Irish Tax Monitor

The Panel comments on the Government's proposed approach to implementing BEPS Pillar Two, including how it could bring heretofore tax exempt activities into the tax net Also: how national authorities and the EU are trying to keep up with changes brought about by increasing digitalisation in the area of VAT; clarification for offshore funds tax treatment; the issues surrounding the new 'Land Value Sharing' legislative proposals to tax rezoned development land. The importance of keeping proper books as evidenced from a recent TAC determination. Also commented on this month is the continuing strong growth of Irish corporation tax receipts and the future health of Ireland's public finances.

DAC 8

In May 2023, EU finance ministers reached agreement on a compromise text for the Directive on administrative cooperation (DAC8) which will extend the scope of the current rules on the exchange of tax-relevant information. Can you outline the key changes as relevant to Irish taxpayers?

Naoimh Mallon, Assistant Manager, Financial Services Tax, Deloitte Ireland LLP: DAC8 proposes to introduce reporting requirements for crypto-related transactions carried out by European Union (EU) resident customers of Reporting Crypto-Asset Providers (RCASP). The reporting requirements under the Directive will be applicable to RCASPs, which will include Markets in Crypto-Assets (MiCA) regulated entities who are EU registered and a category of entities known as 'Crypto-Asset Operators', meaning any persons or businesses who provides crypto-asset services not regulated by MiCA. Exemptions have been made for 'Excluded Persons', namely stock exchange listed entities and their related entities, government entities, international organisations, central banks and financial institutions other than investment entities.

Under the comprised text, Irish RCASPs will be required to carry out due diligence procedures on both new and pre-existing customers to identify whether they are reportable or not. Where the requested information under the due diligence procedures is not provided by customers after two reminders after the initial request and over 60 days have lapsed, the Irish RSCAPs will be obligated to block the customer from performing any transactions until such information is received.

The Deloitte Contributors in the June Roundtable Panel consisted of:
Naoimh Mallon, Assistant Manager, Financial Services Tax, Deloitte Ireland LLP; Katie Daly, Tax Manager, Private Clients, Deloitte Ireland LLP; Donna Hemphill, Senior Manager, Global Trade Advisory, Deloitte (NI) Limited; Fiona McLafferty, Managing Director, Knowledge Management, Deloitte Ireland LLP; Frances Lenihan, Tax Director & Leader of the Irish Tax Desk in Deloitte US; Tatiana Kelly, Senior Manager, Tax Technical and Policy Centre, Deloitte Ireland LLP; Ciara McMullin, Senior Manager, Indirect Tax, Deloitte Ireland LLP.

Naoimh Mallon

With respect to the reporting requirements, Irish RCASPs will only be required to report 'Reportable Transactions', being exchange transactions or transfers of 'Reportable Crypto-Assets'. A 'Reportable Crypto-Asset' will include any crypto-asset other than a Central Bank Digital Currency, Electronic Money or any crypto-asset for which the Irish RCASP has adequately determined that it cannot be used for payment or investment purposes.

Where a 'Reportable Transaction' occurs, Irish RSCAPs will be required to file an annual report with the Member State who has granted them authorisation under the MiCA regulation. For Crypto-Asset Operators who are not regulated by MiCA, such entities will need to register within a Member State of their choice, and file their reports there. The annual report will be due for filing by 31 January of the year following the year to which the information relates.

