Irish Tax Institute




A Guide To Changes In Irish Tax Rules

- The Global Tax Reform Agenda

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THE FACTS YOU NEED TO KNOW ON IRISH TAX CHANGES

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1 INTERNATIONAL TAX RULES HAVE BEEN CHANGING - IRELAND HAS BEEN PARTICIPATING FULLY

It is widely recognised that the existing international tax rules were designed 80 years ago and that the international tax framework has not kept pace with global and digitally driven businesses. It's also recognised that a global effort is needed to fix these issues.

THE TWO BIG PLAYERS – OECD & EUROPEAN UNION

The global tax reform agenda has been shaped by work at the OECD and the EU and both have released significant proposals in the last 12 months. Ireland is a member of the EU and the OECD. It is actively participating in the work of both bodies.

OECD
BETTER POLICIES FOR BETTER LIVES

WHAT GLOBAL TAX REFORM AIMS TO ACHIEVE

- Greater alignment of taxable profits and the location of economic substance
- Increasing the transparency of corporates' tax affairs through Country-by-Country Reporting and the automatic exchange of information between tax authorities
- Re-design of transfer pricing principles which will reform the way in which profits are allocated within corporate groups
- Re-design of preferential IP regimes to ensure that there is a direct link between the qualifying income and the location of the underlying R&D activities
- Addressing tax relief on financing and interest payments

2 IRELAND HAS MADE SIGNIFICANT CHANGES TO ITS TAX LAWS

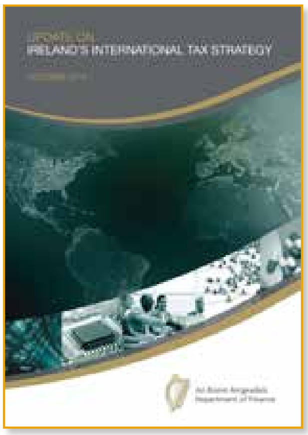
WHAT THE OECD SAID ABOUT IRELAND

"Ireland has been staying the course and it is making the necessary modification and the adjustments and I'm very happy, very proud to say Ireland has been a strong and very exemplary case of adapting and adopting."

– Ángel Gurría, Secretary General of the OECD

IRELAND HAS PUBLISHED TWO MAJOR DOCUMENTS ON CORPORATE TAX IN RECENT YEARS

The Irish Government has engaged with the OECD and the EU from the outset of the global tax debate. In recent years, the Government has published two important documents which set out its strategy on key global policy initiatives;



Ireland's Corporation Tax Strategy *(2012)*: This is based on three fundamental principles; Rate, Regime and Reputation.

Ireland's International Tax Strategy *(published in 2013 and updated in 2015)*: This sets out all measures that Ireland has taken to implement the new global tax rules and a good governance framework.

3 STEPS THAT IRELAND HAS ALREADY TAKEN TO ADDRESS GLOBAL TAX REFORM

Ireland's Work on Mismatches in the Global Tax System

- Following changes in Finance (No.2) Act 2013 and Finance Act 2014, Ireland now has a default tax residence rule for Irish incorporated companies. These changes included the phasing out of the so-called "Double Irish".
- In July 2016, Ireland agreed to adopt the European Commission's **Anti-Tax Avoidance Directive**, new EU legislation to address tax avoidance.
- In 2015, Ireland introduced a **Knowledge Development Box**. Ireland's offering was the first OECD compliant patent box regime globally.

REMEMBER:

The issues in the EC State Aid decision would not arise today because of the changes that have been made to Irish tax law since then.

The Revenue opinions date back to 1991 and 2007 and are **no longer** in force.

Ireland has **already** introduced changes to the law to deal with the relevant company residence issues.

