An Roinn Airgeadais
Department of Finance

Post-Enactment Scrutiny Report

Finance Act 2023

May 2024

Prepared by the Tax Division,
Department of Finance
www.gov.ie/finance

Contents

Name: Finance Act 2023 (No. 11 of 2023)
Date of enactment: 15 May 2023
Minister responsible for the Act: Minister for Finance

1. Introduction

Finance Act 2023 (No. 11 of 2023) was enacted on 15 May 2023. The purpose of this Act was to give legislative effect to some of the taxation measures announced by Government in early 2023 to continue providing certain supports to businesses and households affected by high energy prices and cost of living challenges.

1.1 Pre-legislative scrutiny

The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach agreed to waive pre-legislative scrutiny of Finance Bill 2023 in recognition of its urgent objective of providing necessary supports to businesses and households and to provide certainty to businesses.

1.2 Policy objectives of the Act

The Act provided for a number of targeted tax changes and specific measures to support households and businesses affected by high energy prices and cost of living challenges.

Two of the measures were also intended to support environmental policy and Ireland's climate targets. These were a temporary change in the Benefit-in-Kind (BIK) regime for vehicles and the zero rating of VAT on the supply and installation of solar panels for residential dwellings.

In addition, the Act was provided for the extension and amendment of six agri-tax reliefs, all of which are forms of permissible State Aid, but were due to expire on 30 June 2023 as a result of the revision to the EU Agricultural Block Exemption Regulation which has applied since 1 January 2023.

1.3 Implementation

There have been no amendments to or reviews of the Finance Act 2023 to date. One Statutory Instrument was made under the Act - Finance Act 2023 (Section 7)

(Commencement) Order 2023 (S.I. No. 239 of 2023), which provided for a commencement date of 18 May 2023 for section 7 of Finance Act 2023. All other provisions under the Act came into effect upon enactment.

Section 7 of Finance Act 2023 also inserted a provision into Finance Act 2022 which enabled the Minister for Finance to make an Order to extend the Temporary Business Energy Support Scheme (TBESS) beyond 31 May 2023. The Minister exercised this power and made Finance Act 2022 (Temporary Business Energy Support Scheme) (Specified Period) (No. 2) Order 2023 (S.I. No. 257 of 2023) on 24 May 2023. The Order had the effect of further extending the sunset date of the Scheme to 31 July 2023.

The tax measures implemented by Finance Act 2023, as with any tax expenditure, will be kept under review by the Department. Such reviews must have regard to the sound management of the public finances and the Department's Tax Expenditure Guidelines, which make clear that any policy proposal which involves tax expenditures should only occur in limited circumstances, where there are demonstrable market failures and where a tax-based incentive is more efficient than a direct expenditure intervention. Ultimately, however, it is a matter for the Minister for Finance and the Government of the day which measures are amended, introduced or allowed to expire.

2. Main Provisions of the Act

The Act provided for amendments to the rates of Mineral Oil Tax (MOT), an extension of the temporary reduction in VAT on gas and electricity, an extension of the temporary reduction in VAT on Tourism and Hospitality, a temporary change in the Benefit-in-Kind regime for vehicles and zero VAT rating of supplies of COVID-19 testing kits and for the supply and installation of solar panels. It also provided for amendments to the TBESS and for the extension of six agri-tax reliefs. This section of the report provides an assessment and evaluation of how the policy objectives of the Act have been achieved in light of those changes.

2.1 BIK for Employer-Provided Cars and Vans

Section 1 of Finance Act 2023 provided for an amendment of section 121 of Taxes Consolidation Act 1997 (TCA) for a €10,000 deduction for BIK purposes applied to the Original Market Value (OMV) of an employer-provided car in emissions Categories A-D. The section also amended the lower limit of the highest mileage band to 31 December 2023.

Section 2 of Finance Act 2023 provided for an amendment of section 121A TCA for a similar €10,000 OMV deduction in the case of employer-provided vans. Both measures are for the 2023 year of assessment.

