An Roinn Airgeadais
Department of Finance

# Ireland's Corporation Tax Roadmap

## January 2021 Update

Prepared by the Tax Division
Department of Finance
**www.gov.ie/finance**

# Contents

# Minister's Foreword

I am delighted to publish this update on Ireland's Corporation Tax Roadmap. I published the Corporation Tax Roadmap in 2018 to provide a clear indication of the actions that Ireland would take to ensure that our corporation tax system remained competitive, fair and sustainable.

This update provides an opportunity to reflect on the significant actions which we have taken to date. It is important to recognise that Ireland has consistently taken action to meet new and evolving international standards.

The landscape in 2021 is very different to that in 2018, primarily due to the COVID-19 pandemic. The Government has introduced unprecedented supports for our businesses in this period. Tax expenditures and the efficient use of our tax administration systems have played a significant role in delivering Government supports, whether through the use of Revenue's new real-time PAYE system to provide income supports directly to business employees; the re-introduction of the 9% VAT rate for the hospitality sector; or debt warehousing which is designed to provide a cushion for businesses as they look towards recovery.

This challenging period has once again emphasised the importance of the multi-national sector in Ireland as a significant employer and as a contributor to the Exchequer, not only through corporation tax receipts but also as a driver for the other taxes. It is important to highlight the role that Irish producers and exporters of medical devices and pharmaceuticals are playing in the fight against COVID-19. This underlines the substance and real activity of Irish enterprises and the role of our Corporation Tax strategy in supporting an attractive, open and competitive jurisdiction that can provide both foreign and domestically-grown businesses with a gateway to the EU and global marketplaces.

The publication of this update enables us to take stock of ongoing global tax reform work at what is a crucial moment and to set out the next steps in the ongoing process of modernising and further strengthening our corporation tax system.

There remains significant uncertainty in the global tax landscape. The OECD/G20 Inclusive Framework on BEPS in October 2020 published two "blueprints" intended to address the tax challenges arising from the digitalisation of the economy, but there is more work to do before agreement can be reached. I strongly believe that agreeing a multilateral approach through the OECD/G20 Inclusive Framework is in everyone's interest given the inter-connectivity of the globalised economy. However, any outcome

at international level must strike an appropriate balance and be acceptable to all countries, small and large, developed and developing. We must also ensure that the new International Tax Framework acts as an enabler, and not an inhibiter, of growth and investment – this is particularly relevant given the challenging period ahead as we endeavour to emerge from COVID-19.

Pending the outcome of international discussions, there are some actions that Ireland can, and should, take to further reform our system and ensure it remains in step with evolving international standards. Some of these actions have been taken in Finance Act 2020. This update on the Corporation Tax Roadmap also highlights a range of issues that will need further consideration and consultation over the coming months and years.

Tax laws in Ireland, and internationally, will continue to change over the coming years. I am a firm believer in certainty and the importance of certainty for business. This roadmap reflects the long-standing approach by Ireland to provide certainty in how changes are made and how they are applied. Ireland always looks to the future and makes changes prospectively, and consults with stakeholders where possible to ensure reforms are well-designed and sustainable.

While governments worldwide are doing their part by amending domestic rules, this is a shared challenge. Globally, tax advisors, tax lawyers, and the professional services industry must also play a part in ensuring that we have a sustainable tax system that achieves the twin aims of raising tax revenues to fund public services and at the same time facilitating investment and growth.

As the eventual outcome of reforms at the OECD become clearer, all countries, including Ireland, will need to assess the compatibility of their tax systems with new global norms. My commitment, and that of the Irish Government, remains clear – we will be proactive in ensuring that Ireland's corporation tax regime will remain competitive, fair and sustainable with the 12.5% rate at its core.

To complement our competitive tax rate, we will also ensure that we continue to play to our traditional strengths, including a forward-looking business environment, a whole-of-Government approach to ensure we remain agile and competitive, and importantly recognising the value of an educated and dynamic workforce who have consistently delivered innovation and profitability over many decades for businesses that have made Ireland their home.

Paschal Donohoe T.D.
Minister for Finance

# Update on Ireland's Corporation Tax Roadmap

The publication of *Ireland's Corporation Tax Roadmap*[1] in September 2018 represented a significant milestone in Ireland's implementation of international tax reform. The Roadmap took stock of the significant developments and reforms that had occurred to that date and laid out a further 11 commitments to future action to be taken in Ireland's implementation of agreed international tax reforms. It also reflected on the recommendations set out in the *Review of the Irish Corporation Tax Code* carried out by Seamus Coffey.

In the period since the Roadmap was published, discussions have intensified at the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) and at the EU on agreeing further reforms to the international tax framework, with the aim of reaching agreement in mid-2021. Agreement at an international level continues to represent the most desirable pathway to sustainable tax reform, to avoid a patchwork of regional or unilateral measures which would not be conducive to a positive business environment. In this context, we must also bear in mind the potential for negative spill-overs from the international tax discussions into matters of international trade.

In October 2020, the Inclusive Framework published blueprints on the two Pillars on which the technical discussions have been advancing. Pillar One is designed to deliver a sustainable taxation framework reflective of today's digitalising economy. It is aiming to address concerns that countries have raised around *where* tax is being paid by large multinationals. Pillar Two of the work aims to outline a series of measures to ensure that all large and internationally operating businesses pay at least a minimum *level* of tax on their profits in each jurisdiction in which they operate. The issue of what an appropriate level of minimum tax might be, should Pillar Two ultimately be agreed, has not yet been discussed by the Inclusive Framework. The report notes that countries continue to have diverging views on key design features of the proposals.

