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Irish Tax Monitor

The Roundtable September 2024

What are the main points from your firm's pre-Budget observations under the following five headings?

Investment Funds

Angela Fleming, Partner & Head of Financial Services Tax, BDO: In our submission to the Funds Sector 2030 review last year we called for a number

Angela Fleming

of tax changes to be introduced in order to further enhance Ireland's Investment Fund offering.

The recent modernisation of the ILP regime has been a very welcome development in the industry, and the product is proving to be of keen interest to asset managers and investors. However, there are certain tax changes required to complement the legal changes. The definition of "collective investment undertaking" for Dividend Withholding Tax (DWT) purposes should be extended to include ILPs so that dividends can be paid by Irish companies to ILPs free of DWT. Furthermore, the introduction of a participation exemption is critical for the structures typically used by ILPs.

The 1907 Limited Partnership is a commonly used structure for smaller private equity and venture capital funds. However, the lack of a competitive carried interest regime and developed Revenue guidance and practice generally on the various direct and indirect tax matters which such partnerships encounter is a significant drawback for Ireland. We also believe that such partnerships which are AIFs (Alternative Investment Funds) should also be able to benefit from the VAT fund management exemption.

Finally, we are of the view that the current Investment Undertaking Tax (IUT) regime for Irish resident investors should be replaced by a reporting and investor self-assessment process, and the 8-year deemed disposal rule should be abolished.

Housing

Derek Henry, Partner & Head of Real Estate Tax, BDO: We firmly believe that housing should be the key

Derek Henry

issue that the Government seeks to address in Budget 2025. While many good initiatives have been undertaken by the Government and progress has been made on the number of housing completions, given the increasing rise in demand the scale of the problem continues to grow. Radical intervention is required now.

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Therefore, we are reiterating our call in the 2024 pre-Budget Commentary last year for the introduction of a capital allowance scheme/section 23 type incentive to stimulate supply in residential development. A carefully controlled introduction of such a scheme would have a significant impact on incentivising investment into this area and dramatically improve viability which will have a positive effect on supply of residential units.

The Government have introduced Residential Zoned Land Tax and Vacant Homes Tax to penalise the underutilisation of land that could be put to residential use. We believe introducing a 20% rate of CGT/Income tax on any gains from disposal of such land would result in more landowners selling such holdings to people with the capacity and skills to develop same into residential stock.

SMEs / Private Business

Cian O'Sullivan, Tax Partner, Private Clients, BDO: Inflationary pressures and capacity constraints continue to pose significant challenges

Cian O'Sullivan

for SMEs. While much has been achieved in developing successful FDI, in our view, measures to support the SME sector in Ireland have lagged in comparison, and with increasing global competitiveness and international tax changes, it is vital that policies to support and encourage domestic entrepreneurship are targeted and fit for purpose.

Encouraging Investment in SMEs

While many incentives have been introduced over the years to assist and encourage investment in SMEs, we believe there is more that can be done to broaden the scope of these measures and their ease of access.

We would encourage the introduction of the following changes:

- Enhancing and simplifying the Employment Investment Incentive Scheme (EIIS) which presently is very complex, and with material penalties for getting it wrong. Moreover, no CGT losses are currently available for loss making investments.
- Abolishing the 3% USC surcharge on non-PAYE income over €100,000 to encourage entrepreneurship. This surcharge has repeatedly been noted by the Tax Strategy Group, Commission on Taxation, and indeed was noted in the current Government's Programme for Government, for unfairly penalising self-employed individuals.
- Enhancing the CGT regime through a reduction in the current 33% rate to unlock capital, as well as through broadening current reliefs such as the new angel investor relief which is complex and restrictive, and addressing some of the anomalies in the current CGT Entrepreneur Relief would also be welcomed.
- Maintaining the existing CGT retirement relief regime to facilitate the smooth transition of family businesses. Currently the new rules, which are due to commence on 1 January 2025, will impose a €10m cap on this relief which will act as a barrier to lifetime transfers.

Attracting and Retaining Talent

Competing with the FDI and tech sector for talent is a mounting challenge for SMEs. Incentives such as KEEP (Key Employee Engagement Programme) are intended to help SMEs with this challenge. While welcomed changes have been introduced in recent years, we believe further changes are needed to enhance its effectiveness. The introduction of safe harbour rules around valuations, the removal of the non-trading requirement for holding companies and facilitating share buybacks would all be welcomed measures.

Green Tax Initiatives

With Ireland's commitment to achieving its climate goals, tax measures that encourage sustainable practices would be welcomed by SMEs. This could include expanding the Accelerated Capital Allowance scheme to cover a broader range of energy-efficient equipment or introducing new tax reliefs for investments in renewable energy and green technologies. Such measures would not only support Ireland's environmental targets but also help SMEs reduce their long-term operating costs.

Tax Simplification

Lee Kavanagh, Manager, Financial Services Tax, BDO: It is our firmly held view, and that of many of our

Lee Kavanagh

clients, that the complexity of the Irish tax system is adding to the cost of doing business and is undermining competitiveness even further now that the 12.5% corporation tax rate is less of an advantage following the introduction

of Pillar 2. It is important that steps are taken in Finance Bill 2024 to streamline and simplify the Irish corporation tax system to help maintain Ireland's attractiveness and competitiveness as a location of choice for international businesses, and ease the administrative burden on our SMEs so that they can focus on what's important – running their business.

