Finance Act 2020

by Jane O'Hanlon

Finance Act 2020 ("the Act") was signed into law by the President on 19 December 2020. I have set out below some of the changes introduced by the Act. I have not included all of the changes, but instead I have concentrated on those which are most relevant for a wider audience. Also, I have not covered the changes to CRSS/EWSS which have been dealt with extensively in other commentary.

Business Measures

Capital Allowances - Energy Efficient Equipment

Capital allowances of 100%, instead of the usual 12.5%, of expenditure on certain energy efficient equipment may be claimed in the year in which the expenditure is incurred. The period during which expenditure must be incurred to qualify for 100% allowances has been extended to 31 December 2023.

Professional Services Withholding Tax ("PSWT")

Government departments, state bodies, local authorities and the HSE are required to deduct tax at the standard rate (20%) from payments made for certain professional services. The recipient is entitled to a tax credit for the tax withheld or where certain conditions are satisfied, may make a claim for an interim refund of tax withheld.

The Act contains provisions for the payor to submit a payment notification to Revenue electronically each time a payment is made from which PSWT is deducted. In addition, provision is made for all PSWT returns to be filed electronically. These measures will only come into effect on the issue of a Commencement Order.

Companies

Intangible Assets

Capital allowances may be claimed in respect of capital expenditure incurred by companies on certain intangible assets ("specified intangible assets"). Unlike other assets, there is no balancing charge (i.e. clawback of allowances) where the asset is sold after 5 years. The Act removes the exemption from a balancing charge for expenditure incurred on intangible assets on or after 14 October 2020.

Knowledge Development Box

Finance Act 2015 introduced a Knowledge Development Box ("KDB") regime in Ireland. Under the regime, only 50% of "qualifying profits" from certain intellectual property are liable to corporation tax resulting in an effective 6.25% rate of tax on such profits. The regime was due to expire at the end of 2020 but has been extended by the Act to accounting periods which commence before 1 January 2023.

Share Awards

Employers are required to file a return with Revenue in respect of shares awarded to employees. The requirement to file a return has been extended by the Act to share awards given in the form of a cash equivalent or to where a discount on shares is given. In addition, returns are now required to be filed electronically.

Farming

Farm Safety Equipment - Accelerated Capital Allowances

Like any other business, farmers are entitled to claim capital allowances of 12.5% per annum of the cost of farm equipment. The Act provides that

capital allowances may be claimed at 50% per annum on certain farm safety equipment which is set out in the legislation. The equipment which qualifies for the increased rate of capital allowances include items such as chemical storage cabinets fitted with locking devices and vented to prevent build-up of fumes; animal anti-backing gates and adaptive equipment such as access lifts or hoists to facilitate farmers with disabilities.

To qualify for the accelerated rate of capital allowances, the farmer must apply to the Minister for Agriculture, for a certificate confirming that the equipment acquired by the farmer is qualifying equipment.

The maximum cumulative expenditure which qualifies for relief is €5m. However, the aggregate amount of tax relief obtained by any person under the scheme cannot exceed €500,000. In practice this means that only farming companies, which only pay tax at 12.5%, can qualify for relief on expenditure of up to the maximum amount. For an individual farmer who pays tax at the top rate of 55% the maximum expenditure which will qualify for relief will be circa €1.2m.

The relief is only available to SMEs.

The new provisions will apply to expenditure incurred in the period 1 January 2021 to 31 December 2023 but will not come into effect until the issue of a Commencement Order.

Financial Services

Encashment Tax

Persons entrusted with the payment of dividends out of public revenue (i.e. government interest or dividends and foreign public authorities) and dividends of a non-resident body are required to withhold encashment tax from payments made. Encashment tax was deductible at the standard rate of income tax, 20%. With effect from 1 January 2021 encashment tax was increased to 25% to bring it into line with the rate of dividend withholding tax.

The Act also provides for an exemption from encashment tax for payments to companies within the charge to corporation tax on the amount received. This provision will not come into effect until the issue of a Commencement Order.

Reporting of Credit and Debit Card Payments

The Act contains provisions whereby the Revenue may, with the consent of the Minister for Finance, issue regulations which will require credit and debit card payment providers to make returns of cross border payment card transactions. The latter are any payments made using a debit or credit card where the recipient of the payment is located outside the State.

Personal Taxation

Income Tax Rates and Credits

No changes have been made to the standard rates of tax or to the standard rate tax bands.

