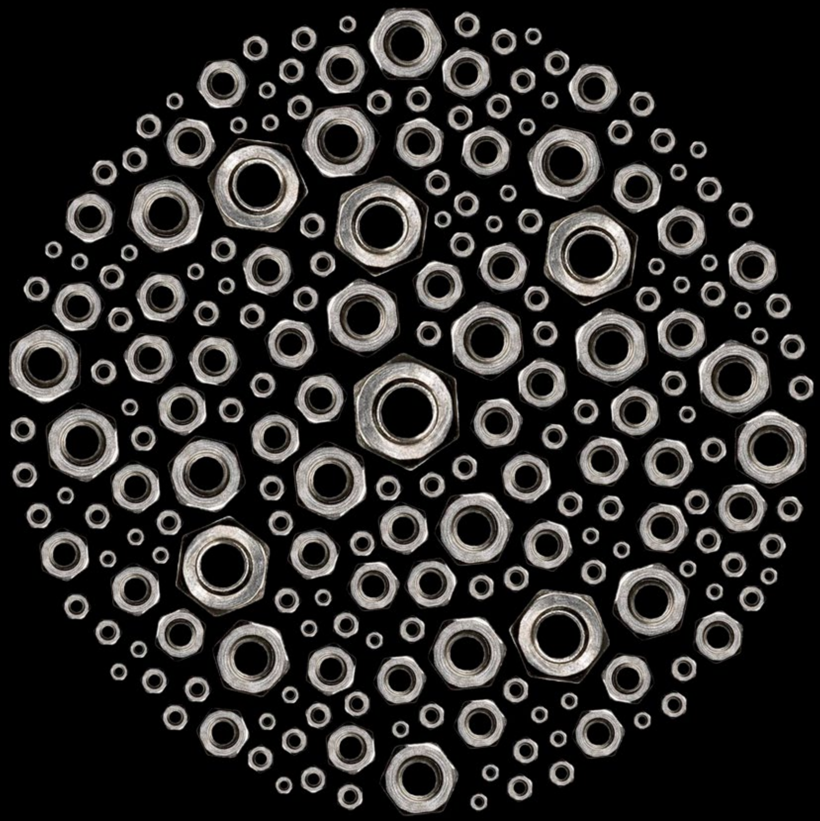
TMT Tax Talks

The latest tax updates to the Technology, Media & Telecommunications industry

April 2024

Deloitte.



Spotlight Article:
Enhanced Reporting Requirements (“ERR”)

Introduction of ERR in Finance Act 2022

Background

- Finance Act 2022 introduced Section 897C of the TCA 1997 which requires employers to report to Irish Revenue details of certain expenses/benefits provided to employees and/or directors. The commencement order was signed on 13 December 2023 and came into effect on 1 January 2024.
- Revenue have confirmed that "*a service for compliance approach will be taken until the 30 June 2024. This approach will involve supporting employers who are attempting to comply with their reporting obligations. During this period, Revenue will not be operating any compliance programmes in relation to the ERR and will not seek to apply any penalties for non-compliance*." The penalty is the same as any normal payroll infringements: €4,000 for the company and €3,000 personally for the company secretary.

What is a reportable benefit?

A reportable benefit is essentially a payment or benefit made to employees without the deduction of tax. Currently only the following three types of expenses are in scope however, it is worth noting that this is only phase 1 and further payments/benefits may be brought into scope.

- The small benefit exemption – section 112B TCA 1997 i.e.(vouchers).
- Remote working daily allowance - €3.20 per day.
- Travel and subsistence payments – vouched/unvouched travel and subsistence, country money, emergency travel, eating on site allowance.

Reporting Requirements

Payments to employees and directors made from 1 January 2024 onwards, must be reported on or before the date the benefit is provided along with employee data.

Credit cards, fuel cards and payments made directly to third parties may be excluded.

See specific requirements for each benefit below.

