

Tax Update

June 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](#).



DAC 8 Approval by the EU Council

On 16 May 2023, the EU Council reached political agreement on a compromise text for the DAC8 directive. DAC8 amends the directive on administrative cooperation in the area of taxation and will introduce reporting and automatic exchange of information requirements in respect of, amongst other things, a broad range of crypto-assets. As such, from 2026 there will be a mandatory automatic exchange between tax authorities of the information provided by reporting crypto-asset service providers.

It is expected that DAC8 will be formally adopted, after the parliamentary consultation process is completed. Following the Council's formal adoption of DAC8, Member States will have until 31 December 2025 to transpose the main rules into national law; the provisions will apply as of 1 January 2026 with some exceptions.

Revenue Guidance on Foreign Entity Classification for Irish Tax Purposes

Revenue have published [guidance](#) to provide clarity on the approach taken by them when classifying a foreign entity for the purposes of Irish tax law (and whether it should be treated as being opaque or transparent for tax purposes). In particular, Revenue mentions the following seven factors as being indicative of a foreign entity being classified as opaque for Irish tax purposes:

1. The foreign entity has a legal existence separate from that of the persons who have an interest in it.
2. The foreign entity issues share capital or something else, which serves the same function as share capital.
3. The business is carried on by the foreign entity itself rather than jointly by the persons who have an interest in it.
4. The persons who have an interest in the foreign entity are not entitled to share in its profits as they arise; the amount of profits to which they are entitled depends on a decision of the entity or its members, after the period in which the profits have arisen, to make a distribution of its profits.
5. The foreign entity is responsible for debts incurred as a result of the carrying on of the business.
6. The assets used for carrying on the business belong beneficially to the foreign entity and can be owned or transferred by the entity in its own right.
7. The foreign entity is capable of perpetual succession, its existence remains unaffected by the incapacity or death of its members.

Revenue note that the importance of the above factors will depend on the relevant taxing provision, and that an entity's constitutional documents, along with the relevant legal framework within which the entity is formed, must be considered.

Matheson Submission to Department of Finance Consultation on Pillar Two Implementation

As noted in our previous updates, the Irish Minister for Finance launched a [Feedback Statement](#) on the transposition of the EU Minimum Tax Directive (the Pillar Two Directive) in March 2023. The Feedback Statement builds on the May 2022 public consultation with questions relevant to the implementation of the Pillar Two rules into Irish legislation.

The Feedback Statement also outlines possible draft legislative approaches to the GloBE rules and possible approaches that could be taken in respect of the Qualified Domestic Top-up Tax (QDTT).

Matheson's submission to the Department of Finance on the Feedback Statement can be read [here](#).

Publications

Revenue Annual Report

Further to our update in last month's edition in relation to tax controversy and the continuing demand for Advance Pricing Agreements and Mutual Agreement Procedures, see an [article](#) on this topic by Partner, Catherine O'Meara and Senior Associate, Trevor Glavey.

Proposed Reforms to the EU Customs Union

The European Commission has proposed significant reforms of the EU Customs Union which will impact a wide range of stakeholders, including EU traders, consumers and national customs authorities. Partners, Matthew Broadstock and Dara Higgins and Solicitor, Anna O'Duffy provide an overview of these reforms in their recent [article](#).

Revenue Reject Tax Decision

The Revenue Commissioners have recently published updated guidance in which they explicitly refuse to accept the reasoning of a Tax Appeals Commission determination that found in favour of the taxpayer. For further details, read Partner, Kevin Smith, Senior Associate, Finn Kelly and Solicitor, Eimear O'Donoghue's InDisputes article [here](#).