What does Finance (No.2) Act 2023 mean for you and your business?

Read our insights

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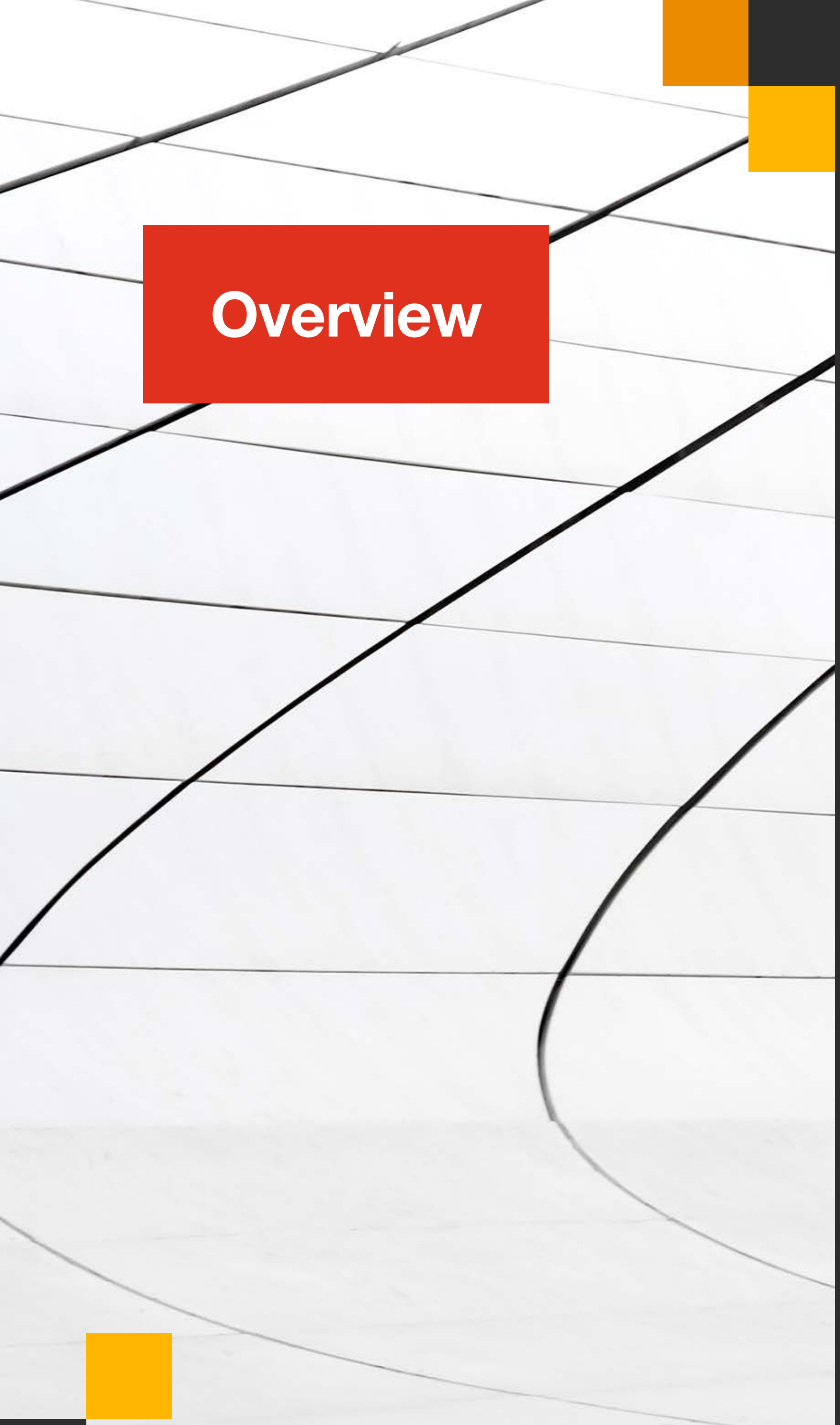

Overview

What Finance (No.2) Act 2023 means for you and your business

Finance (No.2) Act 2023 ("the Act") sets out the legislative changes required to implement many of the Budget Day announcements of 10 October last including important Pillar 2 implementation measures, leasing industry provisions, R&D tax credit regime amendments and outbound payment changes.

The Act also includes a number of measures which were not previously announced. Amongst these were a new interest deduction mechanism for certain on-lent funds by non-traders, pension changes, the moving of share option taxation from self-assessment regime to the PAYE regime, Stamp Duty changes and technical amendments are introduced in relation to group relief and s604A (4/7 year CGT exemption) relief.

Finance (No.2) Bill 2023, which was first published on Thursday 19 October 2023, was amended in a number of respects prior to its enactment on 18 December 2023. This included the introduction of a new Capital Gains Tax relief for Angel Investors. Relevant amendments to the Bill as initiated are highlighted in red throughout this document.

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Pillar Two

The Act includes the Irish legislative provisions to implement the Pillar Two GloBE rules. Pillar Two aims to ensure that in-scope businesses (those with consolidated group revenues of €750m or more in at least two of the four preceding fiscal years) pay at least a 15% effective tax rate on their profits in each jurisdiction they operate in. The rules will come into effect for in-scope businesses with accounting periods beginning on or after 31 December 2023.

The Pillar Two measures as set out in the Act are derived from the OECD model rules and the EU Directive. However, the rules are further supplemented through the OECD guidance. In this regard, the legislation includes measures derived from existing OECD guidance and it also anticipates that further OECD guidance will be released over time and is drafted in a manner that caters for that.

Research & Development Tax Credit

The Act legislates for two significant changes to the R&D tax credit regime, the first being an increase in the headline rate of the R&D credit from 25% to 30%. The increase in the headline R&D tax credit rate will ensure no net impact of the taxation of the R&D tax credit under the Pillar Two GloBE rules. The second significant change was an increase in the first instalment threshold of an R&D tax credit claim from €25,000 to €50,000.

In addition to the above, a number of technical amendments are introduced in the Act to rectify some oversights in the 'new' rules introduced in last year's Finance Act. These include legislating for the inclusion of a plant and machinery R&D apportionment provision; and the ability for unused R&D tax credits to transfer with a trade transfer in certain group restructures. These were previously provided for in the context of the 'old' R&D tax credit rules and now apply to the 'new' R&D tax credit rules. In addition, a new reporting provision is introduced in the Act concerning new R&D claimants.

Outbound Payments

Following the public consultation earlier in the year, the Act includes new measures on the tax treatment of distributions (including dividends), royalties and interest payments to recipients in no-tax and zero tax jurisdictions, as well as those included on the EU list of non-cooperative jurisdictions. The new legislation will limit the operation of certain domestic withholding tax exemptions in respect of captured payments, as well as requiring reporting of same.

The new measures propose that withholding tax should be applied on applicable payments by Irish companies to associated entities that are resident in no-tax, zero-tax or non-cooperative jurisdictions. Entities are associated by virtue of one entity having control of the other or both are under the control of another entity or where one entity has "definite influence" in the management of another entity.

One of the conditions for interest and royalty payments to be in scope of the new rules is that the amount has or can be deducted in computing profits for corporation tax purposes. Furthermore, the new legislation introduces the concept of an "excluded payment", whereby the rules do not apply to any of the captured payments, in scenarios, broadly speaking, where there is no double non-taxation. There is a further carve out for interest payments where the entity to whom the interest was made, subsequently makes a payment of a corresponding amount within a defined time period to a person to whom such payment (had it been made directly by the Irish company) would have been considered an excluded payment. This particular exclusion is subject to a bona fide commercial purposes test.

The interaction between the outbound payments rule and Pillar Two also needs to be considered carefully, as the rules do not apply where the recipient is subject to a "supplemental tax", such as those contained in the Pillar Two regime.

The legislation is intended to apply for payments of certain dividends, royalties and interest to associated entities made on or after 1 April 2024. However, there are grandfathering provisions that apply to arrangements which were in place on or before 19 October 2023. As a result, the new measures will not apply to any such grandfathered payments until 1 January 2025.

Dividend Withholding Tax (DWT)

The Act also outlines changes to the current withholding regime, which ensures that withholding tax provisions operate in line with EU law. As part of the amendments in the Act, withholding exemptions are extended to apply to distributions to residents of EEA states and equivalent pension schemes in countries where Ireland has a Tax Information Exchange Agreement.

Leasing Sector Measures

There have been a number of changes of relevance to the leasing sector. Changes are introduced to Section 403 TCA 1997 - the changes seek to bring clarity to the operation of that provision. Changes in this vein are also introduced to Section 299 TCA 1997, a measure which provides a lessee with an ability to claim capital allowances in certain cases. The changes to Section 76D TCA 1997 are complex and require detailed consideration.

There remain some aspects of the overall taxation framework for leasing that have not been dealt with in the Act; it is anticipated that clarity will need to be provided by way of guidance on these matters in the coming months.

Property Measures

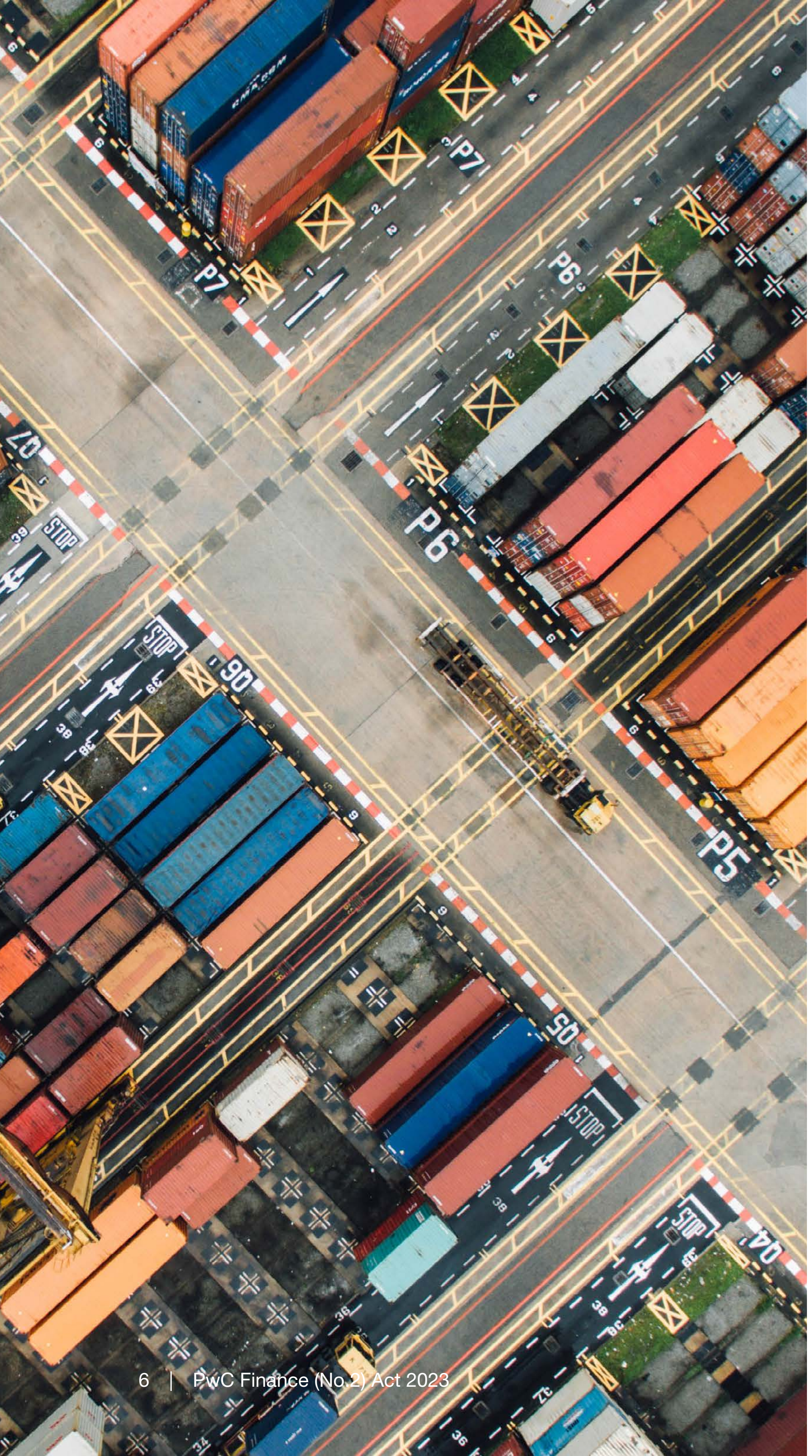
A number of measures in the Act impact the broader real estate sector. The Help to Buy Scheme has been extended in its current form by one year to 31 December 2025. The rate of the Vacant Homes Tax has been increased from three times the basic local property tax (LPT) rate to five times that rate. The Act provides that the date for mapping in respect of assessing the Residential Zoned Land Tax liability will be extended by an additional year to ensure that stakeholders have sufficient opportunity to engage in the mapping process. The Defective Concrete Block Levy is being amended in the Act so that it will no longer apply to ready-to-pour concrete used in the manufacture of precast concrete products.

The Act also legislates for the Budget Day announcement in respect of a relief at the standard rate of income tax for residential rental income earned by individual landlords on properties that are kept in the rental market from 2023 to 2027. Technical amendments have been made to the legislation governing the payment of rent to non-resident landlords and technical amendments to capital gains tax relief ('s604A relief') on properties purchased between 2011 and 2014.

It should be noted that the Accelerated Capital Allowances scheme for Energy Efficient Equipment is being extended for a further two years to 31 December 2025.

Employment and Individual Taxes

From an employment and personal tax standpoint, the majority of the legislative actions contained in the Act relating to credits, bands and extensions to existing BIK relieving measures in relation to electric vehicles were aligned to announcements made on Budget Day. However, there are some newly announced measures which are noteworthy. One such measure



is the move from a self-assessment obligation in respect of tax on gains realised on the exercise of share options to the payroll withholding (PAYE) system. As a result, employers will now be responsible for accounting for the income tax, USC and employee PRSI arising as part of the payroll process instead of the employee. The treatment will apply to exercise gains realised from 1 January 2024 onwards. This move represents a new compliance obligation for employers.

The Act clarifies the time limit on Revenue's ability to raise PAYE assessment on employers; broadly speaking, to a four-year window, commencing at the end of the year following the year of assessment in which the income tax month falls.

While there were no specific measures in relation to Enhanced Employer Reporting Requirements (ERR) contained within this year's Act, ERR was introduced by way of a Ministerial Order signed on 13 December 2023. Steps should be taken by practically all employers to ensure businesses are in a position to comply with the requirements from 1 January 2024.

New Interest Deduction Measure

The Act introduces a new measure providing for interest deductibility for a "qualifying financing company" (being a company that obtains third-party finance and advances this finance to a qualifying subsidiary for the purposes of its trade) once certain criteria are satisfied. Although limited in scope, this measure is a welcome interim measure aimed at simplifying Ireland's rules on interest deductibility.

Private Business Measures

Employment Investment Incentive ("EII")

As expected, the Act introduced several necessary amendments to make the EII legislation compatible with recently updated EU State Aid Rules. The most fundamental change concerns the rate of tax relief granted to investors. Previously, income tax was granted at the marginal rate (40%). This will change so that, from 2024, differing rates of relief will apply depending on which of the eligibility criteria the investee company satisfies. The rates of tax relief will also be impacted by whether investments are made directly into the company (20%, 35% or 50% depending on eligibility criteria) or indirectly into the company via a financial intermediary (30% in all cases).

In addition, the lifetime limit on the amount to be raised by a company is increased to €16.5 million and the amounts are aggregated with angel investor relief (below) on a cumulative basis in order to be compliant with EU State Aid Rules.

Angel Investor Relief

Committe Stage amendments introduced a new targeted capital gains tax relief for angel investors in innovative start-up small to medium enterprises ('SMEs').

The relief provides a reduced CGT rate for qualifying investments made by a qualifying investor in a qualifying company. The reduced CGT rate is 16% for direct investments or 18% for investments made by a partnership.

The investor must have invested over €20,000 to qualify for the relief or between €10,000 and €20,000 and hold at least a 5% stake in the company.

The relief carries a lifetime limit of €3 million.

