itm IRISH TAX MONITOR

In this month's roundtable the surprise opinion handed down by the Advocate General of the Court of Justice of the European Union in relation to the Apple Tax case is analysed, with latest move putting the EU Commission's appeal on hold and sending the case back to the General Court; the main aspects of the Finance Bill, from a tax administration and planning point of view also feature along while changes affecting financing structures for corporates. A major element of the Bill was the BEPS Pillar Two implementing legislation - its impact on Irish funds is analysed, as is the timing of the introduction of territorial tax elements to the Irish tax system. Also on the agenda is OECD's recently published Multi Lateral Convention implementing Amount A of Pillar One and latest on modernising the Irish and EU VAT system.

The Finance Bill

From a tax administration and planning view point, can you comment on the principal business impacts contained in the Finance Bill, published on 19th October?

Kate Healy, Manager, Corporation Tax, Deloitte: Finance Bill 2023 introduced a number of legislative measures which will significantly impact on domestic and international businesses operating in Ireland.

From a tax administration and planning viewpoint, perhaps the most onerous of the new measures for large corporates will be the long-awaited Pillar Two rules. The rules are set to apply to multinational enterprises with annual consolidated revenues in excess of €750 million in at least two of the immediately preceding four years and seek to ensure that large multinational enterprises are subject to a minimum level of tax on the profits arising in each jurisdiction where they operate. The additional administrative burden associated with assessing and complying with the Pillar Two rules is expected to be significant. As such, early consideration of possible technology / systems enhancements to alleviate the burden is recommended.

The Deloitte Contributors in the November Roundtable Panel consisted of:
Kate Healy, Manager, Corporation Tax, Deloitte; Shauna Holohan, Manager, Corporation Tax, Deloitte; Dylan Reilly, Manager, Corporate Tax, Deloitte; Alan Kilmartin, Director, Indirect Tax, Deloitte; Kelly Brosnan, Manager, Corporate Tax, Deloitte; Kim Doyle, Director, Tax Technical Team, Deloitte.

The Finance Bill also included new measures with regard to outbound payments of royalties, interest and dividends by Irish entities to associated entities resident in jurisdictions on the EU list of non-cooperative jurisdictions, no-tax and zero-tax jurisdictions to ensure the prevention of double non-taxation. The effective date of the new outbound payments provisions is 1 April 2024 however, arrangements which were in place on or before 19 October 2023 are grandfathered to the later date of 1 January 2025.

Kate Healy

Also relevant from a tax administration and planning perspective is the change in respect of the taxation of gains realised on the exercise, assignment or release of a right to acquire shares or other assets. Previously, it was the obligation of the employee to self-account for the tax arising on these gains however, as a result of the measures introduced in the Finance Bill 2023, this will become the responsibility of the employer who will be obliged to account for the income tax, USC and employee's PRSI through payroll for any gains arising on or after 1 January 2024.

While the above measures will create an additional administrative and planning burden for businesses operating in Ireland, the Minister for Finance did include some welcome comments in his Budget Day speech, acknowledging the complexity of Ireland's current regime for interest deductibility and committed to reviewing same in the year ahead. In addition, The Minister also confirmed that a participation exemption for dividends will be included in next year's Finance Bill.

Territorial Tax Regime

The Minister for Finance has published the roadmap for the introduction of a participation exemption to Irish Corporate Tax, which includes a public consultation. Comment on the fact that the proposed participation exemption is expected to come into effect on 1st January 2025, one year after BEPS Pillar Two.

Shauna Holohan, Manager, Corporation Tax, Deloitte: In September of this year, the Department of Finance published a roadmap

Shauna Holohan

outlining a plan to introduce a dividend participation exemption to the Irish corporation tax system, with legislation expected to take effect in 2025.

In his foreword to the roadmap, the Minister for Finance reaffirmed the Government's commitment to ensuring our corporation tax code is competitive, while maintaining consistency with international best practices. The Minister references the OECD Two Pillar solution, noting that this will provide a sound basis for inward investment into Ireland in the long-term. Businesses based here are making structural decisions for a post-Pillar Two world, seeking certainty and clarity wherever possible. This roadmap sets a firm date for the introduction of a dividend exemption, albeit 15 months away.

