

Tax Update

August 2023

Our Tax team is actively monitoring Irish and EU tax developments which may be of interest to your business. If you have any questions or would like to discuss any of the developments in further detail, please speak to your usual Matheson contact or to any of our [Tax Partners](#).



OECD Administrative Guidance on Pillar 2

On 13 July, the OECD published a second set of [Administrative Guidance](#) on the GloBE rules (the “**Updated Guidance**”). The Updated Guidance includes details on currency conversion when performing GloBE calculations, on tax credits, and on the application of the Substance-based Income Exclusion (“**SBIE**”). It also contains further guidance on the design of the Qualified Domestic Minimum Top-up Taxes (“**QDMTT**”) as well as two new safe harbours, as follows:

- A permanent safe harbour for jurisdictions that introduce a QDMTT, which will make compliance and administration easier for Multinational Enterprise Groups (“**MNEs**”) and tax administrations.
- A transitional safe harbour, which provides the ultimate parent entity jurisdiction with relief from the application of the UTPR for fiscal years commencing on or before 31 December 2025 and ending before 31 December 2026.

Department of Finance publishes Second Feedback Statement on Pillar 2 Implementation

Following the publication of the OECD's Administrative Guidance, the Department of Finance has now published the [second feedback statement](#) on the implementation of the EU minimum tax directive implementing Pillar 2. The statement includes items related to (i) the transitional CbCR safe harbour, (ii) the transitional UTPR safe harbour, (iii) the QDMTT and safe harbour status, (iv) elections under Pillar 2, (v) the status of the OECD model rules, commentary and administrative guidance, and (vi) administration.

The consultation period runs to 21 August. In their press release the Department notes that *"in view of the complexity of this project and the limited time available to meet the transposition deadline, legislative drafting work will be continuing during the consultation period. Respondents are therefore encouraged to respond early if possible."*

GloBE Information Return

On 13 July, the OECD published the [GloBE Information Return](#) (the “**GIR**”). The GIR sets out a standardised information return to facilitate compliance with, and administration of, the GloBE Rules. It contains the information a tax administration needs to perform an appropriate risk assessment and to evaluate the correctness of a Constituent Entity's Top-up Tax liability. The guidance has been developed following a public consultation. In response to feedback, the GIR incorporates transitional simplified reporting requirements that allow MNEs to report their GloBE calculations at a jurisdictional level. The GIR will be subject to coordinated filing and exchange mechanisms that allow MNEs to report their GloBE calculations on a single return, where the more detailed information is made available to implementing jurisdictions where a Top-up Tax liability may arise.

Guidelines on the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019

Irish Revenue recently published a new [Tax and Duty Manual](#) (the “**Manual**”) providing guidance on the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (the “**Regulations**”). The Regulations transpose the EU's Tax Dispute Resolution Directive (the “**Directive**”) and provide an alternative mechanism for pursuing mutual agreement procedure in tax disputes involving EU Member States, arising from the interpretation of double taxation agreements or the EU Arbitration Convention.

While the Regulations have been in effect for a number of years, and apply to disputes involving income or capital earned in a tax year commencing on or after 1 January 2018, the Manual now offers guidance on the procedure for pursuing tax disputes under the Regulations. The Manual provides useful illustrations of the different phases in the dispute resolution mechanisms under the Regulations, and includes a section dedicated to Frequently Asked Questions in relation to the Regulations.

Updated Revenue Guidance on the Research and Development (R&D) Corporation Tax Credit

The Revenue Commissioners have recently published [updated guidance](#) (the “**R&D Guidance**”) on Ireland's Research and Development Tax Credit (the “**R&D Credit**”). As detailed in previous Matheson updates, Finance Act 2022 reformed the R&D Credit to ensure it constitutes a Qualified Refundable Tax Credit for the purpose of the Pillar Two GloBE Rules. In particular, the R&D Guidance now:

- provides further details on the ability to request an accelerated payment of the refundable R&D Credit for accounting periods commencing on or after 1 January 2022;
- includes a new section on cloud computing, which confirms that costs incurred by a company on cloud computing may constitute qualifying R&D expenditure for the purpose of the R&D Credit.