Retirement Relief

In line with the Budget Day announcements, the age limit for qualifying individuals for the maximum amount of CGT retirement relief is increased from 65 years to 69 years, while at the same time, a new maximum limit of €10m is introduced in the Act for disposals to a child up to the age of 70, both of which are due to take effect from 1 January 2025. For disposals to third-party purchasers, the age limit for the upper threshold has been increased from 65 to 69. The €750,000 and €500,000 respective amounts of retirement relief for third-party disposals has not changed.

R&D Tax Credit Relief

The Act confirms the proposal to increase the R&D tax credit from 25% to 30%, and a doubling of the first-year payment threshold from €25,000 to €50,000.

Revised Entrepreneur Relief

A technical amendment of note is the change to the definition of a "holding company" for revised entrepreneur relief purposes. It now provides that the holding company must be at least a 51% parent company of subsidiaries and its business must consist wholly or mainly of the holding of shares in those subsidiaries. This has the potential to create challenges for founders seeking to dispose of their shares that have tiered group structures with minority stakes.

Medical Practitioners operating in Partnership

S1008A was introduced to address the treatment of certain income of GPs which arises from contractual obligations from arrangements with the HSE.

Where GPs are providing services to the HSE and do so in the conduct of a partnership profession with other GPs, the income can be treated for income tax purposes as that of a partnership. The PSWT credit can also be claimed by the partnership.

A joint election must be made by both the GP and the HSE for the provision to apply.

Climate/Environmental

The Act legislates for extensions to existing measures such as the extension of the BIK exemption on Electric Vehicles of up to €45,000 to 31 December 2024, with reduced tapering relief then applying for periods up to and including 2027 together with an extension to the VRT relief to 31 December 2025. In addition the Accelerated Capital Allowances regime for energy efficient equipment is extended by a further 2 years to 31 December 2025 with the zero VAT rate on supply and fit of solar panels to schools also being extended.

The increase in the tax exemption from €200 to €400 per annum for profits earned by individuals related to the domestic generation of electricity sold to the grid is legislated for whilst landlords of certain private rental properties which were previously subject to rent controls are now eligible to claim an income tax deduction for qualifying retrofitting expenditure.

The Act confirms the annual increase in carbon tax by €7.50 (up from €48.50 to €56) per tonne of carbon dioxide emitted, from 11 October 2023 for auto fuels and from 1 May 2024 for all other fuels. The reduced 9% rate of VAT continues to be extended for supplies of electricity and gas.

Other Corporate Measures

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.

Pre-trading expenditure

An amendment to the pre-trading expenditure provisions under Section 82 is introduced such that this expenditure is not treated as incurred on the commencement of a trade for the purposes of existing loss relief and group relief provisions. This amendment is effective for accounting periods commencing on or after 1 January 2024.

Group relief

Group relief is restricted where the accounting periods of the surrendering company and the claimant company are not fully aligned, or where a company joins or leaves a group of companies. The Act amends existing legislation to clarify that this restriction also applies in respect of group relief which may be set off against other income taxable at the corporation tax rate of 12.5% per cent or on a value basis. This amendment will apply to accounting periods commencing on or after 1 January 2024.

Anti-hybrid rules

The definition of "entity" in the Irish anti-hybrid mismatch rules has been amended to include any legal arrangement, of whatever nature or form, that is within the charge to tax. This limb was previously limited to legal arrangements that own or manage assets.

Additionally, the Act revises the rules to apply to a collective investment scheme both during its start-up and wind-down phases in certain circumstances.

Public country-by-country reporting

While not within the Act EU Directive 2021/2101/EU was transposed into Irish law by way of a statutory instrument (S.I. No. 322 of 2023) effective from 22 June 2023. This requires public disclosure of certain financial and non-financial information by certain undertakings and branches (i.e. public country-by-country reporting or pCbCR). The rules apply to multinational enterprises with global turnover exceeding €750m in each of the last two consecutive financial years.

Film Relief and Digital Gaming Credit

The Act proposes a change to Film Relief by increasing the maximum qualifying expenditure in respect of which the 32% credit can be granted from €70 million to €125 million for certain certified films.

The Act also includes a number of amendments of the digital gaming credit which, among other things, include changes to how it can be claimed. In this regard, companies will have the option to request a payment from Revenue in respect of the credit claimed; or the credit be offset against tax liabilities. The amendments are relevant in making the credit a qualifying credit from a Pillar Two regime perspective.

Pensions

The pension related provisions contained in the Act were not announced on Budget Day. However, they were signposted in the run up to the Budget via the Tax Strategy Group papers, and the Commission on Taxation and Interdepartmental Pensions Reform and Taxation Group recommendations.

The Act provides for no new Retirement Annuity Contracts ("RACs") being capable of being approved on or after 1 January 2024. Provisions are included proposing amendment of the PRSA legislation to allow distributions after age 75. This is part of the process of implementing the "whole of life" PRSA product which allows individuals to both accumulate and then draw down their benefits until death. The Act contains anti-avoidance rules extended to all pension products to prevent the assets being used to provide loans and/or used as security of loans to private type companies. There is also a measure introduced that in order for pension funds to avail of gross roll-up on rental income, the tenancy must be registered with the Residential Tenancies Board.

VAT

The Act introduces new legislation in respect of the VAT treatment applicable to unreturned deposits arising under the Deposit Return Scheme for bottles and cans which will come into effect in February 2024. The Act also increases the thresholds for VAT registration (€40,000 for services, €80,000 for goods) and introduces new zero-rates for ebooks and audiobooks whilst maintaining the zero rate for solar panels provided to schools. It also extends the current 9% rate for the supply of electricity and gas to 31 October 2024 and reduces Farmer's flat-rate compensation from 5% to 4.8% with effect from 1 January 2024.

Stamp Duty

The Act introduced an exemption for any electronic transfers of interests in Irish shares within central securities depositories in the US and Canada, where those shares are dealt in on a recognised stock exchange in either of those countries. Before this, taxpayers had to seek Revenue confirmation on a case-by-case basis that the ADR exemption, an exemption originally introduced specifically for transfers of American Depository Receipts, could apply to such electronic transfers. The amendment will put an administrative practice of the Revenue Commissioners on a statutory footing and simplifies the administrative burden on taxpayers.

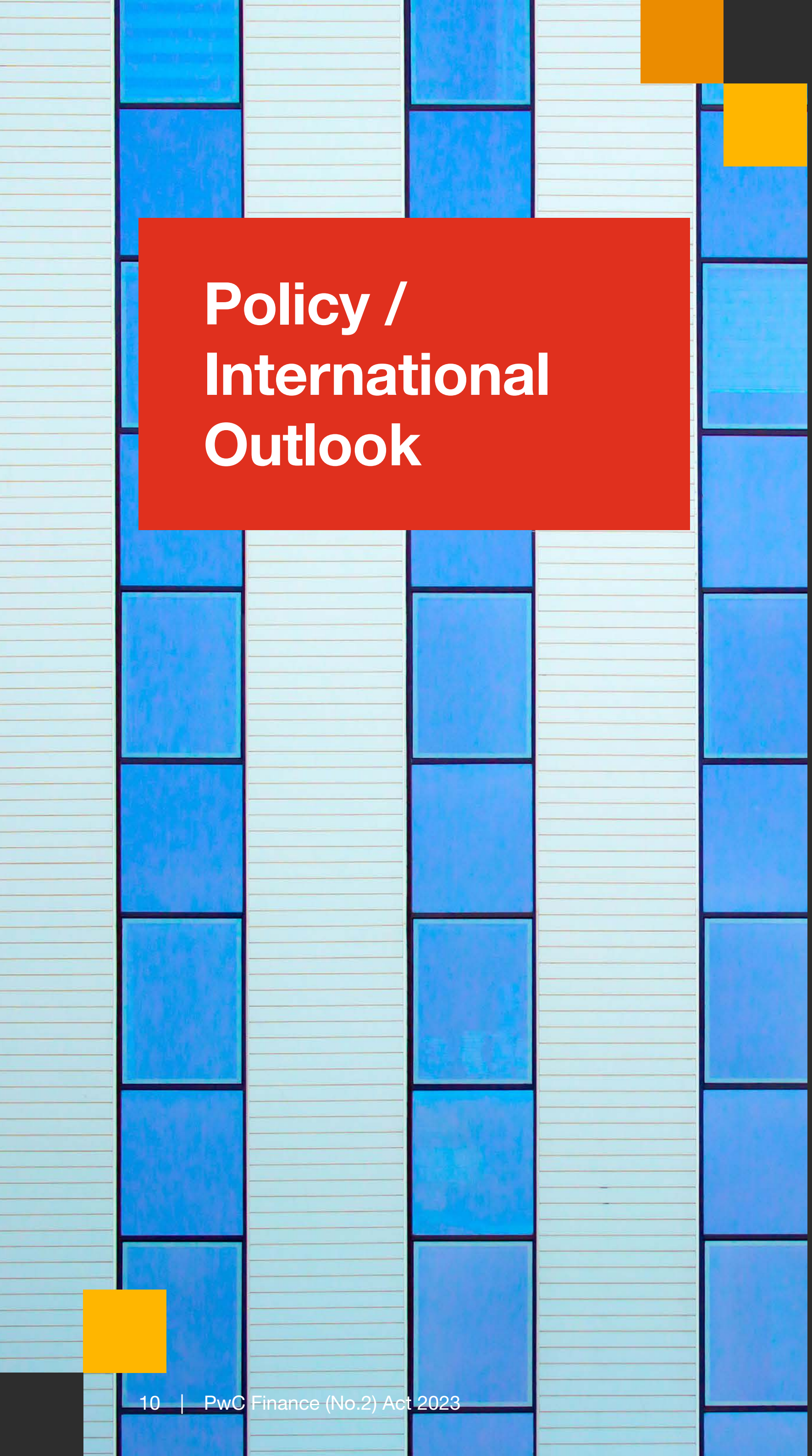
Trade & Customs

The Act confirms the provisions which were flagged on Budget Day. In particular, it confirms the increase to Tobacco Products Tax and it also confirms the Mineral Oil Tax (MOT) changes referenced in the Budget, namely the extension of the temporary MOT reductions on auto diesel, petrol and marked gas oil and the annual increase in carbon tax as set out in Finance Act 2020. The Act confirms the extension of the Vehicle Registration Tax Relief for Battery Electric Vehicles from the end of this year to 31 December 2025. The Act provides for an increase in the rate of excise duty on specific cider and perry products - this measure was not announced on Budget Day.

Tax administration & Revenue Powers

The most significant tax administration measure introduced in the Act is the transposition of DAC 7 which provides a legal basis for Irish Revenue and other EU tax authorities to conduct joint audits. Joint audits are evidence of a further evolution of increasing cooperation and transparency between jurisdictions on tax matters. Other measures include one aimed at ensuring Revenue can apply penalties where a reporting financial institution is a partnership or a trust under the Common Reporting Standard (or "CRS"), DAC 2 and the Foreign Account Tax Compliance Act (or "FATCA").

The Act also seeks to clarify Revenue's powers to make enquiries in relation to returns filed under DAC 6 and to further align the Irish legislative provisions implementing DAC 7 regarding digital platform operators with the EU Directive. As mentioned in the Employment Taxes overview, the Act also clarifies the time limit on Revenue's ability to raise PAYE assessment on employers.



Policy / International Outlook

The impact and effect of international tax policy changes on Finance (No.2) Act 2023

International tax reform continues to shape domestic tax policy-making in Ireland. With corporation tax receipts remaining volatile, the need for Ireland to maintain its global competitive edge is increasingly important. As long-awaited global tax reforms start to come into effect, this need will only intensify.

In this regard, the improvements to key tax reliefs in Finance (No. 2) Act 2023 and the commitment to introducing a participation exemption for foreign dividends in next year’s Finance Act are welcome measures. However, Ireland will have to consistently strive to maintain its edge. In this regard, the Department of Finance should seek to balance the implementation of international reforms with domestic tax policy-making, whilst also seeking to simplify the code domestically.

While the specific changes in Finance (No.2) Act 2023 are set out in the separate sections, the following provides an update on several international tax reforms that we can expect to see impacting domestic tax changes in future Finance Acts.

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Simplification of the Tax Code

The recent comments from the Minister for Finance Michael McGrath T.D. around simplifying the tax system through the establishment of a specific TALC subgroup, particularly for business taxes is very welcome. We understand the intention is to engage with stakeholders, with a view to identifying any opportunities to simplify and modernise the administration of business supports.

This announcement correlates with the recommendation of the Commission on Taxation and Welfare that a review and consolidation of the Taxes Consolidation Act 1997 should be carried out periodically. International reports suggest simplicity of operating efficiently within the realm of business taxes will be a differentiator for countries in the future. It is important that the Department of Finance recognise the balancing act required in implementing international tax reforms, while still trying to identify pro-growth initiatives and simplifying the tax code domestically.

Territorial system of double tax relief

In September, the Department of Finance published a roadmap and public consultation concerning the introduction of a participation exemption for foreign dividends and branches.

The Department intends to introduce the foreign dividend exemption via the 2024 Finance Act, with effect from 1 January 2025. Stakeholders responding to the public consultation have been asked to respond to the design considerations by 13 December 2023.

Ireland is the only EU country and one of a very small number of OECD countries that does not operate some form of participation exemption for foreign dividends, so this development is a positive step. The design of a participation exemption for branches is "considerably more complex" according to the Department.

OECD Pillar One

Pillar One aims to ensure that very large and profitable MNEs pay a greater share of taxes in market jurisdictions, even when they do not have a physical presence. The OECD released a Multilateral Convention to implement Amount A of Pillar One ("the MLC") on 11 October. However, the MLC is not yet opened to countries for signature because there are still issues to be resolved, most notably the political gridlock in the US Congress that would likely prevent the MLC from achieving the necessary critical mass to be enacted.

If the Pillar One proposals move forward, Ireland could lose significant tax revenues given our status as an investment hub. Whilst there is a possibility that Pillar One may feature in next year's Finance Act, given the political issues that remain unresolved that currently looks unlikely.

EU Tax Reforms

The current European Commission administration concludes its 5-year term in 2024. Following this, it is possible that the newly appointed Commission will pursue a new package of tax reforms. For now, there are several EU tax reforms working through the EU institutions, and intended to be implemented in the short to medium term.

- **Business in Europe: Framework for Income Taxation ("BEFIT"):** BEFIT is a proposal to move to a more harmonised EU corporate tax system and sets out a common corporate tax base and rules as to how profits would be allocated to different states. If adopted by the Member States, the proposals would come into force on 1 July 2028.

- **Transfer Pricing:** a harmonised set of transfer pricing rules has been proposed incorporating the arm's length principle and the OECD Transfer Pricing Guidelines. If adopted by the Member States, the proposals would come into force as of 1 January 2026.
- **Head Office Tax ("HOT") System for SMEs:** an optional head office tax system for micro, small and medium-sized enterprises operating through permanent establishments in other Member States, allowing them to compute their taxable profits according to the rules of the head office State and benefit from a one-stop-shop for filing, assessment and collection of tax. If adopted by the Member States, the proposals would apply as of 1 January 2026.
- **Unshell proposal:** The Unshell draft Directive seeks to combat the use of 'shell entities' for tax purposes. The draft Directive is still under discussion between Member States and its implementation is expected to be delayed until 1 January 2026. Presently it is rumoured this will be amended to an exchange of information project whereby Member States exchange details of 'shell entities'.
- **FASTER:** The Faster and Safer Relief of Excess Withholding Taxes ("FASTER") Directive is aimed at making withholding tax procedures in the EU more efficient and secure. The proposal seeks to remove obstacles to cross-border investment and to curb certain abuses. If adopted by the Member States, the proposal would come into force on 1 January 2027.

Modernising VAT reporting

Revenue has launched a public consultation seeking views about the modernisation of the VAT system, with a move to digital reporting supported by e-invoicing. At EU level, discussions are currently in progress on the European Commission's VAT in the Digital Age (VIDA) proposals for similar developments for cross-border transactions between Member States.

Changes in Finance (No.2) Act 2023

The following changes in Finance (No.2) Act are included as a direct result of international policymaking:

Implementation of the Global Minimum Tax into Irish legislation

The most significant change included in Finance (No. 2) Act 2023, driven directly by international tax reform, is the implementation of the Pillar Two rules. These changes are covered separately on page 14.