A new CO_2-based BIK regime to align with other CO_2-based vehicle taxes and international practice was legislated for in Finance Act 2019. The changes which came into operation on 1 January 2023, mean that the cash equivalent of the use of an employer provided car is determined based on the car's CO_2 emissions as well as business mileage.

Section 6 of Finance Act 2019 also introduced a change to the percentage used in the calculation of the cash equivalent of the use of a van. As a result, from 1 January 2023, the percentage used in the calculation of the cash equivalent of the use of a van increased from 5 per cent to 8 per cent. The number of mileage bands has also been reduced from five to four. Under this new basis for calculation, the intention was that higher emission vehicles would experience BIK increases versus the 2022 year of assessment, while lower emission vehicles would experience similar or lower BIK liability depending on mileage levels to encourage uptake of lower emission vehicles.

In light of the cost of living crisis, the Government recognised the difficulty experienced by some people who faced BIK increases under the new 2023 regime. Therefore, temporary changes were made to BIK for 2023 to help lessen the BIK liability for employees. The temporary change comprised of a universal relief of €10,000 being applied to the OMV of cars in Category A-D and vans in order to reduce the amount of BIK payable. This was introduced as a temporary measure for 2023, due to expire on 31 December 2023.

In keeping with Government policy to incentivise low emission vehicles and decarbonise the transport sector, the most pollutant cars (those in Category E) were specifically excluded from the €10,000 deduction. For electric vehicles, the OMV deduction of €10,000 was in addition to the existing relief of €35,000 that is currently available for EVs, meaning that the total relief for 2023 was €45,000.

2.1.1 EVALUATION

The OMV relief was provided in recognition of the increased inflation and cost of living, in an effort to mitigate the impact for employees who have an employer-provided vehicle.

It is difficult to cost and analyse the fiscal impacts of this measure, as the information submitted by employers to the Revenue Commissioners is not itemised based on the type of benefit granted. This means it is not possible to extract vehicle BIK data. Further, there is also limited data on the value and emissions profiles of employer-provided vehicles.

However, the following worked examples illustrate the effect of the relief. Taking account of the €10,000 reduction in the OMV, drivers of cars in categories A-D are saving the amount set out in the table below at the various mileage bands compared with what they would be paying under the 2023 BIK rates before the amendment provided in this Act:

Amount Saved Annually (€)				
Mileage Travelled (km)	**Cat A**	**Cat B**	**Cat C**	**Cat D**
0-26,000	1,170	1,365	1,560	1,755
26,001-39,000	936	1,092	1,248	1,404
39,001-48,000	702	819	936	1,053
48,001 +	468	546	624	702

In very broad terms, it is estimated that a company car will benefit by a range of €468 to €1,775 (depending on mileage, vehicle emissions etc.) from the €10,000 deduction.

2.2 Extension of Certain Agri-tax Reliefs

Sections 3 and 6 of Finance Act 2023 provide for amendments to a number of agri-tax reliefs in the income tax, Capital Gains Tax (CGT), and Stamp Duty areas, relating to the introduction of a revised EU Agricultural Block Exemption Regulation (ABER).

Finance Act 2022 provided for the extension, to 30 June 2023, of five existing agri-tax measures that were due to expire at end 2022, namely the:

- Young Trained Farmer Stamp Duty Relief, under section 81AA of Stamp Duty Consolidation Act 1999 (SDCA);
- Farm Consolidation Relief, under section 81C SDCA;
- Farm Restructuring Relief, under section 604B TCA;
- Young Trained Farmer Stock Relief, under section 667B TCA; and
- Registered Farm Partnerships Stock Relief, under section 667C TCA.

It also provided for the introduction, under section 658A TCA, of an Accelerated Capital Allowance for capital expenditure on slurry storage.

All six of the reliefs were introduced as permissible forms of State Aid under the pre-existing ABER. Block exemption regulations, such as the ABER, and regulations on De Minimis Aid allow Member States to implement a wide range of public support measures without prior notification to the European Commission. This reduces the administrative burden for public authorities and speeds up delivery of the associated public support.

