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Private and Confidential
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Our ref

7 May 2025

Dear Ms Ryan

Finance Bill 2025 - Matheson submission

In advance of the preparation of this year's Finance Bill we have identified a number of issues that persistently arise in practice.

Most of the issues identified undermine Ireland's position as a location of choice for investment and could be easily addressed. We have explained the issues and proposed solutions to address them below.

We have also identified some tough outcomes in determinations made by the Tax Appeals Commission in cases where taxpayers have done their best, but failed, to comply. We think these cases demonstrate a gap in the legislation which currently does not allow the Revenue Commissioners to take account of reasonable explanations given by taxpayers who are doing their best to comply.

We would welcome an opportunity to discuss any of the issues raised below and / or to further assist in developing solutions to address them.

1 Improve participation exemption and introduce branch exemption

Amendments are required to the participation exemption for foreign dividends. Through the Law Society Tax Committee we have made a submission outlining the key changes that we believe are required to improve the submission:

- removing restrictions on geographical scope (save for the carve-out for jurisdictions included on the EU list of non-cooperative tax jurisdictions);
- eliminating the mechanical anti-avoidance provisions (such as the five year waiting period); and
- extending that exemption so that it applies to all distributions that are treated as income in the hands of the recipient

In addition, we would welcome the commencement of a consultation process on the design of a branch exemption to further modernise the Irish tax system – this is another area where current Irish rules are out of step with the treatment in other EU Member States.

2 Exempt ILPs from dividend withholding tax

Currently Ireland does not offer an exemption from dividend withholding tax for dividends paid to Irish investment limited partnerships ("**ILPs**"). This is a significant gap.

By way of background, a private fund (such as an ILP) will generally establish subsidiary companies to hold specific investments. This may be done for a number of reasons (eg, as a lender requirement, for regulatory reasons or to manage legal risk). It is customary for a private fund to establish in a single jurisdiction, so that an ILP established in Ireland would generally prefer to hold investments using an Irish subsidiary. This facilitates more efficient management of the private fund (for example, common boards of directors, common legal, regulatory and tax environment and common local service providers).

Under the existing rules, dividends paid by an Irish company to its ILP shareholder will suffer 25% dividend withholding tax. This is a significant cost that is not typically incurred in private fund structures. It is generally possible for investors in an ILP to reclaim the dividend withholding tax imposed (as they are generally resident in tax treaty partner jurisdiction or other jurisdictions that Irish companies are permitted to pay dividends to free from withholding tax). However, claiming the refund involves a material degree of administration for the investor(s) and the investment manager. Private fund managers do not wish to impose these administration burdens on their investors. Further, managers generally assume fiduciary duties to their clients to ensure that the choice of fund domicile does not bring their clients into the charge to Irish taxation. This means that ILPs generally cannot establish Irish companies to hold their investments.

The imposition of dividend withholding tax does not make any sense in the context of Irish regulated fund structures. Payments of dividends to all other classes of Irish regulated fund including CCF funds - which have the same tax transparent profile as the ILP - are exempt from this dividend withholding tax. If any Irish resident investors are in receipt of distributions from the ILP, they will be fully assessable to Irish tax on their distributions and the Revenue Commissioners ("**Revenue**") will be expressly notified of such distributions in the Irish tax returns filed by the ILP. As a result, there should be no risk to the Irish Exchequer by extending the exemption from dividend withholding tax to ILPs, alongside all other Irish regulated funds.

We strongly recommend a change to Ireland's dividend withholding tax rules to ensure that an ILP is not subject to Irish taxation in respect of dividends paid by Irish subsidiaries of ILPs. This would require changes to both section 172D of the Taxes Consolidation Act 1997 ("**TCA**") and section 153 TCA (both being equally important). Such a change would allow ILPs achieve their intended purpose to grow Ireland's business of being a fund domicile for private funds.

3 Introduce zero VAT rating for customs warehouses

Ireland should extend the application of the zero rate of VAT to sales of goods which take place within a customs warehouse in Ireland.

