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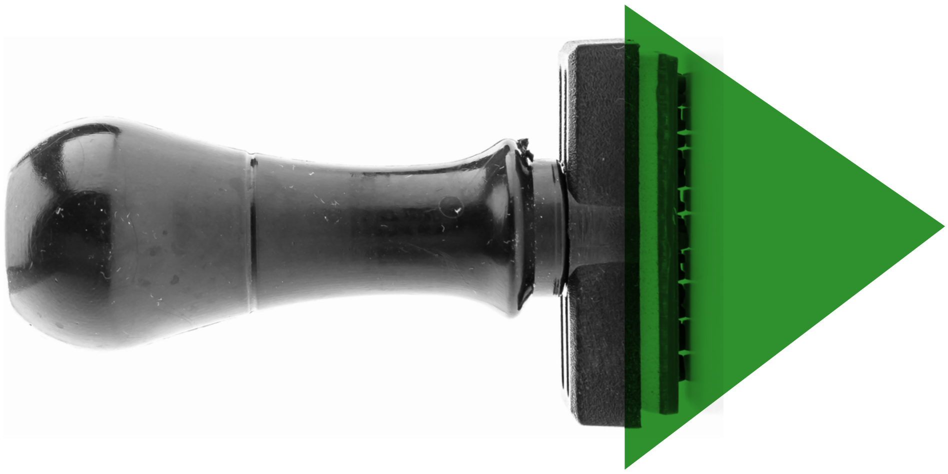

Moving forward

Ireland: domestic and international corporate tax update

7 August 2019

Against the backdrop of a rapidly changing international tax environment, the last number of years have seen moves from various sources to introduce important measures which will shape the future landscape of Ireland's corporate tax regime. These measures include the recommendations under the OECD's Base Erosion and Profit Shifting ("**BEPS**") project and the EU's Anti-Tax Avoidance Directives ("**ATAD**") and Council Directive 2018/822/EU (also known as "**DAC6**").

Change in this sphere is not restricted to external pressures, as demonstrated by the recommendations arising from the Review of Ireland's Corporation Tax Code carried out by Mr Seamus Coffey (the "**Coffey Report**") in 2017. The various domestic and international tax reform initiatives were outlined in 'Ireland's Corporation Tax Roadmap (the "**Roadmap**"), published by the Irish Government in September 2018.[1]

On 18 July 2019, the Irish Department of Finance's Tax Strategy Group ("**TSG**") published their strategy papers for Budget 2020, including a paper focusing on corporation tax. In addition to recognising Ireland's corporate tax regime, including the internationally competitive 12.5% rate, as a long-standing cornerstone of our offering for foreign direct investment, the TSG also reiterated that Ireland has been, and will continue to be, pro-active in taking steps at a domestic level to ensure Ireland's corporate tax regime remains competitive, while also adhering to the newly-agreed international tax standards.

We have outlined below an update of the relevant aspects of domestic and international tax reform, including Ireland's commitments under the BEPS project, ATAD and DAC6, in light of the TSG's strategy paper, recent legislative enactments and movements in the political arena.

[1] Please see our article from September 2018 in relation to Ireland's commitment pursuant to the Roadmap.

