MAPLES GROUP

UPDATE

Irish Finance Bill 2022 – Implications for International and Irish Business

The Irish Finance Bill 2022 (the "Bill") was published on 18 October 2022. This summary highlights the most significant proposed changes for Irish and international investors, corporates and financial institutions including:

a) There are changes to the tax reporting obligations of investment limited partnerships and common contractual funds;

b) The VAT recovery position of Irish based managers of non-EU funds is being changed. There are also changes to the VAT treatment of services to Irish Section 110 companies holding aircraft, rolling stock and other forms of plant and machinery;

c) There are amendments to the interest limitation rules which are relevant to property developers as well as some helpful clarifications on the operation of the interest limitation rules;

d) Companies engaged in research and development may be impacted by the changes to the Knowledge Development Box, the R&D Tax credit and the treatment of patent sales;

e) Companies engaged in digital sales should note the introduction of significant reporting obligations which will impact online businesses; and

f) There are welcome changes to the Irish Key Employee Engagement Programme ("KEEP") share option scheme which are relevant to SME and start-up businesses.

Investment Funds

Reporting provisions

a) The Bill proposes a change to the reporting regime for Common Contractual Funds ("CCFs") and Investment Limited Partnerships ("ILPs"). CCFs and ILPs are currently required to provide a limited annual statement to the Irish Revenue Commissioners. The new provisions require reporting of additional details concerning the assets, net asset value and business activities of the fund. There are penalties of up to €3,000 if the return is incomplete or not made. Managers and administrators of such funds should review the terms of agreements with tax reporting agents to ensure that responsibility for this new reporting is clearly identified.

b) The Bill proposes to amend section 743 of the Taxes Consolidation Act ("TCA"). It clarifies that an Irish unit trust can have a non-Irish resident trustee company. This reflects long-standing Irish Revenue practice in this area. The general administration of the unit trust must be carried on in Ireland and the trustee, if not an Irish resident, must be an Irish branch of a company resident in another EU or EEA Member State. This is a positive clarification and aligns with the EU principles on freedom of establishment and freedom of movement of capital.

VAT Treatment of Management Services Provided to EU Funds

a) Management and administration services provided to Irish regulated funds are generally VAT exempt in Ireland. The Bill extends that exemption to undertakings for collective investment in transferable securities ("UCITS") and alternative investment funds ("AIFs") which are authorised by any other EU Member State.

b) This impacts the VAT recovery position of alternative investment fund managers, investment managers, investment advisors and administrators based in Ireland who provide services to non-Irish EU established funds. They will not be able to recover their VAT on costs related to such services. The position as regards the provisions of services to non-EU established funds has not changed.

c) The Bill also provides for the removal of the VAT exemption for 'agency services' relating to the exempt management of investment funds and Section 110 companies to bring Irish law in line with EU VAT law.

Banking and Structured Finance

VAT Exemption and Section 110 Companies

a) Administration and management of a "qualifying company" for the purposes Section 110 TCA (a "Section 110 company") are generally exempt from Irish VAT. The Bill proposes a change to this VAT exemption where the assets of the Section 110 consist of plant and machinery, such as aircraft, rolling stock or maritime assets. If enacted, this will bring services of administrators and managers of such companies within the charge to Irish VAT, resulting in additional cost in some cases.

b) Irish-based service providers will have to charge VAT on their fees. If the service provider is outside of Ireland, the Section 110 company will be required to operate the "reverse charge" mechanism and account for VAT on fees to Irish Revenue. If the Section 110 company makes taxable or zero rated supplies of leasing services then the company will be able to recover VAT. There is no impact on the VAT exemption for Section 110 companies holding other forms of qualifying assets, including financial assets and commodities.

Interest Limitation

a) The Bill contains amendments to the interest limitation rules introduced in Finance Act 2021 ("ILR"). The most significant change relates to real estate projects; there are relieving provisions in the ILR for qualifying long-term infrastructure projects. The Bill extends the definition of "long-term infrastructure projects" to include the provision, upgrade, operation or maintenance of a large-scale residential development.

b) A large-scale residential development includes a development of 100 or more dwellings, or 200 or more bed spaces in student accommodation. The development must also be approved by the relevant planning authority. It is expected that this amendment will mitigate the impact of ILR on the construction of residential developments and ensure entities developing such projects can benefit from higher levels of leverage. Given the importance of housing development to Ireland's domestic economy, this is likely to be welcomed by developers.

c) The Bill also contains a number of minor legislative changes to align the legislation with Irish Revenue guidance. These include clarification on the exemption for interest on legacy debt (debt incurred prior to 17 June 2016). Repayments of facilities which have a mixture of legacy debt and non-legacy debt will firstly be deemed to decrease that legacy debt. The Bill clarifies

that an entity may be a member of a consolidated accounting group for ILR purposes even if it is excluded from consolidated financial statements by reason of being immaterial. The Bill also makes provision reflecting the difficulty companies may have in calculating their expected corporation tax liability under the ILR provisions. A temporary measure, allowing for "top-up" payments of corporation tax is proposed until 2028.

