ITI Submission to the Department of Finance for consideration in drafting of the new "Brexit Omnibus" Bill 2020
8 July 2020

Background

We understand that the Government no longer intends to commence the taxation provisions contained in *Part 6 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019* ("the Withdrawal Act 2019"), as these measures were devised in the context of a "no-deal" Brexit.

Instead, it is expected that draft Heads of a new "Brexit Omnibus" Bill will be presented to Government for approval before the summer recess, which will be drafted in the context of the UK leaving the European Union with a Withdrawal Agreement.

As you know, in our Pre-Finance Bill 2019 submission to the Minister for Finance we outlined several circumstances that were not covered by the taxation provisions contained in Part 6 of the Withdrawal Act 2019. As requested, we have taken soundings from our members today regarding the importance of these measures and potential implications if not implemented.

We have outlined these measures again at point 1 below, with further comments on the implications for businesses if such measures are not included in the proposed new "Brexit Omnibus" Bill that will be brought through the Oireachtas in the coming months. We have also highlighted the measures that in our view would be of critical importance to business.

Due to the tight timeframe permitted to provide the Institute's feedback to the Department of Finance, we have inserted our new additional comments in purple below with the original text from the 2019 submission.

We have also included some comments at point 2 in the document, relating to the taxation measures contained in Part 6 of the Withdrawal Act 2019, which we believe are essential and should be reflected in the new "Brexit Omnibus" Bill.

Finally, we have received feedback on a CAT matter relating to bank deposits, which has emerged as a significant issue in the context of certain financial services businesses moving business to Ireland post-Brexit. We have provided further details on this issue at point 3.

1. Brexit-related tax measures in our Pre-Finance Bill 2019 submission were as follows:

Distribution Treatment – Section 130 TCA 1997

Section 130(2)(d)(iv) TCA 1997 reclassifies interest payments made by an Irish company to a non-resident company as a distribution, in circumstances where (subject to certain conditions) the companies are 75% associated.

Section 130(2B) TCA 1997 disapplies distribution treatment where the interest payments are made to a company that is resident in a Member State in certain circumstances. However, in the context of a ‘no deal’ Brexit, this disapplication will no longer apply to interest payments made by a company to an associated company resident in the UK. Interest paid on existing and new loans with UK lenders which are currently eligible for relief as a charge on income will therefore no longer be deductible.

In addition, section 130(3) TCA 1997 provides that, where a company transfers assets or liabilities to its members or vice versa and the value of any new consideration provided by its members is less than the market value of the benefit transferred, the excess is treated as a distribution.

However, such transfers between Irish resident companies are not treated as distributions, where one company is a subsidiary of the other or both are subsidiaries of another company which is resident in a “relevant Member State”. “Relevant Member State” is defined for this purpose as an EU Member State or an EEA country with which Ireland has concluded a DTA.

Institute Recommendation:
In order to retain the status quo in the context of a ‘no-deal’ Brexit, we recommend that section 130(2B) and section 130(3) be extended to ensure that UK resident companies remain included.

Feedback from ITI members on 8/7/2020:
Subsections 2B and 3 of section 130 were amended by Finance Act 2019 to ensure that UK resident companies remain included but subject to the commencement of the Withdrawal Act 2019. It is critical that the application of these subsections continue to apply to UK resident companies and so, these amendments should be included in the new “Brexit Omnibus” Bill or the matter addressed in Finance Bill 2020.

Group of Companies - Section 616 TCA 1997
Section 616 TCA 1997 defines a group of companies for the purposes of many provisions that deal with the taxation of chargeable gains. Broadly, section 616 provides that a principal company and all its effective 75% subsidiaries form a group, with a ‘company’ being defined as one which is tax-resident in a “relevant Member State” (subject to certain exceptions outlined below). “Relevant Member State” is defined as an EU Member State or an EEA country with which Ireland has concluded a DTA.

In the event of a ‘no-deal’ Brexit, UK companies will cease to be tax-resident in a “relevant Member State” and will thus cease to be part of a ‘group of companies’ under section 616 TCA 1997.

