MAPLES GROUP

UPDATE

Irish Budget 2022 – Implications for International and Irish Business

Introduction

The Irish Minister for Finance presented the budget for 2022 on 12 October 2021. This is the annual statement and reflection on the Irish government's fiscal and economic strategy.

Here we examine the tax measures contained in the budget and their implications for international and domestic business. Some are well flagged, such as the new EU interest limitation rules, others are new, such as welcome measures to encourage growth and technology companies. Tax and economic measures related to climate change and sustainability was also a key theme, and will continue to be in the years up to the 2030 international targets and beyond.

This year, perhaps the most significant tax development occurred prior to the budget. As part of the new OECD International Tax Agreement, Ireland announced that it will increase its longstanding 12.5% corporation tax rate to 15% for large multinationals with an annual revenue in excess of €750m, perhaps from as early as 2023. Smaller companies will remain at the 12.5% rate. The Minister said in his budget speech:

"*The government has taken the historic decision to join the global political agreement on the future of corporate taxation. It maintains our tax competitiveness and strengthens our position in the world. The agreement, which we shaped, is balanced and represents a fair compromise. It provides long-term certainty for businesses and investors*."

The introduction of this change was not dealt with in detail as part of the budget, but will be a measure that will be implemented over coming years. It is likely to require an EU Directive which will then be transposed into Irish law.

In terms of the economic backdrop, the Minister struck a cautious but optimistic note, noting that while Ireland entered COVID-19 with a budgetary surplus, the level of national debt has grown to address the spending challenges associated with the response to the pandemic. Economic growth, consumer spending, tax revenues and employment figures are all moving in a positive direction, as measured by EU and international comparables.

EU Interest Limitation

The Minister reiterated that Ireland will implement the interest limitation rule as required by the EU Anti-Tax Avoidance Directive ("ATAD"). Our recent webcast[1] on the potential impact of these new rules provide more detail on this. The budget confirms that the rule will apply for accounting periods commencing on or after 1 January 2022. Basic additional details were provided including restating that the interest limitation rule will seek to limit the maximum net interest deduction for companies to 30% of earnings before tax and before deductions for net interest expense, depreciation and amortisation (EBITDA).

[1]https://gateway.on24.com/wcc/eh/2215060/lp/3463204/new-eu-interest-limitation-rules-in-ireland%3A--update-on-latest-developments/

As such, it will be particularly relevant to companies that are highly leveraged. It could also impact qualifying companies under Section 110 of the Taxes Consolidation Act which rely on their ability to take a deduction for results dependent interest.

In line with ATAD, the Government intends to incorporate certain exclusions and reliefs in relation to the interest limitation rules. This includes the €3m de minimis exemption as well as the exemptions for standalone entities, legacy debt (pre-17 June 2016) and certain long-term infrastructure projects. The budget summary also flags the ability for companies to apply the restriction on a single entity or local group basis. These provisions, which will be published in Finance Bill 2021, will be closely scrutinised.

Investment and Entrepreneurs

The Minister announced that the Employment Investment Incentive ("EII") scheme will be extended until 2024 and would be modified. The most significant of these changes is to open up the scheme to a wider range of investment funds in order to attract more investors into the scheme. This change reflects a number of representations made as part of the EII consultation process earlier in 2021. We understand that it is intended to allow funds which are appropriately established to act as collective investment vehicles for investors into EII funds. Previously the funds which could access EII relief were restricted to specific forms of trust however it is hoped this will be extended forms of limited partnerships. The detail of these changes will be announced in the Finance Bill. The Maples Group has been involved in this initiative since its commencement and will continue to monitor the ongoing process.

Other changes announced include allowing investors to redeem their capital without penalty and to allow companies greater flexibility in how and when they deploy the capital.

Irish capital gains tax rates have not been altered. This will continue to represent a source of discontent to Irish based entrepreneurs who are taxed at 33% on gains generally.

The current relief from corporation tax for start-up companies in their first three years of trading will be extended for a period of five years until 31 December 2026.

Investment Funds

The Minister confirmed that Finance Bill 2021 will complete the transposition of the ATAD 2 anti-hybrid rules, through the introduction of new anti-reverse-hybrid rules. The changes are potentially significant to Irish funds and investment vehicles established as partnerships, trusts or common contractual funds. The provisions will bring tax transparent entities within scope of Irish tax where the entity is 50% or more owned / controlled by entities resident in a jurisdiction that regard it as tax opaque and, as a result of this hybridity, double non-taxation occurs.

In such cases, the profits of the Irish entity which would otherwise have gone untaxed due to hybridity will be brought into the charge to tax in Ireland, under corporation tax rules.

The budget materials highlight that "Collective Investment Vehicles" that are widely held, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country of establishment are not within scope of the measure. These concepts have been the subject of a consultation and the Finance Bill 2021 is expected to provide greater clarity on the meaning of these terms.

