23 July 2019

Global Tax Alert

# Ireland publishes Tax Strategy Group papers – Budget 2020

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## Executive summary

On 17 July 2019, Ireland's Department of Finance published the Tax Strategy Group (TSG) papers in respect of Budget 2020. The TSG papers are used by the Department to brief stakeholders on the key policy considerations involved in framing the Budget. The Budget 2020 speech will be delivered by the Minister for Finance to the Irish Parliament on 8 October 2019, with implementing legislation to be introduced as the Finance Bill in the weeks following that speech with enactment complete by the end of the calendar year.

The TSG papers are a regular fixture in Ireland's budgetary cycle and offer valuable insight into the perspective of policymakers. This year's TSG papers are particularly interesting from an international tax perspective as they contain:

- A much-anticipated summary of Ireland's progress on implementing international tax reform (the "Corporation Tax Roadmap," Base Erosion and Profit Shifting (BEPS), and the European Union (EU) Anti-Tax Avoidance Directive (ATAD), among others)
- An outline of Ireland's perspective on other international tax reform matters, e.g., taxation of digital activities and the work done[1] under the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on BEPS (BEPS 2.0)
- A discussion of other reforms ongoing in the Irish domestic arena, including the research and development (R&D) Tax Credit, the Tax Appeals Commission and the tax implications for the issuers of Additional Tier 1 Capital

Building a better working world

The TSG paper on corporation tax opens by stating:

> *Ireland's corporation tax regime is a core part of our economic policy mix and is a long-standing anchor of our offering on foreign direct investment (FDI). The 12.5% rate, which applies to a broad base, is internationally competitive and is notable for its long term stability. Certainty, transparency and a commitment to open engagement with stakeholders are cornerstones of the corporate tax regime.*

This Alerts summarizes the key international tax and corporate measures outlined in the TSG.

# Detailed discussion

## Progress on corporation tax roadmap

The Corporation tax roadmap is an Irish Government policy document issued in September 2018, setting out Ireland's key commitments to reform of its international tax rules. The TSG papers summarize progress against these commitments as follows:

Completed commitments:

| Topic | Completion |
|---|---|
| Controlled foreign corporation (CFC) rules | In force since January 2019[2] |
| Ratification of BEPS Multilateral Instrument | Ratified in January 2019[3] |
| Exit tax | In force since October 2018 |
| Dispute Resolution Mechanism Directive | Implemented June 2019 |

Commitments requiring future action:

| Topic | Timing commitment and comment | Next step |
|---|---|---|
| Interest limitation rules | These were originally planned to come into effect in Ireland from January 2024. No explicit statement has been made about an effective date, but work is under way to have the legislation on the statute book from an earlier date. | Timeline for drafting legislation is expected to be determined by the end of July 2019. |
| Anti-hybrid rules | These are to take effect from January 2020. | A feedback statement summarizing the consultation responses and major policy choices was published by the Government on 22 July 2019. |
| Update of transfer pricing rules | This will include implementation of BEPS Actions 8 – 10, giving statutory effect to the OECD Transfer Pricing Guidelines 2017. Although not explicitly stated in the TSG papers, this is also expected to include some form of extension of transfer pricing rules to non-trading transactions. | A feedback statement is to be published "during the Summer." |
| Consideration of territorial regime | Originally a consultation was planned for early 2019. This has now been deferred *until there is greater certainty around the international taxation environment*. | No indication of timing for next steps. |
| DAC6 (Mandatory Disclosure Regime) | Legislation to be included in Finance Bill 2019 for implementation in January 2020. | Finance Bill 2019 is likely to be published in late October 2019. |

Detailed alerts will follow in the coming weeks covering the Department of Finance publication of the feedback statements on Anti-hybrid rules and transfer pricing, and perhaps further information on the interest limitation rule. Meanwhile Irish parented groups and other taxpayers using Ireland as a holding company jurisdiction will be disappointed at the backsliding on a territorial regime.

## Other international tax reform matters

### "Permanent establishment" definition for commissionaires

The TSG papers contain an interesting discussion of Ireland's position on this topic. Briefly, this was not a "minimum standard" of the BEPS project, and Ireland was among the many countries that opted out of adopting Article 12 of the Multilateral Instrument.