Specific exceptions to the definition of ‘group of companies’ are contained in section 617 (transfer of assets) and section 623 (company ceasing to be a member of group). For the purposes of these sections, only a ‘group of companies can include a company that is resident in any country with which Ireland has concluded a DTA for the purpose of these sections only. Companies that are resident in the UK will therefore remain included for the purposes of these sections.

However, the definition of a group of companies as set out in section 616 will have an impact for many other sections in the TCA 1997. For example:

- Section 618 TCA 1997 which relates to the transfer of trading stock within a group. While transfers of assets will continue to be within section 617, transfers of trading stock in the circumstances set out in section 618 would not.

- Section 625 TCA 1997 applies where a subsidiary company ceases to be a member of a group of companies and another company (the 'chargeable company') had, within the previous ten years, disposed of shares in the subsidiary company in the course of an amalgamation or reconstruction in the group. Where the section applies, the chargeable company is deemed, at the time of the amalgamation or reconstruction, to have disposed of and immediately reacquired the shares in the subsidiary company at market value.

  It would appear that section 625 would have immediate effect in the event of a 'no-deal' Brexit, where the subsidiary company that was party to an earlier amalgamation or reconstruction is UK resident and ceases to be a member of the group of companies as defined by section 616 TCA 97.

- Section 586 TCA 1997 (which deals with company amalgamations by exchange of shares) and section 587 TCA 1997 (which deals with company reconstructions and amalgamations) both contain provisions that apply where the companies in question are members of a group of companies, as defined by section 616 TCA 1997. We note that the Withdrawal Act amends section 80 SDCA 1999 (Reconstructions or Amalgamations of Companies) to ensure that UK-based acquiring companies can continue to be able to avail of stamp duty relief. There would appear to be no reason why the CGT provisions should not be similarly amended.

Institute Recommendation:
To ensure that the provisions set out in sections 618, 625, 586 and 587 TCA 1997 can continue to apply to groups with UK tax-resident members, and in particular to ensure that section 625 TCA 1997 does not give rise to a clawback, in the event of a 'no-deal' Brexit, we recommend that the meaning of 'company' and 'relevant Member State' within section 616 TCA 1997 are amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
Section 616 TCA 1997 was amended by Finance Act 2019 to ensure sections 618, 625, 586 and 587 TCA 1997 continue to apply to groups with UK tax-resident members, and in particular to ensure that section 625 TCA 1997 does not give rise to a clawback as result of Brexit. It is critical that the amendment to section 616 continues to apply and should be included in the new "Brexit Omnibus" Bill or addressed in Finance Bill 2020.

Exit Tax – Part 20 Chapter 2 TCA 1997
Section 627 TCA 1997 contains provisions that impose an exit charge on companies that are resident in another "Member State" in respect of certain assets transferred from a permanent establishment in Ireland. There is no definition of "Member State" provided, however, section 627(1)(c) provides that "*a word or expression that is used in this Chapter and is also used in Article 5 of the Directive shall have the meaning in this Chapter that it has in that Article*".

The Directive referred to is Council Directive (EU) 2016/1164 of 12 July 2016. Therefore, it would appear that the meaning of "Member State" should be taken from this Directive, which would of course exclude the UK in the event of a 'no-deal' Brexit.

Section 629 TCA 1997 contains an option to defer the payment of an exit charge, spreading the payment over six instalments. The option to defer is available only where the relevant transfer is to a "relevant territory". "Relevant territory" is defined in section 629(1) as an EU Member State or a qualifying EEA country.

Institute Recommendations:
Depending on whether it is intended that the exit charge should continue to apply to UK resident companies that transfer assets from a permanent establishment in Ireland, consideration may need to be given to amending the scope of section 627 TCA 1997.

Furthermore, the definition of "relevant territory" in section 629 TCA 1997 may need to be amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
It will be a matter of policy as to whether the exit charge should continue to apply to UK resident companies that transfer assets from a permanent establishment in Ireland. There may be such companies that have already opted to avail of the payment deferral of an exit charge under section 629 TCA 1997, as the UK is currently considered a "relevant territory". This means grandfathering provisions may be required to take account of the impact of the UK no longer being included in the definition of "relevant territory" under section 629 TCA 1997.