Consultation on Proposed New Taxation Measures to Apply to Outbound Payments

The Department of Finance (the “**DoF**”) has recently proposed to introduce new legislation that could potentially impose withholding tax on payments of certain interest, royalties and dividends by Irish resident companies to associated entities in “specified territories” (being ‘no-tax’ or ‘zero tax’ jurisdictions or in jurisdictions included on the EU blacklist). The [DoF publication](#) sets out the proposed draft legislation and seeks feedback on these proposals through a public consultation process.

The provisions (which it is proposed will apply from 1 January 2024) aim to subject certain interest, royalty and dividend payments to “specified territories” to withholding by either switching off existing exemptions or specifically subjecting the payments to withholding (in circumstances where they would not otherwise be subject to a withholding obligation under current rules). The consultation process ran until 8 August and Matheson's submission on the consultation can be accessed [here](#).

Budget 2024 Tax Strategy Group Papers

On 18 July, the Tax Strategy Group published its reports in relation to Budget 2024 (the “**TSG Papers**”). The Tax Strategy Group is not a decision making body, and the issues identified are simply an indication of points that may be considered in the budgetary process. In a corporation tax context, some key issues detailed in the [TSG Paper](#) include:

- Reiteration of Ireland's commitment to introduce legislation to implement the EU's Pillar Two Directive in Budget 2024, to meet the domestic implementation deadline of 31 December 2023.
- The ongoing work on the various EU taxation measures currently underway (eg, Unshell Directive, BEFIT). In this context, the TSG Paper notes Ireland's continued position that matters of direct taxation remain a Member State competence under the treaties.
- Confirmation that the Advocate General's position on the Apple State Aid case is due to be delivered on 9 November 2023, noting that it is not possible to give a date for the determination.
- Confirmation that work continues in relation to the move to a territorial tax regime. The TSG Paper flags a number of different items that will be key considerations in this workstream, including CFCs, anti-hybrids and rules on franked investment income.

The [TSG Paper on stamp duty](#) confirms that a review is underway in respect of the concession from Irish stamp duty, granted in respect of shares in Irish incorporated companies traded by way of book entry transfer in US stock exchanges, with a view to putting this practice on a statutory footing. The paper notes that this could be achieved by an amendment to section 90 of the Stamp Duties Consolidation Act.

OECD Publishes Outcome Statement on Two-Pillar Solution

The OECD has agreed an [Outcome Statement](#) summarising the package of deliverables developed by the Inclusive Framework to address the remaining elements of the Two-Pillar solution. The Outcome Statement discusses the following elements in particular:

- A multilateral convention on Amount A of Pillar One. The statement notes that the convention will be opened in the second half of 2023 and a signing ceremony will be organised by year end, with the objective of enabling it to enter into force in 2025. The statement also notes that members of the Inclusive Framework have agreed to refrain from imposing newly enacted DSTs, or relevant similar measures, on any company between 1 January 2024 and the earlier of 31 December 2024, or the entry into force of the convention.
- Amount B of Pillar One. In this respect, the OECD has launched a [public consultation](#) outlining the design elements of Amount B and seeking input from stakeholders by 1 September on the technical aspects of Amount B; and
- The Subject to Tax Rule (“**STTR**”). The statement notes that the Inclusive Framework has completed and delivered (i) an STTR model provision and commentary and (ii) a multilateral instrument, together with an explanatory statement, to facilitate the implementation of the STTR.

Publications

CJEU's decision on 'Fixed Establishment' for VAT purposes

On 29 June 2023, the Court of Justice of the European Union published its judgment in the case C-232/22 (*Cabot Plastics Belgium*). The fundamental issue in this case was whether the resources of a Belgian toll manufacturer constituted a VAT Fixed Establishment for its Swiss principal. In this [article](#), we look at some of the key takeaways from the court's decision.

InDisputes: Revenue Hedging Bets with Double Assessments

The Tax Appeals Commission recently considered a case where Irish Revenue raised assessments to capital gains tax and income tax on the same transaction. In this [article](#), we discuss the background of the case, and consider the determination and key takeaways.

Irish Tax Review article: The Taxation of Certain Compensatory Payments to Employees

In this [article](#), we discuss the taxation of certain compensatory payments which can be provided to an employee on the termination of an employment. The key point of discussion in the article is the interaction between section 123 TCA (a broad charging provision which can apply to ex-gratia payments made on the termination of an employment) and certain other provisions of the tax legislation (eg, section 192A TCA and section 613 TCA) that can fully relieve “compensatory payments” made by an employer to an employee.