1. Travel and Subsistence

- Vouched travel
- Unvouched travel
- Vouched subsistence
- Unvouched subsistence
- Eat on site allowance
- Emergency travel

2. Remote Working Allowance

- Number of days remote working
- Amount paid

3. Small Gift Exemption

- Date
- Value

ERR Revenue Trends

Irish Revenue – Audit and Compliance

- In general we note increased audit activity
- Revenue have a target to take in €120M in additional tax in 2024 (€80M in 2023)
- The main focus areas are: eCommerce, cash/shadow economy and payroll/ expenses
- Additional data from ERR will assist Irish Revenue in tackling these main focus areas as information is available in real-time.
- Errors and rejections encountered by employers and agents should be reported to Irish Revenue via the National Employer Helpline (“NEH”)
- No penalties will apply for the period to the end of June 2024. From 1 July 2024, normal compliance rules apply.

Potential “Red Flags” or Automated Queries

- There are certain “red flags” which will attract attention from Irish Revenue and we have listed some below:
  - Non-taxable expenses as a high percentage of salary
  - A high percentage increase in non-taxable expenses in a reporting period
  - Fixed amount processed via ERR –flat rate allowances.
  - Sample checks on vouched travel & subsistence.

Update on ERR from Irish Revenue

- Latest stats from Irish Revenue tell us that over 66,000 ERR submissions were made at 31 January 2024 by 17,500 employers. The submissions relate to over 702,000 payments and benefits provided to 226,800 individual employees and directors, with a value of almost €86 million
- Irish Revenue intends to hold further ERR webinars, keep an eye on the Revenue website. Irish Revenue recommends that employers monitor their ROS Inbox for correspondence on ERR.
- Irish Revenue are expected to populate information reported through the ERR submissions in myAccount, with an IT release expected at the end of Quarter 1, 2024.

Resources

For more information, please see the Revenue Tax and Duty Manual Part 38-03-33 - Returns by employers in relation to reportable benefits (revenue.ie)

For any additional queries, please contact Emer Hodges (ehodges@deloitte.ie) of our GES team.

Irish Taxation Updates

Deloitte.

TMT Irish Corporation Tax Updates

Tax Appeal Commission ("TAC") Determinations - 16TACD2024 – S766(5) TCA97 - R&D Time Limit

This is an appeal against the refusal of Irish Revenue to allow a claim for an R&D tax credit for the tax year 2020. Irish Revenue refused on the basis that it was made out of time.

The TAC determined that the appeal could not succeed. On the basis that any claim must be made *"within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred."*

It was held that *"The use of "shall" in section 766(5) indicates that the timeframe for application is mandatory, and that no exceptions to this timeframe are permitted. Therefore, an application must be made within the twelve-month timeframe to be valid."*

The Commissioner noted that this was a case where the Appellant sought an exemption from taxation, and, that all exemptions must be interpreted strictly, applied (para. 62).

Determination: The Commissioner was satisfied that the Appellant did not make a valid claim for its R&D expenditure incurred during 2020 within the time period prescribed, and therefore he determined that the appeal could not succeed.

Outbound Payment Defensive Measures

The new Revenue Tax and Duty Manual ("TDM") on the outbound payment defensive measures includes some helpful clarifications that were sought, while some aspects of the new measures still require clarification. We continue to review the TDM in detail, in the meantime some of the Revenue clarifications we have identified so far include:

- Where the recipient jurisdiction can avail of a Pillar Two safe harbour the amount of income/profits/gains arising from the payment(s) will be considered within the charge to 'supplemental tax' and therefore an 'excluded payment'.
- For the purpose of the measures, two companies shall be associated if one entity is directly or indirectly entitled to more than 50% of the ownership rights, voting rights, assets or profits of the other entity, or has 'definite influence' in the management of the other entity.
- The description of a Eurobond is more closely aligned to the meaning per section 64 TCA 1997. The previous suggestion from Irish Revenue that a Eurobond will need to be in a foreign currency is removed.
- The new measures do not apply to 'excluded payments', Irish Revenue have clarified in respect of distributions excluded from the scope of the measures that a company may specify the profits out of which a dividend or distribution has been paid when assessing the application of an exclusion to the defensive measures. Where the profits out of which a dividend or distribution has been paid have not been specified, the dividend or distribution will be considered to have been paid from the profits of the last period for which accounts of the company were made up and which ended before the dividend or distribution became payable. Where the total dividend or distribution exceeds the profits available for distribution for a period, then so much of the dividend or distribution as is equal to the excess will be treated as paid out of profits of the immediately preceding period (other than profits of that period which were previously distributed).

