Update: Ireland's Corporation Tax Roadmap

On 14 January 2021, The Minister for Finance, Public Expenditure and Reform, Paschal Donohoe, published a further update to Ireland's 2018 Corporation Tax Roadmap (the "**2021 Update**"). The 2021 Update, while outlining Ireland's continued commitment to ensuring its corporation tax code remains competitive, fair and sustainable, also provides an opportunity to take stock of Ireland's progress to date in respect of each of the commitments contained in the **2018 Roadmap**, as well as focusing and outlining the range of commitments for 2021 and 2022.

The 2021 Update is published in the context of intensified discussions at the OECD/G20 Inclusive Framework on BEPS and at EU level on agreeing further reforms to the international tax framework, with the aim of reaching agreement by mid-2021. Agreement at international level continues to represent the most desirable pathway to sustainable tax reform and to avoid a patchwork of regional or unilateral measures which would not be conducive to a positive business environment.

While the 2021 Update focuses on: (i) how Ireland has met its tax reform commitments per the 2018 Roadmap; (ii) the ongoing international tax reform at OECD level; and (iii) the future direction of Ireland's Corporation tax strategy. For the purposes of this article, we have focused on points (ii) and (iii) with further information on how Ireland has met its tax reform commitments from the 2018 Roadmap contained in our **2020 publication** which followed the publication of the Irish Department of Finance's Tax Strategy Group papers for Budget 2021.

A. Giving effect to remaining existing commitments on tax reform

No.	Measure	Status	Update
1.	Introduce ATAD compliant Interest Limitation rules	Stakeholder consultation on ATAD compliant Interest Limitation rules expected to commence in early 2021	ATAD requires the introduction of a rule to limit deductions for net borrowing costs to a maximum of 30% of EBITDA. There will be a number of stages to this transposition process to allow sufficient consultation and ensure a robust regime is developed. The first stage was the publication of an initial Feedback Statement in December 2020, which will be followed by the publication of a Consultation Paper in Q1 2021. The outcome of the consultation process will be outlined in a Feedback Statement in mid-2021 with legislation to be introduced in Finance Bill 2021 with an effective date of 1 January 2022.

No.	Measure	Status	Update
2.	Legislate for reverse hybrid aspects of ATAD anti-hybrid rules	Stakeholder consultation on reverse-hybrid mismatch rules expected to commence in early 2021	The concept of reverse hybrid mismatches was introduced in the second ATAD Directive. The term "*reverse hybrid entity*" refers to a foreign-owned entity established or incorporated in a Member State which is treated as opaque (non-transparent) under the laws of the foreign jurisdiction but as transparent in the Member State where it is either established or incorporated. ATAD requires that such a reverse hybrid entity be regarded as resident in the relevant Member State and taxed on its income to the extent that it is not otherwise taxed under the laws of the Member State or any other jurisdiction. Transposition of the anti-reverse hybrid rule will take place in 2021, following a similar process to the Interest Limitation rules. A Consultation Paper will be published in Q1 2021, followed by a Feedback Statement by mid-2021, with legislation to be introduced in Finance Bill 2021.
3.	Territorial Tax Regime	Public consultation to be launched in 2021	Ireland currently has a worldwide tax regime (i.e. a company resident in Ireland is subject to tax on its worldwide income and gains). By contrast, a territorial tax system focuses on the taxation of profits earned within the relevant jurisdiction, with appropriate anti-abuse measures (such as Controlled Foreign Company rules) to prevent artificial diversion of profits offshore. Most OECD countries use a territorial based tax system and a public consultation was due to take place in 2019 regarding moving Ireland to a territorial based tax system. However, it was deemed prudent to wait until there was greater certainty around the international tax environment before addressing this issue directly. It is now planned that a public consultation will be launched in 2021 to enable further consideration of the issue in the context of the evolving international landscape. Unlike the items discussed above, it is unlikely that any draft legislation will be published in Finance Bill 2021.
4.	International Mutual Assistance Bill	Bill to be published in coming weeks	The OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters was ratified, in part, when Ireland lodged an instrument of ratification with the OECD in 2013. When enacted, the Taxation and Certain Other Matters (International Mutual Assistance) Bill will facilitate the full ratification of the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and enable Ireland to complete the ratification of some of the remaining provisions of the EU/Switzerland Anti-Fraud Agreement. Work is close to finalisation on the drafting with a view to publishing the Bill in the coming weeks, with deliberations at Government level expected in early 2021.

No.	Measure	Status	Update
5.	Apply defensive measures to countries on the EU Member States' list of non-cooperative jurisdictions	Implemented	In October 2019, Finance Ministers at ECOFIN agreed a soft law commitment to introduce national legislative defensive measures against listed jurisdictions. The Ministers agreed a toolbox of four distinct measures from which Member States would adopt one through national domestic legislation. These measures are: the non-deductibility of costs, withholding tax measures, enhancing controlled foreign company rules, and the limitation of participation exemptions on distributions of profit. Of these options, Ireland's worldwide tax system already provides the protection that would be offered by the limitation of a participation exemption. Delivering on this commitment to introduce new defensive measures, Finance Act 2020 has amended Ireland's Controlled Foreign Companies ("**CFC**") rules to provide more stringent criteria in respect of subsidiary companies resident in jurisdictions contained in the EU's list of non-cooperative tax jurisdictions. These amendments are in line with agreements reached at ECOFIN on the need to apply defensive measures against such listed jurisdictions.