Currently sales of goods located in a customs warehouse in Ireland are subject to VAT at the standard rate (or the appropriate rate applied to those goods). Any such VAT should always be recoverable by the purchasing customer (as only VAT registered taxpayers can hold goods in a customs warehouse). The transfers within a customs warehouse therefore do not raise tax revenue for the Exchequer.

Under Article 160 of the VAT Directive, Ireland can opt to zero-rate sales which take place in a customs warehouse. Ireland already exercises a similar option in respect of free zones. Exercising the option in respect of a custom warehouse would not create any loss of revenue for the exchequer. However, not exercising this option is unnecessarily creating a cash flow cost for traders selling and buying goods in a customs warehouse (who must collect and reclaim the VAT). Further, it would encourage the use of customs warehouses in Ireland which are an increasingly important facility in the current trading environment.

We strongly recommend that Ireland exercises its option to zero-rate sales within a customs warehouse.

4 Exclude all transfers of foreign shares from stamp duty

Transactions involving transfers of foreign shares give rise to a charge to Irish stamp duty in some cases. Section 88 of the Stamp Duties Consolidation Act 1999 ("**SDCA**") includes a provision that exempts transfers of foreign shares from Irish stamp duty. However, that exemption is disapplied if the transfer relates to shares in an Irish company.

A transfer of foreign shares 'relates to' shares in an Irish company if the transfer is effected in return for the issue of shares in an Irish company and in those cases the exemption in section 88 SDCA does not apply.

This charge to Irish stamp duty on foreign shares is anachronistic and challenging to explain to international businesses looking to consolidate their holdings in Ireland. We struggle to see any policy reason for the scope of Irish stamp duty to be extended to transfers of foreign shares in exchange for the issuance of Irish shares. The issuance of shares in an Irish company is generally not subject to Irish stamp duty (as required by the EU Capital Duties Directive) and we do not believe there are any policy reasons for why the issuance of Irish shares in exchange for the acquisition of foreign shares should bring that transfer of foreign shares within the Irish stamp duty net.

The issue typically arises in group reorganisations where a large multinational group consolidates part of its international group under an Irish holding company (something we anticipate occurring more frequently as the participation exemption is enhanced). Taxpayers that cannot avail of the exemption under section 88 SDCA instead have to explore other parts of the legislation to determine whether other exemptions can apply. In some cases, associated companies relief under section 79 SDCA may be available. However, if the group has plans to divest itself of assets it can be inadequate. In other cases, the application of section 80 SDCA can be considered but depending on the circumstances, the requirement to effect a reconstruction or amalgamation can prove challenging.

The carve-out from the exemption in section 88 SDCA introduces unnecessary friction to transfers of foreign shares that, as a matter of policy, should fall outside the stamp duty net. We strongly recommend removing the residual charge to stamp duty in section 88 SDCA. We suggest that this could be effected by deleting subsection 88(2)(b) SDCA.

5 Exclude performing loans from CG50 requirements

Under current practices, Revenue require a tax clearance certificate (called a Form CG50A) each time there is a transfer of a loan which is secured over Irish real estate. With an ever increasing level of funding to acquire and develop Irish real estate originating from non-Irish resident lenders, this practice is bringing additional and unnecessary friction to those transactions.

A Form CG50A is required under section 980 TCA when a security that derives its value from Irish real estate is transferred for consideration exceeding €500,000. The requirement is intended to mitigate the risk of non-compliance by non-Irish residents with their tax obligations in respect of chargeable gains. If the Form CG50A is not produced, the purchaser is obliged to withhold 15% of the purchase price due. In practice, we are seeing this requirement impact lending transactions where the funds are used to acquire or develop Irish real estate, even where those lending transactions do not give rise to any chargeable gain.

By way of background, it is common market practice to transfer newly originated loans at par. For example, newly originated loans may be syndicated as soon as they are made or such loans may be funded through repurchase agreements which require the lender, as a financing transaction, to sell the loan to the repo counterparty and subsequently repurchase it. These practices provide additional capital to the lender and as such facilitate further lending. These practices are not unusual in lending transactions to fund the acquisition or development of Irish real estate. These transfers do not give rise to a chargeable gain as the loans are transferred at par.

