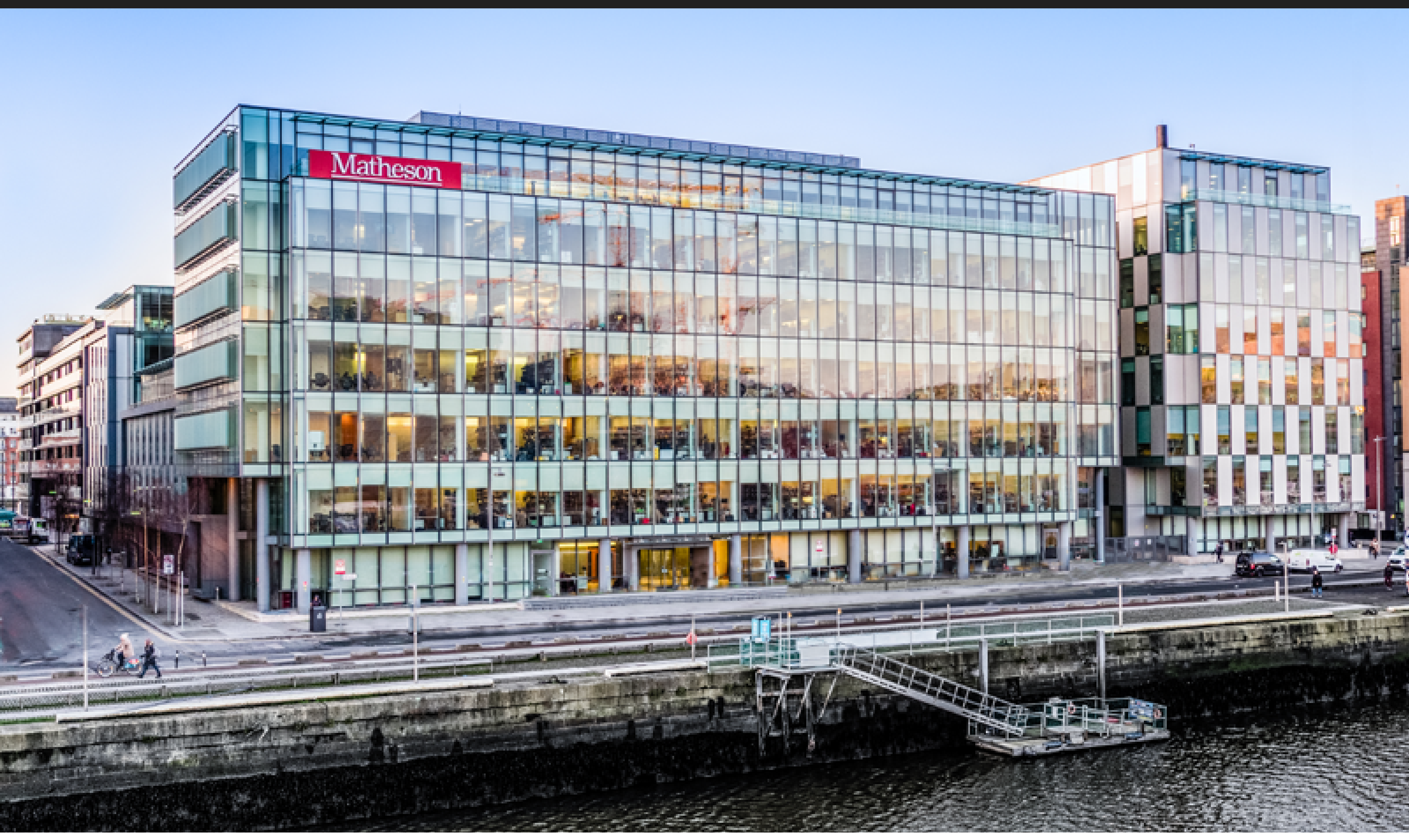
Tax Update

March 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

Update to the EU List of Non-cooperative Jurisdictions

On 14 February 2023, the EU Council decided to add British Virgin Islands, Costa Rica, Marshall Islands and Russia to the EU list of non-cooperative jurisdictions for tax purposes.

Annex I (the EU's so-called "black" list) now includes the following 16 jurisdictions: American Samoa, Anguilla, Bahamas, British Virgin Islands, Costa Rica, Fiji, Guam, Marshall Islands, Palau, Panama, Russia, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

In tandem with the above, the EU Council also approved the state of play document (Annex II, also referred to as the "grey" list), the purpose of which is to recognise ongoing constructive work in the field of taxation, and to encourage the positive approach taken by cooperative jurisdictions to implement good tax governance principles. On the basis that Barbados, Jamaica, North Macedonia and Uruguay fulfilled their commitments, they were each removed from the list. Hong Kong and Malaysia were given an extension to implement reform of their foreign source income exemption regimes as regards capital gains. Qatar was granted an extension due to constitutional reform constraints it faced in implementing reform.

The Council will continue to review and update the EU List biannually, with the next update due in October 2023.

EU Summary Report on Tax Enablers (SAFE) Consultation

On 31 January 2023, the European Commission (the "**Commission**") published a summary report of the stakeholders' responses to the public consultation on the need to secure the activity framework of enablers of aggressive tax planning ("**SAFE**"). The consultation received 132 contributions. However, less than half of the survey respondents agreed that tax evasion and aggressive tax planning continue to be a substantial problem in the EU and many respondents did not believe the issue of tax evasion or aggressive tax planning has continued to increase recently. Interestingly, a number of business associations, including bar associations, raised the issue the term "enabler" could pose for the reputation of intermediaries.

In respect of defining aggressive tax planning ("**ATP**"), the survey provided respondents with five different options to define ATP. The three most "indicative" factors in determining ATP were:

- the main business rationale or the purpose behind the company structure;
- the use of preferential tax regimes, tax treaties, or mismatches in national legislations across countries in a company structure; and
- minimum economic substance of the entities used in the structure.

In terms of tackling the role that enablers play in facilitating tax evasion and aggressive tax planning, many of the survey respondents believed that enablers should be prevented from designing, marketing, organising or assisting in the creation of tax schemes that lead to evasion and aggressive tax planning. However, the respondents were split on whether action by the EU should take the form of a hard or soft law approach. Many respondents did not believe that due diligence procedures are an effective measure to tackle the problem while some voted to enforce more stringent due diligence on enablers. Concerns were raised as to the administrative costs involved and the ability of large international companies to circumvent the definition of ATP. Similarly, the majority of respondents did not believe a code of conduct for enablers would be sufficient and effective at tackling the role of enablers in tax evasion and ATP.

In terms of next steps, the Commission will analyse the views expressed in the consultation which will ultimately feed into any proposed draft legislation and impact assessment.

Publications

No CGT on Shares Deriving Value from Licence Over Land?

In this next instalment of our InDisputes Series, Partner, Vahan Tchrakian and Associate, Chloe Power provide a brief overview of the recent High Court decision in Cintra where the High Court upheld a Tax Appeals Commission determination that the sale of shares in a company which built and operated an Irish motorway by a non-resident company was not subject to Irish capital gains tax.

Share Scheme Reporting

Our tax team has prepared an overview of the share scheme reporting requirements, ahead of the reporting deadline of 31 March 2023, which is accessible here.

Special Assignee Relief Programme

The Special Assignee Relief Programme was introduced to provide a targeted income tax relief for eligible employees assigned to work in Ireland by their employer companies. In this article, Partner, Barry McGettrick and Senior Associate, Pearse Walsh discuss changes to existing qualifying conditions for the programme and new qualifying conditions for 2023 onwards.