Double Tax Relief under Schedule 24 TCA 97
The application of a number of provisions in schedule 24 TCA 1997, which deals with Double Tax Relief, will be restricted in circumstances where a UK company is no longer resident in a "relevant Member State" (which is defined as an EU Member State or an EEA country with which Ireland has a DTA).

Irish parent companies would not be entitled to any additional foreign credit under paragraph 9I in respect of dividends received from UK resident companies, as a UK resident company would no longer qualify as a "source company".

Several other provisions within schedule 24 are conditional on a company being resident in a "relevant Member State". These include:

- Paragraph 9A: Unilateral Relief
- Paragraph 9B: Dividends paid between related companies: Relief for Irish and third country taxes
- Paragraph 9C: Non-Resident companies carrying on a trade in Ireland via a branch/agency
- Paragraph 9DA: Unilateral Relief (branch profits).

Institute Recommendation:
We recommend that the definition of "relevant Member State" in schedule 24 TCA 1997 be amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
We note the Department's comments that Double Tax Relief in Schedule 24 is a complex area of tax law and that a significant amount of work would be required to

fully consider the potential implications of any amendments to avoid any unintended consequences.

In our view, it is critical that the new "Brexit Omnibus" Bill includes an amendment to Paragraph 9I of Schedule 24 in respect of dividends received from UK resident companies, as a UK resident company would no longer qualify as a "source company". Otherwise, there is a risk of mismatches arising between nominal and effective tax rates and in the context of group relief. There are a greater number of Irish companies investing into the UK compared to other countries and therefore, it would be important that such Irish companies would not be disadvantaged as a result of Brexit in doing so.

The other provisions in Schedule 24 listed in our 2019 submission (i.e. Paragraphs 9A, 9B, 9C and 9DA) do not have as a wide an application in practice and therefore, including amendments to these provisions would not be as critical at this juncture.

Securitisation – Section 110 TCA 1997

Section 110(5A) TCA 1997 provides that a deduction is available for profit-participating interest only in a number of qualifying circumstances, for the purposes of calculating the profits of specified property business. These circumstances include where the interest is paid to:

- a pension scheme or PRSA or an equivalent in a "relevant Member State"; or
- an individual who is a national of a "relevant Member State" or
- to a company formed under the laws of a "relevant Member State" (subject to certain conditions).

"Relevant Member State" is defined in section 110(5A) TCA 1997 as another Member State or an EEA State. In our view, the definition of "relevant Member State" should be amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Institute Recommendation:

"Relevant Member State" is defined in section 110(5A) TCA 1997 as another Member State or an EEA State. In our view the definition of "relevant Member State" should be amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:

Given the size and value of the investments that can be made through section 110 companies by pension funds etc, there is a significant risk of the impact on such investments should the exemption included in section 110 (5A) TCA 1997 be suddenly "switched off" without a thorough review being undertaken of the impact. Therefore, we would urge for the definition of a "relevant Member State" to be amended in section 110 (5A) TCA 1997 to include the UK.

Shipping: Tonnage Tax – Section 697H TCA 97 and Section 697A TCA 1997

Section 697H TCA 1997 contains provisions which allow the distributions of an overseas company to be treated as "relevant shipping income", in circumstances where over 50% of the voting power of the overseas company is held by one or more companies that are resident in a "Member State" as defined by section 697A TCA 97. We recommend that the definition of "Member State" be amended to ensure that the UK remains included in the event of a 'no-deal' Brexit.

Institute Recommendation:
We recommend that the definition of “Member State” in section 697A TCA 1997 be amended to ensure that the UK remains included in the event of a ‘no-deal’ Brexit.

