OHT Guide to Finance Bill 2017

Finance Bill 2017 contains 78 sections, the majority of which implement the changes announced on Budget Day together with a limited number of additional anti-avoidance measures and largely technical changes which are deemed to be important for the effective care and maintenance of the tax system.

Commenting on the publication of the Finance Bill today, Paschal Donohoe TD, Minister for Finance and Public Expenditure & Reform stated that:

> *"Today's publication of the Finance Bill 2017 provides the necessary legislative foundation for implementing the tax measures announced on Budget Day. In line with our commitment to Budgetary reform, it has been published as soon as possible after Budget Day."*
>
> *"It now moves forward to be debated in the Dáil and Seanad and I anticipate a constructive discussion on the Bill over the coming weeks with my parliamentary colleagues".*

The Dáil Second Stage will commence on Tuesday 24 October 2017 and the Bill should be signed into law by the end of this year.

Transfers of Non Residential Property

As announced in the Budget the stamp duty rate on non-residential property (including land, and premiums on commercial leases) was increased from 2% to 6% for instruments executed on or after 11 October 2017.

Transitional arrangements provide that if a purchaser has a binding contract in place before 11 October 2017 and the deed is executed before 01 January 2018 the old 2% rate will apply. The instrument must contain a statement in a form to be specified by Revenue certifying the positon. The furnishing of an incorrect statement is a Revenue offence.

Consanguinity Relief

Consanguinity relief applies to transfers of farmland between relatives and S.55 makes key changes to the relief, which take effect from the date of passing of the Act:-

- It sets the rate of stamp duty at 1%, rather than just applying 50% of the normal stamp duty rate.
- The termination date for consanguinity relief has moved back for 3 years (from 01 January 2018 to 01 January 2021) and the upper age limit for the transferor of 67 years has been removed.

Young Trained Farmers

S. 58(1) amends the young trained farmer provisions to meet the EU Commission requirements re State Aid. The new conditions are that a young trained farmer must submit a business plan to Teagasc and must come within the EU Commission definition of *"micro, small and medium enterprises"*.

Leasing Land for Solar Panels

The retirement relief provided for in S. 598 TCA 97 does not generally apply to leased land with some exceptions. The Finance Bill includes the leasing of agricultural land for solar energy production in the categories of leased assets that qualify for retirement relief with effect from 01 January 2018 provided that not more than 50% of the total area of the leased land is used for that purpose. A similar provision is included for CAT agricultural relief.

Interest Deductions

Section 247 TCA 97 provides relief for interest on a loan used to acquire, or in certain circumstances lend to, a holding company that indirectly holds ordinary shares in a trading company through one or more intermediate holding companies. The changes are to allow for interest relief to companies on certain loans used to acquire a trading company where the trading company is held indirectly through one or more intermediate holding companies. The changes effectively legislate for the Revenue practice.

"7-year" Relief

S. 604A TCA 97 provides relief from CGT for the disposal of land or buildings which were purchased between 07 December 2011 and 31 December 2014, provided the property is held for a minimum period of 7 years. The Finance Bill provides that the exemption will also apply to any disposals made on or after 01 January 2018 if the property has been held for between 4 years and 7 years from the time of acquisition.

The time apportionment of the exemption after the land has been held for 7 years is unaffected so if the land is held for 10 years, then sold, 70% of the gain will be exempt under S. 604A TCA 97.

Dwelling House Exemption

Section 63 makes a number of minor amendments to S.86 CATCA 03 which deals with the dwelling house exemption. The Bill clarifies that a liability to inheritance tax will not be triggered where a donor dies within two years of making a gift of a dwelling house to a dependent relative.

Under the current provisions, a dependent relative can claim relief on a gift of any house owned by a disponer but can only claim relief on an inheritance of the disponer's principal private dwelling.

The Bill provides that a property transferring to a dependent relative does not need to be the principal private residence of the disponer to qualify for the exemption in the case of both gifts and inheritances.

CAT on Retirement Funds

Section 85 CATCA 03 provides a CAT exemption for the inheritance of any balance in an Approved Retirement Fund (ARF), an Approved Minimum Retirement Fund (AMRF) or in a Personal Retirement Savings Account (PRSA) by a child of the deceased aged 21 or over.

In such a case the fund is subject to income tax. The exemption is being extended to Retirement Annuity Contracts (RAC) and PRSAs that are deemed to vest on the owner's 75th birthday.

Key Employment Engagement Programme (KEEP)

KEEP will provide for any gain arising on the exercise of qualifying share options to be subject to capital gains tax at the time of disposal of the shares (in place of income tax, USC and PRSI at the time of exercise).