Measure	Implementation date	Status	Comments
Controlled Foreign Company ("CFC") rules	1 January 2019	Implemented	Under the newly introduced CFC rules, undistributed income arising to a non-Irish resident subsidiary from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage will be regarded as CFC income of the Irish parent. However, due to the restricted nature of the CFC rules, they are expected to be broadly tax neutral in effect from an Irish tax perspective, with no additional tax revenue expected to be generated (although consideration of the rules is still required and documentation should be retained to support the position taken by taxpayers falling within their scope).
Exit taxation	1 January 2020	Implemented	A new exit tax regime was implemented ahead of time, firstly by way of financial resolution with effect from 10 October 2018 (on the announcement of Budget 2019), and then enacted permanently in Finance Act 2018. The rate of the new exit tax is in line with the Irish corporate tax rate in respect of trading profits (12.5%), subject to an anti-avoidance provision under which the capital gains tax rate (currently 33%) may apply. Where applicable, the exit tax can be paid in instalments over a six-year period. On 11 July 2019, the Irish Revenue Commissioners ("Irish Revenue") issued helpful guidance in relation to the operation of the revised exit tax rules. In particular, Irish Revenue outlined the circumstances which should fall outside the scope of the anti-avoidance provision giving rise to the higher rate of tax.
Digital taxation	To be confirmed	Ongoing discussions at OECD level	In March 2019, the EU opted to discontinue its plan to introduce an EU-wide digital tax due to the lack of consensus amongst Member States, preferring instead to engage in international discussions on the topic. More recently, on 31 May 2019, the OECD adopted a Programme of Work, utilising a two-pillar approach, laying out the process for reaching a new global agreement for taxing multinational enterprises in light of the digitalised economy. The first pillar addresses value creation and the possibility of a new taxing right based on value creation over physical presence. The second pillar (known as 'BEPS 2.0') seeks to address continued BEPS risks by imposing a global minimum tax. The OECD is aiming to reach consensus on these two pillars by the end of 2020. Ireland's position is that any agreed outcome must follow the well-established principle of aligning taxing rights with value creation, be modest and appropriately targeted to cause as little disruption as possible to the long established international corporate tax framework, and provide certainty in the medium term for both governments and business.
Interest limitation rules	1 January 2019 (subject to the availability of a derogation)	Public consultation carried out between November 2018 and January 2019	Interest limitation rules, as envisaged by ATAD, will operate by limiting the allowable tax deduction for interest payments in a tax period to 30% of EBITDA. While the general implementation date for the interest limitation rules was 1 January 2019, a later implementation date of 1 January 2024 may apply where the derogation applies. The TSG has reiterated Ireland's view that the derogation applies on the basis that Ireland's domestic interest limitation rules are equally effective as those under ATAD. However, the TSG notes that work has commenced to examine the options to bring forward the process of transposition from the end of 2023, as originally planned. A timeline for transposition in this respect is expected imminently.
Hybrid mismatch rules	1 January 2020 (generally) / 1 January 2022 (in the case of reverse hybrid mismatch rules)	Feedback statement published on 22 July 2019	Hybrid mismatch rules address the mismatches between different tax regimes (for example, where expenditure is deductible in one country but the corresponding income is not taxable in another country, or where expenditure is deductible in both countries). At present, there are no hybrid mismatch rules under Irish law. A feedback statement was published by the Irish Government on 22 July 2019 following a public consultation carried out between November 2018 and January 2019. A further consultation period will run until 6 September 2019. Following this, it is expected that hybrid mismatch rules will be introduced in Finance Bill 2019, due to be published in Autumn 2019, and will come into effect from 1 January 2020 in compliance with ATAD.

Measure	Implementation date	Status	Comments
Transfer pricing	Expected to be 1 January 2020	Public consultation carried out between February and April 2019	A feedback statement in relation to Ireland's transfer pricing regime is expected to be published shortly following recent public consultation. The TSG has also confirmed that legislation will be introduced in Finance Bill 2019 in this regard. It is expected that this will include the adoption of the 2017 OECD Transfer Pricing Guidelines into Irish law in order that transfer pricing rules are fully effective in ensuring tax is paid where value is created. Other aspects which may be considered in this regard include the removal of certain grandfathering provisions in respect of arrangements entered into before 1 July 2010, the extension of transfer pricing rules to non-trading transactions, and bringing SMEs within the scope of transfer pricing rules.
Territorial tax regime	To be confirmed	Measure deferred	Ireland currently has a worldwide tax regime (ie a company resident in Ireland is subject to tax on its worldwide profits and gains). A public consultation on moving to a territorial tax regime was due to take place in early 2019, but no such process has commenced to date. The Irish Government has recently stated that, while it is continuing to look at the policy of moving towards a territorial tax system, there needs to be greater certainty at an international level before such a move can proceed.
Multilateral instrument ("MLI")	1 May 2019	Ratified and in effect	The MLI allows countries to transpose BEPS recommendations into their existing double tax treaty network without the need to bilaterally re-negotiate each treaty. The MLI was ratified by Ireland in Finance Act 2018. On 29 January 2019, Ireland deposited its instrument of ratification for the MLI with the OECD, meaning that the MLI entered into force on 1 May 2019. The impact of the MLI has recently been seen in the context of Ireland's agreement with Malta with regard to ending the so-called 'Single Malt' structure.
Mandatory disclosure of cross-border transactions	1 January 2020	No implementation carried out to date	DAC6 imposes mandatory reporting obligations in respect of certain cross-border transactions. While the rules should be implemented by Member States on or before 31 December 2019, transactions which commenced on or after 25 June 2018 (the date DAC6 came into effect) will be reportable. Irish Revenue have indicated that provisions to transpose DAC6 into Irish law will be included in Finance Bill 2019 and will come into effect from 1 January 2020 with affected transactions being reportable from 1 July 2020.

Key contacts

If you would like any further information in relation to the above, please feel free to contact a member of our Tax Group.

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