In advance of Budget 2025, several steps have been suggested to support tax simplification in Ireland. Firstly, we believe that the main direct tax legislation (Taxes Consolidation Act 1997) should be reviewed as there are a number of areas within the existing legislation that are outdated and where simplification is urgently required. For example, our complex interest deductibility rules should be simplified following the introduction of the interest limitation rules. The establishment of an Office of Tax Simplification could support the review of the existing tax legislation in Ireland with a view to simplification. A similar approach was taken in the UK and had success. Other areas which could be reviewed and simplified include taxing income under different schedules with multiple tax rates following the introduction of Pillar 2 as well as simplifying reliefs such as the Research and Development (R&D) tax credit, Key Employee Engagement Programme (KEEP) and Employment Investment Incentive Scheme (EIIS) to make them more open to SMEs.

Further, a key area of focus for tax simplification in respect of international taxes should be the adoption of a territorial regime. The decision to introduce a participation exemption for foreign dividends in Finance Bill 2024 is welcome as Ireland is currently the only EU Member State and one of only four OECD countries without a participation exemption for foreign dividends. However, we believe we should go further and progress with the introduction also of a foreign branch exemption. This would reduce the administrative burden for Irish companies with foreign branches and many other EU Member States and competitor jurisdictions already allow a foreign branch exemption.

FDI & Financial Services

Yvonne Diamond, Senior Manager, Financial Services Tax, BDO:

A key anticipated measure by the FDI and Financial Services sectors in

Yvonne Diamond

Budget 2025 / Finance Bill 2024 is the introduction of a participation exemption for foreign dividends. Following on from the publication of the first Feedback Statement in April this year, a second Feedback Statement was published in late August. My colleague Angela Fleming has contributed a separate article on this second Feedback Statement (page 28) where you can see more details about the likely format of the final regime.

Taxpayers in the FDI and Financial Services space will also be paying close attention to any changes proposed to Ireland's Interest Deductibility Rules, something that we have advocated strongly for on numerous occasions. The complex area of interest deductibility has become even more intricate in recent years due to the introduction of interest limitation rules. Whilst we understand any changes will be implemented over a number of years and may not be included in this year's Budget, both sectors will be keenly monitoring developments in this area.

In addition to ongoing measures as result of Pillar I and Pillar II, developments on direct taxation policy at an EU level will also be closely observed by taxpayers in the FDI and Financial Services sectors. Initiatives such as the Unshell Directive, BEFIT Directive, DAC 8 and FASTER may have implications for taxpayers in these sectors in the future.

Participation Exemption - Second Feedback Statement

On 27 August, the Minister for Finance, Jack Chambers TD, published a second feedback statement on the development of a participation exemption for foreign dividends to the Irish corporate tax system. Please comment.

Angela Fleming, Partner & Head of Financial Services Tax, BDO In my article in the April edition of Irish Tax Monitor, I covered in detail the first feedback statement published on

Angela Fleming

the participation exemption for foreign dividends, including the background to same. So in the interest of brevity I won't go over old ground and will focus solely on the second feedback statement published in late August.

The first thing to say is the period provided for responses was particularly short – just 7 working days! However,

to the fair, with the Budget looming on 1 October, and the Finance Bill set to be published on 10 October, time was not on the Department of Finance's side and thus the need for a short consultation period.

The second feedback statement follows review of the 20 responses received to the first feedback statement, and stakeholder engagement via a sub-group convened from the Department's Business Tax Stakeholder Forum, which met on three occasions. The second feedback statement contains potential draft approaches to key elements of the legislation as well as information on some consequential amendments that may be introduced in conjunction with the participation exemption for foreign dividends.

The key elements of the draft legislation worth noting are:

- The new participation exemption would apply to distributions made on or after 1 January 2025 from subsidiaries which are tax resident in EU/EEA and DTA countries.
- Foreign dividends outside of the scope of the exemption (or which have not been opted into the exemption) would be able to avail of double tax relief under the existing Schedule 24 provisions.
- Companies may opt on an annual basis whether or not to claim the participation exemption. However, where a company opts-in the exemption applies to all qualifying foreign dividends arising in the period.
- To qualify for exemption the parent company must own at least 5% of the ordinary share capital of the subsidiary, be beneficially entitled to not less than 5% of profits available for distribution, and not less than 5% of assets of the subsidiary on a winding up.
- Dividends received by life assurance companies, investment undertakings and section 110 companies would not be eligible for exemption.

The Feedback Statement notes that consequential amendments to other provisions of the Taxes Acts may need to be made, for example the Controlled Foreign Companies regime, transfer pricing rules relating to domestic transactions, and the taxation of certain preference shares.

Furthermore, the Feedback Statement also lists certain other provisions in Irish tax law which although they may interact with the participation exemption for foreign dividends, may not necessitate legislative amendments, including Schedule 24.

Responses to the second Feedback Statement will inform final decisions on the structure of the participation exemption for foreign dividends planned for introduction in Finance Bill 2024.

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