instalment against its corporation tax liability, the amount of corporation tax payable will be reduced by that instalment for the purposes of computing preliminary corporation tax.

Some additional reporting requirements were also introduced.

We are here to help you

Our experienced and multi-disciplinary R&D tax credit team are available to help you with your R&D tax credit claim needs, understand the impact of these changes on your R&D tax claims, and explain the options under the new regime. Contact us today.



Pensions

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The impact and effect of Finance Act 2022 from a pension perspective

The legislative measures included in Finance Act 2022 from a pension perspective were not announced on Budget Day. The changes had been clearly flagged in various publications in the run up to the Budget (via the Tax Strategy Group papers, the Commission on Taxation recommendations and the Inter-departmental Pensions Reform and Taxation Group recommendations)

The key pension measures introduced in Finance Act 2022 are as follows:

Employer Contribution to Personal Retirement savings Accounts (PRSA)

The Benefit-in-Kind charge applying to employer contributions to PRSAs has been removed. This change has the key effect of increasing the scope for employer contributions into a PRSA - in line with the funding rules for occupational pension schemes.

There are wider issues to be addressed in relation to the operation of PRSAs, however this change will be welcomed by a pensions industry adjusting to the effective withdrawal from the market of One Member Arrangements.

Foreign Pension Lump Sums

The taxation of foreign lump sums has been the subject of significant debate following the withdrawal of the Revenue precedent that exempted lump sums payable from foreign pension schemes.

A new taxation regime will apply in respect of foreign lump sums received on or after 1 January 2023, with taxation applying in a manner consistent to Irish Lump Sums.

Pan-European Personal Pension Products (PEPP)

Tax legislation has been introduced in respect of the operation of PEPPs. PEPPs are EU-wide pension products, designed to facilitate cross-border pension savings within the EU.

The PEPP is to be modeled on the PRSA (including the revised provisions outlined above in relation to employer contributions to the PEPP).

The PEPP will follow the "exempt, exempt, taxable" model.

Employer Contribution to Personal Retirement savings Accounts (PRSA)

As employer contributions are no longer a BIK (and are not regarded as an employee contribution), employer contributions are not constrained by age-related contributions limits. This aligns the contributions for PRSAs to occupational pension plans.

The change is effective from 1 January 2023.

This is a significant change to the operation of PRSAs and is welcome. There are wider issues around the authorisation of PRSAs and the regulatory rules under which they operate, however they are acknowledged as being more complicated to amend.

The question now will be whether PRSAs fill the gap left by the withdrawal from the market of One Member pension arrangements - or whether Master Trusts will be used. There has been a move across providers to adapt their Master Trust offering for this purpose in recent months.

There does remain an inequity between employer funding capacity and the contribution limits for self employed professionals where the age related contribution limits continue to apply.

Foreign Lump Sums

A new taxation regime will apply in respect of foreign lump sums received on or after 1 January 2023 subject to the passing of the Finance Act. Foreign lump sums will be taxed in a similar fashion to Irish lump sums.

1. First €200,000 will be exempt from Irish Tax
2. Next €300,000 will be taxed at 20%
3. Balance will be taxed at marginal tax rate & USC

The exemption and amounts taxable at 20% will be subject to lifetime limits in respect of all lump sum payments paid on or after 1 January 2023. The Lifetime Limits apply to both foreign and domestic lump sums.

The taxation of foreign lump sums was somewhat uncertain when the Revenue precedent ceased to apply, so the clarity is welcome. Some commentators are likely to continue to argue that lump sums from foreign pensions should be exempt from tax under first principles, that is, that the amount being drawn is capital in nature.

For individuals returning to Ireland or taking up Irish residence, there will be benefit in examining their pension position before they do so.

Pan-European Personal Pension Products (PEPP)

This legislation gives effect to the EU Directive for the provision of a pan-European pension product.

The vision around the development of a flexible, cost-effective and properly regulated pan-European pension vehicle is clear, however for the moment, the devil remains in the detail of how such a vehicle would operate across the various tax and social insurance regimes applying in the EU.

We are here to help you

The pension landscape in Ireland is changing significantly with the introduction of the IORP II regulations, the effective withdrawal of One Member Arrangements and the anticipated introduction of Auto-Enrolment in 2024.