The European Commission has also signalled its intent with respect to corporation tax, with the publication of a package in July 2020 which encompassed an Action Plan for Fair and Simple Taxation Supporting the Recovery strategy, a proposal to amend the Directive on Administrative Cooperation, and a Communication on Tax Good Governance in the EU and beyond.

This update to the Roadmap provides an opportunity to take stock of Ireland's progress to date in respect of each of the Roadmap commitments, adding to the significant level of reforms Ireland had already taken in recent years in aligning to new and emerging international standards. It also sets out a pathway for further actions to be taken in the period ahead. Finally, it signals a series of further policy considerations and the consultations which will take place to ensure that key stakeholders will have an opportunity, in line with best practices, to provide input into the development of policy to ensure that it is focused and avoids unintended consequences.

[1] https://www.gov.ie/en/publication/b1fbf8-irelands-corporation-tax-roadmap/

## How Ireland has met the Roadmap commitments

The table below summarises the actions taken to date to meet the commitments to action set out in the 2018 Roadmap, and is followed by more detailed discussion of progress.

| | 2018 Commitment | 2020 Update |
|---|---|---|
| 1 | **Controlled Foreign Company (CFC) rules** to be introduced in 2018.<br><br>(BEPS Action 3, ATAD Articles 7 and 8 and Coffey Recommendation) | CFC rules introduced in Finance Act 2018 and took effect from 1 January 2019. ✓ |
| 2 | **General Anti-Abuse Rule**<br><br>(ATAD Article 6) | Ireland's longstanding General Anti-Avoidance Rule meets the ATAD standard. ✓ |
| 3 | **BEPS Multilateral Instrument** to be ratified and brought into force. **(**BEPS Actions 2, 5, 6, 14 and 15) | Ratification of the Multilateral Instrument was completed by Ireland in January 2019 and the Instrument is now in force. ✓ |
| 4 | **Exit Tax**<br><br>(ATAD Article 5 and Coffey Recommendation) | ATAD-compliant Exit Tax introduced in Finance Act 2018 and took effect from 10 October 2018. ✓ |
| 5 | **Interest Limitation rules** – transposition to be advanced from the original planned deadline of end-2023.<br><br>(BEPS Action 4, ATAD Article 4 and Coffey Recommendation) | Ireland remains of the view that our national targeted rules for preventing BEPS risks are equally effective to the ATAD interest limitation rule.<br><br>Notwithstanding this, it has been agreed to advance transposition. An initial feedback statement issued in December 2020. This will be followed by an iterative consultation and feedback process in the first half of 2021, with transposition to take place in Finance Bill 2021.<br>» 20/21 |
| 6 | **Hybrid Mismatch Rules** to be introduced in Finance Bill 2019 and anti-reverse hybrid rules to be introduced in subsequent Bill.<br><br>(BEPS Article 2, ATAD Article 9 & 9a) | ATAD-compliant anti-hybrid rules were introduced in Finance Act 2019. Transposition of anti-reverse-hybrid rules is planned for 2021, in line with the schedule set out in ATAD. ✓ |

| | 2018 Commitment | 2020 Update |
|---|---|---|
| 7 | **Transfer Pricing Rules** to be updated.<br><br>(BEPS Actions 8-10 & Action 13, Coffey Recommendation) | Finance Act 2019 incorporated the OECD 2017 Transfer Pricing Guidelines into domestic legislation and extended transfer pricing rules to non-trading and capital transactions. It also provided for the extension of the rules to SMEs but this is subject to a Ministerial commencement order due to the current uncertain business environment. ✓ |
| 8 | **Consideration of a Territorial Regime** – it is intended that a public consultation will be launched in early 2019 on moving to a territorial regime or simplification of double tax relief rules.<br><br>(Coffey Recommendation) | Consideration of moving to a territorial system of taxation was deferred in view of the ongoing Pillar One and Two discussions at the Inclusive Framework. It is intended to commence this consultation process in 2021. » 2021 |
| 9 | **Mandatory Disclosure Rules** – implementation of DAC6 Directive.<br><br>(BEPS action 12, DAC6, and Coffey Recommendation) | Legislation was introduced in Finance Act 2019 to transpose DAC6. Revenue has developed the necessary systems and produced guidance, with the system going active on 1 January 2021 as scheduled. ✓ |
| 10 | **Dispute Resolution Mechanism Directive** – Regulations to be issued to implement the Directive and provide Irish taxpayers with access to the new arbitration framework.<br><br>(BEPS Action 14 and EU Dispute Resolution Mechanism Directive) | Regulations issued at end of June 2019 transposing this Directive. ✓ |
| 11 | **International Mutual Assistance Bill** – finalise drafting of Bill with a view to publishing before end 2018.<br><br>(Coffey Recommendation) | Drafting on the Bill continues. It is expected that the Bill will be published in the coming weeks. » 20/21 |

### Commitment 1: Introduce Controlled Foreign Company Rules

Building on the BEPS Action 3 report, the Anti-Tax-Avoidance Directive (ATAD) required Member States to have Controlled Foreign Company (CFC) rules. CFC rules are an anti-abuse measure, intended to prevent the diversion of profits from controlling companies to offshore subsidiaries located in low or no tax jurisdictions.