Banking Levies

a) The Bill extends the Bank Levy for a further year. The levy, which is calculated as a percentage of deposit interest retention tax ("DIRT") collected by banks, will expire at the end of 2023.

b) Amendments to reform the stamp duty collected by banks on financial cards and cheques will come into force on 1 January 2023 and 1 January 2024. The amendments were enacted in Finance Act 2021 but have been awaiting commencement by order of the Minister for Finance. Banks are also now required to provide returns to the Irish Revenue in electronic form. Likewise, authorised health insurers must provide electronic returns in relation to certain insurance policies.

Corporate Tax – Intellectual Property and Research

Knowledge Development Box

a) The Bill confirms the extension of the Knowledge Development Box ("KDB") relief for a further four years. However, the Bill also provides (subject to a Ministerial Commencement Order) for a new effective rate of 10% for profits within scope of the KDB (currently 6.25%). The reason for this is to counteract the impact of changes in the OECD/G20 Inclusive Framework Two-Pillar Solution, specifically the Subject to Tax Rule ("STTR").

b) Pillar Two provides that Inclusive Framework members (such as Ireland) that apply nominal corporate income tax rates below the STTR minimum rate of 9% to interest, royalties and other defined payments would adopt the STTR into their bilateral treaties with developing Inclusive Framework members in due course. In line with this, it is likely the date this change comes into effect will be determined by reference to international progress on the implementation of the STTR.

Sale of Patents

a) Companies with significant amounts of Intellectual Property should note the Bill amends the treatment of capital sums received for the sale of patent rights. Such transfers are now capable of being treated as tax neutral intra-group transfers.

b) The Bill also contains a technical amendment which confirms the outright sale of a patent or a patent pending is not a sale of patent rights. The sale of a patent is chargeable to capital gains tax, whereas the sale of patent rights for a capital sum is subject to tax as income.

Research and Development ("R&D") Tax Credit of Patents

a) The Bill introduces changes to the operation of the R&D tax credit. Amongst the amendments are a number of measures which aim to provide greater flexibility for taxpayers in claiming the credit as well as adjustments necessary to respond to external changes such as the Pillar Two GloBE rules and changes to the US foreign tax credit regime.

b) The current system of offsetting the R&D tax credit against corporation tax liabilities and providing for payment in three instalments is being changed to a new three-year fixed payment schedule. In a move seeking to provide claimants with cash-flow benefits and encourage new companies to avail of the relief, the first

€25,000 of a claim on R&D expenditure will now be payable in full.

c) The changes also provide claimants with the option to call for payment of their eligible R&D tax credit or to request for it to be offset against other tax liabilities. In addition, limits to the amount of credits that can be claimed in cash are being removed.

d) Pre-trading expenditure incurred on qualifying R&D activities will now be allowable in a R&D claim over a three-year period from the year the company commences to trade. Finance Act 2019 previously included a provision that enabled small and micro companies conducting pre-trading R&D to claim the R&D tax credit before trading commences. However, the Bill seeks to repeal this provision on the basis it is not compliant with EU State Aid requirements.

Employers

Special Assignee Relief Programme ("SARP")

a) SARP provides income tax relief for certain people who are assigned to work in Ireland from abroad. This relief was due to expire at the end of 2022 but the Bill has extended the measure for a further three years to 31 December 2025.

b) In order to be eligible for SARP it was necessary that the individual earn a minimum basic salary of €75,000 per annum; this has been increased to €100,000 for all individuals who arrive in Ireland from 2023 onwards.

Key Employee Engagement Programme

KEEP is a tax efficient share option scheme. A number of helpful amendments to KEEP were announced on Budget Day including to allow for the buy-back of KEEP shares, to increase the lifetime company limit for KEEP shares to €6 million and to broaden the scheme to allow it to operate in a more flexible manner. The legislation required to implement these amendments will be introduced later in November 2022.

