itm Irish Tax Monitor

As BEPS rules begin to be implemented around the globe the prospect of disputes arising around the Pillar Two rules, and how they are likely to be resolved, feature in this month's Roundtable, with stakeholders awaiting the outcome of the OECD's public consultation earlier this year. The steps corporates should be taking to comply with the Interest Limitation Rules are analysed with higher interest rates perhaps warranting a reconsideration of strategy for the years ahead. The EU's ViDA appears set to be delayed and how affected companies can best take advantage of the extra preparation time is outlined, as are recent Stamp Duty changes, new employer reporting of benefits obligations as well as BEPS required changes that make the 'Knowledge Development Box' now largely redundant.

Pillar Two Readiness

With greater detail becoming available on OECD Pillar Two implementation in Ireland and many other jurisdictions what can companies expect by way of tax disputes under the new rules?

Aisling Coleman, Tax Manager, Corporate Tax, Deloitte: Pillar Two Global Anti-Base Erosion (GloBE) refers to one of two key pillars of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The Pillar Two rules effectively seek to apply a coordinated system to ensure that Multinational Enterprises (MNEs) with revenue above EUR 750 million pay tax at least a minimum level of 15% on the income arising in the jurisdictions in which they operate. The recognition of a "qualified" rule status for an Income Inclusion Rule (IIR), Undertaxed Payment Rule (UTPR) or a Qualified Domestic Minimum Top Up Tax (QDMTT) is a fundamental mechanism for ensuring the coordinated application of the GloBE rules across jurisdictions.

The Deloitte Contributors in the October Roundtable Panel consisted of:
Aisling Coleman, Tax Manager, Corporate Tax, Deloitte; Emmet O'Halloran, Manager, Corporate Tax, Deloitte; Lorraine Morrison, Senior Tax Manager, Indirect Tax, Deloitte Ireland LLP; Aifric Madden, Apprentice Solicitor, Private Clients, Deloitte; Niamh Creedon, Manager, Global Investment & Innovation Incentives (Gi3), Deloitte; Shane Mc Auliffe, Senior Tax Manager, Global Employer Services & Employment Tax, Deloitte Ireland LLP.

Dispute Prevention

In theory, given the rules are being introduced based on an agreed OECD Model Ruleset one would expect to see a reduction in the volume of tax disputes via the introduction of the GloBE rules. The introduction of the rules will be further supported by the Administrative Guidance on the GloBE rules being subject to continuous updates, and it will be essential for jurisdictions to promptly integrate such changes into their application of the rules. Failure to do so could lead to a situation where different versions of the Administrative Guidance is used by jurisdictions when applying the GloBE rules. Of course, there will be cases where the GloBE rules are not uniform, and disputes will arise. However, initially we would expect that resolving such disputes will be through a multi-lateral review process (i.e. at a country-by-country level) rather than on a company by company basis.

Aisling Coleman

Dispute Resolution

It is imperative to the success of the Pillar Two rules, that all jurisdictions agree upon an efficient dispute resolution mechanism to address issues arising for MNE's, due to variations in the

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interpretation or application of the GloBE Rules across jurisdictions. The OECD have recognised this challenge and launched a public consultation earlier this year on the matter of Pillar Two – Tax Certainty. We are awaiting the output from this work. It should not be the case that jurisdictions are left to resolve double or excessive taxation disputes among themselves, whether through a Mutual Agreement Procedure (MAP), the introduction of provisions for dispute resolution in domestic rules, or the development of a Multi-Lateral Convention ("MLC") that would provide for same. Such an approach would likely result in discrepancies in the application of the GloBE rules. It is crucial that taxpayers receive a clear understanding of how double taxation disputes will be resolved, the timeline for implementing the dispute and the expected timeframes for resolving such disputes.

Interest Limitation Rules

With new reporting requirements around interest limitation rules required for accounting periods from 1st January 2022, what steps could corporates be taking to meet obligations under the rules?

Emmet O'Halloran, Manager, Corporate Tax, Deloitte: Finance Act 2021 introduced Interest Limitation Rules ("ILR") that are applicable to accounting periods starting on or after 1 January 2022. ILR were introduced to limit base erosion attempts by multinational companies through the use of excessive interest deductions. To accomplish this, the ILR limits the ability of entities to deduct net borrowing costs in a given year to a maximum of 30% of Earnings before Interest, Tax, Depreciation and Amortisation ("EBITDA").

The first key step corporates should take to meet their obligations is to ensure they understand what the ILR applies to. For the purposes of the ILR, the definition of interest is broad and includes other amounts where they are considered to be economically equivalent to interest ("interest equivalent"). Interest equivalent is widely defined, and the definition encompasses interest and amounts economically equivalent to interest including (but not limited to) discounts, amounts under derivative instruments or hedging arrangements and amounts arising in connection with the raising of finance (such as guarantee, arrangement and commitment fees).

