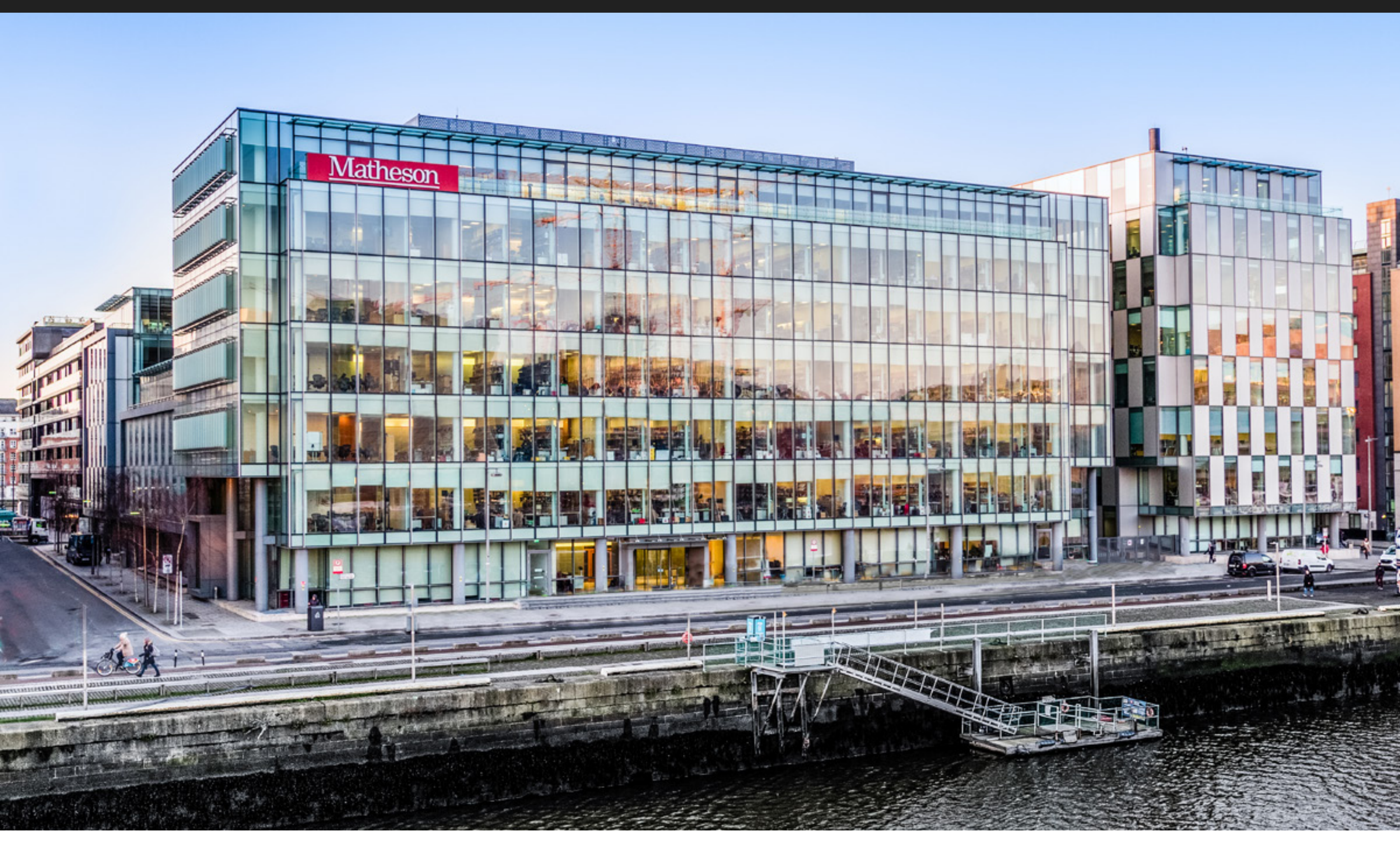
Tax Update

October 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.



Finance (No.2) Bill 2023 and Budget 2024

Ireland published Finance (No.2) Bill 2023 (the "**Bill**") on 19 October 2023 to implement the changes announced by the Minister for Finance (the "**Minister**") in Budget 2024 on 10 October 2023, in addition to other amendments to the Irish tax code.

Most notably, following the two feedback statements issued by the Department of Finance earlier this year and in order to transpose the EU Minimum Tax Directive, the Bill implements the OECD Pillar Two rules to ensure a 15% minimum effective tax rate for multinational groups with an annual global turnover exceeding €750 million in at least two of the preceding four years.

