Grant Thornton

Tax

International tax update

June 2021

Stamp duty

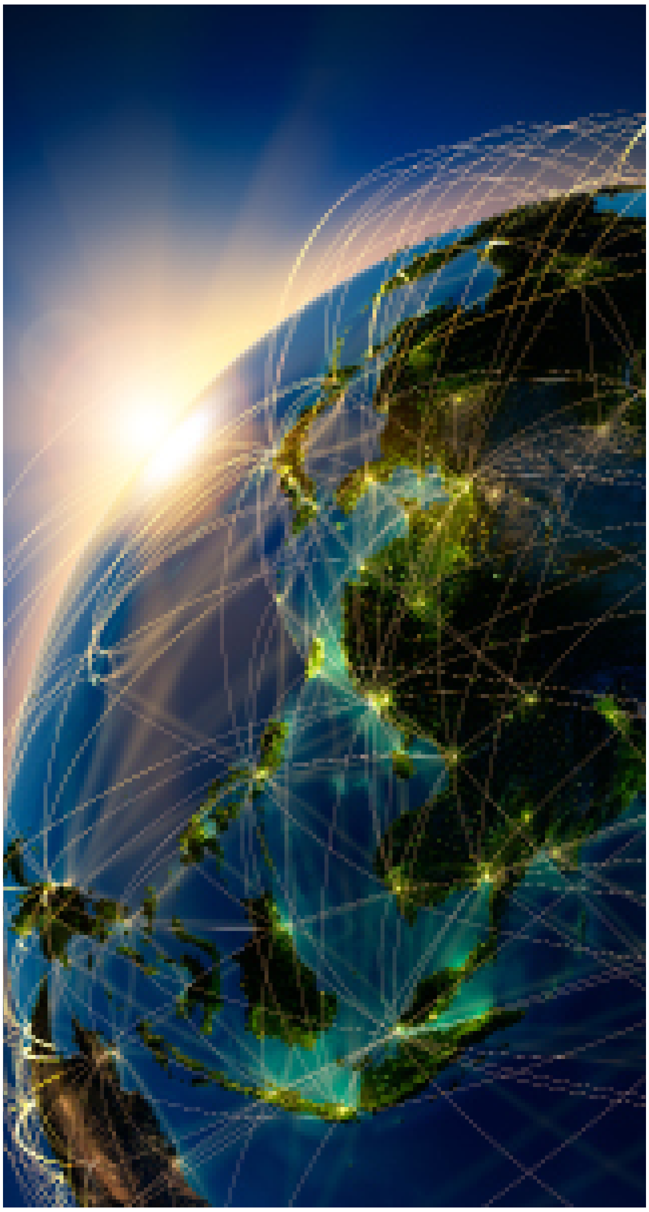
A Financial Resolution was passed by the Irish Government on 19 May 2021 which inserts a new Section 31E into the Stamp Duties Consolidation Act 1999, imposing a stamp duty charge of 10% on the multiple purchase of 10 or more residential units with effect from 20 May 2021.

The background to this Financial Resolution is the Irish Government's response to recent purchases by institutional investors of all or a significant proportion of residential housing estates, particularly close to the time of completion.

This higher charge, as well as applying to bulk purchases, will also apply to a situation where a person acquires 10 or more units on a cumulative basis over a 12-month period.

Impact of new provisions

- There is a 3-month transition period provided for the execution of contracts that have been entered into but not completed prior to the commencement of the Financial Resolution.
- Units purchased before the Financial Resolution comes into effect can be counted towards triggering the threshold of 10, but the higher stamp duty charge can only be applied to units acquired after the introduction of the Financial Resolution.
- The higher stamp duty charge will therefore take effect once a 10th property is purchased in a 12-month period. This means that where a person or institution has purchased incrementally and reaches the 10 threshold, the higher stamp duty will apply to all of the other previous 9 purchases also.
- The new provisions include measures which apply to shares or units of companies, IREFs and partnerships which derive their value, directly or indirectly, from a residential unit.
- It should be noted that purchases by Local Authorities, Approved Housing Bodies, and the Housing Agency are outside the scope of the higher stamp duty charge.