Feedback from ITI members on 8/7/2020:
Section 697A TCA 1997 has limited application and specifically applies to tonnage companies. We would recommend that soundings are taken from tonnage companies to fully appreciate the potential impact of the UK no longer falling within the definition of a “Member State” after the end of the Brexit transition period but in our view, this would not be amendment that is critically important at this juncture.

Life Assurance Companies: Policyholders – Section 730D TCA 1997
Section 730D TCA 1997 contains provisions regarding the treatment of gains arising on a chargeable event relating to a life policy. Section 730D (2A) TCA 1997 allows Revenue, subject to certain conditions, to grant approval to life companies excluding them from the requirement to obtain non-resident policyholder exit declarations, where the business is written through a branch in an offshore state or the business is written on a freedom of services basis and the policyholder resides in an offshore state. Offshore state for the purposes of section 730D is defined as an EU or EEA State.

If life assurance companies are permitted to sell life policies into the UK post-Brexit (the regulatory position in currently unclear), subsection (2A) will not apply and it will be necessary for the companies to obtain individual non-resident declarations from policyholders.

Furthermore, as the status of existing approvals, once the UK leaves the EU, is unclear this provision could have an immediate impact on business already written, where exit tax would have to be deducted, if exit tax declarations are not obtained and there is a doubt over whether the approval already granted still applies.

Institute Recommendation:
We recommend that the definition of “offshore state” for the purposes of section 730D TCA 1997 be amended to ensure that the UK remains included in the event of a ‘no-deal’ Brexit.

Feedback from ITI members on 8/7/2020:
Section 730D TCA 1997 is a provision that is currently widely used by life assurance companies. It allows them to do business in the UK the same way they carry on their business in Ireland. We believe obstacles should not be put in the way of such life assurance doing business in the UK going forward and so, we would recommend that the new “Brexit Omnibus” Bill amends the definition of “offshore state” for the purposes of section 730D TCA 1997 to ensure that it includes the UK.

Real Estate Investment Trusts (REIT) – Part 25A TCA 1997
In order to be regarded as a REIT or group REIT, a company or a principal company of the group must meet certain conditions. One of these conditions is that the company must have its shares listed on the main market of a recognised stock exchange of a Member State.

Section 705A TCA 1997 defines a “recognised stock exchange” as being a stock exchange in a Member State, which is regulated by the appropriate regulatory authority of that Member State.

Institute Recommendation:
We recommend that the definition of a “recognised stock exchange” in section 705A TCA 1997 be amended to ensure that UK stock exchanges remain included in the event of a ‘no-deal’ Brexit.

Feedback from ITI members on 8/7/2020:
We understand that many REITs are dual listed in Ireland and the UK and we are not aware of any of the existing REITs being solely listed on the UK Stock Exchange. It may be worth consulting with the Revenue Commissioners to confirm that this is correct position to ascertain if an amendment to section 705A TCA 1997 is needed. If a REIT is not listed on a recognised stock exchange, they cease to qualify and therefore, the consequences would be very significant if there are any existing REITs solely listed on the UK Stock Exchange once the Brexit transition period comes to an end.

Irish Real Estate Funds (IREF) – Part 27 TCA 1997
Where an IREF has transferred some or all its IREF business to a specified company before 1 July 2017, then the tax arising on the IREF taxable event can be deferred, subject to certain conditions, for a period of up to 10 years under section 739V TCA 1997.

One of the events under which the tax becomes due and payable is where the company ceases to be resident in the EU or an EEA country. Therefore, it would appear that this section could have immediate effect in the event of a ‘no-deal’ Brexit, where an IREF has transferred an IREF business to a company that is UK resident.

Institute Recommendation:
In our view, the meaning of “specified company” and the provisions of section 739V(4)(d) TCA 1997 should be amended to ensure that UK resident companies remain included in the event of a ‘no-deal’ Brexit.

Feedback from ITI members on 8/7/2020:
It may be worth consulting with the Revenue Commissioners regarding the number of companies (specified companies) that may have converted to UK residence to ascertain how many such companies would be affected by not including an amendment to section 739V(4)(d) TCA 1997 in the new “Brexit Omnibus” Bill. If an amendment is not included in the Bill, grandfathering would need to be considered to avoid unintended consequences for companies that have not themselves changed their residence but due to Brexit are no longer resident in the EU.