In addition to the above, the comprised text includes provisions to extend the scope of the current rules on the exchange of tax-relevant information. Specifically, the provisions included proposes to:

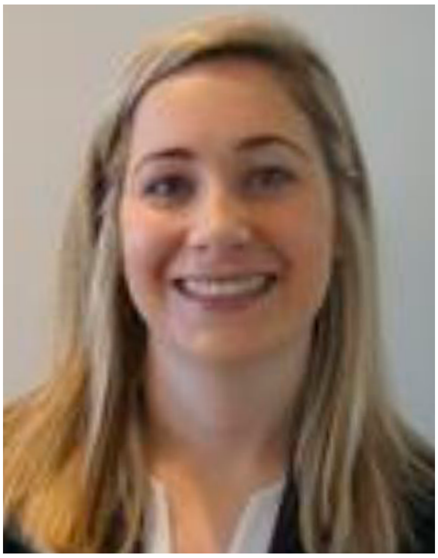
1. Require Member States to share advance cross-border rulings that are issued, amended or renewed after 1 January 2026 to high net-worth-individuals where the amount of the transaction (or series of transactions) exceeds €1,500,000 or where the ruling determines whether the person is or is not resident for tax purposes in the Member State issuing the ruling.
2. Allow information exchanged under DAC be used for purposes other than tax.
3. Extend the list of reportable information under DAC 1 to include 'non-custodial dividend income'.
4. Require Member States to include TINs within the data exchanged under the Directive.

DAC8 will be formally adopted once the European Parliament give their non-binding opinion, which is due to occur in the coming weeks. Once adopted, Member States will have until 31 December 2025 to transpose the main rules into national law and the provisions will come into effect from 1 January 2026, with the exception of the inclusion of TIN's within the data exchanged, which is not due be implemented until 2028.

Discretionary Trust Tax

The Revenue Commissioners have recently provided guidance on Discretionary Trust Tax. Can you outline the latest changes and the taxation of discretionary trusts?

Katie Daly, Tax Manager, Private Clients, Deloitte Ireland LLP: A discretionary trust arises where a disponer, known as the settlor, settles assets on trust, and gives control of these assets to the trustees to appoint them out among a particular class or classes of beneficiary. Where a discretionary trust is established, no charge to Capital Acquisitions Tax (CAT) arises however CAT can arise on an appointment out of the trust. Beneficiaries under a discretionary trust for legal purposes have no specific entitlement to any assets of the trust and may not benefit from the trust unless the trustees exercise the discretionary powers given to them under the trust deed in favour of that beneficiary. The beneficiaries merely have a right to be considered.



Katie Daly

Subject to some exemptions, Discretionary Trust Tax (DTT) is payable by trustees of a discretionary trust on the market value of the trust fund initially at 6%, with a 1% annual levy imposed thereafter. The initial tax will only arise on the latest of the occurrence of the following events:

- The date on which the assets become subject of the trust;
- The date of death of a settlor; or
- The date on which there ceases to be a principal object under the age of 21 years. Principal objects are defined as a spouse of a settlor, children of the settlor (or of his/her spouse/ civil partner) or any children of a predeceased child of a settlor or of his/ her spouse/civil partner.

The initial tax at 6% can by reduced to 3% where the trust is distributed or wound up within five years of the occurrence of the triggering event as outlined above.

Updates to Revenue Guidance in 2023

Revenue have recently updated the CAT Manual Part 5 regarding Discretionary Trust Tax which included relevant filing dates. For instance, it confirmed that the submission of a DT1 by the settlor of a trust is required within 4 months of setting up the trust; as well as stating that Form IT 4, which is the self-assessment return form for the 6% once off charge, must be filed within 4 months of the relevant valuation date by the accountable person (i.e. trustees, or agent on their behalf). The annual 1% charge arises on 31 December each year and the guidance confirms that the Form IT 32, the self-assessment return form for the 1% charge, must be filed within 4 months of the relevant valuation date (31 December each year).

The new guidance also refers to the difference between the legal definition of a discretionary trust and the definition for the purpose of CAT and the fact that the definition for CAT purposes is broader than its meaning in general law. The definition for CAT includes any trust where property is held on trust to accumulate all or part of the income of the property. Thus, a trust with one individual object (beneficiary) can be considered a discretionary trust for CAT purposes if the income of the trust property is to be accumulated. It also includes any entity which is similar in its effect to a discretionary trust regardless of how that entity is described. This can bring additional entities, e.g. foundations, within the charge to discretionary trust tax.