Preventing Tax Avoidance - Ireland has one of the most robust General Anti-Avoidance Rule regimes globally

- Ireland has had a General Anti-Avoidance Rule ("GAAR") in place for over 25 years which is considered one of the most robust GAAR regimes globally. As part of the Anti-Tax Avoidance Directive, other EU Member States have recently agreed to incorporate a GAAR into their domestic legislation.
- Ireland was one of the first countries to adopt a Mandatory Disclosure regime under which promoters or taxpayers must provide information to Revenue on certain transactions which give rise to a "tax advantage". Other countries have since followed suit. Mandatory Disclosure was one of the OECD's BEPS recommendations and it is expected that the European Commission will release proposals on Mandatory Disclosure for other Member States later this year.

Directors now have greater Company Law responsibilities

- Ireland's Companies Act 2014 places greater obligations on Directors over the tax compliance of certain companies. It sets out a number of fiduciary duties and obligations of Directors which relate to tax matters. In particular, Directors are now required to sign a statement in the Directors' Report which confirms that the company is in compliance with its tax obligations.

STEPS THAT IRELAND HAS ALREADY TAKEN TO ADDRESS TAX AVOIDANCE (CONT'D)

Enhancing Tax Transparency - Ireland one of the first countries to adopt Country-by-Country Reporting

- In 2015, Ireland introduced Country-by-Country Reporting for multinationals on foot of recommendations in the OECD's BEPS package.

  NOTE: Country-by-Country Reporting requires multinationals to provide a breakdown of key business information by country to Revenue authoritites. The information collated and shared by Revenue authoritites allows them to risk assess whether the right amount of tax has been paid in each country.

- Irish Revenue has signed up to eight separate international information sharing initiatives in recent years. These enable the exchange of taxpayer information with other tax authorities. Four initiatives with the EU, three with the OECD and one directly with the US:

  4 EU initiatives: The EU's Directive on Administrative Cooperation ("DAC") is at the core of tax transparency within the EU and it has been broadened four times since 2011 to facilitate the exchange of additional types of information (such as financial & non-financial information on non-residents, tax rulings and Country-by-Country Reports).

  3 OECD initiatives: This includes the Common Reporting Standard (i.e. financial information on non-residents), the spontaneous exchange of tax rulings, and Country-by-Country Reporting.

  1 initiative with the US: In 2012, Ireland concluded an Intergovernmental Agreement with the US on the Foreign Account Tax Compliance Act ("FATCA"), at the time becoming only the fourth country in the world to sign such an agreement.

- In 2015, Ireland agreed to adopt the European Commission's Fourth Anti-Money Laundering Directive which provides for greater transparency on the beneficial ownership of companies and trusts.
- Ireland has now signed Double Tax Agreements with 72 countries which helps to facilitate the full exchange of tax information with Revenue authorities in these countries.
- Ireland has concluded Tax Information Exchange Agreements (TIEAs) with 25 countries.

4 THE DEPARTMENT OF FINANCE & IRISH REVENUE - WORKING WITH THE EU AND OECD

- Both the Department of Finance and Revenue are actively involved in international tax reform matters.
- Through their engagement with the OECD and European Commission, they have made significant contributions to the development of the new global tax framework.
- Both bodies have dedicated teams dealing with tax proposals from the OECD and European Commission, meaning frequent meetings in Paris and Brussels.

IRELAND WORKING WITH THE OECD

At the OECD, Ireland is represented

- on five Working Parties dealing with BEPS
- at the Forum for Harmful Tax Practices
- on the Ad Hoc Group on the Multi-lateral instrument
- on Working Party 10 (which deals with the Exchange of Information)
- on the Task Force on the Digital Economy

All of these groups feed into the OECD's Committee on Fiscal Affairs.

AT THE EUROPEAN COMMISSION IRELAND...

