MAPLES GROUP

UPDATE

Irish Finance Bill 2020 – Key Developments for Irish and International Business

The Irish Finance Bill 2020 has now been published and contains the legislation to implement the Irish Budget measures of 13 October 2020[1] and has also introduced certain new measures. The Bill will now proceed through the Dáil (the Irish Parliament) and will be enacted into law before the end of the year.

The Bill contains a number of technical tax measures which will be relevant to Irish and international business. In particular, it continues the recent trend of incorporating certain international OECD and EU tax measures into Irish law and these are addressed in more detail in this update.

EU Anti-Hybrid Rules

Ireland introduced anti-hybrid rules as required by the EU Anti-Tax Avoidance Directive (ATAD) from 1 January 2020. The Finance Bill contains a number of helpful technical clarifications as to how the anti-hybrid rules operate. In particular, these amendments clarify how the test of association by virtue of consolidation is intended to operate, how inclusion operates with respect to payments made to an entity which is exempt from tax, and that incurring a CFC charge can remove a payment from the scope of the rules.

Most significantly, the Finance Bill has introduced an amendment which provides that transactions entered into between enterprises which are "associated" (as defined for the purpose of the anti-hybrid rules) at the time the transaction was entered into or formed, but which are not so associated:

a) at the time the payment arises; and
b) at the time a deduction in respect of that payment arises

will fall outside the scope of the anti-hybrid rules. This carve out only applies where it is reasonable to consider that the arrangement which results in those enterprises ceasing to be associated was entered into for bona fide commercial reasons. It does not form part of any arrangement where the main purpose, or one of the main purposes of which, is to avoid the application of the anti-hybrid rules. This is a welcome amendment because this point was unclear previously.

Transfer Pricing

The Finance Bill introduces changes to the Irish transfer pricing rules that were introduced under Finance Act 2019. Those rules broadened the scope of Irish transfer pricing to include non-trading transactions for the first time, with an exemption for certain domestic transactions.

In the absence of published Revenue guidance, there were some differing views in the market on the application of the legislation to those domestic transactions and the

[1] https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/10/Irish-Budget-2021-the-Impact-on-Irish-and-International-Business

changes are intended to provide some clarity on its application.

In particular, the Finance Bill outlines how certain interest-free loan transactions are to be treated and when the exemption will apply to such arrangements. This is welcome as it was highlighted as an area of some confusion under the existing rules. It is expected that further Revenue guidance on transfer pricing will be released before the end of the year.

EU Mandatory Disclosure Rules (DAC6)

The Finance Bill made a number of technical amendments to the EU mandatory disclosure rules (DAC6), most notably putting a number of matters included in draft Revenue guidance on a legislative footing. In particular the Bill seeks to limit the unnecessary duplication of reporting transactions across the EU by allowing for an intermediary to make use of a filing exemption where they have evidence that a filing has been made by an intermediary in another Member State. In addition, the notification requirements for intermediaries, in particular lawyers, seeking to rely on legal professional privilege have been eased.

The Finance Bill also provides for a statutory basis for the exemption of a number of arrangements previously exempted from the application of Hallmark A3, which relates to the use of standardised documentation and structures, by draft Revenue guidance. While this will provide greater certainty for many taxpayers, the list of specific schemes within the Bill is less exhaustive than the draft Revenue guidance, and the rationale for the exclusion of some of these exemptions is unclear.

VAT

From a VAT perspective, the main change was the well-flagged reduction in the VAT rate from 13.5% to 9% for the supply of certain goods and services in those sectors of the economy considered to have been most severely impacted by COVID-19. The reduction applies for the period from 1 November 2020 to 31 December 2021 and will apply to the supply of food and drink in restaurants and other catering settings, holiday and guest accommodation, admission to certain cultural and entertainment attractions including cinemas and museums, the supply of certain printed material such as brochures and catalogues and also to hairdressing services.

The other significant change is the introduction of a new section giving Irish Revenue the ability to require the appointment by a non-Irish trader of a tax representative in Ireland or another EU Member State. The representative would have joint and several liability for any Irish VAT liabilities of the non-Irish trader. This does not apply to traders who pay VAT in Ireland under the Mini One Stop Shop (MOSS) regime. This effectively implements Articles 204 and 205 of the recast EU VAT Sixth Directive.

The Finance Bill also included a number of technical amendments including a number of changes which aim to ensure certain definitions in the Irish VAT legislation are aligned with EU VAT law and caselaw of the European Court of Justice.

Irish Real Estate

Shares deriving value from immovable property and cancellation schemes of arrangement

Section 46 Finance Bill 2020 has amended section 31C of the Stamp Duties Consolidation Act 1999 ("SDCA") by inserting a new subsection (7A). This new subsection interacts with section 31D SDCA and prioritises section 31C over section 31D in certain circumstances.

Section 31C SDCA is an anti-avoidance measure which was introduced in Finance Act 2017 in tandem with the increase in stamp duty on non-residential property. Section 31C imposes an additional charge on certain share transfers in a company deriving its value from Irish non-residential land, exposing the transfer to stamp duty at 7.5% of the gross value of the land. The measure was designed to deter the type of tax avoidance arrangement where the company itself is sold (attracting a 1% rate of stamp duty on shares) instead of a direct sale of the company's property (attracting a 7.5% rate of stamp duty on non-residential property).

Section 31D SDCA similarly contains an anti-avoidance measure and imposes a stamp duty charge of 1% where there is an agreement to acquire a company using a court-approved scheme involving the cancellation of existing shares and the issue of new shares as consideration. Section 31D SDCA deems that for any consideration paid to the shareholders for the cancellation of shares in the target company, a stamp duty of 1% is liable to be paid by the acquirer.