EU Customs Union Reform – VAT proposals

On 17 May 2023, the European Commission put forward proposals for the comprehensive reform of the EU Customs Union (see more here https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en). The proposals include the establishment of a new EU Customs Authority to oversee an EU Customs Data Hub as well as 'a more modern approach to e-commerce'. Can you assess the Commission's proposals in relation to e-commerce and VAT?

Donna Hemphill, Senior Manager, Global Trade Advisory, Deloitte (NI) Limited: One of the primary aims of the proposed EU customs reform is to cut down on the increasing levels of fraud in the e-commerce sector. The Customs Data Hub will centralise EU trader data in one single hub available to all EU customs authorities to help with risk management and anti-fraud actions.

Donna Hemphill

Under the proposal, the duty relief on imported goods valued at less than €150 will be abolished and the use of the IOSS will be mandatory for all distance sales irrespective of their value.

Currently the Import One Stop Shop (IOSS) can only be used to declare VAT on sales of goods imported from non-EU in consignments not exceeding €150. Under the new proposal, businesses would be able to use IOSS to declare VAT on the sale of imported goods of all values, except for products subject to excise duty which would remain excluded from IOSS. Therefore, while the reform does impose an additional customs duty cost on low value goods, it would simplify the application of VAT deemed supplier provisions for marketplaces in complex scenarios, such as when orders exceeding €150 are split into multiple consignments valued under €150.

This will eradicate the opportunity for the undervaluation of goods to take advantage of customs duty exemption. Legitimate businesses will be able to opt into a simplified duty system to avoid unnecessary red tape.

In the new customs framework, online platforms will be considered as the importer of record and be responsible for the payment of import charges upfront so that buyers do not have to pay additional charges on delivery. The platforms will also be responsible for compliance with product quality standards and legislation.

100 Years of the Revenue Commissioners

The Revenue Commissioners recently published its 100th Annual Report covering 2022. Can you comment on its review of the year?

Fiona McLafferty, Managing Director, Knowledge Management, Deloitte Ireland LLP: In the Annual Report, the Revenue Commissioners confirmed net exchequer receipts of

Fiona McLafferty

€82.4 billion in 2022, an increase of €14.9 billion on 2021. The breakdown of tax collected was Income Tax (37%), Corporation Tax (27%), VAT (23%), Excise (7%), Stamp Duty (2%), CGT (2%), CAT (1%) and Customs (1%). The practical impact of Brexit was evident in the processing of customs declarations – 40 million import declarations were processed in 2022 compared to 27 million in 2021 and 1 million in 2020.

The first statistics on the new Code of Practice for Revenue Compliance Interventions were available. Between 1 May and 31 December 2022, there were 50,608 completed Level 1 interventions with an average yield of €692 and 167 completed Level 2 interventions with an average yield of €18,144. As the new Code operated for part of the year, the complete view of compliance activity in 2022 shows that, in addition, there were 376,372 completed 'non-audit' interventions and 1,169 completed 'audit' interventions. A notable statistic on transfer pricing was that the yield from 6 interventions completed during the year was €240.8 million, which equates to nearly €40 million for each intervention.

There were agreed tax settlements of €28 million (€30 million in 2021) with 36 taxpayers (86 in 2021) published on the tax defaulters list. Despite the new Code providing that engagements under the Co-operative Compliance Framework (CCF) are Level 1 interventions, this may not have translated to encouraging participation by corporate groups as there were 121 groups in CCF in 2022 compared to 125 groups in 2021. The existence of co-operation with other tax authorities was evident in the mutual assistance requests which stood at 1,931 requests received from other countries in 2022 (1,206 in 2021) and 401 requests sent by the Revenue Commissioners in 2022 (361 in 2021). The press release from the Revenue Commissioners described the report as reflecting a year of strong performance.