Finance Act 2022 seeks to address some of the issues in relation to the treatment of foreign pension plans, however complexity remains.

We can guide you through the changing pension landscape.

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Finance Act 2022: key VAT measures

The main legislative changes introduced in Finance Act 2022 that impact on VAT include an extension to the exemption for management of funds to include EU based funds authorised by the competent authority in another EU Member State, the zero-rating of newspapers, the extension of the 9% rate on electricity and gas supplies to 28 February 2023, the zero-rating of hormone replacement therapy and nicotine replacement products and the removal of the zero-rate from products derived from milk.

The key VAT measures introduced in Finance Act 2022

The measures take effect from the passing of the Act unless stated otherwise below

- The Finance Act provides that the management of a fund authorised by a competent authority in another EU Member State will be VAT exempt in the same manner as the management of an equivalent fund in Ireland. This amendment could negatively impact on the VAT recovery position of Irish fund managers and administrators providing services to EU based non-Irish funds
- The Act provides that the zero-rate of VAT will apply to the sale of newspapers with effect from 1 January 2023
- The Act introduces a requirement to notify Revenue within 30 days where a taxpayer has applied for a "domestic only" VAT number and has subsequently engaged in intra-Community trade
- As flagged in the Budget, the 9% reduced rate on the supply of electricity and gas is being extended to 28 February 2023
- As flagged in the Budget, the farmer's flat-rate addition is being reduced from 5.5% to 5% with effect from 1 January 2022
- The Finance Act introduces more prescriptive language defining professional medical care services that qualify for exemption
- The Act introduces a zero-rate for non-oral hormone replacement products, and non-oral nicotine replacement products. This change brings the non-oral products in line with the oral equivalent. Other products to be zero rated are those menstrual products not already subject to the zero rate and Automated External Defibrillators. These rates take effect from 1 January 2023
- The Act provides that "preparations and extracts derived from milk" will no longer qualify for the zero-rate but will be standard rated
- The Act provides that the management of a Section 110 company that holds plant and machinery will no longer qualify for exemption
- The Act introduces a power of Revenue to request certain information from Financial Institutions on behalf of other EU tax authorities when requested under Mutual Assistance Provisions
- The Act changes the provisions in relation to cost-sharing groups to provide that members of the cost sharing group can include entities which carry out taxable activities.

VAT exemption for UCITS and Alternative Investment Funds authorised in other EU Member States

Under existing Irish VAT legislation the management of certain financial funds including Undertakings for the Collective Investment of Transferable Securities (UCITS) and Alternative Investment Funds (AIF) as defined under Irish legislation is VAT exempt. The Finance Act extends this exemption to equivalent funds authorised by the competent authority in another EU Member State.

What does this mean for your business?

This measure will negatively impact the VAT recovery position of Irish fund managers / administrators which currently treat the management of non-Irish EU based funds as taxable services outside the scope of Irish VAT, with full VAT recovery on related costs incurred. Following this amendment, VAT on costs incurred in relation to the management of such funds would not be deductible.

Section 110s holding plant and machinery

VAT legislation currently provides that the management of an undertaking that is a qualifying company for the purposes of Section 110 of the Taxes Consolidation Act 1997 is VAT exempt. The Finance Act provides that, from 1 March 2023, this VAT exemption will not apply to Section 110 companies that hold plant and machinery.

What does this mean for your business?

As a result of this amendment, the management of a Section 110 company that holds plant and machinery (for example aircraft) would be taxable. This change would not result in additional VAT costs where the Section 110 company is engaged in fully VATable activities. However, if the Section 110 had partial VAT recovery (for example as a result of holding financial assets as well as plant and machinery) this amendment could result in an irrecoverable VAT cost.

Extension of the reduced rate of VAT on Electricity and Gas

In an effort to counter the rising cost of living, the rate of VAT applicable to supplies of electricity and gas was reduced from 13.5% to 9% effective 1 May 2022. The rate was due to revert to 13.5% on 1 November 2022, however the Finance Act extends this to 28

February 2023. This change was anticipated having been set out by the Finance Minister in his Budget Speech.

Intra - EU VAT Registration

Ireland operates a two tier VAT registration system. Businesses applying for an Irish VAT number will be given a 'domestic only' VAT registration unless it can be demonstrated that the business requires an intra-EU VAT number, which is valid for supplies made between EU Member States.

