

Tax Update

February 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](#).



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European Parliament Approves “Unshell Directive” Amendments

The European Parliament has approved the European Commission’s draft directive for preventing the misuse of shell entities for tax purposes (“**ATAD 3**” or the “**Unshell Directive**”), as amended by the Committee on Economic and Monetary Affairs.

The amendments approved by the European Parliament, amongst other things, adjust the thresholds under the gateway tests and amend the carve-outs, potentially bringing more entities within the scope of the ATAD 3 reporting requirement. For instance, with respect to the amendments to the gateway tests, it is now proposed that an entity will satisfy the gateway tests (and therefore have to report certain economic substance related information) if, in the preceding two tax years:

- more than 65% of the entity’s revenue accrues from “relevant income” (which is generally passive income including such items as interest, dividends and royalties);
- the entity is engaged in cross-border activities on the grounds that:
 - more than 55% of the book value of the entity’s in-scope fixed and moveable assets were located outside the entity’s Member State; or
 - at least 55% of the entity’s relevant income is earned or paid via cross-border transactions; and
- the entity outsourced the administration of day-to-day operations and the decision-making on significant functions to a third party.

Prior to these amendments, the relevant income threshold was 75% and the cross-border activity thresholds were 60%. That noted, the amendments do helpfully clarify that only outsourcing to a third party will trigger the third gateway.

The amended directive must go before the Council of the EU, where it must be approved unanimously, before it can be adopted into EU law.

Further information on the European Parliament’s amendments can be found [here](#).

Update to Revenue Guidance on the Receipt of Interest and Royalties Without Deduction of Income Tax

Revenue has updated its manual on the payment and receipt of interest and royalties without deduction of income tax to, amongst other things, modify, in certain circumstances, the self-certification process in relation to the application of withholding tax on certain payments of interest and royalties under the terms of a double taxation agreement.

The manual has also been updated to clarify Revenue’s interpretation of the meaning of “bona fide banking business in the State”. Essentially, Revenue interpret a bona fide banking business as an undertaking the business of which is to take deposits from the public in the State and to grant credits for its own account in the State under the necessary authorisations to do so. The updated manual can be accessed [here](#).

Update to Revenue Guidance on the Cooperative Compliance Framework

Revenue has updated its manual on the Cooperative Compliance Framework. The updated manual, amongst other things, confirms that in order to provide groups with a level of continuity, Revenue will endeavour to ensure that Case Managers are assigned for a period of 5 years. Where a Case Manager has been in place for 5 years or more Revenue will assign a new Case Manager as soon as is practicable. The updated manual can be accessed [here](#).

Renewal of Opinions Provided by Revenue in 2017

Revenue has updated its manual on the review of opinions or confirmations to provide guidance to taxpayers who wish to continue to rely on an opinion or confirmation issued by Revenue for the period between 1 January and 31 December 2017 on or after 1 January 2023. A taxpayer who wishes to continue to rely on such an opinion or confirmation is required to make an application for its renewal or extension on or before 31 March 2023.

OECD Publishes Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements

On 1 February, the OECD published [a manual on the handling of multilateral mutual agreement procedures \(“MAPs”\) and advance pricing arrangements \(“APAs”\) \(“MoMA”\)](#). The MoMA is part of the tax certainty work programme of the Forum on Tax Administration and it is intended to serve as a guide to multilateral MAP and APA processes from both a legal and procedural perspective. It provides tax administrations and taxpayers with information on the operation of these procedures and suggests different approaches based on the practices and experiences of jurisdictions. The MoMA does not impose a set of binding rules, but rather seeks to complement the existing framework for MAPs and APAs based on tax treaty rights and existing OECD guidance.

The MoMA acknowledges that multilateral processes can be challenging as there are more stakeholders involved and that most jurisdictions have limited experience in coordinating bilateral MAP and APA cases to offer multilateral certainty. As a reaction to this, the MoMA encourages tax administrations to explore whether the implementation of multilateral procedures is appropriate having regard to the MAP and APA programmes they operate and to consider whether the MoMA guidance may be incorporated into domestic guidance on MAP or APA processes to provide additional clarity.

The MoMA further outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally, for example, having a centralised taxpayer point of contact to coordinate with the competent authorities involved.

Under the Irish framework, the Irish Competent Authority is willing to consider entering into a series of bilateral MAPs / APAs as a way of dealing with multilateral situations where issues involve more than two tax jurisdictions. In our experience, there has been a significant increase in MAP and APA processes entered into by MNEs operating in Ireland in recent years, many of which involve multiple jurisdictions. The MoMa therefore provides welcome guidance to further enhance cooperation and certainty for taxpayers considering MAPs and APAs.

OECD publishes the Agreed Administrative Guidance for the Pillar Two GloBE Rules

On 2 February the OECD published the [Agreed Administrative Guidance for the Pillar Two GloBE Rules](#) (the “**Guidance**”) to assist governments with the implementation of the 15% minimum effective tax rate under Pillar Two.

The OECD [states](#) the Guidance includes:

- guidance on the recognition of global intangible low-taxed income (“**GILTI**”) under the global anti-base erosion (“**GloBE**”) rules and on the design of qualified domestic minimum top-up taxes;
- general guidance on the scope, operation and transitional elements of the GloBE rules to allow Inclusive Framework members that are in the process of implementing the rules to reflect this guidance in their domestic legislation in a coordinated manner; and
- responses to stakeholder feedback on technical issues, such as the collection of top-up tax in a jurisdiction in a period where the jurisdiction has no GloBE income and the treatment of debt releases and certain tax credit equity structures.

The Guidance forms part of the OECD’s implementation framework for the GloBE rules together with the Pillar Two implementation package published in December 2022 (which is made up of the [guidance on safe harbours and penalty relief](#), the [public consultation document on the GloBE information return](#) and the [public consultation document on tax certainty for the GloBE rules](#)).

As a next step, the OECD intends to incorporate the Guidance into a revised version of the official [Commentary](#) to the GloBE Model Rules originally issued in March 2022.

Publications

In our latest InDisputes Series [article](#) the team looks at a recent Irish tax case where tax advice was referred to as evidence against the taxpayer and the benefit of legal professional privilege in these circumstances.