itm Irish Tax Monitor

In this issue the Roundtable panel analyse the recently approved revised EU Code of Conduct on Business Taxation that will take effect from 2024; improving and simplifying Ireland's Double Taxation mechanisms; recent changes to relief for terminal loss in a trade; the key issues and concerns around the Residential Zoned Land Tax and developments in tax data management and analytics.

Code of Conduct

The Ecofin Council has approved a revised Code of Conduct that broadens the scope to include not just preferential tax measures but also 'tax features of general application' which create opportunities for double non-taxation or can lead to the double or multiple use of tax benefits. Can you discuss the revisions to the Code and how these may be relevant for Irish corporate taxpayers?

Dylan Reilly, Assistant Manager, Corporate Tax – Corporate & International, Deloitte: The EU Code of Conduct on Business Taxation (Code) is described by the European Council as "an important instrument of the EU, which promotes fair tax competition, both within the EU and beyond". The original Code of Conduct was approved in 1997. Its primary focus has been to highlight potentially damaging "preferential tax measures", being measures that allow for a lower level of taxes than the amount that is applicable in general. The Council calls on the EU Member States to cooperate fully against tax avoidance and evasion.

On 8th November 2022, the Ecofin Council approved a revised Code, expanding its scope to include "tax features of general application," which can result in double non-taxation opportunities or the utilisation of tax benefits more than once.

The Deloitte Contributors in the January 2022 Roundtable Panel were:
Dylan Reilly, Assistant Manager, Corporate Tax – Corporate & International, Deloitte; Emma Arlow, Director, Tax Policy and Technical Services, Deloitte; Damien Kiniry, Manager, Corporate Tax - Corporate & International, Deloitte; Niall McCarthy, Tax Manager, Tax and Legal - Real Estate Tax, Deloitte; Ronan Ferry, Partner, Tax and Legal - Tax Technology Consulting, Deloitte; Sudhakar Kandasamy, Senior Manager, Tax and Legal - Tax Technology Consulting, Deloitte.

The updated Code will take effect on 1 January 2024, and will apply to any tax features of general application that are implemented after 1 January 2023.

The revised code includes two interrelated tests to determine whether tax provisions of general application are harmful:

1. Does the tax feature of general application lead to double non-taxation or does it allow the double or multiple use of tax benefits in connection with the same expenses, amount of income or chain of transactions, because it is not accompanied by appropriate anti-abuse provisions or other adequate safeguards?
2. Does this affect in a significant way the place of business activity in the EU?

Dylan Reilly

In an Irish context we expect that any future changes to Irish tax law would not fall within the tax features of general application which are harmful. Ireland is committed to the EU's adoption of anti-base erosion measures. This includes the EU's introduction of a 15% minimum tax for large corporates, and Ireland's adoption of all relevant measures under the EU Anti-Tax

Avoidance Directive. In addition, Ireland has robust domestic anti-avoidance tax legislative provisions.

Of course, Irish corporate taxpayers should also be mindful of Other Member States in which they operate and any future tax changes in those Member States which could be found to be harmful under the Code.

Double Taxation

In March 2022, the Irish Department of Finance closed a public consultation on the potential move to a territorial tax system for foreign dividends and branch income. While many stakeholder responses addressed the benefits associated with such a territorial tax system, a number of commentators noted that further consideration should be given to engaging in a broad simplification of existing double tax relief mechanisms to bring greater clarity for companies operating internationally. In your opinion what would be the most beneficial double tax areas, outside of an elective foreign branch profit and dividend exemption that a territorial tax system could accommodate, that could be revised to improve the system for companies that operate internationally?

Emma Arlow, Director, Tax Policy and Technical Services, Deloitte: Broad simplification of double tax relief rules currently contained in Irish law would be a welcome development for many taxpayers. In considering the potential simplification of existing double tax relief rules we would point to a number of key areas. Firstly, broadening the categories of income on which double tax relief may be afforded would improve matters greatly for both inward and outward investment to and from Ireland. At present, double tax relief is only afforded with respect to specific income streams (interest, royalties etc). We are aware of a number of countries and developing economies who seek to impose withholding tax on payments for services referred to commonly as "technical services". The treatment of such payments, and in particular whether they are to be assessed as royalties or business profits typically varies depending on jurisdiction. The analysis may also vary depending on the facts at issue. For example, where in the course of providing a service the supplier uses technology but does not grant or sell the technology then such payments may not fall to be classed as "royalties". Broad simplification of this area by widening the categories of income on which relief may be afforded would help to alleviate this complexity. Secondly, the provisions governing the pooling and carry forward of excess double tax credits are complex and not universally applied to all sources of income on which double tax relief may be available. While current provisions allow for the pooling of excess credits arising on relevant interest, there is no provision for the carry forward of excess credits arising on such interest to later periods. In addition, the conditions attaching to whether interest is "relevant interest" for pooling purposes can be onerous. The differing requirements imposed depending on the type of income create unnecessary complexity and should be simplified.


Emma Arlow

Corporation Tax

Can you outline the most recent changes to relief for terminal loss in a trade, and how the relief works for Irish corporate taxpayers?

Damien Kiniry, Manager, Corporate Tax - Corporate & International, Deloitte: The rules for determining how losses can be utilised by Irish corporate taxpayers in the most tax efficient way is not always straightforward and requires some forward planning and an understanding of the different options available.

