Finance Bill 2019 Highlights

By Mairéad Hennesy

Mairéad Hennesy gives an overview of Budget 2020 / Finance Bill 2019

Budget 2020 was announced by Minister for Finance and Public Expenditure, Paschal Donohoe, on 8th October last. As the Minister stated himself, this year's Budget was "developed in the shadow of Brexit" and assumed a departure from the EU by the UK on 31st October without any deal.

On a positive note, however, improvements have been made to a number of small business tax incentives and the key provisions are summarised below.

The legislation enacting the Budget measures is contained in the Finance Bill 2019 ("the Bill") which was published on 17th October 2019. The Bill will be debated in the Houses of the Oireachtas and it is likely that amendments will be made during that process. The final text is expected to be passed into law before the end of the year.

Key Employee Engagement Programme (KEEP)

KEEP is designed to help Irish SMEs compete with larger firms to attract and retain employees. It provides for more advantageous tax treatment of gains arising on the exercise of qualifying share options. Under the new measures, various eligibility conditions will be eased.

The Bill amends existing KEEP legislation to reflect the changes which were announced on Budget Day, including provisions to:

- allow companies that operate through certain group structures avail of KEEP;
- amend the definition of "qualifying share option" to remove the requirement to issue new shares to the employee when the option is exercised. Existing shares may therefore qualify for the scheme;
- reduce the working hours requirement for a "qualifying employee" such that the employee/director must work at least 20 hours per week for the qualifying company and devote not less than 75% of his / her working time to the qualifying company. This is an amendment to the current legislation which requires an individual to devote at least 30 hours per week working for the company;
- update the reporting requirements so that in the case of a qualifying group, a qualifying company within the group must be designated to report details of share options granted in a year to Revenue. This return must be submitted to Revenue by 31 March of the following year.

These new measures are subject to a commencement order because changes to KEEP must be notified to the European Commission under State aid rules.

Employment and Investment Incentive (EII)

The Bill includes changes to EII, a tax relief that can be used by trading companies to attract equity-based finance from individuals. The change allows for full income tax relief to be provided in the year of investment in respect of shares issued after 8 October 2019, rather than being split over years one and four as had previously been the case.

The maximum annual investment qualifying for relief for investors will increase to €500,000 where the investor undertakes not to dispose of the shares for 10 years. In all other cases, the annual investment limit will be €250,000 (an increase from €150,000 for 2019). The increased limits will apply from 1 January 2020.

The Bill also includes a number of technical amendments.

Research and Development (R&D) Tax Credit

The Budget included announcements in relation to enhancements to Ireland's R&D tax credit, with a focus on SMEs. These measures are included in the Finance Bill.

The credit will be increased from 25% to 30% for micro and small companies, as defined under the Annex to Commission Recommendation 2003/361/EC of 6 May 2003. This includes companies with less than 50 employees, and which have an annual turnover and / or balance sheet total that does not exceed €10million.

The Bill includes an improved method of calculating the limit on payable credit for micro and small companies. The limit will now be based on twice the current year payroll liabilities. In addition, micro and small companies will be entitled to claim an offset of the R&D tax credit for pre-trading expenditure against their PAYE, USC and VAT liabilities for the same period, the overpayment can be refunded to the company. These are very welcome changes to the operation of the credit and will hopefully lead to an increase in the number of SMEs availing of the relief.

The Bill provides that the level of expenditure on R&D that is outsourced to universities that can qualify for the credit will be increased from 5% to 15% of overall expenditure on R&D. This is a very welcome improvement to the relief as it supports collaboration between industry and academia to deliver innovations.

Where expenditure is outsourced, the taxpayer must notify the person to whom the R&D is outsourced that the R&D tax credit is being claimed by the taxpayer (so that the person undertaking the outsourced R&D does not also seek to claim a credit). The Bill requires that notification to be made on or before the date payment is made.

The Bill confirms that all State or EU grants must be excluded from qualifying R&D expenditure.

Dividend Withholding Tax (DWT)

The Budget confirmed that the DWT rate will be increased from 20% to 25% from 1 January 2020. The existing exemptions continue to apply and as a result, the increase should be relevant to a limited number of recipients of dividends from Irish companies.

From 1 January 2021, Revenue will introduce a modified DWT regime that will allow a personalised rate of DWT to be applied to each individual taxpayer. Questions remain as to how this new regime will operate in practice.

Transfer Pricing

The Bill implements previously announced changes including updates to Ireland's Transfer Pricing regime. These new rules will bring the Irish rules in line with international best practice OECD Guidelines.