CFC rules were introduced into Irish law in Finance Act 2018 in line with the ATAD requirement. Ireland's CFC rules operate by automatically attributing certain income, arising to the CFC from any sources, to the Irish parent company, thereby bringing it within the charge to Irish tax.

Following more recent commitments at EU level, Finance Act 2020 has amended these rules to provide more stringent criteria in respect of subsidiary companies resident in jurisdictions included in the EU list of non-cooperative tax jurisdictions. This is in line with agreements reached at ECOFIN on the need to apply defensive measures against listed jurisdictions.

### Commitment 2: Ensure General Anti-Avoidance Rule in line with ATAD standard

General anti-avoidance rules (GAARs) tackle abusive tax practices that are not dealt with through specifically targeted provisions. GAARs aim to fill in gaps and prevent non-genuine arrangements from availing of unintended tax advantages.

The ATAD required all Member States to ensure they had a robust GAAR that targeted non-genuine arrangements. Ireland's longstanding GAAR already meets the minimum standard required by the ATAD and therefore no further action was needed.

### Commitment 3: Ratify the BEPS Multilateral Instrument

A significant number of the OECD BEPS recommendations have been implemented by Ireland via the BEPS Multilateral Instrument (MLI). The MLI modifies the application of thousands of bilateral tax treaties globally to implement agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms.

Ireland completed the necessary legislative steps in Finance Act 2018 and deposited our Instrument of Ratification with the OECD on 15 January 2019. The MLI is now in force for Ireland to ensure that our tax treaty network is compliant with the BEPS standards.

The majority of Ireland's treaty partners have signed up to the MLI, however, Ireland is also implementing the BEPS recommendations on a bilateral basis with a small number of tax treaty partners who sought implementation via bilateral updates.

The impact of the MLI on aggressive tax planning has been demonstrated by the Competent Authority Agreement entered into by the Revenue Commissioners and the Maltese tax authorities to shut down the structure known as the 'Single Malt'. The

Agreement relies on clauses contained in the MLI to prevent the Ireland-Malta double tax agreement from applying in a manner which could have facilitated this aggressive tax planning structure.

### Commitment 4: Amend Ireland's Exit Tax to meet ATAD standards

Exit taxes seek to tax unrealised capital gains where companies migrate or transfer assets offshore such that they leave the scope of the national tax system. ATAD required all Member States to ensure they had an exit tax that was in line with the Directive.

An ATAD-compliant Exit Tax was introduced into Irish legislation in Finance Act 2018 and took effect from 10 October 2018. It operates by deeming the company to have disposed of, and then reacquired, relevant assets at market value immediately before departure, and applies an exit tax at 12.5% on any latent gains.

In line with the requirements of ATAD, the legislation provides an option for taxpayers to elect to defer the payment of exit tax by paying it in instalments over 5 years in the case of exits to an EU/EEA Member State.

### Commitment 5: Interest Limitation rules

Following the Common Approach agreed in BEPS Action 4, ATAD requires Member States to implement an interest limitation ratio, designed to limit the ability of entities to deduct net borrowing costs in a given year to a maximum of 30% of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA).

Under ATAD, a transposition deadline of up to end-2023 can apply where a Member State has pre-existing national rules that are equally effective at preventing BEPS risks. Ireland has extensive and long-standing rules in place to prevent abuse of interest deductions in calculating taxable profits. However, these rules are different in structure to the ATAD rule. They are purpose-based tests designed to limit qualifying borrowings, supplemented by extensive anti-avoidance provisions relating to connected party transactions. As a result, the data collected for the purposes of administering and enforcing our domestic regime does not provide the data points necessary to demonstrate a hypothetical EBITDA outcome and on this basis a derogation was not approved to defer implementation.

The European Commission commenced infringement proceedings in 2019, issuing a reasoned opinion in November 2019. This is one of 20 infringement proceedings that the Commission has commenced to date against various Member States relating to various aspects of ATAD transposition. While we remain of the view that the extended deadline of 1 January 2024 should apply, it has been agreed to accelerate the transposition process.

Work has been ongoing on the transposition process and an initial Feedback Statement issued in December 2020 This will be followed by an iterative consultation and feedback process in the first half of 2021, with transposition to take place in Finance Bill 2021. Further details on this process are discussed later in this Update.

### Commitment 6: Introduce Hybrid Mismatch rules

The purpose of anti-hybrid rules is to prevent arrangements that exploit differences in the tax treatment of a financial instrument or an entity under the tax laws of two or more jurisdictions to generate a tax advantage; referred to as a mismatch outcome.

ATAD-compliant anti-hybrid rules were introduced in Finance Act 2019 and apply to payments made or arising on or after 1 January 2020. They address situations where a hybrid instrument or entity can give rise to a double deduction mismatch; a deduction without inclusion mismatch; or a withholding tax mismatch.

Transposition of anti-reverse-hybrid rules is planned for 2021, in line with the schedule set out in ATAD.

### Commitment 7: Comprehensive Transfer Pricing Reform

Transfer pricing determines the conditions, including the price, for transactions within a multinational enterprise group resulting in the allocation of profits to group companies in different countries. Transfer pricing legislation is designed to protect the Irish tax base and to remove uncertainty regarding the application of internationally accepted transfer pricing standards.

To meet the BEPS recommendations, it was necessary for Ireland's transfer pricing legislation to be updated to incorporate the latest OECD Transfer Pricing Guidelines. However, on foot of recommendations made in the Coffey Review, it was decided that a more fundamental reform, and extension, of Ireland's rules was needed to bring them fully into line with global best practices.

