OHT Guide to Finance Bill 2018

Finance Bill 2018

The Minister for Finance Paschal Donohoe published Finance Bill 2018 (“FB18”) on 18 October 2018.

The Minister indicated that the intention is to:-

“build resilience in our economy and work to further support its long term growth.

We are doing this by balancing the books, making steady and sustainable investment in day to day services and putting money back in people’s pockets.”

Rent-a-room Relief

Finance Bill 2018 amends Rent-a-room relief which provides for the exemption of payments of up to €14,000 for individuals renting out rooms in their homes, by introducing a minimum rental period of 29 days to exclude short-term lettings from the relief.

However, the relief will still apply to the provision of short-term accommodation for respite care, students or digs for at least 4 days a week for at least 4 consecutive weeks.

CAT - Dwelling House Exemption

Section 86 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 03) which provides for an exemption in respect of certain dwelling houses has been amended to close a “loophole”.

The amendment provides that a successor will be deemed to have a beneficial interest in a dwelling house that is subject to a discretionary trust that he has established if the trust property may be applied for his benefit. This means that transferring a holiday home into a discretionary trust will no longer allow a person to avail of the exemption as the taxpayer will be deemed to still have a beneficial interest in the holiday home.

CAT - Extension of Period for Revenue Queries

A technical amendment has been made to the standard 4 year time limit which allows Revenue to make enquiries and authorise inspections.

The FB18 inserts a different commencement date for the 4 year period in circumstances where the relief contains conditions that must be satisfied which are relevant to the assessment of the CAT. In such cases, the 4 year period commences on the latest date on which all the conditions are satisfied.

Stamp Duty

The young trained farmers stamp duty relief has been extended for a further 3 years by S. 46 FB 18 so it will end on 31 December 2021 (subject to a commencement order).

EU State Aid regulations have capped the amount of relief that can be granted to a farmer and S. 46 FB 18 provides that the aggregate amount of relief that can be claimed between stamp duty young trained farmer relief, stock relief and relief for succession farm partnerships cannot exceed a ceiling of €70,000 per young trained farmer (as required by EU Commission Regulation 702/2014 of 25 June 2014).

Stamp Duty

Finance Act 2017 introduced a condition 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” to claim young trained famer relief. This has now been extended to a retrospective relief claim, made when a farmer claims relief before qualifying.

Sections 31 and 31A Stamp Duties Consolidation Act 1999 provide for a stamp duty charge on certain contracts and on documents used to leave a purchase “resting in contract” or at licence stage. If a deed is signed later there is provision for stamping the later document based on the stamp duty paid. S. 45 FB 18 provides that instead of stamping the document Revenue will issue a stamp certificate stating that the later instrument is not chargeable.

Section 47 of the Finance Bill gives a taxpayer the right to appeal a decision by Revenue to refuse a refund of stamp duty.

Capital Gains Tax (CGT)

The European Court of Justice recently ruled in the case of Panayi Settlements v HMRC (C-646/15) that the UK legislation imposing a CGT trust exit tax on any increase in the value of capital assets held by trustees who ceased to be tax resident in the UK (which corresponds to S. 579B TCA 97) was incompatible with the freedom of establishment as an immediate payment of CGT was required on exit. The Irish legislation has been amended to provide trustees with the option of paying CGT exit tax in instalments over 5 years to avoid a similar issue.

Section 28 amends the CGT relief on the transfer of a site to a child (set out in S. 603A TCA 97) so that it can be claimed by the spouse and/or civil partner of a child of the transferors from 01 January 2019.

Relief for Investments in Corporate Trades

Part 16 TCA 97 provides for relief from income tax for investments in corporate trades. Those reliefs are the Employment Investment Incentive (“EII”) and Start-Up Relief for Entrepreneurs (“SURE”). The entire text of Part 16 is to be replaced with a new text and a number of changes are to be made to the operation of these reliefs.

A new Start-up Capital Incentive will allow tax relief to certain persons who invest in early stage start-up ventures.

From 1 January 2015, Film Relief is only available to producer companies in the film and film production industry. A company can use film relief as a credit against corporation tax and the Finance Bill provides for a 5% increase in the credit for productions in certain designated areas, with the 5% increase tapering back down to the current 32% credit over a 4 year period. The introduction of the uplift will be subject to EU approval and the section also provides for some administrative changes. As announced in the Budget the relief is to be extended for 4 years, to 2024.

