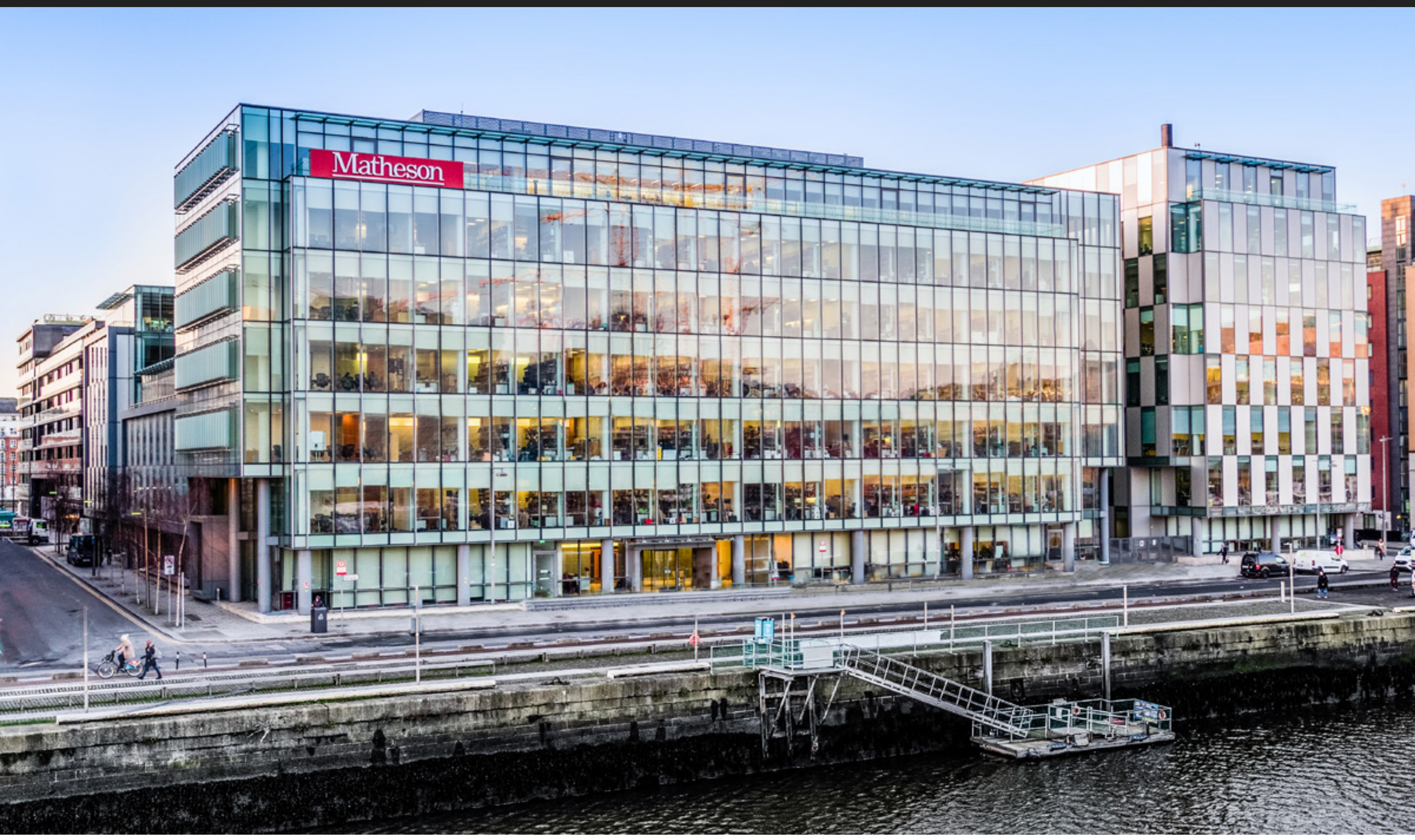
Tax Update

January 2024

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.



Tax

EU Tax Update - January Meeting of Ecofin

Belgium has taken over the EU Presidency which runs until June 2024. Given the upcoming European Parliament elections in June 2024, the current European Parliament will be dissolved in April. This means that the worktime for the Belgian Presidency on legislative matters will be compressed. With that in mind, the Belgian Presidency confirmed that their priorities in the area of tax will be to finalise the VAT in a Digital Age package ("**ViDA**"). ViDA comprises three elements:

i. a real-time VAT reporting system based on e-invoicing;

ii. a requirement for platform economy operators to provide information to tax authorities with respect to transactions facilitated on their platforms; and

iii. the introduction of a single VAT registration across the EU.

With respect to the first element, Ireland issued a public consultation on real-time VAT reporting in October 2023 which closed at the end of January 2024. Matheson participated in that consultation process and we are happy to share our views with you.

With respect to the second element, the new reporting obligations for platform economy operators were implemented into Irish law by the Finance Act 2022 and the first reporting obligation for digital platform operators was due to arise on 31 January 2024 in respect of the year 2023.

Discussions on the third element of the ViDA package (single EU VAT registration) are on-going at European level and both the Belgian Presidency and the Commission have confirmed that reaching agreement on that proposal is a key priority in their up-coming work.