Emmet O'Halloran

Secondly, where corporates are members of a group, all Irish entities should prepare individual ILR calculations to determine where there is "Spare Capacity" in the group. Spare Capacity is calculated by using the below formula. Each of the terms are defined in the ILR Revenue guidance, *(Deductible Interest Equivalent – Legacy Debt Interest) – Taxable Interest Equivalent.*

When the numbers are inputted in the above formula, if the answer is greater than or equal to zero, this represents exceeding borrowing costs. If the answer is less than zero this represents interest spare capacity.

Where companies are determined to have Spare Capacity and others have exceeding borrowing costs, consideration should be given to forming an "interest group". An interest group means that the ILR calculations are completed at a group level, allowing the group members to pool individual entities' interest and interest equivalents as well as spare capacity. However, careful consideration is required in this regard as once an entity elects to be treated as part of an interest group, the election remains in place for 3 years. As such, it is important that the group considers their options prior to making the election.

It is important that companies continue to actively engage with the ILR, as failure to apply the rules correctly could lead to significant underpayments of tax, interest and penalties and potential reputational damage for the company.

Vat in the Digital Age

The implementation of EU's Vat in the Digital Age reforms looks set to be delayed with the timelines for the extensive reforms expected to be pushed out by a year with the first phase now likely to begin in 2025. Can you outline the main aspects of ViDA and how corporates can best take advantage of the likely extension to prepare?

Lorraine Morrison, Senior Tax Manager, Indirect Tax, Deloitte Ireland LLP: The VAT in the Digital Age (ViDA) proposal is an extensive set of measures aimed at modernising and digitalising the EU's VAT system, while ultimately also making it more robust to fraud. The proposed reforms can be broken down into three particular areas as follows:

E-invoicing and digital reporting requirements (DRR): introduction of mandatory e-invoicing and DRRs for certain intra-EU supplies of goods and services, with near real time transactional data transmission to tax authorities;

VAT rules for the platform economy: extension of current deemed supplier rules for platforms, as well as the introduction of deemed supplier rules for platforms facilitating short-term accommodation and passenger transport services;

Single VAT registration: new and extended options for businesses selling to consumers across the EU to report transactions in a single VAT registration through expansion of the use of the One-Stop-Shop (OSS) and Import-One-Stop-Shop (IOSS) schemes.

While there are particular subsets of the proposals aimed at specific industries and operators, it is important to note that these proposed reforms are far-reaching and will impact on all businesses in the coming years.

At this juncture, businesses should become familiar with the ViDA proposals and assess how they impact your business. It will be vital to prepare a high-level plan for readiness together with the relevant internal stakeholders and engage with your advisors where support is needed. Many businesses have been adapting, and continue to adapt, to an ever-expanding digital reporting landscape and while these proposals should reduce the current fragmented approached across the EU, a level of Member State discretion will remain for implementation of the rules. Businesses should ensure they remain up to date as the ViDA proposals progress and Member States move to

implementation, allowing for timely and accurate development and upgrading of IT systems, as well as training for personnel to address these upcoming changes.

Stamp Duty

The Revenue Commissioners have provided new guidance on exemptions and reliefs from Stamp Duty. Can you outline these changes and any implications for taxpayers?

Aifric Madden, Apprentice Solicitor, Private Clients, Deloitte

In 2023, the Finance Act 2022 introduced significant refund schemes which will be of interest to property

Aifric Madden

owners. The guidance recently published by Revenue synopsises what is in the legislation and the conditions relevant to each scheme. These new schemes are in addition to the current refund scheme available to landowners that complete residential developments. The overarching aim of the refund schemes is to make more residential properties available as affordable or social housing or redesignated as residential care centres.

1. Section 83DA – Refund of stamp duty under affordable house dwelling purchase arrangements

Section 83DA of the Stamp Duties Consolidation Act (SDCA) 1999 came into operation on 1 June 2023. It provides that, where a residential property is acquired and is then subsequently sold by the original purchaser within 12 months of acquisition for the purposes of affordable home arrangements under the Affordable Housing Act 2021, a full repayment of stamp duty may be claimed subject to satisfying certain conditions.

2. Section 83DB Repayment of stamp duty in respect of certain residential units

Section 83DB of the SDCA 1999 also came into operation on 1 June 2023 and provides for a partial repayment of stamp duty paid at the higher rate of 10% pursuant to section 31E SDCA 1999 where the property is:

- let to a housing authority or approved housing body for social housing purposes;
- designated as a cost rental dwelling under the Affordable Housing Act 2021;
- registered as a designated centre under the Health Act 2007, which provide care in the community for those with disabilities; or
- registered as a children's residential centre under the Child Care Act 1991, which provide homes for children in care.

