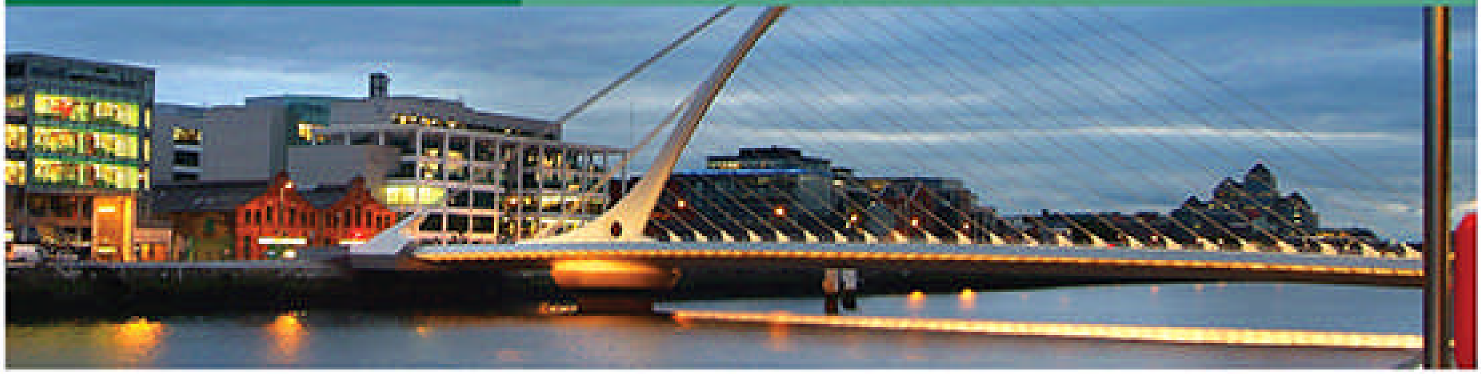

Finance Bill 2013 – Financial Services

Finance Bill 2013 (the “**Bill**”) aims at further enhancing Ireland’s financial services sector by introducing innovative measures that are intended to stimulate and sustain growth and ensure on-going competitiveness in the global financial services industry.

Outlined below are the main measures proposed as well as some other technical amendments.

Investment Funds

Investment Limited Partnerships (ILPs)

The Bill proposes a fundamental change in the manner that Investment Limited Partnerships established under the Investment Limited Partnerships Act, 1994 (ILPs) are to be treated from an Irish tax perspective. Currently, ILPs are included within the definition of “investment undertaking” for Irish tax purposes and are therefore subject to the normal exit charge rules that apply under the Investment Undertaking Tax regime.

The proposed amendments under the Bill will ensure that ILPs are no longer treated as above but will instead be treated as transparent entities for tax purposes, similar to the treatment of Common Contractual Funds (CCF’s). The purpose of this amendment is to bring the treatment of ILPs in Ireland more in line with the general tax treatment of these vehicles internationally and to make the investment in such vehicles more attractive to prospective investors particularly in the private equity and real estate space.

This new tax treatment (together with the ongoing overhaul of the ILP Act, 1994) will ensure that Ireland has a globally recognised and competitive partnership regime which is important with the imminent implementation of the Alternative Investment Funds Managers Directive
The ILP will be obliged to make an annual electronic return to Revenue giving details of the name and address of, and profits made and benefits accruing to each partner. This return will be due to be filed with the Revenue Commissioners on or before 28 February of the year following the reporting year (i.e. calendar year) in question.

A number of technical amendments were made to stamp duty, capital acquisitions tax and VAT legislation in accordance with the above direct tax amendments.

Gross Roll-up Funds

The Bill proposes to increase the rates of exit tax applicable to certain Irish resident investors in Irish investment undertakings under the gross roll-up regime by 3% - the new rates will be 33% for payments made annually or more frequently and 36% for other payments. In the case of Irish corporate investors the rate of exit tax remains at 25%. This increase in rates will also apply to certain Irish residents investing in regulated offshore funds in other EU Member States, EEA States and OECD countries with which Ireland has a double taxation treaty.

VAT – Fund Management Services

There were a number of technical amendments made to the VAT deduction entitlements of business supplying fund management services. The amendments align the domestic legislation with the EU VAT Directive ensuring strict compliance with the Directive by refining the definition of a qualifying activity.

Life Assurance

The rates of exit tax applicable to certain Irish resident policyholders on profits and gains from domestic life assurance policies under the gross roll-up regime are also proposed to increase by 3% - the new rate will be 36%. This increase in rate will also apply to life assurance policies in other EU Member States, EEA States and OECD countries with which Ireland has a double taxation treaty.

Real Estate Investment Trusts (REITs)

A positive and welcoming note announced in the Budget and introduced in the Bill, is the introduction of Real Estate Investment Trusts (REITs). While Ireland already has a tax efficient property fund regime, the favourable tax regime is only applicable for regulated funds. The REIT will not need to be regulated and is already a well established vehicle in Europe, the US, Asia and Australia and therefore it is hoped that the introduction of the REIT will help to stimulate growth in the Irish property market by encouraging foreign investment.

