PMQ

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TAX PARTNERS

Finance (No. 2) Act 2023

A Comprehensive Commentary

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Introduction

We are pleased to outline our commentary on Finance (No. 2) Act 2023 ("the Act") which was signed into law by the President on 18 December 2023.

Welcome measures for individuals and families include:

- The increase in the standard rate tax bands
- The increase in personal tax credits
- The reduction in the 4.5% rate of USC to 4% and the widening of the 2% USC band
- The introduction of a mortgage interest tax credit for 2023.

Measures of particular interest to companies which are included are:

- The increase in the % rate of the R&D tax credit (from 25% to 30%)
- The continuation of accelerated capital allowances for expenditure on energy efficient equipment to the end of 2025.
- Tax due on the exercise of unapproved share options has been brought within the scope of the PAYE system.
- A number of changes have been made to the Employment Investment Incentive (EII) including an increase in the amount which can be raised under the scheme and the amount of the investment qualifying for relief. In addition, a % (50% to 125%) of the investment will qualify for relief depending on the period of time for which the company has been in operation.
- The extension of the exemption from tax and dividend withholding tax to dividends paid to persons resident in an EEA State.
- The introduction of an entitlement to interest relief for qualifying financing companies.

Provisions of interest to employers and employees include:

- The continuation of the temporary measures brought in to alleviate the increase in car BIK charges on the change to the CO2 emissions basis of calculating the BIK.
- As set out above, tax on the exercise of unapproved share options have been brought within the scope of PAYE.

There are a number of measures of particular interest to farmers including:

- The period during which expenditure on farm safety equipment must be made to qualify for accelerated capital allowances has been extended to the end of 2026.
- The extension of the reduction in the rate of stamp duty (Consanguinity Relief) on transfers of farm land between relatives to the end of 2028.
- The raising of the limit on enhanced stock relief which may be claimed by young qualified farmers and certain registered farm partnerships.
- The restriction of the exemption from tax on income from letting farm land to individuals who own the land in question.

Introduction

The Act contains a number of measures relevant for the property sector including:

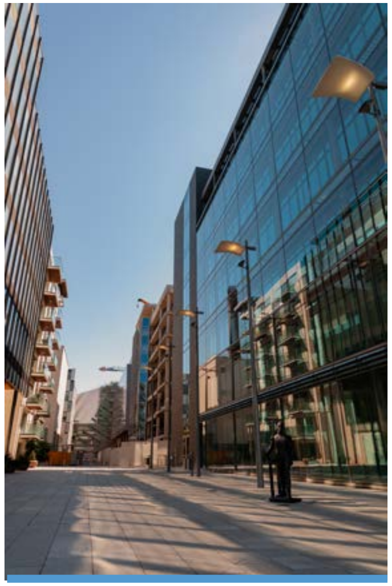
For landlords/tenants:

- The provision of an additional tax credit to landlords for residential properties
- An increase in the rent tax credit
- The Help to Buy scheme has been extended to the end of 2025

For those involved in property development/construction:

- The deferral of the first due date for the payment of residential zoned land tax to February 2025 and further provisions made for disputing land within the scope of the tax.
- The exclusion of pouring concrete used in the manufacture of precast concrete products from the scope of the defective concrete products levy.
- The increase in the vacant homes tax to 5 times LPT.

Owners of businesses and shares in family trading companies will be interested in the changes in retirement relief made by the Act. The €750,000 limit on disposals to third parties, which reduces to €500,000 on reaching age 66, has been extended up to and including age 69. On the negative side, however, a cap of €10m is being put on disposals to a child by a parent up to age 70. Once the parent reaches age 70 the €10m limit is reduced to €3m. A new relief (commonly referred to as a relief for "Angel investors") is to be introduced which will reduce the CGT rate from 33% to 16% on gains arising on the disposal of shares in certain innovative start-up companies. There are many conditions to be satisfied by the vendor and the company for the relief to apply. The relief will only come into operation on the issue of a commencement order.



Companies

Corporation Tax Group Relief

A company may surrender losses to other group companies for offset against income of the claimant company under group relief provisions. Where the accounting periods of the surrendering and claimant companies are not aligned, the amount of the loss which may be offset against the profits of the claimant company is restricted by reference to the part of the accounting period common to both companies.

The Act amends the group relief provisions to clarify that the above restriction also applies where losses are surrendered for which relief is to be claimed on a value basis and where losses are surrendered which may only be offset against income liable at 12.5%.

These provisions apply for accounting periods commencing on or after 1 January 2024.

Distributions and Dividend Withholding Tax

Persons who are not resident or ordinarily resident in the State and who are resident in a "relevant territory" (i.e. an EU country or a country with which Ireland has a Double Taxation Treaty) are exempt from income tax on distributions received from Irish resident companies. The exemption also extends to companies which are under the control of persons tax resident in such a country and to companies whose shares, or in certain cases the shares of whose parent company, are traded on a recognised stock exchange in such a country. Distributions which are exempt from income tax under these provisions are also exempt from dividend withholding tax (DWT), if an appropriate declaration is made.

The Act extends the definition of "relevant territory" to include EEA countries and extends the persons who can qualify for the exemptions from income tax and DWT to pension funds located in a country with which Ireland has entered into a Tax Information Exchange Agreement. The pension fund must be one which would be approved if it were located in the State and must be subject to supervisory and regulatory rules equivalent to those which apply to pension funds in the State.

The pension fund is required to make a declaration to the paying company confirming that it satisfies these conditions.

These provisions come into operation on 1 January 2024.

Employment Investment Incentive ("EII")

The EII provides a means by which companies can raise funding by the issue of share capital. Under the scheme investors are entitled to a tax deduction for the investments made. For the relief to apply certain conditions must be satisfied by the company and the investors.

The Act makes a number of changes to the scheme as follows:

Initial risk finance investment

Where funds are raised under the EII scheme for the first time, this is referred to as "initial risk finance investment". Prior to the Act an initial risk investment only qualified for EII relief if it was less than 7 years since the first sale was made by the RICT group (see definition below).

The Act provides that initial risk finance investment will qualify for EII relief provided either when the shares are issued each company in the RICT group has not operated in any market or if they have operated in any market it is either less than 10 years since incorporation or less than 7 years after its first commercial sale.

Follow-on risk finance investment

Where funds are raised for a subsequent investment under the EII scheme this is referred to as "follow-on risk finance investment". Prior to the Act the legislation provided that such finance could only qualify for EII relief where the possibility of raising funds under the scheme a second time was "foreseen" in the business plan on which the previous EII funding was based. The Act provides that the second round of funding must be "provided for" in the original business plan rather than being "foreseen".

Definition of RICT Group: In determining if EII relief applies certain conditions must be satisfied by the "RICT Group" of which the company raising the funds is part of. Broadly a "RICT Group will consist of the company raising the funds and other companies or businesses with which it is "linked" (as defined under EU regulations).

Companies

Employment Investment Incentive ("EII") *continued*

Expansion risk finance investment

Prior to the Act, funds could only be raised under the EII scheme more than 7 years (extended to 10 years after incorporation – see page 6) after a first sale was made by the RICT group of which the company is a member, if the funds qualify as "expansion risk finance investment". Prior to the Act this was defined as the issue of shares to fund entering a new product on the market or entering a new geographic market. The Act now defines "expansion risk finance" as the issue of shares to fund a "new economic activity". "Economic activity" is not defined but it is understood the intention is to extend the circumstances in which funds under the EII scheme can be raised after 7/10 years.

In addition to the manner in which the funds must be used to qualify as expansion risk finance being more restrictive, to qualify as expansion risk finance prior to the Act, the amount to be raised through the issue of shares had to be greater than 50% of the RICT group's average turnover in the preceding 5 years. The Act reduces the requirement for the funds raised to be 50% of average turnover to 30% of average turnover where the investment is to significantly improve the environmental performance of the company or to make other environmentally sustainable investments.

Definition of "eligible shares"

The shares issued under EII must be "eligible shares". Prior to the Act the legislation specifically stated that eligible shares could have a preferential right to a dividend or to a repayment of capital on a winding up (apart from where relief under the SURE scheme is being claimed). The Act deletes this provision and now provides that, except where shares are issued to the managers of a qualifying investment fund, EII relief will not apply to shares in a company that carry preferential rights to dividends or to a repayment of capital on a winding up.

Limits on funds raised

Prior to the Act the amount of funds which could be raised by a RICT group under the EII scheme was limited to €5m, in any 12-month period, and €15m in total. The 5m limit has been increased to €5.5m and the €15m limit to €16.5m. In determining if these limits have been exceeded shares which qualify for the new "Angel Investor" relief are taken into account.

Maximum investment for which relief is given

Prior to the Act, the maximum investment which qualified for relief was €250,000, or €500,000 if the shares are held for 7 years. The Act provides for the €500,000 maximum to apply to all investments and not just those held for 7 years.

The Act also provides that the relief given is a % of the investment made. The % which applies depends on the length of time which companies in the RICT group have been operating and on the type of investment. For shares issued prior to 1 January 2024 the investor is entitled relief in relation to 100% of the investment made. For shares issued on or after 1 January 2024 the investor will be entitled to relief of:

- 125% of the investment where no company in the RICT group has been operating in any market,
- 87.5% of the investment where it is less than 10 years since any company in the RICT group has been incorporated or less than 7 years since any company in the RICT group made its first sale,
- 50% where the funds raised are for "expansion risk finance investment" (i.e. more than 10 years since incorporation or, if later, more than 7 years after the first sale),
- 50% where the funds raised are for "follow-on risk investment" (i.e. second round of funding under EII), or
- 75% where the investment is made through a qualifying investment fund.

The relief only applies to eligible shares issued on or before 31 December 2024. Unutilised relief cannot be carried forward to tax years after 2024.

The amendments made by the Act have effect for shares issued on or after 1 January 2024.

Definition of RICT Group: In determining if EII relief applies certain conditions must be satisfied by the "RICT Group" of which the company raising the funds is part of. Broadly a "RICT Group will consist of the company raising the funds and other companies or businesses with which it is "linked" (as defined under EU regulations).

Companies

Research and Development

Research and Development Tax Credit

The Act has increased from 25% to 30% the % of qualifying expenditure on research and development (R&D) which a company is entitled to claim as a tax credit.

Prior to Finance Act 2022 a company could offset the credit against its corporation tax liability for the current and prior year period and could make a claim for a repayment of a portion of the excess remaining. Any amount not repaid was carried forward and offset against subsequent years corporation tax liabilities with a portion of the excess credit over corporation tax liabilities for the next two years being repaid. Finance Act 2022 provided that with effect for accounting periods commencing on or after 1 January 2023 the entire R&D credit would be repaid in three instalments as follows:

(i) The first instalment will be the greater of €25,000 (or if lower the amount of the credit) or 50% of the credit. Where the qualifying R&D expenditure is in relation to a building, the first instalment will be 50% of the credit.

(ii) The second instalment will be 3/5ths of the credit less the first instalment and

(iii) The third instalment will be the balance of the credit not yet repaid.

A company must specify whether the instalments are to be repaid or to offset against its corporation tax liabilities.