The Finance Act updates the VAT registration section such that it now requires holders of a domestic only VAT registration who subsequently makes an intra-community supply or acquisition of goods to notify Revenue within 30 days of doing so. The taxpayer will then be asked to update their registration accordingly.

What does this mean for your business?

There is an additional requirement for businesses holding a domestic only VAT registration to update Revenue where they are engaged in intra-community trade. This could also potentially give rise to intrastat reporting requirements, depending on the value of goods in question. In practice, it would be expected that most businesses would be doing this anyway as a domestic only VAT registration would not show as valid for intra-EU trade on the EU portal that validates VAT numbers (which would generally be consulted by businesses in other EU Member states prior to entering into a transaction).

Medicine and Healthcare

Professional medical care services are exempt from VAT. Currently a professional medical care service is defined as being a service recognised as such by the Department of Health and Children (other than a dental or optical service). The Finance Act updates this definition to become more prescriptive by defining the person who may supply those services. Such persons are registered medical practitioners, midwives and nurses, as well as registered members of designated professions under the Health and Social Care Professionals Act 2005.

We would expect that this change will bring more certainty around the types of medical services which qualify for exemption which had been a focus of some recent determinations by the Tax Appeals Commission.

Furthermore, as highlighted in Budget 2023 there has been an extension of the zero rate of VAT to include non-oral hormone replacement products and non-oral nicotine replacement products. This change brings the non-oral products in line with the oral equivalent. Other products to be zero rated are those menstrual products not already subject to the zero rate and Automated External Defibrillators. These rates take effect from 1 January 2023.

What does this mean for your business?

Businesses currently availing of the VAT exemption for medical services should consider if they continue to qualify in light of the updated definition.

Zero Rate of VAT on Newspapers

Currently newspapers are subject to VAT at the rate of 9%. With effect from 1 January 2023 newspapers, as well as their online equivalents, will be subject to the zero rate of VAT. The Finance Act specifically clarifies that newspapers which are wholly or predominantly devoted to advertising will continue to be subject to the 9% rate.

Rate of VAT on Milk Based Products

Milk and preparations and extracts derived from milk are currently subject to the zero rate of VAT. The

Finance Act excludes 'preparations and extracts derived from milk' from the zero rate with effect from 1 January 2022.

What does this mean for your Business?

Manufacturers, wholesalers and retailers of milk based products should review their product lists to determine which products may be impacted by the change and update VAT rates accordingly.

Retailers and wholesalers should also consider if they are impacted by the zero rates of VAT applicable on newspapers and medical products discussed above.

Other VAT measures

Flat Rate Farmer's Compensation Scheme

Further to Budget 2021 which reduced the farmer's flat-rate compensation from 5.6% to 5.5%, the Finance Act further reduces the rate to 5.0%. The rationale given for the reduction is that it is warranted to avoid over compensation which would be a contravention of the EU VAT Directive.

Technical amendment to the VAT recovery position on the issue of shares

The Finance Act makes a technical amendment to the VAT recovery position on costs incurred in respect of the issue of new stocks, new shares, new debentures or new securities for raising capital. Under the existing legislation there is a specific provision allowing for VAT deduction on such transactions. This section is being deleted with the result that the VAT deduction position will be under general provisions. This technical change should not alter the ability of companies to deduct VAT on the issue of new shares etc to raise capital provided they meet the normal criteria for VAT recovery.

Extension of cost sharing exemption

Existing VAT legislation provides for VAT exemption for services provided by a cost-sharing group to its members where all of the members of the cost sharing group carry out wholly VAT exempt activities. The Finance Act extends the cost sharing exemption to cost sharing groups where the members carry out taxable as well as VAT exempt activities. This amendment brings Irish legislation in line with existing European Court of Justice case law.

Removal of exemption for agency services on fund management

Irish VAT legislation currently provides that agency services in respect of the management of certain qualifying funds (e.g. UCITS) are VAT exempt. The Finance Act includes provisions to remove this exemption, bringing Irish legislation in line with the EU VAT Directive.

Powers of Revenue to request information on behalf of other EU tax authorities under mutual assistance

The Finance Act includes a provision to allow Revenue to request information from certain Financial Institutions where requested by another EU Member State. It also gives Revenue the power to impose penalties on the Financial Institution where it does not comply with this request.