With an eye on the future the TSG papers state that while Ireland has no intention to adopt Article 12, it will keep the position under review, noting that the BEPS 2.0 process may in any event lead to further changes to the definition of permanent establishment.

### OECD work and BEPS 2.0

The OECD work is divided into two Pillars. Pillar 1 is concerned with revised nexus and profit allocation rules. Although not explicitly stated in the TSG papers, Ireland has consistently taken the position that the OECD is the appropriate forum to develop consensus around a new framework and to avoid unilateral approaches. After a brief summary of the state of play at the OECD, the TSG papers then outline a statement by the Minister for Finance as to the criteria that any agreed outcome must meet, as follows:

- *Follow the well-established principle of aligning taxing rights with value creation*
- *Be modest and appropriately targeted to cause as little disruption to the long established international corporate tax framework*
- *Be based, to the greatest extent possible, on existing transfer pricing rules which are deeply embedded in the international tax framework*
- *Ensure that the bulk of profits remain taxable in exporting countries under the existing corporate tax framework. This can help to ensure that such countries are not disproportionately impacted*
- *Do not disproportionately benefit large countries at the expense of smaller ones*
- *Be focused on providing certainty in the medium term for governments and for business*

Pillar 2 is effectively about some form of global minimum tax rules. On this proposal the Minister in the same speech stated that this Pillar is problematic, "not least because of a lack of clarity as to what its proponents are trying to achieve."

Ireland remains an active participant in technical working parties on both pillars.

### EU – Digital Services Tax

The TSG papers take note that the EU Finance Ministers will discuss OECD work "with a view to identifying any common perspectives."

### EU – Common Consolidated Corporate Tax Base (CCCTB)

The TSG papers take note that technical work continues on this and that Ireland is engaging constructively, while critically examining the proposal and whether it is in Ireland's interest. They also note that unanimity will be required to introduce this proposal.

### EU – Non-cooperative jurisdictions

This is called out as successful in encouraging tax reform in such jurisdictions. The TSG papers note that "Discussions … continue in respect of whether defensive measures are necessary in respect of countries that fail to take action and remain on the EU list."

## Other reforms in the domestic tax arena

### R&D Tax Credit

A review of this regime is under way. It is clear that some enhancements are contemplated, largely focused on making the incentive suitable for small and medium enterprises.

### Tax Appeals Commission (TAC)

Some technical changes are being contemplated to expedite the progress of the Commission in addressing a backlog of tax appeals. These will likely appear in the Finance Bill 2019. The areas under consideration are:

- Publication of some determinations without redaction. TAC hearings are held in camera, but some of the determinations are published in a redacted form where they have precedential value. The redaction process imposes a significant work burden on the TAC, which may not make sense in cases where the facts are to become public anyway. Work is under way to see how the TAC workload may be lessened without compromising confidentiality.
- Clarification of the status of Case Management Conferences and consequences of the failure of a party to appear.
- Interaction with Mutual Agreement Procedure cases and the need to reconcile the timing requirements of both procedures.

### Additional Tier 1 (AT1) Capital

This is a specialist topic of relevance to regulated financial institutions, for which Ireland has already legislated, although some technical amendments to the legislation are expected in Finance Bill 2019. There was also discussion as to whether a similar treatment ought to be afforded to other comparable contingent convertible securities with similar characteristics. The TSG papers conclude that such instruments (i.e., contingent convertible bonds other than AT1) are unlikely to feature in the Irish market and therefore the Irish authorities do not propose to enact legislation to address them.

## Next steps

EY will be actively monitoring developments in the coming months. Detailed alerts will follow as matters unfold.

## Endnotes

1. For example, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD*, 31 May 2019.
2. Final guidance from Irish Revenue is awaited, although this is not referred to in the TSG papers.
3. Now in force and effective for withholding tax matters from 1 January 2020 and other matters for taxable years beginning on or after 1 November 2019.

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EYG no. 003477-19Gbl

1508-1600216 NY
ED None



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