Finance Act 2019 substantially changed Ireland's transfer pricing rules in three main areas. The changes included an extension of the scope of the rules to cover non-trading and capital transactions, the abolition of grandfathering of pre-2010 transactions and the introduction of new documentation requirements in line with BEPS Action 13 standards.

The Finance Act 2019 changes also allow the Minister for Finance to extend transfer pricing rules to SMEs. Given the uncertainties and challenges faced by SMEs as a result of both Brexit and COVID-19, there are currently no plans to extend transfer pricing rules in this manner.

### Commitment 8: Consider introduction of Territorial Regime

At present, a company resident in Ireland is subject to Irish tax on its worldwide income and gains. In order to prevent double taxation of foreign income also subject to tax at source in the foreign jurisdiction, foreign tax paid on that income can be used to offset any Irish tax payable on the same income. In practice this results in very limited amounts of incremental tax becoming payable in Ireland on foreign earnings. However, the legislation governing double tax relief, contained in Schedule 24 of the Taxes Consolidation Act 1997, is complex, having evolved over many years in response to changes in policy and to accommodate principles established in European case law.

By contrast, a territorial tax system focuses on the taxation of profits earned within the relevant jurisdiction, with appropriate anti-abuse measures (such as Controlled Foreign Company rules) to prevent the artificial diversion of profits offshore. Most OECD countries use a territorial based tax system. A territorial system can be less complex and provide greater certainty for businesses, but must also be accompanied by robust anti-abuse measures.

In general, responses to the Coffey/ATAD consultation indicated broad support for moving to a territorial based tax system among stakeholders, particularly in view of the introduction of CFC rules into the Irish tax system.

A public consultation was due to take place in 2019, however, it was deemed prudent to wait until there was greater certainty around the international taxation environment before addressing this issue directly. It is now planned that a public consultation will be launched in 2021 to enable further consideration of this issue in the context of the evolving international tax landscape.

### Commitment 9: Additional Mandatory Disclosure Regimes for taxpayers and intermediaries

Ireland continued to support EU proposals on ensuring tax authorities have access to all relevant information to properly challenge aggressive tax planning. The DAC6 Directive built on the OECD BEPS Action 12 report and introduced a comprehensive disclosure regime across the EU for transactions that bear particular hallmarks.

Ireland already had a pre-existing, robust domestic mandatory disclosure regime which is now complemented by the DAC6 regime. The Directive was transposed into Irish law in Finance Act 2019.

### Commitment 10: Improved Dispute Resolution

The extent of the changes that have been, and are being, made to the international tax landscape makes it inevitable that disputes and disagreements between tax

authorities will increase. Ireland believes that strong dispute resolution frameworks are absolutely vital to ensure a properly functioning international tax system.

To ensure that disputes are resolved in a timely manner, the Dispute Resolution Mechanism (DRM) Directive was agreed to enhance the framework for mandatory binding arbitration of tax disputes in EU law. Ireland transposed this Directive into Irish law by the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019.

The DRM Directive also requires that each Member State nominate a number of Independent persons of standing to serve on ad-hoc advisory commissions. The Department of Finance has launched a public call for qualified parties to be available to serve on advisory commissions. Following this call, a panel of qualified individuals who satisfy the required criteria will then be drawn up and submitted to the European Commission.

The Commission's recently published Action Plan for Tax includes an intention to establish a standing committee to complement these ad-hoc advisory commissions and Ireland is positively disposed to the establishment of, and participation in, such a committee.

Looking beyond the EU, the BEPS Multilateral Instrument (MLI) also provides for enhanced dispute resolution mechanisms among treaty partners. Ireland opted into the relevant MLI provisions that allow for tax treaty disputes to be dealt with by arbitration. This permits taxpayers to refer disputes that have not been resolved through the Mutual Agreement Procedure (MAP) process to independent and binding arbitration, further providing certainty for taxpayers and minimising the instances where double taxation arises.

### Commitment 11: International Mutual Assistance Bill

The OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters was ratified, in part, when Ireland lodged an instrument of ratification with the OECD in 2013. The Taxation and Certain Other Matters (International Mutual Assistance) Bill, when enacted, will facilitate the full ratification of the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. This Bill cleared pre-legislative scrutiny during 2017.

The Taxation and Certain Other Matters (International Mutual Assistance) Bill will also enable Ireland to complete the ratification of some remaining provisions of the EU/Switzerland Anti-Fraud Agreement.

Work is close to finalisation on the drafting with a view to publishing the Bill in the coming weeks, with deliberations to commence in the Oireachtas in early 2021.

# Ongoing International Tax Reform

The international tax landscape remains in flux with significant work underway at the OECD and also at EU level. Consideration of what actions are appropriate for Ireland to take on tax reform issues are heavily influenced by the progress of this international work, recognising Ireland's desire for a multilateral agreement.

## Addressing the Tax Challenges of Digitalisation

On 12 October 2020, the Inclusive Framework published a series of reports on its ongoing work to address the tax challenges arising from the digitalisation of the economy.

This work has its origins in the BEPS Action 1 Report from 2015, which committed to continuing to explore the issue of whether tax rules were fit for an increasingly digitalised world. The October reports build on an interim report published in March 2018, a Programme of Work from May 2019 and a further update in January 2020.

