Irish Tax Monitor

The Roundtable July 2023

BEPS & Private Equity

What are the key BEPS considerations for the private equity industry?

Angela Fleming, Partner & Head of Financial Services Tax, BDO: Businesses in all industries have been grappling to assess and understand the impact of the raft of international tax changes that have been introduced in recent years, or are planned to be introduced, as a result of BEPS and/or EU directives implementing BEPS-style changes. The Private Equity industry is no different, though the nature of the industry brings additional complexities and nuances to the analysis. Although a lot of the BEPS changes are primarily aimed at large trading groups, in principle they can affect any kind of entity or structure that meets the relevant scoping criteria. In the PE world, impact needs to be considered at (a) PE house level; (b) fund level; and (c) at the level of portfolio companies.

For example, it is not uncommon for portfolio companies to consider only the size of its own business when looking at the relevant thresholds for various tax rules. However, depending on the ownership structure, and percentage ownership by the PE fund, it may be necessary to consider also the size of other businesses held by the PE fund. This can easily tip "small" businesses into tax administration requirements that might otherwise not apply to them. A good example of this is Transfer Pricing (TP). Portfolio companies may qualify as an SME (Small and Medium Enterprise) for TP purposes and therefore be outside the scope of Irish TP. However, it may not be an SME when factoring other businesses held by the PE fund, in which case TP rules would apply, bringing with them additional documentation requirements.


Angela Fleming

Interest limitation rules is another area of concern for the PE industry, which typically use debt to part-fund the acquisition of portfolio companies. The limitation of the deductibility of debt at various levels in the acquisition stack structure will impact on investor returns and valuations, and thus should be assessed carefully. In particular, the application of group and equity ratio escape clauses may be complex to analyse in such structures, but may ultimately offer additional relief.

In addition to BEPS-related changes, there are also additional EU changes that the PE industry needs to consider on an ongoing basis, and factor into their structuring of their investments. Directives such as ATAD III could have significant impact for the sector due to the typical structuring of investments, notwithstanding such structures are commercially-driven and industry standard.

Territorial Tax Regime

The American Chamber of Commerce in Ireland has said the failure of Ireland to offer a territorial tax regime 'would very much undermine the attractiveness of Ireland for foreign direct investment.' Can you discuss the prospect of Ireland adopting a territorial tax regime and the implications for MNEs based in Ireland?

Yvonne Diamond, Senior Tax Manager, Financial Services Tax, BDO: Currently Ireland operates a worldwide tax system which taxes the profits of corporations tax resident in Ireland, regardless of their source. A territorial tax system for corporations differs from a worldwide tax system in that under a territorial tax system, the profits multinational companies earned in foreign countries are excluded from their domestic tax base. Therefore, corporations only pay taxes to the countries in which they are located and earn their income.

Historically, the reluctance to move to a territorial tax regime emerged from the fact the Ireland did not have its own controlled foreign company (CFC) legislation in place, but this should no longer be a concern since the introduction of this legislation in Finance Act 2018. To further bolster confidence that Ireland's domestic tax base is being protected, there have been a raft of measures recently introduced that successfully address the threat of artificial diversion of profits and base erosion, such as the recent introduction of Interest Limitation Rules, extended Transfer Pricing rules and Anti-Hybrid rules.


Yvonne Diamond

Taking that into account, the risks of Ireland moving to a territorial tax regime are reduced and calls from the American Chamber of Commerce in Ireland, as well as many others, for Ireland to offer a territorial tax regime are understandable when it is envisaged that moving to a territorial tax regime would make Ireland a front-runner as a location for foreign direct investment (FDI) as well as removing a competitive disadvantage, therefore ensuring Ireland remains an attractive location for FDI.

The potential implications for multinational enterprises (MNEs) could mean benefits by way of a reduction in the administrative and compliance burden currently in place. Simplification of the existing rules for double tax relief could lead to certainty of tax treatment for taxpayers. The introduction of a participation exemption regime should also be beneficial as MNEs would be further encouraged to use Ireland as a location for headquarters.

With the introduction of more changes just around the corner, such as Pillar II, now would be the correct time for the change to a territorial tax regime to be further examined.