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Global Tax Alert

Ireland publishes updated Corporation Tax Roadmap

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Executive summary

On 14 January 2021, the Irish Minister for Finance Paschal Donohoe published an update to Ireland's Corporation Tax Roadmap (the Roadmap) which serves to give investors a signal of Ireland's future policy intent and sets out timelines for action. The Roadmap builds on the original publication of September 2018, the purpose of which was to provide a clear indication of the actions that Ireland would take to ensure that its corporation tax code remained competitive, fair and sustainable.

This update provides an opportunity to reflect on the significant actions which Ireland has taken to date; it considers ongoing global tax reform and Ireland's future tax policy intent, while also setting out timelines for the next steps in the ongoing process of modernizing and strengthening Ireland's corporation tax code. The Minister notes that as the outcome of tax reforms become clearer, all countries – including Ireland – will need to assess the compatibility of their tax systems with new global norms. In this context the Minister outlines Ireland's commitment to ensuring that its corporation tax code remains "competitive, fair and sustainable."

The Roadmap focuses on:

- How Ireland has met its tax reform commitments under the 2018 Roadmap

Building a better working world

- Ongoing international tax reform (at the European Union (EU) and Organisation for Economic Co-operation and Development (OECD) level)
- The future direction for Irish corporation tax strategy

While the Roadmap includes a progress summary of actions taken by Ireland to date to meet the 2018 Roadmap commitments (commitments 1, 3 and 4 below remain actions to be taken by Ireland from the 2018 publication), this Alert focuses on the future commitments outlined in the Roadmap.

Detailed discussion

Ministerial foreword

In his foreword, Minister Donohoe reiterates Ireland's commitment to the 12.5% corporation tax rate. He outlines:

> *My commitment, and that of the Irish Government, remains clear – we will be proactive in ensuring that Ireland's corporation tax regime will remain competitive, fair and sustainable with the 12.5% rate at its core.*

The Minister comments on the importance of certainty for businesses stating, "I am a firm believer in certainty and the importance of certainty for business." He notes that the Roadmap reflects Ireland's long-standing approach to provide certainty in how changes are made to Irish tax legislation. He also states that "Ireland always looks to the future and makes changes prospectively and consults with stakeholders where possible to ensure reforms are well-designed and sustainable."

Aside from tax-related commitments, the Minister also notes his commitment to ensuring Ireland plays to its "traditional strengths including a forward-looking business environment, a whole-of-Government approach to ensure we remain agile and competitive, and importantly recognising the value of an educated and dynamic workforce."

The Minister also acknowledges the role that multinational companies (MNCs) have had as significant employers and as contributors to the Exchequer and how Ireland's corporation tax strategy has supported "an attractive, open and competitive jurisdiction that can provide both foreign and domestically-grown businesses with a gateway to the EU and global marketplaces." The Minister references the role played by Irish producers and exporters of medical devices and pharmaceuticals in the fight against COVID-19 underlining the substance and real activity of Irish enterprises and the role of Ireland's corporation tax strategy in supporting Ireland as a gateway location to EU and global markets.

Key commitments and timelines

The Roadmap sets out Ireland's key commitments to further action and a timeline for same. Commitments 1-5 are pre-existing while 6-12 are further commitments to action for consultation and consideration.

The commitments and timelines are as follows:

Commitment reference	Commitment topic	Expected timeline
1	Interest limitation rules	Consultation: Two-phased approach throughout 2021 Effective date of legislation: 1 January 2022
2	Reverse hybrid rules	Consultation: Q1 2021 Effective date of legislation: 1 January 2022
3	Possibility of moving to a territorial tax regime	Consultation to be launched in 2021
4	Progress the International Mutual Assistance Bill	Early 2021

Commitment reference	Commitment topic	Expected timeline
5	Apply defensive measures in controlled foreign company (CFC) regime to countries on EU Member States' list of non-cooperative jurisdictions (the EU Non-Cooperative list)	*Finance Act 2020*
6 and 7	Consider the appropriateness of additional defensive measures for countries on the EU Non-Cooperative list and, if necessary, other outbound payments	Finance Bill 2021[1]
8	Adopt the Authorized OECD Approach for transfer pricing of branches	Finance Bill 2021
9	Continue to meet international best practices on exchange of information and support efforts to enhance information exchange	Ongoing
10	Proactively respond to the outcomes of international reform efforts	Ongoing
11	Publish a tax treaty Policy Statement taking account of international developments	Prior to end of 2021
12	Continued engagement in international fora and develop a new framework for domestic stakeholder engagement	Ongoing/Prior to end of 2021

A more detailed discussion follows on each of these commitments.

1. Introduce ATAD-compliant interest limitation rules

The EU Anti-Tax Avoidance Directive (ATAD) requires Member States to implement an interest limitation ratio, designed to limit the ability of entities to deduct net borrowing costs in a given year to a maximum of 30% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA).