All these refund schemes are subject to a time limit of four years.

These are valuable refund schemes available to taxpayers and due consideration should be given to the schemes available before undertaking a redesignation of property use or transferring property to ensure that the conditions are met.

Knowledge Development Box

The Minister for Finance recently signed a commencement order to implement Finance Act 2022 amendments to the Knowledge Development Box from 1st October 2023. Can you outline the changes and what it means for corporates availing of the Knowledge Development Box?

Niamh Creedon, Manager, Global Investment & Innovation Incentives (Gi3), Deloitte: The Knowledge Development Box (KDB) is a corporation tax relief on income from usable qualifying assets such as computer programs and certified intellectual property (IP). It was initially introduced in Budget 2016 and allowed for a corporation tax rate of 6.25% for profits derived from qualifying assets, or families of qualifying assets. The objective of which is to encourage the development of IP in Ireland. However, since the inception of the regime, no more than 20 companies have claimed the relief in any one year due to the complexity of claiming.

On September 11, 2023, the Minister for Finance signed a Commencement Order to implement the Finance Act 2022 amendments to increase the effective tax rate on Knowledge Development Box (KDB) profits from 6.25% to 10%. This order provides for measures to take effect from 1 October 2023 and is another step in the implementation of the OECD Pillar Two Agreement.

Niamh Creedon

The impact of this change is to make an incentive that was not working effectively, even less attractive and all but redundant. As outlined previously, there are less than 20 companies claiming this relief annually. Those that will be subject to Pillar Two will still see a 5% saving against the 15% minimum rate. Those not subject to Pillar Two, with a 12.5% CT rate, will see a 2.5% saving. Both will find it very hard to justify claiming the relief when the benefits are compared to the administrative costs.

Employer Reporting of Benefits

Revenue's Enhanced Reporting Requirements (ERR) for certain payments to employees was introduced in Finance Act 2022. With the start date of 1 January 2024 approaching, what needs to be reported and what are the key considerations for employers?

Shane Mc Auliffe, Senior Tax Manager, Global Employer Services & Employment Tax, Deloitte Ireland LLP: The ERR represents a new reporting obligation for Irish employers. Introduced as part of Finance Act 2022, the target implementation date is 1 January 2024, subject to a commencement order.

The new requirements are part of a phased introduction of reporting non-taxable payments to employees, as Revenue seek to enhance their Compliance Intervention Framework. Phase 1 has focused on three specific categories of 'reportable benefits' made to employees and / or directors, as follows:

- The provision of benefits to employees under the small benefit exemption;
- Travel and subsistence expenses paid to employees;
- The payment of the tax-free €3.20 remote work daily allowance.

In keeping with the approach adopted with respect to PAYE Modernisation in 2019, ERR mandates real-time reporting of the above non-taxable payments 'on or before' the payment date.

Practical Considerations

The ERR will have a significant impact for employers, the most notable considerations being:

Employers need to engage now to ensure that procedures are in place to facilitate compliance with the new rules. Manual systems or ad hoc reimbursement of expenses may no longer be suitable.

While the changes indicate Revenue are moving towards a digitalized approach for collecting payroll data, there is a lot more involved than a tech solution. Employers will need to examine how they collect and record information on reportable benefits to assess if existing processes are fit for purpose.

Shane Mc Auliffe

The frequency of payments and expense reimbursement policies should be reviewed, as reporting is required 'on or before' the payment date. For example, a company might currently reimburse employees for travel expenses on a weekly basis. This will cause a significant administrative burden as multiple payroll submissions would be required each month.

Multiple functions (e.g. payroll, HR, finance teams) across a business are likely to be involved in management and administration of reportable benefits. Due to the 'on or before' reporting requirement, processes need to be in place to ensure the appropriate team are aware of non-cash payments within the scope of ERR on a timely basis. Cross department collaboration between the key stakeholders is necessary to ensure compliance.

Robust controls are required to track, gather, and report non-cash benefits that qualify under the small benefit exemption. This could prove challenging for employers, especially given the traditional spontaneous nature of the provision of such benefits. Employers should review who has authority to provide such gifts to employees, and who actually does so in practice.

What is next?

Revenue is currently focussing on stakeholder engagement and information sessions, with further guidance expected to be available in Q4 2023.

It is expected there will be a very short transition period that will allow employers to get up to speed. Failure to comply could result in penalties for incorrect payroll submissions. This could lead to heightened scrutiny and increase the likelihood of Revenue intervention.