

# Tax Update

December 2023

Our Tax team is actively monitoring Irish and EU tax developments which may be of interest to your business. If you have any questions or would like to discuss any of the developments in further detail, please speak to your usual Matheson contact or to any of our [Tax Partners](#).



## Tax

### Reporting Rules Regarding Small Benefit Exemptions

The Irish Revenue Commissioners ("Revenue") issued an [ebrief](#) on 4 December 2023 regarding the publication of an updated manual on section 112B of the Taxes Consolidation Act 1997 (the "TCA") on the small benefit exemption (available [here](#)). The update was to provide additional information and examples regarding the changes introduced by the Finance Act 2022 (the "2022 Act").

The 2022 Act amended the rules on providing qualifying incentives (such as a voucher or gift cards) to employees (also known as the small benefit exemption). Section 112B TCA provides that a qualifying incentive may be given to an employee tax free where certain conditions are met. Prior to the 2022 Act, section 112B TCA provided that employers could gift employees a benefit not exceeding €500 tax free. The new rules now permit employers to bestow two benefits to employees in a given year the total value of which must not exceed €1,000. In order to be a qualifying incentive:

- the benefit must be a tangible asset other than cash;
- it must not form part of a salary sacrifice arrangement; and
- the benefit can only be used to purchase goods or services which cannot be redeemed for cash.

As mentioned in previous updates, the 2022 Act also implemented new enhanced reporting requirements ("ERR") commencing on 1 January 2024. The ERR provides that an employer must report the date and value of any small benefit, where the exemption applies, on or before the date the benefit is granted to the individual (ie, in real time).

The Commencement Order for the ERR was signed by the Minister for Finance on 13 December 2023 (with effect from 1 January 2024) and Revenue has [confirmed](#) that a service for compliance approach will be taken until 30 June 2024. This approach will involve supporting employers who are attempting to comply with their reporting obligations and Revenue will not seek to apply any penalties for non-compliance.

### Share Based Remuneration Consultation

On 5 December 2023, the Irish Department of Finance published a consultation document (available [here](#)) seeking stakeholder views on how the Irish tax regime applying to share based remuneration can be improved. Share based remuneration schemes in Ireland can be either Revenue approved (eg, Approved Profit Sharing Schemes) or unapproved (eg, unapproved share option schemes, restricted stock units, convertible shares) and the tax treatment will depend on the type of scheme operated by the company.

The 2022 Commission on Taxation and Welfare Report previously outlined certain recommendations regarding share based remuneration including the recommendation that PRSI should be extended to all sources of employment income including share based remuneration. The consultation paper notes these recommendations will form part of the review. The report also recommended that the taxation of employee share options should be moved from self-assessment to the PAYE system and this amendment was included in Finance (No.2) Bill 2023 (and is to apply to gains on the exercise of share options from 1 January 2024).

The consultation closes on 22 January 2024.

### Engie and Amazon – Court of Justice Judgments

The Court of Justice of the European Union ("CJEU") delivered its judgment in the [joint Luxembourg / Engie case](#) on 5 December 2023.

This case related to the Commission decision issued in 2018 regarding Luxembourg tax rulings that treated the same transaction both as debt and equity. The General Court of the European Union (the "General Court") dismissed the actions taken by the Engie group and Luxembourg in respect of the Commission decision and therefore, they appealed to the CJEU.

The CJEU annulled the General Court's judgment that the tax rulings issued by Luxembourg granted Engie a selective advantage (therefore, annulling the Commission's state aid decision). The CJEU held that the General Court should have considered Luxembourg's own interpretation of its tax rules and the Luxembourg tax authorities' own administrative practice. The CJEU also held the Commission decision failed to fully take into account Luxembourg law as part of the relevant "reference framework".

The CJEU also delivered its judgment in the [Amazon case](#) on 14 December 2023. This case related to the Commission decision in 2017 regarding a tax ruling issued to Amazon by Luxembourg on a royalty payment between two Luxembourg group entities. The General Court annulled the Commission's decision and therefore, the Commission appealed to the CJEU.

The CJEU confirmed the Commission did not establish that the tax ruling was unlawful state aid. The CJEU concluded the Commission had wrongly determined the "reference framework" as the OECD transfer pricing guidelines could only form part of the reference framework if it was incorporated into the national tax law concerned. The guidelines had not been incorporated under Luxembourg tax law at that time. CJEU judgments are final and cannot be appealed.

