

Tax Update

November 2023

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](#).



Horizon Tracker

The Matheson Horizon Tracker: Autumn 2023 has been issued and includes an overview of the main domestic and EU legislative developments of note. This edition, in addition to looking ahead to 2024, features a year in review, highlighting key Insights published across our various practice areas in 2023. It can be accessed [here](#).

OECD Publication of the Mutual Agreement Procedure Statistics for 2022

On 14 November 2023, the OECD published the [Mutual Agreement Procedure \(“MAP”\) statistics for 2022](#) and announced the competent authorities that are the winners of MAP [awards](#) for their performance in 2022. For the second year in a row, Ireland (together with both Denmark and Germany) won the “co-operation” category for having the most MAP cases fully resolved through agreement by a pair of jurisdictions in both the transfer pricing and non-transfer pricing categories.

The [OECD’s full statistical breakdown on Ireland](#) also reveals some interesting insights:

- Ireland has continued to resolve the majority of its MAP cases by agreement to fully eliminate double taxation. In 2022, the percentage of cases being resolved by agreement rose to 92% for transfer pricing cases and 89% for non-transfer pricing cases;
- No cases were denied MAP access in Ireland in 2022;
- There has been a decrease in the number of open MAP cases in Ireland. At the end of 2022, Ireland had 144 open MAP cases, 77 (53%) of which were transfer pricing cases. Interestingly, Ireland has now closed its final transfer pricing case which had begun prior to 1 January 2016; and
- There has been a significant decrease in the average time needed to close MAP cases in Ireland. However, transfer pricing cases still take significantly longer to resolve than non-transfer pricing cases, with the average closing time now at 24.6 months. In this regard, Ireland is moving closer to the BEPS Action 14 recommended timeframe of 24 months.

See our Matheson [Insight](#) for more details.

Publication of the Committee and Report Amendments to Finance (No.2) Bill 2023

On 6 November 2023, the Committee Stage amendments to the Finance (No.2) Bill 2023 (the “**Bill**”) were published and on 21 November 2023, the Report Stage amendments were published (see [here](#)).

The amendments proposed by the Minister for Finance are primarily to clarify and correct drafting / typographical errors contained in the Bill when initially published. In addition, the Committee Stage amendments included draft legislation for a new capital gains tax (“**CGT**”) relief for angel investors for qualifying investments in innovative enterprises. The Minister had announced this relief in Budget 2024 but it was not included in the Bill as published. The relief will provide a reduced rate of CGT for qualifying investment in innovative start-ups (16% or 18% for partnerships on a gain up to twice the value of the investment). The investment must be for a minimum amount of €20,000 or €10,000 where a shareholding of at least 5% is acquired. However, the relief will only apply for disposals of qualifying shares held for a period of at least three years.

Publication of New DAC 7 Manual – Registration Guidelines for DAC 7 – EU Reporting Platform Operators

The new reporting obligations under the Council Directive (EU) 2021/514 (“**DAC 7**”) for digital platform operators in respect of revenues generated by sellers carrying out certain activities via digital platforms apply from 1 January 2023 and the first reporting obligation will arise on 31 January 2024 (in respect of the year 2023). The Irish Revenue Commissioners (“**Revenue**”) published a guide on “[EU Reporting Obligations for Platform Operators](#)” in July 2023 which was subsequently updated in October 2023. The guide clarifies how certain aspects of the DAC7 regime will apply in practice. The registration portal for platform operators in Ireland was opened from 1 November 2023, with the deadline for registration being 30 November 2023. The Revenue guidance “[Registration Guidelines for DAC7](#)” was published in November 2023 and provides general guidance on how to register for the reporting obligations in Ireland. Matheson’s [Insight](#) on the key elements of the DAC7 reporting regime and how the regime will apply in practice can be accessed [here](#).

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

In our previous update, we shared our [insight](#) on the new enhanced reporting requirements (“**ERR**”) for certain non-taxable benefits, which are due to come into effect from 1 January 2024. In advance of the ERR coming into effect, Revenue has published an additional [ebrief](#) regarding the update to the relevant [Revenue manual](#) with further guidance. The updated manual provides additional information in relation to the reportable measures, as well as including some examples of the in-scope benefits and information on the ERR reporting mechanisms.

Supreme Court Judgment in the “Domino’s Pizza” Case

The Irish Supreme Court has published its judgment in the case of *The Revenue Commissioners v Karshan (Midlands) Limited trading as Domino’s Pizza*. The case considered whether delivery drivers were to be considered independent contractors (under “contracts for service”) or employees (under “contracts of service”), for the purposes of Schedules D and E of the Taxes Consolidation Act 1997, to determine if they were subject to PAYE.

With respect to categorising a contract as one of service or for services, Mr Justice Murray set out the following five questions to be considered as part of this analysis:

1. Does the contract involve the exchange of wage or other remuneration for the work?
2. Is the agreement one in which the worker is agreeing to provide their own services and not those of a third party to the employer?
3. Does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?
4. Whether the terms of the contract between employer and worker, interpreted in the light of the admissible factual matrix and having regard to the working arrangement between the parties, are consistent with a contract of employment or some other form of contract, and
5. Whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing.

Applying the above analysis, the Supreme Court, in parting from the decision reached by the Court of Appeal, held that the delivery drivers were employees of the respondent for the purposes of income tax.

The Supreme Court acknowledged the importance of the employment law concept of the mutuality of obligations but, in reaching their decision, placed less weight on the concept, instead emphasising that it was merely a factor, amongst others, to be taken into account when determining if an employment contract existed. In addition, the Supreme Court emphasised that if any of the first three questions above are answered in the negative an employment contract could not exist, and therefore it was not necessary to consider questions 4 or 5.

Following the Supreme Court’s judgment, Revenue released a statement welcoming the clarification to, what can be, a complex area of Irish law. In the statement, Revenue encouraged all businesses, and any agents representing them, to familiarise themselves with the judgment to ensure individuals have the correct status applied to them (ie, independent contractor or employee) as a misclassification could result in substantial tax liabilities, social welfare implications and, potentially, claims related to employment law.

Publications

InDisputes: Customs Duty - The Importance of Establishing Customs Representation

In this [article](#), partner Dara Higgins and solicitor Anna O’Duffy consider a recent Tax Appeal Commission determination which highlights the importance of establishing appropriate customs representation when importing goods into the EU.

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