Non-cooperative countries for tax purposes

Finance (No.2) Act 2023 amends Section 835YA to account for the changes to the EU list of non-cooperative countries for tax purposes (generally referred to as 'blacklist' or 'greylist' countries). The EU Finance Ministers, sitting as the Council of the EU, amended both lists earlier this week. More details on the lists can be found here.

Conclusion

As the international tax landscape continues to evolve, PwC Ireland and the PwC international network of firms will continue to stay ahead of global tax policy developments. We are still a long way from the finish line in terms of implementing the reforms we know are coming. In addition, further reforms are likely to emerge which we do not yet have sight of.

With the OECD getting closer to finalising Pillars One and Two (at least in their own words), it is probable that the focus could increasingly shift towards the green taxation space and global mobility issues into the medium term. On the domestic front, there is also the possibility that this Finance Act could be the last of the current Government. There remains uncertainty as to what approach a Sinn Féin-led Government would take with respect to international tax reform.

Pillar Two

Finance (No.2) Act 2023 - key Pillar Two measures

Ireland's implementation of the Pillar Two rules will significantly impact how large businesses calculate and pay corporate taxes in Ireland and abroad.

The legislation in Finance (No.2) Act 2023 follows the earlier release of two Pillar Two implementation feedback statements. As such, interested parties will be somewhat familiar with most of the rules. However, several updates have been made to the rules following the consultation process.

The updates mainly relate to the areas of the Qualifying Domestic Minimum Top-Up Tax (QDMTT), safe harbours and the administrative provisions.

The Finance Act includes the Irish legislative provisions to implement the Pillar Two rules. The rules will come into effect for in-scope businesses with accounting periods beginning on or after 31 December 2023.

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Overview

Pillar Two aims to ensure that in-scope businesses (those with consolidated group revenues of €750m or more in at least two of the four preceding fiscal years) pay at least a 15% effective tax rate on their profits in each jurisdiction they operate in. Delivering this outcome requires the following:

1. The computation of a new tax base (GloBE income), which will initially be based on accounting profits and requires a series of adjustments for book-to-Pillar Two differences.
2. Businesses will also determine the adjusted covered taxes based on the total tax charge in the financial statements, with specific adjustments.
3. Steps one and two are calculated for each constituent entity in the first instance and aggregated on a jurisdictional basis to calculate the jurisdictional effective tax rate. This is calculated by dividing adjusted covered taxes from step two by GloBE income in step one, with the result being the jurisdictional effective tax rate percentage.
4. The difference between 15% and the percentage from step three is multiplied by the GloBE income (less any substance-based income exclusion). The result is the top-up tax for Pillar Two.

Adoption of the OECD guidance

The Pillar Two rules to be implemented in Ireland are derived from the OECD model rules and the EU Directive. However, the rules are further supplemented through the OECD guidance. The legislation anticipates that further OECD guidance will be released over time, including after the rules come into effect.

The guidance issued to date is referenced in the legislation and it is confirmed that the outcomes from that OECD guidance should be followed, unless those outcomes are inconsistent with the EU Directive. Future guidance may be adopted through Ministerial Order.

Accordingly, the rules, in adopting the guidance, legislate for the following provisions (not an exhaustive list):

- Transitional country-by-country reporting (CbCR) safe harbour;
- Qualifying Domestic Minimum Top-Up Tax (QDMTT) safe harbour;
- Undertaxed Profits Rule (UTPR) safe harbour; and
- Qualifying Domestic Minimum Top-Up Tax (distinct from the QDMTT safe harbour) and how the QDMTT applies in specific scenarios. In the Irish legislation that QDMTT is referred to as the QDTT, which is in line with the abbreviation in the EU Directive and is otherwise the same in substance.

Other aspects of the OECD guidance pertaining to the treatment of specific transactions, credits and so on are also adopted in the Irish rules.

Specific areas of note:

Qualifying Domestic Top-Up Tax (QDTT)

The QDTT offers a jurisdiction the opportunity to claim the primary taxing rights over GloBE excess profits of low-taxed constituent entities located in that jurisdiction. The mechanics of the calculation of the top-up tax under the QDTT broadly align with the calculation under the Income Inclusion Rule (IIR) or the UTPR, with some exceptions. As a result, Ireland has chosen a short legislative provision for the QDTT, linked very closely to the IIR and UTPR sections, the EU Directive provisions for a QDMTT,

and the administrative guidance on QDMTTs.

Some flexibility is offered to jurisdictions in, for example, the financial reporting standard upon which the calculations are based, with Ireland choosing to follow the Local Financial Accounting Standard (LFAS) rule. The Finance Act provides greater clarity for the use of local financial statements.

QDMTT safe harbour

Distinct from the QDTT is the QDMTT safe harbour. This simplification regime operates by setting the top-up tax to zero for a jurisdiction when a multinational enterprise (MNE) group qualifies for safe harbour in that jurisdiction. The Irish QDTT is intended to comply with the safe harbour requirements. Separately, Ireland has provided for the application of the QDMTT safe harbour in respect of constituent entities in other jurisdictions. This is an extremely welcome provision for MNE groups as multiple top-up tax calculations should not be required (e.g. calculation only needed for QDTT purposes if the safe harbour criteria are met).

The three criteria for a QDMTT to be considered a QDMTT safe harbour regime are as follows:

- **Consistency standard:** the consistency standard is met if the computations under the QDMTT are the same as those required under the GloBE rules, except where the OECD guidance explicitly requires the QDMTT to depart from the GloBE rules.
- **Administration standard:** the administration standard requires that a jurisdiction that benefits from the safe harbour must be subject to the same ongoing monitoring process as the GloBE rules.
- **Local accounting standard:** the implementing jurisdiction can choose for the QDMTT to be applied using the accounting standard of the UPE or a LFAS. The choice is at the jurisdictional level and not at the level of the MNE group (choice resting with the jurisdiction, not the business).

Local Financial Accounting Standard (LFAS)

Ireland has opted to follow the LFAS rule. Whether or not the LFAS can be applied by groups in computing their QDTT top-up taxes will require case-by-case review. We encourage businesses to start work on identifying what financial accounting standard should be used as a matter of urgency.

QDMTT safe harbour qualification

An OECD-led peer review process will be carried out to determine whether a jurisdiction's QDMTT qualifies for the safe harbour. However, the details of such reviews are not yet clear. Without these peer reviews being completed, it is difficult for businesses to determine with certainty whether or not the Irish QDTT can be treated as a QDMTT or whether the QDMTT safe harbour criteria are met for Ireland.

Standalone Entities

Ireland has moved slightly beyond the scope of the OECD and EU Directive rules by introducing the concept of a QDTT that applies to standalone entities (i.e. non-consolidating entities) which breach the €750m threshold. Helpfully however, the rules have applied a carve out to *"investment entities"* (as defined). It is therefore anticipated that the standalone provisions are likely to have limited impact on Irish non-consolidated taxpayers given the significant revenue threshold.

UTPR safe harbour

The UTPR acts as a backstop to the IIR so that top-up taxes can still be collected where an IIR may not apply.

This UTPR safe harbour applies with respect to ultimate parent entity (UPE) jurisdictions. If an MNE group avails of this safe harbour, the UPE jurisdiction must have a statutory corporate tax rate greater than 20%. This safe harbour results in a one-year delay in implementing the UTPR for the UPE jurisdiction. The safe harbour applies for fiscal years that are no more than 12 months in duration, beginning on or before 31 December 2025 and ending on or before 31 December 2026.

Linked changes to the R&D tax credit

The research and development (R&D) tax credit has been amended in the Finance Act. The amount of expenditure qualifying for the relief will increase from 25% to 30%. Because the R&D tax credit will be taxed as GloBE income (as it's a qualified refundable tax credit) for in-scope businesses from 2024, this increase in the R&D tax credit rate ensures that there is no net impact of the taxation of the R&D tax credit and it will in fact result in a net benefit for companies. We also note that the digital games tax credit has been designed to be a qualified refundable tax credit.

Administrative provisions

Below is an overview of the registration, filing and payment obligations for the purpose of Pillar Two. These administrative requirements are additional to the existing corporation tax requirements; thus, Pillar Two top-up tax liabilities are in addition to the current corporation tax payment obligations.

Registration requirements

These apply to:

- Any entity subject to IIR and/or UTPR top-up tax in Ireland; and
- A qualifying entity (as defined), which includes each Irish constituent entity and Irish joint ventures (JVs) within an in-scope group.

Top-up tax information return (GloBE information return) or notification of filer

This must be filed by each Irish constituent entity unless a designated local entity is appointed.

Top-up tax returns (collectively, *"GloBE return"*) and associated payments

- IIR return and payment: submitted by relevant parent entity (as defined).
- UTPR return and payment: submitted by each relevant UTPR entity or, if appointed, the UTPR group filer.
- QDTT return and payment: submitted by each qualifying entity (as defined) or, if appointed, the QDTT group filer.

Revenue has the right to impose penalties where there is a failure to comply with the administrative provisions and can also serve notices on group members where the appointed UTPR/QDTT group filer defaults on payment.

Key actions businesses can take today

1. **Know your disclosure requirements**

   Pillar Two disclosures will be required for impacted groups' financial statements very soon, in some cases in respect of the current accounting period. Knowing your disclosure requirements before closing out your accounting period is key to preparing for your next and future audits of tax, which will have a Pillar Two element. You should also prepare a robust Pillar Two balance sheet for deferred taxes.

2. **Undertake safe harbour analysis**

   If you have not already started, now is the time to assess whether your business can potentially avail of any transitional or permanent safe harbours. Accessing a safe harbour can significantly simplify your overall Pillar Two compliance burden and reporting requirements. For those already analysing their applicability for safe harbours, the publication of the legislation should allow you to finalise this work.

3. **Unanticipated outcomes**

   Businesses should take time to understand the unanticipated outcomes from Pillar Two.

4. **Determine applicable accounting standards**

   Different accounting standards can apply to different aspects of the Pillar Two rules. Knowing exactly where to start and what set of accounting standards to use for Pillar Two is critical.

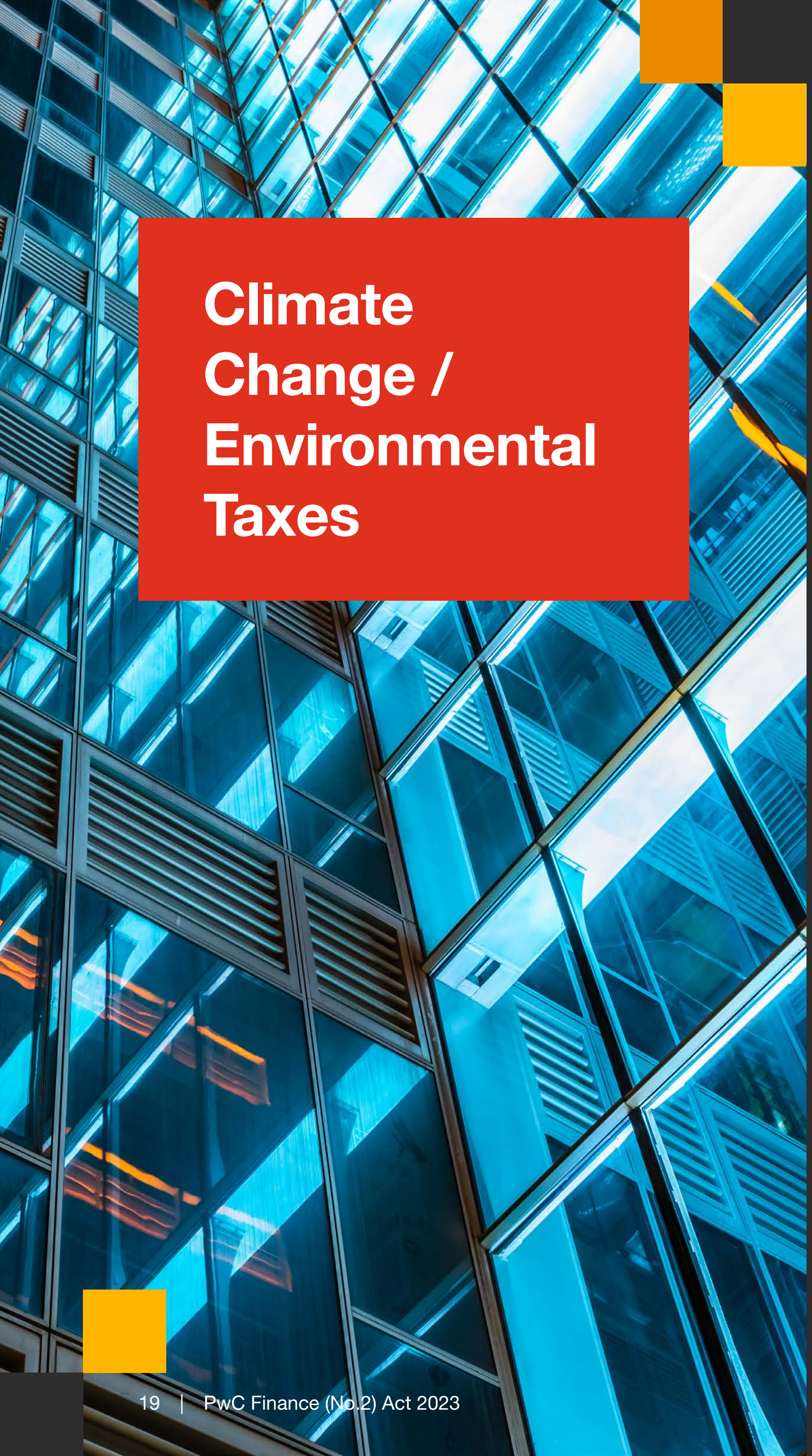
5. **Pillar Two analysis for all future transactions**

   In the future, all transactions (be they acquisitions, divestments, mergers, refinancings, reorganisations, etc.) will need to be considered from a Pillar Two perspective, as well as in light of the existing corporate tax rules.

We are here to help you

The good news is that even if you are at the early stages of thinking about Pillar Two, there is still time to get "Pillar Two-ready" before 1 January 2024.

PwC has specialist teams to support your business with everything from understanding the technical aspects of the rules, identifying the data points needed to perform the calculations, offering technology-driven solutions, supporting restructuring activities, building your in-house teams to be Pillar Two-ready, and much more. Pillar Two requires businesses to reimagine how their tax function will collect new information and meet new requirements. Contact us today to see how PwC can help.



Climate Change / Environmental Taxes

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The impact and effect of Finance Act (No.2) 2023 on Climate Change and Environmental Taxes

While the introduction of the €14bn Infrastructure, Climate and Nature Fund was welcome, it is disappointing that Finance Act (No.2) 2023 did not contain more targeted, immediate measures to mobilise private investment in sustainable innovation and to drive the decarbonisation of our economy.

Below are our key insights on the climate change and environmental tax measures introduced in the Finance Act.

The key climate measures introduced in the Finance Act include:

- BIK exemptions on electric vehicles of up to €45,000 will continue to apply until 31 December 2024, with reduced tapering relief then applying for periods up to and including 2027.
- Accelerated capital allowances for energy efficient equipment are extended by a further two years to 31 December 2025.
- Increase in the exemption from income tax, PRSI and USC from €200 to €400 per annum for profits and gains earned by qualifying individuals related to the domestic generation of electricity which is sold to the grid.
- Landlords of certain private rental properties which were previously subject to rent controls are now eligible to claim an income tax deduction for qualifying retrofitting expenditure.
- Confirmation of the annual increase in carbon tax by €7.50 (up from €48.50 to €56) per tonne of carbon dioxide emitted, from 11 October 2023 for auto fuels and from 1 May 2024 for all other fuels.
- Zero rate of VAT on supply and fitting of solar panels extended to primary and post-primary schools from 1 January 2024.
- Reduced 9% rate of VAT extended by 12 months to 31 October 2024 for supplies of electricity and gas.
- Extension of the vehicle registration tax relief for battery electric vehicles from the end of 2023 to 31 December 2025.