Ireland is currently an outlier, being the only EU country that does not operate some form of participation exemption for foreign dividends. As such, this announcement is a welcome development which will move Ireland's corporate tax system closer to a territorial system, helping to maintain Ireland's position as a model location for international groups during a period of critical change in global tax reform.

Stakeholders have been calling for the legislation to be published in tandem with the implementation of Pillar Two, as it's believed this would greatly reduce the uncertainty and the administrative burden that the new global regime will bring to MNEs in Ireland. Furthermore, competition for foreign direct investment is intense across Europe at present.

Pillar Two introduces enormous complexity for impacted groups. It is regrettable that the introduction of an Irish participation exemption on dividends could not have been better aligned with the introduction of Pillar Two in Ireland (which provides for a quasi-participation exemption on certain dividends through the computational mechanics related to excluded dividends). We welcome the advancement of these discussions within the Department of Finance over the coming months to ensure greater simplification in the context of the tax treatment of foreign dividends is achieved from 2025.

Foreign Branch Exemption

A Foreign Branch exemption has not been included in the initial Roadmap. How important is the inclusion of a Foreign Branch Exemption for updating Ireland's tax regime? How effective can the proposed participation exemption for foreign dividends be without a foreign branch exemption?

Dylan Reilly, Manager, Corporate Tax, Deloitte: A foreign branch exemption is very important for modernising Ireland's double tax relief regime. Ireland's current double tax regime is complex and has experienced significant change over the years to address EU law concerns. This has resulted in a double tax regime which does not lend itself either to taxpayer certainty or user-friendly compliance obligations. This along with the recent developments on international tax reform and significant changes in the global tax landscape has led to growing stakeholder support for a "two-pronged approach" involving a foreign branch profit exemption and a foreign source dividend exemption (participation exemption) on an optional basis.

Dylan Reilly

The broad benefits associated with an elective foreign branch profit and dividend exemption would be a reduction in compliance workload and complexity with respect to the tax treatment of such income streams. The existing operation of double tax relief under Schedule 24 Taxes Consolidation Act 1997 would, in general, provide for relief either by way of a double tax credit or a partial credit with the remaining foreign tax relieved by way of a deduction in the computation of taxable profit for the Irish company. Accordingly, a move to an optional exemption for foreign branch income would likely result in a similar level of tax take from such companies but with reduced time and complexity associated with the preparation of the company's corporation tax computation and return. As such, with respect to the operation of a foreign branch exemption, the expectation is that an elective foreign branch profit and dividend exemption should not materially impact on tax revenues from Irish resident companies with such branches.

Moving to a territorial style tax regime, by introducing both a foreign branch profit and dividend exemption, should enhance Ireland's competitiveness as an investment and holding company hub, and align it with other global and EU competitor jurisdictions. A foreign branch exemption should attract more substance and employment to Ireland by reducing the compliance burden for multinational enterprises with foreign branches. Introducing the foreign source dividend exemption, without the foreign branch exemption, could result in Ireland becoming less desirable as opposed to other jurisdictions which include both provisions in their tax regimes. Whilst it is positive that the initial roadmap has set a date for the introduction of a foreign dividend exemption (i.e., to be included in Finance Bill 2024 and to take effect from 2025) it is a shame that a date has not yet been set for the foreign branch exemption. Ireland can no longer continue to rely on its 12.5% corporation tax rate with the incoming Pillar Two minimum effective tax rate and to stay competitive in the FDI market for large multinational enterprises, and therefore both exemptions would appear important to maintain the status quo.

In summary, a foreign branch exemption is an important element of simplifying Ireland's tax regime and boosting its attractiveness for foreign investment. It complements the foreign source dividend exemption, and both are needed to ensure Ireland's competitiveness in a changing global tax landscape.

