itm Irish Tax Monitor

In this month's roundtable the Department of Finance's plans to introduce a participation exemption for corporation tax features with the move welcomed as 'extremely positive' despite the proposed implementation date being later than hoped for. The tax highlights and lowlights for 2023 also feature with the aforementioned participation exemption chosen in the former category, as does BEPS Pillar Two. The opportunities to improve Ireland's personal taxation regime are also analysed as is the Department of Finance's review of the taxation of share-based remuneration and the broader Irish share scheme environment, the new CESOP regime, effective 1st January 2023 and new Revenue guidance on VAT treatment of portfolio management services.

Participation Exemption

The Department of Finance's consultation period on the introduction of a Participation Exemption for Corporation Tax ended in mid-December. Can you comment on the plans?

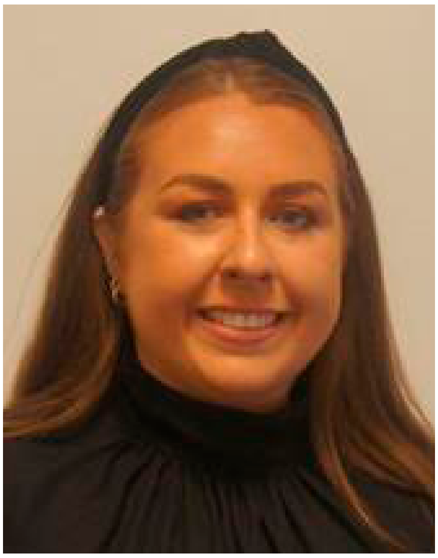
Emma Storey, Manager, Corporation Tax, Deloitte: Deloitte recently responded to the Department of Finance's consultation on the introduction of a participation exemption for distributions and a foreign branch exemption to the Irish corporation tax system.

Deloitte's overall position is that a move to a full territorial regime (substantial shareholding exemption, participation exemption for distributions, and a foreign branch exemption) will be a positive change to the Irish tax code and will only enhance Ireland's attractiveness as a location for companies.

The key considerations that Deloitte communicated to the Department of Finance was that an Irish participation regime for distributions should be broad and as simple as possible and provide certainty to taxpayers. We highlighted that any opportunity to simplify the Irish corporation tax code and protect the country's competitiveness for Foreign Direct Investment should be at the forefront in the design of any new tax regime.

We recommended that Ireland introduces a participation exemption into domestic legislation so that foreign sourced dividends and distributions are fully exempt from tax in Ireland. In addition, an exemption for foreign branch profits should be introduced at the earliest opportunity. The introduction of both such regimes along with the current exemption from tax in the case of gains on disposals of shares under section 626B TCA 1997, will move Ireland to a territorial corporate tax base and bring the country in line with other EU Member States and OECD countries.

The Deloitte Contributors in the February 2024 Roundtable Panel consisted of:
Emma Storey, Manager, Corporation Tax, Deloitte; Tatiana Kelly, Senior Manager, Tax Policy and Technical, Deloitte; Sarah Conry, Director, Global Employer Services, Deloitte; Niall Dunleavy, Senior Manager, Global Employer Services, Deloitte; Daniel Baquerin, Assistant Manager, Indirect Tax, Deloitte; Stephanie Bowe, Director, Global Employer Services, Deloitte; Mark Curry, Director, Tax Technology Transformation & Innovation, Deloitte.



Emma Storey

Currently, Ireland is the only EU Member State not to have a participation exemption regime for dividends/distributions and is only one of four OECD countries (along with Chile, Korea and Mexico) that does not provide a form of participation exemption for dividends/distributions.

Share-based remuneration

The Department of Finance is to review the taxation of share-based remuneration and the Irish share scheme environment. The project is set to be undertaken over the coming months and will take on board feedback received from the recently launched Public Consultation on share-based remuneration. What changes do you suggest can be made to ensure Ireland's offering around share-based remuneration can 'support Irish companies in attracting and retaining highly skilled and motivated employees' (as the Department of Finance's review aims to do).