Our analysis

Benefit-in-Kind (BIK) for Battery Electric Vehicles (Cars and Vans)

Certain BIK exemptions and discounts are available where the car made available to your employee is an electric car. In order to encourage the further uptake of electric vehicles, the Finance Act extends tapering relief for battery electric vehicles to 2027. This means that the current reduction of €45,000 in the Open Market Value ("OMV") (€35,000 by way of tapering relief and €10,000 in respect of the temporary reduction in OMV for cars in categories A-D) will continue to apply to battery electric vehicles until 31 December 2024. This will taper to €35,000 in 2025, €20,000 in 2026 and €10,000 in 2027. Please see more details in our Employment and Individual Taxes insight.

Accelerated Capital Allowances

Accelerated capital allowances allow for a 100% first-year capital allowance deduction in respect of expenditure incurred on certain approved energy-efficient equipment. This relief was due to expire on 31 December 2023 but has now been extended by a further two years to 31 December 2025.

Microgeneration of Electricity

This relief currently provides for an exemption of up to €200 from income tax, USC and PRSI for certain profits arising to a qualifying individual who generates energy from renewable, sustainable or alternative energy sources at a qualifying residence for their own consumption and sell the excess energy produced to the grid. The Finance Act increases the exemption from €200 to €400 per annum. The expiry date for the relief has also been extended from 31 December 2024 to 31 December 2025.

Retrofitting Expenditure incurred by Landlords

Landlords of certain private rental properties who were previously subject to rent controls are now

eligible to claim an income tax deduction for qualifying retrofitting expenditure, subject to a limit of €10,000 per property for a maximum of two properties. Please refer to our Property insight for a more detailed analysis.

Carbon Tax

The Finance Act confirms the annual increase in carbon tax (as per Finance Act 2020) from €48.50 to €56 per tonne of CO2. The increased rates were applied to auto-fuels such as petrol and auto-diesel from 11 October 2023 and will apply to other fuels from 1 May 2024.

Extension of VRT relief for Battery Electric Vehicles

The VRT relief of up to €5,000 on battery electric vehicles was due to expire at the end of this year. However, it has now been extended to 31 December 2025.

VAT on Solar Panels

The zero rate of VAT on the supply and installation of solar panels has been extended to primary and post-primary schools from 1 January 2024.

Extension of the Reduced Rate of VAT on Electricity and Gas

Please refer to our VAT insight for details of the extension of the reduced 9% rate of VAT for supplies of electricity and gas.

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 your decarbonisation journey, our Energy, Utilities and Resources Tax Group is here to support you. Contact us today.

Domestic and International Large Corporates

What Finance (No.2) Act 2023 means for large corporates

The main legislative changes in the Finance Act that are likely to impact domestic and international corporations include the introduction of legislation to transpose the EU Directive on Pillar Two, amendments to outbound payments legislation and changes to the Research & Development ('R&D') tax credit.

Several other technical amendments are contained in the Act, which may be relevant for certain domestic and international corporations.

The key measures impacting domestic and international corporates in the Finance Act include:

- the transposition of the EU Directive on Pillar Two into Irish legislation;
- amendments to the taxation of outbound payments from Ireland;
- an increase in the R&D tax credit rate from 25% to 30%;
- the extension of the Accelerated Capital Allowances scheme for Energy Efficient Equipment to 31 December 2025;
- an increase to the maximum value of expenditure for calculating the Film Tax Credit from €70 million to €125 million; and

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- the introduction of a new stamp duty exemption for any electronic transfers of interests in Irish shares within central securities depositories in the US and Canada.

Our analysis

Pillar Two

The Act introduced legislation to implement the 15% minimum effective tax rate for large corporations (applying to groups with consolidated revenues of €750m or more). As outlined in the Minister's Budget 2024 statement, Pillar Two is a once-in-a-generation reform to our corporation tax system and marks the culmination of a ten-year global project to reform the taxation of multinational enterprises. Please refer to our section on page 14 for further analysis on Pillar Two.

Outbound payments from Ireland

Following the public consultation earlier in the year, the Act includes new measures on the tax treatment of distributions (including dividends), royalties and interest payments to recipients in no-tax and zero tax jurisdictions, as well as those included on the EU list of non-cooperative jurisdictions. The new legislation will limit the operation of certain domestic withholding tax exemptions in respect of captured payments, as well as requiring reporting of same.

The new measures propose that withholding tax should be applied on applicable payments by Irish companies to associated entities that are resident in no-tax, zero-tax or non-cooperative jurisdictions. Entities are associated by virtue of one entity having control of the other or both are under the control of another entity or where one entity has "definite influence" in the management of another entity.

One of the conditions for interest and royalty payments to be in scope of the new rules is that the amount has or can be deducted in computing profits for corporation tax purposes. Furthermore, the new legislation introduces the concept of an "excluded payment", whereby the rules do not apply to any of the captured payments, in scenarios, broadly speaking, where there is no double non-taxation. There is a further carve out for interest payments where the entity to whom the interest was made, subsequently makes a payment of a corresponding amount within a defined time period to a person to whom such payment (had it been made directly by the Irish company) would have been considered an excluded payment. This particular exclusion is subject to a bona fide commercial purposes test.

The interaction between the outbound payments rules and Pillar Two also needs to be considered carefully, as the rules do not apply where the recipient is subject to a "supplemental tax", such as those contained in the Pillar Two regime.

The legislation is intended to apply to payments of certain dividends, royalties and interest to associated entities made on or after 1 April 2024. However, there are grandfathering provisions that apply to arrangements which were in place on or before 19 October 2023. As such, the new measures will not apply to such grandfathered payments until 1 January 2025.

Dividend Withholding Tax (DWT)

The Act also outlines changes to the current withholding regime, which ensures that withholding tax provisions operate in line with EU law. As part of the amendments contained in the Act, it is provided that the withholding exemptions should be extended to apply to distributions to residents of EEA states and equivalent pension schemes in countries where Ireland has a Tax Information Exchange Agreement.

R&D tax credit

The Act legislates for two changes to the R&D tax credit regime:

- an increase in the headline rate of the R&D credit from 25% to 30%; and
- an increase in the first instalment threshold of an R&D tax credit claim from €25,000 to €50,000. The first instalment threshold that a company can claim is now the greater of 50% of the company's R&D tax credit claim for the year or an amount of the credit up to €50,000. The increase from €25,000 to €50,000 is directed at small and medium-sized companies.

In addition to the above, a number of technical amendments are introduced in the Act to rectify some oversights in the 'new' rules introduced in last year's Finance Act. These include legislating for the inclusion of the following provisions in the 'new' R&D tax credit rules:

- a plant and machinery R&D apportionment provision; and
- the ability for unused R&D tax credits to transfer with a trade transfer in certain group restructures.

These were previously provided for in the context of the 'old' R&D tax credit rules and now apply to the 'new' R&D tax credit rules. In addition, a new reporting provision is introduced in the Act concerning new R&D claimants.

The increase in the headline R&D tax credit rate will ensure no net impact of the taxation of the R&D tax credit under the Pillar Two GloBE rules. It should, in fact, result in a net benefit for companies.

These amendments build on the positive changes introduced in last year's Finance Act to make our R&D tax credit regime a fully payable credit regime and to abolish the maximum amount of an R&D tax credit that can be monetised. The amendments also endorse the importance of the R&D tax credit regime in anchoring and stimulating investment and high-quality employment in R&D activities in Ireland.

Accelerated Capital Allowances scheme for Energy Efficient Equipment

The Act provides for the extension of the accelerated capital allowances scheme for energy efficient equipment for a further two years to 31 December 2025.

Film Relief (Section 481 TCA 1997)

Following the extension of Section 481 relief until 31 December 2028, which was introduced last year, the Act increases the maximum qualifying expenditure in respect of which the 32% credit can be granted from €70 million to €125 million for films certified by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. This crucial amendment provides a significant opportunity for growth in the Irish audiovisual industry and for the promotion of Irish culture on a global scale. This amendment is subject to EU State Aid approval and, as such, will commence at a future date.

In his Budget 2024 speech, the Minister also stated that he will engage with the European Commission to develop an incentive for the unscripted production sector in line with State Aid rules. This is a very welcome development for companies operating in this area.

Digital Gaming Tax Credit (Section 481A TCA 1997)

The Finance Act includes a number of amendments to the digital gaming tax credit which, among other things, include changes to how it can be claimed. This should ensure that it will be a qualifying refundable tax credit for the purpose of Pillar Two. The amendments will apply in respect of accounting periods beginning on or after 1 January 2024 and specifically include that companies will have the option to request:

- a payment from Revenue in respect of the credit claimed; or
- the credit be offset against tax liabilities.

Any payment or offset will be made within 48 months of making a valid claim. If the credit is to be offset against the company's corporation tax liability, it can be taken into account when computing preliminary corporation tax.

The deadline for claiming the credit for a completed game has also been extended in certain circumstances.

Territorial regime

In his Budget 2024 statement, the Minister confirmed that Ireland will introduce a participation exemption for foreign dividends next year. This is a welcome step in simplifying Ireland's tax system, thereby enhancing Ireland's attractiveness as a destination for inward and outward investment.

Interest deductibility

In his Budget speech, the Minister acknowledged that Ireland's current regime for interest deductibility is a complex area. He has committed to reviewing this issue and will engage with stakeholders in the year ahead. This is a welcome development and will be particularly relevant for many large corporations operating in Ireland.

The Act also introduces a new section (Section 76E), which provides for interest deductibility for a qualifying financing company (being a company that obtains third-party finance and advances this finance to a qualifying subsidiary for the purposes of its trade) once certain criteria are satisfied.

Stamp Duty (Section 78B SDCA 1999)

The Act introduced an exemption for any electronic transfers of interests in Irish shares within central securities depositories in the US and Canada, where those shares are dealt in on a recognised stock exchange in either of those countries. Before this, taxpayers had to seek Revenue confirmation on a case-by-case basis that the ADR exemption, an exemption originally introduced specifically for transfers of American Depository Receipts, could apply to such electronic transfers. The amendment will put an administrative practice of the Revenue Commissioners on a statutory footing and simplifies the administrative burden on taxpayers.

Public country-by-country reporting

While not within the Act, EU Directive 2021/2101/EU was transposed into Irish law by way of a statutory instrument (S.I. No. 322 of 2023) effective from 22 June 2023. This requires public disclosure of certain financial and non-financial information by certain undertakings and branches (i.e. public country-by-country reporting or pCbCR). The rules apply to multinational enterprises with global turnover exceeding €750m in each of the last two consecutive financial years.

The introduction of pCbCR reinforces the EU's and Ireland's commitment to a culture of corporate transparency. The transposition of this Directive is especially significant from a large corporate taxpayer's perspective given the additional information required to be publicly disclosed in the report. As per the statutory instrument, the pCbCR obligation will apply in relation to financial years beginning on or after 22 June 2024.

Non-cooperative countries for tax purposes

The Act amends existing legislation to account for changes to the EU list of non-cooperative countries for tax purposes. As the EU Council updates the list of non-cooperative countries twice yearly (February and October), companies should ensure they refer to the appropriate list for their particular accounting period.

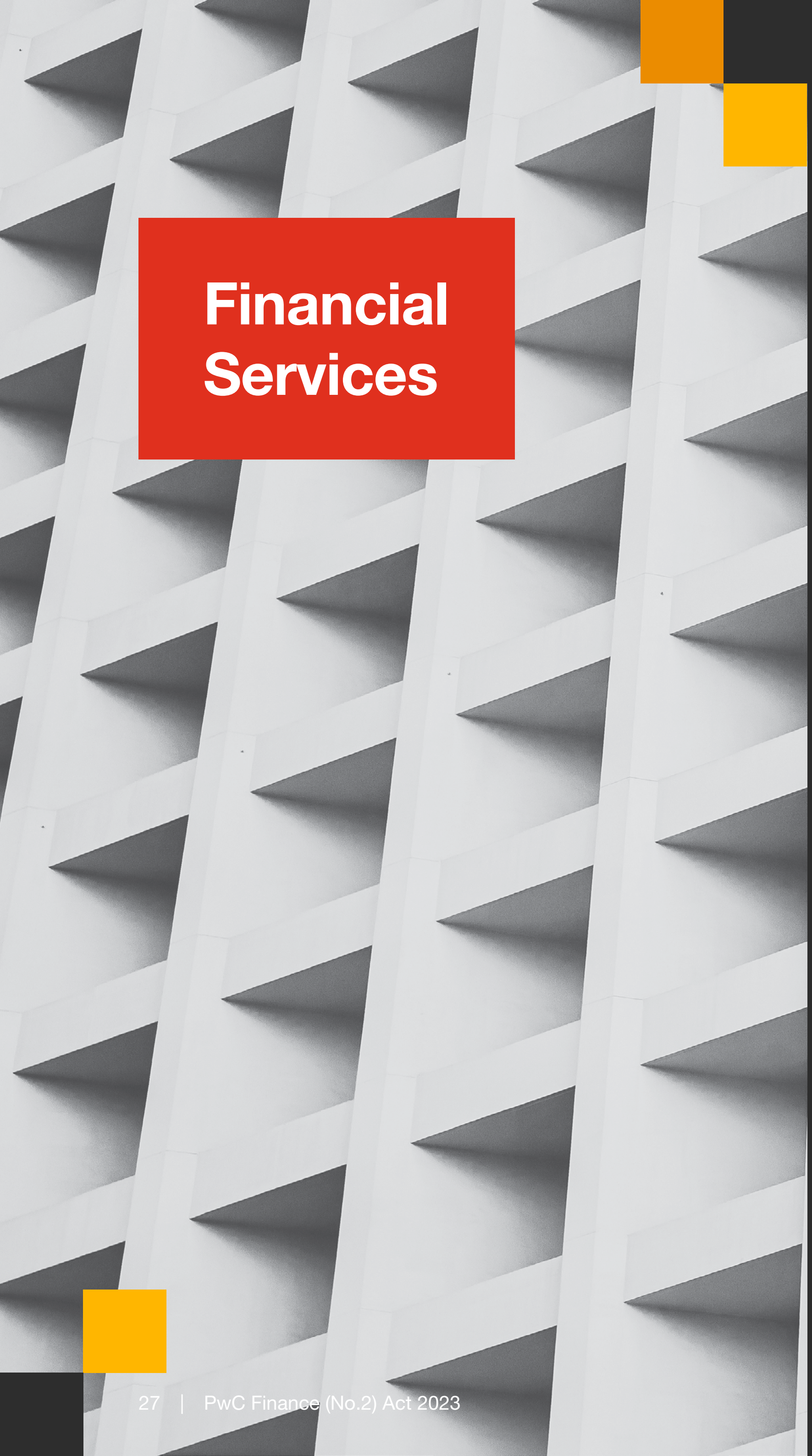
Miscellaneous

The Act introduced a number of technical amendments, including;

- An amendment to the pre-trading expenditure provisions such that this expenditure is not treated as incurred on the commencement of a trade for the purposes of existing loss relief and group relief provisions. This amendment is effective for accounting periods commencing on or after 1 January 2024.
- Group relief is restricted where the accounting periods of the surrendering company and the claimant company are not fully aligned, or where a company joins or leaves a group of companies. The Act amends existing legislation to clarify that this restriction also applies in respect of group relief which may be set off against other income taxable at the corporation tax rate of 12.5 per cent or on a value basis. This amendment will apply to accounting periods commencing on or after 1 January 2024.
- The definition of "entity" in the Irish anti-hybrid mismatch rules has been amended to include any legal arrangement, of whatever nature or form, that is within the charge to tax. This limb was previously limited to legal arrangements that own or manage assets. Additionally, the Act revises the rules to apply to a collective investment scheme both during its start-up and wind-down phases in certain circumstances.
- In his Budget 2024 speech, the Minister demonstrated a strong intention to further support sporting bodies. As part of this, the Minister noted that there will be a review of sporting legislation to promote capital investment in our sports facilities.

We are here to help you

The Finance Act contains many important changes that will have implications for domestic and international corporations, particularly the transposition of the EU's Pillar Two Directive into Irish legislation. PwC's tax team is available to help you and your business understand how these changes will impact your business. Please get in touch today.