The Bill includes the amendments announced in the Budget to the research and development ("**R&D**") tax credit and also an amendment to the digital games tax credit to ensure that the credit will align with the definition of a qualified refundable tax credit under the Pillar Two rules. Following a public consultation earlier this year, the Bill inserts new sections regarding outbound payments (withholding taxes on royalties, interest, dividends) to ensure the prevention of double non-taxation. The Bill also outlines a change in respect of the collection of any tax on the exercise of a share option on or after 1 January 2024 from self-assessment to the PAYE system.

We have summarised some of the key changes below:

Transposition of the EU Minimum Tax Directive - Pillar Two Rules

- The Bill transposes the EU Minimum Tax Directive into Irish law to implement the OECD Pillar Two rules. The two main charging rules under Pillar Two to ensure the minimum effective tax rate of 15% is paid on a jurisdictional basis where a group operates are the income inclusion rule ("**IIR**") and the undertaxed profit rule ("**UTPR**"). The IIR, introducing a top-up tax, will apply for accounting periods beginning on or after 31 December 2023. The UTPR, which applies a top-up tax where an IIR is not applicable, is to come into effect one year following the IIR for accounting periods beginning on or after 31 December 2024.
- Ireland has introduced a qualified domestic top-up tax ("**QDTT**") to ensure collection of any top-up tax from in-scope domestic entities before the IIR or UTPR would apply in another jurisdiction. The QDTT has been designed with a view to obtaining safe harbour status such that a multinational group can exclude the group entities subject to the QDTT when calculating the IIR and UTPR in another jurisdiction. All countries seeking to avail of this status will be subject to an OECD peer review process.
- Ireland has also implemented the transitional UTPR safe harbour. The UTPR top-up tax calculated for the ultimate parent entity ("**UPE**") jurisdiction would be deemed to be zero if the UPE jurisdiction has a corporate income tax with a rate of at least 20%. The transitional UTPR safe harbour applies for fiscal years that run no longer than 12 months beginning on or before 31 December 2025 and ending before 31 December 2026.
- The transitional country-by-country reporting safe harbour has also been implemented under the Bill to provide for a transitional period to ease the compliance obligations where a multinational group meets certain tests.

R&D Tax Credit

- As announced in the Budget, the R&D tax credit will increase from 25% to 30% for qualifying expenditure. The Minister noted in his Budget speech that this "will maintain the net value of the existing credit for those businesses subject to the new 15% minimum effective tax rate". This follows the amendments to the R&D tax credit in Finance Act 2022 to ensure that it is a qualified refundable tax credit for Pillar Two. In addition, the current first year payment threshold is being increased from €25,000 to €50,000. There is also a new pre-notification requirement included for companies intending to claim the R&D tax credit for the first time or where a company has not claimed the credit in the prior three years. These changes apply in respect of accounting periods commencing on or after 1 January 2024.

Digital Games Tax Credit

- The Bill includes amendments to ensure that the digital games tax credit will align with the definition of a qualified refundable tax credit under the Pillar Two rules. The proposed amendments will apply in respect of accounting periods beginning on or after 1 January 2024.

Outbound Payments

- The Bill inserts new defensive measures with regard to outbound payments (withholding taxes on royalties, interest, dividends) to associated entities resident in jurisdictions on the EU list of non-cooperative jurisdictions, no-tax and zero-tax jurisdictions to ensure the prevention of double non-taxation. The effective date of the new outbound payments provisions is 1 April 2024. Also, arrangements which were in place on or before 19 October 2023 are grandfathered to the later date of 1 January 2025.

Tax on Share Options

- The Bill provides for a change to the collection of tax on any gain arising on the exercise of a share option on or after 1 January 2024 from self-assessment to the PAYE system. This will give rise to an additional compliance burden for employers. Further details of this amendment are included in our Matheson Insight.

Exemption from Stamp Duty - Dematerialised Securities

- The Bill provides for an exemption from Irish stamp duty on certain transfers of Irish shares listed on a recognised stock exchange located in the US or Canada (this puts an existing administrative practice of Irish Revenue on a statutory footing).

Interest Deductibility Rules for Qualifying Financing Companies

- The Bill introduces new interest deductibility rules for qualifying financing companies once certain criteria are met. A qualifying financing company is one which obtains third-party finance and advances this finance to a subsidiary (direct shareholding of 75% or more) for a qualifying business purpose.