Sarah Conry, Director, Global Employer Services, Deloitte and Niall Dunleavy, Senior Manager, Global Employer Services, Deloitte: Evidence supports that fiscal policy can increase

Sarah Conry

employee-share ownership and we recommend that the existing exemption from employer's PRSI is retained.

It is important that tax legislation relevant to share-based remuneration continues to evolve in line with changing workforce trends and an increasingly diverse economy.

The use of share-based remuneration by privately owned SMEs is growing and the Key Employee Engagement Programme (KEEP) legislation was introduced to support these businesses. However, there are many companies unable to access KEEP for various reasons including restrictive qualifying criteria, a lack of valuation support and ineffective buy-back provisions.

Niall Dunleavy

Given the importance of these businesses to the Irish economy we recommend, as a minimum, that KEEP is updated to remove the current barriers to entry. Furthermore, for SMEs unable to access KEEP, we would recommend a deferral of tax to the date that shares are disposed of, rather than the current tax point on 'vest' or 'exercise'. This would provide an opportunity for increased employee ownership from an early stage without onerous tax implications being triggered. Similar changes aimed specially at SMEs have recently been introduced in Portugal, Germany and the Netherlands for example.

From a listed company perspective, Save As You Earn (SAYE) and Approved Profit Sharing Schemes (APSS) have historically been successful initiatives but workforce trends are changing which may be making the schemes less attractive. For example, the savings and retentions periods attached to the awards are often considered too long. In light of this fact, the UK who operate very similar arrangements (SAYE and SIP) recently concluded a consultation of their legislation and changes may be expected in the future. We recommend that a similar review is undertaken in Ireland to ensure that listed companies can avail of tax advantaged arrangements which are fit for purpose and competitive in a global economy. We also recommend that the current charge to USC and employee PRSI on these awards is removed.

2023: highlights and lowlights

What would you consider to have been the tax highlights of 2023 and what would you consider to have been the tax lowlights of 2023?

Tatiana Kelly, Senior Manager, Tax Policy and Technical, Deloitte: Pillar Two represents the biggest corporate tax reform in a generation

Tatiana Kelly

and will fundamentally change how large businesses calculate and pay tax internationally. The level of change in the international tax environment represented by the introduction of Pillar Two across the globe is unprecedented. EU Member States, with some exceptions, had until 31 December 2023 to transpose the EU's Minimum Tax Directive into domestic law. Ireland did it in a timely manner.

National legislation, in Finance (No. 2) Act 2023 (which was one of the largest Finance Acts put forward in some time, running to almost 270 pages) to implement Pillar Two rules for accounting periods commencing on or after 31 December 2023 was undoubtedly a significant change bringing about additional complexities and responsibilities for qualifying entities in Ireland. This was a once-in-a-generation reform to our corporation tax system which was the culmination of a ten-year, global project to reform the taxation of multi-national enterprises.

This legislation will increase the minimum effective tax rate for companies that are part of groups with revenues of €750M and above to 15% through the introduction of a Qualifying Domestic Minimum Top-up Tax and Income Inclusion Rule. These rules will apply for fiscal years beginning on or after 31 December 2023. The undertaxed profits rule (UTPR) will apply for fiscal years beginning on or after 31 December 2024.

It is imperative that Ireland provides an attractive entrepreneurial landscape for growth. There are numerous forces which will drive a successful entrepreneurial landscape in Ireland, such as a skilled workforce, financial and technological resources, and infrastructure, etc. Critical to all these forces is our tax system, which should act in a coherent manner to promote growth and entrepreneurship. It is imperative from an entrepreneurial perspective that our tax system incentivises innovation, encourages longevity.