Before delving into the specific details on "terminal loss relief", it is useful to provide a high-level overview of the typical loss relief options for Irish companies. Where a company incurs a loss from carrying on its trade or profession in an accounting period, they can elect to offset this loss on a "euro-for-euro" basis against similar profits in the same or the prior accounting period.


Damien Kiniry

However, where a company also has non-trading income such as rental or investment income, they can only elect to offset any remaining losses on "a value basis" against corporation tax in the same or the prior accounting period. The value basis is essentially a credit against corporation tax and ensures that losses arising in a trade or profession only have a tax value of 12.5%. Any excess losses after these claims are then carried forward against profits from the same trade or profession in future years.

A "terminal loss" specifically refers to a loss arising in the final twelve months up to the date of the cessation of a trade or profession. A company can elect to set this specific loss against profits of the same trade or profession for the three years prior to the year of cessation which can trigger a refund of corporation tax previously paid for these years. If this relief wasn't available then losses incurred in the last period would otherwise be lost if the current and preceding periods income was insufficient to absorb the loss, as the loss could not be carried forward due to cessation.

Under Irish tax rules, there is no prescriptive time limit in which a terminal loss claim must be made, and it was generally the working assumption among advisors that the normal four-year statutory time limit should therefore apply. In the recently updated Tax and Duty Manual (Part 12-03-02), Revenue confirmed this point that a claim must be made within four years from the end of the accounting period in which the terminal loss is incurred.

Residential Zoned Land Tax

With the publication of draft zoning maps on 1 November 2022 for the purpose of the application of the Residential Zoned Land Tax, what are the key issues and concerns of the industry?

Niall McCarthy, Tax Manager, Tax and Legal - Real Estate Tax, Deloitte: Finance Act 2021 introduced the Residential Zoned Land Tax (RZLT),

Niall McCarthy

an annual 3% tax charge on the market value of land within its scope. The aim of the tax is to deter land hoarding and activate zoned and serviced land for residential development.

There are certain opportunities for exclusion and a "deferral and abatement" of RZLT is available where land is developed to completion in certain circumstances.

On 1 November last, each local authority published draft maps identifying land within the scope of RZLT, with the first pay and file date arising in May 2024. In order to seek an exclusion, a submission must have been made to the local authority by 1 January 2023.

In relation to land that is ultimately in scope, a number of bodies within the construction industry have identified some key issues and concerns, in particular:

Factors outside of the control of the landowner

RZLT may only be deferred where planning permission has been granted and development has commenced. Where planning permission cannot be obtained or there are delays outside of the control of the landowner, the tax will continue to be charged. If the land is sold, development ceases permanently or the planning permission expires before completion, the deferred tax must be paid together with statutory interest for late payment (8% per annum).

Where a third party brings a judicial review application against a grant of planning permission, the tax may be deferred until the judicial review is determined. However, if the planning grant is overturned at the end of the

Ronan Ferry

judicial review process, the landowner must pay all the deferred tax for the duration of the proceedings, in addition to statutory interest for late payment.

Viability

The commercial viability of residential development (particularly the development of apartments) is a live issue for many in the construction industry. There are a number of factors that have already led to cost inflation in the industry, including Brexit, Covid-19 and the war in Ukraine. To the extent a developer's site is not commercially viable it will nonetheless suffer RZLT, thereby further exacerbating existing commercial viability issues while RZLT will ultimately be a cost that is passed on to the final consumer.

Conclusion

We expect this tax to be a prominent point of discussion over the coming 12 months and beyond. The first payment of the tax will be due in May 2024 and we might expect to see some legislative amendments in the meantime for RZLT to have its intended effect in activating the development of zoned and serviced land, without applying additional costs on those developers actively engaged in seeking planning permissions for the purpose of much needed residential development.

Tax Technology

Tax data management and analytics can aid corporates in a broad array of areas including scenario planning and efficiency. Please comment on latest developments.

Ronan Ferry, Partner, Tax and Legal - Tax Technology Consulting, Deloitte & Sudhakar Kandasamy, Senior Manager, Tax and Legal - Tax Technology Consulting, Deloitte: In an era of exponential increases in available data, tax departments need new and consistent ways to accurately access, analyse, and apply tax data.

The time is right to take the first step towards tax analytics. Many businesses put off taking the first step because they believe their data needs to be "near perfect." Data doesn't need to be perfect to have impact. Tax data analytics can

Sudhakar Kandasamy

take the data you have—limited or disorganized as it may be—and turn it into insights that can help your tax department guide the wider organization toward increased efficiency and business success. With tax data analytics, you can incorporate new data elements, run multiple scenarios, and present an interactive dashboard to explore possibilities with key stakeholders in a matter of hours. Corporates need to imagine how an analytics solution can be the catalyst to kickstart a tax analytics initiative, adding efficiency, reducing risk and improving the corporate tax decision-making process. The realisation will set in that tax data analytics is a part of a continuous effort that can help deliver greater tax insights, increase business revenue, understand and manage tax liability, and drive profit and shareholder value. Taking the first step can be the most challenging, but the rewards can be transformational.

As corporates mature in the approach to tax analytics the focus evolves to robust tax data management- accessing reliable, accurate, and fit-for-purpose sensitized tax data. Challenges such as version control, manual data collection, or getting the right format and level of data for accurate reporting and insights are solutioned from the source. This attention to tax data management builds an agile and reliable end to end tax data model that harnesses automation and business process control to generate the right data in the right format at the right time.

Taxes aren't going away so it is never too late for corporates to embed analytics and effective tax data management models into Tax functions to achieve significant improvements in the quality of work products and informed, data driven, decision making.