

itmm

IRISH TAX MONITOR

The Roundtable August 2024

FASTER

The EU Ministers of Finance recently reached agreement on the new EU Directive on a ‘faster and safer excess tax return’ (FASTER). With formal adoption set to take after approval from the European Parliament can you outline what the Directive aims to achieve and the implications?

Lee Kavanagh, Manager, Financial Services Tax, BDO: On 14 May 2024, the Council of the EU reached an agreement on the “FASTER” Directive, setting out rules that aim to harmonize withholding tax procedures in the EU and make them more efficient and secure for investors, financial intermediaries and Member States. The FASTER Directive will apply in respect of publicly traded shares and publicly traded bonds and sets out three key actions to improve the efficiency of withholding tax procedures in Member States.

The first of these actions is a common EU digital tax residence certificate (“eTRC”) that tax paying investors can use in order to avail of the fast-track procedures introduced by the Directive to obtain relief from withholding taxes. Member States will be required



Lee Kavanagh

to provide an automated process for issuing the eTRC to a natural person or entity considered to be tax resident in their jurisdiction. Further, the Directive requires the eTRC to be issued by the Member State within 14 days after a certificate request is submitted. The eTRC will cover a period not exceeding the calendar year or the period of a fiscal year for which it is issued.

The Directive then provides for two fast-track procedures, to complement

the existing standard withholding tax refund procedures – a ‘relief at source’ procedure and a ‘quick refund’ system. Member States are able to choose which one to use, or to include a combination of both. Under the ‘relief at source’ procedure, the tax rate applied at the time of payment of dividends or interest is directly based on the applicable rules of the double tax treaty provisions. Under the ‘quick refund’ procedure, the initial payment is made taking into account the domestic statutory withholding tax rate and a refund of excess withholding tax imposed is to be granted within 60 days after the end of the period given to request the quick refund. It was agreed that Member States must apply the fast-track procedures if they provide relief from excess withholding tax on dividends paid for publicly traded shares. It should be noted that Member States with a national financial market capitalization representing less than 1.5% of the overall EU market capitalisation, may be exempt from applying the Directive’s quick relief systems and registration and reporting of CFIs, if a comprehensive relief-at-source system is already in place in that jurisdiction. However, the exemption does not extend to implementation of the eTRC.

Finally, the Directive sets a standardised reporting obligation for financial intermediaries such as banks or investment platforms. This will make it easier for national tax authorities to detect potential tax fraud. Member States will establish national registers where large (and optionally smaller) financial intermediaries will have to register to be certified. In order to simplify this registration procedure, the Council agreed to create a European Certified Financial Intermediary Portal. This portal will act as a central dedicated website where the national registers will be accessible.

It was agreed that Member states will have to transpose the Directive into national legislation by 31 December 2028 and generally apply the provisions of the Directive for fiscal years starting on or after 01 January 2030.

Double Tax Treaties and BEPS

The Revenue Commissioners have updated its Tax and Duty Manual Part 34-00-02 to incorporate changes to the Double Tax Treaty between Ireland and the UK arising from the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Can you explain the implications of this change?

Michelle Adams, Senior Manager, Financial Services Tax, BDO: The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) came into force in Ireland from 1 May 2019. On the entry of the MLI, the provisions modify the application of Ireland's Double Taxation Convention (DTC) with other jurisdictions that have also ratified the MLI. Ireland introduced the new rule under Article 4 of the MLI in relation to the determination of the residence of dual-resident persons, referred to as the tie-breaker rule.

Under the tie-breaker rule, a dual-resident person, other than an individual, no longer automatically qualifies for a single jurisdiction of residence status based solely on the place of effective management. Instead, the Competent Authorities will determine a sole jurisdiction of residence through mutual agreement, considering the relevant factors (e.g. the place of effective management, the place of incorporation or otherwise constituted). In order for the Competent Authorities to consider



Michelle Adams

the case, the taxpayers affected need to implement the Mutual Agreement Procedure (MAP) as provided for in the MAP article of the DTC. Generally, the MAP article allows a taxpayer to submit their case to the Competent Authority of either jurisdiction. If an agreement cannot be reached, the company will only be entitled to treaty benefits to the extent that the Competent Authorities agree.

The Tax and Duty Manual Part 34-00-02 has been updated to incorporate the changes brought in by the tie-breaker rule for the Double Tax Treaty between Ireland and the UK for determining the residence of trusts and estates. Previously, a trust was deemed to be resident where its place of effective management was situated, however, the Competent Authorities are now required to determine the tax residence position through the MAP.

For the purpose of the modified tie-

breaker rule, and while other relevant factors will be taken into consideration, 'place of effective management' is still an important factor and the following should be considered in that regard:

- If the trustees are all individuals residing in one country, that country should be the place of effective management.
- If the trustees are all individuals who reside in different countries, the place of effective management should be the country where the individual who generally controls and supervises the administration of the trust resides. If there is no such individual, the place of effective management should be the country where the majority of meetings were held.
- If a professional body is acting as trustee, the place of effective management should generally be the place of business of that professional body.
- If the professional body acting as a trustee is a UK bank with a branch/subsidiary in Ireland and the work is carried out by that branch/subsidiary, Ireland should be regarded as the place of effective management, and vice versa.

The modified tie-breaker rule has effect in Ireland with respect to taxes levied by Ireland with respect to taxable periods beginning on or after 1 November 2019; and in the United Kingdom, from 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax.

Taxpayers need to be mindful of the impact of the modified tie-breaker rule if there is a risk of being considered dual-resident as the MAP can be a lengthy process.