Both the Belgian Presidency and the Commission noted that they were committed to implementing the OECD's Pillar One proposal by 1 January 2025. It's likely that we will see an EU Directive on Pillar One this year. However, given the on-going discussions at OECD level and the compressed timeline that the Belgian Presidency must work to, it seems unlikely that we will see significant progress in this respect in the first half of the year.

The Commission also noted the importance of reaching agreement on the so-called FASTER Directive which is intended to make withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries and Member State tax administrations.

Irish DAC7 Filing Deadline Deferred

On 31 January 2024, Revenue announced that the first DAC7 filing deadline for digital platform operators in Ireland would be deferred from 31 January 2024 to 7 February 2024.

EU FAQs on Pillar 2

On 22 December 2023, the Commission published non-binding FAQs concerning the interpretation of the EU Minimum Tax Directive (Council Directive 2022/2523), following discussions between the Commission and Member States. The FAQs provide guidance on Pillar 2, as well as clarification on EU specific direct tax considerations. The following points are of note:

- The treatment of financial instruments under the financial accounting standard used in the preparation of the Consolidated Financial Statement is decisive for the purpose of identifying an ownership interest, eg, preference shares that are accounted for as debt in the financial accounts should not be considered ownership interests.
- The method of allocation of QDMTT and UTPR is left to the discretion of the Member States.
- Covered Tax withheld with respect to interest payments would be allocated to the interest recipient, and Covered Tax withheld with respect to distributions should be allocated to the distributing entity.

The International Compliance Assurance Programme: Aggregated results and statistics

On 29 January 2024, the OECD released their International Compliance Assurance Programme ("**ICAP**") statistics up to October 2023.

ICAP is a voluntary programme for a multilateral coordinated risk assessment of an MNE's key international tax risks. There are currently 23 tax administrations participating in ICAP including the US, UK, France, Italy, Luxembourg, Netherlands, Spain and Ireland.

The following ICAP statistics are of note:

- 40% of the MNEs involved had low-risk assessments for all the main covered risk areas by all tax administrations that included them in the scope of the risk assessment. A transaction is considered to be low-risk where a tax administration does not anticipate that any further enquiries will be required for the periods covered by the risk assessment.
- Interestingly, in 32% of the cases where an issue was identified it was addressed within the ICAP process rather than on audit or through MAP.
- On average, cases took 61 weeks for the risk assessment to be issued (versus a target of 52 weeks).
- The risk of a permanent establishment received the highest proportion of low-risk assessments (considered low-risk in 95% of cases where the topic was included in the scope of a tax administration's risk assessment). Financing and intangible assets had the highest proportion of not low-risk outcomes, however, even in these areas 75% of the tax administrations issued low-risk assessments.
- The largest ICAP risk assessments to date involved nine tax administrations, while the smallest risk assessment involved three tax administrations.

The next ICAP application deadline is 31 March 2024.

Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements

Revenue has published an additional ebrief regarding updates to the enhanced reporting requirements ("**ERR**") Revenue manual, together with a FAQ document on ERR and practical guidance on how to make ERR filings. As noted in our previous update, Revenue has confirmed that a 'service for compliance approach' will be taken until 30 June 2024. Employers should use this time to ensure that they have the systems in place to allow full compliance with ERR by 30 June 2024. Revenue has also confirmed that they are running further webinars to assist employers with the ERR process. In addition, the Revenue TALC sub-group continues to meet on a monthly basis, and if you have any specific concerns / issues that you'd like raised at this group, please let us know.

Share-based Remuneration Consultation

As mentioned in our previous update, the Irish Department of Finance published a consultation document seeking stakeholder views on how the Irish tax regime applying to share-based remuneration can be improved. This consultation closed on 22 January 2024 and we provided input into the responses prepared by a number of different representative / industry bodies. Some of the key points that have been raised in the replies to the consultation process are as follows:

(a) It is important to preserve the exemption from employer PRSI on certain share-based remuneration as this represents a significant benefit of Ireland's current share-based remuneration regime, and is essential to help mitigate the high cost of employment in Ireland.

(b) There should be clear principle-based Revenue guidance on share valuations, including acceptable methodologies and safe harbours, to support companies that wish to use share-based remuneration. Currently, the lack of clear guidance on share valuations can influence the manner in which employers structure their share-based remuneration schemes.

(c) Revenue guidance on Restricted Stock Units ("**RSU**") confirms that where an RSU is share settled and an employee wishes to sell their shares to fund the income tax, USC and PRSI due, Revenue is prepared to delay the collection of tax, USC and PRSI until the date on which the shares are actually settled, provided that the settlement date is within 60 days of the vesting date. A similar approach should be adopted in the context of share options which are exercised but not necessarily settled in shares until a date post exercise (and perhaps a deadline extending further than 60 days may be appropriate in certain circumstances).

(d) Various specific amendments have been suggested in the context of a variety of incentives schemes, to include the KEEP Scheme, unapproved share option schemes, restricted share schemes, Approved Profit-Sharing Schemes and Save As You Earn schemes.

This Matheson LLP ("Matheson") material contains general information about Irish law and about our legal services. This material is not intended to provide, and does not constitute or comprise, legal advice on any particular matter and is provided for general information purposes only. You should not act or refrain from acting on the basis of any information contained in this material, without seeking appropriate legal or other professional advice.