This work consists of proposals under two Pillars – Pillar One and Pillar Two:

- The work under Pillar One focuses on the distribution of taxing rights in respect of highly digitalised and consumer facing activities. Under the current international tax framework, corporation tax is paid where a company has a tangible nexus, which typically requires some physical presence in a country. Pillar One seeks to review these rules with the primary objective of increasing the profits allocated to, and therefore tax paid in, jurisdictions where users or customers are located. Technical work has advanced at the Inclusive Framework on the proposal, but key policy choices remain undecided.

- Pillar Two is focussed on the concept of minimum effective taxation. The proposal contains a series of rules that could apply in situations where a company pays an effective rate of tax below a set level.

While the technical work has advanced on both pillars, there are a number of open issues which will require agreement at political level. On Pillar One, the report blueprints note areas where significant divergences of opinion remain to be resolved including on scope and the amount of tax to be re-allocated to the jurisdiction of the user or customer. As regards Pillar Two, the question of what rate may be an appropriate minimum tax rate has not yet been formally discussed by the Inclusive Framework. Issues may also arise in respect of the compatibility of existing country regimes with any Pillar Two outcome.

The Inclusive Framework in the covering note published with the reports highlights that further work and negotiation is needed before a final agreement can be reached. The ambition is to reach agreement by mid-2021 and implementation will then take

some time depending on whether action is needed at national, EU, or international level.

Ireland remains convinced that agreement through the Inclusive Framework is far preferable to a patchwork of regional or unilateral measures which would no doubt lead to an uncertain business environment with potentially higher compliance costs. Such an agreement through the Inclusive Framework on Pillars One and Two will require compromises and trade-offs. However, it is important that any eventual agreement strikes an appropriate balance between competing viewpoints, and be broadly acceptable to all countries, small and large, developed and developing. It is critical also that any international agreement is given the appropriate time to be implemented and deliver the intended reforms. Constant change and instability are not conducive to investment and growth, and this will be even more important as we emerge from the COVID-19 pandemic.

### Ongoing EU tax reform

The issues under discussion at the Inclusive Framework are also being considered at EU level. The European Commission has voiced its support for the Inclusive Framework process, and any agreements in this forum may give rise to proposals from the Commission to implement the measures within the EU as was the case following agreement in 2015 on the first BEPS framework.

Ireland continues to believe that any EU action must be consistent with Inclusive Framework agreements and we must give sufficient time for the work of the Inclusive Framework to reach a successful conclusion.

Recent work at EU level has focussed on responding to the COVID-19 crisis. A Directive was agreed by Member States to extend a number of deadlines in the Directive on Administrative Co-operation to provide taxpayers with more time to file certain information. All information must still ultimately be filed with tax authorities, but it was agreed that Member States should be given the flexibility to extend certain deadlines by a number of months in recognition of the challenges posed by COVID-19.

The longstanding CCCTB proposal remains under discussion, albeit with limited momentum. Ireland continues to believe that the work at the Inclusive Framework on realigning taxing rights globally remains a more appropriate approach to corporation tax reform.

In July 2020, the European Commission adopted a new Tax Package which includes two Communications on tax issues. The Communications outline the Commission's thinking on a range of areas and identify options which the Commission will explore further during its current term of office. The Package also contained a legislative proposal to revise the Directive on Administrative Cooperation to extend the Automatic

Exchange of Information (AEOI) framework to supplies made via digital platforms including in respect to the sharing and gig economy, and marketplaces. This file was agreed by Finance Ministers at ECOFIN on 1 December 2020. The new rules will apply from the beginning of January 2023.

The Communication on an **Action plan for Fair and Simple Taxation Supporting the Recovery Strategy** contains 25 Actions or initiatives that the Commission will roll out and promote over the next three years.

While many of the actions focus on the need to remove tax obstacles and administrative burden, there are also proposed initiatives to improve compliance, improve the use of data, and promote taxpayers' rights.

Ireland has noted a desire, in certain instances, to agree tax files using qualified majority voting. Ireland, like many Member States, has grave concerns about any proposals which may seek to undermine the requirement for unanimity on tax issues.

In this context, it is important to highlight that unanimity has not been an obstacle to very significant tax reform at European level, as demonstrated by the remarkable achievements under the last Commission and the unprecedented number of Directives which have been agreed in recent years.

The **Communication on Tax Good Governance in the EU and Beyond** outlines the Commission's intentions to enhance transparency and fair taxation, both inside the EU and across the globe. The Communication details aims to reform the Code of Conduct for Business Taxation as well as the EU list of non-cooperative jurisdictions for tax purposes. The German Presidency began a process to reform the Code of Conduct Mandate and the process will continue into the Portuguese Presidency in the first half of 2021. As always, Ireland will constructively engage with any proposals.

# The future direction for Irish Corporation Tax

Corporation tax reforms over the last several years have focused heavily on preventing aggressive tax planning, by agreeing new international standards, addressing mismatches between jurisdictions and ensuring tax authorities have the information they need.

Work is ongoing in Ireland and other jurisdictions worldwide to introduce the legislation necessary to underpin these standards, and this process will continue for a number of years.

While a significant amount of action has already been taken by Ireland, there is more to do. Specific commitments have already been made and further detail is provided below on how these commitments will be met. This update also provides an opportunity to discuss some further areas where consultation, consideration and, ultimately, action may be undertaken.