In addition, to increasing the rate of credit to 30%, the Act makes the following changes:

- The amount of the first instalment of the repayment is increased to the greater of €50,000 or 50% of the credit.
- Unpaid instalments can be paid to a successor company where the company which was entitled to the refunds ceases to trade and the trade, and R&D activities, are continued on by a group company and the predecessor company has not specified whether the unpaid instalments to be repaid to it or treated as an overpayment of corporation tax.
- In making a claim for an R&D tax credit, the company is required to give details of tax credits carried forward under the pre Finance Act 2022 regime.
- Where a company has not made a claim for an R&D tax credit in the 3 immediately preceding accounting periods it must within 90 days before a claim for the credit is made notify Revenue of its intention to make a claim giving various details regarding the company and the R&D activities.

The new provisions apply in respect of accounting periods commencing on or after 1 January 2024.

Relief for Investment in Films

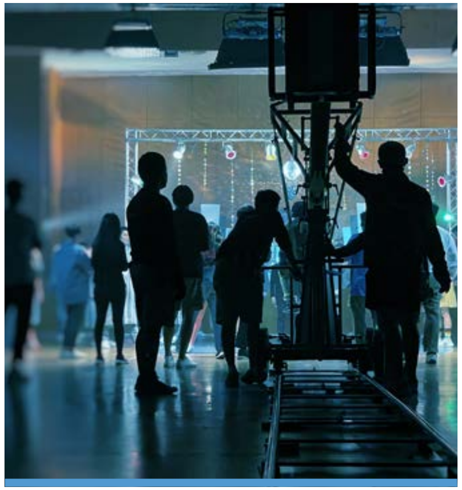
Corporation tax credits are given to film production companies provided certain conditions are satisfied. The tax credit given is 32% of the lower of the following:

- Eligible expenditure
- 80% of the cost of production
- €70m

Enhanced tax credits are given to companies which produce films in “assisted areas” i.e. areas designated under State aid regional guidelines.

The Act proposes to increase the €70m limit to €125m.

This amendment will only take effect on the issue of a Commencement Order by the Minister for Finance.



Companies

Digital Games Corporation Tax Credit

Corporation tax credits are given to digital games companies provided certain conditions are satisfied.

The credit is 32% of the lower of the following:

- 80% of qualifying expenditure (i.e. expenditure on the design, production and testing of a digital game)
- Eligible expenditure (i.e. the portion of qualifying expenditure expended on development in the State or the EEA)
- €25m

To claim the credit the company must have a cultural certificate relating to the digital game issued by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. An interim cultural certificate may be applied for at any time before the development of the digital game is complete. This allows the company to make an interim claim for the credit. When a final certificate is issued on the completion of the game a final claim for the balance of the tax credit is made.

The Act makes a number of changes as follows:

- The company must have been carrying on a trade of developing digital games for at least 12 months before a claim can be made.
- The company is given the option of receiving the credit as a cash payment or offsetting the credit against tax liabilities.
- A "valid claim" (i.e. a claim containing all information required to determine if the credit is due) must be made to receive the credit and Revenue have up to 48 months from the submission of a claim to make a payment.
- A final claim must be made within 12 months of the accounting period in which the last of the expenditure which gives rise to the claim was made. Where the final cultural certificate is issued within 3 months before the end of the 12 month period, the final claim can be made up to 3 months from the date of the issue of the certificate.
- An interim claim can be made in a return for the accounting period in which expenditure was incurred.
- Any credit paid in cash is not taxable and if offset against tax liabilities it can be taken into account in calculating preliminary tax liabilities.

The above changes take effect for accounting periods beginning on or after 1 January 2024.

Pre-Trading Expenditure

A tax deduction is available for certain expenditure incurred in the three-year period before a trade or profession commences. The expenditure is deemed to be incurred on the day the trade or profession commences and is deductible from income from the trade or profession. These pre-trading expenses may not be taken into account in calculating a loss to be offset against other income of the trader or a loss to be surrendered to another company by way of group relief.

The Act provides that such expenses may not be taken into account in calculating a loss for which relief on a value basis is to be claimed either by the company which incurred the expenditure or by a group company.

This provision applies for accounting periods commencing on or after 1 January 2024.

Employers and Employees

Refunds and Assessments

The Act provides that an **employer** shall not be entitled to a refund of PAYE or USC where the monthly return in respect of which the refund is claimed has been filed more than 4 years after the end of the year in which the relevant month falls. However, where the amount of PAYE/USC due by the employer in the return exceeds the refund due, Revenue may offset the refund against the PAYE/USC due. Revenue are required to notify the employer of a decision to refuse a refund and the employer is entitled to appeal Revenue's decision to the Appeal Commissioners.

The Act also sets out time limits for the making or amendment of assessments by Revenue in relation to PAYE. The general time limit is 4 years from the end of the year in which the relevant PAYE return month falls. The 4-year time limit does not apply in certain circumstances including:

- To take account of any fact or matter arising by reason of an event occurring after the return is made.
- To correct a calculation error.
- To correct a mistake of fact where the assessment does not properly reflect facts disclosed by the employer.
- Where Revenue believe there are reasonable grounds for believing there has been fraud or neglect.

The new provisions regarding funds apply in respect of returns filed for income tax months commencing on or after 1 January 2019. The new provisions regarding time limits for the making of assessments came into effect from the date of the passing of the Act, 18 December 2023.

Relevant Tax on Share Options

Where an **employee** exercises a share option under a non-approved share option scheme, the employee is liable to income tax, USC and PRSI on the gain arising. Prior to the Act, Relevant Tax on Share Options (RTSO) had to be paid by the employee within 30 days of exercising such a share option. The RTSO is the amount of income tax, USC and PRSI due by the employee on the gain.

The Act provides that for gains realised on the exercise of an option on or after 1 January 2024, instead of RTSO being payable, the tax due on the exercise of the share option must be deducted under the PAYE system.

Benefits in Kind

Car BIK

The BIK arising on the provision of a company car is a % of the original market value (OMV) of the car. The % which applies depends on the annual business mileage band and the CO_2 emissions category into which the car falls. Prior to 2023 the BIK calculation did not depend on the CO_2 emissions of a car. The change to a CO_2 emissions basis of calculating the BIK resulted in an increase in BIK charge for many.

To provide a temporary relief from the increased BIK charge, for 2023 Finance Act 2023 provided that the OMV to be used in calculating the BIK charge could be reduced by €10,000 for all cars other than those in the highest CO_2 emissions category. In addition, the upper limit of the highest business mileage band was reduced by 4,000km. The Act provides for these two measures to continue to apply for 2024.

Electric vehicles

For 2023 the BIK charge arising where an electric vehicle was provided to an employee was calculated by reducing the OMV of the vehicle by €35,000, in addition to the €10,000 reduction referred to above. For 2024 it was intended that the €35,000 reduction would be reduced to €20,000 and for 2025 and subsequent years, to €10,000.

The Act provides that the €35,000 reduction will continue to apply for 2024 and 2025 and will be reduced to €20,000 for 2026 and to €10,000 for 2027.

The €10,000 reduction in the OMV for cars generally applies to electric cars in addition to the €35,000 reduction.

Other Business Measures

Capital Allowances - Energy Efficient Equipment

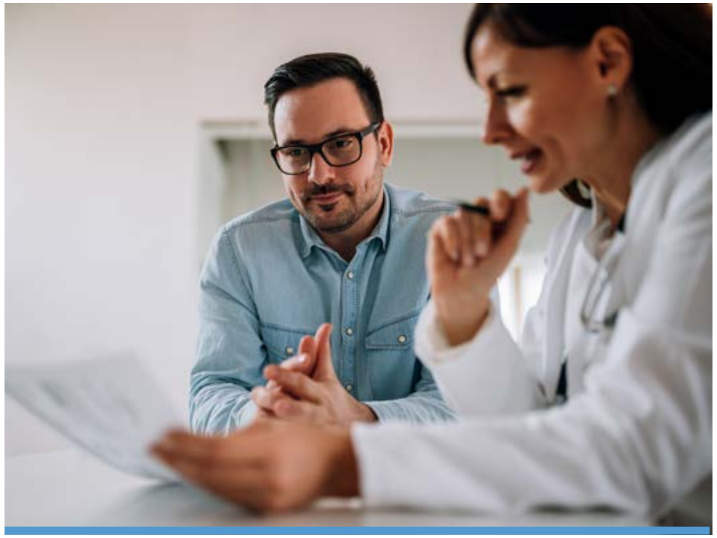
Capital allowances of 100%, instead of the usual 12.5%, of expenditure on certain energy efficient equipment may be claimed in the year in which the expenditure is incurred. The equipment must be included on a list of energy efficient equipment maintained by the Sustainable Energy Authority of Ireland (SEAI).

The Act extends the relief to expenditure incurred up to the end of 2025.

Medical Practitioners

The Act provides that where medical practitioners operate in a partnership, and one or more of the partners has entered into a contract with the HSE for the provision of certain medical services an election can be made for any income from such contract to be treated as income of the partnership rather than of the individual partner. The medical services provided under the contract with the HSE must be carried out in the context of the partnership. An election must be made by all the partners for this treatment to apply. Where professional services withholding tax (PSWT) is applied to such payments, credits will be apportioned among the partners.

These provisions came into operation on 1 January 2024.



Financial Services

Bank Levy

The Act provides for a bank levy of 0.112% to be applied to four banks, Bank of Ireland, AIB, Permanent TSB and EBS. The levy applies to total eligible deposits at 31 December 2022. Eligible deposits are defined as for the EU (Deposit Guarantee Schemes) Regulation 2015. The levy only applies for 2024 and is payable by 20 October 2024.

These provisions come into effect from the date of the passing of the Act, 18 December 2023.

Exemption from Stamp Duty for US and Canadian Listed Shares

The Act provides for an exemption from stamp duty for Irish shares dealt with on a recognised stock exchange located in the US or Canada provided the settlement system is operated through a Central Securities Depository.

This provision came into effect from the date of the passing of the Act, 18 December 2023.

Qualifying Financing Companies

The Act provides for a tax deduction for interest paid by a non-trading "qualifying financing company".

A ***'qualifying financing company"*** is a company that:

- Holds directly at least 75% or more of the ordinary share capital of one or more qualifying subsidiaries, or intermediate holding company,
- Borrows money for the purpose of on lending that money to qualifying subsidiaries, or indirect qualifying subsidiaries and
- Apart from carrying on activities ancillary to the above activities, carries on no other activities.

A ***'qualifying subsidiary"*** is one which exists wholly or mainly for the purpose of carrying on a trade, is tax resident in the EU, EEA or a country with which Ireland has a Double Taxation Agreement.

An indirect qualifying subsidiary is one which would be a qualifying subsidiary only 75% or more of its ordinary share capital is held by an intermediate holding company i.e. a company whose business consists wholly of holding shares in indirect qualifying subsidiaries of the qualifying financing company.

Only interest on an "external" loan is deductible i.e. interest on a loan from a non-associated person who does not hold, or can control, directly or indirectly, more than 5% of the borrowing company. The deduction is given in calculating the tax due on income from a "relevant loan" i.e. a loan made at arm's length to a qualifying direct or indirect subsidiary. The subsidiary must be a 75% subsidiary (direct or indirect) of the qualifying financing company and must use the funds wholly and exclusively for the purpose of carrying on a trade or trades. The funds may not be used by the subsidiary to redeem or subscribe for share capital or to make any other payments relating to shares or the capital structure of the company.

