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Irish Tax Monitor

The Roundtable October 2022

Branch profits

The Revenue Commissioners recently updated the Tax and Duty Manual to take into account changes to the Taxes Consolidation Act 1997 in relation to attribution of profits to a branch. What are the implications for Irish branches and their parent companies?

Sam Stiles

Sam Stiles, Head of Transfer Pricing, BDO: While Ireland's transfer pricing regulatory framework has generally kept up to date with international standards in recent years, specific rules relating to the attribution of profits to branches has been conspicuous by its absence. The OECD introduced the report on the "Attribution of Profits to Permanent Establishments" (APPE) in 2010, however it has not been legislated for until this year.

The Department of Finance introduced the APPE, and its "Authorised OECD Approach" (AOA) guidance to establishing arm's length profits in branches for accounting periods commencing on or after 1 January 2022.

Whether and how transfer pricing rules have applied to branches from a practical perspective in the intervening period has been somewhat vague, as while there was not a direct reference to the APPE or AOA in Irish tax legislation, the concepts of the AOA are included in Article 7 of the OECD's Model Tax Convention, and consequently, also most of Ireland's Double Taxation Treaties.

The introduction of the APPE in the Taxes and Consolidation Act cements the AOA and its principles into Irish legislation and removes some of the apparent historical ambiguity.

The AOA effectively aims to bring in the same standard of transfer pricing rigour and documentation to branches as were already required in companies, and it requires that taxpayers determine an arm's length allocation of profits to the branch, as if it were a separate company from its non-Irish resident remainder of the company.

Similar to its standalone company equivalent, the branch is obligated to prepare "Relevant Branch Records" on an annual basis to document and evidence functional background and arm's length nature of the related party transactions the branch is involved in (including dealings with its non-Irish resident remainder of the company), resulting in documentation similar to that of a Local File prepared by companies.

An additional requirement for branches compared to companies is to analyse an appropriate attribution of assets, risks and free capital to the branch, which may face particular scrutiny on sectors that have capital requirements placed upon them in order to operate.

Benefit in kind

There are significant changes to the basis of taxing the benefit in kind arising from the provision of company cars, due to come into effect on January 1st 2023. What are these and what are the implications?

Pat O'Brien

Pat O'Brien, Senior Consultant, Employment Taxes, BDO: Significant changes to the basis of taxing the benefit in kind (BIK) arising from the provision of a company car will come in to effect from 1 January 2023. The new provisions, which are already on the statute book since Finance Act 2019, and are therefore not dependent on the recent Budget, will change the basis of the charge from one based solely on the original market value (OMV) of the car and business mileage travelled, to one which also takes account of the vehicle's CO_2 emissions.

At present the cash value of the benefit of a company car is calculated as 30% of the OMV, with a reducing percentage applied where the user incurs significant business travel (in excess of 24,000 Km). The new system will retain both OMV and business mileage as factors in calculating the BIK charge, however, it will also take account of the vehicle's CO_2 emissions based on a standard table.

There is an element of 'carrot and stick' which is consistent with the aim of encouraging the use of cleaner forms of transport. Users with cars in the lowest emissions bands will see the BIK charge reduce from 30% to 22.5%. However, those with cars in the highest emission range (over 179g/km) will see an increase in the percentage BIK charge across all mileage bands, with a new maximum rate of 37.50%. For many users with cars in the middle of the emissions range, it is likely that the BIK charge under the new system will remain the same as at present.

Other changes already legislated for will see the beginning of the tapering off of the BIK exemption for electric cars. From 1 January 2023, this will be reduced from €50,000 to €35,000, with further reductions in following years, which will reduce the exemption to nil from 2026.

All employers who provide cars to employees for private use will need to revisit their BIK calculations in advance of 1 January 2023 to avoid possible PAYE/PRSI/USC underpayments.