Other Relevant Matters

<u>New Revenue Tax Duty Manual ("TDM") on DAC in the Field of Taxation</u>

- Revenue TDM provides a road map to the Irish transportation of the DAC (DAC 1 – DAC 7) and general guidance on the scope and application of the DAC and the amendments to it.
- This TDM references EU law, Irish Law and the relevant Revenue guidance.
- Council Directive 2011/16/EU (DAC) provides for the automatic exchange of information between the tax administrations of EU Member States.
- Since the DAC was introduced, it has been amended numerous times.
- DAC 8, which is not covered in this version of the TDM, entered into force in November 2023, Member States have until the end of 2025 to transpose into national law and the provisions are to generally apply from 1 January 2026.

Tax Appeal Commission ("TAC") determination - Foreign Royalty Withholding Tax

TAC Determination - 47TACD2024 recently published concerning taxpayers' calculation of its adjusted taxable trading income in respect of the accounting periods ending 2010 to 2016 inclusive and the treatment as a deductible expense certain Royalty Witholding Tax "RWHT" incurred in the course of business conducted in certain jurisdictions. Irish Revenue has disallowed RWHT as a deductible expense.

Determination: The TAC found in favour of the taxpayer and it was held that *"the Commissioner determines that the Appellant has succeeded, on the balance of probabilities, in showing that the Respondent was incorrect to issue the Notices of Amended Assessment…"*

Revenue eBrief No. 103/24 - 28 March 2024 - Payment and receipt of interest and royalties without deduction of income tax

Tax and Duty Manual 08-03-06 'Payment and receipt of interest and royalties without deduction of income tax' has been updated:

- to reflect the introduction of the outbound payments defensive measures contained in Chapter 5 of Part 33 of the Taxes Consolidation Act 1997, refer to the new section 1.3 (p.5).Finance (No.2) Act 2023 inserted Chapter 5 'Outbound payments defensive measures' in Part 33 of TCA 1997. The measures provide for the implementation of defensive measures by way of withholding taxes, on outbound payments of interest and royalties, and on the making of distributions, in certain circumstances.
- to provide additional guidance in respect of the application of interest withholding tax to interest paid to Irish partnerships and foreign tax transparent entities, refer to the last paragraph of section 5.3, which now includes an underlined sentence:

  > *"If any one or more of the members in the tax transparent entity is unable to satisfy the conditions above, or the conditions set out in section 9.1.1 below, withholding tax, under the provision of section 246(2) TCA 1997, should be deducted from the gross interest payment. Where a member of the tax transparent entity is itself a tax transparent entity, Revenue is prepared to 'look through' the second mentioned tax transparent entity where the above conditions are met in respect of the second mentioned entity (and so on where, for bona fide commercial purposes, there are multiple tax transparent entities in an investment chain)."*

- to provide additional detailed guidance on payments of interest to tax transparent entities where members of those entities may avail of the rate of withholding tax provided for under the terms of a double taxation agreement, refer to section 9.1.1 (pp. 13-4).

Global Updates

Australia: New interest limitation rules finally enacted

On 8 April 2024, the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 ("multinational tax bill" or "bill") which introduces the new Australian interest limitation rules received royal Fassent.

We arrive at this point more than one year since the government formally announced its intention to introduce new interest limitation rules to replace the thin capitalization regime, and nine months after the general commencement date for the new rules. The bill was subject to two Senate reviews, lengthy consultation, and significant shifts on key policy and design matters as it progressed from exposure draft (March 2023) to bill stage (June 2023) to final passage, including material government amendments. The process and the outcome were less than optimal, if only by virtue of the law being finalized so long after commencement.

Broadly, the new regime applies to general class investors and is operative for years of income starting on or after 1 July 2023, while the new "debt deduction creation rules" (DDCR or "debt creation rules") will first be operative for years of income starting on or after 1 July 2024.
The multinational tax bill also dealt with "Multinational tax transparency - disclosure of subsidiaries" (schedule 1): this article deals only with the interest limitation rules in schedule 2. Read the full article here

Pillar Two Implementation Tracker

Bermuda

- The Minister of Finance is issuing these Frequently Asked Questions (FAQs) with respect to the Corporate Income Tax Act 2023, "the Act". The Act will have a general commencement date of 1 January 2025. These FAQs can be found on the Government of Bermuda website at: www.gov.bm/CIT.

