MAPLES GROUP

UPDATE

Irish Finance (No.2) Act – Implications for International and Irish Business

What You Need to Know

The Irish Finance (No.2) Act (the "Act") was signed into law on 18 December 2023. The Act gives effect to the tax changes outlined in Budget 2024.

This summary highlights the most significant changes for Irish and international investors, corporates and financial institutions in the following areas:

a) Implementation of the EU Global Minimum Tax Directive
b) Outbound Payments to Zero Tax Jurisdictions
c) Employers and Investors
d) Leasing and Finance Companies
e) Property Related Changes / Real Estate
f) VAT and Stamp Duty
g) EU Directives on Administrative Co-operation

Implementation of the EU Global Minimum Tax Directive

The transposition of the EU Global Minimum Tax Directive (the "Directive") into Irish domestic law is the landmark change in the Act. The Directive implements the OECD model Global Anti-Base Erosion ("GloBE") rules on minimum taxation. The aim is to ensure that multinational and domestic groups with more than EUR750 million of annual consolidated revenue pay an effective rate of tax of at least 15% in each jurisdiction where they operate.

The GloBE rules primarily operate through three new 'top-up' taxes:

a) The income inclusion rule ("IIR") is a top-up tax levied on parent entities in respect of their own low-taxed income or the low-taxed income of their subsidiaries. This is effective from 31 December 2023.

b) The undertaxed profits rule ("UTPR") which imposes tax on affiliate companies if the parent is not subject to an IIR in another jurisdiction. This will, in most cases, apply from 31 December 2024.

c) The qualified domestic top-up tax ("QDTT") which raises the effective rate of tax for the constituent entities in a group to at least 15%. This allows a jurisdiction to collect tax that another jurisdiction might have otherwise collected under the IIR. The QDTT applies from 31 December 2023.

In order to determine whether an entity or group is within the scope of the rules, the GloBE rules require an analysis as to what entities are or would be included in consolidated financial statements. Therefore, the accounting position is of primary significance.

Where a group is below the EUR750 million revenue threshold, the group will be outside the scope of the rules and there will be no change in the tax paid on its Irish profits. Ireland's long standing 12.5% trading tax rate will remain applicable.

The rules contain several exemptions for investment structures. There is a full exclusion for an 'investment fund' that is an 'ultimate parent entity'. In addition, an entity that meets the definition of an 'investment entity' is not required

to apply the IIR, the UTPR or the QDTT. Those exemptions are intended to apply to most widely held investment funds and their wholly-owned subsidiaries. However, the definition can be complex and eligibility for these exemptions needs to be considered on a case-by-case basis.

The application of the tests to international capital markets transactions involving Irish section 110 companies deserve particular attention. Such entities are typically structured to be bankruptcy remote with shares being held by a share trustee and this will be significant in how the rules are applied.

Entities that are within scope of the GloBE rules will need to register with Irish Revenue and file an annual GloBE information return. The return requires detailed information for each group member, covering all aspects of the GloBE Rules. The reporting obligations will involve the allocation of significant resources by taxpayers and will require planning well in advance of any deadlines.

Outbound Payments to Zero Tax Jurisdictions

The Act introduces new Irish withholding tax measures on payments of dividends, royalties and interest payments to zero tax jurisdictions or EU non-cooperative jurisdictions. The measures only apply to payments by companies to associated entities. The provisions should not impact Irish investment funds or capital markets transactions.

Entities are associated by virtue of one entity having control of the other, by two or more entities being under the control of the same entity or by one entity having 'definite influence' in the management of another entity.

There are a number of exceptions which restrict the scope of the provisions. Payments to tax transparent entities, or other conduit entities, should not be impacted provided the ultimate recipient of the payment is not in a specified jurisdiction. In relation to interest withholding tax, payments on listed and cleared debt should not be impacted. Irish dividends should also not be impacted where the underlying income giving rise to the dividend has been taxed.

These rules apply from 1 April 2024. There is limited grandfathering for arrangements in place before 19 October 2023, which will not be impacted until 1 January 2025.

Employers and Investors

Employee Options

From 1 January 2024, employers will have an obligation to account for payroll taxes on the exercise of employee share options. Previously, the obligation to account for tax lay with the employee under the self-assessment system. This is a significant change which requires employers to review the terms of their option schemes and establish systems to ensure the tax is accounted for directly.

EIIS

The Act amends the Employment Investment Incentive Scheme ("EIIS") to increase the amount of relief that an investor can claim for such investments, from the current limit of EUR250,000 to EUR500,000 per year.