In addition, section 739K (1) TCA 1997 also includes a definition of "*specified person*" for the purposes of Part 27, Chapter 1B. Tax arises on the happening of an IREF taxable event in respect of a specified person. The definition of "*specified person*" excludes:

"a pension scheme, undertaking or company equivalent to those referred to in paragraphs (a) to (c), authorised by a Member State or an EEA state and subject to supervisory and regulatory arrangements at least equivalent to those applied to those pension schemes, undertakings or companies, as the case may be, in the State"

Institute Recommendation:
We recommend that the meaning of Member State for the purposes of Part 27, Chapter 1B be widened to ensure that a pension scheme, undertaking or company, which is

authorised by the UK and which fulfils all other legislative requirements, will not be regarded as a "*specified person*" in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
If section 739K (1) TCA 1997 is not amended to include the UK as a "specified person", there is a risk of UK pension funds moving from an exempt status to a taxable status because of Brexit. This should be avoided as such investments in Irish property would have been made in good faith and changing their tax treatment mid-investment could act as disincentive for such investments and encourage potential exits from the Irish market. It is commonplace for UK pension funds to invest directly and indirectly in Irish property.

Rate applicable to deposit interest received by individuals – Section 267M TCA 1997
Section 267M TCA 1997 provides that EU-sourced deposit interest will be taxed at the reduced rates set out in section 256 TCA 1997 (the DIRT rates), subject to certain conditions being met.

Institute Recommendation:
We recommend that section 256 TCA 1997 be amended to ensure that UK-sourced deposit interest continues to be taxed at the DIRT rates in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
Section 267M TCA 1997 is not a critical measure at this current juncture given how low interest rates are at present but extending the measure to the UK would arguably complement the Common Travel Area that exits between Ireland and the UK.

Relief for investments in films – Section 529B TCA 1997
Chapter 1A of Part 18 provides for a withholding tax which must be deducted from payments made to non-resident artistes. A "non-resident" is defined for this purpose as an individual who is neither resident nor ordinarily resident in an EU Member State or an EEA country.

Institute Recommendation:
We recommend that the definition of "non-resident" be amended to ensure that UK resident individuals remain excluded for the purposes of the withholding tax in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
The Irish and UK film industries are fundamentally intertwined. Co-productions with the UK and cross-border collaborations with Northern Ireland are a significant part of the Irish film industry. It is essential that a withholding tax obligation is not accidentally created with the UK because of Brexit and therefore, it is critical that the definition of non-resident in section 529B TCA 1997 is amended to include the UK.

In addition, the definition of a "producer company" in **section 481 TCA 97** also needs to be amended to include UK producer companies.

Restriction of certain reliefs – Section 1032 TCA 1997
In general, non-resident individuals are not entitled to the personal allowances, deductions and reliefs specified in the Table to section 458 TCA 1997. However, section 1032 TCA 1997 provides that a portion of the allowances may however be available in certain circumstances, including where the individual is a citizen, subject

or national of another EU Member State. In these circumstances, the portion is determined by the ratio of Irish sourced income to the total income of the individual.

In the context of a 'no deal' Brexit, British citizens not resident in Ireland will no longer be entitled to these personal allowances, deductions, and reliefs, unless they meet one of the other conditions contained in section 1032(2).

Institute Recommendation:
In our view, section 1032 TCA 97 should be amended to ensure that British citizens continue to be entitled to specified personal allowances, deductions, and reliefs.

Feedback from ITI members on 8/7/2020:
Section 1032 (2) TCA 1997 was amended by Finance Act 2019 to ensure that British citizens continue to be entitled to specified personal allowances, deductions, and reliefs but the amendment is subject to the commencement of the Withdrawal Act 2019. It is critical that the application of this section continues to apply to British citizens and so, this amendment should be included in the new "Brexit Omnibus" Bill or the matter addressed in Finance Bill 2020.

