

# itmm

## IRISH TAX MONITOR

### The Roundtable May 2023

#### VAT & Digital Services

**T**he European Commission's focus on VAT & Digital Services has been highlighted by a number of recent developments, including the Commission's recently published working paper on the VAT treatment of non fungible tokens (NFTs) and a Court of Justice of the European Union ruling (CJEU, C-695/20) on VAT liability for platforms providing digital services. Please comment.

##### **Emma Galvin, Director, VAT, BDO:**

In our ever-changing economy, there are many benefits associated with the constant evolving digital economy but with new developments comes new VAT challenges, as VAT legislation lags the speed of developments in the digitised economy.

The VAT challenges are evident with the increased level of disputes between taxpayers and Tax Authorities, resulting in local and Court of Justice of the European Union (CJEU) cases, as taxpayers, Tax Authorities and the court systems struggle to apply current VAT legislation to supplies made in the digital economy, as can be seen in the recent



**Emma Galvin**

Fenix International Ltd CJEU ruling (C-695/20) which dealt with the VAT liability for platforms providing digital services, which was referred from the UK.

In this case, the CJEU ruled in favour of HMRC determining that Article 9a of Council Implementing Regulation No 282/2011 which provides that electronic services supplied via a platform are deemed to be supplied by the platform

rather than the service provider, is compliant with EU law.

As a result of the case, platforms should review in detail the services they facilitate to ensure that they are compliant from a VAT perspective on the potential deemed supply of such underlying services.

In response to the continued VAT challenges associated with VAT & Digital Services, the European Commission has in recent times particularly focused on this area.

On the 8th of December 2022, the European Commission published its proposed VAT in the Digital Age (VIDA) reforms to amend the EU VAT system. The proposal is a series of measures to modernise and ensure that the EU VAT system works better for businesses and should assist with tackling VAT fraud by embracing and promoting digitalisation.

The European Commission also recently published a Working Paper on 21 February 2023 in relation to the initial VAT reflections on Non-Fungible Tokens (NFTs). The intention of the Working Paper was to describe the NFT environment to address NFT related recent questions and concerns.

It notes that NFTs have been in

existence for c.20 years but that the volume of trade has grown exponentially in recent years, but many questions remain unanswered as to the applicable VAT treatment to supplies linked to NFTs. It also highlights for the sake of legal certainty; it is desirable to reach a common position on the VAT treatment.

As the digital economy evolves and develops at a rapid pace, it is reasonable to assume that cases will continue to come before local courts and the CJEU, further proposals and Working Papers will be issued by the European Commission and that updates to the VAT Directive should be expected around VAT & Digital Services.

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## Taxation of unit trusts

**The Revenue Commissioners has updated rules relating to the tax treatment of an authorised unit trust, as a result of changes introduced in Finance Act 2022. Can you outline the background to this update?**

**Lee Kavanagh, Assistant Manager, Financial Services Tax, BDO: An**



**Lee Kavanagh**

interest in a unit trust scheme, the trustees of which are non-resident, can be considered a material interest in an offshore fund. As the concept of tax residence does not apply to a branch, but only to a company. Therefore, on a technical reading of the legislation, an Irish unit trust, with an Irish-based

trustee operating via a branch structure, may be considered an offshore fund. While it was a generally accepted principle that this should not be the case, prior to the amendment introduced by Finance Bill 2022, an authorised unit trust would have to seek written confirmation from Revenue that they would not be treated as an offshore fund in such circumstances.

In order to clarify the position, Finance Bill 2022 introduced a key amendment to section 743 of the Taxes Consolidation Act 1997 (“TCA 1997”). This amendment confirms that a unit trust scheme should not be considered a material interest in an offshore fund provided that the general administration of the unit trust is carried on in Ireland and the trustee, if not an Irish resident company, is an Irish branch of a company resident in another EU or EEA Member State.

Overall, this is very welcome development, providing clarity on the issue, ending any uncertainty about the classification of such funds as domestic or offshore, and removing the burden of having to seek written confirmation from Revenue on the matter.