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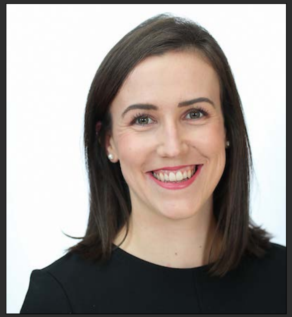

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What Finance (No.2) Act 2023 means for the financial services industry

The Act contains a number of important provisions for the financial services sector. The most significant measures include legislation to implement Pillar Two, new defensive measures applying to outbound payments and the introduction of a new intra-group financing structure. The Act also includes some steps in modernising the framework of taxation for leasing companies and some other minor amendments which are detailed below.

It is positive to see the key areas of legislative reform being implemented in a practical manner and drafted in a manner which acknowledges the specific nuances of financial services taxpayers.

Territorial regime

While the Act does not include legislation to introduce a territorial system of double tax relief, the Department of Finance has confirmed its intention to introduce a participation exemption for foreign dividends in Finance Act 2024. A consultation process is currently ongoing. The introduction of a foreign branch profits exemption remains under consideration.

This, coupled with the other positive and business-friendly provisions which are included in the Act, including outbound payments and amendments to the Employment Investment Incentive relief for Qualifying Investment Funds, signals a positive direction of travel for the sector.

Pillar Two

The legislation has seen many welcome changes since the draft legislation included in the second Feedback Statement earlier in the summer.

Although Ireland has moved slightly beyond the scope of the OECD and EU Directive rules by introducing the concept of a QDTT that applies to standalone entities (i.e. non-consolidating entities) which breach the €750 million threshold themselves, helpfully the rules have carved out standalone "investment entities" (as defined).

The Act also appears to remove the application of the QDTT to investment entities that are members of a consolidated group. This maintains consistency of treatment with the IIR and UTPR collection mechanisms, which ensure the maintenance of existing tax neutrality by preventing a top-up tax applying to the investment entity itself.

The amendments reflect the result of an effective collaborative consultation process. The resulting legislation assists in the continued development of Ireland's competitive funds industry while also implementing Pillar Two in line with the requirements of the OECD and EU Directive.

Importantly, Ireland has implemented legislation which reflects that OECD Guidance should be considered alongside the Irish legislation. Therefore where subsequent OECD Guidance reflects a conflicting position to existing Irish legislation, the OECD Guidance should be followed, unless it conflicts with the EU Directive. This may be important for a number of areas, including the substance-based income exclusion in the aircraft leasing sector.

Outbound payments

Following the public consultation earlier in the year, the Act includes new measures on the tax treatment of distributions, royalties and interest payments to recipients who are associated entities in jurisdictions on the EU list of non-cooperative jurisdictions and zero-tax jurisdictions.

From a financial services perspective, the legislation contains a number of welcome amendments to the proposals contained within the July Feedback Statement.

The definition of "associated entity" for this purpose departs somewhat from the current definitions of "associated entity" in Irish legislation. In summary:

- there is a 50% ownership interest test;
- there is no financial statements consolidation test in the definition; and
- the "significant influence" test in other areas of Irish tax legislation is replaced by a "definite influence" test. The definition of "definite influence" appears to be a higher threshold than that of "significant influence".

In a financial services context, many outbound payments will be made to multi-tiered and widely held flow-through structures. In this regard, it is positive that the Act includes a "reasonable to consider" test in implementing the "excluded

payment" definition. A similar provision also applies to the assessment of the "associated entity" test in certain scenarios linked to the payment of interest which will be welcomed in the public deals market.

In addition, it is very positive that the definition of an "excluded payment" includes certain payments to certain tax exempt entities resident in a territory other than a "specified territory".

Provisions also exist to facilitate a look-through approach in certain cases where the payments are made to an entity but the relevant payment is treated as arising or accruing to another entity which will be helpful for transparent or flow-through structures.

Leasing technical amendments

The Bill initially proposed a number of complex changes of relevance to the leasing sector. However, some were subsequently amended during Report and Committee Stages, ultimately resulting in amendments that aim to update and provide clarity in a number of areas, although not going as far as the industry would have hoped to legislate for certain aspects of the overall taxation framework of the industry.

These changes follow significant involvement and dialogue by various stakeholders in the broader leasing industry with Revenue and the Department of Finance over the last number of years.

The Act attempts to deliver a number of changes which will impact lessors and lessees, many of which are welcomed. Changes to Section 403 are helpful in clarifying the operation of that section, in particular updates which have been made to ensure the legislation is more reflective of the commercial reality of a modern leasing business. Meanwhile, changes to Section 299, which provides a lessee with an ability to claim capital allowances in certain cases, address some existing issues with that section. The changes to

Section 76D are complex and require detailed consideration. Initial concerns of a seemingly worrying divergence from a path where taxpayers have been following the accounting treatment have receded as the changes have been limited to finance lessors.

The overall impact of the changes to finance lessors may not be material, although the changes should be considered in detail, together with any additional disclosure requirements.

The Bill has also introduced a new subsection to Section 77, which provides that taxpayers carrying on a leasing activity within the charge to corporation tax under Schedule D Case IV should not be precluded from claiming a deduction for yearly interest. This amendment is welcomed and addresses concerns that non-trading entities engaged in leasing activities may not have an ability to claim a deduction for interest expense.

There remain some aspects of the overall taxation framework for leasing in Ireland however, that have not been dealt with in the Act including trading guidance and the taxation of asset disposals. Taxpayers will have a legitimate expectation that clarity is provided by way of guidance on these over the coming months.

Qualifying financing companies

The introduction of a new regime for non-trading financing companies has long been sought and is a very welcome addition. This represents a new structure to facilitate the provision of external debt into a group where there are certain commercial restrictions or difficulties in lending directly to the end user.

Given the Minister signalled in the Budget speech that a broader review of Ireland's interest deductibility rules would be conducted next year, it is therefore very positive to see an ability to get an interest deduction in a Case III/ Case IV context being introduced.

Technical amendments to the anti-hybrid and anti-reverse hybrid rules

The Act provides for some technical amendments to the anti-hybrid rules introduced in Finance Act 2019 and the anti-reverse hybrid rules introduced in Finance Act 2021.

The definition of "entity" for the purpose of the anti-hybrid rules will be amended to include any legal arrangement, of whatever nature or form, that is within the charge to tax, whereas this leg was previously limited to legal arrangements that own or manage assets.

Minor technical amendments have also been included to clarify the operation of the anti-reverse hybrid rules and their application to collective investment schemes during their start-up and wind-down phase to bring legislation in line with published Revenue guidance.

Employment Investment Incentive (EII) relief for Qualifying Investment Funds (QIFs)

The Act, which implements the new State Aid GBER rules, provides that EII relief shall not apply to shares in a company that carry preferential rights to a dividend or to repayment of capital on a winding up. However, the Act provides that this anti-avoidance amendment shall not apply in circumstances where the shares are issued to the managers of a QIF (being an ILP or a limited partnership managed by an AIFM).

FATCA/CRS

The Act provides for amendments to the legislation relating to CRS, DAC2 and FATCA to ensure Revenue has the ability to apply penalties in the case of reporting financial institutions that are structured as partnerships or trusts (including trusts that qualify as investment undertakings), whereby the penalties may be applied to a "liable person", such as the precedent partner (in the case of a partnership) or the trustees or management company in the case of trusts. To date, penalties might otherwise not apply in the case of such financial institutions without legal personality.

The Act also provides the framework for joint audits and clarifies Revenue powers in making enquiries into inaccurate returns or failure to make returns under DAC6.

Additional measures relevant to financial services

Further levy on certain financial institutions

The Act also contains amendments to the provisions for the operation of banking levies. The changes propose that the levy will apply to the total value of the relevant deposits held by a financial institution in the base year (relevant base year is 2022 for 2024). Tax at a rate of 0.112% will apply to these deposits. This is a change to the previous levy which was based on the total amount of DIRT paid.

The application of the new levy is limited to certain prescribed persons who are named in the Act. Notably, AIB, EBS, Permanent TSB and Bank of Ireland. The levy for 2024 will be due to be paid in October 2024.

Provisions applicable to credit institutions

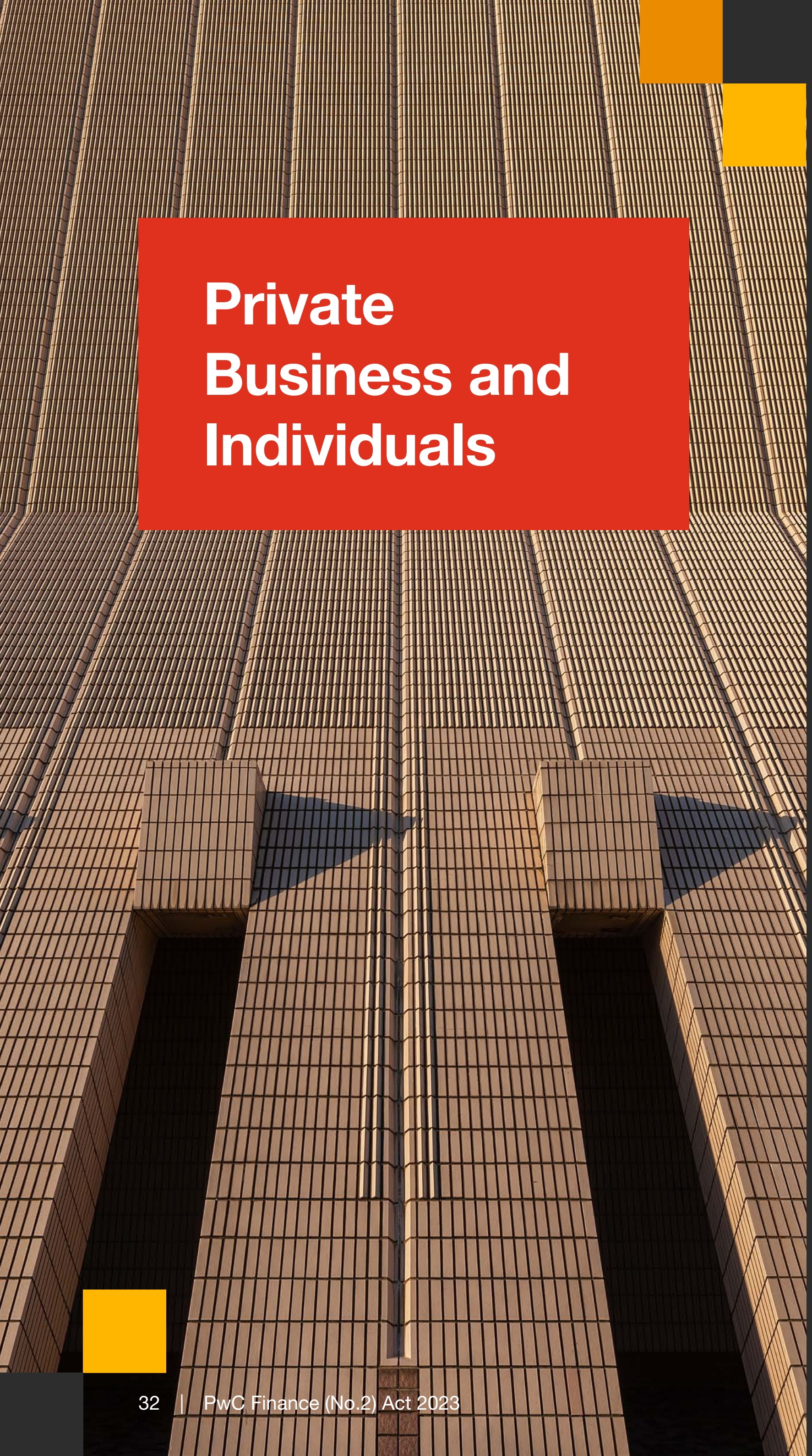
The Act contains minor amendments to a number of provisions impacting financial institutions relating to information reporting and certain Revenue powers to remove the definition of “credit institution” from “financial institution” as credit institutions are already covered by other parts of the definition.

Distributions to non-resident pension schemes

Included in amendments that align the dividend withholding tax rules (and related income tax provisions) with EU law is an amendment that extends the exemption from dividend withholding tax and income tax to distributions made to non-resident pension schemes.

Stamp Duty

The Act includes the provision of an exemption for any electronic transfers of interests in Irish shares within central securities depositories in the US and Canada, where those shares are dealt in on a recognised stock exchange in either of those countries. The inclusion of the exemption simplifies the administrative burden on taxpayers and is a welcome amendment.



Private Business and Individuals

What Finance (No.2) Act 2023 means for Private Business

The key theme of Finance (No.2) Act 2023 is that it seeks to increase cash inflows into Private Businesses through increased participation by "Angel" investors and by a wider cohort of investors under the EII scheme. The enhancement to the R&D tax credit will reduce the net of tax cost for Private Businesses investing their own funds. These cash inflows/savings are necessary and will hopefully go some way to offset the cash outflows caused by general cost inflation, labour shortages, increases in the minimum wage and other cost pressures. The sheer breadth of the Private Business sector means that some industries will inevitably fare better than others.

The key measures introduced in Finance (No.2) Act 2023 include:

- Employment Investment Incentive
- CGT Retirement Relief
- CGT Revised Entrepreneur Relief
- CAT - Interest Free Loans
- CGT - Angel Investor Relief

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Our analysis

Employment Investment Incentive ("EII")

As expected, Finance (No.2) Act 2023 introduced several necessary amendments to make the legislation compatible with recently updated EU State Aid rules.

The most fundamental change concerns the rate of tax relief. Previously income tax relief was granted at the marginal rate (40%) in all circumstances. This will change so that, from 2024, differing rates of relief will apply depending on which of the eligibility criteria the investee company satisfies. The rates of tax relief will also be impacted by whether investments are made directly into the company (20%, 35% or 50% depending on eligibility criteria) or indirectly into the company via a financial intermediary (30% in all cases).

To illustrate the likely impact, tax relief of only 20% will be available on *"follow-on"* investments when the money is invested directly into the company. The concern for such companies is that they would have expected, at the time they prepared the relevant business plan, that 40% tax relief would have been available on follow-on investments so the reduction to the rate of tax relief to only 20% could make the task of completing the funding round more difficult.

Other changes in the Act include the following:-

- Change in the definition of *"eligible shares"* for direct investments so from 2024, in essence, only full risk ordinary shares constitutes an eligible investment.
- Increase in the maximum investment limits at the level of the company from €15 million to €16.5 million (lifetime) and from €5 million to €5.5 million (annual). Please note that these limits also include Angel Investor CGT Relief on an aggregate basis.
- Increase in the investor annual investment maximum from €250,000 to €500,000.
- Standardising the investment period to four years.
- A softening of the test (funds being raised as a percentage of the company's recent average annual turnover) for companies seeking to raise *"expansion risk finance"* that will support the environment - it is set at 30% rather than 50% which is the typical rate.

CGT Retirement Relief

The age limit for qualifying individuals for the maximum amount of CGT Retirement Relief is increased from 65 years to 69 years, while at the same time a new maximum limit of €10m is being introduced for disposals to a child up until the age of 70, both of which are due to take effect from 1 January 2025.

The introduction of the €10m cap will likely prompt many business owners to consider succession before 1 January 2025 but we would be concerned that chasing a tax deadline might bring with it the risk of business owners losing sight of the often far more important questions about what's best for the family, the business or the people who work in the business.

For disposals to third party purchasers, the age limit for the upper threshold has been increased from 65 to 69 years. The €750,000 and €500,000 retirement relief thresholds for third party disposals have not changed.

Angel Investor CGT Relief

The new angel investor CGT relief should enable certain qualifying investors to avail of a reduced CGT rate of 16% (or 18% through a partnership) for certain qualifying investments made in qualifying companies.

The relief appears to have been introduced based on EU State Aid Rules. Therefore, there is significant overlap with this relief and the legislation in the area of relief for investment in corporate trades, such as the EII scheme.

The introduction of the legislation is a welcomed change but the rules to be met for the relief to apply are quite niche and the regime appears targeted for investments in early-stage enterprises. Follow-on risk finance investments and expansion risk finance investments are specifically excluded.

Revised Entrepreneur Relief

Revised entrepreneur relief currently offers a reduced CGT rate of 10% on up to €1m of gains on the disposal of qualifying shares by a qualifying individual.

The definition of a *"holding company"* for revised entrepreneur relief purposes has been amended to provide that the holding company must be at least a 51% parent company of subsidiaries and its business must consist wholly or mainly of the holding of shares in those subsidiaries.