EU Directives
Several measures are included in the TCA 1997 in order to transpose EU Directives into Irish law. This includes Part 21, Chapter 1 TCA 97 which deals with Mergers, Divisions, Transfers of Assets and Exchanges of Shares concerning companies of different Member States.

We note that the Withdrawal Act contains an amendment to section 87B SDCA 1999, so that UK-based companies acquiring Irish property, as part of a merger will continue to be able to avail of the stamp duty exemption. The non-availability of stamp duty relief would make mergers more expensive and thus less attractive.

In the event of a 'no deal' Brexit, the various corporation tax and CGT relieving measures that are provided in Part 21, Chapter 1 TCA 1997 would also no longer be available for transactions involving UK companies. We would suggest that consideration should be given to widening the definition of "company" and other references to "Member State" in section 630 TCA 1997, as appropriate, to ensure that UK companies remain included.

Institute Recommendation:
We would suggest that consideration should be given to widening the definition of "company" and other references to "Member State" in section 630 TCA 1997, as appropriate, to ensure that UK companies remain included.

Feedback from ITI members on 8/7/2020:
We would strongly recommend that the definition of "company" in section 630 TCA 1997 is extended to ensure that UK companies remain included in that definition for the purposes of sections 633 and section 633D TCA 1997. The other sections in Part 21, Chapter 1 TCA 1997 are not as widely relied upon in practice.

Other relevant measures in the TCA 1997 include:
- Part 8, Chapter 6: Interest and Royalties Directive
- Section 831: Parent/Subsidiary Directive

To the extent that UK companies are no longer covered by the above provisions, this may give rise to the imposition of withholding taxes or may result in an increased administrative burden.

Institute recommendation:
We would suggest that consideration should be given to widening the definition of "company" in section 267G and section 831 TCA 1997, to ensure that UK companies remain included, in the event of a 'no-deal' Brexit.

Feedback from ITI members on 8/7/2020:
The Interest and Royalties Directive and Parent/Subsidiary Directive are not extensively relied upon in practice. Provisions under the Ireland/UK tax treaty and other domestic exemptions can address withholding tax implications for interest, royalties and dividends paid to UK companies following Brexit, albeit with some increased administration required for such companies to avail of the relieving provisions.

Companies Act 2014
Section 137(1) Companies Act 2014 requires a company to have at least one director resident in an EEA state. This requirement is set aside only where:

- the company has put in place a bond (section 137(2) Companies Act 2014), or
- the company has obtained a certificate from the Registrar, stating that the company has a real and continuous link with an economic activity being carried out in Ireland (section 140 Companies Act 2014).

We understand that several Irish companies currently rely on a UK resident director to fulfil this requirement. Such companies would be in breach of Irish company law, in the context of a 'no deal' Brexit.

Institute Recommendation:
We would suggest that consideration should be given to expanding the scope of section 137(1) Companies Act 2014 to include a person who is resident in the UK.

Feedback from ITI members on 8/7/2020:
This remains an issue and we would suggest that section 137(1) Companies Act 2014 is expanded to include a person who is resident in the UK.

2. Part 6 of the Withdrawal Act 2019

The measures outlined in point 1 relate to the various circumstances we had identified in our 2019 submission that were not covered by the taxation provisions contained in Part 6 of the Withdrawal Act 2019. In our view, the taxation measures contained in Part 6 of the Withdrawal Act 2019 remain valid and should be reflected as far as possible in the new 2020 Brexit Omnibus Bill.