This provision will be available in respect of share options granted to employees of qualifying unquoted companies during the period from 01 January 2018 to 31 December 2023, subject to EU approval.

The maximum value of the issued but unexercised qualifying share options of a company cannot exceed €3,000,000. Additionally, the total market value of all shares in respect of which qualifying share options have been granted to an employee cannot exceed €100,000 in a year, €250,000 in any 3 consecutive years, or 50% of the annual emoluments of the employee.

Irish Real Estate Fund (IREF)

Broadly, Irish Real Estate Funds (IREFs) are funds where 25% of the value of the undertaking is made up of Irish real estate assets.

Finance Act 2016 introduced the IREF regime to provide for a withholding tax on certain distributions from IREFs.

The following amendments are to be made to deal with some issues that have been raised:

- An exemption from the IREF withholding tax is to be introduced in respect of payments to ARFs, AMRFs and vested PRSAs.
- Advance clearance is to be available to deal with a situation where a full refund of any tax withheld would be made. Revenue will issue a certificate stating that the withholding tax should not be deducted or the withholding tax should be paid to the indirect investor.

PAYE Modernisation

The Finance Bill introduces a number of changes which will come into effect from 01 January 2019 arising from the PAYE Modernisation Programme being undertaken by Revenue.

Under the new system, employers will update and report their employees' pay and deductions to Revenue in real time as they are being paid.

PAYE taxpayers will be liable to pay income tax on a receipts basis (currently PAYE is paid on an earnings basis) and there will be a new provision for the recoupment, on a grossed-up basis, of income tax where an employee receives a benefit and PAYE is not operated by an employer.

BIKs from Health or Dental Insurer

Section 8 inserts a new section 112AA into the Taxes Consolidation Act 1997. This section provides that where an employee of a health and/or dental insurer receives a health or dental insurance policy in the course of the employment, any discount received on the policy shall be a taxable emolument for the employee.

Where a family member of an employee receives a free or discounted policy because they are connected to the employee, the value of any discount received shall also be taxable for the employee.

The emolument is calculated by reference to the market value of the insurance policy net of any tax relief at source (TRS) that would have been available.

As such, no individual may claim TRS in respect of any amount deemed to be an emolument under this section.

Accelerated Capital Allowances for Energy Efficient Equipment

This scheme is designed to improve energy efficiency among Irish companies and sole-traders and assist Ireland in meeting our national targets and both binding and non-binding EU targets in respect of energy savings.

The scheme was due to expire at the end of 2017 but has been extended to 31 December 2020.

Anti-Avoidance Legislation

The Finance Bill introduced an anti-avoidance measure that affects several CGT reliefs from 19 October 2017.

In many cases the charge to CGT on shares depends on what assets the company derives the bulk of its value from. For example shares are included in the definition of the specified assets which are subject to Irish CGT regardless of the residence of the taxpayer in S. 29 TCA 97, if they derive their value wholly or mainly from other assets listed in the section.

Since Finance Act 2015 the introduction of money into a company by a connected person to "swamp" the value of the specified assets before a disposal, has been countered by a provision that the money would be ignored in establishing what assets the share value related to. The Finance Bill extended this provision to cover the introduction of assets other than money into the company.

A similar anti-avoidance clause was included in the participation exemption legislation in S. 626B (as the exemption does not apply where the shares derive the greater part of their value from specified Irish assets such as land or mineral rights). and the CGT withholding tax legislation in S. 980 TCA 97 (as the withholding tax only applies to shares deriving their value, or the greater part of their value, from specified assets such as land).

Following the introduction of this new anti-avoidance if assets are introduced before a disposal to skew the "source of value" test the introduced assets will be ignored.

In addition, where a CGT charge does not affect shares which are quoted on a stock exchange, the Finance Bill provides that the exclusion only applies if the shares are actively and substantially traded. This provision affects the definition of specified assets in S. 29 TCA 97 and the 15% CGT withholding tax provided in S. 980 TCA 97.

Sections 579, 579A, 590 & 806 TCA 97 are anti-avoidance provisions relating to non-resident trusts, controlled family companies not resident in Ireland and Irish resident individuals who transfer assets abroad.

These sections are to be amended so that this anti-avoidance legislation will not apply where genuine economic activities are carried on in a relevant Member State.

In order for this exception to apply, it must be shown in writing or otherwise to the satisfaction of the Revenue Commissioners that this condition is met.

VAT on Educational Services

Finance Bill 2017 provides for the making of regulations relating to educational services to give clarity on the application of the VAT exemption to vocational training and educational services.

Caveat: *These notes are intended as a general guide to Finance Bill 2017, as initiated. The legislation is draft and the provisions may change substantially before enactment. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*