This may result in unintended consequences for founder shareholders that end up having a tiered group structure and minority stakes in subsidiaries and want to claim revised entrepreneur relief on the disposal of their shareholdings.

CGT Relief - Disposal of Certain Land or Buildings

There were a number of technical amendments to the relief provided on the disposal of certain land and buildings that were held for 7 years, and which were acquired between 7 December 2011 and 31 December 2014.

The amendments seek to clarify that (1) relief is only available for property purchased at full market value or from a relative for at least 75% of market value and (2) any wider provisions within the Taxes Consolidation Act that may deem a transaction to have occurred at market value between connected parties do not apply in the context of this relief.

Interest-Free Loans

A mandatory filing requirement has been introduced in relation to interest-free loans. Where an interest-free loan is made to a person by a *"close relative"* of that person (e.g. parents, grandparents, siblings, aunts, uncles, etc.), and the balance outstanding on the loan, when aggregated with the balance outstanding on any other interest-free loans, exceeds €335,000, a CAT return will have to be filed that will detail the person who made the loan, as well as the balance outstanding on the loan.

It will also apply to loans to and from private companies where the beneficial owner of the company and the person making/receiving the loans are *"close relatives"*.

CAT Thresholds - Foster Care Relationships

Where a foster child resided with a foster parent for at least 5 years prior to turning 18, they will be treated as a child of the foster parent for the purposes of calculating CAT where a claim is made to Revenue. Similarly, the foster child will be able to avail of the Group B threshold upon receipt of a gift/inheritance from the foster parent's siblings, children or parents, where a claim is made to Revenue. Where two or more foster children were in the care of the same foster parent for at least 5 years prior to turning 18, they will be deemed to be siblings for the purposes of calculating CAT where a claim is made to Revenue.

Agricultural Relief/Business Relief

A number of amendments were introduced to address inconsistencies and anomalies in the legislation, including:

- Bringing clarity to the clawback trigger events for CAT agricultural relief and business relief purposes.
- Aligning the clawback for CAT business relief more closely to that of CAT agricultural relief.
- Changing the commencement of the clawback period for both CAT agricultural reliefs to the valuation date rather than the gift or inheritance date.

- Providing additional clarity to the pay and file obligations for a taxpayer where CAT agricultural relief or business relief is clawed back.

Farmland - Stamp Duty Consanguinity Relief

As signalled in the recent Budget, consanguinity relief, which applies to certain transfers of farmland between close relatives, is to be extended for another 5 years to 31 December 2028. In addition, the lifetime aggregate amount of relief available to persons under the young trained farmer relief and other associated direct tax reliefs has been increased from €70,000 to €100,000.

Foreign Bank Account Disclosures

Irish tax resident individuals are obliged to report the opening of foreign bank accounts on their annual income tax returns. The provisions in this regard have been amended to provide that individuals who are not otherwise obliged to file a tax return should be excluded from the obligation to disclose certain foreign bank accounts.

Charitable Tax Exemption

There is an existing income tax exemption available to income arising to charities provided the income is applied solely for charitable purposes.

The legislation has been amended to enable Revenue to revoke the exemption where they believe the body ceases to be qualifying. Revenue also may now publish a list of the charities claiming the exemption.

Sporting Bodies Exemption

With regard to the existing tax exemption from income of certain sports bodies, the definition of *"sport"* as used in the Sport Ireland Act 2015 has been adopted. The exemption has been retained for any sports body already claiming the exemption.

Medical Practitioners operating in Partnership

GPs who have entered into contractual arrangements with the HSE and conduct those services in a partnership profession with other GPs can now elect for income tax in that partnership.

The regime was introduced to overcome the challenges doctors faced by being treated as being taxed as individuals as opposed to part of a partnership.

Relief for certain income from leasing of farm land

Amendments were made to the provisions which exempt from income tax certain income arising from leasing of farm land. These include the introduction, subject to certain conditions, of a seven-year holding requirement in respect of farm land purchased by an individual pursuant to a contract entered into on or after 1 January 2024 for market value consideration. The individual must hold the farm land for at least seven years before they are eligible for income tax relief.

Employment and Individual Taxes

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What Finance (No.2) Act 2023 means from an employment and personal tax perspective

From an employment and personal tax standpoint, the majority of the legislative actions contained in Finance (No.2) Act 2023 were aligned to announcements made on Budget Day. However, there are two newly announced measures in the Act and these are likely to be of significant interest to employers.

The key employment and individual tax measures introduced in Finance (No.2) Act 2023 include:

- The taxation of exercise gains on share options is moving from the self-assessment to the payroll withholding (PAYE) system. This treatment will apply to gains realised from 1 January 2024 onwards.
- Additional measures have been introduced to clarify the time limits that apply with respect to Revenue's ability to raise PAYE assessments on employers for tax years 2019 et seq.
- There has been a further extension to the temporary universal relief applied to vehicles within emissions categories A-D for company car BIK purposes.
- There has been an increase in the 2% USC threshold and the 4.5% USC rate has been cut to 4%.
- The Standard Rate Cut-Off Point has been increased by €2,000.
- The personal tax credit, employee PAYE, home carer and earned income tax credit have been increased by €100 each.

- The single person child carer credit has been increased by €100 and the incapacitated child tax credit has also been increased by €200.
- Renters will get a welcome increase to the existing Rent Tax credit. The credit will be increased to €750 for individual renters, or €1,500 per year for jointly assessed couples.
- The Help to Buy scheme has been extended for a further year to the end of 2025.
- Certain mortgage holders will be eligible for limited mortgage interest relief on a once off basis.
- Small landlords will benefit from limited income tax relief measures provided their properties remain on the rental market.
- And finally a reminder that employers and employees will each face a 0.1% increase in social taxes (PRSI) from October 2024. The legislation to underpin this Budget day announcement will be contained in separate social welfare legislation that will likely be released in the new year.

Our analysis

Share Options - PAYE Requirement

The Act introduces further compliance requirements on employers with regard to share based remuneration. Gains realised on the exercise of a right to acquire shares or other assets are being moved from self-assessment to the PAYE system. As a result, employers will now be responsible for accounting for the income tax, USC and employee PRSI arising as part of the payroll process. The treatment will apply to gains realised from 1 January 2024 onwards. Gains realised on or before 31 December 2023 will remain taxable under the self-assessment system.

The above change follows the Budget day announcement that the Department of Finance will shortly launch a public consultation on share-based remuneration in recognition of the increasing importance that employers place on shares as a tool to reward and retain employees, and the continued globalisation of the workforce.

Employers may now wish to consider reviewing their own policies around share based remuneration to assess whether the existing structures remain compliant and indeed efficient for the organisation.

Statute of Limitations for PAYE

In a welcome clarification, the Act now provides certainty on Revenue's ability to raise PAYE assessments on employers for all tax years beginning from 2019. With limited exceptions, such assessments must be raised within a 4 year window, commencing at the end of the year following the year of assessment in which the income tax month falls. In other words, it appears that a 2019 tax year assessment could be raised at any time up to 31 December 2024.

Where a claim for a refund of PAYE/ USC is being submitted by an employer, the supporting return must now be filed with Revenue within 4 years commencing at the end of the year of assessment in which the income tax month giving rise to the refund claim falls. This would appear to be a different four year time limit to Revenue's own in that, continuing the earlier example, employers would appear to have until 31 December 2023 to claim a refund related to the 2019 tax year.

Company Car BIK Measures

Finance Act 2019 introduced a new C02 based regime for company provided vehicles which took effect from 1 January 2023. Earlier this year, as a result of a significant number of employees experiencing increases in their income tax liabilities at the start of 2023 as a

result of these changes, the Minister introduced a relief of €10,000 to be applied to the original market value (OMV) of cars in Category A-D in order to reduce the amount of BIK payable. For Electric Vehicles, the €10,000 deduction was in addition to the existing deduction of €35,000, meaning the total relief was €45,000.

Finance (No.2) Act 2023 extends the temporary relief of €10,000 for vehicles in Categories A - D to 31 December 2024. The current reduction of €45,000 in OMV will continue to apply for Electric Vehicles until 31 December 2024. Additionally, the lower mileage limit in the highest mileage band will remain at 48,001 until 31 December 2024.

Personal tax thresholds, exemptions and credits

Finance (No.2) Act 2023 includes the increase of €2,000 to the Standard Rate Cut Off Point as announced in Budget 2024. This follows from the €3,200 increase from Budget 2023 and results in a tax saving of €400 for a single individual with income of €42,000 or more.

The Personal Tax Credit, Employee Tax Credit and Earned Income Tax Credit will each be increased by €100 to €1,875 for 2024. The Home Carer Credit is also increased by €100 to €1,800 and the Single Person Child Carer Tax Credit has also been increased by €100 to €1,750 from 2024. In addition, the Incapacitated Child Tax Credit has been increased by €200 to €3,500 from 2024.

There was also a small increase in the 2% threshold for USC from €22,920 to €25,760 to reflect the increase to the minimum wage that will take effect at the start of 2024. 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.

A welcome reduction in USC rates, the first in 5 years, will see the current 4.5% rate reduced to 4% from 2024. The reduced rate of 2% USC that applies to medical card holders, and those aged over 70 whose aggregate income does not exceed €60,000 has been extended for two years to the end of 2025.

Property Related Reliefs

The Help to Buy scheme has been extended for a further year to the end of 2025. The scheme has also been expanded to include properties purchased through the Local Authority Affordable Purchase (LAAP) scheme.

A temporary and targeted level of mortgage interest relief has now been introduced. The relief applies to mortgage holders with an outstanding mortgage balance of between €80,000 and €500,000 as of 31 December 2022. The relief will be available as a credit at the standard rate of income tax on the increase in mortgage interest paid in 2023 in comparison to 2022. The maximum value of any tax credit will be €1,250 per property.

An increase in the rental credit by €250 to €750 for individual renters, or to €1,500 for jointly assessed couples has also been included for the tax years 2024 and 2025. A further amendment to the rent tax credit has been has also been made to allow payments made by parents in respect of "digs" or rent a room accommodation for their children to attend an approved course, to qualify for the credit. This amendment applies retrospectively for the years 2022 and 2023.

In addition to renters, small landlords will also benefit from a newly introduced tax relief. Rental income of €3,000 will be disregarded at the standard rate of income tax in the tax year 2024 (with increases to €4,000 in 2025, €5,000 for 2026 and €6,000 for 2027). Importantly, a claw back of the full relief will arise if, within four years, the landlord removes any of the rental properties from the rental market. Please refer to our section on Property for further details.

We are here to help you

Finance Act (No.2) 2023 comes at a time when individuals, families and businesses are struggling with rising inflation and cost of living increases. There were some small wins for most taxpayers. However, employers are facing greater challenges ahead given the increase in employer PRSI from October 2024, additional compliance measures in relation to share options, as well as the introduction of Enhanced Employer Reporting Requirements from 1 January 2024.

Property

What Finance (No.2) Act 2023 means for the real estate sector

Finance (No. 2) Act 2023, as published on 19 October 2023, includes a range of legislative measures that will impact the broader real estate sector — from an increase in the Vacant Homes Tax to the provision of mortgage interest relief for one year, and much more.

In this insight, we analyse the key real estate related aspects of the Finance Act.

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

- The Help to Buy Scheme has been extended in its current form by one year to 31 December 2025.
- The rate of the Vacant Homes Tax has been increased from three times the basic local property tax (LPT) rate to five times that rate.
- The date for mapping in respect of assessing the Residential Zoned Land Tax liability will be extended by an additional year to ensure that stakeholders have sufficient opportunity to engage in the mapping process.
- The Defective Concrete Block Levy is being amended so that it will no longer apply to ready-to-pour concrete used in the manufacture of precast concrete products.

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- The Accelerated Capital Allowances (ACA) scheme for Energy Efficient Equipment (EEE) is being extended for a further two years to 31 December 2025.
- The rental tax credit available for a principal private residence will be increased from €500 to €750.
- A one-year mortgage interest tax relief will be introduced for certain homeowners whose mortgage interest payments on their principal private residence increased from 2022 to 2023.
- Relief at the standard rate of income tax will be available for residential rental income earned by individual landlords on properties that are kept in the rental market from 2023 to 2027.
- Technical amendments have been made to the legislation governing the payment of rent to non-resident landlords.
- Technical amendments to capital gains tax relief on properties purchased between 2011 and 2014.

Our analysis

Help to Buy Scheme

The enhanced Help to Buy scheme, first introduced in July 2020, has been extended in its current form and will now expire on 31 December 2025.

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%. With effect from 11 October 2023, applicants for the Local Authority Affordable Purchase (LAAP) scheme will also be eligible to apply for the Help to Buy scheme.

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 Act has extended the date for mapping by one year in respect of assessing the RZLT liability. The extension is to ensure that stakeholders have sufficient opportunity to engage in the mapping process.

Residential land subject to phased development under a local authority development plan or local area plan has been excluded from the application of the tax also.

Vacant Homes Tax

The rate of the Vacant Homes Tax (VHT) has been increased from three times the basic local property tax rate to five times that rate. No account is taken of the local adjustment factor, as decided by local authorities, in calculating the liability to VHT.

The VHT applies to residential properties occupied as a dwelling for less than 30 days in a chargeable (12 month) period. Each chargeable period commences on 1 November and ends on 31 October of the following year. This increased rate of VHT will take effect from the next chargeable period for VHT commencing on 1 November 2023.

Defective Concrete Products Levy

The Defective Concrete Block Levy has been amended so that it will no longer apply to ready-to-pour

concrete used to manufacture precast concrete products.

The Act has also introduced a refund scheme to allow those who paid the levy on such concrete between 1 September 2023 and 31 December 2023 to reclaim it.

The levy applies to a defined list of certain concrete products that are used for any purpose (i.e. residential or commercial development) and is calculated at 5% of the open market value of the concrete products.

Before making the first supply of a concrete product, chargeable persons are 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).

Accelerated Capital Allowances (ACA) Scheme for Energy Efficient Equipment (EEE)

The extension of the ACA scheme for EEE for a further two years to 31 December 2025 reiterates the Government's commitment to climate action.

Relief for Renters

The annual tax credit available on principal private residences will be increased from €500 to €750 for individuals, and €1,500 for married couples. In addition, parents who pay for their student children's rent-a-room or 'digs' accommodation will be able to claim a rental tax credit in respect of such lettings. The option to claim this tax credit will also be backdated for FY2022 and FY2021.

Mortgage Interest Relief

A one-year mortgage interest tax relief has been introduced for homeowners whose mortgage interest payments on their principal private residence increased from 2022 to 2023.

This relief will be available to LPT-compliant homeowners who have an outstanding mortgage of between €80,000 and €500,000. Relief will be available at the standard rate of income tax on the amount by which interest paid in 2023 exceeded interest paid in 2022, with the maximum relief capped at €1,250 (i.e. €6,250 at 20%). Individuals must file tax returns to claim the tax credit.

Certain anti-avoidance provisions apply for acquisitions of residential property from connected parties.

Rental Income Relief

Relief at the standard rate of income tax will be available in respect of residential rental income earned by individual landlords on properties kept in the rental market from 2024 to 2027. This relief only applies to tax compliant and Residential Tenancies Board (RTB) registered landlords, and does not apply to corporate landlords.

A tax credit equal to 20% of rental income (after allowing for loss relief) will be available, subject to the following maximum levels: €600 in 2024, €800 in 2025, and €1,000 in each of 2026 and 2027. Where a property is removed from the rental market during the four-year period, a full clawback of the relief claimed will arise.

Stamp Duty

The Act provides for an increase in the stamp duty exemption that applies on certain short-term leases of residential property. This amendment will increase the annual rent threshold from €40,000 to €50,000.

Non-resident Landlords

Technical amendments have been included to clarify that tenants making rental payments to non-resident landlords via a collection agent should not be obliged to operate withholding tax on such payments.

Retrofitting Scheme

The scheme, which allows for a deduction for certain retrofitting expenditure, has been expanded to include properties previously subject to certain rent controls.

Relief for Certain Disposals

The legislation which provides for relief from capital gains tax on the disposal of properties acquired between 2011 and 2014 has been amended to clarify that such properties must have been purchased for their market value without regard to any provisions that deem a transaction to have occurred at market value between connected parties.