Modernising VAT administration

Can you comment on the Revenue Commissioner's recently launched consultation 'Modernising Ireland's administration of Value-Added Tax (VAT)'?

Alan Kilmartin, Director, Indirect Tax, Deloitte: In 2022, the European Commission launched its VAT in the Digital Age (ViDA) proposal, which includes the introduction of mandatory e-invoicing for cross border B2B and B2G transactions from 1 January 2028, with an obligation for suppliers to share transaction level data within days.

The Revenue Commissioners' launch of the public consultation, following the Budget 2024 speech by Minister McGrath, is Ireland's first step towards complying with the ViDA e-invoicing proposal. While the ViDA proposal will influence Ireland's approach, even prior to it, it was expected that our VAT reporting system would be modernised.

Many other Member States in the EU have already introduced various real time or near real time reporting or e-invoicing requirements. There

Alan Kilmartin

are some similarities between the various regimes, however there are also significant differences, so the ViDA proposals seek to achieve a degree of commonality across the EU.

The consultation seeks input from a wide range of stakeholders on their views, concerns and opinions on how Irish VAT reporting can be digitised and what the Irish VAT system should look like going forward. The consultation period will remain open until Friday, 12 January 2024. This presents an opportunity for business to express views on the approach that Ireland should take.

While the precise form of Ireland's approach to VAT modernisation is yet to be determined, it is clear that the changes will have a significant impact on how taxpayers meet VAT compliance obligations, how to send and receive invoices, and it will require system and data improvements for most businesses. It will likely impact numerous stakeholders within a business, so tax functions will need to work with their wider businesses, including their finance and technology teams on this journey.

While no timeframe for implementation has been mentioned, Revenue have emphasised that the consultations will be open and transparent, we would expect a reasonably sufficient notice period for the implementation and enforcement of a new regime. In our view, it is likely to be at least two to three years before any meaningful changes are implemented, but we would encourage businesses to engage and respond to the consultation and begin preparations now for future changes.

Financing structures

What are the considerations for companies when reassessing their financing structures, in particular in light of Finance Bill 2023?

Kelly Brosnan, Manager, Corporate Tax, Deloitte: How a company finances their operations in Ireland is a delicate balance between debt, equity and

Kelly Brosnan

government incentives such as grants. A key concern from a tax perspective is understanding the tax implications associated with each source of finance. A company needs to consider the deductibility of any interest payments, the application of withholding taxes, the impact of the interest limitation rules and transfer pricing obligations including debt capacity analysis and documentation. The Minister of Finance in his Budget 2024 speech acknowledged that Ireland's current regime for interest deductibility is a complex area and needs to be revisited as part of a multi-year project.

Finance Bill 2023 introduced a small technical amendment to Section 247 regarding the anti-avoidance provision relating to the use of back-to-back loans with unconnected persons. Broadly, Section 247 provides for an interest deduction as a charge on income for certain loans applied in acquiring a shareholding in trading subsidiaries or real estate owning subsidiaries subject to certain conditions. While companies should be mindful of this anti-avoidance provision, we do not expect this to be a significant concern when reassessing financing structures.

Finance Bill 2023 also introduces new legislation in the form of Section

76E, which at a high level, provides for interest deductibility subject to certain conditions under Schedule D Case III or Schedule D Case IV for qualifying finance companies. Companies should consider the application of this section where in their finance structure a company is borrowing external funds and onward lending these funds on an arm's length basis to a +75% subsidiary located in an EU or EEA state for the purpose of the trade of the subsidiary.

While the above changes are welcome, the current landscape of interest deductibility contains some of the most complex tax legislation in Ireland and is fraught with danger given the complexity, therefore simplification is certainly required. I am hopeful that the promised focus of the Department of Finance in this area will prove fruitful and help simplify the tax implications for financing structures in the near future. Future Finance Acts would preferably introduce an overhaul of the current system but I welcome any measures proposed to reduce the complexity associated with financing structures.