However, as the text of the revised Regulation was agreed at EU level after the Finance Act 2022 was passed by the Houses of the Oireachtas, it was only possible to provide for the reliefs until 30 June 2023 in Finance Act 2022. The revised Regulation came into effect on 1 January 2023 (Commission Regulation (EU) 2022/2472 of 14 December 2022[1]).

Section 3 of Finance Act 2023 provided for the extension of the Young Trained Farmer Stock Relief and the Registered Farm Partnerships Stock Relief to the end of 2024, to align with the sunset date of the General Stock Relief provision under section 666 TCA, while sections 3 and 6 of the Act extended the other four reliefs to the end of 2025, in line with Government approval.

It was also necessary to make some changes to the conditions set out in, and references contained in, the legislation in the Tax Acts that provides for certain agri-tax reliefs. These are required to keep the reliefs compliant with the revised Regulation. These amendments included providing for a reduced level of aid received above which details of the recipient are to be published (from €60,000 to €10,000).

The Act also provided, under the Young Trained Farmer Stamp Duty Relief, for a reduction from four to three years in respect of the amount of time a person has to obtain a trained farmer qualification to claim a refund of the Stamp Duty paid.

Amendments were also made to section 285D TCA, which provided for the acceleration of wear and tear allowances for farm safety equipment, also a permissible State Aid, so that the measure remained consistent with the revised ABER.

2.2.1 EVALUATION

These agri-tax reliefs provide important supports to young farmers and the farming sector generally, both domestically and across the EU.

The aging demographic profile for farmers across the EU is acknowledged as one of the greatest challenges facing rural areas. Supporting young farmers and generational renewal is critical to the future for the agri-food sector. In Ireland, just over 7 per cent of farmers are below 35 years of age, while 32.5 per cent are aged over 65[2].

As such, the primary domestic policy objectives of these reliefs include encouraging the inter-generational transfers of agricultural land, and to increase the level and rate of adoption of more productive and more environmentally friendly farming practices (including consolidation of land parcels, greater use of more environmentally sustainable fertilisers). These objectives are also supported and shared across the EU Member States.

The key objective of the amendments included in Finance Act 2023 is to ensure that the reliefs continue to be available to qualifying farmers and remain compliant with State Aid rules, and as such, Sections 3 and 6 have had their intended effect.

[1] OJ No. L327, 21.12.2022, available at: http://data.europa.eu/eli/reg/2022/2472/oj

[2] Agriculture Labour Force - CSO - Central Statistics Office

2.3 Mineral Oil Tax

Section 4 of Finance Act 2023 provided for an Extension of Temporary Reductions in MOT on Auto Diesel, Petrol and Marked Gas Oil (MGO), by Amendment of Schedule 2 to Finance Act 1999.

On 10 March 2022, the Government introduced temporary reductions in the rate of MOT applying to petrol, diesel and MGO in the order of 20, 15 and 2 cent per litre (VAT inclusive) respectively. An additional 1 cent per litre reduction applied to petrol and diesel from 1 April 2022 to offset the anticipated increase in price arising from changes to the biofuel obligation scheme. An additional 3.4 cent per litre reduction applied to MGO from 1 May 2022.

These reductions were first introduced at a time when the impacts of sharp inflation, particularly in energy product prices was being experienced economy wide. This was a global phenomenon initially arising from legacy issues associated with the COVID-19 pandemic and was exacerbated by Russia's invasion of Ukraine. The spikes in energy prices were driven by market factors, and while the tax system could not prevent this, the Government provided for these reductions to lessen the financial impacts of the price increases for households and businesses. These temporary rate reductions were due to expire on 28 February 2023.

Section 4 of Finance Act 2023 provided for their extension until 31 May 2023 with a phased restoration of the rates taking place in three stages as set out below:

- 1 June 2023: per litre VAT inclusive increase of 6 cent on petrol, 5 cent on auto diesel and 1 cent on MGO.
- 1 September 2023: per litre VAT inclusive increase of 7 cent on petrol, 5 cent on auto diesel and 1 cent on MGO.
- 31 October 2023[3] per litre VAT inclusive increase of 8 cent on petrol, 6 cent on auto diesel and 3.4 cent on MGO.