The earned income credit, which may be claimed by self-employed and proprietary directors who are not entitled to the employee tax credit, has been increased from €1,500 to €1,650 for 2020 and subsequent tax years and is now the same as the employee tax credit.

The dependent relative tax credit has been increased from €70 to €245 for 2021 and subsequent tax years. An individual who maintains an elderly or incapacitated relative, a widowed parent, or a child who is required to live with them because of the individual's age or incapacity, is entitled to claim this credit. The person in respect of whom the credit is claimed must not have income exceeding a specified limit.

There have been no other changes to tax credits.

Universal Social Charge

No changes were made to the USC rates. The band within which USC is paid at 2% has been widened by €610 with a corresponding reduction in the 4.5% band. This change has been made to ensure that individuals who receive a pay increase due to the increase in the National Minimum Wage from 1 January 2021 do not pay USC at a rate higher than 2%.

The relief whereby individuals under 70 with income not exceeding €60,000 who have a full medical card pay USC at a maximum rate of 2% has been extended up until the end of 2022.

Help to Buy Scheme

The Help to Buy scheme provides assistance to first time purchasers buying or building a dwelling. Under the scheme individuals who have not previously purchased or built a dwelling can claim a rebate of income tax and DIRT paid for the four previous years. The rebate which may be claimed is the lesser of:

- €20,000,
- The amount of income tax (i.e. not USC or PRSI) and DIRT paid by the individual for the four preceding years; or
- 5% of the "purchase value" of the qualifying dwelling. The purchase value of a dwelling is the price paid or in the case of a self-build, the mortgage provider's valuation of the dwelling.

The rebate does not apply where the cost/valuation of the dwelling exceeds €500,000.

As part of Government's July Jobs Stimulus plan, temporary enhancements to the Help to Buy scheme were introduced for the period 23 July to 31 December 2020. For this period, the rebate claimable was increased to the lesser of:

- €30,000
- The amount of income tax and DIRT paid by the individual for the four preceding years; or
- 10% of the "purchase value" of the qualifying dwelling.

The Act has extended the period during which the enhanced rebate may be claimed to the end of 2021.

Capital Acquisitions Tax

Rates and Thresholds

There has been no change to the rate of capital acquisitions tax (33%) or to the tax-free thresholds which apply to gifts or inheritances from persons other than a parent.

Requirement to File a Return

A person was required to file a capital acquisitions tax return only if required to do so by Revenue or where the cumulative value of gifts received from persons to whom the same tax-free threshold applies*, exceeds 80% of the relevant tax-free threshold in question. The Act extends the requirement to file a return to:

- Gifts of agricultural property; or
- Gifts of business property which qualifies for business relief.

*For example, a tax-free threshold of €335,000 applies to gifts or inheritances from a parent. A capital acquisitions tax return must be filed when a child has received cumulative taxable gifts or inheritances of €268,000 from their parents.

Capital Gains Tax ("CGT")

Revised Entrepreneur Relief

A 10% rate of CGT applies for gains (up to a cumulative amount of €1m) on disposals of certain business assets and shares in certain companies. One of the conditions which must be satisfied is that the individual must have owned at least 5% of the ordinary share capital for a continuous period of at least 3 years in the 5 years prior to the disposal. The Act amends this provision so that the relief can apply where the individual has held the shares for a continuous period of at least 3 years at any time prior to the disposal. The new provision applies to disposals on or after 1 January 2021.

Anti-Avoidance

A debt is an asset for CGT purposes and the repayment of the debt is a disposal of an asset. Where however a debt is repaid to the original creditor no chargeable gain arises for CGT purposes. Foreign currency in a bank account is a debt owing to the customer by the bank. The conversion of foreign currency would constitute the disposal of a debt which would potentially be exempt from CGT under this provision. Accordingly, to ensure that gains arising on currency speculation are not exempt from CGT, legislation provides that the exemption does not apply to the disposal of foreign currency in a bank account.

The Act amends this anti-avoidance measure further to provide that no chargeable gain or allowable loss will arise for CGT purposes where foreign currency is transferred by a person from one bank account to another. This is to ensure that no chargeable gain or allowable loss will arise for CGT purposes where no actual gain or loss has arisen.

Stamp Duty

Farm Consolidation Relief

Where a disposal of land qualifies for a "Farm Restructuring Certificate" * for capital gains tax farm consolidation relief, a 1% rate of stamp duty applies to the transfer instead of the normal 7.5%. This relief was due to expire at the end of 2020 but has been extended by the Act to the end of 2022.