The rate of relief given will no longer be a standard rate of 40%. From 2024, varying rates will apply, ranging from 20% to 50%. The basis upon which the company seeking investment is eligible for relief and the means of investment, i.e. whether it is direct or made through a qualifying investment fund, will determine the rate of relief applicable. This will add an additional layer of complexity to the operation of the scheme, both for companies preparing their business plans and investors seeking to optimise their investment strategies.

Angel Investors

The Act contains a new highly targeted capital gains tax reduction for 'Angel Investors'. It applies to those who invest in unlisted innovative

companies. The relief, which requires a commencement order from the Minister for Finance, requires pre-certification from the Revenue Commissioners. It reduces the rate of capital gains tax to 16%, or 18% in the case of investments made by partnerships. The relief is relatively restricted and has a lifetime limit of EUR3 million.

Keen observers will note that Ireland will soon have several targeted capital gains tax rate reductions, covering entrepreneurs, angel investors and private equity investors. At some point the argument that the headline rate of capital gains tax (currently 33%) should simply be reduced may gain political traction.

R&D Tax Credit Amendments

There was an increase in the headline rate of the R&D credit from 25% to 30%. The increase is intended to maintain the existing net benefit of the credit for companies in the scope of the new 15% minimum tax rules. Smaller companies outside the scope of those rules will see real benefit from the increased credit. This aspect of Irish tax policy is likely to continue to evolve in response to the GLoBE rules

There is an increase in the first-year payment threshold, which will provide a cash flow support for smaller companies.

Leasing and Finance Companies

There are a number of technical changes to the taxation of leasing activity, including aircraft leasing which is of course a very large sector in Ireland. The general aim of those amendments is to move away from a concessional or practice based approach and to put the treatment on a statutory footing.

The first amendment relates to the computation of profits for both a lessor and lessee, requiring the full amount of the lease payments to be recognised in the tax computations and to be spread evenly over the full term of the lease. This treatment is applicable irrespective of how the arrangement is recognised for accounting purposes.

The second amendment grants a lessee an ability to claim capital allowances on leased assets in certain circumstances and a further amendment is included which adjusts the balancing allowance and charge treatment in the context of leased assets.

Changes to lease ring-fencing provisions, the disposal of leased assets and disclosure requirements have also been included in the Act.

Interest Deductibility for Qualifying Finance Companies

The Act introduces a new concept of a "qualifying financing company" and provides for deductibility of interest payable to a third party or unconnected lender. A qualifying finance company is one which owns 75% or more of one or more qualifying subsidiaries which the qualifying finance company finances by way of third party debt. The qualifying subsidiary must be tax resident in an EU or EEA member state and must carry on trading activities.

Property Related Changes / Real Estate

Non-resident Landlord Withholding Tax

The Taxes Consolidation Act 1997 contains administrative provisions to ensure that tax is collected on rent paid to non-resident lessors. Currently, a lessee of Irish land is required to withhold 20% of rental payments. If an Irish collection agent has been appointed by the lessor, the collection agent is either liable for tax on the rent or, since 1 July 2023, can withhold 20% of the rent and pay it to Revenue.

The Act contains a remedial amendment to clarify that where a lessor has appointed an Irish collection agent, the lessee has no withholding obligations in respect of the rent.

Property Taxes

The rate of the Vacant Homes Tax has been increased from three times the basic local property tax (LPT) rate to five times that rate.

The Act effectively defers the application of the Residential Zoned Land Tax charge by another year to allow greater time for input in the mapping process which underpins the taxation.

Relief for Certain Disposals of Land or Buildings

The Act contains an interesting amendment to the capital gains tax exemption for land contained in section 604A of the Taxes Consolidation Act, 1997 (the "TCA").

The Act clarifies that the provisions of section 604A do not apply to transactions which are 'deemed' to be for market value in any other provisions within the TCA. This relief only applies to properties that were purchased at market value. The change appears to be intended to prevent certain intra-group, or inter-family transactions benefitting. The change is purported to be retrospective such that it applies to disposals made on or after 1 January 2018.

VAT and Stamp Duty

VAT

There were limited VAT changes. The registration thresholds were increased slightly. This will assist smaller businesses to remain out of the VAT administration net.

Stamp Duty

The Act creates legislation around the stamp duty position of electronic transfers of shares listed on US and Canadian markets. This codifies prior Revenue practice around Irish companies which were listed in North America and whose shares were traded through the Depositary Trust Company.

EU Directives on Administrative Co-Operation

EU DAC6

The Bill introduces some changes to the DAC6 rules. DAC6 is the EU's mandatory disclosure regime for cross-border tax arrangements. The changes clarify the powers available to Revenue to investigate the accuracy of DAC6 returns.

EU DAC7

A new section 891L is introduced to the Taxes Consolidation Act which gives effect to the provisions contained in DAC7 allowing for the conduct of joint audits by Member State tax authorities.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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