Top-up tax

With the use of a Qualified Domestic Top Up Tax (QDTT) the proposed option for Ireland to meet BEPS Pillar 2 requirements, what should in-scope companies and groups now do to prepare for the QDTT?

Frances Lenihan, Tax Director & Leader of the Irish Tax Desk in Deloitte US: Pillar Two seeks to ensure a minimum tax rate (15%) for in-scope

Frances Lenihan

groups (i.e. groups with consolidated annual revenue in excess of €750 million) in each jurisdiction they operate in.

Once Pillar Two is effective, and assuming an in-scope group does not meet the Pillar Two temporary safe harbours in respect of a jurisdiction (e.g.

Ireland), the first step is to calculate the effective tax rate for that jurisdiction in line with Pillar Two requirements (ETR).

If the ETR for the jurisdiction (and not per entity) is less than 15%, a top-up tax is imposed to bring it up to 15%. Under the model rules, primarily the jurisdiction where the profits are recognised gets an opportunity to collect the additional tax by way of a Qualified Domestic Top-up Tax (QDTT). This is followed by the Income Inclusion Rule (IIR) which is applied by a parent or intermediate parent entity, with a backstop rule known as the Undertaxed Profits Rule (UTPR) also provided for.

The Department of Finance published a Feedback Statement in March 2023. It included provisions for Ireland to implement a QDTT (expectation is for accounting periods commencing on or after 31 December 2023). It also reflects there is no proposed change to Ireland's headline tax rate of corporation tax of 12.5%.

Following are some actions in-scope companies and groups should consider now to prepare for the QDTT:

1. Understand how Pillar Two impacts on the group and the timing of same (e.g. will the temporary safe harbour rules apply, or could a QDTT / IIR apply as soon as 2024?).
2. Monitor in-country and international Pillar Two legislative developments.
3. Carry out impact assessment to model potential top-up tax liabilities arising as a result of a QDTT and wider Pillar Two provisions and the timing of same.
4. Determination of the ETR for each jurisdiction requires large amounts of granular tax, accounting, and reporting data. Groups should consider what data is needed, availability of necessary data, identify gaps and develop remediation plans.
5. Update existing tax technology systems to deal with Pillar Two.
6. Be prepared for relevant year-end reporting disclosures.
7. Develop a process to facilitate real-time capture of the data required to populate Pillar Two returns.
8. Consider the impact of Pillar Two on current transactions.
9. Engage with the relevant stakeholders, internally and externally.

Given Pillar Two will be effective in many jurisdictions in the coming months, in-scope companies and groups should be actively preparing for the potential impact of same on their business.

Withholding Tax proposals

On 19 June 2023 the European Commission submitted a Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding taxes 2023/0187 ("FAST Proposal"). What are the key proposals and how will they benefit the investors?

Tatiana Kelly, Senior Manager, Tax Technical and Policy Centre, Deloitte Ireland LLP: This proposal for a Directive aims to introduce a common EU-wide system for withholding tax on

Tatiana Kelly

dividend or interest payments. It will include a system for tax authorities to exchange information and cooperate with each other. The new rules proposed under the directive should make withholding tax relief procedures in the EU more efficient and secure for investors, financial intermediaries and Member States administrators. The proposal sets out common features that aim to enhance the Member States' withholding tax systems and strengthen them against fraud and abuse.

There are three key proposals:

1. Common digital tax residence certificate (eTRC): A common EU digital tax residence certificate will make WHT relief procedures faster and more efficient.
2. Two fast-track procedures complementing the existing standard refund procedure:
   - a "relief at source" procedure whereby the tax rate applied at the time of payment of dividends or interest will be directly based on the applicable rules of the double taxation treaty provisions or domestic rules; and
   - a "quick refund" faster and more harmonised across the EU under which the initial payment will be made taking into account the WHT rate of the MS where the dividends or interest is paid, but the refund for any overpaid taxes will be granted within a maximum of 50 days from the date of payment.