Interest on the external loan is only deductible to the extent that the external loan is "matched" with the relevant loan. Where at or about the time the external loan is taken out, the funds borrowed are on-lent under a relevant loan, the loans are matched to the extent of the amount on-lent. Where an external loan was in place on 1 January 2024 it can be matched with relevant loans also in place at that date. Interest is not deductible unless had the external loan been taken out by the qualifying subsidiary or qualifying indirect subsidiary it would have been entitled to a tax deduction for interest paid on the loan or would have been entitled to a deduction if it were within the charge to tax in the State.

The qualifying financing company is required to give details of the relevant loan matched to the external return in its corporation tax return.

Entitlement to the deduction is subject to a bona fide test and anti-avoidance provisions.

The provisions came into operation on 1 January 2024.

Leasing

Capital Allowances

Generally capital allowances may only be claimed in respect of plant and machinery by the person who owns it. Where, however, plant or machinery is let under a finance lease on such terms that the burden of wear and tear falls on the lessee, the lessee rather than the lessor is entitled to claim the capital allowances. The Act extends the leases to which this treatment applies to operating leases where the discounted present value of the lease payments payable during the lease term amount to 80% or more of the fair value of the asset, the lease terms is 65% or more of the predictable useful life of the asset and the asset is expected to pass into the ownership of the lessee at the end of the lease.

Prior to the Act a joint election by the lessor and lessee had to be made for this tax treatment to apply, except where the lessor is not within the charge to tax in respect of the lease income. The Act provides that a joint election is only required where the lessee is an individual. Finance leases and operating leases in respect of which this tax treatment applies are referred to as “relevant leases”.

The Act amends the legislation to extend the circumstances in which a balancing allowance or charge will arise to include where:

- A lessor lets plant/machinery in circumstances where the lessee is entitled to claim capital allowances and the lessor had previously claimed capital allowances in respect of the items leased. The balancing allowance/charge is calculated assuming proceeds equal to the higher of the market price of the asset or the discounted present value of the lease payments under the lease.
- The use of plant/machinery, in respect of which a lessee had claimed capital allowances, reverts to the lessor. The balancing allowance/charge is calculated assuming proceeds equal to the higher of the market price of the asset or the amount expected to be payable under a residual value guarantee which forms part of the lease.

Leasing ring-fence

Tax legislation provides that capital allowances arising from leased assets may only be offset against income from leasing activities. Where such capital allowances exceed income from the leasing activities creating a loss, the loss may not be offset against non-lease income. Where leasing activities are carried on by a company which is part of a group, to the extent that any loss which arises is attributable to capital allowances from leased assets, that part of the loss may only be surrendered by way of group relief to another group company for offset against the income from a trade of leasing carried on by the claimant company.

The range of income against which leasing capital allowances may be offset is extended where a company’s business, or the business of the company and certain related companies, consists wholly or mainly of leasing (i.e. greater than 50%), and not less than 90% of the activities of the company consist of certain activities (as defined) which are closely related to leasing. In such cases income from these additional activities are treated as income from a trade of leasing. The Act defines these additional activities as “lease adjacent activities” and extends the circumstances in which lease adjacent income is treated as lease income to where the company is a member of a group for corporation tax loss relief purposes and the 50% and 90% tests are satisfied by the group. The Act also extends the activities considered to be “lease adjacent activities” to include the provision of finance by an intermediate financing company and the disposal of certain contractual rights to acquire an asset intended to be leased.

The Act provides that companies which are subject to the ring-fencing provisions must include additional information in the corporation tax return in relation to ring fenced capital allowances, losses and the disposal of assets in relation to which such capital allowances were claimed.

Leasing

Lease Income and Lease Payments

Tax legislation provides that generally companies are taxed on trading income calculated in accordance with GAAP. Tax legislation, however, provides an exception to this rule in the case of companies carrying on a trade of leasing. In such cases in relation to finance leases, companies are taxable on gross lease payments receivable rather than the income calculated in accordance with GAAP (i.e. the interest element of the lease payment). This rule does not apply where the lessee is entitled to claim capital allowances in relation to the leased asset or in the case of certain short-term leases where the lessor company can elect to be taxed on accounting income from a finance lease without any entitlement to claim capital allowances, or to claim accounting depreciation on an operating lease instead of capital allowances. Tax legislation did not, however, deal specifically with the tax treatment of lease payments made by lessees.

The Act provides that for the purpose of computing the trading profit of a company that is a lessee of an asset used for the purpose of the trade, the amount deductible will not be the lease related expenses calculated in accordance with GAAP. The amount deductible will be calculated by treating the total lease payments payable over the term of the lease as if the payments were to be made evenly over the term of the lease. No distinction is made between finance leases and operating leases. (See however below where the lessee is entitled to claim capital allowances in relation to the asset.) The Act also provides that non-trading lessors can claim a deduction for interest incurred in leasing activities.

In relation to companies carrying on a trade of leasing, companies continue to be taxable on the gross lease payments receivable in relation to finance leases, however, the Act provides that the total lease payments receivable are to be treated as arising evenly over the lease term. For this purpose “lease payments” include any guaranteed residual amounts to be paid to the lessor at the end of the lease term and any guaranteed amounts to be refunded by the lessor at the end of the lease term.

The Act also provides that where a rebate of lease payments is payable or receivable on the termination of a lease the lessee is taxable on the amount of the rebate in the year in which it is received or accrued, whichever is earlier, and the payment is deductible for the lessor in the year in which the rebate is paid or accrued, whichever is later. This latter provision is not restricted to companies.

A lessee is entitled to claim capital allowances in relation to an asset leased under a finance lease where the lessee bears the burden of wear and tear. As set out above, this entitlement to claim capital allowances has been extended by the Act to certain operating leases. The Act provides that where this tax treatment applies and the lessor is a company, the lessor will be taxed on lease income on the following basis:

- Where the lease is a finance lease, the lessor will be taxed on lease income calculated in accordance with GAAP and
- Where the lease is an operating lease, the lessor will be taxed on the amount of the income from the lease which would be included in the accounts under GAAP if it were a finance lease.

The above tax treatment will only apply where the asset belongs to the lessor, they continue to own it throughout the lease term, the lessor acquired the asset by way of a bargain made at arm’s length and the lease was entered into by way of a bargain made at arm’s length. Where the lessee is not tax resident in the State it must be reasonable to assume that they are only entitled to a tax deduction for an amount equivalent to the finance element of the lease payments and not the gross lease payments. The lease must be entered into for bona fide commercial reasons and not as part of any arrangements to avoid tax. Where the lessee is an individual, the required joint election to claim the capital allowances must have been made. Where the lessee is not an individual a claim must be made in the corporation tax return and where both lessor and lessee are within the charge to tax they must jointly agree in writing at the start of the lease that the burden of wear and tear falls on the lessee. Companies are required to provide a considerable amount of additional information when making a claim to be taxed only on lease income calculated in accordance with GAAP.

Leasing

Lease Income and Lease Payments *continued*

The Act provides that where a lessee is entitled to claim capital allowances under the new provisions in relation to an operating lease, the lessee will be entitled to a deduction for the amount which is treated as a lease expense under GAAP.

Other Amendments to Leasing Legislation

Where an asset is leased under a hire purchase agreement or under any other agreement whereby a person has the use of an asset for a period at the end of which the ownership is transferred to them, for CGT purposes the asset is treated as being disposed of at the start of the agreement. The Act provides that this provision will not apply to a leased asset where the lessee is entitled to claim capital allowances unless a valid election/claim to the capital allowances has been made.

Where a gain arises on the disposal of an asset in respect of which capital allowances have been claimed, the capital allowances claimed are ignored. Where, however, a capital loss arises, in calculating the loss arising, the cost of the asset is reduced by any capital allowances claimed. The Act provides that this provision will apply where the capital allowances granted in relation to the asset were claimed by the lessee of the asset.

Generally gains arising on the disposal of wasting asset (i.e. assets with a useful life of not more than 50 years) which are tangible moveable property are not liable to CGT. This exemption does not apply in the case of assets used for the purpose of a trade where the person disposing of the asset claimed or could have claimed capital allowances in respect of the asset. The Act provides that the exemption does not apply to a disposal of machinery or plant which was let under a lease where the lessee was entitled to claim capital allowances in relation to the asset and the person disposing of the asset was the lessor.

The above provisions came into operation on 1 January 2024.

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. Finance Act 2020 provided for capital allowances to 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, Food and the Marine, 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 Act extends the period during which expenditure must be incurred to qualify for the 50% rate of capital allowances, to the end of 2026.

Relief for Income from Leasing Farm Land

An individual who leases farm land to an unconnected party who uses the land for the purpose of farming may be entitled to an exemption from income tax on rental profits arising from the land. The land must be let under a lease for at least 5 years. The maximum amount exempt from income tax depends on the length of the lease being €18,000 where the lease is less than 7 years to €40,000 where the lease is for at least 15 years.

Prior to the Act for a lessor to qualify for the relief the only requirement to be satisfied by the lessor was that they had not leased the land from a connected party on non-arm's length terms. The Act provides that the lessor must have owned the land, or had a leasehold interest in the land for a term of at least 50 years or more, for at least 7 years to qualify for the relief. This new provision only applies to individuals who purchase land, or acquire a leasehold interest of at least 50 years, at market value on or after 1 January 2024. Individuals who acquire land by way of inheritance or gift do not have to own the land for at least 7 years to qualify for the relief. There are, however, anti-avoidance provisions where the relief can be denied where land is purchased and then transferred at less than market value to a connected party.

These provisions came into operation on 1 January 2024.

Stamp Duty

Relief for transfers to young trained farmers

Relief from stamp duty applies to transfers of land to "young trained farmers" where certain conditions are satisfied.

There is a cap on the total amounts of the following reliefs which may be claimed:

- Enhanced stock relief for qualifying farmers (i.e. 100% stock relief)
- Stamp duty relief on transfers to young trained farmers and
- Farm succession income tax credit (the annual tax credit of €5,000 available to partners in a registered farm succession partnership)

The Act increases the cap from €70,000 to €100,000.

Farming

Stamp Duty *continued*

Consanguinity relief

In the past the rate of stamp duty applicable to transfers between relatives was reduced to 50% of the normal rate. This general relief was abolished for transfers from 2015 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 2024 but has been extended to transfers which take place before 1 January 2029.

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%. Where a person qualifies for the relief in respect of land, disposes of the land within 5 years the relief is clawed back. The clawback does not arise where the disposal is to a spouse for the purpose of creating a joint tenancy.

The Act extends the circumstances in which a clawback does not arise to disposals to a civil partner for the purpose of creating a joint tenancy.

The stamp duty amendments listed above came into effect from the date of the passing of the Act, 18 December 2023.

* 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.

Stock Relief

Where the value of a farmer's closing stock exceeds the value of opening stock, the farmer is entitled to claim stock relief of 25% of the increase. Farmers, age 35 or under, with certain agricultural qualifications ("qualifying farmers") are entitled to claim enhanced stock relief of 100% of the increase in stock values in the accounting year for a four-year period. The amount of the relief cannot exceed €40,000 in any year or, prior to the Act, €70,000 over the four-year period. The Act has increased the €70,000 cap to €100,000,

This enhanced stock relief applies to farmers who first become a qualifying farmer on or before 30 June 2023. A qualifying farmer is entitled to the enhanced stock relief for the year in which they become a qualifying farmer and for the subsequent three years so an individual who becomes a qualifying farmer in 2023 will be entitled to enhanced stock relief for the years 2023 to 2026.