BEPS Pillar One

The OECD has released the Multilateral Convention (MLC) to implement Amount A of Pillar One, a landmark development in the OECD's BEPS Project. Can you comment on Amount A, and how it may impact both in-scope companies and countries' tax receipts?

Kim Doyle, Director, Tax Technical Team, Deloitte: On 11 October 2023, the OECD released the draft of the Multilateral Convention (MLC) for the implementation of Pillar One Amount A.

MLC in a nutshell

Pillar One Amount A would reallocate taxing rights for market jurisdictions over a portion of the excess profit (i.e. profit in excess of 10% of revenue) of the largest and most profitable multinational enterprises (MNEs) operating in their market, with a corresponding obligation to relieve double taxation.

The MLC needs to be ratified by at least 30 jurisdictions including headquartered jurisdictions of at least 60% of multinationals (MNEs) currently expected to be within scope of Amount A.

The MLC is not final, and it is not yet open for signature as there are still areas being negotiated.

Amount A

The Amount A rules are complex, to comply with the rules MNEs will have to apply a series of five steps.

Kim Doyle

Firstly, the rules will apply to multinational businesses with global annual turnover above €20 billion and profitability above a 10% margin, calculated using an averaging mechanism. The revenue threshold will reduce to €10 billion, contingent on successful implementation determined via a 7-year review. Segmentation rules will apply only in exceptional circumstances where a segment disclosed in financial statements meets the scope of the rules. Businesses in the extractive, regulated financial services sectors, defence and certain domestically oriented businesses are excluded.

A market country will be entitled to an allocation of Amount A if revenues of at least €1 million are generated in that country. For countries with GDP lower than €40 billion, this threshold will be €250,000. Revenues will be sourced to the end market country where goods or services are used or consumed. Specific sourcing rules apply to identify the jurisdiction where the end customer consumes or uses the goods or services.

It will be necessary to determine relevant group profit, allocate a portion of excess profit through the application of a specific formula to markets and adjust to prevent 'double counting'.

Double taxation will be eliminated through a series of steps and a formulaic tiered approach.

The final step will be pay and file. A central coordinating entity will file the Amount A tax return and common documentation package with the lead tax administration, typically the parent jurisdiction. Payment of tax will be a single group entity. Specific pay and file deadlines will apply.

Digital Services Taxes (DSTs)

The MLC includes a list of specific measures that must be removed for all businesses (including those not in the scope of Amount A) as part of the implementation of Amount A. The list includes the DSTs implemented by Austria, France, Italy, Spain, Tunisia, Turkey, and the UK, as well as India's equalisation levies on online advertisement services and e-commerce. Ireland does not have a DST.

In a previous July 2023 Outcome Statement from the OECD, it was stated that, members of the Inclusive Framework agreed to refrain from imposing newly enacted DSTs or relevant similar measures, as defined in the MLC, on any company between 1 January 2024 and the earlier of 31 December 2024, or the entry into force of the MLC. This represents a one-year extension of the current moratorium on such taxes, which was originally agreed to run through the end of 2023 unless the MLC came into force sooner.

Given the ongoing negotiations and the fact that the MLC is not yet opened for signature, it remains an open question whether countries will agree to a continuation of the DST standstill.

Economic Impact

On 11 October 2023, the OECD also published an updated estimate of the economic impact of Amount A. According to the updated assessment, Amount A would have generated USD$204.6 billion in residual profits in 2021 from 106 MNEs. The assessment also found that Amount A results in positive revenue impacts for low-, middle-, and high-income jurisdictions, with low-income jurisdictions gaining the most and high-income jurisdictions gaining the least, as a share of current corporate tax revenues. It is also noted that "while most jurisdictions are expected to gain revenues, investment hubs are expected to experience significant losses in tax base and tax revenues." Investment hubs are noted as all jurisdictions with an inward FDI position exceeding 150% of GDP.

From an Irish perspective, as a small open economy, Pillar One may come at a cost to the exchequer as new taxing rights may be allocated away from Ireland to larger market jurisdictions.