We are here to help you

We work with a broad spectrum of clients across a variety of industries to deliver practical and effective VAT solutions. We would be pleased to discuss any of the VAT issues raised in this publication with you further so that we can assess the impact to your business and help you find practical solutions to comply with the new requirements that combine industry insight with first-class technical expertise. We've led the way with the thought leadership contained in our pre-Budget submissions. We can help to distil the Finance Act 2022 measures down to what they mean for you and/or your business. Please do not hesitate to get in contact with us to find out more.

Trade and Customs

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The impact and effect of Finance Act 2022 on general excise tax in Ireland

Finance Act 2022 (the Act) introduces a number of new provisions which were flagged by the Minister for Finance in his Budget 2023 speech.

In particular, it provides for the introduction of a new excise relief for small cider / perry producers and amends the thresholds applicable to the current excise relief for small independent breweries.

The Act also introduces a stand-alone section for excise within the tax-geared penalties regime and implements a legal basis for the imposition of penalties with respect to small errors.

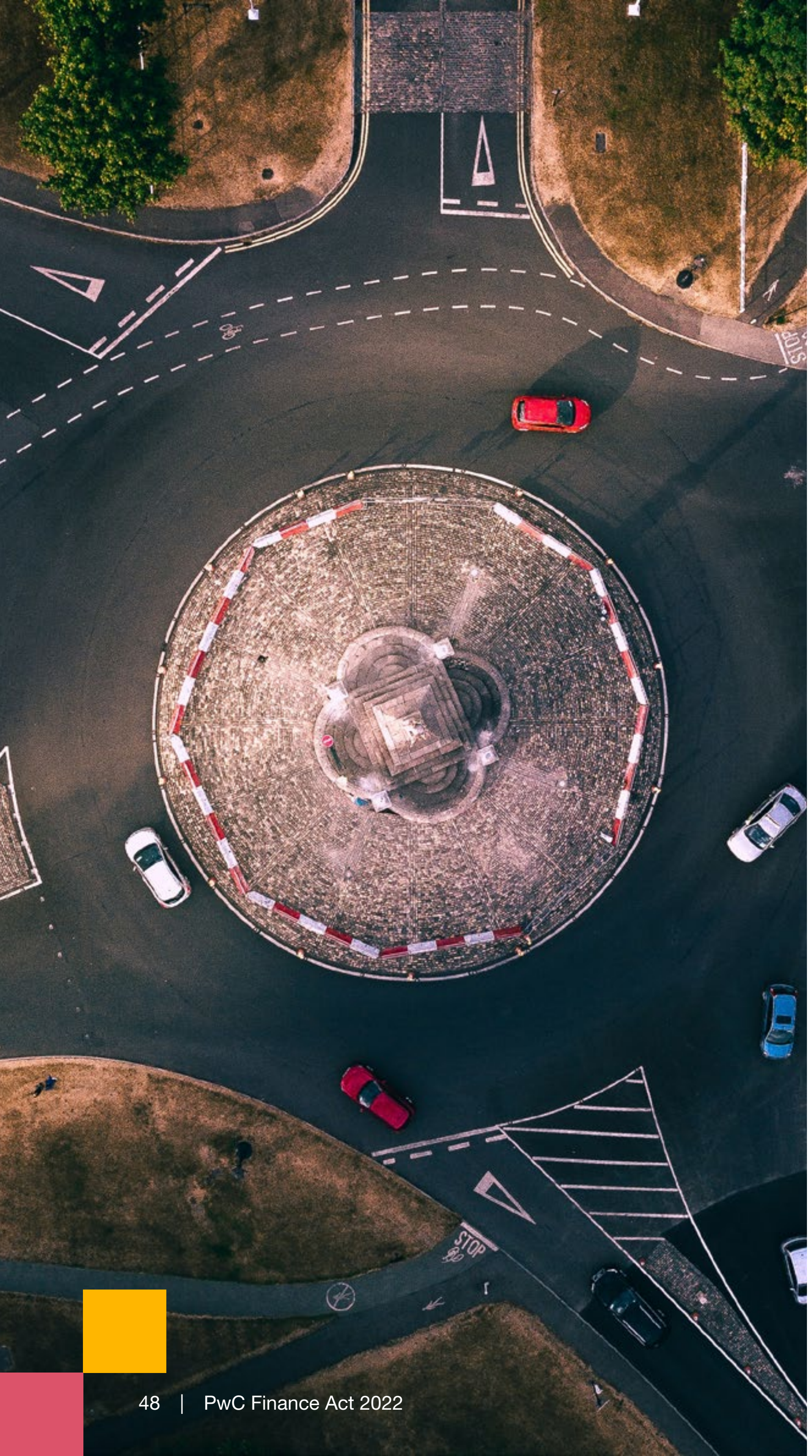
The Act also confirms the increases to Tobacco Products Tax introduced in the Budget.

