itm Irish Tax Monitor

In this issue the roundtable panel analyse the benefits of Ireland making the switch to a territorial system of corporate taxation, a move currently under consideration by the Irish Government. The EU's latest effort to harmonise corporate taxation standards across the bloc, BEFIT, is another topic discussed, with this new project having many similarities to previous efforts in the area. The key BEPS considerations for Ireland's international insurance industry also features, as do the latest developments around share stamp duties, foreign exchange and cross-border remote work.

Territorial Corporation Tax System

The Minister for Finance in the 2023 Budget speech signalled 'serious consideration of the options for a move towards a territorial tax system'. On a broad front, what might the overall benefits include?

Emma Arlow, Director, Tax Policy and Technical Services, Deloitte: In December 2021, the Department of Finance issued a public consultation on a potential move to a limited territorial system of tax, which would exempt income from foreign branches and foreign sourced dividends. As an overarching comment, 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 and acts as a disincentive to indigenous companies looking to expand abroad and also foreign companies considering inward investment into Ireland compared to many other countries. Detailed double tax relief provisions, while often providing for a de facto participation exemption, require a series of complex steps to be undertaken as part of the tax compliance process. 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. Accordingly, an elective exemption for foreign branch income and/or foreign dividend income would be welcome. In addition to the benefits associated with such a territorial tax system, further consideration should be given to engaging in a broad simplification of existing double tax relief mechanisms to bring greater clarity for companies operating internationally. Legislative amendments and further technical work would likely be required to ensure that any territorial regime interacts correctly with existing provisions including Controlled Foreign Company rules and the imminent Pillar 2 rules; however, on balance such legislative amendments may not be seen as a "deal breaker" from an Irish tax perspective. Careful consultation on any proposed legislative changes with relevant stakeholders will, in our view, be key to the success of any territorial system but the benefits to taxpayers would seem clear.

The Deloitte Contributors in the December 2022 Roundtable Panel were:
Emma Arlow, Director, Tax Policy and Technical Services, Deloitte; Colm Stringer, Senior Manager, Corporate Tax – Financial Services, Deloitte; Anna Holohan, Director, Corporate Tax – Financial Services, Deloitte; Marianne Donaghy, Director, Tax and Legal – Tax Technology Consulting, Deloitte; Stephen Byrne, Assistant Manager, Corporation Tax – Tax and Legal, Deloitte.


Emma Arlow

EU Corporation Tax Consultation

The European Commission launched a public consultation on Business in Europe: Framework for Income Taxation (BEFIT). What are the similarities between this and previous initiatives in the area, such as CCCTB?

Colm Stringer, Senior Manager, Corporate Tax – Financial Services, Deloitte: On 13 October 2022, the European Commission (EC) published a call for an impact assessment and public

Colm Stringer

feedback on proposed policy options for a new corporate tax system known as Business in Europe: Framework for Income Taxation (BEFIT).

The aim of the initiative is to provide common rules for determining the corporate tax base for EU-based entities that are part of a group with consolidated revenues over a certain threshold (i.e. €750m). Therein, this initiative would include provisions for the allocation of profits to Member States based on a pre-defined formula. The EC had been actively promoting the idea of a common consolidated corporate tax base (CCCTB) since 2011 when the first Directive proposal for a single set of corporate tax rules in the EU was published. Following a deadlock on the initial proposal, the CCCTB was re-launched in October 2016 in the form of a two-step approach;

i. the determination of a common corporate tax base (CCTB Directive) and
ii. subsequent additional rules on the formation of a consolidated tax group and a formulary apportionment of the consolidated tax base to the respective Member States. Both the CCTB and CCCTB were designed to apply to corporate groups with consolidated revenue exceeding €750 million, with an opt-in option for smaller groups.

However, in 2021, the EC announced intentions to withdraw the pending CCCTB in light of this new BEFIT initiative.

This initiative aims to reduce complexity and compliance costs resulting from having to deal with 27 different corporate tax systems in the EU and appears to have similarities to the proposed Pillar One rules. In fact, the public consultation questionnaire which was issued also notes that the formula to allocate the tax base to Member States should deviate to the one proposed under the OECD's Pillar One solution. While the Pillar One revenue sourcing rules use one factor (i.e. place where a good, service, or intangible is used or consumed), the "more complex" allocation under BEFIT should use at least three factors (i.e. tangible assets, labour and sales by destination). It will therefore be interesting to see how BEFIT will interact with the OECD's Multilateral Convention implementing Amount A or an alternative legislative EU proposal to address digital economy taxation in the absence of the implementation of Pillar One.

BEPS and Insurance

What are current key BEPS considerations for Ireland's international insurance industry?

Anna Holohan, Director, Corporate Tax – Financial Services, Deloitte: The sheer volume of international tax changes in recent years is unprecedented and there is no expectation that this trend will abate any time soon.

The global tax reset is being driven at an international and domestic level with international tax changes through the OECD and the EU, increased co-operation and sharing of information between tax authorities and the introduction of domestic legislation to align with international changes.