USA

- US International Tax Alert Notice 2023-80 outlines the interaction of to certain top-up taxes, including income inclusion rules, qualified domestic minimum top-up taxes, and undertaxed profits rules described in the Global Anti-Base Erosion Model Rules (Pillar Two), as well as guidance that taxpayers may rely on until proposed regulations are issued.

Bahamas

- Bahamas Introduce a Corporate Tax Regime in Response to Pillar 2. The Bahamian government has announced its plans to implement a 15% corporate income tax in response to the OECD's two-pillar international tax reform plan, anticipating tax revenue to exceed $140 million annually.

Belgium

- Belgium enacted its Income Inclusion Rule (IIR) on 28 December 2023. IIR applies from periods beginning on or after 31 December 2023.
- Belgium enacted its Undertaxed Profits Rule (UTPR) 28 December 2023. IIR will apply from the period beginning on or after 31 December 2024

Why is this relevant?

- Pillar Two is being implemented to ensure a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups with the EU Pillar Two Directive.

TMT Global Tax Updates

Bahamas Belize Seychelles and Turks and Caicos Islands Removed from EU List of Non-Cooperative Jurisdictions for Tax Purposes

- On 20 February, the Council **removed** Bahamas, Belize, Seychelles and Turks and Caicos Islands from the list of non-cooperative jurisdictions for tax purposes. With these updates, the EU list consists of the following 12 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.
- The next revision of the list is scheduled for **October 2024.** Irish Revenue publish a timeline of the changes to this EU list, this timeline is yet to be updated for 2024,
- This EU list is particularly relevant for DAC 6, Hallmark C1b, Public Country by Country Reporting (PCbCR), the meaning of *"specified territory"* under the new measures applying to outbound payments of interest/royalties/distributions and the modified application of the CFC exemptions.

Why is this relevant?

- All companies are required to disclose details of any transaction with non-cooperative jurisdictions during the period in the company's form CT1. This refers to transactions relating to interest, royalties, and dividends.

European Parliament Adopts Opinion Supporting HOT, With Amendments

IBFD Tax News, 11 April 2024. On 10 April 2024, the plenary of the European Parliament adopted its opinion on the Proposal for a directive establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU (HOT Proposal).
The opinion is supportive of the HOT proposal but recommends substantial changes to the scope and clarification of its rationale. Examples of suggestions made by the opinion include, among others:
- delineate the opportunities created by the SMEs, the financial and administrative obstacles they face and the corresponding solutions that the HOT proposal would bring;
- extend the scope of the proposal to include companies that operate not only through permanent establishments but also through a maximum of two subsidiaries;
-- recommending the reassessment of the usefulness of excluding international shipping (and SMEs which are covered by the tonnage tax regime) after 5 years of HOT having been in action;
- establish a cooperation obligation between the Member States' tax authorities (e.g. if the Member State of the head office carries out an audit on its own initiative, it should invite the host Member State to carry out such an audit jointly);
- making the HOT proposal known to SMEs through a thorough and comprehensive Union-wide information campaign available in all languages; and
- accelerating the adoption of the proposal by having Member States implement it at national level by 31 December 2024, so that the measures would apply from 1 January 2025 (and not from 1 January 2026 as previously foreseen).
Note: Next steps include the European Parliament's opinion being passed to the Council for consideration, followed by Member States' adoption of the definitive act. The European Parliament's opinion is not binding on the Council. However, the Council must consider it when debating and adopting the directive.

OECD/UK Treasury Provides Update on the Implementation of the OECD Guidance on Pillar Two Safe Harbor

On 14 March 2024, HM Treasury published a brief written statement confirming that the UK will be introducing anti-abuse rules for the Pillar Two transitional country-by-country (CbC) reporting safe harbor, in line with the latest administrative guidance published by the OECD/G20 Inclusive Framework on BEPS in December 2023.

This guidance included measures that cover certain transaction-based potential tax avoidance mechanisms. The government intends to apply these rules as from 14 March 2024. The statement confirms that the government will consult on how the rules are implemented and will include the required legislation in a future finance bill.

