**Ireland's Corporation Tax Roadmap**

On 5 September 2018, the Department of Finance issued *Ireland's Corporation Tax Roadmap* (the "**Roadmap**") setting out the next steps in implementing changes required at EU level under the Anti-Tax Avoidance Directives ("**ATAD**") and the OECD's Base Erosion and Profit Shifting ("**BEPS**") project. The Roadmap confirms the timing of these key changes. You can access the Roadmap here.

**Implementation of ATAD**

Ireland, and all other EU Member States, must implement a series of changes under ATAD. Different timelines apply to the various changes. The Roadmap confirms:

- **Controlled foreign company rules** will be implemented in Finance Bill 2018. It was been confirmed that Ireland will adopt an Option B approach (under this approach, income arising to a non-Irish resident company from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage will be regarded as CFC income). A '*Feedback Statement*' on the CFC rules will be issued during the third quarter of 2018 for public consultation. That document will include suggested language for inclusion in the draft CFC legislation.

| **CFC rule - key points** |
|---|
| *Effective date: 1 January 2019* |
| *Ireland will adopt an Option B approach* |
| *Consultation on text of draft rules expected before the end of September 2018* |
| *More detail: page 22 of Roadmap* |

- No changes will be required to Ireland's existing **general anti-avoidance rule** ("**GAAR**") in section 811C of the Taxes Consolidation Act 1997 to implement the anti-abuse rule included in ATAD.

| **GAAR - key points** |
|---|
| *No change under Irish law* |
| *More detail: page 22 of Roadmap* |

- EU Member States are required to implement an **interest limitation rule** restricting deductions for interest payments to 30% of EBITDA by 1 January 2019. However, if a Member State has rules restricting deductions of interest that are equally effective to the proposed interest limitation rule, ATAD permits a derogation from the requirement to implement the rule until 1 January 2024. Ireland considers that its existing targeted rules that limit interest deductions are at least equally effective to the rule contained in the ATAD.

  Ireland is currently in correspondence with the European Commission in respect of the derogation. According to the Roadmap, it is unclear whether agreement will be secured in relation to the derogation. Timing of the Irish implementation of the interest limitation rule will depend on this engagement with the Commission. The Department of Finance notes in the Roadmap that *"it is anticipated that transposition could potentially advance, at the earliest, to*

*Finance Bill 2019."* The Department of Finance will also consult in detail on the implementation of the interest limitation rule during the third quarter of 2018.

| **Interest limitation rule - key points** |
| --- |
| *Effective date: may take effect earlier than 1 January 2024* |
| *Consultation on an Irish interest limitation rule will commence during the third quarter of 2018* |
| *More detail: page 21 of Roadmap* |

- At the same time as the consultation on the interest limitation rule, the Department of Finance will consult on the Irish implementation of the **anti-hybrid rules** which will be introduced in Finance Bill 2019. The reverse hybrid rule will not be implemented until 1 January 2022 in accordance with a derogation available under ATAD.

| **Anti-hybrid rules – key points** |
| --- |
| *Effective date: 1 January 2020 (reverse hybrid rule will take effect on 1 January 2022)* |
| *Consultation on the anti-hybrid rules will commence during the third quarter of 2018* |
| *More detail: page 23 of Roadmap* |

- The Roadmap confirms that the **exit tax** envisaged in ATAD will be implemented by 1 January 2020 but it gives no indication on the applicable rate. The Roadmap does note that a majority of participants in the preceding consultation (known as the Coffey Consultation) suggested that a 12.5% rate would be appropriate.

| **Exit tax – key points** |
| --- |
| *Effective date: 1 January 2020* |
| *Rate to be confirmed* |
| *More detail: page 22 of Roadmap* |

**Transfer Pricing**

- The Roadmap confirms that Ireland will make changes to its transfer pricing rules with effect from 1 January 2020. This should mean that the **2017 OECD Transfer Pricing Guidelines** will be incorporated into Irish law by the Finance Act 2019.

- The Roadmap is silent on:

  (a) whether grandfathering for pre-2010 transactions will be removed;

  (b) whether the transfer pricing rules will be extended to apply to non-trading and capital transactions;

  (c) whether the transfer pricing rules will be extended to apply to SMEs; and

  (d) whether revised OECD transfer pricing documentation requirements will be expressly legislated for.

  The Roadmap notes that the Department of Finance will further consult on transfer pricing changes in 2019.

| **Transfer pricing – key points** |
| --- |
| *Effective date: 2017 OECD Transfer Pricing Guidelines to apply from 1 January 2020* |
| *Expect further consultation on broader changes to transfer pricing regime during 2019* |
| *More detail: page 23 of Roadmap* |

**Moving to a territorial regime**

The Roadmap acknowledges that under the Coffey Consultation there was broad support for moving to a territorial regime (for foreign dividends and branch profits). The Department of Finance will consult on making such a change in early 2019.

| **Territorial regime – key points** |
|---|
| *Overall support for moving to territorial regime* |
| *Expect consultation in 2019* |
| *More detail: page 24 of Roadmap* |

**Multilateral Instrument and Ireland's withholding tax rules**

Ireland will seek to complete the ratification of the **MLI** in Finance Act 2018 with a view to the MLI taking effect to update Ireland's double tax treaties from 1 January 2020.

This part of the Roadmap includes a statement on Ireland's **domestic withholding tax provisions**: "*The most important changes to Ireland's treaties under the Multilateral Instrument will be the introduction of strong anti-avoidance rules that should prevent treaty benefits being claimed inappropriately. Consideration is also being given to whether any related changes need to be made to Ireland's domestic withholding tax provisions to give effect to the new anti-avoidance provisions that will be introduced by the Multilateral Instrument."*

| **MLI – key points** |
|---|
| *MLI expected to update Ireland's double tax treaties from 1 January 2020* |
| *Anti-avoidance rules may be incorporated into Ireland's domestic exemptions from withholding tax* |
| *More detail: page 26 of Roadmap* |

**Other developments**

- The Roadmap notes the work on the **EU list of non-cooperative third countries** and includes the following statement: "*Discussions are underway at EU level as to whether defensive measures are needed in response to countries who are listed and refuse to make changes. Ireland is also considering what administrative measures may be appropriate to take in response to the list in line with commitment made at Council when the list was established*."

- The Roadmap notes the EU and OECD work on the **taxation of the digital economy** and confirms: "*Ireland will continue to actively engage on these matters with our fellow Member States and the related debate ongoing at OECD level so that we have a system of international taxation which is appropriate to meet the challenges and opportunities that arise from the digitisation of the economy.*" The Roadmap also confirms that the Department of Finance will seek input from stakeholders as part of its on-going analysis of these developments.

- The Roadmap notes that Ireland will implement the **Mandatory Disclosure Directive** and the **Dispute Resolution Directive** on time.

If you would like further details on any aspect of the Roadmap or how it applies to your transactions, please speak to your usual Matheson contact or to any member of our [Tax Department].