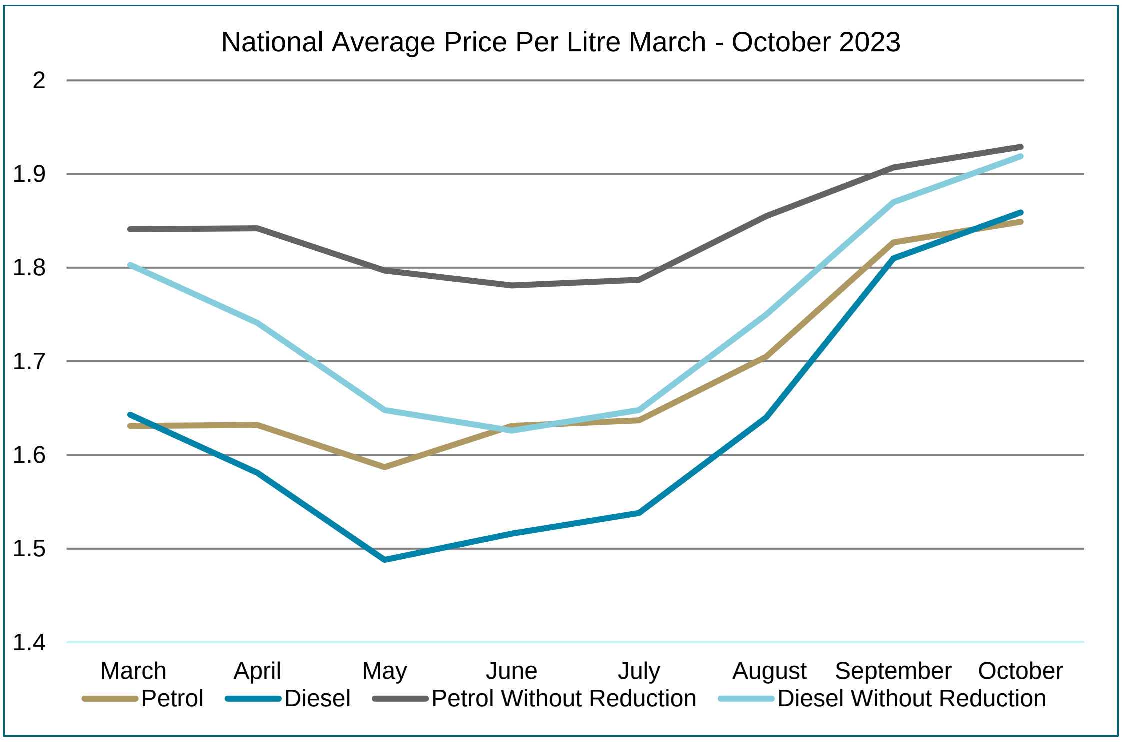
At the time of announcement this extension and phased restoration was estimated to cost €383 million.

2.3.1 EVALUATION

The temporary reductions in MOT were initially introduced in 2022 to lessen the financial impact of increased fuel prices for consumers of auto fuels and MGO. The drivers of this inflation were wholesale international market dynamics outside of Government control and while it was not possible for Government to fully insulate consumers from increased prices, the temporary reductions in MOT provided some financial relief. The temporary reductions were due to end in February 2023 but owing to ongoing energy price inflation at the time,

[3] As announced on Budget day 10 October 2024, the restoration due to take place on 31 October 2023 was deferred with a further phased restoration due to take place in 2024.

the Government decided to further extend the reductions with a phased restoration scheduled to take place as set out above. This extension of the temporary reductions in MOT with a phased restoration provided further financial relief to consumers while wholesale market prices regained stability. The chart below shows the average national price per litre of auto diesel and petrol and the speculated average price had the temporary reductions not been in place during this time frame.