GES Tax Updates

TMT Irish GES Updates

France Management and Collection of “employer tax” transferred to the tax administration

Pursuant to the Finance Law n°2022-1726 dated December 30th, 2022 (for 2023), the transfer of the management and collection of "employer tax" from OFII (Immigration Office) to the tax authorities (DGFIP) took effect on 1 January 2023. As a reminder, the liable party is an employer who hires foreign workers or hosts seconded employees to France for a salaried professional activity. The tax applies upon their first admission to France. The hiring of EU nationals is exempted from this employer tax.

Since the tax is to be declared and paid annually in arrears, the first formalities will take place in February 2024 for Calendar year 2023. This transfer of responsibilities has been accompanied by changes in the reporting process.

In accordance with Article D. 436-2 of the CESEDA, the reporting process for the tax due by employers of foreign nationals ("employer tax") now follows the rules applicable to value-added tax (VAT). The corresponding forms have been updated on the impots.gouv website.

Furthermore, the Official Bulletin of Public Finances-Taxes (BOFIP), in its publication of 5 July 2023 (article 60), has clarified the categories of hiring activities not subject to tax, including foreigners holding "Passport - Talent" and "ICT Posted worker " residence permits, such residence permits including an automatic right to work.

Deloitte’s view

Considering this change, employers of non-EU nationals should not have received invoices issued by the Immigration Office in 2023. As this is the first year of implementation, a specific attention has to be taken to avoid double taxation.

French employers are encouraged to maintain a list of the concerned foreigners to declare them in accordance with the new procedures in force. This also implies that HR managers or international mobility teams are in contact with the services responsible for VAT declarations.

Finally, the new exemptions applicable to Talent Passport and ICT permits increase the attractiveness of these immigration statuses.

Supreme Court Judgement – The Revenue Commissioners v Karshan (Midlands) Ltd (trading as Domino’s Pizza) [2023] IESC 24

On 20 October 2023, the Supreme Court delivered its judgement in *The Revenue Commissioners v Karshan (Midlands) Ltd (trading as Domino’s Pizza),* which concerned a dispute over the employment status of delivery drivers working for Domino’s Pizza. The judgement is important in terms of the classification of individuals who are engaged under a ‘contract of service’ (i.e. an employee) or a ‘contract for service’ (i.e. a self-employed independent contractor). Not only does the outcome of the judgement have potential consequences for both employers and employees engaged in the “gig economy” but it may have a far wide reaching impact for employers and employees in general.

The Supreme Court concluded that the contracts between Karshan and the drivers were ‘contracts of service’ rather than ‘contracts for service’.

Arising from this significant judgement, Irish Revenue is currently drafting guidelines for determining employment status for taxation purposes to assist employers in understanding the implications of this judgement.

Kazakhstan – New tax return form in view of Universal Declaration

What is the change?

Kazakhstan is introducing a Universal Declaration for individuals from 2025. Certain categories of individuals have already started filing the new tax return form in view of the Universal Declaration which is being introduced gradually.

Who is affected by the change?

At present, civil servants and employees of the quasi-state sector are participating in the system. Starting from 2024, individuals being heads and/or founders of Kazakhstani legal entities and their spouses, (as well as individual entrepreneurs) are required to submit the new form in view of Universal Declaration.

From 2025, Universal Declaration will apply to the following categories:

- Kazakhstani citizens and foreigners having Kazakhstani permanent residence card (similar to a “Green card”, not a work permit);
- Foreigners having Kazakhstani assets and/or receiving income from Kazakhstan sources which is subject to self-reporting

Key changes:

1. The current personal income tax return forms are substituted by new forms:
   - Tax return on assets and liabilities (to be filed once) – Form 250
   - Tax return on income and assets (to be filed on a regular basis) – Form 270
2. Both Kazakhstani citizens and foreigners being heads or founders of the local legal entities and their spouses:
   - are required to file a tax return on assets and liabilities by 15 September 2024 (irrespective of their tax residency status!) declaring their worldwide assets and liabilities as of 31 December 2023.
3. Tax filing requirement in 2025 will arise for Kazakhstani citizens depending on the tax residency and foreigners depending on assets and income source.
4. Incorrect completion of initial tax return may lead to accrual of 10% income tax in subsequent years.

For more information, please visit: https://egov.kz/cms/ru/articles/property_declaration

Deloitte’s view

The change is important and affects all citizens of Kazakhstan, including those working outside of Kazakhstan, due to local rules of tax residency determination. International companies having subsidiaries in Kazakhstan should also consider this change as it imposes additional personal tax reporting obligations on foreign individuals who are heading the local subsidiaries. It is critical to be compliant with the change as it may impact personal matters of the individuals and local companies in view of the latter.