Ireland had asserted that its existing interest rules were at least equally effective as the ATAD interest rules and consequently Ireland had sought a derogation of the ATAD rules until January 2024. The European Commission took infringement proceedings against Ireland and issued a reasoned opinion in November 2019. The Roadmap notes that this is 1 of 20 infringement proceedings against various Member States pertaining to the transposition of ATAD.

The importance of engagement with businesses and advisors during the drafting process of the interest limitation rules is highlighted "to avoid undue complexity and unintended consequences with this measure."

Due to the complexity of the ATAD interest limitation rules and their interaction with domestic legislation, a two-stage approach to the development of this measure is being taken. It is intended first to develop a robust legislative approach to the operation of the rules, including carryforward provisions, on a single company basis, and this is the focus of the first Feedback Statement,[2] published on 23 December 2020. When the framework of the interest limitation and carryforward on a single company basis is firmly established, legislative approaches will then be developed to consider the notional local group and group ratio options.

The closing date for receipt of submissions is Monday 8 March 2021. EY is actively engaged in this consultation process.

The rules are expected to be effective from 1 January 2022.

2. Legislate for reverse hybrids aspect of ATAD anti-hybrid rules

ATAD requires that a reverse hybrid entity be regarded as resident in a relevant Member State and taxed on its income to the extent that it is not otherwise taxed under the laws of a Member State or any other jurisdiction. A consultation paper is to be published in Q1 2021 followed by a Feedback Statement by mid-2021. It is expected that the legislation will be effective from 1 January 2022.

3. Consultation on possibility of moving to a territorial tax regime

The Roadmap outlines that a public consultation was due to take place in 2019 on potentially moving to a territorial tax regime however this was put on hold until there was "greater certainty around the international taxation environment." The Roadmap notes that there is now a sufficient level of detail published and it is planned to hold a consultation on this topic in 2021. Irish-parented groups and other taxpayers with Irish holding companies in their structure will be pleased with the progress on this topic as territoriality may simplify the Irish tax code.

4. Progress the International Mutual Assistance Bill

The Roadmap notes that The Taxation and Certain Other Matters (International Mutual Assistance) Bill "will facilitate the full ratification of the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters" (the Convention). The OECD outline that the Convention "provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes" and that "co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims."

The Roadmap outlines that "work is ongoing on finalising the drafting of this Bill with the objective of publishing the Bill in the coming weeks", with the Bill progressing through the legislative approval process in early 2021.

5. Apply defensive measures in CFC regime to countries on the EU Non-Cooperative list[3]

EU Member States have agreed defensive measures to be taken against jurisdictions on the EU's Non-Cooperative list, namely: the non-deductibility of costs; withholding tax measures; enhancing CFC rules; and the limitation of participation exemptions on distributions of profit. Measures were introduced in *Finance Act 2020* which provide that certain exemptions from Ireland's CFC rules will not be available to a CFC resident in a country on the EU Non-Cooperative list.

6 and 7. Consider additional defensive measures for EU Non-Cooperative listed countries as well to other payments from Ireland

In addition to defensive measures introduced in *Finance Act 2020*, it is proposed that a consultation be held with regard to introducing further measures, if deemed necessary, for "material payments" made from Ireland to EU Non-Cooperative listed jurisdictions. A consultation will be launched in early 2021 with the "objective of considering the introduction of appropriate measures in Finance Bill 2021."

As part of this review, it is proposed to also examine outbound payments from Ireland and withholding taxes in response to issues raised in the European Semester Process and in the Country Specific Recommendations published on 20 May 2020. The EU suggests Ireland acts to "address features of the tax system that facilitate aggressive tax planning." The Roadmap notes that the matters raised by the EU largely relate to historical issues which have largely been remedied by US tax reform.

8. Adopt the Authorized OECD Approach for transfer pricing of branches

Ireland's transfer pricing rules have changed significantly in recent years. It is now proposed to extend transfer pricing rules to the taxation of branches in Ireland in line with the Authorized OECD Approach. It is expected that this legislation will be included in Finance Bill 2021.

9. Continue to meet international best practices on exchange of information and support efforts to enhance information exchange

The Roadmap notes how Ireland has been at the forefront of developing and implementing the latest standards for exchange of information among tax authorities. It also notes that Ireland remains committed to the highest international best practice standards developed by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The Roadmap references how Ireland has been proactive "at the OECD in shaping the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy" that will bring the gig economy within the scope of Automatic Exchange of Information. It is noted that this work paved the way for the EU's 7th Directive on Administrative Cooperation (DAC7) which "aims to ensure that revenues earned through platforms are transparent and to ensure a level playing field for traditional operators."

Furthermore, it is outlined that Ireland is committed to contributing to the development of new reporting rules for crypto-assets and e-Money to complement the Common Reporting Standard and will feed into a European Commission proposal in this area (DAC8). This proposal is expected towards the end of 2021.