As Revenue's practice is to treat all loans secured over Irish real estate as securities that derive their value from Irish real estate, the transfer of such loans is almost always subject to the requirement to obtain a Form CG50A. In practice, this requires each non-Irish resident lender to register for tax in Ireland and to apply for a Form CG50A.

Where the original lender in a transaction is not resident in Ireland, the requirement for a Form CG50A adds a layer of administration and can therefore cause material delay in initial funding. It is often the case that the original lender is not tax resident in Ireland and must register for tax to obtain a Form CG50A. The tax registration process can materially delay the ability to transfer, syndicate or 'repo' loans, which can result in corresponding delays to the advancement of those loans in the first instance. In some cases, loan market participants (such as investment funds) which are not tax resident in Ireland may have restrictions on registering for taxes outside their own jurisdiction of tax residence. The requirement to obtain a Form CG50A can therefore prevent them participating in transactions involving loans secured over Irish real estate entirely.

In our view, this matter could be addressed by a change in practice by Revenue. However, if the view is that this requires a change in law, then section 980 TCA should be amended to dispense with the requirement to obtain a Form CG50A where there is a transfer of a loan (or debt security) where the debtor is not in default of any of the terms of the loan (or debt security).

Transfers of performing loans should generally not give rise to chargeable gains, so this change would merely be removing significant administrative complexity for international lenders and loan market participants without impacting the substantive taxation of transactions. We note that this proposal would not change the charging provisions of capital gains tax in any way, but only the situations in which a Form CG50A is required.

6 Introduce protections for taxpayers doing their best to comply

Over the past year, we have noticed a series of determinations issued by the Tax Appeals Commission ("**TAC**") which left taxpayers with a strong history of compliance in invidious positions as a result of honest mistakes they had made when completing their tax returns. These decisions demonstrate a gap in Irish law: there is no facility for Revenue to have regard to the broader circumstances of a case or the compliance history of a taxpayer in their dealings with taxpayers. It is clear from the cases that existing Irish tax law offers inadequate protections to taxpayers who are doing their best to comply. We have set out below three examples from recent TAC determinations.

TAC determination 164TACD2024

An 87 year old pensioner had been allocated a higher employee tax credit than he was entitled to due to an error made by Revenue. That error resulted in the taxpayer underpaying tax by €112 for four years in a row. Revenue issued assessments for the underpaid tax (€449 in total). Even though the Commissioner was very sympathetic to the taxpayer's position, he had no option but to uphold the assessment.

TAC determination 42TACD2025

A taxpayer filed their corporation tax return and paid the tax due on time but failed to upload their financial statements. Their iXBRL file was generated but was not accepted by Revenue's online platform. Revenue issued an amended assessment which included a 10% surcharge of €13,350 for late filing even though all tax due had been paid on time. In the absence of any supervisory jurisdiction over Revenue's procedures or the conduct of Revenue, the Commissioner found that Revenue were permitted to impose the surcharge.

TAC determination 54TACD2025

For two weeks before and two weeks after the date a corporation tax return was due, the taxpayer's agent was unavoidably and unexpectedly on an extended period of sick leave. As a result, the taxpayer's return was filed two weeks late (with a note from the tax agent explaining the reason for the late filing and a doctor's certificate). The return included a claim for the R&D tax credit. Revenue denied that claim on the basis that it was made outside the statutory time limit and issued an assessment requiring payment of €128,007. Despite the Commissioner's sympathy for the taxpayer's position and her acceptance that the determination would have a negative impact on the taxpayer's business, the Commissioner dismissed the appeal.

The outcomes of all three determinations are harsh and illustrate that the tax system is failing to accommodate taxpayers that are doing their best to comply. Both Revenue and the Commissioners in each case were unable to take account of the taxpayers' history of compliance and their genuine efforts in the relevant years to comply. There is no suggestion in any of the cases that the taxpayers acted dishonestly or tried to avoid their obligations. The taxpayers will have incurred additional cost in bringing the appeals. In our view, the cases (which are a sample only) demonstrate an increasing imbalance in the administration provisions and a clear gap in the existing rules.