The OECD Framework on Base Erosion and Profit Shifting (BEPS) proposes a two-pillar approach to address the tax challenges which are arising as a result of the digitalisation of the economy and modern business practices. Pillar two will be of particular interest for the international insurance industry. The proposal to have a 15% effective minimum

Anna Holohan

tax rate will likely impact many insurers who may have global effective tax rates above this minimum but who may also have operations in lower tax jurisdictions. Groups impacted by the rules, need to consider the rules in detail and many are currently in the process of developing models and mapping data requirements (which can be significant) in order to determine the potential impact of the proposed new rules.

Insurers will also face challenges with the continued increase in transparency and reporting as a result of changes in the law such as DAC 6 and the proposed introduction of EU public country by country reporting which may come into force as early as 2024. The draft Directive published requires relevant companies to publicly disclose certain information including the entity's activities, revenue, number of employees and the tax the entity pays. This will certainly add to the administrative burden of insurers.

Insurers need to consider the impact of BEPS considerations on their business and consider the capability of their internal systems and processes to manage the enhanced compliance and administrative burden arising.

Increased media attention on taxation matters is also highlighting now, more than ever, that companies and indeed tax authorities, cannot risk misstepping in relation to taxation matters. This means that tax and tax reform is likely to be a challenge for insurers for the foreseeable future and to be on the Board agenda of many companies and groups.

Stamp Duty

Recent stamp duty changes have changed the rules for electronic transfers of shares, bringing previously unstampable transfers into scope. In this light how do stamp duty rates on shares in Ireland compare with the UK and other competing jurisdictions? Is there a case for bringing them in line with other exchanges to promote, e.g. Euronext Dublin?

Marianne Donaghy, Director, Tax and Legal – Tax Technology Consulting, Deloitte: Following Brexit stamp duty legislation was updated to take account of the migration of Ireland's Central Securities Depository from the UK based CREST system to Euroclear Belgium. While Revenue practice still appears to only seek stamp duty where transfers occur through CREST or Euroclear, the updates to the stamp duty legislation mean that transfers through other clearing systems are also stampable.

Marianne Donaghy

This could have an unsettling effect on foreign investment in Irish incorporated entities. The Irish stamp duty rate of 1% on stocks and marketable securities is considerably higher than other jurisdictions with developed financial services industries. For example, the equivalent duty is 0.5% in the UK, 0.3% in France and 0.26% in Hong Kong. In fact, several jurisdictions, such as Germany, do not impose any stamp duty on share transfers. This means that Irish firms are already at a disadvantage when competing with firms in other jurisdictions for equity investment.

It is widely acknowledged that stamp duty charges disincentivise investment and increases the cost of capital particularly for companies with regularly traded stocks. Since 2017 Ireland has an exemption from stamp duty for shares traded through the Euronext Growth Market (formerly ESM) operated by Euronext Dublin. This exemption was announced in Budget 2014 by then Finance Minister Michael Noonan as an effort to stimulate investment in small and medium enterprises and implicitly acknowledges the negative effects of stamp duty on equity investment. Surely then any attempt to widen the scope of stamp duty on transfers otherwise than through ESM/EGM will have a further adverse effect on investment. In the context of this widening scope, there is an even stronger case for reducing the 1% stamp duty rate on Irish shares.

Foreign Exchange

The Finance Bill sets out changes in the treatment of foreign exchange gains and losses for corporate tax purposes. Can you outline these proposed changes and the implications that may arise for taxpayers?

Stephen Byrne, Assistant Manager, Corporation Tax – Tax and Legal, Deloitte: Section 79 of TCA 1997 provides that foreign exchange movements on "relevant monetary items" are, for corporation tax purposes, to be treated as part of profits or losses of a company's trade rather than treated as capital gains or capital losses. Section 31 of Finance Bill 2022 proposes an amendment to section 79 that is said in the Explanatory Memorandum to the 2022 Bill to be an expansion of the definition of "relevant monetary item" to include both trade receivables and trading bank accounts with the aim of allowing foreign exchange gains or losses in respect of those items to be treated as part of trade profits or losses rather than subject to capital gains tax.

Such items are often potentially capable of being so treated under first principles and under certain interpretations of the section 79 as it stands currently in the Direct Tax Acts. As such, the proposed amendment could be viewed as a clarification measure.

Stephen Byrne

While the amendment is welcomed, if the measure is to put the treatment of trade-related bank accounts beyond doubt and to achieve the aim as stated in the editors document, then further amendments (and none were included in the committee stage amendments) are likely to be necessary to address some potential shortcomings in its scope as currently drafted.

A sample of a potential shortcoming is in connection with the new meaning of a "relevant monetary item", and within this definition there is a divergence in the meaning "purposes", which will likely give rise to the following issue for most taxpayers in respect of the purpose of holding a bank account. As currently drafted, by focusing on the purpose of the account and that purpose needing to be one which is linked to the computation of profits for tax purposes, practical issues may arise for taxpayers in evidencing the purpose of bank accounts.

It was requested in the Main TALC Direct Capital Taxes Sub-Committee meeting on 27 October 2022, that the current approach be reconsidered, and it was concluded that guidance will be published on the section in due course. Unfortunately, there may be some uncertainty on how this section will operate until such guidance is published.