itm Irish Tax Monitor

The prospect of a domestic consolidated corporate tax regime is analysed by the panel in the month's Roundtable following a suggestion by Aircraft Leasing Ireland, in its response to the Government's public consultation on BEPS Pillar Two, to introduce such a regime; how the private equity industry could be impacted by BEPS is also outlined by the panel, as well as the interaction between Ireland's Qualified Domestic Top-up Tax (QDTT) and Controlled Foreign Company regimes (notably the US' GILTI regime); the impact of the UTPR safe harbour on Irish companies is also examined. With the Government's review of Ireland's funds sector in full swing the panel also examines areas of taxation that could be simplified to further enhance Ireland's funds regime. The advantages of a territorial tax regime also feature as does the possibility of a QDTT causing double taxation on certain corporates.

Domestic consolidated corporate tax regime

In its response to the Government consultation on the implementation of BEPS Pillar Two, Aircraft Leasing Ireland asks for consideration of further flexibility within the Irish corporate tax regime 'given the significant impact that the Rules will have on Irish companies'. It suggests the introduction of a consolidated tax regime in Ireland for domestic corporate tax (which could then be followed by Pillar Two). Can you outline how such a regime could benefit aircraft leasing groups and Irish groups in general?

Kate McKenna, Senior Manager, Corporate Tax, Tax and Legal, Deloitte Ireland LLP: Ireland does not currently have a consolidated tax regime. However, in recent times, it has become apparent that in order for Irish companies to be tax compliant it is necessary to have regard to the financial position of not only other Irish group companies but also the consolidated worldwide group.

The Deloitte Contributors in the July Roundtable Panel consisted of:
Kate McKenna, Senior Manager, Corporate Tax, Tax and Legal, Deloitte Ireland LLP; Anna Holohan, Director, Corporate Tax, Tax and Legal, Deloitte Ireland LLP; Robert Farrington, Assistant Manager, Corporate Tax, Tax and Legal, Deloitte LLP; Joseph Keane, Manager, Corporate and International, Tax and Legal, Deloitte Ireland LLP; James Smyth, Partner, Corporate and International, Corporate Tax, Deloitte Ireland LLP; Kim Doyle, Director, Tax Policy and Technical Services, Deloitte Ireland LLP; Louise Kelly, Partner, Corporate and International, Corporate Tax, Deloitte Ireland LLP.

For example, the recently introduced Interest Limitation Rules, which apply to accounting periods commencing on or after 1 January 2022, allow for the flexibility for Irish companies to elect into an interest group and to complete the calculations on a group level with any restriction to be then allocated to the various group members in accordance with a specific formula. Now with the soon to be introduced Pillar Two rules, further calculations will be required that will need to have regard to the wider group.

Kate McKenna

In light of this, now might be an optimal time to consider introducing a consolidated tax regime. Allowing groups to file a single consolidated tax return could significantly reduce the existing compliance burden and complexity on taxpayers, particularly those with large numbers of Irish tax resident entities, as is commonly the case with aircraft leasing groups. Individual Pillar Two calculations for each of those entities will be a large compliance burden on the groups, on top of a significantly increased compliance burden due to Interest Limitation Rules and other changes introduced as a result of BEPS and the Anti-Tax Avoidance Directive. Although the concept of group consolidation doesn't exist in Irish tax legislation, it does appear in a large number of other OECD jurisdictions and could likely offer a good proposition for the wider Irish tax system going forward.

BEPS & Private Equity

What are the key BEPS considerations for the private equity industry?

Anna Holohan, Director, Corporate Tax, Tax and Legal, Deloitte Ireland LLP: Base erosion and profit shifting (BEPS) involves multinational

Anna Holohan

enterprises taking advantage of mismatches or gaps in tax rules to artificially shift profits to low or no-tax jurisdictions. The 15 Actions set out in the action plan by the OECD/G20 for tackling BEPS have implications for the private equity industry, whether for the private equity houses themselves, the funds they manage, their asset holding companies or portfolio companies.