Engages with

- The Code of Conduct Group
- The Working Party on Tax Questions (This is a Council group that deals with the technical aspects of all tax proposals of the Commission, eg Anti-Tax Avoidance, Exchange of Information, CCCTB, Parent/Sub Directive, Interest/ Royalties Directive, FTT, VAT issues etc)
- The Council High Level Working Party (Policy positions on all tax proposals of the Commission & other initiatives)

Is represented on

- The Platform for Good Tax Governance (Member States, Business & NGO's)
- The Commission Working Party IV (various direct tax issues)
- The Commission CACT & ACDT Groups (practicalities of exchange of information)
- The Joint Transfer Pricing Forum

IRISH PERMANENT REPRESENTATION

The Permanent Representation is staffed by representatives from nearly every Government Department. The Department of Finance currently has five staff in the Permanent Representation of Ireland to the EU. Ireland also has a Permanent Representation at the OECD and a Permanent Mission in Washington.

FORUM ON TAX ADMINISTRATION

Irish Revenue engages regularly with the Forum on Tax Administration (a global forum of Tax Commissioners chaired until January 2015 by the then Chair of Irish Revenue). Irish Revenue participates in the FTA's MAP Forum, JITSIC (Joint International Task Force for Sharing Intelligence and Collaboration) and Large Business Programme.

KEY INTERNATIONAL TAX MATTERS

Both the Department of Finance and Revenue are regularly involved in other key international tax matters such as;

- The US tax reform agenda
- Bilateral tax treaty negotiations

5 HOW NEW TAX RULES ARE IMPACTING COMPANIES

TAX ISSUE	IMPACT
Closer alignment of substance and profit	The objective of the BEPS Action Plan is to ensure that profits are taxed in the jurisdiction where the economic activities generating such profits are performed and where value is created. Companies will need to review their operating models to ensure that they have an even stronger alignment between profits earned globally and the substance or activities creating those profits.
Transparency	Country-by-Country Reporting (CbCR) and the sharing of information is one of the biggest engines of tax transparency - it is set to have one of the biggest impacts on companies. For the first time, large corporates will be required to disclose key business information on a country-by-country basis which will be shared between tax authorities across the world. Compliance with CbCR rules, together with broader transfer pricing documentation requirements, is likely to have a significant impact on companies in terms of resources, staff-mix and systems implementation. **Country-by-Country Reporting & Increased Revenue Interventions** CbC Reports will give tax authorities greater visibility of a corporation's global tax position, which will inevitably lead to an increase in the level of audit interventions. In preparation for engagement with tax authorities, companies will need to consider where their profits are generated and whether the local economic substance correctly reflects that level of profit. **Practical Collation of Data** The collation of data for the CbC Reports, together with the increased interaction with tax authorities will have an impact on the resources of in-house tax functions, and the wider business (e.g. IT, Human Resources, Finance, Data Teams etc.)

TAX ISSUE	IMPACT
Transparency (cont'd.)	**Transfer Pricing Documentation (including tax rulings)** The scope of transfer pricing documentation has been broadened meaning that companies will have to provide a greater degree of information to tax authorities through the master file and local file. Both the EU and OECD have introduced rules on exchange of tax rulings and Advance Pricing Agreements between tax authorities (see page 12).
Transfer Pricing	The re-design of the transfer pricing principles will require a closer alignment of profits with the location of economic value creation. In particular, businesses that derive value from intangibles will have to consider the location of the key 'DEMPE' functions in relation to those intangibles (Development, Enhancement, Maintenance, Protection and Exploitation). This requires an in-depth assessment of the business processes and the organisational model. It also requires an understanding of the people in the organisation who manage the risks and whether the companies in the group which control the risks actually have the financial capacity to bear them. The new transfer pricing rules are more focused on people functions and less on contractual terms and capital. Key questions for businesses to consider are; • What key employees do and where, • Whether the profits being realised in these global locations are aligned with the functions and substance located there, • Where key decisions are taken and where management control is actually affected? As mentioned above, more detailed end-to-end transfer pricing documentation will be required, together with a new CbC report which provides quantitative information and analysis about the company's global business and footprint. The revised transfer pricing guidelines are still being developed by an OECD working group and it is expected that these will be released in the next 12 months.