In addition, farmers in certain registered farm partnerships are entitled to enhanced stock relief of 50% of the increase in stock values for a three-year period. Prior to the Act stock relief granted over a three-year period could not exceed €15,000. The Act increases the €15,000 limit to €20,000.

Prior to the Act also there was also a cap of €70,000 on the total amount of the following reliefs which a person may claim:

- Enhanced stock relief for qualifying farmers (i.e. 100% stock relief)
- Stamp duty relief on transfers to young trained farmers (see above) and
- Farm succession income tax credit (the annual tax credit of €5,000 available to partners in a registered farm succession partnership)

The Act increases this cap to €100,000.

These provisions come into operation on 1 January 2024.

Property

Deduction for Retrofitting Expenditure

Finance Act 2022 provided for a tax deduction for expenditure of up to €10,000 incurred on a let residential premises to improve the energy efficiency of the premises. The expenditure must be carried out in the period 1 January 2023 to 31 December 2025 and the claimant must receive an approved retrofitting grant (i.e. the Individual Energy Upgrade grant, the One Stop Shop Service grant or any other grant administered by the Sustainable Energy Authority of Ireland which is designated by Revenue for the purpose of the relief.) The deduction is given in the year after the expenditure is incurred.

The work must be carried out by a qualifying contractor and the tenancy must be registered with the Residential Tenancies Board. The property must be rented out when the expenditure is incurred and for the following 2 years. If the property ceases to be let within 2 years, the relief is clawed back unless the property is re-let or is actively marketed for rent at market rent without any conditions being attached to the proposed letting which are unreasonable or designed to impede a letting.

The landlord must be LPT compliant in respect of the property in order to qualify for the relief. A deduction can only be claimed in respect of expenditure on no more than two properties. Where the expenditure is on two properties the total tax deduction is limited to €10,000.

The Act extends the relief to expenditure on a premises to which the Housing (Private Rented Dwellings) Act 1982 applies (i.e. properties previously subject to rent controls).

This provision came into operation on 1 January 2024.

Pension Funds

Pension funds are exempt from tax on rents and on gains arising from disposals. The Act provides that exemption from tax will not apply to rents for the letting of a residential property unless the tenancy is registered with the Residential Tenancies Board.

This provision came into operation on 1 January 2024.

Rental Income Relief

The Act provides for a tax credit for the tax years 2024, 2025, 2026 and 2027 for individuals liable to tax on profits from rented residential premises located in the State. The tax credit is an amount equal to lower of 20% of net rental profits (after deduction of capital allowances and rental losses) or the following amount:

- For 2024, €600
- For 2025, €800
- For 2026, €1,000
- For 2027, €1,000

The property must be a "qualifying premises" i.e. it must be owned by the individual and must be:

- Occupied under a tenancy which is registered with the Residential Tenancies Board; or
- A premises which to which the Housing (Private Rented Dwellings) Act 1982 applies (i.e. properties previously subject to rent controls); or
- Let to a local authority or
- Being actively marketed for rent

The relief does not apply where the property is occupied by a person connected to the property owner. To qualify for the relief the property must be LPT compliant and the owner must have a tax clearance certificate.

Where during the four years referred to above, the individual ceases to be entitled to rent from any qualifying premises or any qualifying premises is occupied by a connected person the relief claimed in previous years is clawed back.

Property

Rent Tax Credit

Finance Act 2022 introduced an annual tax credit for rent paid.

The credit may be claimed in respect of rent paid for:

- A principal private residence (PPR)
- Use of a residential property to facilitate attendance at a trade, profession, employment or approved course*
- The use of a residential property by a child as their PPR to facilitate their attendance at an approved course*

The credit may only be claimed in respect of a tenancy which has been registered with the Residential Tenancies Board (RTB) or a licence for the occupation of a room where there is no requirement for the licence to be registered with the RTB. Where the landlord and tenant are related, the credit may only be claimed where it is in respect of a tenancy registered with the RTB and the tenant is not a child of the landlord. When the credit was introduced, it could only be claimed in respect of a property occupied by a child attending an approved course where the tenancy was required to be registered with the RTB. The Act eliminates this requirement with effect from 1 January 2022.

The Act provides that Oireachtas members who are in receipt of allowances in relation to a residential property, or who are entitled to claim a deduction for expenses incurred in relation to the maintenance of a second residence which they are require for the purpose of carrying out their duties, are not entitled to claim the rent tax credit in respect of such residential property.

The rent credit may be claimed in respect of the years 2022, 2023, 2024 and 2025. The Act amends the legislation with the intention of increasing the rent credit to a maximum of €750, from €500, for single persons and to a maximum of €1,500, from €1,000, for married couples for 2024 and 2025. As amended by the Act, the legislation does not actually provide for the higher credit, however, it is understood that the intention is that the higher credit will apply and it is likely that the legislation will be amended in the future.

* Approved courses are those for which a credit may be claimed for third level fees i.e. broadly undergraduate courses of at least 2 years duration or post graduate courses of at not less than one year, but not more than 4 years, duration undertaken at a university or similar institution.

Stamp Duty

A lease of a residential house or apartment for less than 35 years, or for an indefinite period, is exempt from stamp duty provided the annual rent does not exceed a specific amount. Prior to the Act the exemption only applied if annual rent was €40,000 or less. The Act increases the annual rent limit to €50,000.

This amendment came into effect from the date of the passing of the Act, 18 December 2023.

Defective Concrete Products Levy

Finance Act 2022 provided for a “defective concrete products levy” to be payable on the supply of certain concrete products. The stated intention of introducing the levy was to raise revenue to contribute towards the funding of the Defective Concrete Blocks Grant Scheme. (This scheme was introduced to provide financial support to homeowners whose properties were damaged due to the use of concrete blocks containing excessive mica or pyrite.) The levy is 5% of the market value of the product. The concrete products to which it applies are products that contain concrete and ready to pour concrete which are required to comply with certain EU standards.

The levy will only apply to the first supply and the supplier is required to register for the levy with Revenue before the first supply. A return must be filed and the levy paid within 23 days after the end of the accounting period in which the supply occurs. Returns must be filed electronically.

The Act has amended the legislation so that the levy will not apply to pouring concrete used in the manufacture of precast concrete products with effect from 1 January 2024. The Act also brought in a refund scheme for those who have paid the levy on such products between 1 September 2023 (when the levy first applied) and 31 December 2023. The claim must be made within four months of the accounting period ending in this period.

Property

Residential Zoned Land Tax

"Residential zoned land tax" was introduced by Finance Act 2021. The tax is 3% of the market value of the land and is payable annually. It applies to land which is zoned as being suitable for residential development. The land must be serviced land, zoned for residential use and must not be subject to conditions which may impact on its ability to be used to provide housing on the land (e.g. land which already has existing housing on it or that is used for infrastructure purposes (e.g. utilities) or for community or recreational purposes).

Local authorities are required to publish a map of land within its area which may be subject to the tax. The maps are updated annually. The owner of a site which is subject to the tax is required to register as owner of the site with Revenue.

For land zoned before 1 January 2022, the intention was that the tax would be charged from 2024 on the liability date (i.e. 1 February 2024). For land zoned on or after 1 January 2022, the tax is charged in the 3rd year after the land comes within the scope of the tax. The valuation date is 1 February in the year in which the land first comes within the charge to the tax. Sites must be revalued every three years.

The Act has deferred the first due date for payment of the tax to 1 February 2025. It also amends the legislation to allow landowners dispute maps published on 1 February 2024 and request rezoning by 31 May 2024.

Vacant Homes Tax

Finance Act 2022 provided for a "vacant homes tax" to be paid in respect of residential properties which are in use as a dwelling for less than 30 days in a "chargeable period". A "chargeable period" is a 12-month period commencing on 1 November. The first chargeable periods commenced on 1 November 2022 so the first chargeable period for which vacant homes tax became payable was for the 12 months ending on 31 October 2023.The tax must be paid on or before 1 January following the end of the chargeable period and a return filed on the 7th day after the end of a chargeable period. The Act increases Vacant Homes Tax to 5 times, from 3 times, the amount of LPT payable in respect of the property before taking into account any adjustment to the LPT rate made by a local authority.

The increased rate applies to the chargeable period commencing on 1 November 2023.

Personal Taxation

Income Tax Rates and Credits

The standard rate tax band has been widened by €2,000 for single persons and married couples with one income and by €4,000 for married couples with two incomes.

Personal tax credits have been increased by €100 for single persons and €200 for married couples. The child carer credit, home carer credit, employee tax credit and the earned income tax credit have all been increased by €100. The incapacitated child credit has been increased by €200.

The above changes apply for 2024 and subsequent years.

Universal Social Charge

The 4.5% rate of USC has been reduced to 4%, otherwise no other changes have been made in the rates of USC. The band within which USC is paid at 2% has been widened by €2,840 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 2024 do not pay USC at a rate higher than 2%.

The relief whereby individuals 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 2025.

Help to Buy Scheme

Under the Help to Buy 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 claimable is 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 rebate does not apply where the cost/valuation of the dwelling exceeds €500,000. A mortgage of at least 70% of the purchase price or self-build value must be taken out (the loan-to-value ratio).

Finance Act 2022 extended the scheme to the purchase of a building, not previously used as a dwelling, by a first-time purchaser under an affordable dwelling purchase arrangement and a direct sales agreement under the Affordable Housing Act 2021. The Act provides that in the case of an affordable dwelling purchase the affordable dwelling contribution may be taken into account in determining if the loan-to-value ratio is satisfied. This change takes effect on and from 11 October 2023.

The scheme was due to expire on 31 December 2024 but has been extended to the end of 2025.

Mortgage Interest Relief

The Act provides for a tax credit for 2023 only for interest payments on a loan taken out to purchase, repair, develop or improve one’s sole or main residence. The credit is 20% of the difference between the interest paid in 2022 and 2023 subject to an overall maximum credit of €1,250.

To qualify for the credit the balance on the loan must be at least €80,000 and not more than €500,000 on 31 December 2022, the property must be LPT compliant, and any planning permissions granted in relation to the property must have been complied with.

Certain details regarding the property, the loan and the claimant must be provided when making a claim for the credit.

Oireachtas members who are in receipt of allowances in relation to a residential property, or who are entitled to claim a deduction for expenses incurred in relation to a second residence which they require for the purpose of carrying out their duties, are not entitled to claim the mortgage interest relief tax credit in respect of such residential property.

Personal Taxation

Miscellaneous Income Tax Changes

Exemption for Clinical Placement Allowance

The Act provides for an exemption from income tax and USC for a payment, generally referred to as a Clinical Placement Allowance, made to undergraduate students undertaking Supernumerary Clinical Placement as part of an undergraduate programme in nursing or midwifery.

The exemption applies to payments made before and on or after 1 January 2024.