The key general excise measures introduced in Finance Act 2022

- Introduction of a stand-alone legal provision for excise within the tax-geared penalties and disclosure regime.
- Confirmation that the temporary excise reductions brought in earlier in 2022 have been extended until 1 March 2023 for certain mineral oils used as a propellant, as set out in Budget 2023.

Other Alcohol Points

- The introduction of a new excise relief for independent micro-producers of cider and perry.
- Confirmation of the increase to the production threshold for eligibility to claim relief from alcohol products tax on beer brewed in small breweries.



- Reduction in the excise duty applicable on special exemption orders (SEOs) as announced in Budget 2023.

Tobacco points

- Confirmation of the Budget excise duty increase of 50c on a pack of 20 cigarettes (with pro-rata increase for other tobacco products).

Other

- Clarification regarding the taxable value to be attributed to a bet where such a bet is on foot of an offer provided by a bookmaker.

Disclosures, tax-geared penalties, penalty-reductions: excise now put on legislative footing

This Finance Act has introduced a new Section 99C into the Finance Act 2001 which brings excise in line with other tax heads for the purposes of disclosures and tax-geared penalties. While currently provided for on an administrative basis only under the Code of Practice, this change will mean excise is also underpinned from a legislative perspective.

The wording of the Act has mostly replicated the provisions already included for other tax heads and provides further clarity on the distinction between a deliberate default and careless default.

One notable change is in respect of the legislative basis for not charging a penalty for technical adjustments, innocent errors and cases where the total tax defaults do not exceed €6,000 and are careless and not deliberate. Excise is now to be considered in this threshold calculation in addition to other applicable taxes.

New excise duty relief for small, independent producers of cider & perry

The revised EU Alcohol Directive allows for excise relief to be provided to small independent producers of cider and perry. The Act introduces this relief for qualifying cider and perry producers:

- Allowing for a 50% reduction in excise duty for up to 8,000 hectolitres produced in a calendar year
- In order to qualify, the total combined production for the previous year must not have exceeded 10,000 hectolitres

This relief is similar in structure and scope to the existing relief for small, independent producers of beer, but with significantly lower ceilings.

Expansion of existing excise duty relief thresholds for small, independent producers of beer

The existing excise relief for small independent breweries has been amended to increase the qualifying production ceiling from 50,000 to 75,000 hectolitres produced in the previous year. This has been introduced to allow the microbrewery industry further scope to expand.

Confirmation of betting duty treatment of offers of free or discounted bets

The Finance Act has clarified that offers of free bets (or discounted bets) are subject to betting duty based on what would have been the amount of the unit stake.

Special Exemption Orders

The Act has implemented the reduction in excise duty on Special Exemption Orders (SEOs) as outlined in Budget 2023. This reduction is a welcome measure for those traders who are required to hold such an order.

Primarily this will affect nightclubs and late bars who must obtain an SEO for each instance they wish to trade beyond normal opening hours. The reduction in the excise charge can be seen as a measure to help stimulate the night time economy after the difficulties faced by the industry through the Covid pandemic.

We are here to help you

Due to the unconsolidated nature of Irish excise law, the excise provisions in the Act and their implications for your business can take time to unravel. We in the PwC Global Trade and Customs team are here to support you by identifying how they impact you and what measures can be taken to minimise business disruption and maximise potential opportunities.

Tax Administration and Revenue Powers

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What Finance Act 2022 means for tax administration and appeal cases

Finance Act 2022 contains a number of provisions that have implications for tax administration and appeal cases. The main changes provide a statutory basis for matters previously administered under the Code of Practice for Revenue Compliance Interventions, while also extending the time periods for certain actions to be taken in the tax appeal process.