## A: Giving effect to remaining existing commitments on tax reform

### *Commitment 1: Introduce ATAD-compliant Interest Limitation rules*

ATAD requires the introduction of a rule to limit deductions for net borrowing costs to a maximum of 30% of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA). Work on transposition is ongoing and is a complex process in view of the nature and scope of the rule. While other ATAD measures enacted to date, such as the CFC and anti-hybrid measures, were targeted at specific BEPS strategies, the ATAD interest limitation rule is not targeted at specific types of behaviour or borrowings; rather, it imposes an overall limit on overall net borrowing costs, for whatever purpose. It is therefore of relevance to all taxpayers with borrowings, i.e. the vast majority of businesses.

This consideration has increased in relevance over the past year as businesses of all sizes face reduced earnings and increased borrowings as a result of public health measures in response to the COVID-19 pandemic, and for the conclusion of the Brexit transition period at end-December 2020.

Engagement with businesses and advisors during the drafting process is of particular importance to avoid undue complexity and unintended consequences with this measure. The key challenge when integrating the new ATAD rule will be to deliver a system which is understandable and easy for both businesses and Revenue to administer, while also retaining the necessary protections for the tax base.

Transposition of the ATAD rule is now planned for Finance Bill 2021, with the measure to take effect from 1 January 2022. There will be a number of stages to this transposition process to allow sufficient consultation and ensure a robust regime is

developed. The first stage was the publication of an initial Feedback Statement in December 2020, which will be followed by an iterative consultation and feedback process in the first half of 2021, with transposition to take place in Finance Bill 2021.

***Commitment 2: Legislate for reverse hybrids aspect of ATAD anti-hybrid rules***

The concept of reverse hybrid mismatches was introduced in the second ATAD Directive. The term "reverse hybrid entity" refers to a foreign-owned entity established or incorporated in a Member State which is treated as opaque (non-transparent) under the laws of the foreign jurisdiction but as transparent in the Member State where it is established or incorporated.

ATAD requires that such a reverse hybrid entity be regarded as resident in the relevant Member State and taxed on its income to the extent that it is not otherwise taxed under the laws of the Member State or any other jurisdiction. The deadline for this rule to be in place is end-2021.

Transposition of the anti-reverse hybrid rule will take place in 2021. The first stage of this process will be the publication of a Consultation Paper in Q1 2021 followed by a Feedback Statement by mid-2021 with legislation to be introduced in Finance Bill 2021 with an effective date of 1 January 2022.

***Commitment 3: Consult on possibility of moving to a territorial regime***

As outlined above, a public consultation was due to take place in 2019 on considerations relevant to the option of moving from a worldwide corporate tax system to a territorial corporate tax system. However, it was deemed prudent to wait until there is greater certainty around the international taxation environment before addressing this issue directly.

The outcome of work at the OECD, and in particular Pillar Two, has the potential to fundamentally alter the international tax framework. Consideration of a possible move to a territorial system must take into account the potential direction of this framework. Given the level of detail now published on the OECD work to date, a consultation on this issue will be launched in 2021. Any subsequent policy actions will need to take account of the outcome of the ongoing international discussions.

***Commitment 4: Progress the International Mutual Assistance Bill***

As outlined above, work is ongoing on finalising the drafting of this Bill with the objective of publishing the Bill in the coming weeks, with the Bill progressing through the Oireachtas in early 2021.

### *Commitment 5: Apply defensive measures to countries on the EU Member States' list of non-cooperative jurisdictions*

Ireland supports the EU list of non-cooperative jurisdictions for tax purposes (listed jurisdictions) which has been successful in encouraging countries to introduce tax reforms and move into line with international standards.

In October 2019, Finance Ministers at ECOFIN agreed a soft law commitment to introduce national legislative defensive measures against listed jurisdictions. The Ministers agreed on a toolbox of four distinct measures, from which Member States would adopt one through national domestic legislation. These measures are: the non-deductibility of costs; withholding tax measures; enhancing controlled foreign company (CFC) rules; and the limitation of participation exemptions on distributions of profit.

Of the four options detailed, Ireland's worldwide tax system already provides the protection that would be offered by the limitation of a participation exemption.

Delivering on this commitment to introduce new defensive measures, Finance Act 2020 delivered new measures to provide that Ireland's CFC rules apply more stringently to companies with subsidiaries operating in jurisdictions that remain on the EU list.

## B: Additional commitments for further consideration, consultation and action

This Update on Ireland's Corporation Tax Roadmap also provides an opportunity to set out further actions which will be taken that go beyond the existing commitments outlined above.

### *Commitment 6: Consider additional defensive measures in respect of countries on the EU list of non-cooperative jurisdictions*

Following the introduction of more stringent provisions in CFC legislation in Finance Act 2020 linked to the EU list of non-cooperative jurisdictions, consideration will be given to introducing additional defensive measures, if required, including denial of tax deductions or the imposition of withholding taxes where material payments are made from Ireland to listed jurisdictions.

The design of such measures would need careful consideration, and consultation, to ensure profits which are generated from actual substantive activities in listed countries are not unfairly impacted. It is proposed to launch a public consultation in early 2021, with the objective of considering the introduction of appropriate measures in Finance Bill 2021.

### *Commitment 7: Consider actions that may be needed in respect of outbound payments*

While examining the appropriateness or necessity for further defensive measures to take against listed jurisdictions, it would be appropriate to also explore broader issues related to outbound payments from Ireland and withholding taxes. This would also include an examination of issues raised by the EU in recent years in the European Semester Process and in the Country Specific Recommendations given to Ireland[2].