**National Average Retail Prices as per CSO Consumer Price Index (without reduction prices calculated by the addition of VAT inclusive per litre MOT reductions to national average price).*

2.4 VAT

2.4.1 GAS AND ELECTRICITY

Section 5(a)(i) of Finance Act 2023 provided for the extension until 31 October 2023, for the temporarily reduced VAT rate of 9 per cent for gas and electricity. This measure was previously due to expire on 28 February 2023 however a Financial Resolution passed on 22 February 2023 provided a legislative basis for the change to come into effect from 1 March 2023, in advance of the Act coming into force.

Evaluation

The VAT rate of 9 per cent for gas and electricity was subsequently extended, in Budget 2024, for a further twelve months to 31 October 2024. The estimated cost of this measure is €115 million.

The measure recognised that even after some improvements in the global energy markets households and businesses were continuing to struggle with the cost of living. For that reason, the extension of the reduced VAT rate of 9 per cent continues to provide ongoing support to those facing increased energy prices.

This measure had the intended effect of providing assistance and support to businesses and families.

2.4.2 TOURISM AND HOSPITALITY

Section 5(a)(ii) provided for the temporary 9 per cent rate of VAT on the supply of certain goods and services which primarily relate to hospitality and tourism to continue until 31 August 2023. This was also due to expire on 28 February 2023 however a Financial Resolution passed on 22 February 2023 provided a legislative basis for the change to come into effect from 1 March 2023, in advance of Finance Act 2023 coming into force.

Evaluation

The decision to extend to the 9 per cent VAT rate for tourism and hospitality provided further financial support to many businesses from 1 March to 31 August 2023. The estimated cost of this measure is €300 million.

The decision recognised the challenging business environment that the tourism and hospitality sectors were operating in, as well as the role that these businesses play in driving employment and economic activity across Ireland. The extension sought to strike a balance between the cost to public finances and the provision of support for these sectors.

This measure had the intended effect of providing assistance and support to businesses.

2.4.3 SUPPLIES OF COVID-19 TESTING KITS

Section 5(b) provides a legislative basis for the continued application of a zero rate of VAT to the supply of COVID-19 testing kits. The zero rate had previously applied to these testing kits on the basis of a derogation from the VAT Directive provided by the EU Commission. The legislation had previously specified that the zero rate applied to supply only during the period from 12 December 2020 to 31 December 2022, however, given the ongoing levels of the virus in general circulation, the Government decided maintain this zero rate on a permanent basis.

Evaluation

The zero rate of VAT applied to COVID-19 test kits provided that no VAT increase applied to their purchase. This in turn ensured that consumers were not faced with a financial disincentive to the use of these test kits. Although it is not possible to give an estimate of the cost of zero rating COVID-19 test kits, the cost is not expected to be significant.

This measure had the intended effect of providing assistance and support to consumers.

2.4.4 SOLAR PANELS

Section 5(c) set the VAT rate for the supply and installation of solar panels on or adjacent to private dwellings at zero, with effect on and from 1 May 2023. This measure was possible due to changes made in the European VAT Directive in 2022 which allow for a certain number of zero rates outside of historical derogations. A Financial Resolution passed on 18 April 2023 provided a legislative basis for the change to come into effect from 1 May 2023, in advance of the Act coming into force.

Evaluation

The zero rate of VAT applied to the supply and installation of solar panels on or adjacent to private dwellings from 1 May 2023. The estimated cost of this measure for the Exchequer is €19 million annually. As price reductions are passed on an additional incentive is created for consumers to install solar panels.

The Department of the Environment, Climate and Communications estimated that, if passed to consumers, the measure would reduce the average cost for such supply and installation for consumers from €9,000 to €8,000 and would support households reduce their electricity bills. In this way, it is considered that this measure had the intended effect of providing assistance and support to consumers and encouraging more people to avail of this innovative technology.