The main changes are that connected party transactions must be calculated on an arm's length basis and will also include non-trading income such as loans and capital transactions which have a market value exceeding €25milion. In addition, the grandfathering that existed for transactions agreed before 1 July 2010 will be removed.

Larger groups will now also be required to maintain a master and local Transfer Pricing file setting out their group Transfer Pricing principles. Medium sized groups will now also be required to hold robust Transfer Pricing documentation but may be required to provide master or local files where intercompany transactions exceed €1million. Smaller groups who employ less than 50 staff with turnover less than €10million or net assets under €10million should continue to be exempt.

The Bill also includes some Transfer Pricing changes that were not announced in the Budget. Notably, the rules now provide that taxpayers who make reasonable efforts to comply with the Transfer Pricing rules can be protected from tax-geared penalties in the event of a Transfer Pricing adjustment. In addition, new penalty provisions provide for a €25,000 penalty where a request by Revenue for supporting Transfer Pricing documentation is not satisfied (daily penalties can also be applied).

Stamp Duty

The Bill includes provisions to effect the announced increase in stamp duty from 6% to 7.5% on transfers of non-residential property. The increased rate applies to instruments executed on or after 9 October 2019. If a binding agreement was in place before 9 October, the increased rate will not apply provided the instrument of transfer is executed before 1 January 2020 and it includes a certificate confirming that a binding agreement was in place before 9 October 2010.

A new charge on "cancellation schemes" is included in the Bill and applies to scheme orders made in respect of Irish companies on or after 9 October 2019. These transactions involve arrangements whereby an Irish company is acquired by cancelling shares in that company and issuing new shares. The provision imposes a 1% stamp duty charge on the consideration received for the cancelled shares. Previously stamp duty did not apply as there is no transfer or conveyance on sale of shares.

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Other Measures in Finance Bill 2019

- The Earned Income Tax Credit for the self-employed will rise by €150 to €1,500.

- The Bill extends the benefit-in-kind (BIK) exemption for electric vehicles, with an original market value (OMV) of €50,000 to 31 December 2022 (it was due to expire on 31 December 2021). A deduction of €50,000 will be available for electric vehicles with an OMV more than €50,000 when determining the taxable BIK using existing rules.

- The Special Assignee Relief Programme (SARP) and the Foreign Earnings Deduction (FED) will be extended until the end of 2022.

  SARP provides relief from income tax on the earnings of employees who are assigned to work in Ireland from abroad where certain conditions are satisfied. The SARP scheme has been extended to the end of 2022 allowing employees arriving in Ireland in 2021 and 2022 the opportunity to avail of SARP relief.

  The FED is a relief from income tax that is available to employees who are resident in Ireland but spend time working abroad. It has been extended to the end of 2022.

- Following an external review of the CGT Revised Entrepreneur Relief, no changes will be made to the relief at present. However, the Department of Finance will consider the outcome of the review to determine any changes that could be made to better support entrepreneurs and entrepreneurial activity.

- The lifetime Group A tax-free threshold which broadly applies to transfers between parents and their children under the Capital Acquisitions Tax (CAT) regime has been increased from €320,000 to €335,000.

- The Bill amends the CAT Dwelling House Exemption rules to reflect the High Court decision in the Deane case. The new provision changes the conditions of the relief to ensure that all properties inherited from the same estate are considered when assessing an individual's eligibility for the exemption. A clawback is provided for where a beneficiary subsequently receives an interest in any other dwelling house from the same deceased person.

- The farm restructuring relief will be extended until the end of 2022.

- A mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning has been introduced. This is in line with EU Directive on Administrative Compliance 6 (DAC6). Uncertainty exists regarding the practical operation of the legislation and it is hoped that Revenue guidance on this will be provided.

- The Bill includes amendments to procedures for tax appeals. The Appeal Commissioners are now required to notify the parties to attend a case management conference of the time and place it will take place, in line with existing requirements for attending at hearings.

  The Appeal Commissioners may dismiss an appeal where a party has failed to comply with a direction to attend a case management conference and the Appeal Commissioners are not satisfied that the failure to attend was due to illness or other reasonable cause.

Overall Budget 2020 and Finance Bill 2019 reflect measures that were generally anticipated in advance of Budget Day last October. The extension and enhancements to some key tax reliefs for SMEs are to be welcomed. Nevertheless, the shortcomings with CGT Entrepreneur Relief remain. The taxation of entrepreneurs is an area that needs to be improved in the near term in order to retain Ireland's competitiveness in maintaining its high level of entrepreneurial activity.

Mairéad Hennessy,

Mairéad is founder of Taxkey, a specialist practice providing virtual tax partner services to accountancy firms around Ireland.