Exemption for payments for maternity-related administrative support

In 2022 a legal entitlement to maternity leave was introduced for elected members of local authorities. In 2023 legislation providing for the payment of an allowance to such members for secretarial/administrative supports during maternity leave was enacted. The Act provides for an exemption from income tax and USC for an allowance payment made by the Minister for Housing, Local Government and Heritage to a member of a local authority. Such allowances are referred to as payments for "maternity-related administrative support".

Micro-generation of electricity

Finance Act 2021 provided for an exemption from income tax for income of up to €200 per annum earned by an individual from the micro-generation of electricity. Micro-generation of electricity means the use of renewable, sustainable or alternative forms of energy to generate electricity at the residence of the individual.

The Act increases the exempt amount from €200 to €400 per annum and extends the relief for a further year to the end of 2025.

Pensions

Retirement Annuity Contracts

The Act provides that Revenue will not approve any retirement annuity contracts (RAC) on and from 1 January 2024, except where an application for approval was made before that date.

Deemed Distributions

Where an approved pension fund, PRSA, Approved Retirement Fund or Pan-European Personal Pension Product, uses fund assets in certain ways set out in the legislation (which broadly benefit the pension fund holder or connected parties), the fund is deemed to have made a distribution to the pension fund holder and the assets are no longer regarded as pension assets.

The Act extends the circumstances in which the above provisions apply to include where pension funds are used to make loans to, or provide security for a loan to, a close company where the pension fund holder, or a person connected to them, is a participator in the company. (A "close" company is, broadly, a family owned company or a company controlled by its directors.) The amount of the deemed distribution is the value of the assets used to make the loan or used as security for such a loan.

This provision came into operation on and from 1 January 2024.

PRSA

The Act removes the upper age limit of 75 on accessing funds from a PRSA.

This provision came into operation on 1 January 2024.

Capital Acquisitions Tax

Rates and Thresholds

Capital acquisitions tax (CAT) is payable at 33% where the cumulative gifts or inheritances received by a beneficiary to date are in excess of the relevant tax-free threshold. The tax-free threshold which applies depends on the relationship between the person from whom the gift or inheritance is taken and the recipient. The current tax-free thresholds are as follows:

- Gift/Inheritance from a parent to a child: €335,000
- Gift/Inheritance from a child to a parent, to a sibling or other relative: €32,500
- Gift/Inheritance to a person who is not a relative: €16,250

The Act has not changed the tax-free thresholds or the rate of CAT. Prior to the Act the legislation provided that for the purpose of determining the appropriate tax-free threshold a foster child is treated as child of their foster parent where a gift or inheritance was received from the foster parent. The Act extends this relief for foster children and provides that a foster child is also deemed to be a child of the foster parent in determining the tax-free threshold which should apply to gifts or inheritances received by the foster child from "specified relatives" of the foster parents. A "specified relative" is a lineal ancestor (e.g. parent), child, or child of a civil partner, and a brother or sister. This allows a foster child to avail of the €32,500 tax-free threshold for gifts taken from those who would be regarded as their grandparent, aunt/uncle or sibling if they were a natural child of their foster parent. In addition, the Act provides that a foster child will be treated as a sibling of other children fostered by their foster parent in determining the tax-free threshold to apply to gifts or inheritances taken from such foster children.

Prior to the Act the parent/child tax free threshold also applied where a gift or inheritance was received by certain persons who, although not legally fostered, were under the care and were maintained by another person for at least 5 years before the person reached age 18.

The Act now provides that the €32,500 threshold can apply to gifts or inheritances taken by such a person from "specified relatives", as defined above, of the person who took care of them and from other persons who were also taken care of by the same person.

These provisions came into effect from the date of the passing of the Act, 18 December 2023.

Agricultural Relief

Where an individual receives a gift or inheritance of agricultural property, in calculating the CAT liability arising the market value of the property is reduced by 90% where the conditions for agricultural relief to apply are satisfied. The relief is clawed back where the property is disposed of within 6 years unless the proceeds are reinvested in other agricultural property.

Agricultural relief can also apply to a gift or inheritance of cash given on condition that it is invested in agricultural property and the cash is so invested within two years.

The Act provides that the 6-year clawback period will commence on the "valuation date" in relation to the gift or inheritance (or the date cash given on condition it is invested in agricultural property is invested). Previously the clawback period commenced on the date of the gift or inheritance. The valuation date of a gift or inheritance is the date the beneficiary becomes entitled to the gift/inheritance or if earlier when the subject matter of the gift/inheritance is held for their benefit. The date of a gift is when the gift is made. The date of a gift and the valuation date of a gift will generally be the same.

Generally the date of an inheritance will be the date of death of the person from whom the inheritance is taken. The valuation date of an inheritance is generally later than the date of the inheritance. It is generally no earlier than the date probate issues but can be as late as when assets are distributed to a beneficiary.

These provisions came into effect from the date of the passing of the Act, 18 December 2023 but do not apply in relation to **gifts or inheritances taken before 1 January 2024.**

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Capital Acquisitions Tax

Agricultural Relief *continued*

The granting of a lease can be treated as a part disposal of an asset for capital gains tax purposes. One of the conditions to be satisfied for an individual to qualify for agricultural relief is that they must farm the land for a 6-year period or let the land to another person who farms the land for the 6-year period. The Act confirms that the granting of a lease in this context which is treated as a part disposal for CGT purposes will not give rise to a clawback of agricultural relief.

Where agricultural property is disposed of and gives rise to a clawback of agricultural relief the amount of the clawback is calculated using a formula which compares the proceeds not reinvested with the market value of the property immediately before its disposal. So if say 50% of the land is sold at market value 50% of the agricultural relief claimed is clawed back. If the property were gifted on within 6 years no proceeds, or proceeds of less than market value, are received for a disposal, the formula could mean that no clawback of agricultural relief would apply in such circumstances. The Act amends the formula to provide that the proceeds from a disposal are deemed to include the market value of any non-cash consideration received and the market value of the property disposed of where less than full market value consideration is received.

To qualify for agricultural relief an individual must satisfy certain conditions, one of these conditions is that the on the valuation date at least 80% of the property they own must be agricultural property. In addition, for a 6-year period the individual has to spend at least 50% of their working time farming the land or have certain agricultural qualifications or lease the land to another person who satisfies these conditions for the 6-year period. As the legislation was written if any of these conditions, including the 80% test, was not satisfied throughout the 6-year period agricultural relief would be clawed back. The Act amends the legislation to confirm that a clawback of agricultural relief will arise (other than on a disposal of the land) only where the individual does not satisfy the conditions regarding holding farming qualifications, leasing the land to a qualifying farmer or farming the land for a 6 year period.

The Act also provides that a CAT return must be filed and any additional tax due paid which is due on a clawback of agricultural relief, within 3 months of becoming aware that a clawback arises.

These provision came into effect from the date of the passing of the Act, 18 December 2023 .

Capital Acquisitions Tax

Business Relief

Where an individual receives a gift or inheritance of a business or shares in certain unquoted companies, in calculating the CAT liability arising, the amount liable to CAT is reduced by 90% where the conditions for business relief to apply are satisfied. The relief is clawed back where the business/ shares are disposed of within 6 years unless the proceeds are reinvested in another business/shares in a company to which the relief could apply.

The Act provides that the 6-year clawback period will commence on the "valuation date" in relation to the gift or inheritance (or the date cash, given on condition it is invested in agricultural property, is invested). Previously the clawback period commenced on the date of the gift or inheritance. The valuation date of a gift or inheritance is the date the beneficiary becomes entitled to the gift/inheritance or if earlier when the subject matter of the gift/inheritance is held for their benefit. The date of a gift is when the gift is made. The date of a gift and the valuation date of a gift will generally be the same. Generally the date of an inheritance will be the date of death of the person from whom the inheritance is taken. The valuation date of an inheritance is generally later than the date of the inheritance. It is generally no earlier than the date probate issues but can be as late as when assets are distributed to a beneficiary.

Prior to the Act, a clawback of relief applied where the property was "sold, redeemed or compulsorily acquired". The Act amends this to all situations where the property is "disposed of", which would include a disposal by way of gift.

These provisions came into effect from the date of the passing of the Act, 8 December 2023 but do not apply in relation to gifts or inheritances taken before 1 January 2024.

The Act also provides that a CAT return must be filed and any additional tax due on a clawback of business relief paid, within 3 months of becoming aware that a clawback arises.

This provision came into effect from the date of the passing of the Act, 18 December 2023.

Interest Free Loans

A CAT return must be filed even where there is no CAT liability where the cumulative taxable gifts or inheritances received exceed 80% of the relevant tax-free threshold (see above), where business relief or agricultural relief is claimed in relation to a gift/inheritance or where a person is required by Revenue to file a return.

A gift is deemed to be received where a person is given an interest free, or low interest loan. The deemed gift is the difference between the amount of interest which the lender could have earned if they had put the loan funds on deposit, less the interest paid by the borrower. The Act extends the circumstances in which a CAT return must be filed to include where a gift is received arising from the use or enjoyment of a "specified loan" where no interest is paid in respect of the loan and the balance outstanding on all specified loans exceeds €335,000 at any time in a 12 month period ending on 31 December.

A "specified loan" is a loan:

- Made to a person by a close relative
- Made to a person by a company, a shareholder in which is a close relative
- Made to a company where the lender is a close relative of a shareholder in the company
- Made by a company to another company where a shareholder in one company is a close relative of a shareholder in the other company

The return to be filed must include details of the lender, the balance outstanding and any other information Revenue may reasonably require.

The new provisions came into effect on 1 January 2024.

Capital Gains Tax

Compensation and Insurance Proceeds

In certain circumstances where a person receives compensation or insurance proceeds in respect of an asset the person is treated as making a deemed disposal or part disposal of the asset in question. Tax legislation provides for an effective deferral of the CGT arising where compensation is received for damage or destruction to an asset where the compensation/insurance proceeds are used in restoring or replacing the asset. The Act provides that this deferral will not apply where the deemed disposal in question is to an authority possessing compulsory purchase powers and the disposal or deemed disposal in question would not have been made but for the exercise of those powers or the giving of a notice of intention to exercise those powers.

This provision came into operation on 1 January 2024.

Rates

There have been no changes to the standard rate of CGT which remains at 33% or to the 10% rate of CGT which applies to the disposal of certain business assets and shares in trading companies.

Relief for Investment in Innovative Enterprises

The Act introduces a new CGT relief, called "relief for investment in innovative enterprises" but which is referred to by many commentators as relief for "Angel investors". Where the conditions for the relief are satisfied the rate of CGT payable on a disposal of shares is reduced to 16% (or 18% where the investment is made by a qualifying partnership). Cumulatively the relief can apply to gains made by an investor of up to €3m. However, for each disposal the maximum gain on which the relief applies is restricted to the lower of the gain or twice the investment made. So if an investment of say €200,000 is made and a gain of €800,000 arises on the disposal of the investment the relief will only apply to €400,000.

The relief does not apply to a redemption, repayment or repurchase of shares or to a disposal which is a part disposal.

Overview of relief

The relief applies to disposals of ordinary shares by individuals which have been held for at least 3 years. An investment of at least €20,000 must be made. Where the investor has at least a 5% interest, relief can apply to an investment of between €10,000 and €20,000. The relief only applies to investments in innovative SMEs within the first five years since incorporation. A number of conditions must be satisfied by the investor and the company, which are set out below.