Key actions businesses can take today

1. **Take action now**

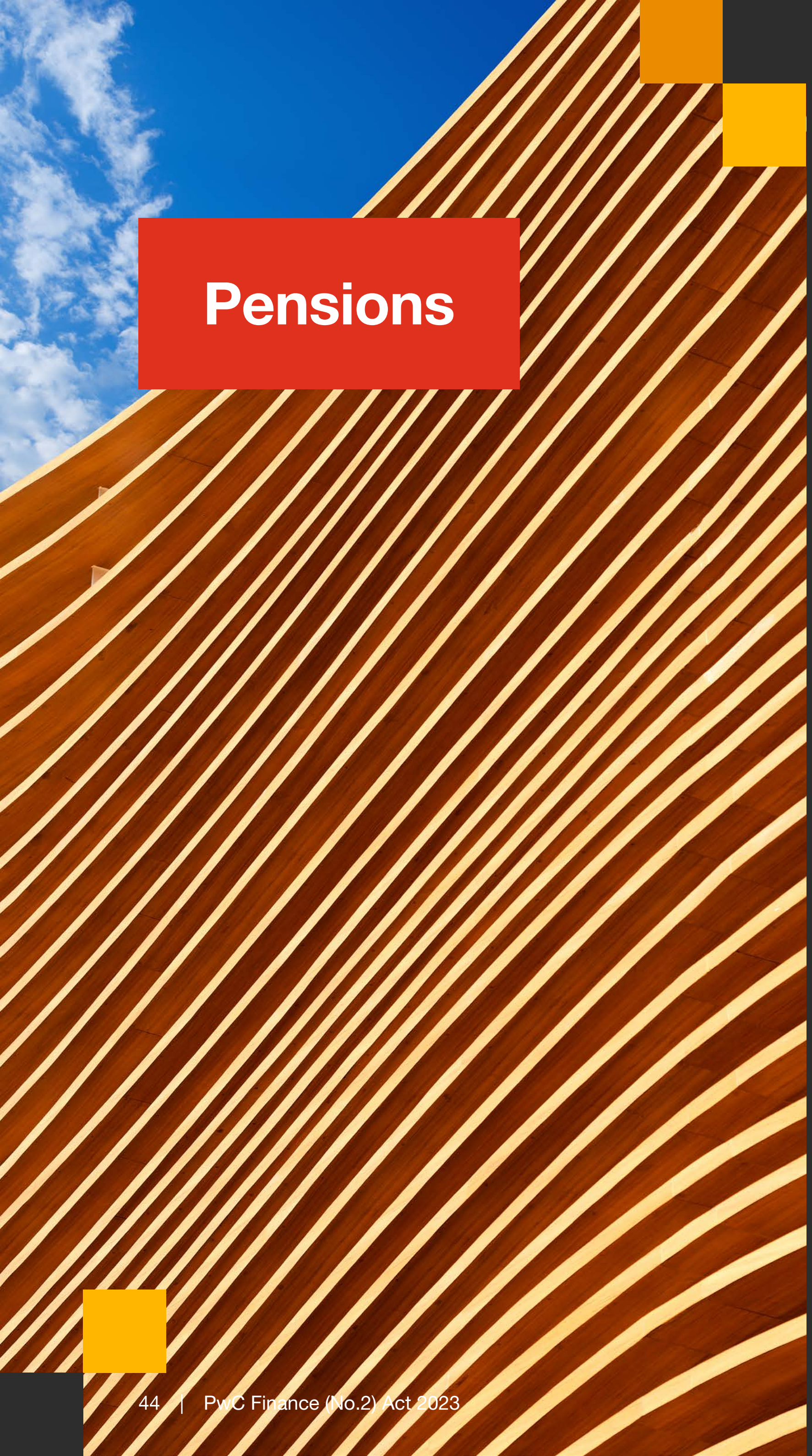
   The Irish tax system is complex and ever-changing. The Finance Act brings new and improved incentives to maximise tax savings for your business. Please reach out to your PwC contact to find out how we can help.

2. **Consider the impact on your business**

   The legislative changes will likely have an impact on your organisation. PwC's tax team is available to help you and your business understand how these changes will impact your business.

We are here to help you

The Finance Act has introduced a number of legislative changes which will impact the broader real estate sector. PwC's team of real estate tax experts are available to help you understand how such changes could impact your business. Please get in touch with us for further insights.



Pensions

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What Finance (No.2) Act 2023 means from a pensions perspective

The legislative measures included in Finance (No.2) Act 2023 pertaining to pensions were not announced on Budget Day. That said, the changes had been clearly signposted in various publications in the run up to the Budget via the Tax Strategy Group papers, and the Commission on Taxation and Interdepartmental Pensions Reform and Taxation Group recommendations.

While larger occupational pension schemes will remain a feature of the Irish pensions landscape, Finance (No.2) Act 2023 delivers a key milestone via the use of a PRSA as the sole alternative choice. The central role of PRSA structures into the future is also evidenced through the implementation of changes that permit the use of PRSA contracts for pension drawdown purposes beyond the age of 75.

The key pensions measures introduced in the Finance (No. 2) Act 2023 include:

- Amending the legislation such that no new Retirement Annuity Contracts (“RACs”) can be approved on or after 1 January 2024. This change does not impact contracts approved prior to this date.
- Amending the PRSA legislation to allow distributions after the age of 75 years. This is part of the process of implementing the “whole of life” PRSA product which allows individuals to both accumulate and then draw down their benefits until death.
- Anti-avoidance rules extended to all pension products to prevent the assets being used to provide loans and/or used

as security for loans to private type companies.

- Provides that in order for pension funds to avail of gross roll-up on rental income, the tenancy must be registered with the Residential Tenancies Board (RTB).

Our analysis

Retirement Annuity Contracts (RACs)

RACs are used by individuals in non-pensionable employment and/or by self-employed individuals to make pension contributions. A Personal Retirement Savings Account ("PRSA") is also open to these categories of individuals.

Finance (No. 2) Act 2023 provides that no new RAC contract can be approved on or after 1 January 2024. PRSAs operate in a similar fashion to RACs so all new pension contributions from 1 January 2024 will need to be made to a PRSA rather than a RAC. It is not clear if the change impacts top up payments to existing RAC contracts approved before 1 January 2024 or for continuing contributions to regular premium contracts approved before 1 January 2024.

For individuals who have invested in RACs, they can retain the existing contract or transfer to a PRSA. There are different investment rules and charging structures that apply to PRSAs, so it may be appropriate for existing RAC investments to be retained until drawdown (subject to the facts and circumstances applying in each individual case).

PRSAs

As part of the simplification process a whole of life pension was considered. Finance (No.2) Act 2023 removes an upper age limit restriction on payments from both new and existing PRSAs. Previously an upper age limit of 75 years applied. Drawdown can now continue from a PRSA after age 75 years for the rest of an individual's lifetime. This is part of the process of implementing the "whole of life" PRSA product.

The above amendment does not remove the requirement for a deemed crystallisation (against the lifetime limit of €2 million currently) of a PRSA at age 75 years where funds have not been accessed before reaching that age.

As part of the simplification process it was also considered whether no new Approved Retirement Funds ("ARFs") would be permitted. No change has been made to the ARF regime so new ARFs can continue to be opened; this position may be an area that will get attention in the future.

Exemption for Pension Funds:

Where approved pension funds, i.e. occupational pension plans, PRSAs, Pan European Pension Product and ARFs, invest in property, there is a general exemption from tax for any rental income received by the pension fund. From 1 January 2024 the exemption will only continue to apply where the tenancy is registered with the Residential Tenancies Board ("RTB").

Anti-Avoidance Rules:

Specific provision applied to ARFs where the ARF holder used the ARF assets for the purposes of a loan to certain companies or used the ARF as security for a loan to certain companies. The rules have now been extended to occupational pension plans, PRSAs and Pan-European Pension Products.

We are here to help you

The pensions landscape in Ireland is changing significantly with the introduction of the IORP II regulations, the effective withdrawal of One Member Arrangements, the anticipated introduction of Auto-Enrolment in 2024 and development of the whole of life PRSA product.

The pensions landscape remains complex with important decisions for employers and members to be made. We can guide you through this changing landscape.

VAT

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What Finance (No.2) Act 2023 means for VAT

Finance (No.2) Act 2023 introduces new legislation to set out the VAT treatment which will apply to unreturned deposits arising under the Deposit Return Scheme for bottles and cans which will come into effect in February 2024. The Act increases the thresholds for VAT registration and introduces new zero-rates for ebooks and audiobooks and for solar panels provided to schools. It also extends the current 9% rate for the supply of electricity and gas to 31 October 2024.

The key VAT measures introduced in Finance (No. 2) Act 2023

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

In summary, the key VAT measures introduced in the Finance Act include:

- An increase in turnover thresholds below which VAT registration is not required to €40,000 for services and €80,000 for goods
- Setting out the VAT treatment of deposits arising under the planned Deposit Return Scheme being introduced in Ireland from 1 February 2024. The Act provides that the operator of the scheme will be required to account for VAT on unredeemed deposits arising under the scheme. However, no other business in the supply chain is required to account for VAT on scheme deposits
- Zero-rate of VAT on ebooks and audiobooks being introduced with effect from 1 January 2024
- Zero-rate of VAT on solar panels provided to schools being introduced with effect from 1 January 2024
- Extension of the current 9% rate on electricity and gas from 31 October 2023 to 31 October 2024
- Farmer's flat-rate compensation being reduced from 5% to 4.8% with effect from 1 January 2024

VAT registration thresholds

As announced in the Budget, with effect from 1 January 2024 the thresholds below which a person is not obliged to register for VAT are being increased. The turnover thresholds (which relate to turnover in any continuous 12 month period) will be increased from €37,500 to €40,000 in respect of the supply of services and from €75,000 to €80,000 where at least 90% of the turnover is in respect of the supply of goods.

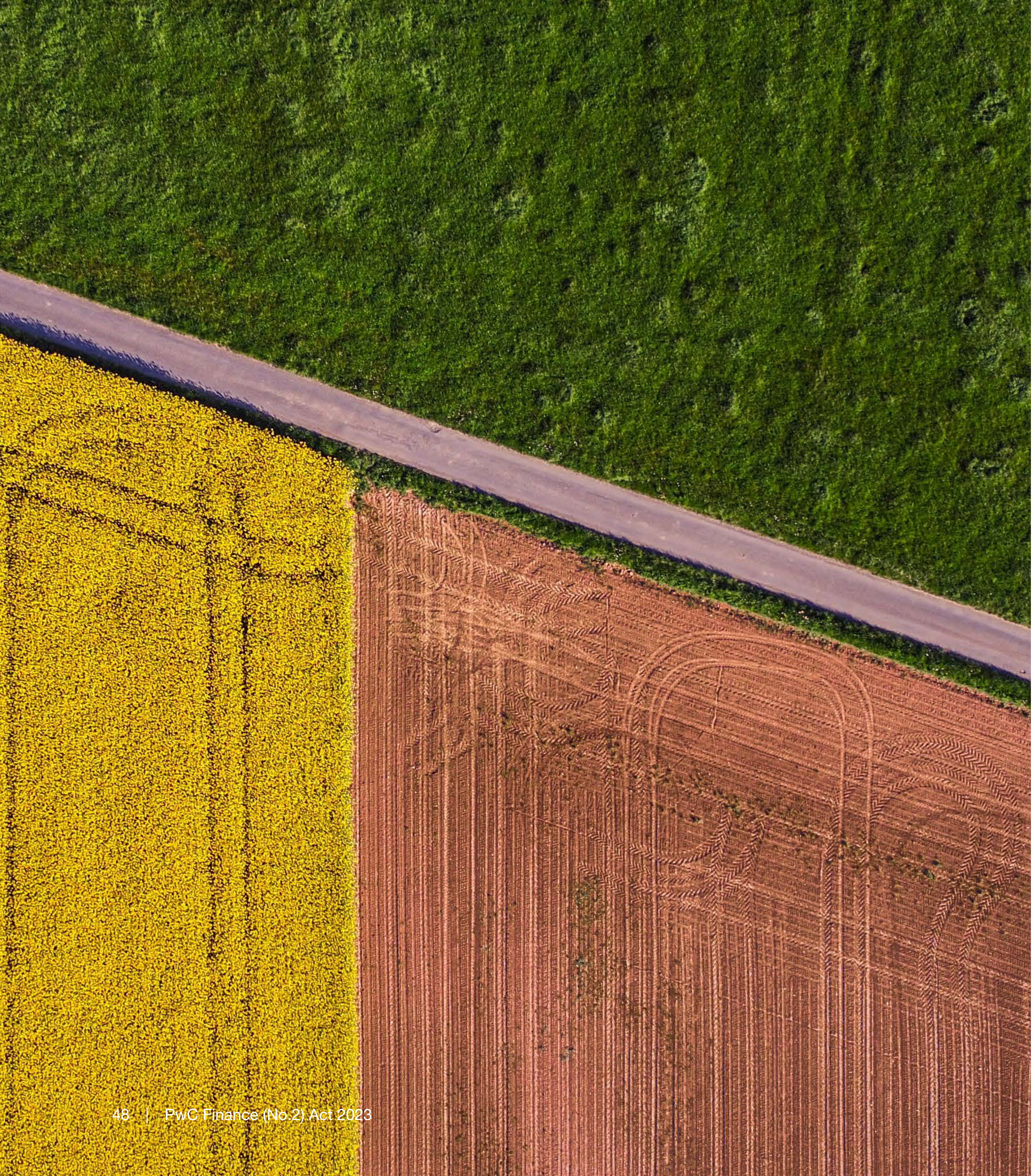
What this means for your business

This increase, although modest, in the entry point at which businesses are required to operate VAT should be a welcome measure for small business owners given the burden of VAT compliance costs on such businesses. However, it is worth noting that these thresholds do not apply in all circumstances. A nil VAT registration threshold applies, for example, to foreign traders operating in Ireland and businesses in receipt of taxable services from abroad.

Deposit return scheme

Ireland will be introducing a Deposit Return Scheme in February 2024. Under the scheme, when a customer purchases a plastic bottle, aluminium or steel can that features the Re-turn log, the customer will pay a small deposit in addition to the price of the drink. When that empty, undamaged container is returned to any retail outlet the customer will be refunded the deposit in full.

The Act sets out the VAT treatment of the Deposit Return Scheme and provides that the operator of the scheme will be required to account for VAT on unredeemed deposits. However, all other businesses in the supply chain will not be required to account for VAT on scheme deposits.



What this means for your business

It is welcome news that the requirement to account for VAT on unredeemed deposits of returnable containers under the Deposit Return Scheme will be limited to the operator of the scheme. However, other businesses in the supply chain will need to verify that their systems correctly exclude these deposits from the taxable amount in order to avoid potential overpayments of VAT.

Zero-rate of VAT on ebooks and audiobooks

Currently ebooks and audiobooks are subject to VAT at the rate of 9%. With effect from 1 January 2024, ebooks and audiobooks will be subject to the zero-rate of VAT. This brings the VAT rate on ebooks and audiobooks in line with the VAT rate on printed books.

What this means for your business

Suppliers of ebooks and audiobooks should ensure that their systems are updated to apply the zero-rate of VAT to these products with effect from 1 January 2024.

Zero-rate of VAT on supply and installation of solar panels on school buildings

Currently the supply and installation of solar panels to private dwellings is zero-rated for VAT purposes while 23% VAT arises on the supply of solar panels to other parties. As announced in the Budget Speech, the zero-rate is being extended to the supply and installation of solar panels to schools with effect from 1 January 2024.

What this means for your business

Suppliers of solar-panels should ensure that their systems are updated with effect from 1 January 2024 to apply the zero-rate of VAT. Schools considering purchasing solar panels may wish to delay purchases until 1 January 2024 to avail of the zero-rate of VAT.

Other VAT measures

Removal of ability to seek a determination of a VAT rate

The Act removes the ability of a taxpayer to seek a determination from Revenue on the VAT rate applicable to the supply of a good or service. In the explanatory memorandum accompanying the Act the rationale given for the removal of this section is that the provision is not used and is no longer considered necessary.