10. Proactively respond to the outcomes of international reform efforts

The Roadmap outlines that it is hoped that "successful agreement at the OECD and implementation of measures can lead to a period of stability after a decade of constant change." With respect to future policy, the Roadmap expresses the need to have a dual focus for "both ensuring compliance with new and emerging global standards and also ensuring Ireland's system remains highly competitive for real and substantial investment." It is outlined that this can be achieved by Ireland taking a proactive, consultative approach in ensuring Ireland's corporation tax system is well-placed for the changing environment. The statement on a proactive and consultative approach is a welcome signal of Ireland's policy intent.

11. Publish a tax treaty Policy Statement taking account of international developments

The Roadmap outlines that a Policy Statement on Ireland's tax treaties will be published before the end of 2021. It is noted that this document will have particular emphasis on tax treaties with developing countries.

12. Continued engagement in international fora and develop a new framework for domestic stakeholder engagement

The Roadmap outlines the importance of continued engagement with both international and domestic stakeholders. It is noted that details on a formalized annual stakeholder engagement process is to be published in early 2021.

Ongoing International Tax reform (at the EU and OECD level)

The Roadmap notes that the current international tax landscape remains in flux with significant workstreams underway at an OECD and an EU level. The OECD work is divided into two "Pillars" and it is noted that "technical work has advanced on both pillars."

Pillar 1 is concerned with revised nexus and profit allocation rules focusing on the distribution of taxing rights in respect of highly digitalized and consumer facing activities. Pillar One seeks to amend existing rules with the primary objective of increasing the profits subject to tax in market jurisdictions. The Roadmap comments that "key policy choices remain undecided" with respect to Pillar One including the quantum of tax to be re-allocated to the jurisdiction of the user or customer.

Pillar 2 is effectively focused on a global minimum tax. The Inclusive Framework reports contain a series of rules that could apply in situations where a company pays an effective rate of tax below a set level. The Roadmap highlights that the rate of appropriate minimum tax rate has not yet been formally discussed by the Inclusive Framework and that other issues may potentially arise with respect of the compatibility of existing country regimes with any Pillar Two outcome. Although not explicitly cited, the operation of the United States' (US) global intangible low-taxed income low (GILTI) rules is understood to be one such compatibility issue.

Ireland continues to favor a multilateral approach to sustainable tax reform to avoid a "patchwork of region or unilateral measures" which would not be conducive to a positive business environment. In his foreword, the Minister notes the current uncertain position of the global tax landscape outlining that, in particular, any outcome of the OECD/G20 Inclusive Framework should be balanced and acceptable to all countries, small and large, developed and developing.

Continuing on this theme, and with regard to tax reform at the EU, the Roadmap remarks that Ireland continues to believe that any action at the EU level must be consistent with Inclusive Framework agreements and "must give sufficient time for the work of the Inclusive Framework to reach a successful conclusion." This is likely a reference to proposals being mooted by various EU Commissioners with respect to an EU minimum tax directive and an EU digital tax.

The Roadmap notes that the Common Consolidated Corporate Tax Base proposal remain under discussion albeit with limited momentum. It outlines that "Ireland continues to believe that the work at the Inclusive Framework on realigning taxing rights globally remains a more appropriate approach to corporation tax reform."

In July 2020, the European Commission adopted a new Tax Package which includes two Communications on tax issues. The Communication on an Action plan for Fair and Simple Taxation Supporting the Recovery Strategy includes 25 initiatives to be rolled out over the next three years. The initiatives range from actions that focus on the need to remove tax obstacles and administrative burdens to proposed initiatives to improve compliance, improve the use of data and promote taxpayer's rights. The package also included the DAC7 (commitment 9 above refers).

The Roadmap notes a desire at the European level, but only in certain instances, to agree tax files using qualified majority voting. It also notes that Ireland "has grave concerns about any proposals which may seek to undermine the requirement for unanimity on tax issues." Against the backdrop of the "achievements under the last Commission and the unprecedented number of EU Directives agreed in recent years," the Roadmap highlights that "unanimity has not been an obstacle to very significant tax reform at European level."

With respect to the second Communication contained in the Tax Package, the Roadmap outlines the Commission's intentions to enhance transparent and fair taxation in the EU and worldwide. It is noted that Ireland will constructively engage with any proposals in this regard.

Next steps

The Roadmap provides further clarity to the timing of the introduction of changes to the Irish corporation tax code and most observers will note that there are much fewer revenue raising provisions relative to the 2018 Roadmap. The Roadmap should allow MNCs' to update their impact assessments and provides a clear timeline for consideration of possible responses to those changes.

EY will be active participants in the consultation processes signaled above and will work with our clients, Government and other stakeholders on these important issues.

Endnotes

1. It is expected that Finance Bill 2021 will be published in late October 2021.
2. A Feedback Statement is a publication issued by the Department of Finance which typically sets out a proposed draft legislative approach to new legislation or updates to existing tax law. The proposed approach is then considered by relevant stakeholders to identify any uncertainties or unintended consequences that need to be resolved. Feedback Statements routinely invite interested stakeholders to give their views and suggest alternative approaches.
3. As at the time of writing this Alert, the EU Non-Cooperative list includes 12 countries, namely: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

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