The measures included in the Finance Act should impact Irish Indigenous business in a favourable manner, the amendments to the R&D tax credit and the increase in VAT registration thresholds will be favourable from a cash flow perspective. However, the amendment to the age threshold to a maximum age of 70 years old for retirement relief is welcome, but it does not go far enough. The cap on the availability of retirement relief represents a difficulty to the transfer of shares in a family-owned business during the lifetime of the entrepreneur. We welcome the review of Revised Entrepreneur Relief. However, other measures which were included in the Deloitte pre-Budget submission, and which could have made an immediate impact include the introduction of a lower rate of tax of 20% on dividends that could be provided to entrepreneurs subject to an annual dividend cap of €100,000. The Act also contained amendments to the R&D tax credit. Despite positive changes (i.e., the amount of the credit available has been increased to 30% and the amount of tax repayable in the first year has been increased to €50,000), new claimants or companies that have not made an R&D tax credit claim over the past three immediately preceding accounting periods are now required to notify Revenue of their intention to claim in advance of submitting an R&D tax credit claim.

VAT

The Revenue Commissioners have recently updated guidance on the VAT treatment of portfolio management services. Can you outline the changes and any implications for taxpayers?

Daniel Baquerin, Assistant Manager, Indirect Tax, Deloitte: Back in November the Irish Revenue updated its guidance


Daniel Baquerin

on the VAT treatment on the provision of Portfolio Management Services by non-EU suppliers. First, the guidance reaffirms the principles of the CJEU as set out in Deutsche Bank (C-44/11) which states that discretionary investment management services are subject to the standard rate of VAT (unless provided to a qualifying special investment fund) but it then draws attention to the interaction with the existing use and enjoyment rules which can tax investment management services provided by non-EU suppliers to Irish residents.

Revenue's guidance covers the supply of financial services but with a particular focus on Portfolio Management Services which are stated as consisting of:

i. analysing and monitoring assets of client investors, and
ii. purchasing and selling securities.

It confirms that the place of supply (POS) of such services to consumers can fall within the Irish VAT regime where:

a) the place of supply would be outside the EU under the general rules; and
b) the services are used and enjoyed in Ireland.

Notably, the guidance does not refer to these services as supplied on a B2C basis but speaks of "client investors" and "consumers"– which we assume to be non-taxable persons (private), nor does it offer any guidance as to how non-EU suppliers are to determine where such services are "used and enjoyed". For background, Article 58 of the EU VAT Directive provides that the POS of certain services is where the effective use and enjoyment of such service takes place. This rule would deviate the POS from the general rule where services supplied to private individuals are taxed in the supplier's country. Therefore, in cases where investment management services are provided by a non-EU supplier but enjoyed within the EU, the POS will be in the EU Member State where the service is effectively enjoyed. The use and enjoyment rules are not mandatory and each Member State can freely choose to transpose this rule into their national VAT legislation.

In this regards, the use and enjoyment rules for Financial Services have always been part of the Irish Law, however they have not been generally applied by the industry. However the potential impact of the EU VAT provisions has increased since Brexit given the services provided from the UK to Irish customers). In cases where UK investment management companies are providing Portfolio Management Services to private Irish customers, they will be subject to the use and enjoyment rules provisions where the relevant conditions are met, and will have to register for, and charge Irish VAT on these services.

The guidance also confirms that in the context of portfolio management it is still possible to retain the VAT exemption when it comes to the purchase and sale of shares or securities but only where fees are separately charged for that purchase or sale on a transaction-by-transaction basis and the documentation reflects same.

In light of the above, non-EU providers may have a VAT registration and / or reporting requirements if portfolio management services are provided:

vii. to Ireland-based B2C customers (e.g. high net worth individuals);
viii. from a non-EU servicing company (e.g. the UK, the US, the Channel Islands); and
ix. the financial services provided do not qualify for VAT exemption.

We would encourage non-EU providers of Financial Services (i.e. portfolio management services) to check whether its services are being provided to individuals in the EU to understand if there is a VAT exposure therein and agree next steps with the Tax Authorities where required.