Qualifying investors

To qualify for the relief an investor must be a "qualifying investor". A "qualifying investor" is an individual who subscribes for "eligible shares" in a "qualifying company" and who when the investment is made, is not connected with the company. "Connected" is broadly defined in this context and includes where the individual, or an associate, has an interest in the capital of the company or of any company which is a member of the same "relief group" (see below under "innovative enterprises"). However, in determining if an individual has an interest in shares, shares which qualify for the relief are ignored provided the individual does not control the company at the date of the investment. An individual regarded as having an interest in the capital of a company includes an individual who has advanced a loan to the company. An individual is also regarded as connected to a company if they, or an associate, are a director or employee of the company or a company which is a member of the same "relief group".

To be regarded as subscribing for shares, the subscription must be for cash and the issue of the shares must be for bona fide commercial reasons and not as part of an arrangement to avoid tax.

Eligible shares

"Eligible shares" are as defined for EII relief purposes i.e. they must be new ordinary shares and may be redeemable. The legislation does not specifically refer to whether or not the shares may have preferential rights to dividends or capital on a winding up, unlike for EII relief where the Act specifically provided that the relief would not apply where the shares have such rights.

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Capital Gains Tax

Relief for Investment in Innovative Enterprises

continued

Qualifying Company

A company is a qualifying company if it holds "certificates of qualification" i.e. a "certificate of going concern" and a "certificate of commercial innovation". A company seeking to raise investments from investors can apply to Revenue for certificates of qualification. The applicant must have a business plan and it must be reasonable to consider that the company intends to and has sufficient expertise and experience to implement the business plan. The company must also provide details of the shareholders and linked and partner businesses. To make an application the company must satisfy the following conditions:

- Be incorporated in the State, EEA or UK
- Be tax resident in the State, EEA or UK and intends to carry on "relevant trading activities" (definition as for EII) from a fixed place of business in the State.
- Hold a tax clearance certificate.
- Not control another company (including with persons connected to the company) other than a qualifying subsidiary. (A company is a qualifying subsidiary if it is a 51% subsidiary of the qualifying company, no other person has control of the subsidiary and no arrangements are in place by which these two conditions would cease to be satisfied).
- Not be under the control of another company (or by a company and persons connected with the company)
- Arrangements must not be in place whereby the last two conditions would not be satisfied in the period of 3 years following the issue of a certificate of commercial innovation.
- Must exist wholly for carrying on relevant trading activities (as defined for EII) or its business must consist wholly of holding shares in or making loans to qualifying subsidiaries or one or both these activities and carrying on relevant trading activities.
- The company must be an "innovative enterprise" (See right).

Innovative Enterprise

The definition of "innovative enterprise" is taken from the EU General Block Exemption Regulation (GBER). This includes the following enterprises:

- One which can demonstrate, by means of an evaluation carried out by an external expert, that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure.
- One where its R&D costs represent at least 10% of its total operating costs in at least one of the 3 years preceding the granting of aid or, in the case of a start-up enterprise, in the audit of its current fiscal period as certified by an external auditor.

Where a company raises funds through the issue of eligible shares for the purpose of raising money for relevant trading activities being carried out by a qualifying subsidiary the funds must be used to acquire eligible shares in the qualifying subsidiary.

Capital Gains Tax

Relief for Investment in Innovative Enterprises
continued

Innovative enterprise continued

In addition, to make an application for certificates of qualification the "relief group" of which the company is a part must satisfy a number of conditions as set out below. A "relief group" consists of a company, its partner businesses and linked businesses (as defined under EU regulations) and any relief group of which the company is a member and any company that was a member of a relief group with a qualifying company or qualifying subsidiary.

Conditions to be satisfied by each member of the relief group:

- Must be unlisted and have no arrangements in place to be listed.
- Must not be subject to an outstanding recovery order following a decision of the European Commission that declared an aid illegal and incompatible with the internal market.
- All issued shares must be fully paid up
- No member can have been registered more than 5 years prior to the date of the issue of the certificate of innovation.
- Must be an SME (as defined under EU regulations)
- Must not be an undertaking in difficulty (definition as for GBER)

If a company does not satisfy the conditions set out in above or a company in the relief group does not satisfy the conditions above the company must return its certificates of qualification to Revenue and cannot provide copies to qualifying investors/partnerships. The certificates are then withdrawn and no longer valid. If the company does provide copies of the certificates to qualifying investors/partnerships the company is charged to tax on an amount = (I x 2 x 17%) x 4 where I is the investment amount.

A company is required to notify Revenue of any material changes in the facts relevant to the conditions set out above which occur during the period of validity of the certificates of qualification. If this is not done and Revenue become aware of changes, or that the conditions were not satisfied, they will give notice of intention to withdraw the certificates. The company can make submissions following which Revenue will give a determination and company can appeal determination.

Certificate of going concern

Revenue will issue a certificate of going concern where it is satisfied the applicant is an SME and is not an undertaking in difficulty. Alternatively Revenue can issue a determination that the applicant has not demonstrated that these conditions are satisfied. (An appeal can be made against such a determination). Revenue may issue or renew a certificate of going concern after taking into consideration recommendations of Enterprise Ireland. If a company holds a valid certificate of commercial innovation but its certificate of going concern has expired or is about to expire it can apply to Revenue for a renewal. Revenue won't issue a certificate if the conditions set out above to be satisfied by the company (other than re innovation and business plan) are not satisfied and if the conditions to be satisfied by members of the relief group are not satisfied.

A certificate of going concern is valid until the later of the following dates:

- 3 years from the date of registration of the first company in the relief group that was registered.
- The earlier of the last day of the accounting period in which the certificate was issued or if the certificate was renewed, the date the certificate of commercial innovation ceases to be valid.

Certificate of commercial innovation

Revenue shall issue a certificate of commercial innovation provided the applicant company satisfies the conditions that it is an innovative enterprise and has the expertise and experience to implement the business plan. Alternatively it will issue a determination that the company has not demonstrated that these conditions have been satisfied. (An appeal can be made against such a determination).

Capital Gains Tax

Relief for Investment in Innovative Enterprises
continued

Certificate of commercial innovation *continued*

Revenue may issue or renew a certificate of commercial innovation after taking into consideration recommendations of Enterprise Ireland. Revenue shall not issue or renew a certificate if the conditions above to be satisfied by the company and members of the relief group are not satisfied. If a company holds a valid certificate of commercial innovation but its certificate of going concern has expired or is about to expire they can apply to Revenue for a renewal.

A certificate of commercial innovation is valid until 5 years after the date of registration of any company which is a member of the relief group.

Qualifying investment

The investment made must be a "qualifying investment". To be a qualifying investment it must be based on a business plan and must not be an "expansion risk finance investment" or "follow-on risk finance investment". These terms are as defined for EII purposes (see above under EII) i.e. "expansion risk finance investment" means the issue of eligible shares to fund a new economic activity and "follow-on risk finance investment" means an issue of eligible shares subsequent to the first issue of eligible shares. Thus only the first issue of eligible shares by a company will qualify for the relief. An investment will not be a qualifying investment unless the qualifying company provides a copy of the certificates of qualification to the qualifying investor/partnership.

In addition, the following conditions must be satisfied for an investment to be a "qualifying investment":

- The shares are held for at least 3 years.
- During the 3-year period the total shares held by the individual in the company, or a company which is a member of the same relief group, is not more than 49% of the ordinary share capital and do not entitle the individual to more than 49% of distributions, votes or assets on a winding up.
- During the 3-year period the investor has a copy of the certificates of qualification in respect of the qualifying company that were valid on the date of the investment.
- The value of the eligible shares on the date of the investment is:
  - Not less than €20,000 or
  - Not less than €10,000 and at the time of the investment the eligible shares represent 5% or more of the ordinary share capital and the individual is entitled to not less than 5% of distributions, 5% of votes and 5% of assets on a winding up and there is no arrangement in place whereby the 5% would be reduced.

An investment will not be a "qualifying investment" where:

- An arrangement exists which might substantially reduce the risk that the person owing the shares might be unable to realise an amount specified or receive such an amount in respect of the shares, then the shares will not be a qualifying investment or
- Where in the 3-year period commencing with the investment the company or any of its qualifying subsidiaries begins to carry on a business previously carried on by someone else in that 3 year period or acquires the whole or the greater part of the assets used for the purpose of a business previously carried on. This provision only applies where the individual making the investment is a person, or one of a group of persons, who had a 50% share in the business previously carried on or controlled the company which previously carried on the business.
- Where the company acquires control of another company during the 3-year period and the individual making the investment controls, or is part of a group of persons who control, the company, also controlled the other company.

Capital Gains Tax

Relief for Investment in Innovative Enterprises
continued

Qualifying partnership

The relief is also available where an individual makes an investment in a "qualifying partnership". A "qualifying partnership" is one in which an individual has contributed a minimum of €20,000 prior to the investment by the partnership in a qualifying company. In addition, the following conditions must be satisfied:

- It is established under a partnership agreement where its principal business is the investment of funds in accordance with a defined investment policy.
- Under the partnership agreement funds are to be invested in eligible shares without undue delay.
- The partnership agreement should specify the rate of commission for management expenses to be paid on dividends or interest and any other charges by means of management or other expenses.
- Audited accounts must be prepared annually and submitted to Revenue.

Where an investment is made through a qualifying partnership the rate of CGT which applies to a disposal of shares is 18%.

Interaction with other reliefs

Where there is a disposal of ordinary shares and the conditions for revised entrepreneur relief are satisfied a 10% rate of CGT will apply to the gain arising. If the CGT payable due to the application of revised entrepreneur relief is less than the CGT which would be payable if relief for investment in innovative enterprises only applied, then relief for investment in innovative enterprises will not apply.

Where retirement relief applies on a disposal of ordinary shares, all or part of the gain arising may be relieved from CGT. If the CGT payable due to the application of retirement relief is less than the CGT which would be payable if relief for investment in innovative enterprises only applied, then relief for investment in innovative enterprises will not apply.

If a claim is made for EII relief in respect of shares a claim for relief for investment in innovative enterprises cannot be made in respect of the shares.

The relief only applies to disposals of shares that are issued on or before 31 December 2026.

These provisions only come into effect on the issue of a commencement order by the Minister for Finance.

Retirement Relief

Relief from CGT applies on the disposal of certain business assets and shares in trading companies where an individual satisfies the conditions for retirement relief to apply.

An individual can only qualify for retirement relief on cumulative lifetime disposals of up to €750,000, to persons other than a child (as defined). Where the individual reaches age 66 the €750,000 cap is reduced to €500,000 and in addition the relief only applies to cumulative disposals to a child of up to €3 million. Marginal relief applies where the consideration exceeds the €750,000/€500,000 limits.

The Act provides that for disposals on or after 1 January 2025 the €750,000 limit in relation to disposals other than to a child, will apply to disposals by an individual up to age 70. In relation to disposals to a child, the Act provides that for disposals on or after 1 January 2025, full relief will only apply to disposals by an individual age 55+ where the individual has not reached age 70 and cumulative disposals of assets qualifying for the relief do not exceed €10m. The €3m limit will apply to disposals by an individual on or after 1 January 2025 who has reached age 70.