Similar to the approach taken in the UK, we recommend that a good first step to address the existing imbalance would be to update the legislation to allow Revenue to accept reasonable excuses from taxpayers to explain instances of non-compliance. Such a provision would permit Revenue to waive penalties that would otherwise arise. In addition, it could permit the extension of deadlines for claiming allowances and reliefs and making elections. The 'reasonable excuse' provision only applies in the UK if circumstances arise that stop a person from meeting a tax obligation despite them having taken reasonable care to meet the obligation. It is not a wide or unencumbered discretion and the meaning of what can be regarded as a reasonable excuse has been developed through case law over time.

In addition, thought should be given to introducing a provision precluding Revenue from pursuing an otherwise compliant taxpayer for underpayment of low levels of tax in cases where the underpayment is a result of Revenue error. The position taken by Revenue against the 87 year old pensioner in 164TACD2024 was particularly harsh. The cost of taking the case must have exceeded the €449 of tax due. There should be room for Revenue to opt not to pursue underpaid tax where (i) it resulted from Revenue's own error; (ii) the cost of collecting the tax would be higher than the tax itself; and (iii) the taxpayer has an otherwise good record of compliance.

7 Reduce the consequences of administrative errors

In some cases under the Taxes Acts, administrative errors can give rise to disproportionate outcomes. This undermines Ireland's competitiveness as a location to do business. We have included two examples below of the 'cliff-edge' effect of administrative errors. We have suggested changes that maintain the integrity of the relevant provisions but replace the disproportionate consequences with penalties that more appropriately reflect the nature of the error.

7.1 Failure to file Form S110 on time

Companies seeking to qualify under section 110 TCA are required to file a Form S110 notifying Revenue of their intention to be a qualifying company within eight weeks of the date of the company's first transaction. Taxpayers do not object to this requirement and understand that it is necessary for Revenue to be aware of what companies intend to be regarded as qualifying companies for the purposes of the provision.

The obligation to file a Form S110 is typically outsourced to a third party service provider given the qualifying company itself will not have employees. From time-to-time, whether due to crossed-wires, illness, changes in personnel or human error, the requirement to file the Form S110 within the eight week deadline is missed. For those companies, it is not an exaggeration to describe the consequences as catastrophic. Failure to file the Form S110 within the eight week timeframe means that the company cannot be regarded as a 'qualifying company' for the purposes of section 110 TCA. There is no possibility for the taxpayer to rectify the error. Failure to be regarded as a qualifying company can result in the company being taxed at 25% on a gross basis. This outcome is entirely disproportionate.

We recommend removing the requirement to file the Form S110 from the definition of 'qualifying company' in section 110(1) TCA and relocating it as a standalone requirement (with a fixed penalty for non-compliance) in a new subsection 110(8) TCA:

(a) Every company that it is or intends to be a qualifying company shall notify in writing the authorised officer in a form prescribed by the Revenue Commissioners and shall supply such other particulars relating to the company as may be specified on the prescribed form including details concerning the—

(i) type of transaction,

(ii) assets acquired,

(iii)originator,

(iv) intra-group transactions, and

(v) connected parties,

not later than 8 weeks from the day referred to in subsection (1), paragraph (e), and where information required is not available at the time the written notification is provided to the authorised officer, that information should be provided without undue delay upon becoming available.

(b) Where a qualifying company fails without reasonable excuse to make a notification under this subsection, then that company shall be liable to a penalty of [€3,000].

7.2 Failure to meet €10 million day one requirement

Another requirement of section 110 TCA that we have seen give rise to disproportionate outcomes in the case of administrative errors is the requirement that the first transaction that a company enters into must be valued at €10 million or more. Taxpayers understand the policy reasons for the minimum €10 million requirement being a core threshold for section 110 TCA to apply. Failure to meet the €10 million day one requirement means that the company cannot be regarded as a 'qualifying company' for the purposes of section 110 TCA. As explained above, this means that the income of the company can become taxable at 25% on a gross basis.

We have seen cases where human error has resulted in the €10 million day one requirement being failed, or potentially failed, or requiring detailed legal analysis to consider whether or not it has been failed. In cases where the failure to meet the €10 million day one requirement is in the nature of an administrative slip, the inability to be regarded as a qualifying company for the purposes of section 110 TCA is disproportionate.