   Member States will be able to choose which one to use – including a combination of both.
3. Common standard for reporting will provide national tax administrations with the necessary tools to check eligibility for the reduced rate and to detect potential abuse. A common standard for reporting across the EU saves compliance costs for investors and intermediaries and allow for swifter and safer WHT relief procedures.

The new residence certificate (eTRC) will allow investors to submit their withholding tax refund request digitally, making the reclaim process faster and smoother. It is proposed that only one eTRC which will cover a full calendar year, at a minimum, will allow investors to reclaim several refunds during a calendar year, avoiding the issuance of multiple certificates of residence in case of an investor with a diversified portfolio in the EU. Overall, the new WHT framework will grant investors access to fast-track procedures, ensuring the tax rights they are entitled to and avoiding double taxation.

Once adopted by all Member States, the new procedures are expected to come into force on 1 January 2027. It is important to note that this is a proposal only and not EU Directive in force until it follows the prescribed legislative process.

VAT

Can you explain the 'single supply rule'? Are there any implications for the Irish VAT treatment of the leasing of immovable property as a result of the recent judgement by the Court of Justice of the Europe Union (CJEU) on a German VAT case (Case C-516/21, Finanzamt X Vs Y)?

Ciara McMullin, Senior Manager, Indirect Tax, Deloitte Ireland LLP: Where a range of goods and/or services are jointly supplied one must decipher whether the supply should be treated as a “composite supply” or a “multiple supply” to determine what VAT rate applies to the supply or particular parts of the supply.

A composite supply comprises two or more supplies of goods and/or services supplied in conjunction with each other, with one, the main supply, being viewed as a principal supply. An ancillary supply is any element forming part of a composite supply that is not physically and economically dissociable from the principal supply – it is only supplied for the better use and enjoyment of the principal supply. This being the case the VAT rate applicable to the entire consideration received is that which attaches to the principal element.

In contrast, a multiple supply means two or more individual supplies which are made in conjunction with each other for a single consideration, but they do not constitute a composite supply. Each element of a multiple supply is capable of being supplied as a good or a service in its own right. The consideration received is apportioned between the individual supplies and each supply subject to VAT at its appropriate rate.

In May 2023, the CJEU ruled in the German case of Finanzamt X (C-516/21) that the VAT exemption for the leasing and letting of immovable property applies to the letting of permanently installed equipment and machinery if the latter constitutes a supply ancillary to a principal supply of leasing of immovable property under an agreement between the same parties. Further to Article 135(2)(c) EU VAT Directive the letting

Ciara McMullin

of permanently installed equipment and machinery is excluded from the VAT exemption for leasing or letting of immovable property as provided for in Article 135(1)(l). Notwithstanding this, Article 13b(d) of Council Implementing Regulation (EU) No 282/2011 states that immovable property includes equipment or machinery permanently installed that cannot be moved without destroying or altering the building. Therefore, if a building is leased out with operating equipment, a question may potentially arise as to whether the supply of the lease should be divided into a service that is exempt from VAT and a taxable service or treated as a single VAT exempt service (it being viewed as a composite supply).

The case in question concerned the lease of an agricultural building containing permanently installed machinery and equipment used for poultry rearing. The main question before the CJEU was whether the supply could be treated as a single exempt supply of immovable property or whether there was a separate taxable supply of the lease of the installed equipment. As is often the case the CJEU didn’t definitively rule on the specific issue but gave guidance to the national court to assist it in arriving at a decision and did confirm that if there was a single supply of immovable goods the full rental would in principal be exempt. They reconfirmed that artificially splitting a single economic supply is contrary to EU VAT law.

With Finanzamt X in mind whenever buildings are let with fixtures it is clear that the exemption can apply to the entire rent if the letting amounts to a single supply. Therefore, it will be important to verify whether the provision of operating equipment constitutes an ancillary supply/service to the VAT exempt supply of leased property to ensure correct VAT treatment.