In determining if the limits set out above are exceeded, cumulative disposals which qualified for the relief are taken into account. Thus for example, if an individual makes a disposal of assets qualifying for retirement relief for €700,000 to a third party in year 1, no CGT may be payable. If the individual makes a second disposal of assets qualifying for retirement relief of €600,000 to a third party in year 2, cumulative disposals of qualifying assets will exceed €750,000 which will cause a clawback of retirement relief originally granted in year 1 (subject to the possibility of marginal relief applying).

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Capital Gains Tax

Retirement Relief *continued*

In determining if the €3m limit is exceeded only disposals on or after 1 January 2014 by an individual aged 66 plus are taken into account. The Act provides that in determining whether the new €10m limit for disposals to a child by an individual age up to 70 has been exceeded the following disposals are taken into account:

- Disposals to a child in the period 1 January 2014 to 31 December 2024 (inclusive) made when the individual was aged at least 66, provided that if the market value of such disposals exceeded €3m in total, only €3m will be taken into account; and
- Disposals on or after 1 January 2025.

Prior to the Act retirement relief did not have to be claimed, if the conditions were satisfied the relief applied. The Act provides that a claim must be made for the relief in their return.

This provision came into operation on 1 January 2024.

Prior to the Act where an individual aged 66 or over disposed of shares in a family company to a child and also disposed of shares in the company to a company controlled by the child the consideration for the disposal of the shares to the child were taken into account in determining if the €500,000 cap on disposals to a person other than a child was exceeded. The Act provides that in addition where an individual aged 55 or over disposes of shares in a family company to a child on or after 1 January 2025 and also disposes of shares in the company to a company controlled by the child, that the consideration for the disposal of the shares to the child will be taken into account in determining whether the €750,000 cap has been exceeded.

Revised Entrepreneur Relief

Revised entrepreneur relief provides for a 10% rate of CGT to apply to gains (up to a cumulative amount of €1m) arising on disposals of certain business assets and shares in certain companies.

A disposal of shares in a holding company can qualify for the relief.

A "holding company" was defined as a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51% subsidiaries. The Act provides a new definition of "holding company" to clarify that all companies in which shares are held must be 51% subsidiaries (i.e. more than 50% share ownership) and that the business of the holding company must consist wholly or mainly of holding those shares.

The above provision came into operation on 1 January 2024.

Relief for Certain Disposals of Land or Buildings

Finance Act 2012 introduced a relief from capital gains tax (CGT) on disposals of land or buildings situated in any EEA State (i.e. EU plus Norway, Iceland and Lichtenstein). The relief applies to land or buildings which were acquired in the period 7 December 2011 to 31 December 2014. Where the relief applies and the property is sold during the period beginning 4 years after the property was acquired and ending 7 years after that date, any gain arising will not be liable to CGT. If the property is owned for at least 7 years a portion of any gain arising equal to the same proportion of the gain as 7 years bears to the period of ownership is exempt from CGT e.g. if a property is owned for 12 years 7/12ths of any gain arising will be exempt from CGT.

Prior to the Act the legislation stated that the relief applied to land or buildings "acquired" in the relevant period and the amount of the relief depended on the period which had elapsed since the asset was "acquired". Revenue have replaced the word "acquired" in the legislation with the word "purchased". Revenue state that this is just a clarification of the legislation, saying that the exemption was always only intended to apply where the property was acquired by way of a purchase.

The relief only applies where the property has been "purchased" for a consideration equal to market value or 75% of market value where the property was "purchased" from a relative. Another "clarification" which has been made to the legislation by the Act is to state that in determining whether this market value rule has been satisfied, any other provisions in the CGT Acts which fix the deemed consideration received or given is to be ignored. Accordingly, one must look at the actual consideration given.

These provisions are deemed to have effect in relation to disposals made on or after 1 January 2018.

Miscellaneous Amendments

Charities

Charities are exempt from income tax on income arising from carrying on a trade provided either the trade is exercised in the course of carrying out the primary purpose of the charity or the work in connection with the trade is mainly carried on by the beneficiaries of the charity. The Act extends this exemption to professions carried out by a charity.

Overseas charities may apply to Revenue seeking a determination that if the charity had income in the State the income would qualify for exemption from income tax. This allows the charity to access the tax relief scheme for donations to approved bodies (which include charities).

The Act provides that where Revenue is satisfied that an exemption from income tax, or determination given to an overseas charity, no longer applies they shall inform the charity by notice in writing served by registered post and will also inform the Charities Regulatory Authority. The Act also provides that Revenue can publish the name, address and CHY number of a charity.

The above provisions came into operation on 1 January 2024.

Definition of Incapacitated Person

The definition of an "incapacitated person" has been amended for income tax purposes from "any minor or person of unsound mind" to "a person who lacks capacity within the meaning of the Assisted Decision-Making (Capacity) Act 2015 or a minor".

This provision came into effect from the date of the passing of the Act, 18 December 2023.

Donation of Heritage Items

Certain tax liabilities may be paid by donating heritage items to an approved body (e.g. the National Archives, The National Gallery of Ireland, The National Museum of Ireland). The amount of tax deemed to be paid will be 80% of the market value of the item donated. The item donated must have a minimum value of at least €150,000 (in the case of a collection at least one item must have a minimum value of €50,000). The donation must be approved by a selection committee. There is a ceiling in value terms on the aggregate of items which may be donated in any one year. The Act increases this ceiling from €6,000,000 to €8,000,000.

This provision come into effect from the date of the passing of the Act, 18 December 2023.

Sports Bodies

Bodies established for the sole purpose of promoting athletic or amateur games or sports are exempt from income tax and corporation tax where the income of the body is applied solely for those purposes. The Act for the first time inserts a definition of "sport" in the legislation. "Sport" is defined as including "competitive sport" and "recreational sport". "Competitive sport" is defined as all forms of physical activity which through organised participation aims to express or improve physical fitness and to obtain improved results in competitions at all levels. "Recreational sport" is defined as all forms of physical activity which aim to express or improve physical fitness and mental well-being and to form social relationships.

The Act also provides that Revenue may publish the name, county and games and sports exemption number of an approved body.

The above provisions came into operation on 1 January 2024.

Stamp Duty

The period from which interest accrues on a repayment of stamp duty due from Revenue has been reduced by the Act from 183 days to 93 days after a valid claim has been made. (Where there is an error by Revenue interest accrues from the date the original stamp duty was paid.)

This provision came into effect from the date of the passing of the Act, 18 December 2023.

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VAT

Threshold for VAT Registration

A person is required to register for VAT when their annual turnover exceeds a certain threshold. The annual turnover thresholds above which a person who supplies services only has been increased from €37,500 to €40,000 and for a person supplying goods (or both goods and services where 90% or more of the turnover is from the supply of goods) has been increased from €75,000 to €80,000.

The new thresholds apply with effect from 1 January 2024.

VAT Rate Changes

Reduced VAT rate for gas and electricity

The temporary 9% reduced VAT rate which has applied to supplies of gas and electricity since 1 May 2022 and which was due to end on 31 October 2023 has been extended to 31 October 2024.

Reduction in flat rate addition for farmers

With effect from 1 January 2024 the “flat rate addition” rate is reduced from 5% to 4.8%. The flat rate addition is a payment made to non-VAT registered farmers to compensate them for VAT paid on goods and services acquired in the course of their farming activities which they are unable to recover.

Extension of the 0% rate of VAT

From 1 January 2024 the 0% rate of VAT has been extended to:

- Audiobooks supplied on physical means of support
- Electronically supplied books and audiobooks other than those predominantly devoted to advertising or consisting predominantly of audible music or video content.
- The supply and installation of solar panels to primary and post primary schools

Exemption from VAT on the issue of shares

The issue of stocks, shares, debentures and other securities has been removed from the list of financial transactions exempt from VAT. This is seen as a technical amendment as in practice such transactions would be outside the scope of VAT and VAT would not apply.

This amendment came into effect from the date of the passing of the Act, 18 December 2023.

Exemption from VAT on the provision of emergency accommodation

The Act provides that the letting of property to be used for the provision of emergency accommodation is exempt from VAT. This is regarded as a technical amendment as in practice such supplies were treated as VAT exempt.

This amendment came into effect from the date of the passing of the Act, 18 December 2023.

Deposit Return Scheme

Under the Deposit Return Scheme, which came into effect on 1 February 2024, when a drink is purchased in a plastic bottle or a can with a “Re-turn” logo on it, a deposit is charged as part of the cost of the drink. This deposit is refunded when the drink container is returned. The Act provides for the VAT treatment of deposits paid under the Deposit Return Scheme. No VAT is charged on the deposit element of the amount charged for the sale of the drink. If the container is not returned, the supplier of the drink becomes liable for VAT on the deposit.

Miscellaneous Amendments

VAT rate determination

Legislation that gave Revenue the power to make a determination as to whether a particular activity was exempt from VAT or what VAT rate should apply to a particular transaction, has been repealed.

This amendment came into effect from the date of the passing of the Act, 18 December 2023.

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Minimum Tax Rate for Large Groups, Anti-Avoidance and EU Reporting

Minimum Tax Rate for Large Groups

Under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, almost 140 countries agreed to enact a two-pillar solution to address the challenges arising from the digitalization of the economy. The Pillar Two rules, also referred to as the "Global Anti-Base Erosion" or "GloBE" Rules, are designed to ensure large groups pay a minimum effective rate of tax (15%) on the income arising in each jurisdiction in which they operate. The Act incorporates the Pillar Two rules into Irish legislation.

The rules apply to Multi-National Entities (MNE) groups and "large-scale domestic" groups with an annual revenue of €750 million or more in the consolidated financial statements of its ultimate parent entity (UPE) in at least two of the four fiscal years immediately before the year being tested. An MNE group is a group that includes at least one entity or permanent establishment which is not located in the same jurisdiction as the UPE. A large-scale domestic group is one where all the member entities are located in the same Member State.

The GloBE rules, now incorporated into Irish legislation, consist of three interlinked rules:

(1) The Income Inclusion Rule (IIR)

(2) The Undertaxed Profit Rule (UTPR)

(3) Qualified Domestic Top-up Tax (QDTT)

The Income Inclusion Rule (IIR)

This rule requires the UPE of a group to determine whether it has an effective tax rate (ETR) of at least 15% in each jurisdiction in which it operates. If a jurisdiction has an ETR of less than 15%, the parent entity is required to pay an additional amount of tax (IIR top-up tax) to bring the ETR in the jurisdiction to 15%.

The IIR rule will generally be applied by the UPE of the group. However, if the UPE is not in a country which applies the GloBE rules, the requirement to apply the IIR rule moves down the chain to the next company in the chain located in a jurisdiction which applies the IIR rule.

Irish entities will become liable to IIR top-up tax where the entity is the UPE of its group and overseas subsidiaries have an ETR of less than 15% in a particular jurisdiction and qualified domestic top-up tax (QDTT – see below) is not payable in the overseas jurisdiction.