Property Related Changes / Real Estate

Non-resident Landlords

The Bill includes a number of amendments relating to the tax treatment of non-Irish resident landlords receiving Irish source rent. Under the current legislation, tenants paying rent directly to a non-Irish resident person are required to deduct 20% of the rent and remit that amount to the Irish Revenue. Such tenants will now be required to provide additional information to the Irish Revenue on the landlord and the rental payments. The Bill also includes amendments to the obligations on collection agents who are currently chargeable and assessable to tax on the rental income of the non-resident landlord. The collection agent will be relieved of this obligation if the collection agent deducts withholding tax from rental payments, remits the tax to Irish Revenue and gives Irish Revenue certain information on the payments.

Residential Zoned Land Tax

The Bill proposes a new Vacant Homes Tax which is being introduced with the aim of increasing the supply of homes for rent or purchase. The tax will apply to residential properties which are occupied for less than 30 days in a 12 month period. There will be a number of exemptions for certain forms of vacancy. The tax will operate on a self-assessment basis and will be administered by the Revenue Commissioners. The tax will be charged at a rate equal to three times the property's existing basic Local Property Tax rate. The tax will apply to buildings which are residential properties for the purposes of Local Property Tax, which means it will not apply to derelict properties or properties unsuitable for use as a dwelling. The legislation also provides for the establishment of a register of vacant homes and for the exchange of information between Irish Revenue and other bodies, such as local authorities for the purposes of

administering the tax and maintaining the register.

Stamp Duty

The Residential Development Stamp Duty Refund Scheme will be extended to the end of 2025. This is a scheme whereby a portion of the stamp duty paid on the acquisition of non-residential land is refunded where that land is subsequently developed for residential purposes. The net minimum stamp duty payable after a refund is 2%, whereas the normal rate for non-residential property is 7.5%.

Rental Credit

The Bill introduces a new annual tax credit for those paying rent on their principal private residence, on a residence that facilitates work or the residence of a qualifying child attending college. The value of the credit is the lesser of 20% of the qualifying payment and €500. The Rent Tax Credit is available for the tax years 2022 to 2025.

Digital Platforms

New Reporting Requirements

a) The Bill continues to transpose the seventh EU Directive on Administrative Co-operation ("DAC 7") into Irish law. This extends the application of the automatic exchange of information ("AEOI") to digital platforms, including businesses providing:

    i. Personal services, such as online delivery food companies;

    ii. Transport rental services, such as bike/ car-sharing system companies;

    iii. Services in relation to the rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces, including accommodation services, and vacation rental companies; and

    iv. Services in relation to the sale of goods, including e-commerce companies.

b) The platform must ensure it implements procedures to (i) identify reportable sellers and (ii) ensure these reportable sellers provide the platform with the information required under DAC 7. The platform must then supply significant amounts of information to the Revenue Commissioners. The Irish Revenue will also be able to access data collected for the purposes of anti-money laundering and counter-terrorist financing when investigating transactions suspected of concealing the beneficial ownership of assets for the purposes of avoiding reporting under DAC 7.

c) Ireland must incorporate all elements of DAC 7 into national law by 31 December 2022. Certain provisions unrelated to digital platforms still require transposition, including a number of amendments that will enable Irish Revenue to access the central register of ownership of bank and payment accounts and safe deposit accounts. Therefore, a Committee Stage Amendment is to be brought forward in order to ensure this is effected before year-end.

d) The proposed DAC 8 will extend reporting obligations to crypto-asset providers, bringing platforms providing services in relation to cryptocurrencies, crypto-assets, virtual currencies and digital money into scope of AEOI. It is unclear at present when the DAC 8 reporting requirements will become effective but further details are anticipated later in 2022.

Other Matters

Tax Controversy and Enforcement

a) There are a number of helpful changes to the tax appeals process. Currently, a party to a determination of the Tax Appeals Commission ("TAC"), the Irish tax tribunal, may appeal on a point of law to the High Court. The period of 21 days is now

extended to 42 days. A similar change is made to the ability to submit representations with respect to the case to be submitted to the High Court. Both of these changes are welcome as they provide for more time to prepare and engage with the appeals process.

b) There were changes to the enforcement provisions on excise taxes (principally tobacco and alcohol). These changes relate to the calculation of tax geared penalties and the ability to make voluntary disclosures in relation to non-payments of excise taxes. These changes were mostly technical.

Employment Investment Incentive ("EII")

a) EII is an income tax relief applicable to investments in Irish trading companies. Currently, an individual is ineligible for the relief if they, or an associate, are connected with the investee company. The Bill amends these provisions to clarify that persons will not be deemed connected for these purposes solely by virtue of being partners in a partnership which constitutes a qualifying investment fund, being a partnership established for the purpose of facilitating EII investments. This amendment compliments the extension of eligible EII fund vehicles to regulated partnerships which was effected by way of the Finance Act 2021.

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