While it is anticipated that issues raised in respect of outbound payments relate primarily to historical issues which have largely been remedied by US tax reform, a consultation on the issue would provide an opportunity to consider whether further action by Ireland may be necessary or appropriate. Any such action will be considered in the context of Finance Bill 2021, also taking account of developments at the Inclusive Framework.

### *Commitment 8: Adopt the Authorised OECD Approach for transfer pricing of branches*

Following the substantial modernisation and extension of our transfer pricing rules in Finance Act 2019, the next step in this modernisation process is to extend transfer pricing rules to the taxation of branches in Ireland in line with the Authorised OECD Approach. Work will commence in early 2021 on this matter and it is intended to bring forward the necessary legislation in Finance Bill 2021.

With regard to Ireland's transfer pricing regime as a whole, it is also important to keep Ireland's general transfer pricing rules in line with new and emerging international best practice. Ireland will be proactive in adopting any new emerging standards where appropriate.

### *Commitment 9: Continue to meet international best practices on exchange of information and support efforts to further enhance information exchange.*

Ireland is, and will continue to be, at the forefront of developing and implementing the latest standards for exchange of information among tax authorities.

Ireland remains fully committed to maintaining the highest international best practice standards developed by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

In terms of policy developments, Ireland has been proactive at the OECD in shaping the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (MRDP) that were agreed July and will bring the sharing and gig economy within the scope of Automatic Exchange of Information (AEOI).

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1591720698631&uri=CELEX%3A52020DC0507

This important work has paved the way for the 7th Directive on Administrative Cooperation (DAC7) which was agreed by Finance Ministers at ECOFIN on 1 December 2020. Ireland welcomes the Directive, which will introduce AEOI to supplies of goods and services through digital platforms, that aims to ensure that revenues earned through platforms are transparent and to ensure a level playing field for traditional operators.

Further, we are fully committed to contributing to the development of new reporting rules for crypto-assets and e-Money to complement the Common Reporting Standard. This will feed into a European Commission proposal in this area (DAC8) which is expected towards the end of 2021.

Ireland is committed to ensuring the best use of information received under the International EOI framework, and is actively working with other jurisdictions to this effect including through the EU Fiscalis Programme and the OECD Forum on Tax Administration.

### *Commitment 10: Proactively respond to the outcomes of international reform efforts*

One of the primary objectives of ongoing international tax reform efforts is to reach a new equilibrium in the international tax framework. While governments will always need to be proactive in clamping down on any emerging aggressive tax planning schemes, it is hoped that successful agreement at the OECD and implementation of measures can lead to a period of stability after a decade of constant change. Such stability will be critical as we emerge from the COVID-19 pandemic.

As this new framework emerges and beds in, future policy choices will need to have a dual focus – both ensuring compliance with new and emerging global standards and also ensuring Ireland's system remains highly competitive for real and substantial investment.

As the future direction of global tax reform becomes clearer, the Department will continue to take a proactive, consultative approach in ensuring Ireland's corporation tax system is well-placed for the changing environment. This may include consideration of any changes to existing tax incentives as well as any broader modernisation that may be appropriate in the relevant context.

### *Commitment 11: Publish a tax treaty policy statement taking account of International developments*

The benefits of double taxation agreements have long been established: originally intended to prevent taxpayers being taxed twice on the same income, they have evolved over the years to incorporate many further aspects such as non-discrimination, exchange of information, mutual agreement procedures and, most recently, the anti-abuse procedures brought about by the OECD BEPS programme.

Ireland signed the oldest of its existing Double Tax Agreement in the 1960s and has signed a further 73 of its current treaties since that time. It has been a long-standing policy objective to seek treaties with countries, developing or developed, which have significant actual or potential trading links.

This treaty network development has been driven by the motivation that the broadest treaty network provides the optimum framework for increased investment, resulting in more economic activity, and therefore is best for Ireland's economic growth. We have now reached the position where we have treaties in place with most of our main trading partners.

It is timely to consider our broader tax treaty policy in the context of outcomes of the discussions at the OECD/G20 Inclusive Framework on BEPS, and what actions may be necessary — whether regarding a new multilateral instrument or bilateral negotiations. It is intended to publish a Policy Statement before end-2021. The Policy Statement will have a particular emphasis on tax treaties with developing countries, having regard to Ireland's development commitments and in consultation with the Department of Foreign Affairs and Irish Aid.

### *Commitment 12: Continued engagement in international fora and develop a new framework for domestic stakeholder engagement*

Throughout the recent discussions on international tax reform, Ireland has constructively engaged in a wide range of multilateral fora, representing the concerns of small open economies and working towards a sustainable new global tax framework. Lists of the EU and OECD fora in which we are actively engaged are set out in Appendix 2.

Engagement with domestic stakeholders is also an essential component of policy development. It ensures differing perspectives can be known and considered, and that factors important to investment and employment in the State can be highlighted. As set out above, a range of consultations on specific issues is planned over the coming year, but the Department is also planning to establish a formal annual stakeholder engagement process, to facilitate engagement on broader matters of interest. Details of this process will be finalised in early 2021.