TAX ISSUE	IMPACT
Intangibles	**Definition of Intangibles** The definition of intangibles has been expanded and there has been significant changes to the rules governing which group company is entitled to the income from intangibles. Income on intangibles will be determined based on where the DEMPE functions are carried out. **New Modified Nexus Approach (substance aligned with profit)** The introduction of a new Modified Nexus Approach for patent/innovation boxes means that companies wishing to avail of these preferential IP regimes need to review the way in which a company's R&D is performed, who performs it and where the resulting IP is held and managed.
Permanent establishment changes	PE risk has increased i.e. the risk of a company creating a taxable presence in a foreign country. Lower thresholds will now apply to PEs and it is more likely that some activities carried on in a country will create a tax presence in that country. This can lead to a corporate tax charge in that foreign country plus increased compliance costs - tax registrations, keeping books and records, filing tax returns, etc. PE risks that require particularly careful monitoring include the holding of inventory overseas, warehousing and sales functions.

TAX ISSUE	IMPACT
Global employee mobility	Some realignment of employee locations may be needed to ensure that substance is better aligned with profit. Companies must have employees with the requisite skills, experience and decision making ability operating in the correct location. In a post BEPS world, employees will have to become more globally mobile. As employees move cross-border, companies will need to keep under review their PE risk and also ensure that they are complying with their employment tax obligations.
Increased interaction with tax authorities	The new rules and the heightened transparency levels brought about by automatic exchange of tax rulings, CbCR and new transfer pricing documentation, will result in more interaction with global tax authorities. Companies need to be able to foresee the queries which may arise from analysis by tax authorities of key company data provided to them.

6 TRANSPARENCY – THE IMPACT

Transparency is at the heart of the global tax reform agenda. The objective is to ensure that multinationals provide more and better information about their business to tax authorities worldwide.

The transparency measures being put forward by the OECD and the EU are focused on **three core elements**. Ireland is engaged on all three issues and has already introduced legislation in some areas.

TAX TRANSPARENCY - THE THREE PILLARS

PILLAR 1
Country-by-Country Reporting

OECD

BEPS ACTION 13:
Introduction of Country-by-Country Reporting as a minimum standard

EU:

Directive for the implementation of Country-by-Country Reporting

PILLAR 2
Transfer Pricing Documentation

OECD

BEPS ACTION 13:
Broadening of the information to be provided in the master file and local file

EU:

EU-TPD to be reviewed to align the current requirements of the master file and local file with the OECD recommendations

PILLAR 3
Exchange of Rulings

OECD

BEPS ACTION 5:
Compulsory spontaneous exchange of certain rulings that could give rise to BEPS

Spontaneous exchange of tax rulings means that a country provides its treaty partner with rulings about a taxpayer if it considers that it is relevant for the other country.

EU:

Extension of DAC to allow for the mandatory automatic exchange of tax rulings and APAs

The automatic exchange of cross-border tax rulings and advance pricing arrangements means the automatic provision of information by one Member State to all Member States.

REVENUE AUTHORITIES WILL HAVE ACCESS TO KEY INFORMATION ON MULTINATIONALS' BUSINESS BY WAY OF COUNTRY BY COUNTRY REPORTING

Table 1

ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT – 35

Annex III to Chapter V

A model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING © OECD 2014

Table 2

36 – ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding or Managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other[2]
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

[2] Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

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Table 3

ANNEX III TO CHAPTER V. A MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT – 37

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:
Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report.

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WHAT INFORMATION IS INCLUDED IN THE CBCR?

The model CbCR template developed by the OECD consists of three tables:

Table 1:
This is mainly quantitative data which must be completed by the MNC on a country-by-country basis. For each country, the MNC must provide detail on revenue, profit (or loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets.

Table 2:
This table consists of more qualitative information, which must be provided on an entity-by-entity basis in the group, including the country of tax residence and the nature of the entity's business activities.

Table 3
This table consists of additional information that is relevant to the MNC e.g. exchange rates, specific tax reliefs claimed, details of transparent entities.

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