B. Additional commitments for further consideration, consultation and action

No.	Measure	Status	Update
6.	Consider additional defensive measures to countries on the EU Member States' list of non-cooperative jurisdictions	Public consultation to be launched in early 2021 with objective of considering introduction of appropriate measures in Finance Bill 2021	Following the introduction of more stringent provisions in CFC legislation in Finance Act 2020, consideration will be given to introducing additional defensive measures, if required, including denial of tax deductions or imposition of withholding taxes where material payments are made from Ireland to listed jurisdictions.
7.	Consider actions that may be needed in respect of outbound payments	Under consideration	While it is anticipated that issues raised in respect of outbound payments relate primarily to historical issues which have largely been remedied by US tax reform, a consultation on the issue would provide an opportunity to consider whether further action by Ireland may be necessary or appropriate.
8.	Adopt the Authorised OECD Approach for transfer pricing of branches	Extension of Transfer Pricing Rules expected in Finance Bill 2021	Following the substantial modernisation and extension of Ireland's transfer pricing rules in Finance Act 2019, the next step in the modernisation process is to extend transfer pricing rules to the taxation of branches in Ireland in line with the Authorised OECD Approach. Work will commence in early 2021 on this matter and it is intended to bring forward the necessary legislation in Finance Bill 2021.

No.	Measure	Status	Update
9.	Continue to meet international best practices on exchange of information and support efforts to further enhance information exchange	Ongoing with proposals expected towards the end of 2021	In terms of policy developments: -Ireland has been proactive at OECD level in shaping the Modern Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy that were agreed in July 2020. This has paved the way for the 7th Directive on Administrative Cooperation (DAC7) which was agreed by Finance Ministers at ECOFIN on 1 December 2020. This Directive, which will introduce the Automatic Exchange of Information to supplies of goods and services through digital platforms, aims to ensure that revenues earned through platforms are transparent and to ensure a level playing field for traditional operators. -Ireland is also committed to contributing to the development of new reporting rules for crypto-assets and e-Money to complement the Common Reporting Standard. This will feed into a European Commission proposal in this area (DAC8) which is expected towards the end of 2021.
10.	Proactively respond to the outcomes of international reform efforts	Ongoing	As the future direction of global tax reform becomes clearer, the Department of Finance will continue to take a proactive, consultative approach to ensure Ireland's corporation tax system is well-placed for the changing environment. Future policy choices will have a dual focus, both ensuring compliance with new and emerging global standards and also ensuring Ireland's system remains highly competitive for real and substantial investment.
11.	Publish a tax treaty policy statement taking account of international developments	Ongoing – policy statement to be published before the end of 2021	As Ireland has now reached the position where it has treaties in place with most of their main trading partners, it is timely to consider the broader tax policy in the context of outcomes of the discussions at the OECD/G20 Inclusive Framework on BEPS, which in October 2020 published two "blueprints" intended to address the tax challenges arising from the digitalisation of the economy and what actions may be necessary. It is intended that a Policy Statement will be published, in consultation with the Department of Foreign Affairs and Irish Aid, before the end of 2021 which will have a particular emphasis on tax treaties with developing countries.
12.	Continued engagement in international fora and develop a new framework for domestic stakeholder engagement	Ongoing – details of the process to be finalised in early 2021	While Ireland has constructively engaged with a wide range of multilateral fora in recent discussions on international tax reform, engagement with domestic stakeholders is also an essential component of policy development. While a range of consultations are planned over the coming year, the Department of Finance is also planning to establish a formal stakeholder engagement process, to facilitate engagement on broader matters of interest. Details of this process will be finalised in early 2021.

Final Word

The 2021 Update provides welcome clarity on the timing of any forthcoming changes to Ireland’s corporation tax code while also reaffirming Ireland’s continued commitment to the 12.5% corporation tax rate and a fair, competitive, transparent and sustainable regime. The 2021 Update provides businesses with certainty on what changes to expect and also time in identifying any additional compliance obligations or restructuring that may be required as the reforms are being adopted.

In relation to the introduction of ATAD compliant interest limitation rules in Finance Bill 2021, due primarily to the complexity of the rules and their interaction with domestic legislation, the 2021 Update highlights the importance of engagement with businesses and advisors during the drafting process to “*avoid undue complexity and unintended consequences with this measure*”. This may involve examining the interaction of the proposed new rules with the interest deductibility rules contained in section 247 of the Taxes Consolidation Act 1997, as well as the implications these changes may have on the financial services sector more generally.

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If you wish to discuss the implications of any of the above on you or your business, then please contact a member of our Tax Team below.

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