*A Farm Restructuring Certificate is a certificate issued by Teagasc certifying that the sale or exchange of land in question has been undertaken for farm restructuring purposes.

Stamp Duty Refund for Residential Land

There is a stamp duty refund scheme in respect of a purchase of land which is subsequently developed for residential purposes. Under the scheme a claim may be made for a refund of 11/15ths of the stamp duty paid at 7.5% (or 2/3rds where stamp duty at 6% was paid on the acquisition). A claim for a repayment can be made provided construction operations commence within 30 months of the acquisition of the land and are completed within 2 years. Prior to the Act the relief would only apply if construction commenced before 1 January 2022.

The Act extends the period within which the construction must be completed to qualify for the refund, from 2 years to 30 months and extends the final cut-off date within which construction operations must commence for a further year to 1 January 2023.

Consanguinity Relief

In the past the rate of stamp duty applicable to transfers between relatives was reduced to 50% the normal rate. This general relief was abolished for transfers other than transfers of farmland. With effect from 1 January 2015 stamp duty has continued to be payable at 1% on transfers of farmland between relatives where the following conditions are satisfied:

- The transferee is an individual who farms the land or who leases it for at least 6 years to someone who farms the land.
- The transferee/lessee who farms the land must hold certain agricultural qualifications or must spend not less than 50% of their normal working time farming land (including the land transferred to him), and
- The land must be farmed on a commercial basis.

The relief was due to expire at the end of 2020 but has been extended to transfers which take place before 1 January 2024.

VAT

Changes in VAT Rates

Reduction in VAT rate for tourism and hospitality sectors

For the period 1 November 2020 to 31 December 2021 the rate of VAT applicable to the tourism and hospitality sectors has been reduced from 13.5% to 9%. The reduced rate will apply to the following for this period:

- Restaurant and catering services and food supplied via vending machines (excluding alcohol and soft drinks).
- Take away food.
- Printed matter such as brochures, maps, catalogues (the 9% rate already applies to newspapers).
- Admission to shows, theatres, cinemas, museums, art galleries and other cultural events, amusement parks, fairgrounds, and open farms.
- Guest or holiday accommodation.
- Hair dressing services.

VAT rate on sanitary products, candles and supplies of Covid-19 related equipment.

The rate of VAT on certain sanitary products is to be reduced to 13.5% from 1 January 2021.

The standard rate of VAT (21% until 28 February 2021) will apply to all candles from 1 January 2021. Currently certain white candles qualify for the 0% rate of VAT.

The temporary 0% rate of VAT which applies to supplies of equipment to the HSE, hospitals, nursing homes and general practitioners which are used to combat Covid-19 (e.g. personal protection equipment, ventilators, hand sanitiser) will be extended provided EU approval is received.

VAT rate on supplies of guest accommodation

Previously supplies of guest accommodation, excluding rooms in a hotel or guest house, are liable to VAT at the reduced rate of VAT (13.5% temporarily reduced to 9% see above) where the accommodation is let on a "short term basis". This is defined in regulations as lettings which are unlikely to exceed 8 consecutive weeks. Lettings in excess of 8 consecutive weeks would therefore be exempt from VAT.

The circumstances in which the reduced rate of VAT applies to the provision of such accommodation has been amended and is no longer restricted to lettings on a short-term basis. Accordingly, the reduced rate of VAT should apply to all supplies of holiday or guest accommodation regardless of the period of occupation.

Increase in flat rate addition for farmers

From 1 January 2021 the "flat rate addition" rate will be increased from 5.4% to 5.6%. The flat rate addition is a payment made to non-VAT registered farmers to compensate them from VAT paid on goods and services acquired in the course of their farming activities which they are unable to recover.

Requirement to Appoint a Tax Representative

The Act contains a provision whereby the Revenue may serve a notice on a VAT registered person requiring them to appoint a representative who is established in the EU. This representative will be jointly and severally liable with the VAT registered person for the payment of VAT due by the VAT registered person. The notice may only be served on a person who does not have an establishment in the State, other than persons who are registered to pay Irish VAT under the Mini One Stop Shop scheme. *

*The MOSS scheme is a scheme for persons who supply telecommunications, broadcasting, and electronic services to private individuals. In the absence of the MOSS scheme suppliers would be required to register for VAT in each EU state in which these services are supplied. Under the scheme the supplier only has to register for VAT in one Member State.)

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