Next Steps

The Bill will be debated in the Houses of the Oireachtas and it is likely that amendments will be made during that process. The final text is expected to be passed into law before the end of 2023.

Budget Announcements on Proposed Tax Consultations

Ongoing Consultation on the Introduction of a Participation Exemption(s)

- There is an ongoing consultation on the introduction of a participation exemption(s) to the Irish corporation tax system and the Department of Finance will further engage with stakeholders over the next year regarding implementation. The Minister confirmed in his Budget speech that a participation exemption for dividend receipts will be included in Finance Bill 2024.

Business Supports Administration Review

- Irish Revenue will establish a Tax Administration Liaison Committee sub-group to identify measures to simplify and modernise the administration of business supports. The recommendations of the subgroup are to be delivered in 2024.

VAT Modernisation Consultation: Real-time Digital Reporting and Electronic Invoicing

- As announced in the Budget, Irish Revenue have launched a public consultation on "Modernising Ireland's administration of VAT". The focus of the consultation is on the development of a new system of digital real-time VAT reporting in conjunction with mandatory eInvoicing.

Share based remuneration

- The Minister noted the Department of Finance will launch a public consultation on share based remuneration shortly.

Interest deductibility regime

- The current interest limitation rules are also to be reviewed and the Minister committed to engaging with stakeholders in respect of the regime.

BEPS 2.0: Pillar One and Two Updates

The Multilateral Convention to Implement Amount A of Pillar One

The OECD has published the text of the multilateral convention to implement amount A of Pillar One ("**MLC**") providing for: (i) the reallocation of taxing rights of certain multinational enterprises ("**MNEs**"); and (ii) the repeal of digital services taxes. This has been unanimously approved by the members of the OECD inclusive framework on base erosion and profit shifting.

Broadly, under the terms of the MLC, MNEs with global turnover exceeding €20 billion would be required to re-allocate their profits across jurisdictions in which they have a market share. A minimum of 30 jurisdictions, including those with headquarters of at least 60 percent of in-scope MNEs, must sign and ratify the MLC before it enters into force. The date at which such MLC will enter into force (if ratified) is yet to be decided.

Pillar Two: Subject to Tax Rule

On 3 October 2023, the OECD published a "multilateral convention to facilitate the implementation of the Pillar Two Subject to Tax Rule" (the "**Convention**"). The Subject To Tax Rule ("**STTR**") is a treaty based rule which will enable developing countries to tax certain intra-group payments, in instances where these payments are subject to a nominal corporate income tax rate below 9%. It allows source jurisdictions (where the covered income arises) to impose a tax where they otherwise would be unable to do so under the provisions of a double tax agreement ("**DTA**").

The STTR only impacts an existing bilateral DTA if both contracting jurisdictions have designated the DTA as being covered by the Convention, have completed the ratification procedure and a certain period has lapsed.

Update to EU List of Non-Cooperative Jurisdictions for Tax Purposes

On 17 October 2023, the European Council added Antigua and Barbuda, Belize and Seychelles to the EU list of non-cooperative jurisdictions for tax purposes. Three jurisdictions were removed from the list: British Virgin Islands, Costa Rica and Marshall Islands.

The EU list now consists of the following 16 jurisdictions: American Samoa, Antigua and Barbuda, Anguilla, Bahamas, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

The EU list of non-cooperative jurisdictions for tax purposes is part of the EU's external strategy on taxation and aims to promote good tax governance worldwide. Jurisdictions are assessed on the basis of a set of criteria laid down by the European Council. These criteria cover tax transparency, fair taxation and implementation of international standards designed to prevent tax base erosion and profit shifting.

The next revision of the list is scheduled for February 2024.

Directive on Administrative Cooperation in the Field of Taxation (DAC8)

The European Council formally adopted the directive amending EU rules on administrative cooperation in the area of taxation ("**DAC8**"). The amendments relate primarily to the reporting of transactions in crypto-assets to ensure transparency (eg, automatic exchange of information on revenues).

Member States will have until 31 December 2025 to transpose the main rules into domestic law and the provisions will apply as of 1 January 2026 with some exceptions.

Publications

Update on Enhanced Reporting Requirements to Irish Revenue

In this recent article, the Matheson Tax Team provide some insight into practical considerations employers are raising on the enhanced reporting requirements.