The most recent measure which needs to be considered by the private equity industry is the implementation of a global minimum rate of tax as part of a two-pillar solution to tackle the tax challenges arising from the digitalisation of the economy.

Pillar 2 seeks to ensure a global minimum level of tax whereby multinational enterprises with annual consolidated turnover in excess of €750m will be required to pay a minimum 15% rate of tax in every jurisdiction in which they operate.

The private equity industry needs to consider the scenarios in which Pillar 2 may have application. There are certain exemptions from the application of the Pillar 2 rules where an entity is considered an 'Excluded Entity'. Certain investment funds may fall within this exemption.

In addition, it should be ascertained whether certain funds need to consolidate with their portfolio companies in considering the application of the global minimum tax rules. It may be that the relevant investment funds and portfolio companies are not required to consolidate for financial reporting purposes and this may bring the structures outside the scope of the Pillar 2 rules.

Consideration should also be given to if there is carried interest being earned in low tax jurisdictions or if the private equity structures are using transparent entities such as LLPs and what the impact of same is.

Ongoing discussions in relation to the implementation of Pillar 2 should be monitored by the private equity industry to consider any potential implications that may arise.

Funds Sector 2030

The Irish Government is currently undertaking a review of Ireland's funds industry, entitled Funds Sector 2030. In the June issue of Finance Dublin funds industry leaders identified a number of areas that could be reviewed to enhance Ireland's offering to global funds managers and investors, including tax simplification. Can you discuss the tax areas that could be simplified from an Irish funds industry perspective?

Robert Farrington, Assistant Manager, Corporate Tax, Tax and Legal, Deloitte LLP: As part of the review of the Irish funds industry, the Department of Finance released a Public Consultation on 21 June 2023, responses to which are required by 15 September 2023.

The Public Consultation explicitly makes reference to the 2022 Commission on Taxation and Welfare ("COTW") report, which recommended simplification and harmonisation among the tax treatment of different investment products, while achieving a revenue-raising or neutral position.

Naturally, given the growing number of investment products available in both the Irish and international markets nowadays, the tax treatment of such products is not always clear to investors or investment managers/promoters. Complications may arise given different investment products will require different tax treatment depending on certain factors, such as for example, the classification of the investment product or who the investor is and their tax residence or domicile

Robert Farrington

position etc. This can make it difficult for even the best-intentioned taxpayers and investment providers to be compliant (either as self-assessed taxpayers or as administrators of the tax regime), in particular given that not all have access to the same level of professional advice.

It is not possible to predict exactly what measures will be introduced, but it may require a more simplified and coherent set of rules to classify investment products. The Public Consultation document lists 14 (current) investment classifications from the perspective of an Irish investor and details the tax treatment of each type depending on, among other things, the status of the investor. A narrower scope for the classification of investment products (that respects the principle of horizontal equity) would reduce complexity and the resulting uncertainty that investors may experience in ensuring they remain compliant. This aligns with the view expressed by the COTW.

The findings of the review will ultimately be reported to the Minister for Finance in Summer 2024 by the Department of Finance.

QDTT and CFCs

How would Ireland's Qualified Domestic Top-up Tax interact with controlled foreign company (CFC) regimes, such as the US' GILTI regime?

Joseph Keane, Manager, Corporate and International, Tax and Legal, Deloitte Ireland LLP: From the outset, it is important to note that the exact future implementation of Ireland's Qualified Domestic Top-up Tax (QDTT) is not finalised; the recent 'Pillar Two Implementation Feedback Statement' consultation included draft legislation for the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR), however, it did not include draft legislation for the QDTT. It is notable that the Irish draft legislation for the IIR and UTPR was in line with the EU Directive (for the most part) and referred back to OECD Pillar Two guidance publications (as relevant), therefore, it is a reasonable assumption that the Irish QDTT legislation will also follow the EU Directive with similar references to OECD Pillar Two guidance publications (however, this is yet to be seen).