New subsection (7A) provides that a transaction chargeable under section 31D that would, in the absence of that subsection, be chargeable under section 31C is now chargeable only under section 31C. Therefore, any consideration paid to the shareholders for the cancellation of shares in a company deriving its value from Irish land will now be chargeable to stamp duty at a rate of 7.5% and not 1%.

The Stamp Duty Residential Development Refund Scheme

Section 48 Finance Bill 2020 amends section 83D SDCA which provides for refund of a portion of the stamp duty paid on acquisition where land is developed for residential purposes. The scheme was due to expire on 31 December 2021 but has been extended to operations commenced by 31 December 2022. The time allowed between commencement and completion of a qualifying project is also extended by six months to two-and-a-half years, meaning the last possible eligible completion date will be 30 June 2025.

The Help to Buy Scheme

The Help to Buy Scheme which was set to expire on 31 December 2020 has been extended by 12 months to 31 December 2021. As part of the July Government Stimulus measures, the relief under the Scheme was enhanced to give first time buyers a tax rebate of 10% (up from 5%) of the purchase price of the new home or of the completion value of the property in the case of self builds up to a maximum of €30,000 (up from €20,000).

Corporation Tax

Specified Intangible Assets

In the Budget announced on 13 October 2020, a financial resolution was passed in order to amend section 288(3C) Irish Taxes Consolidation Act 1997 (TCA) and it provided that all intangible assets acquired on or after 14 October 2020 will be subject to a balancing

charge on a subsequent disposal. Section 17 of the Finance Bill reflects the changes included in the aforementioned financial resolution.

Prior to this amendment, a balancing charge, or clawback of allowances made, did not arise where the intangible asset was held for more than five years. Although this change only applies in respect of specified intangible assets acquired on or after 14 October 2020, the previous rule in place before this amendment continues to apply to any specified intangible assets acquired prior to this date which will continue to fall outside the scope of a balancing charge, where they have been held for more than five years.

This change and its immediate implementation was unexpected given that the Irish Government has previously looked to engage with industry when considering amendments to the intellectual property tax regime. As part of his Budget speech, the Minister for Finance indicated that this measure was being introduced to ensure that Ireland's tax regime for intellectual property is fully consistent with international best practice. This is important particularly given the current OECD BEPS 2.0 project and other related international developments.

Knowledge Development Box (KDB)

Section 21 of the Finance Bill reflects the Minister's confirmation on Budget day that the KDB will be extended for a further two years, until 31 December 2022. The KDB, an OECD-compliant intellectual property regime, was introduced in 2016 and provides an effective reduced rate of corporation tax of 6.25% for qualifying income derived from 'qualifying expenditure' in the EU by an Irish tax resident company. The extension of the relief provides a clear indication of the Government's commitment to the development of Ireland's indigenous knowledge economy.

Controlled Foreign Companies (CFC)

The Finance Bill introduces changes to the Irish CFC rules such that certain exemptions to the rules (specifically the "effective tax rate exemption", "the low profit margin exemption" and the "low accounting profit exemption") are denied in circumstances where for an accounting period, the CFC is resident in a jurisdiction that is listed on the EU list of non-cooperative jurisdictions.

Exit Tax

The Irish exit tax rules provide an option to defer payment of the exit tax charge where assets are transferred to an EU / EEA country. Where an election is made to apply this option the tax is payable in six equal instalments at yearly intervals. A technical amendment to the operation of interest with respect to this deferred tax was introduced by way of a financial resolution effective from 14 October 2020. The Finance Bill includes a similarly effective provision which will be enacted into the Irish Taxes Consolidation Act, 1997 with indefinite effect.

Employment Related Securities Reporting

The Finance Bill provides for mandatory reporting of information by employers in relation to awards of shares to directors and employees where such an award is not already caught within the requirement to report under another provision. This essentially makes the obligation to report a catch-all requirement. It also extends the scope of reporting to include awards given in the form of a cash equivalent or where a discount on shares is provided to the employee or director. The Finance Bill also broadens the existing

reporting e-filing requirements for awards under share plans to restricted share, forfeitable share and convertible securities plans in a format to be prescribed by Irish Revenue.

Encashment Tax

Section 16 of the Finance Bill provides for an increase in the rate of encashment tax from 20% to 25%. This change brings the rate of encashment tax in line with the rate of DWT (Dividend Withholding Tax) which was increased to 25% in Finance Act 2019. Broadly, encashment tax must be deducted by Irish banks and other Irish companies on certain payments received from a non-Irish resident body and paid to Irish residents.

The proposed amendments in Section 16 also introduce an exemption from encashment tax for companies who are or will be within the charge to corporation tax on dividend income paid. Both the increased rate and exemption come into effect in respect of payments made on or after 1 January 2021. Additional requirements are also provided for in the Finance Bill in respect of those responsible for the collection and return of encashment tax to make automatic returns of certain information to Revenue. However, the introduction of these reporting requirements is subject to the making of a Ministerial order.

Further Information

If you have any questions or require further information on the measures highlighted above, please contact a member of the Maples Group Tax team:

Dublin

Andrew Quinn
+353 1 619 2038
andrew.quinn@maples.com

William Fogarty
+353 1 619 2730
william.fogarty@maples.com

Lynn Cramer
+353 1 619 2066
lynn.cramer@maples.com

David Burke
+353 1 619 2779
david.burke@maples.com