South Korea

On 27 February, 2024, the proposed amendment to the Enforcement Decree of the Financial Investment Services and Capital Markets Act, allowing the sale of overseas listed securities not acquired through Korean securities firms via foreign investment intermediaries, was approved in the Cabinet meeting.

Reason for Amendment

The previous legislation mandated that all trading of foreign securities and foreign exchange derivatives by individual investors be exclusively through domestic securities intermediaries, without exceptions. Consequently, individuals were required to transfer overseas listed securities held with foreign securities firms to domestic ones before selling. Recognizing the ongoing inconvenience of this transfer process, regulatory improvements were deemed necessary. As a result, exceptions have been introduced for specified disposal transactions, allowing for easy selling not only through domestic securities firms but also through foreign securities firms.

Summary of Amendment

The amendment provides exceptions to the sale of foreign securities not acquired through domestic investment intermediaries (Korean securities firms). This includes stocks of the foreign headquarters held in foreign securities accounts, granted as performance incentives (i.e., stock options, RSUs, etc.) to domestic employees of foreign companies, as well as inherited or gifted overseas listed securities from non-residents. These securities can be traded through foreign investment intermediaries without requiring transfer to domestic securities firms. However, it's crucial to note that overseas listed securities or foreign derivatives not falling under this exception must still be traded through domestic securities firms.

Legislative Timeline

The amendment to the Enforcement Decree of Capital Market Act will be promulgated in early March 2024 and is scheduled to be implemented immediately upon promulgation.

VAT Updates

TMT VAT Updates

Ireland – VAT Modernisation Consultation:

On 13 October 2023, Irish Revenue launched a public consultation on the modernisation of Ireland's administration of VAT. The focus of the initial public consultation was the modernisation of Business to Business ("B2B") and Business to Government ("B2G") VAT reporting, supported by e-Invoicing.

Irish Revenue requested the views of all VAT stakeholders on the public consultation. We understand Revenue is pleased with the level of engagement in the consultation to date. B2C transactions were not within the scope of this consultation, but further consultations are expected.

In 2022, the European Commission launched its VAT in the Digital Age ("ViDA") proposal, which includes the introduction of e-invoicing for cross border B2B and B2G transactions, alongside an obligation for suppliers to share transaction level data for those cross-border transactions within two days of the invoice date (near Real Time Reporting). Many other Member States in the EU have already introduced various real time or near real time reporting or e-invoicing requirements, and notably France and Germany have flagged the introduction of e-Invoicing in the next 2-3 years. While there are some similarities between the various regimes, there are significant differences, so the ViDA proposals seek to achieve a degree of commonality across the EU.

With the global trend towards digitisation, it was widely expected that Ireland would also modernise its VAT reporting. The public consultation can be seen as a move towards complying with such ViDA proposals. ViDA proposals are seen as a key tool in the fight against fraud and a means to reduce the 'VAT Gap'.

In addition, at an Irish level, there is continual move towards modernisation of the Irish tax system. As most businesses in Ireland would be aware, the Revenue Commissioners also undertook a PAYE modernisation exercise in recent years.

Central Electronic Systems of Payment Information ("CESOP") Filing Deadline – 30 April 2024

From 1 January 2024, Payment Services Providers (PSPs) need to report certain cross-border payments (where the payer is in the EU) to Irish Revenue on a quarterly basis, with the first report due by 30 April 2024.

The Irish CESOP legislation is broadly aligned to the requirements of the EU CESOP Directive.

The CESOP regime was introduced with the main goal of detecting potential fraud and controlling VAT liabilities. It applies to most PSPs operating in the EU, as defined by the second Payment Services Directive ((EU) 2015/2366), or PSD2. These include: credit institutions, e-money institutions, payment institutions and post office giro institutions.

The reporting requirements apply to payments facilitated by PSPs offering, among others, the following payment services:

- Credit transfers,
- Direct debits,
- Money remittances,
- Card payments, and
- E-money

PSPs that must register in Ireland for CESOP reporting have now been eligible to register since 1 February 2024.

Deloitte.

Deloitte.

Official Partner to Team Ireland