### Review of Opinions or Confirmations – Update to Tax and Duty Manual

Revenue have updated the [Tax and Duty Manual](#) ("TDM") on the Review of Opinions or Confirmations to provide guidance to taxpayers who wish to continue to rely on an opinion or confirmation issued by Revenue in the period 1 January to 31 December 2018, in respect of a transaction, period or part of a period, on or after 1 January 2024. A taxpayer who wishes to continue to rely on such an opinion or confirmation is required to make an application for its renewal or extension on or before 29 March 2024.

### Requests for Transfer Pricing Documentation – New Tax and Duty Manual

Revenue have published a [new TDM](#) on Requests for Transfer Pricing Documentation. The TDM documents the operational policy of the Transfer Pricing Audit Branches of Large Corporates Division for requesting transfer pricing documentation from taxpayers as part of the risk appraisal process. This TDM also sets out how transfer pricing documentation requests fit within Revenue's Compliance Intervention Framework, noting that transfer pricing documentation requested during a Revenue appraisal constitutes a Level 1 compliance intervention and it outlines the relevant statutory penalties for non-compliance.

### Finance (No.2) Bill 2023 Signed into Law

Finance (No.2) Bill 2023 (the "Bill") was signed into law [by the President](#) on 18 December 2023. The text of [Finance \(No.2\) Act 2023](#) has not yet been published. Our previous Matheson insight on the Bill is [here](#).

### OECD/G20 Inclusive Framework Agreed Administrative Guidance for the Pillar Two GloBE Rules

The OECD/G20 Inclusive Framework published [Administrative Guidance for the Pillar Two GloBE Rules](#) (the "Administrative Guidance") on 18 December 2023. The Administrative Guidance provides technical guidance to governments on the implementation of the Pillar Two GloBE rules and is to supplement the [Commentary to the Global Anti-Base Erosion Model Rules](#) previously published. The Administrative Guidance includes guidance on the application of the Transitional Country-by-Country Reporting Safe Harbour and the definition of revenues for the purposes of determining whether a multinational enterprise group is within scope of the GloBE rules. There is also guidance on allocating taxes arising in a Blended CFC Tax Regime when some Constituent Entities do not compute their effective tax rate under the GloBE rules. The Administrative Guidance is intended to promote certainty by clarifying the interpretation of the GloBE rules and by providing guidance to tax administrations on how to apply the GloBE rules.

### Webinar on Ireland's First Transfer Pricing Appeal

In this webinar, tax partner, Mark O'Sullivan and senior associate, Anna Crowley, were joined by Frank Mitchell, Senior Counsel, to discuss their experience with transfer pricing audits and appeals, and how transfer pricing cases differ from typical tax appeals. The webinar is available to view through our [Matheson Knowledge hub](#) (please contact us to register for access).

### Publications - Looking Back at 2023 Tax Controversy Insights

#### USD 518m Expense Not Deductible – Tax Advice Referred to as Evidence Against Taxpayer

In February 2023, the Matheson Tax Team published an [article](#) which looked at a recent decision of the Irish Tax Court, where it ruled that a US\$518M expense incurred by a multi-national company ("MNC") was not deductible for Irish tax purposes, resulting in the MNC having a material Irish tax liability. This case was significant as the Revenue referred to tax advice from the MNC's tax advisors as evidence against the MNC in proceedings. The advice in question would not appear to have been protected by legal professional privilege.

#### No CGT on Shares Deriving Value from Licence Over Land?

This [article](#) discussed the High Court's decision in [Cintra v Revenue Commissioners](#) to uphold a Tax Appeals Commission determination that the sale of shares in a company which built and operated an Irish motorway (and received a portion of the toll revenue) by a non-resident company was not subject to Irish capital gains tax ("CGT"). This decision provided guidance to taxpayers regarding the meaning of the words 'land' and 'indirectly' for the purposes of CGT.

#### The Importance of Expert Evidence in Tax Disputes

In this [article](#), the Matheson Tax Team provided insight into the importance of properly assessing expert evidence and the evidentiary requirements in tax disputes. It also looked to a number of recent cases which illustrated the potential pitfalls associated with the use of expert witness evidence in the context of tax disputes.

#### InDisputes: Better Together? The Future of Multilateral Tax Controversy

In this [article](#), we discuss the EU Directive 2021/514 (DAC 7) on joint audits and the OCED Manual on the Handling of Multilateral MAPs and APAs.

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