Conditions

The new REITs regime provides for an exemption from tax on income and chargeable gains of a property rental business once certain conditions are satisfied. The main conditions are that the REIT must;

- be resident and incorporated in Ireland and not be resident elsewhere;
- have its share listed on the main market of a recognised stock exchange in Ireland or another EU Member State;
- derive 75% of its aggregate income from the property rental business. In this regard, it is possible for the business to carry on other “residual business” (i.e. business which is not property rental business) but the above mentioned tax exemptions will only apply to the property rental business;
- not be a close company (however, there are certain “good shareholder” exceptions e.g. investment undertakings);
- conduct property rental business consisting of at least 3 properties, the market value of no one of which is to be more than 40% of the total market value of the properties constituting the property rental business (3 year build up period permitted);
- maintain a property financing costs ratio of at 1.25:1;
- distribute to its shareholders 85% of the property income from its rental property business by way of property income dividend;
- give notice in writing to the Revenue Commissioners that it wishes to be a REIT.

Irish resident individuals will be taxable under Irish income tax rules on such dividends and will be taxable under capital gains tax principles on any disposals of shares in the REIT. Irish corporate investors will be subject to corporation tax on any dividends received and capital gains tax on any disposals of shares in the REIT. Non-resident investors will not be liable to capital gains tax on any disposal of shares in the REIT and dividend withholding tax rules will apply on any dividends to non-residents (see below). Profits arising from the reinvestment of the proceeds on sale of any property by the REIT will be treated as property income for two years following the date of disposal of the property in question.

Any dividends paid out of property income will be subject to Dividend Withholding Tax at the rate of 20%. However, in the case of non-resident individuals it may be possible to obtain a reduced rate of withholding tax under a relevant Double Taxation Agreement. Any such income will also be taxable on the receiving shareholders at the appropriate tax rates depending on the relevant shareholders personal circumstances (e.g. whether the shareholder is a company or individual and its residency status etc.)

Transfer of shares in a REIT will be subject to 1% stamp duty as a REIT will be a company incorporated under the Irish Companies Acts.

It is possible for an existing company to become a REIT and in the scenario that an existing company restructures to a REIT, the assets that the company held prior to company becoming a

REIT will be deemed for capital gains tax purposes to have been sold and immediately required by the company as at that date – in this way, a capital gains exposure may exist for the company on the restructuring to a REIT.

The legislation also allows for group REIT structures in so far as each member of the group meets the relevant conditions of the scheme.

The REIT will be obliged to make an electronic return to Revenue on an annual basis.

Foreign Account Tax Compliance Act (FATCA)

While not specifically incorporated in the Bill significant progress has been made in the area of FATCA in recent months.

In general terms, FATCA represents an expansive information reporting regime enacted by the United States ("**US**") aimed at ensuring that US persons with financial assets outside the US are paying the correct amount of US tax. The regime will generally impose a withholding tax of up to 30% with respect to certain US source income <u>and</u> gross proceeds from the sale or other disposal of property that can produce U.S. source interest or dividends paid to a foreign financial institution ("**FFI**") unless the FFI enters directly into a contract ("**FFI agreement**") with the US Internal Revenue Service ("**IRS**"). An FFI agreement will impose obligations on the FFI including disclosure of certain information about US investors directly to the IRS and the imposition of withholding tax in the case of non-compliant investors.

Following from the above, it is clear that there would be significant reporting and compliance requirements for Irish FFIs. In recognition of this and with the intent to reduce the burden for Irish FFIs, the Irish and US Governments signed an intergovernmental agreement ("**Irish IGA**") on the 21st December 2012. It is hoped that this IGA will simplify the compliance process and minimise the risk of withholding tax.

It is understood that the Irish IGA will be implemented into Irish legislation by way of regulation in the coming months. Finally, it should be noted while the Bill did not contain such regulations it did include the relevant legislation that will allow for its introduction in the coming months.

Aviation

The Bill also proposes further improvements and development of the Irish aviation industry by introducing a scheme of accelerated industrial buildings allowances for certain investments in the aviation industry. In general overview, the scheme will allow for accelerated industrial buildings allowances to be claimed for costs incurred in relation to the construction or refurbishment of certain buildings or structures used in connection with the maintenance, repair or overhaul of commercial aircraft (e.g. hangars).

The scheme will be available for capital expenditure incurred in the 5 year period from the passing of the Finance Act (however, the scheme will require Ministerial Order prior to commencing in the first instance) and the expenditure will be allowed on a straight-line basis over a period of 7 years.

Islamic Finance

Favourable Sharia tax legislation was introduced in Finance Act 2010 with the legislation providing that it applies to a range of financial transactions including “investment certificates”. Currently the definition of investment certificates requires that such certificates will only qualify for the specialised tax treatment if they are issued to the public. The Bill proposal now to amend this such that a qualifying company is no longer required to issue the certificate to the public (as this requirement was proving to be a hindrance) but instead will be capable of being issued to persons other than certain connected persons or to a person from whom the asset in respect of which the investment certificate has been issued, was required.

Section 110 Companies – Extension of Stamp Duty Reliefs

Current Irish stamp duty legislation allows for an exemption from stamp duty on a wide range of financial instruments such as transfers of units in Irish investment undertakings, transfers of units in collective investment schemes not incorporated/formed in Ireland and transfers of stocks and marketable securities of a company or other body corporate not registered in Ireland.

The above exemptions are generally only available where the transfer does not relate to Irish situate real property or stocks or marketable securities in an Irish registered company save for investment undertakings (i.e. Irish regulated funds) where the exemption still applies even if the transfer does relate to stocks or marketable securities in an Irish registered company which is an investment undertaking.

The Bill extends this latter exemption to apply to stocks or marketable securities of a qualifying company (within the meaning of Section 110) in the same way as it applies to investment undertakings.

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