EVERSHEDS SUTHERLAND

# Providing guidance

## Ireland: Domestic and International Corporate Tax Update

### Overview

Ireland’s corporation tax regime has long been a core part of its economic policy mix and is a long-standing anchor in respect of its offering on foreign direct investment. The internationally competitive 12.5% rate, which promotes long term stability, remains a cornerstone of Irish tax policy, in addition to certainty, transparency and a commitment to open engagement with relevant stakeholders.

Over the last number of years, we have witnessed a rapidly changing international tax landscape, commencing with the OECD’s Base Erosion and Profit Shifting (“**BEPS**”) project in 2013 and, more recently, the EU’s Anti-Tax Avoidance Directives (“**ATAD**”) and Council Directive 2018/822/EU (also known as “**DAC6**”).

Ireland has been actively involved in the discussions concerning BEPS, ATAD and DAC6, taking appropriate steps at a domestic level with a view to ensuring that its corporate tax regime remains competitive and continues to contribute to employment and economic growth, while also meeting the newly-agreed international tax standards. 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.

In September 2020, the Irish Department of Finance’s Tax Strategy Group (the “**TSG**”) published their strategy papers for Budget 2021, including a paper focusing on corporation tax. In addition to highlighting Ireland’s ongoing commitment to the process of global tax reform, demonstrated by the consistent progress made by Ireland to date, the TSG signalled the manner in which outstanding measures outlined in the Roadmap will be implemented in due course.

We have outlined below an update on the progress made by Ireland in implementing the relevant aspects of domestic and international tax reform, including its commitments under the BEPS project, ATAD and DAC6, in light of the TSG’s strategy paper and recent legislative enactments, as well as the unprecedented challenges resulting from the COVID-19 pandemic and the forthcoming end to the Brexit transition period on 31 December 2020.

**September 2020**

| Measure | Implementation Date | Status | Comments |
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| Controlled Foreign Company (“CFC”) Rules | 1 January 2019 | Implemented | Under the CFC rules, undistributed income with an Irish nexus 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 and the number of exemptions, they are 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). |

| Measure | Implementation Date | Status | Comments |
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| Digital Taxation | To be confirmed | Ongoing discussions at OECD level | Following the discontinuation by the EU of its plan to introduce an EU-wide digital tax, the OECD adopted a Programme of Work in May 2019, 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. In August 2020, the OECD released draft reports of the OECD containing the blueprints of Pillars I and II which were discussed at a meeting of the Steering Group of the Inclusive Framework on BEPS with a view to publishing the final documents in October 2020. While the OECD had been aiming to reach consensus on Pillars I and II by the end of 2020, this timeline has been impacted somewhat by COVID-19. Plans for a new global tax framework for digital companies have also been dealt a blow due to the indication from the US in June 2020 that it was temporarily pausing discussions on Pillar I due to the need to deal with the COVID-19 pandemic. Ireland's stated position is that any agreed outcome in this area 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. |
| Exit Taxation | 1 January 2020 | Implemented | Ireland implemented a new exit tax regime ahead of time with effect from 10 October 2018. The rate of the 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. The Irish Revenue Commissioners ("**Irish Revenue**") have issued helpful guidance in relation to the operation of the exit tax rules, in particular, by outlining the circumstances which should fall outside the scope of the anti-avoidance provision giving rise to the higher rate of tax. Certain amendments to the exit tax were introduced by Finance Act 2019 with effect from 9 October 2019, including in relation to transfers by non-EU companies which have a permanent establishment in Ireland. |
| Hybrid Mismatch Rules | 1 January 2020 (generally) / 1 January 2022 (in the case of reverse-hybrid mismatch rules) | Implemented (generally) / Stakeholder consultation on reverse-hybrid mismatch rules expected to commence in early 2021 | The aim of anti-hybrid rules is to prevent arrangements that exploit differences in the tax treatment of an entity or financial instrument arising from the way in which that entity or instrument is characterised under the tax laws of two or more jurisdictions (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). In line with ATAD, Finance Act 2019 introduced general anti-hybrid measures into Irish law which apply to all corporate taxpayers in respect of payments made after 1 January 2020. The primary effect of the Irish anti-hybrid rules is that, where they apply, a tax deduction can be denied in Ireland in respect of payments made by Irish resident companies that give rise to a mismatch outcome. The TSG has confirmed that transposition of reverse-hybrid mismatch rules is planned for 2021 in line with the implementation date |