The most typical example is where an inexperienced employee in a financial institution involved in the transaction makes a low value bank transfer to the bank account of the company before the transaction day to confirm that "the bank account works" or to pay an initial expense. As a company can only be regarded as a 'qualifying company' for the purposes of section 110 TCA if it satisfies the day one €10 million requirement, these kind of administrative errors become 'high stakes' events that require detailed legal advice and input from a range of senior stakeholders in the transaction. More often than not, when an administrative error like this occurs, a decision is taken, solely because of the day-one €10 million requirement, to dissolve the original company, to incorporate a new entity, change all transaction documents and more often than not delay the closing date of the transaction. The last minute advice and restructuring can be costly for all involved. Typically, the new entity will need to be approved under 'know your client' procedures by a range of counterparties to the transaction – a process that in many cases can take six to eight weeks.

With a view to minimising the risk of administrative errors giving rise to disproportionate outcomes, we recommend amending the requirement so that it is satisfied either as a day one requirement or at the end of the company's first financial year. In order to achieve this section 110(1)(e) TCA could be amended as follows:

in relation to which company -

(i) the market value of all qualifying assets held or managed, or

(ii) the market value of all qualifying assets in respect of which the company has entered into legally enforceable arrangements,

is not less than €10,000,000 on ***either*** *the day on which the qualifying assets are first acquired, first held, or an arrangement referred to in subparagraph (iii) of paragraph (b) is first entered into, by the company****, or on the last day of the company's accounting period****, and*

8 Clarify ILP reporting obligations

We understand that at recent TALC meetings, representatives of Revenue have indicated that in their view the precedent partner of an ILP is required by section 880 TCA and section 959I TCA to file a Form 1. This view came as a surprise to the Irish funds industry. The Form 1 is designed for ordinary partnerships (rather than ILPs) and as such requires the precedent partner to disclose details on trading profits, exempt income, Irish rental income, other Irish income, foreign income and details of chargeable assets acquired and gains accrued. It is not a form that is designed to be completed by an investment fund such as an ILP.

Separately, section 739J(3) TCA has always required an ILP to make an annual filing on 28 February after each year of assessment. This annual filing (made on a Form ILP1) requires the ILP to disclose the name and address of each partner along with their tax reference number and their share of relevant income, the net asset value of the ILP at the end of the year of assessment, details of material transactions entered into by the ILP and assets held by the ILP.

The Form ILP1 should provide Revenue with all of the information they require to ensure and enforce compliance with Irish tax law by an ILP and its investors. Also imposing an additional requirement for ILPs to file a Form 1 is excessive and unnecessary administrative work, making Ireland less attractive as a fund domicile for private funds. Further, the Form 1 is not designed to be filed by an ILP and as such imposes a higher compliance burden on ILPs than other partnerships. The approach runs counter to the increased emphasis at EU level on improving competitiveness, decluttering the tax system and reducing unnecessary regulatory burdens.

We understand that Revenue's view is that the Form 1 is required to be filed by precedent partners of ILPs as a matter of law. Rather than interrogating the technical merits of that position (which is for another forum), we would urge a clarificatory change to the legislation to confirm that the requirement to file a Form 1 does not apply to an ILP or its precedent partner. In this respect, we consider that the simplest fix would be to amend section 959M TCA as follows:

The precedent partner of any partnership ***save for an investment limited partnership*** *shall –*

(a) be deemed to be a chargeable person for the purposes of this Chapter, and

(b) as respects any chargeable period, deliver to the Collector General on or before the specific return date for that chargeable period the return which that partner would be required to deliver for that period under section 880, if a notice under that section had been given to that partner before that specified date.

Further assistance

We would welcome the opportunity to engage further on any of the issues raised above and to further discuss or refine the solutions proposed.

Yours faithfully

Sent by email, bears no signature

MATHESON LLP

Copy: Clare Costello, Assistant Secretary with responsibility for Domestic and Indirect Tax Policy, Department of Finance (by email)