
itm IRISH TAX MONITOR

The Roundtable October 2024

Budget 2025

What are the takeaways from Budget 2025 for Ireland's competitiveness as a location for international business, and can you comment on the principal business impacts, including any proposals regarding tax administration and simplification in the Budget?

Angela Fleming, Partner & Head of Financial Services Tax, BDO: The first piece of very welcome news was confirmation on Budget Day that a new participation exemption regime for dividends is being introduced from 1 January. We look forward to seeing the drafting of the legislation on 10 October (which should be published by the time this article goes to print). One of the biggest criticisms of the strawman proposal that was put forward a month ago was that the exemption is limited to dividends from subsidiaries in EU and treaty countries. While it seems that this is to remain the case, in his Budget speech Minister Chambers stated



Angela Fleming

“work will continue in the coming year on participation exemptions, including further consideration of geographic scope and of a foreign branch exemption”. Thus, it also sounds like the geographic scope of the exemption may be widened in future years as Pillar Two continues to evolve. Furthermore, a foreign branch

exemption, while not to be expected in this year's Finance Bill, is still under review and potentially something we can be optimistic about seeing introduced into Irish tax law in future years.

Minister Chambers acknowledged in his Budget speech “it is critical that we continue to actively work on maintaining Ireland's attractiveness to businesses”, a sentiment that we strongly share. We have, on numerous occasions in this publication, advocated for an overhaul of Ireland's interest deductibility rules. We believe this should be a key priority in order to simplify Irish tax law, ease the administrative burden on taxpayers, and make Ireland an attractive place to do business for international companies. On 27 September, the Department of Finance launched a public consultation on the Taxation of Interest, which includes both the taxation and deductibility of interest, as well as interest withholding tax. While this is a welcome development, the consultation period runs to 30 January 2025 meaning we are unlikely to see any changes until next year's Finance Bill.

Transfer Pricing

The Tax Appeals Commission made its first determination in relation to transfer pricing in its determination 59TACD2024. The case involved a multinational granting share options to employees of an Irish subsidiary and such transactions' transfer pricing implications. What are the key points from the determination for multinational companies?

Kevin O'Donohoe, Senior Manager, Transfer Pricing, BDO: Earlier this year, the Tax Appeals Commission (TAC) delivered a groundbreaking decision when it ruled in favour of an appellant in the first ever transfer pricing case heard in Ireland (59TACD2024).

The case concerns that of an Irish subsidiary of a multinational technology company with its immediate parent, a US-headquartered company and an initial assessment raised by Revenue with respect to services provided by the Irish subsidiary to its US parent company. In its assessment, covering a four-year period between the years 2015 and 2018 inclusive, Revenue made an adjustment for the non-inclusion of share-based awards in the relevant cost base for mark-up when determining the service fee to be charged by the Irish subsidiary to its parent.

The assessment was overturned on appeal on the basis that share based awards did not represent an economic



Kevin O'Donohoe

cost to the subsidiary despite the fact that it is recorded as financial cost in its financial statements.

In overturning the assessments, the commissioner looked to the OECD Transfer Pricing Guidelines to determine whether the costs associated with the issuance of the share-based awards represented an economic cost to the Irish subsidiary. In doing so, it agreed with the OECD guidance which states that one should look at the functional analysis to determine where the actual cost of the share issuance had been borne rather than where it has been recorded for accounting purposes. In looking at the functional analysis of

both of the relevant parties, as well as hearing detailed evidence, it had found that the US parent not only bore the financial risk in issuing the awards, but it also performed the relevant functions involved in the share issuance.

The decision places emphasis on the merit of the OECD Guidelines as opposed to findings in other jurisdictions which look to accounting expense treatment under FRS 102, which includes these expenses as a notional cost to the subsidiary. While the commissioner did not dispute the accounting treatment, it did find that application of the arm's length principle requires their exclusion from the cost base in providing services to the parent company under the relevant services agreement.

The determination of the TAC also addressed a number of secondary issues including the rejection of Revenue arguments of unsatisfactory comparables, enforcement of the statutory time limit for the re-opening of returns, and the admissibility of expert witnesses.

The case represents the first of its kind in Ireland and finds against some international case law. Aside from posing the possibility of more similar cases being brought for appeal with regard to transfer pricing issues, the case itself is a helpful international precedent in showing an appeal commissioner taking significant regard of the OECD Guidelines as part of its decision in conjunction with the application of local transfer pricing legislation.