Personal Taxation

In your experience as a tax practice, in which areas in Ireland's personal income tax structures offer the greatest scope for success in pursuing the reforms recently recommended by the IMF in its annual Report on Ireland? (i.e. 'improving personal income tax system').

Stephanie Bowe, Director, Global Employer Services, Deloitte:

As outlined in Deloitte's response to the Consultation on Ireland's Personal

Stephanie Bowe

Tax System in April 2023, there is plenty of opportunity to enhance and improve the personal income tax system to make it more competitive, in order to continue to attract FDI into Ireland and support growth in the indigenous business community.

Some key recommendations Deloitte has made previously are as follows:

- An increase to the standard rate band for income tax to €50,000, and a reduction to the higher rate of income tax. In our view, this should be designed to bring the top rate of tax (currently 52% - 55%), whether you are employed or self-employed, to no more than 50%.
- No further increases to PRSI. Increases to employee and employer PRSI rates add to the cost of employment in Ireland. Opportunities to reduce this cost should be considered and the PRSI system should be significantly simplified.
- Reform and enhancement to key reliefs like the Special Assignee Relief Programme (SARP) and the Key Employee Engagement Programme (KEEP). SARP is a vital tax policy measure which was introduced to attract top talent to Ireland, but it is too restrictive in its current form. KEEP was introduced to help Irish SMEs to retain and attract talent, but again the legislation is too complex and restrictive.

The increases to the standard rate bands and tax credits for PAYE and the reduction in the USC rate with effect from 1 were all welcome enhancements in Budget 2024. However, the planned increases to PRSI rates over a 5-year period was disappointing. While improvements were made to the legislation on KEEP, it remains to be seen whether the changes will increase uptake. More needs to be done to reduce the cost of employment in Ireland, enhance key reliefs and simplify administration under the personal income tax system, to make Ireland a more attractive location to invest and grow businesses.

Tax Technology

Would you comment on significant developments, and the major trends to watch for in 2024 and beyond in the area of tax technology?

Mark Curry, Director, Tax Technology Transformation & Innovation, Deloitte: Without doubt, we cannot discuss developments in tax technology without referring to the most significant development in 2023, Generative AI. Gen AI will be used to unlock business value, supercharge efficiency and productivity and open the door to entirely new products, services and business models. The use of Gen AI will only increase with time, and has the capability to revolutionise many professions and activities, the Tax profession and tax activities are no exception.

GenAI will bring a new perspective for companies and tax professionals on how tax advice is sought, researched and drafted, in addition to how tax processes are executed. Gen AI chatbots can be used to draft emails, presentations and other written content, as well as having the ability to summarise lengthy documents or reports.

Outside GenAI, Tax Professionals are currently grasping Pillar 2 requirements, e-Invoicing, real-time reporting and other local complex compliance obligations making it necessary to handle increased volumes of data in shorter timeframes. In addition, tax professionals will continue to drive automation on routine activities, looking to dedicate more time to understanding their stakeholders' unique needs and providing value-added services, ultimately strengthening stakeholder and client relationships. In order to achieve this, other technologies like machine learning, robotics, data wrangling and analytic tools will continue to play a vital and increasing role to help drive efficiency and streamlining on all tax processes and activities. Other more tax specific technologies for indirect tax determination, indirect reporting and tax provisioning will continue to trend upwards as companies review and refine their tax operating models.

Mark Curry

By continuing to drive automation on routine activities, tax professionals are looking to dedicate more time to understanding their stakeholders unique needs and providing value-added services, ultimately strengthening stakeholder and client relationships. Tax Professionals will have access to increasing amounts of knowledge such as tax regulation and case law.

In closing, the thrilling progress of GenAI holds huge promise for efficiency gains and value add for tax as we move into 2024, yet navigating its advancement requires careful consideration of potential benefits and risks. In the interim, other technologies will continue to gain traction in tax that can provide and drive efficiencies, reduce risks and create value add in any tax activity, in professional services and companies alike.