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| | | | set out in ATAD (ie 1 January 2022). |
| Interest Limitation Rules | 1 January 2019 (or 1 January 2024 where domestic rules are equally effective) | Not implemented – Feedback statement expected to be published by the end of 2020 with a public consultation planned during the first half of 2021 | Interest limitation rules, as envisaged by ATAD, will operate by denying a tax deduction for net interest expenses that exceeds 30% of the taxpayer's EBITDA or €3 million, if higher. While the general implementation date was 1 January 2019, Ireland had sought to avail of a later implementation date of 1 January 2024 on the basis that Ireland's domestic interest limitation rules were equally effective as those under ATAD. The European Commission challenged Ireland's claim for a derogation until 1 January 2024 which resulted in the commencement of infringement proceedings and the issuing of a reasoned response opinion in November 2019. The TSG has reaffirmed Ireland's view that the extended deadline of 1 January 2024 should apply, but has confirmed that work to bring forward the transposition process has commenced notwithstanding the effects of the COVID-19 pandemic and the expected end of the Brexit transition period. Having regard to a number of relevant factors, including the detailed requirements under ATAD, the range of applicable policy considerations and technical choices, and the manner in which the new EBITDA ratio will integrate with Ireland's existing interest provisions, the TSG has advised that progress on transposition will continue in 2020 with a view to producing a detailed feedback statement for consultation with stakeholders by the end of 2020. This will allow for a consultation process to take place in the first half of 2021 with final legislation to be introduced in Finance Bill 2021, taking effect from 1 January 2022. |
| Mandatory Disclosure of Cross-Border Transactions | 1 January 2020 | Implemented but reporting deadlines delayed | DAC6 is an EU Directive that imposes mandatory reporting obligations in respect of certain cross-border transactions. Although DAC6 was introduced with a view to increasing tax transparency across the EU and to fight certain aggressive tax planning arrangements, in some cases it may also require disclosure where a tax advantage is not a main benefit of the arrangement in question. While DAC6 was required to be implemented into national law by each EU Member State on or before 31 December 2019, relevant transactions which commenced on or after 25 June 2018 (the date DAC6 came into effect) will be reportable. DAC6 was implemented into Irish law by Finance Act 2019. The first reports were due to be submitted during July/August 2020, with the various tax authorities due to exchange information reports on 31 October 2020. However, in light of the severe disruption caused by the COVID-19 pandemic, Ireland has exercised an option agreed at EU level to postpone by six months the DAC6 reporting timelines for the first returns of information in relation to reportable cross-border arrangements. This means that reporting to Irish Revenue will not commence until January 2021 at the earliest. For further information, please see our separate **article** in relation to DAC6. |
| 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 was seen in the context of Ireland's agreement with Malta with regard to ending the so-called *'Single Malt'* structure. |

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| 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). The Irish Government has 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. The TSG has recently reiterated this position. |
| Transfer Pricing | 1 January 2020 | Implemented | Finance Act 2019 adjusted Ireland's transfer pricing rules, with the majority of the changes coming into effect on 1 January 2020. One of the most significant aspects was the incorporation of the OECD 2017 Transfer Pricing Guidelines (the "**2017 Guidelines**") into Irish law in place of the previous 2010 guidelines. Other relevant changes included the extension of Irish transfer pricing rules to cross-border non-trading transactions and capital transactions, removing the exemption for grandfathered arrangements (ie arrangements entered into before 1 July 2010), and updating transfer pricing documentation requirements in line with the 2017 Guidelines. Finance Act 2019 has also brought certain SMEs within the scope of transfer pricing rules, although this is subject to a Ministerial commencement order (which has not been issued yet). |

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