Economic recovery plan and COVID-19 supports

On 1 June 2021, the Irish Government launched the Economic Recovery Plan, which included and extension of existing supports and further supports to provide support to businesses as they re-open and resume normal trading. These include:

Employment Wage Subsidy Scheme (EWSS) will be extended from 30 June until 31 December 2021. The current enhanced payment rates will be maintained for July, August, and September (Quarter 3). The time-period for assessment will be expanded from the current 6-month period of assessment to a full 12-month period. In addition, the question of an employer contribution to employee wages under the scheme will be considered for Quarter 4.

Covid Restrictions Support Scheme (CRSS) will be extended from 30 June until 31 December 2021 and provide additional support to businesses upon re-opening. An enhanced restart payment is intended to incentivise businesses to exit the scheme and return to trading as early as possible.

A new additional **Business Resumption Support Scheme (BRSS)** for businesses with reduced turnover because of public health restrictions will be implemented in September 2021. Further operational details of the scheme are to be announced.

The **Debt Warehousing Scheme** will be extended to the end of 2021 for all eligible taxpayers, with an interest-free period during 2022, and to include overpayments of EWSS in the scheme. COVID-19 related liabilities will then fall to be paid from 1 January 2023.

Reduced rate of VAT of 9% which applies on a temporary basis to hospitality and tourism related goods and services will be extended until 1 September 2022.

The above measures are a welcome announcement and will support cash-flow as trading resumes for the initial months as restrictions are lifted.

Anti-hybrid mismatch rules

As required by the EU Anti-Tax Avoidance Directive (ATAD), Finance Act 2019 introduced wide ranging anti-hybrid mismatch rules into Irish domestic tax legislation. These provisions apply in respect of all payments made or arising on or after 1 January 2020. Recent changes introduced in Finance Act 2020 in relation to the operation of the provisions have now been incorporated into Revenue's updated guidance on the provisions

Revenue's guidance on the Anti-Hybrid Rules Manual has been updated to include guidance in relation to:

- amendments made by Finance Act 2020 to how the anti-hybrid rules apply to worldwide systems of taxation,
- key terms used in the anti-hybrid rules such as 'payee', 'reasonable to consider' and 'associated enterprise'; and
- the 'imported mismatch' rule;

The rules are in effect since 1 January 2020 for all Irish companies irrespective of their accounting year end. It is therefore critical that Irish companies consider their current and future arrangements with associated enterprises in the context of these Anti-Hybrid Mismatch rules.

Research and development tax credit updates

Revenue have published the long-awaited updates to their Research and Development (R&D) guidelines covering the treatment of rental expenditure

R&D guidelines which issued on 1 July 2020, stated that 'Rent is expenditure on a building or structure and is excluded from being expenditure on research and development by section 766(1)(a) TCA 1997.' Previously, in our experience Revenue would have accepted the inclusion of rent when included in the same manner as other overheads, i.e. where a just and reasonable apportionment has been used. Clarity was sought from Revenue on their position on rent and also on the application of this position to historic and new claims for R&D tax relief.

Latest position

In these latest updates, Revenue's stated view is that in 'many cases expenditure incurred on renting a space or facility, which is used by a company to carry on an R&D activity, may be expenditure that is incurred 'for the purposes of', or 'in connection with', the R&D activity but will not constitute expenditure incurred wholly and exclusively in the carrying on of the R&D activity'. According to the Revenue update, the eligibility of rental expenditure for relief will depend on the 'extent to which it is incurred wholly and exclusively in the carrying on of the R&D activities'.