VAT exemption on supplies of emergency accommodation

The Act makes some technical amendments to the VAT treatment of emergency accommodation confirming that supplies of emergency accommodation are VAT exempt. This aligns Irish VAT legislation with the EU VAT Directive and should not result in any change to current practice.

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 and extended since that date. The rate was due to revert to 13.5% on 31 October 2023, however the Act extends this for one year until 31 October 2024. This change was anticipated having been set out by the Finance Minister in his Budget Speech.

Removal of the word “issuing” from the description of financial activities subject to VAT exemption

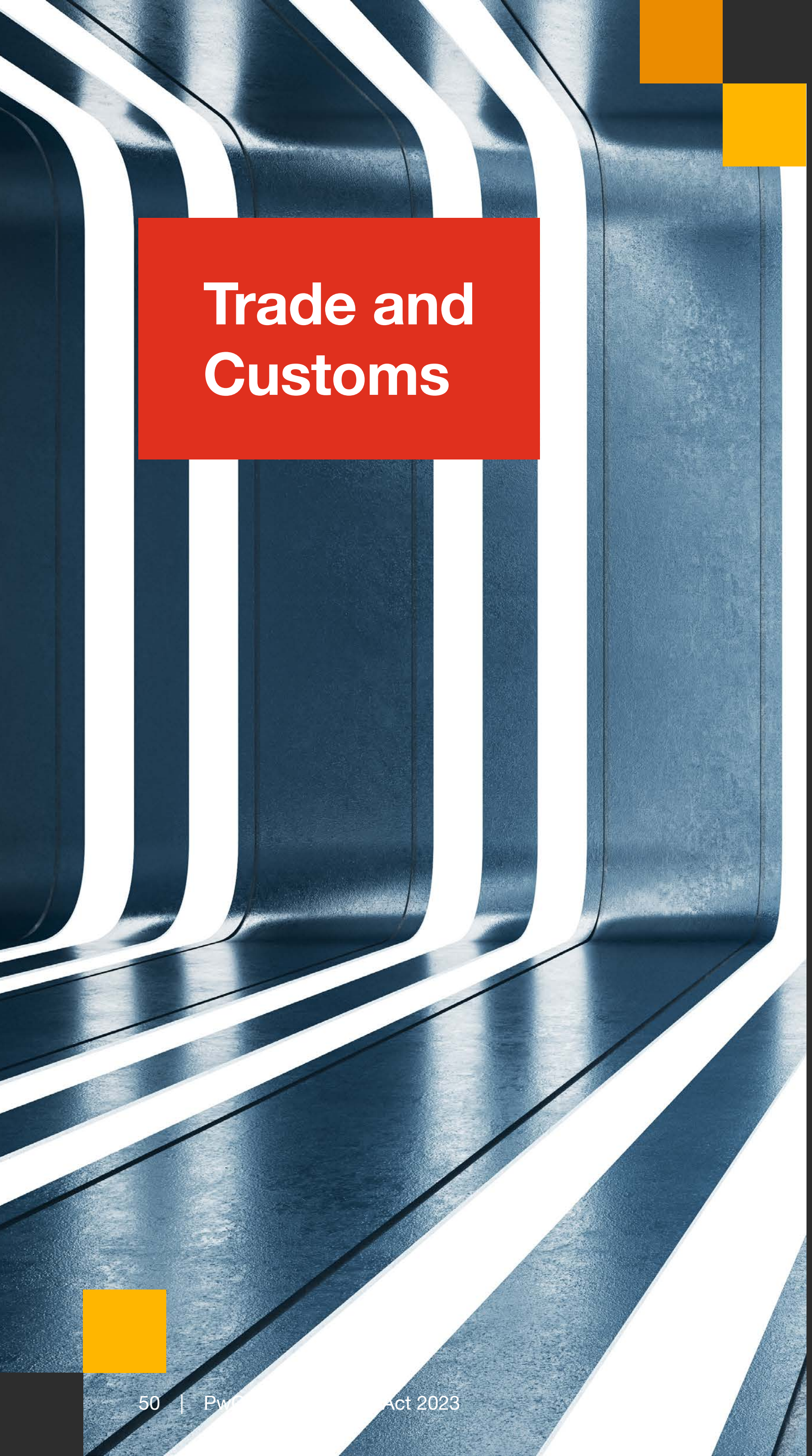
This amendment brings Irish legislation into line with the European VAT Directive. It is also consistent with European case law which has provided that the issuing of shares is not an economic activity.

Flat Rate Farmer’s Compensation Scheme

Further to Budget 2023 which reduced the farmer’s flat-rate compensation to 5.0% in order to avoid over compensation which would be a contravention of the EU VAT Directive, the Finance Act further reduces the rate to 4.8% with effect from 1 January 2024.

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 can help to distil the Finance Act 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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What Finance (No. 2) Act 2023 means for Customs and Excise

Finance (No. 2) Act 2023 confirms the provisions which were flagged as part of the Budget 2024 speech by the Minister for Finance.

In particular, it confirms the increase to Tobacco Products Tax introduced in the Budget.

The Act also confirms the Mineral Oil Tax (MOT) changes referenced in the Budget, namely the extension of the temporary MOT reductions on auto diesel, petrol and marked gas oil and the annual increase in carbon tax as set out in Finance Act 2020.

While not flagged as part of the Minister's Budget 2024 speech, the Act provides for an increase in the rate of excise duty on specific cider and perry products.

The key General Excise measures introduced in the Finance Act include:

- An increase in the excise duty applicable to a pack of cigarettes and other tobacco products.
- Confirmation of the deferral of the final tranche of mineral oil tax increases which were due to be implemented on 31 October 2023.
- Confirmation of the annual carbon tax increase as set out in Finance Act 2020.
- An increase in the rate of excise duty on cider and perry products.
- Confirmation of the extension of the Vehicle Registration Tax Relief for Battery Electric Vehicles from the end of this year to 31 December 2025.

Our analysis

Continued excise duty rate increase on tobacco products

In line with Budget 2024 and public health policy, the Act has confirmed the increase in excise duty applicable to tobacco products.

While previous Acts have steadily increased the rate of excise by 50c each year, Finance Act (No.2) 2023 sees the annual increase rise to 75c, with a pack of 20 cigarettes in the most popular price category now costing €16.75.

New excise duty rate for cider & perry

To ensure compliance with the EU Alcohol Directive, the excise duty rate for cider and perry which has an ABV of 8.5% or higher has been increased.

This increase brings the rate for such goods in line with the rate applicable to other fermented beverages and will be charged at:

- €424.84 per hectolitre for Still beverages, and
- €849.68 per hectolitre for Sparkling beverages.

Deferral of Mineral Oil Tax increases

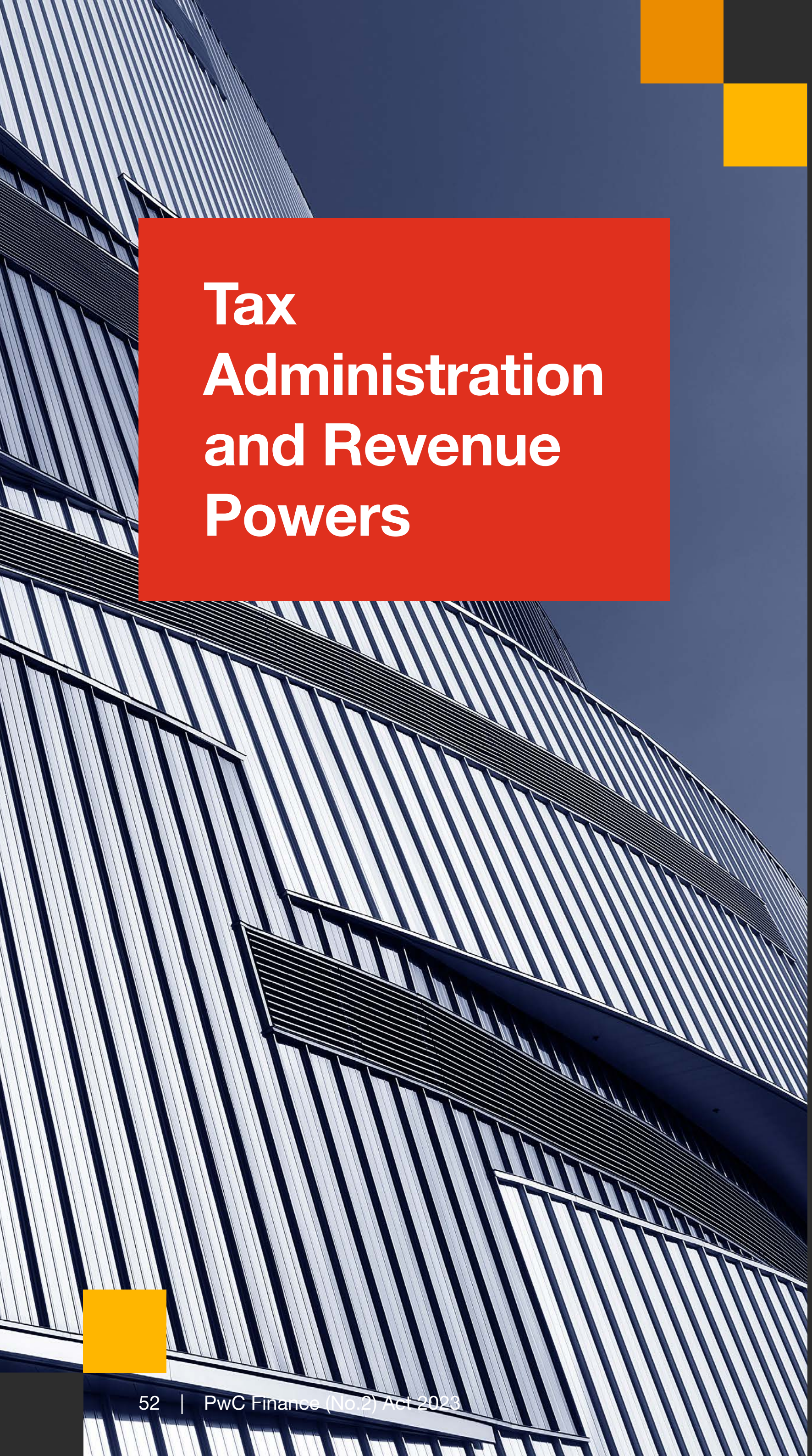
As per Budget 2024, an extension has been applied to the temporary MOT reductions. The existing temporary excise duty rate reductions on such fuels will be extended until 31 March 2023 and the excise increases will be introduced in two equal instalments on 1 April 2024 and 1 August 2024.

Extension of VRT relief for Battery Electric Vehicles

The Vehicle Registration Tax (VRT) relief of up to €5,000 on battery electric vehicles (BEVs) was due to expire at the end of this year. However, it has now been extended to 31 December 2025.

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 these provisions 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 (No.2) Act 2023 means for tax administration

The most significant administrative measure introduced in Finance (No. 2) Act 2023 is the transposition of DAC 7 which provides a legal basis for Irish Revenue and other EU tax authorities to conduct joint audits. Joint audits will be a game-changer for tax authorities and are a further evolution of increasing cooperation and transparency between jurisdictions on tax matters.

Taxpayers will need to ensure that they are ready for increased cross-border interventions which will present various procedural complexities to navigate.

The key tax administration measures introduced in Finance (No.2) Act 2023 include:

- The introduction of joint audits by Irish Revenue and the tax authorities of other EU Member States.
- Ensuring Revenue can apply penalties where a reporting financial institution is a partnership or a trust under the Common Reporting Standard (or "CRS"), DAC 2 and the Foreign Account Tax Compliance Act (or "FATCA").
- Clarification in relation to Revenue's powers to make enquiries in relation to returns filed under DAC 6 and further alignment of the Irish legislative provisions implementing DAC 7 regarding digital platform operators with the EU Directive.
- Correction of incorrect references and minor drafting errors in existing tax legislation.

Our analysis

Joint Audits

Revenue will have to facilitate other EU Member States in conducting joint audits in respect of periods beginning on or after 1 January 2024, as the Finance Act transposes Article 12a of DAC 7.

A joint audit is an administrative enquiry conducted by Irish Revenue and the competent authority (i.e. tax authority) of another Member State, linked to one or more persons of common or complementary interest to the two tax authorities.

Revenue must respond to any request from an EU Member State tax authority within 60 days. Revenue can reject the request where there are justified grounds for doing so. The legislation does not indicate what those justified grounds might be; it remains to be seen whether, for example, a lack of resources might justify a refusal to agree to a joint audit request.

The legislation does not contain any provision for a taxpayer to request a joint audit.

The legislation allows Revenue to authorise a foreign tax official to be a 'nominated officer' only for the purposes of a joint audit. The nominated officer can accompany Revenue officers during the joint audit, interview individuals and examine records. The nominated officer will be furnished with a written authorisation by Revenue, which must be produced to the taxpayer on request. Revenue must appoint an authorised officer to supervise and coordinate the joint audit.

Revenue and the other foreign tax authority must endeavour to agree

- the relevant facts and circumstances
- the tax position of the taxpayer based on the results of the joint audit.

On conclusion of the joint audit, Revenue's authorised officer and the nominated officer must prepare a final report, detailing their findings and the issues on which they agree in a final report and furnish to the taxpayer a copy of the final report within 60 days of its issue.

Importantly, the applicable procedural law for all officials involved in a joint audit is the law of the country in which the audit takes place.

The nominated officer cannot perform any function that exceeds the scope of their functions under the laws of the Member State that requested the joint audit. Accordingly, the nominated officer must comply with whichever are the stricter of the rules and limits imposed by Irish law or by the laws of the requesting Member State.

This may result in Revenue and, on appeal, the TAC and the Irish courts, having to consider and opine on the laws of other EU Member States in order to ensure that a foreign tax official is not exceeding the scope of their functions under the laws of the requesting Member State.

As part of joint audits, a taxpayer's right to assert privilege over professional advice of a confidential nature given by a professional to a client, legal professional privilege, and privilege over medical information, is expressly recognised.

A taxpayer subject to a joint audit has the same rights and obligations as they would in the case of an audit carried out by Revenue only, including rights in relation to complaints, reviews, confidentiality of taxpayer information and appeals.

These provisions provide a legal framework for joint audits for the first time in Ireland. This is likely to lead to an increase in cross-border audit activity and will mean greater work for Revenue, both in dealing with inbound joint audit requests and in supervising and conducting joint audits. It remains to be seen how such joint audits will run.

It must be noted that while the tax authorities will endeavour to agree facts and issues arising from a joint audit, there is no obligation on them to agree on the issues raised during a joint audit and there is no obligation for the tax authorities to include in the final joint audit report the points on which the tax authorities did not agree. This may mean that, at the end of a joint audit, both tax authorities will still need to consider further at a domestic level issues raised during the joint audit.

Clarification on Revenue's powers regarding DAC 6

Section 83 of the Act clarifies Revenue's powers regarding regulating DAC 6 returns by allowing Revenue to make enquiries in relation to a DAC 6 return to ensure that the return was correct and complete, without having to enter the premises of the intermediary or relevant taxpayer. This means that Revenue can now issue letters of enquiry.

Prior to this amendment, Revenue was entitled to enter a premises to make enquiries, but there was no provision for them to do so without entering the premises of the intermediary or relevant taxpayer.

Section 83 also seeks to further align the Irish legislative provisions implementing DAC 7 with the EU Directive, by clarifying Revenue powers with regard to DAC 7 and clarifying the information to be provided by a platform operator when registering with Irish Revenue DAC 7.

Penalties for reporting trusts and partnerships

Section 82 of the Act ensures that, where a reporting financial institution is a trust or a partnership, it is the persons behind the trust or partnership who are liable to a penalty under the provisions relating to the CRS, DAC 2 and FATCA. Depending on the nature of the trust, the person liable to penalties will be either the trustees, the management company or another person who is authorised to act on behalf of the trust and habitually does so.

In the case of a partnership it will be the "precedent partner". The inclusion of precedent partner in this section ensures that Revenue will always be able to pursue a person resident in the State for penalties.

The provisions apply until such time as the person liable is identified as someone other than a partnership or a trust. This means that, once a person other than a trust or partnership is identified as being liable to the relevant penalty, this provision no longer applies and the liability of the trustee, management company, precedent partner etc. falls away.

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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