Joseph Keane

Before analysing the interaction of Ireland's QDTT and US' Global Intangible Low-Taxed Income (GILTI) regime, it is useful to understand the current landscape of the US' Pillar Two position. To date, the US have not confirmed the implementation of Pillar Two; instead, the US have enacted a tax reconciliation bill, the 'Inflation Reduction Act', which seeks to include a new minimum 15% tax on financial statement income for certain large companies. It was originally planned that changes to GILTI would be made in the Inflation Reduction Act to make it compliant with the OECD's Pillar Two Model which would primarily involve calculating GILTI on a jurisdictional basis together with a proposed effective rate increase in excess of 15%, however, these changes have not yet occurred. The Democratic Party's ability to enact any significant tax changes appear limited with the Republican Party now in the majority in both the House of Representatives and the Senate.

The OECD have previously published guidance clarifying that the QDMTT (or QDTT, in Ireland's case) applies before any CFC taxes (inclusive of the US' GILTI). As such, it is expected that Ireland's QDTT would be calculated without taking into account GILTI suffered on Irish situated profits (however, this is subject to the specific drafting of Ireland's QDTT). This differs from the approach under an IIR where the Administrative Guidance for the Pillar Two rules (issued in February 2023) clarifies that GILTI tax can be pushed down based on a pre-determined allocation key to CFCs that are subject to an IIR.

UTPR

What impact might the newly announced Undertaxed Profits Rule (UTPR) Safe Harbour have on companies based in Ireland?

James Smyth, Partner, Corporate and International, Corporate Tax, Deloitte Ireland LLP: The UTPR is one of the most contentious aspects of the Pillar Two proposals as it essentially seeks to tax the profits of fellow subsidiary companies in circumstances where the ultimate parent entity (UPE) is not in a jurisdiction which implements Pillar Two. The extra-territorial reach of the UTPR has created much global tension, most evidently in the US but also in China and similar large economies. The second round of additional Administrative Guidance issued by the OECD Inclusive Framework in July 2023 should greatly reduce these tensions whilst also removing a potentially onerous burden on the directors of Irish subsidiaries with parents in those countries and others with similar characteristics. The new guidance introduces a UTPR Safe Harbour applicable for accounting periods generally covering 2025 and 2026 meaning that the UTPR will be deemed to be zero for ultimate parent entity jurisdictions which has a corporate tax applicable at a nominal rate of at least 20%. This should mean that most, if not all, of the domestic profits of US and China based UPEs (and other UPE jurisdictions with similar tax rates) will fall outside the scope of Pillar Two until 2027. The Biden Administration had a significant role in the coalition which initially signed up to Pillar Two and planned changes to its GILTI rules which could have satisfied the OECD Inclusive Framework's rules but US domestic politics means that the US is not in the first wave of implementation. The additional time before full implementation of the UTPR may see US tax changes to conform with the global consensus. Not all tension will have dissipated however as the UTPR Safe Harbour will apply only to the UPE's profits and not those of low-tax subsidiaries in other non-implementing jurisdictions, however.


James Smyth

This will come as a relief to executives of Irish subsidiaries of such groups who would otherwise have faced the obligation to gather data about the profitability of their parents and borne the burden of filing returns and paying taxes on the UPE's profits out of local resources. A burden which will be substantially deferred until 2027.

Territorial Tax Regime

The American Chamber of Commerce in Ireland has said the failure of Ireland to offer a territorial tax regime 'would very much undermine the attractiveness of Ireland for foreign direct investment.' Can you discuss the prospect of Ireland adopting a territorial tax regime and the implications for MNEs based in Ireland?

Kim Doyle, Director, Tax Policy and Technical Services, Deloitte Ireland LLP:

Prospect of Ireland adopting a territorial tax regime

Under the current Irish tax system, Irish resident companies are subject to tax on worldwide income. Certain foreign tax paid on income that is also taxed in Ireland can be relieved under double tax relief provisions. However, these provisions have gone through significant changes in recent years, mainly to address EU law concerns, and are consequently detailed and complex.