2.5 Temporary Business Energy Support Scheme

The TBESS was introduced in Finance Act 2022 as part of a suite of Government measures to counteract the impact on businesses of increased energy costs which arose as a result of the invasion of Ukraine by Russia. TBESS was an approved State Aid, designed to comply with the EU Commission Temporary Crisis and Transition Framework.

The scheme provided support to qualifying businesses in respect of increases in their electricity or natural gas costs. It was available to eligible tax compliant businesses carrying on a trade or profession, the profits of which were chargeable to tax under Case I or Case II of Schedule D. The types of businesses which were eligible for the scheme included self-employed individuals, companies and partnerships. Charities and sporting bodies who carry on certain activities which would have been chargeable to tax except for an available exemption were also included in the scheme. Credit and financial institutions were excluded from the scheme as a condition of State Aid approval.

The scheme operated on a self-assessment basis and was administered by the Revenue Commissioners. It was funded by the Department of Enterprise, Trade and Employment.

The scheme did not apply to oil and liquefied petroleum gas, however the Department of Enterprise, Trade and Employment introduced a scheme specifically for business users of kerosene which operated independently of TBESS.

Section 7 of Finance Act 2023 provided for an extension of, and a number of enhancements to, TBESS which expanded eligibility and increased the level of payment to qualifying businesses. It reduced the energy cost threshold for businesses from a 50 per cent increase in energy costs to a 30 per cent increase in energy costs, effective from 1 September 2022. Furthermore, it increased the amount of the temporary business energy payment from 40 per cent of eligible costs to 50 per cent of eligible costs for claim periods from 1 March 2023 to the end of the scheme, subject to monthly limits.

The section also extended TBESS to 31 May 2023, and included a provision allowing for a further extension of the scheme to no later than 31 July 2023, by way of Ministerial Order. The Finance Act 2022 (Temporary Business Energy Support Scheme) (Specified Period) (No. 2) Order 2023 (S.I. No. 257 of 2023) was exercised on 24 May 2023, and extended the scheme to 31 July 2023. Businesses were allowed two months from the end of the scheme to make a claim. The final deadline for eligible businesses to submit claims for relief under the scheme was 30 September 2023.

2.5.1 EVALUATION

When TBESS was originally devised, it was expected that energy costs would increase significantly over the winter months - with the €1.2 billion cost, which was estimated by the Department of the Environment, Climate and Communications, based on what was the expected upper end or 'worst case scenario' of wholesale energy price rises and consumption over the winter period.

While energy costs did rise before subsequently falling, 'the worst case scenario' in terms of energy pricing did not happen due to a number of factors such as a milder than expected winter which reduced demand as well as mitigation measures which were put in place across Europe such as increased storage capacity for natural gas.

There was a significant stabilisation in energy prices in 2023. The decline in wholesale energy prices took time to filter through to business customers and TBESS was enhanced and extended to give businesses a further opportunity to avail of the scheme.

According to Revenue data, 25,523 businesses across the country benefited from the scheme. Overall, businesses received direct payments of €141.25 million and tax liability offsets of €12.6 million, resulting in a total value of €153.85 million. The majority of claims paid out were to the wholesale and retail trade, the accommodation and food sectors and the manufacturing sector. Over €82 million of the total value of claims were paid out to businesses with less than 50 employees.

Revenue has published the list of businesses who received payments under the TBESS[4], including those businesses who exceeded the monthly thresholds per single undertaking under the Finance Act 2022. The scheme is now closed.

3. Conclusion

Finance Act 2023 gave legislative effect to the taxation measures announced by the Government on 21 February 2023 to continue to assist households and businesses in managing increased energy prices and cost of living challenges and ensure there were no cliff-edges to existing supports. As outlined, in this report each of the relevant measures has delivered on this policy aim, including remaining compliant with EU legislation. It is clear from the amounts of support provided and the broad scope of these measures, that the provisions of the Act had the intended effect of mitigating the impacts of increases in cost of living on citizens and businesses. The targeted and time-bound nature of those measures limits the financial consequences for the Exchequer.

[4] Available at: https://www.revenue.ie/en/starting-a-business/documents/tbess-publication-list.pdf

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