We would consider the following list of amendments in Part 6 of the Withdrawal Act 2019 to be essential:

Income Tax

- Amendment of section 42 of Act of 1997
- Amendment of section 128D of Act of 1997
- Amendment of section 191 of Act of 1997

- Amendment of section 192B of Act of 1997
- Amendment of section 195 of Act of 1997
- Amendment of section 208A of Act of 1997
- Amendment of section 208B of Act of 1997
- Amendment of section 470 of Act of 1997
- Amendment of section 473A of Act of 1997
- Amendment of section 480A of Act of 1997
- Amendment of section 489 of Act of 1997
- Amendment of section 490 of Act of 1997
- Amendment of section 770 of Act of 1997
- Amendment of section 772 of Act of 1997
- Amendment of section 772A of Act of 1997
- Amendment of section 784 of Act of 1997
- Amendment of section 784A of Act of 1997
- Amendment of section 785(1A) of Act of 1997
- Amendment of section 787M of Act of 1997
- Amendment of section 790B of Act of 1997
- Amendment of section 806 of Act of 1997

Corporation Tax

- Amendment of section 243 of Act of 1997
- Amendment of sections 410 and 411 of Act of 1997
- Amendment of section 438 of Act of 1997
- Amendment of section 615 of Act of 1997
- Amendment of section 766 of Act of 1997 and also consider an amendment for the Knowledge Development Box (section 769G TCA 97)
- Capital Gains Tax
- Amendment of section 604A of Act of 1997

Value-Added Tax

- Amendment of section 53 of Act of 2010
- Insertion of section 53A into Act of 2010
- Amendment of section 56 of Act of 2010
- Amendment of section 58 of Act of 2010
- Amendment of section 120 of Act of 2010
- Stamp Duties
- Amendment of section 75 of Act of 1999
- Amendment of section 75A of Act of 1999
- Amendment of section 80 of Act of 1999
- Amendment of section 80A of Act of 1999
- Amendment of section 124B of Act of 1999
- Amendment of section 125 of Act of 1999

Capital Acquisitions Tax

- Amendment of section 89 of Capital Acquisitions Tax Consolidation Act 2003

Excise

- Amendment of section 104 of Finance Act

3. Growing the digital banking sector post-Brexit (CAT)

One of the key factors in Ireland's success as an international financial services centre is that the Irish tax system does not tax non-Irish residents who have invested in products issued by Irish banks, asset managers and insurers. In effect, Ireland recognises that returns from these products should be taxed only where the customers are tax resident and to apply Irish tax would lead to double-taxation (e.g. a non-Irish resident investor is not subject to Irish taxes on an investment in an Irish fund). The tax infrastructure underpinning this has been in place for many years and applies across DIRT, exit tax, CAT, stamp duty, etc. However, a gap exists in relation to bank deposits which has emerged as a significant issue in the context of certain financial services businesses moving business to Ireland post-Brexit.

Cash held in an Irish bank account constitutes an Irish situate asset, and therefore is in scope of CAT, including where the assets are transferred between individuals who are neither resident nor ordinarily resident in Ireland.

CAT legislation was amended in 2010 with respect to investments in Irish funds. This change allowed for units to pass between individuals who are not Irish domiciled nor ordinarily resident, without incurring an Irish CAT charge. This has allowed the funds industry to remain attractive internationally, by not bringing individuals into scope of CAT where they would not otherwise be. The Irish position is also out of step with other EU jurisdictions such as Luxembourg, the Netherlands and Germany which do not seek to impose inheritance or state taxes on non-residents holdings of cash.

Ireland continues to strengthen its position within the international financial services industry, and the commitment to growing the sector is outlined in the Government's Ireland for Finance strategy document, published last year. Banking and Fintech will be key areas in order to achieve the target of increasing employment in the sector to 50,000 by 2025.

However, as more banks consider Ireland as a potential EU headquarter location post-Brexit, including many of the newer digital banks, the potential for bringing clients who are not Irish domiciled nor ordinarily residence into the Irish CAT net may potentially prove a significant factor in the decision as to where to base the EU headquarters. Ireland's competitive disadvantage as a potential location could both restrict growth and also limit competition in the banking sector.

As such, a legislative amendment to remove from the scope of Irish CAT, cash in Irish bank accounts passing by gift or inheritance between two non-ordinarily resident, non-domiciled individuals, similar to that introduced in 2010 in respect of units in Investment Funds, would remove a potentially significant obstacle to banks moving operations and additional activities into Ireland post Brexit and, as mentioned, the so-called "disruptor banks" entering into the Irish market.