Corporation Tax

A new tax credit was announced for the digital gaming sector which will take the form of a refundable corporation tax credit for qualifying expenditure incurred in the design and development of digital games. The tax credit will be available at a rate of 32% of qualifying expenditure with a maximum limit of €25m per project. A per project minimum spend requirement of €100,000 will also apply.

The relief will only be available for projects on digital games which have been issued with a cultural certificate from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, but will be accessible for expenditure incurred on an annual basis, meaning that it will not be necessary to wait until the conclusion of a project in order to avail of the relief.

The intention of the new tax credit is to enhance Ireland's competitiveness as a jurisdiction for the expanding digital gaming sector. Similar to the existing Section 481 Film Tax Credit, it will be necessary for a digital game company to sign an undertaking in respect of quality employment in order to be eligible for the relief.

The Minister also announced that corporation tax relief for certain start-up companies will be extended for a period of five years until 31 December 2026. The relief is intended to support start-up companies in their initial years of trading and reduces the corporation tax payable on profits and gains of the new trade. It was also announced that the relief will be amended such that it will be available for the first five years of trading, rather than the current three year period.

The Bank Levy was due to expire in 2021 but is being extended for another year. It will not be applied to the institutions which are exiting the market and it was stated that the effected institutions will not pay more in 2022 than they did in 2021.

Real Estate

The Minister announced the introduction of a new zoned land tax to encourage residential construction. The tax will apply to land which is zoned residential or which is zoned for a mix of uses, including residential use which is serviced, but has not yet been developed for housing. The tax will be based on the market value of the land and will be at a rate of 3% at the outset. There will be a number of exclusions from the tax such as dwelling houses and their gardens, with other exemptions to be published in Finance Bill 2021. The Minister also noted that this tax will replace the vacant site levy when it comes into operation.

The introduction of the tax will be gradual and there will be a two-year lead-in time for land zoned before January 2022, and a three-year lead-in time for land zoned after January 2022. The new zoned land tax sits alongside similar initiatives such as the stamp duty refund scheme introduced in prior years, and both are intended to encourage construction. There had been speculation that there would be a tax on windfall gains from re-zoned land, but this route has not been pursued at present.

The Minister announced that the Help-To-Buy scheme which allows for relief up to €30,000 for first time buyers will be extended until 31 December 2022. The Minister also noted that there will be a full review of the scheme during the course of 2022.

The Minister announced a three-year extension of the relief for landlords on certain pre-letting expenses to encourage landlords to return empty properties to the market as quickly as possible. The relief will now apply until the end of 2024.

Climate Change and Sustainability

Action on climate change is a key part of the budget agenda. Key climate and environmental measures introduced include an increase in the carbon tax and the allocation of €202mfor home energy upgrades or 'retrofitting' and €174m for energy efficiency measures.

In the budget, the Government has introduced a definition of "Green budgeting". This is a process which seeks to consider the impacts of fiscal policy on the transition to a more sustainable, environmental and climate friendly economy. This emphasises the Government's view of both the short and long-term importance of sustainability in 2022 and beyond, and will also be important in terms of the growing significance of Environmental, Social and Governance (ESG) trends in business.

The Minister announced a carbon tax rise of €7.50 from €33.50 to €41 per tonne of carbon dioxide emitted. This is to fund the fuel allowance and applies from 12 October 2021 for auto fuels and from 1 May 2022 for all other fuels.

To encourage households to generate electricity, a tax disregard (€200) is being introduced in respect of personal income received by households who sell residual electricity that they generate back to the grid.

There were changes to Vehicle Registration Tax (VRT) rates and the extension of relief for Battery Electric Vehicles.

The Accelerated Capital Allowance scheme for Energy Efficient Equipment, which allows an accelerated deduction when businesses invest in highly energy efficient equipment has been amended to prohibit equipment directly operated by fossil fuels from qualifying for the scheme. Measures are also introduced to include hydrogen powered vehicles and refuelling equipment.

The budget is considered to be only one of a number of components of the Government's climate change agenda with the carbon budget to be announced, in addition to a revised climate action plan due later in October.

Aviation

The Minister announced that an amendment will be introduced in the Finance Bill 2021 to exclude non-Irish resident air crew from Irish taxation where certain conditions are satisfied. Currently, non-Irish resident flight crew are liable to Irish income tax when they work aboard an aircraft managed by an enterprise operating in Ireland. They may not actually perform any activities in Ireland. This provision had been the subject of significant litigation in 2019, as Irish based airlines sought to dispute the charge to tax. The tax position of such crew will now be greatly simplified.

VAT

The reduced 9% VAT rate for the hospitality and tourism sector, will remain in place to the end of August 2022.

Further Information

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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