In certain scenarios, rental expenditure may be included as part of an R&D tax relief claim. In cases where a building is rented, which is 'integral to the carrying on' of R&D activities, rent may be treated as an allowable expense, such as renting a specialist laboratory required purely for carrying out the R&D activity. On the other hand, if a company rents a warehouse or office space where R&D activities happen, the rent will not be treated as eligible expenditure.

While Revenue maintain their position on the treatment of rent and this is disappointing, we understand from communications we have had with Revenue that this position will only apply for accounting periods commencing from 1 July 2020. We expect that Revenue will not examine R&D claims retrospectively for the inclusion of rent.

Treatment of TWSS and EWSS

All subsidy amounts received by companies under the TWSS and EWSS are considered State support and therefore such amounts will reduce the qualifying eligible expenditure. Therefore, businesses should identify TWSS and EWSS subsidy amounts received for staff working on R&D tax relief projects and reduce their qualifying R&D tax relief expenditure accordingly.

Early payment of cash instalments due in 2021

Revenue also provided separate guidance on their website on the early payment of cash instalments due in 2021. Repayable R&D tax credits are not typically available until at least nine months after the end of the company's accounting period. However, given the exceptional circumstances due to COVID-19 Revenue will expedite the payment of any instalment of excess R&D tax credit that is due to be paid in 2021 i.e. the 1st instalment of 2020, 2nd instalment of 2019 and 3rd instalment of 2018

To avail of this early payment, a claim must be made to Revenue, and at the time of the claim, the corporation tax return for the accounting period ending in 2020 and for accounting periods ending up to March 2021, must be filed with Revenue. Claims will be subject to Revenue checks.

Impact of the measure

Companies should review their research and development claims to ensure that they take account of the updated guidance in relation to rental expenses and also where TWSS or EWSS claims have been made.

Employer share awards

Finance Act 2020 introduced a mandatory reporting obligation on employers, essentially this means that reporting by employers is extended to include share awards given in the form of cash equivalents, or where a discount on shares is provided, to employees. Revenue confirmed that the new electronic form, known as the Employer's Share Awards (ESA) return will be available during June 2021.

The deadline for the 2020 ESA return is 31 August 2021

Updates to ESA return

The statutory deadline for reporting share scheme information using the existing electronic returns KEEP1, RSS1, ESS1 is 31 March following the relevant tax year. This 31 March deadline remains and also applies to the new ESA return. However, as this new ESA return was not available in advance of 31 March 2021, the deadline for the 2020 ESA return is 31 August 2021.

For subsequent tax years the deadline for filing the ESA return will also be 31 March of the following the relevant tax year i.e. for 2021 the deadline for ESA returns will be 31 March 2022.

This new electronic form will be completed by employers who are required to report certain share based remuneration electronically to Revenue.

According to Revenue the format of the new ESA return will be similar to the existing KEEP1, RSS1 and ESS1 electronic return. Essentially this is a pre-formatted spreadsheet which can be uploaded through Revenue Online Service (ROS). We expect the new ESA return will be available during June 2021.

Impact of the measure

Failure to comply with the mandatory electronic reporting obligation can result in monetary penalties. Employers should review any existing ESA's in line with the reporting requirements and ensure that information for ESA's is readily available in time for the filing deadline.

Indirect tax update

As the implementation date of the European Union's e-commerce VAT package is fast approaching on 1 July 2021, it is opportune to consider how this may impact on cross border e-commerce transactions entered into by your business.

The purpose of these changes and modernisation of the EU VAT system is that businesses should benefit from a substantial reduction in cross-border VAT compliance costs which will facilitate greater international trade.

The changes contained in the package will have a significant impact for any business which is selling goods and/or services to consumers across the EU. The changes also affect businesses operating electronic interfaces such as online marketplaces or platforms facilitating such sales where the value of goods is below €150.

Further details are available in our slides and recent webinar.

Watch now

Contact

Should you have any queries in relation to the contents of this article or would like to discuss any international or indirect tax issue, please feel free to contact us.

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