The key measures relating to Tax Appeals introduced in Finance Act 2022

- Improves the administration of appeals from the Tax Appeal Commission ("TAC") to the High Court on a point of law by way of case stated.
- Extends the timeline for appealing by way of case stated to the High Court and the timeline for submitting written representations on a case stated drafted by the TAC.
- Gives Revenue the power to make or amend an assessment to give effect to an agreed Mutual Agreement Procedure ("MAP") and allow certain claims for reliefs outside of normal time limits.
- Puts tax-geared penalty measures relating to Excise Duty on a legislative footing.

Extension of timeline for cases stated

The Finance Act has made changes to improve the administration of appeals from the Tax Appeal Commission ("TAC") to the High Court on a point of law by way of case stated. If a party is unhappy with a determination of the Tax Appeal Commission, they may appeal to the High Court. The timeframe for appealing by way of case stated was extremely tight and has now been extended. A party now has 42 days (up from 21 days) from the date of a determination within which to make a request for case stated. The time period for an Appeal Commissioner to draft and share the case stated with the parties remains at 3 months, and the parties then have 42 days (up from 21 days) to make submissions in respect of the draft case stated.

What does this mean for you and your business?

The extensions of the time periods to appeal a TAC determination to the High Court on a point of law by way of case stated, and to submit representations to the TAC in respect of the draft case stated recognises the complexities involved in properly identifying points of law and grounds for an appeal to the High Court. The extended time frames, while still tight, are very welcome amendments to the administration of appeals from the TAC to the High Court and will benefit taxpayers, Revenue and practitioners.

Implementation of Mutual Agreement Procedure ("MAP")

The purpose of a MAP is to avoid a taxpayer being subject to double taxation, for example, by being taxed in two jurisdictions on the same profits. The Finance Act allows for Revenue to raise or amend an assessment at any time to give effect to a bilateral MAP reached between Revenue and the competent authority of another jurisdiction with which Ireland has a double taxation treaty.

What does this mean for you and your business?

This allows Revenue to make or amend an assessment to be raised to give effect to the MAP, and allow claims for reliefs such as loss relief or group relief notwithstanding that the claim for such relief would otherwise be statute barred. This is particularly relevant as there is significant growth in MAP cases globally as taxpayers seek to mitigate and/or eliminate their potential exposure to double taxation.

Treatment of penalties relating to Excise Duty now on a legislative footing

Finance Act 2021 legislated for certain penalty mitigation measures to ensure alignment with the provisions in Revenue's Code of Practice for Revenue Compliance Interventions. Finance Act 2022 introduces for similar mitigation provisions in respect of Excise Duty such that:

- no penalty will be charged for technical adjustments, innocent errors and cases where total tax defaults do not exceed €6,000 and those defaults are careless, rather than deliberate; and
- the calculation of this €6,000 limit for all tax heads is also amended to now include Excise Duty.

Further, the basis on which a tax-geared penalty is calculated where no Excise Duty return has been filed has been amended. This penalty is now calculated based on the tax paid before the notification of a Revenue inquiry or investigation, rather than before the commencement of that inquiry or investigation.

What does this mean for you and your business?

Bringing the application of tax-geared penalties for Excise Duty into legislation and aligning it with other tax heads is welcomed. This provides taxpayers with greater certainty on the application of penalties on underpayments of Excise Duty. Please see more details in our Trade and Customs insight.

Debt Warehouse Scheme

Revenue announced an extension to the Debt Warehouse Scheme ("DWS") on 17 October 2022. Under the DWS, businesses would either have to repay, or enter into an arrangement with Revenue, to deal with warehoused debt by 31 December 2022 (or by 1 May 2023 under an extended deadline). On 17 October Revenue extended the timeline to 1 May 2024 - with a 3% interest rate applying between 1 January 2023 and 30 April 2024. This extension will need to be placed on a legislative footing.

We are here to help you

Our Tax Risk & Controversy team help companies deal with all aspects of tax risk prevention, Revenue interventions, appeals and Mutual Agreement Procedures. Our focus is on helping you to manage your tax risk, both prior to intervention or audit, as well as when Revenue formally intervenes. To talk to us about Revenue audits, tax appeals, Mutual Agreement Procedures and any concerns that you might have around risks in your business, please contact any member of our team.

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