

Ireland and the Long Reach of EU Taxation

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The influence of the EU in Ireland's tax affairs is growing, with more measures and complexities coming down the tracks

Lorraine Courtney, Reporter for the Business Post interviewing Andrew Quinn, head of tax, Maples and Calder, the Maples Group's law firm

The EU has become a key driver of change in terms of Irish and international tax, said Andrew Quinn, Dublin head of tax at Maples and Calder, the Maples Group's law firm.

"Irish companies are facing significant new EU-led tax legislation and rules," said Quinn. "It is a stark contrast from a few years ago when the EU had a much more limited role in tax matters."

While we have already come through a period of significant changes, there are more to come. "The tax environment that companies are operating in is becoming increasingly complex," said Quinn. "There are many new EU tax measures coming down the tracks. In fact, I expect that from this point onwards, Ireland will be seeing annual EU tax changes to give effect, for example, to OECD tax measures and green tax initiatives.

"The Apple case is the most obvious example of the EU's influence and the first time it came onto the public's radar generally," said Quinn. The European Commission ruled in August 2016 that Apple had received unfair tax incentives from the Irish government under so called State Aid rules. Both Apple and the Irish State appealed against the original ruling, saying the iPhone maker's tax treatment was in line with Irish and EU law.

We are also in the middle of implementing the EU Anti-Tax Avoidance Directive (ATAD) – an anti-tax avoidance project that has been agreed by OECD countries. ATAD sets out several action points, and within the EU it was felt that this should be done in a coordinated way. "The directive is now being implemented right across the EU, including Ireland," said Quinn. "The Finance Bill 2019 contains some measures in this regard, and more will follow in the next year. With an EU directive it has force of law, rather than just being a cooperative project as it is outside the EU, so it is very important that member states implement it properly."

The EU is also updating its whistleblower legislation. “They have included protections for employees if they report an arrangement of the employer whose purpose is to obtain a ‘tax advantage’,” said Quinn. “This is extremely broad and shows the reach the EU now have in terms of taxation.”

Another big story for Ireland is the potential new global minimum tax – GloBE. This is based on something that the US implemented under Trump – a minimum tax on “global intangible low-taxed income” (GILTI) that requires US companies pay tax wherever they set up. For example, if a US company has a subsidiary here in Ireland, the income will be taxed in the US. This has led to GloBE.

“It will require big companies to pay a certain amount of tax, through different measures, wherever they set up,” said Quinn. The background is that countries like Germany and France saw US GILTI and said, ‘We’d like to introduce that’. The rate hasn’t been set yet, but the process is moving forward quite quickly. The Department of Finance is very conscious of the next phase and Ireland will have to monitor the situation and ensure it stays competitive.

There will be new reporting and transparency obligations for advisers and companies under DAC6 – the EU directive on cross-border tax arrangements, intended to increase transparency and fairness in taxation through new reporting obligations. “DAC6 is significant because of the amount of information which will need to be passed on to authorities starting in 2020,” said Quinn. “Under the directive, advisers and companies will have to report transactions in a new way.

“Ireland is now sitting at the top table internationally,” said Quinn. “The huge increase in corporation tax revenues show that Ireland plays a major role as a location for international business. Our authorities have done well in adapting to changes as they have come in and ensuring that we have a sustainable corporation tax offering. But we are living in a very competitive and very closely monitored world.”

The pace of change has been very rapid. “Governments around the world used to be very conservative about changing tax rules but over the past five years there have been very significant changes for companies to absorb and that we have to advise our clients on,” said Quinn.

The Maples Group has recently been recognised by Bloomberg Tax as 2019 International Tax Author of the Year.

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