Anti-Avoidance - Exit Tax for Companies

The new section 627 provides that an exit tax will apply on the occurrence of any of the following events, where such event occurs on or after 10 October 2018:

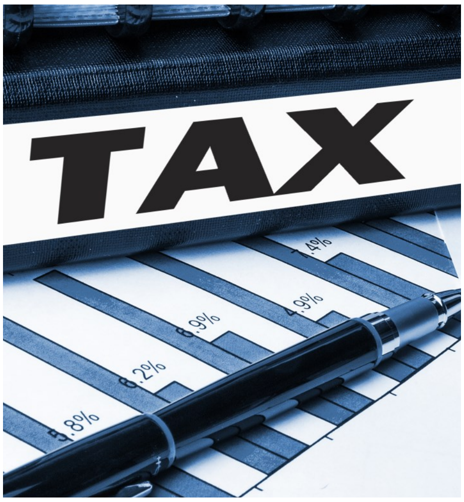
- where a company transfers assets from its permanent establishment in Ireland to its head office or permanent establishment in another territory,

Discretionary Trust Tax

An amendment has been made to Section 53A CATCA 03 which provides for the late filing surcharge.

Prior to this amendment, a late Discretionary Trust Tax (DTT) return would only be subject to the surcharge if the return was not filed by 31 October that year (in the case of a valuation date falling between January and August) or by 31 October the following year (in the case of a valuation date falling between September and December).

The DTT surcharge will now apply if the return is filed late i.e. not within 4 months of the valuation date.



Tax Appeals Commission (TAC)

The Finance Bill contains several amendments to the tax appeal procedures to facilitate improvements. The section dealing with the Statement of Case has been amended to remove the requirement to give details of the written material which is to be relied on and details of witnesses who might be called at the appeal hearing.

A new section (section 67A) is to be been inserted in CATCA 03. This provides that following the determination of an appeal, any tax underpaid is due and payable on the original due date for the appealed assessment, however, if the tax paid is at least 90% of the tax determined to be due, the balance of the tax is due and payable one month after the determination.

- where a company transfers the business carried on by its permanent establishment in Ireland to another territory, or

- where an Irish-resident company transfers its residence to another country.

The rate of exit tax will be 12.5%. However, an anti-avoidance provision is included in the legislation to ensure that a rate of 33% rather than 12.5% will apply if the event that gives rise to the exit tax charge forms part of a transaction to dispose of the asset and the purpose of the transaction is to ensure that the gain is charged at the lower rate.

In addition, the new section 629A provides that exit tax in respect of non-resident companies can be recovered from another Irish-resident member of a group or from a controlling director who is resident in Ireland for tax purposes.

Budget Provisions

The changes in rates and credits announced in the Budget were introduced and are included in the OHT Tax Tables, CAT Rate and Thresholds and VAT Rates Table.

Legislation was introduced for the measures announced in the Budget, such as:

- Interest paid by Landlords - Section 21 restores the relief for interest paid on loans used to purchase, improve or repair a residential property to 100% with effect from 01 January 2019.

- CAT – S 51 increased the group (a) threshold from €310,000 to €320,000 for gifts or inheritances received on or after 10 October 2018.

- Agri-Taxation - Section 19 amends the income averaging treatment of farm profits to a farmer with another trade or profession, or who is a shareholder director of a company carrying on a trade or profession (controlling more than 25% of the ordinary share capital). Stock relief and young trained farmers stamp duty relief have been extended for a further 3 years.

- Corporation Tax - Section 19 extends start up relief for new companies for a further three years, until 31 December 2021.

- Childcare and Fitness – Section 17 commences legislation for an Accelerated Capital Allowances scheme introduced last year to provide a benefit to employers who incur capital costs on equipment and buildings used for employee childcare or fitness.

- VAT - Section 41 increases the VAT rate on tourism activities to 13.5%, with the exception of newspapers and sports facilities.

- Income Tax - Section 11 extends the parameters of the current Key Employee Engagement Programme ("KEEP") to increase the value of options the company can now grant in a period to a maximum of €300,000 (up from €250,000) and provide that employees can received annual shares with a value of 100% of salary (previously 50%).

Further details are set out in the OHT Guide to Budget 2019.

Policy considerations drove many of the provisions of Finance Bill 2018. The housing crisis is a key issue and the Rent-a-room relief and the tax treatment of Air BnB activity have been reviewed. The Minister met Ireland's commitments to the EU by introducing exit tax and controlled foreign company rules under the Anti-Tax Avoidance Directive ("ATAD") and by capping income tax and stamp duty reliefs for farmers to comply with EU State Aid rules.

The Bill is scheduled to pass all stages in the Dáil by mid-December, and should be enacted by the end of the year.

Caveat: *These notes are intended as a general guide to Finance Bill 2018. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*