IIR top-up tax comes into effect for fiscal years (i.e. the accounting period for the ultimate parent entity) **commencing on or after 31 December 2023.**

The Undertaxed Profit Rule (UTPR)

Where the UPE of a group is not located in a jurisdiction which had implemented the Pillar 2 rules, the UTPR comes into play. Under the UTPR, top-up tax is collected by another group member located in a jurisdiction which has implemented Pillar 2 rules. An Irish entity may become liable to UTPR top-up tax in respect of an overseas group member with an ETR of less than 15% where the income is not assessed under the IIR in the other jurisdiction and QDTT is not payable in the overseas jurisdiction.

The UTPR comes into effect for fiscal years commencing on, or after, 31 December 2024. Where the UPE of the group is located in an EU Member State which has not implemented the Pillar 2 rules, the UTPR comes into effect for fiscal years commencing on, or after, 31 December 2023.

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Minimum Tax Rate for Large Groups, Anti-Avoidance and EU Reporting

Minimum Tax Rate for Large Groups *continued*

Qualified Domestic Top-up Tax (QDTT)

Under Pillar 2 rules, jurisdictions may collect top-up tax from domestic entities before IIR or UTPR top-up tax applies. Ireland has elected to implement QDTT. Thus any top up tax due in respect of Irish entities will be paid in Ireland to the Irish Revenue. A safe harbour applies to jurisdictions which have implemented a QDTT which is compliant with the OECD rules. This safe harbour allows groups to disregard those jurisdictions; because Ireland has opted to implement QDTT this means that entities in other countries can ignore Irish entities in determining top up tax liabilities. Similarly, Irish entities will not become liable to IIR or UTPR top up tax in relation to entities located in jurisdictions which have opted to implement QDTT.

QDTT will be payable for accounting periods commencing on or after 31 December 2023.

Effective Tax Rate (ETR)

The ETR is the effective rate of tax paid in the relevant jurisdiction on income. Special rules apply in determining the income on which the ETR is calculated. The starting point is the income as calculated for the purpose of the consolidated accounts before any consolidation adjustments eliminating intra-group transactions have been made.

Temporary CbCR safe harbour rules

For the first three years top up tax for a jurisdiction is reduced to nil if one of the following tests is satisfied:

- Revenue, as included in the group's Country-By-Country Report (CbCR), is less than €10m and group profit before tax is less than €1m
- The jurisdiction has a simplified ETR that is more than the transition rate (15% in 2023 and 2024, 16% in 2025 and 17% in 2026). The simplified ETR is calculated using profit or loss before tax from the CbCR and the income tax expense in the financial statements.
- The group's CbCR profit or loss before tax in the jurisdiction is less than the "substance-based income exclusion" (SBIE) amount. The SBIE amount is calculated based on payroll costs and tangible assets.

Temporary UTPR safe harbour

An entity which would be required to pay UTPR top up tax in respect of an overseas entity is not required to pay this tax for a transition period fiscal year (i.e. an accounting period not exceeding 12 months which begins on or before 31 December 2025 and ends before 31 December 2026) where the rate of corporate income tax in the overseas jurisdiction is at least 20%.

Controlled Foreign Companies

Finance Act 2018 introduced for the first time Controlled Foreign Companies legislation into Irish law to comply with an EU Directive on "laying down rules against tax avoidance practices that directly affect the functioning of the internal market" (the "Anti-Tax Avoidance Directive").

The provisions apply where a company is a "controlled foreign company" (CFC). A company is a CFC if it is not resident in the State and is controlled by a company, or companies, resident in the State. A CFC charge arises where a CFC has undistributed income in an accounting period and significant decision-making functions (referred to as "relevant Irish activities") in relation to the CFC have been carried out in Ireland by the controlling company. Where the charge arises a portion of the undistributed income of the CFC is attributed to the Irish controlling company.

The charge does not apply in the following circumstances:

- The Irish tax which would be payable on the profits if they were within the charge to Irish tax is not greater than twice the amount of the foreign tax paid by the CFC on the profits
- The accounting profits of the CFC are less than 10% of its operating costs
- The accounting profits of the CFC are less than €75,000 or
- The accounting profits of the CFC are less than €750,000 and nontrading income accounts for less than €75,000 of those profits

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Minimum Tax Rate for Large Groups, Anti-Avoidance and EU Reporting

Controlled Foreign Companies *continued*

The above exemptions will not apply where the CFC is included in the EU list of non-cooperative jurisdictions for tax purposes. The Act amends the section to ensure that for accounting periods beginning on or after 1 January 2024 the relevant EU list is that published on 23 October 2023.

Hybrid Mismatches

Finance Act 2019 brought into Irish law anti-hybrid rules provided for in the EU Anti-Tax Avoidance Directive II (ATAD2). The purpose of the ATAD is to counteract planning undertaken by large multinational companies designed to exploit the differences in tax rules of different countries. The legislation aims to deal with hybrid mismatch outcomes in relation to payments (e.g. interest and royalties) between entities located in different jurisdictions.

What is a hybrid entity?

A hybrid arises where two countries characterise an entity, a payment or business activities differently for tax purposes. For example, an entity would be regarded as a hybrid entity where it is characterised as opaque in one jurisdiction but look through in another jurisdiction. A payment which is regarded as interest in one jurisdiction but as a tax-exempt distribution or dividend in the other jurisdiction would be a hybrid payment.

What is a hybrid mismatch outcome?

A hybrid mismatch outcome occurs where as a result of the different characterisation of an entity, payment or business activity, a deduction is being given in one jurisdiction without a corresponding taxable receipt in the other jurisdiction (a deduction without inclusion mismatch outcome) or where a deduction is being given in more than one jurisdiction without the corresponding income being included in more than one jurisdiction (a double deduction mismatch outcome).

The definition of "entity" under these provisions has been widened by the Act to include any legal arrangement which is within the charge to any of the taxes covered by the legislation. The Act also amends the legislation to clarify how the rules apply in certain circumstances to collective investment schemes during start-up and wind down phases.

These provisions came into operation on 1 January 2024.

Outbound Payments Defensive Measures

The Act introduces provisions whereby relief from withholding taxes will not apply to payments of interest, royalties or distributions by a company to an associated entity, or permanent establishment of an associated entity, which is resident in a "specified territory" and which is also not resident in a territory which is not a "specified territory". The purpose of the legislation is to avoid double non-taxation of such payments.

A "specified territory" is one included in the EU list of non-cooperative jurisdictions for tax purposes or one which does not generally subject entities to tax on income, profits or gains or subjects entities to tax on income, profits or gains at a zero rate. The definition of specified territory excludes one which is a Member State of the EU or is an EEA state.

Broadly entities are "associated" entities where one has a 50% interest in the other, directly or indirectly, and also where one entity has a "definite influence in the management" of the other entity. Two entities will also be considered associated where both entities are associated under this definition with another entity. An entity is considered to have a "definite influence in the management" of another entity where it has the ability to participate, on the board of directors or equivalent governing body of the second-mentioned entity, in the financial and operating policy decisions of the second-mentioned entity, where that ability causes, or could cause, the affairs of the second-mentioned entity to be conducted in accordance with the wishes of the first-mentioned entity.

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Minimum Tax Rate for Large Groups, Anti-Avoidance and EU Reporting

Outbound Payments Defensive Measures *continued*

The provisions only apply to payments of interest or royalties which have been or may be deducted, allowed or relieved in computing profits or losses for corporation tax purposes. The new rules do not apply to “excluded payments”. Broadly excluded payments are those where income, profits or gains arising from the payment are within the charge to domestic or foreign tax (at a rate greater than zero), or the payment is made out of income, profits or gains which are within the charge to foreign tax (at a rate greater than zero) and no account is taken of the payment in calculating the foreign tax. Tax for this purpose includes taxes arising under the Pillar 2 tax regime or tax arising as a result of a CFC charge. Payments to exempt entities such as pension funds are also excluded payments.

In the context of payments of interest, withholding tax, and relief therefrom, generally only apply to “annual interest”. Under the new provisions withholding tax will apply to payments of short interest.

The new provisions will not apply to distributions made out of income, profits or gains which have been subject to domestic or foreign tax (at a rate greater than zero) or subject to a CFC charge or tax under the Pillar 2 tax regime.

Companies are required to disclose payments to associated entities resident in a specified territory in their tax returns.

The provisions apply to payments made on or after 1 April 2024. For arrangements in place on or before 19 October 2023, the provisions will only apply to payments on or after 1 January 2025.

FATCA, CRS and DAC 2

The Act amends the penalty provisions applicable to financial instructions who do not report financial information which is required to be reported under agreements with other jurisdictions under FATCA, CRS or DAC 2(see below*).

The Act clarifies who is required to pay the penalty where the financial institution is a partnership (the precedent partner) or a trust (the trustees or in the case of an Investment Trust, the trustees, the management company or any person authorised to act on behalf of the trust).

These provisions came into effect from the date of the passing of the Act, 18 December 2023.

* Foreign Account Tax Compliance Act (FATCA) is an information sharing agreement between Ireland and the US. Under the agreement Irish financial institutions are required to identify US investors/account holders and report details of their income/assets to the Irish Revenue who pass on the details to the Inland Revenue Service (IRS). The Common Reporting Standard (CRS) is an OECD provision which requires jurisdictions to obtain information from financial institutions and automatically exchange that information with other jurisdictions on an annual basis. EU Council Directive 2011/EU (also known as DAC) provides for the exchange of information between tax authorities of EU Member States. Amendments to DAC, known as DAC2, brought CRS into EU legislation and have been transposed into Irish legislation. Under DAC2/CRS Irish financial institutions are required to report details of account holders not tax resident in Ireland.

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Minimum Tax Rate for Large Groups, Anti-Avoidance and EU Reporting

DAC 6 and DAC 7

Finance Act 2019 incorporated into Irish legislation amendments to the EU Directive on Administrative Cooperation in the Field of Taxation (often referred to as DAC6) aimed at tackling what was perceived as aggressive cross border tax planning arrangements. Under these provisions, certain persons ("intermediaries") are required to make a return to Revenue when a "reportable cross-border arrangement" is implemented or made available for implementation. Information reported to the Revenue Commissioners will be disclosed by Revenue to the tax authorities of the relevant EU Member State.

The Act contains certain technical amendments to ensure that Revenue have the power to make enquires in relation to a return, or failure to file a return, or to enter into business premises to carry out enquiries in relation to returns required to be filed under the DAC6 provisions.

This provision came into effect from the date of the passing of the Act, 18 December 2023

Finance Act 2021 incorporated into Irish legislation amendments to the EU Directive on Administrative Cooperation, referred to as DAC7. The provisions impose requirements on digital platform operators who are resident in the State, incorporated in the State or have a place of management in the State but not being a non-union platform operator, to register with Revenue and collect and report information on sellers offering certain services.

The Act amends the provisions relating to the detailed information which is required to be reported under the DAC7 provisions. It also sets out how a platform operator should deal with a reportable seller who has not provided relevant information.

These provisions come into effect from the date of the passing of the Act, 18 December 2023.

The Act also enacts legislation to allow Revenue to participate in a joint audit with EU Member States in relation to DAC7. Revenue can accept or reject a Member States request to participate in such an audit within 60 days.

This legislation applies from 1 January 2024.

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TAX PARTNERS

The above is intended as a general guide to the measures announced in Finance (No. 2) Act 2023. No action should be taken on the basis of the above without obtaining professional taxation advice.

If you have any queries please do not hesitate to contact Purcell McQuillan Tax Partners Ltd on 01 668 2700.

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