Kim Doyle

Recent developments on international tax reform and the OECD Base Erosion and Profit Shifting, known as the BEPS project, have resulted in significant changes to the global tax landscape. Such changes have created a level of uncertainty for taxpayers. But with these changes comes the opportunity for Irish fiscal policy to re-assess Ireland's current offering in tax and competitiveness.

There is the opportunity now for Ireland to adopt a foreign source dividend exemption (a participation exemption for dividends) and a foreign branch income exemption - a partial territorial regime, on an elective basis. And, at the same time simplify the existing double tax relief provisions.

Prior obstacles to introducing such a territorial regime, like no Controlled Foreign Company rules in the Irish tax system have been removed due to the implementation of EU Anti-Tax Avoidance Directives into the Irish tax system.

It is noted in the Tax Strategy Group 23/04 - Corporation Tax Paper that the Department of Finance and Revenue are carrying out an analysis of the available options for a move to a territorial regime and their implications. This follows the public consultation in 2022 on a territorial regime, and confirmation in Budget 2023 that there would be an examination of the introduction of a participation exemption into the Irish tax system. We can expect ongoing engagement with stakeholders to identify all considerations relevant to a move to a territorial regime.

Implications for MNEs based in Ireland

An elective territorial system should reduce the compliance burden and difficulty with respect to the tax treatment of foreign source dividends and foreign branch income.

A boarder simplification of the existing double tax relief provisions should bring some clarity for multinationals

Conclusion

Moving to a foreign branch income exemption and a foreign source dividend exemption in Ireland in tandem with the broad simplification of the double tax relief provisions will be a welcome step in reducing the compliance burden for taxpayers. This move is now a must, especially when we consider the impending implementation of the EU Minimum Tax Directive (Pillar Two) into Irish tax law. More on that another time!

QDTT and Double Taxation

The prospect of Double Taxation of US corporates in Ireland has been raised by the American Chamber of Commerce in Ireland if the proposed QDTT is not recognised as creditable foreign tax in the US. Can you discuss any possible unintended consequences, evident to you, that the introduction of a QDTT could cause?

Louise Kelly, Partner, Corporate and International, Corporate Tax, Deloitte Ireland LLP: The US taxes the profits of its overseas operations and subsidiaries on a worldwide basis except that some profits are taxed immediately and others only on repatriation to the US (generally in the form of dividends). In imposing US tax, a tax credit (reduction) is given for foreign taxes levied thereon but generally only to the extent that it is an eligible foreign tax which is influenced by how it is charged and the extent to which the US Treasury has prescribed that relief is available in the US foreign tax credit (FTC) regulations.

A QDTT is a top-up tax imposed under the Pillar Two rules and is a tax levied on accounting income with a number of prescribed adjustments. In this respect, it is similar to Irish corporation tax which also taxes accounting profits albeit that Irish CT has many more adjustments than are required under Pillar Two!

Louise Kelly

As Ireland's CT rate is levied (generally) at 12½%, there is an expectation that 2½% of QDTT is required to bring it up the minimum tax rate of 15%. As the tax bases are different, companies may find that they have a significantly different top-up tax liability than 2½% and that tax will mostly be collected by means of the proposed QDTT which will not be referenced in the Ireland/US double taxation agreement nor in the US FTC regulations. To the extent that it is not creditable in the US then an additional tax burden will arise. The ability for Ireland and countries in similar positions to levy the QDTT is not generally in dispute as it is levied on the domestic profits of the companies resident in the relevant jurisdiction. While the general hope and expectation is that the QDTT will qualify for FTC, some uncertainty will persist until such time as the US Treasury amends the FTC regulations or publicly announces that it regards them as qualifying. Some groups may consider incurring greater amounts of Irish CT to reduce any QDTT liability in the greater expectation that such Irish CT will benefit from a credit, assuming all relevant conditions are satisfied.

Both sides of the political divide in the US may coalesce around the need to give an FTC for the QDTT to ensure that US groups are not financially disadvantaged; it is perhaps the one aspect of Pillar Two on which it could be hoped that a consensus would be reached at an early stage.