## Summary of Commitments to Future Action, Consideration and Consultation

| | Existing Commitments to Further Action |
|---|---|
| 1 | **Introduce ATAD-compliant interest limitation rules**<br>The publication of an initial Feedback Statement in December 2020 will be followed by an iterative consultation and feedback process in early 2021, with transposition in Finance Bill 2021. |
| 2 | **Legislate for reverse hybrids aspect of ATAD anti-hybrid rules**<br>Publication of a Consultation Paper in Q1 2021 followed by a Feedback Statement by mid-2021, with legislation to be introduced in Finance Bill 2021 to be effective from January 2022. |
| 3 | **Consultation on possibility of moving to a territorial regime**<br>A consultation on this issue will be launched in 2021. Any subsequent policy actions will take account of the outcome of the ongoing international discussions on international tax matters. |
| 4 | **Progress the International Mutual Assistance Bill**<br>Bill to be published in the coming weeks, and to begin progression through the Oireachtas early 2021. |
| 5 | **Apply defensive measures in CFC regime to countries on EU Member States' list of non-cooperative jurisdictions**<br>Finance Act 2020 provides that Ireland's CFC rules apply more stringently to companies with subsidiaries operating in jurisdictions that remain on the EU list. |
| | **Further Commitments to Action, Consideration and Consultation** |
| 6 | **Consider additional defensive measures re countries on EU list of non-cooperative jurisdictions**<br>In 2021 consideration will be given to introducing additional restrictive measures, if required, including denial of tax deductions or imposition of withholding taxes where material payments are made from Ireland to listed jurisdictions. |
| 7 | **Consider actions that may be needed in respect of outbound payments**<br>In 2021, commence a consideration of broader issues related to outbound payments from Ireland and our wider withholding tax regime. |
| 8 | **Adopt the Authorised OECD Approach for transfer pricing of branches**<br>Extend transfer pricing rules to the taxation of branches in Ireland in line with the Authorised OECD Approach. Work will commence in early 2021 on this policy and it is intended to bring forward the necessary legislation in Finance Bill 2021. |
| 9 | **Continue to meet international best practices on exchange of information and support efforts to enhance information exchange**<br>Ireland is, and will continue to be, at the forefront of developing and implementing the latest standards for exchange of information among tax authorities. |
| 10 | **Proactively respond to the outcomes of international reform efforts**<br>As the future direction of the global tax framework becomes clearer, the Department will continue to take a proactive, consultative approach in ensuring Ireland's corporation tax system is well-placed for the changing environment. |
| 11 | **Publish a tax treaty policy statement taking account of International developments**<br>New tax treaty policy statement having particular regard to treaty policy for developing countries. |
| 12 | **Continued engagement in international fora and develop a new framework for domestic stakeholder engagement**<br>New domestic stakeholder engagement process to be established in 2021. |

# Appendix 1 - Irish Corporation Tax Reform since 2013

Ireland has taken significant actions on corporate tax over the last 7 years. The key actions that have been taken by Ireland have been:

1. Changes were made to Ireland's **corporate tax residence rules** in Finance (No.2) Act 2013 to prevent Irish incorporated companies from being stateless for tax purposes, and in Finance Act 2014 to shut down known structures (such as the so-called 'Double Irish') which were designed to exploit gaps in US tax rules.

2. Ireland has continuously made changes to ensure we are constantly up to date with best practice on **tax transparency and exchange of information.** Of the 78 jurisdictions reviewed to date, Ireland is one of only a small number of jurisdictions to have been found to be fully compliant with new international best practice by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

3. Ireland commissioned and published in 2015 a **Spillover Analysis**, carried out by the independent International Bureau of Fiscal Documentation (IBFD), to examine the impact of our corporation tax regime on developing countries.[3]

4. Ireland introduced **Country by Country Reporting** in Finance Act 2015 and subsequently agreed a Directive (DAC4) to ensure a consistent approach on CbCR across the EU.

5. Ireland agreed and has fully implemented an EU Directive (DAC 3) to provide for the automatic **exchange of information on advance cross-border tax rulings** and advance pricing arrangements among all Member States. Ireland is also fully compliant with the BEPS Action 5 requirements on exchange of taxpayer information in this regard.

6. Ireland agreed an EU Directive (**DAC5**) in 2016 to ensure access for tax administrations to **information about beneficial owners** of companies and other information held for anti-money laundering purposes. Ireland has made Regulations to ensure Revenue can access and exchange information on beneficial ownership of companies.

7. Ireland was among the group of countries to sign the **BEPS multilateral instrument** at the first possible opportunity in 2017. Ireland ratified and deposited our Instrument of Ratification with the OECD on 15 January 2019. The MLI is now in force to ensure that our tax treaty network is compliant with the BEPS standards.

[3] http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf

8. Ireland agreed two **Anti-Tax Avoidance Directives** (ATADs) with our fellow EU Member States in 2016 and 2017 and has made significant progress on transposition.

9. Ireland commissioned an independent expert, Mr. Seamus Coffey, to carry out a thorough **review of our Corporation Tax Code** and to make recommendations for any reforms that may be needed. This review was published in September 2017.

10. Ireland agreed in October 2017 the **Directive on Dispute Resolution Mechanisms** to extend the availability of arbitration when two Member States disagree on how, and where, a taxpayer should be taxed. This Directive has now been implemented by Ireland.

11. Ireland agreed the first ever **EU list of non-cooperative tax jurisdictions** with our fellow Member States in December 2017. The list has been successful in encouraging third countries to commit to implementing international tax best practices.

12. Ireland agreed an **EU Directive (DAC6)** in 2018 to introduce a common mandatory reporting regime for tax advisers and companies where transactions are entered into that meet certain hallmarks in 2018. The Directive was transposed in Finance Act 2019, however implementation was delayed across the EU until January 2021 due to COVID-19, a with a look back period to June 2018. Ireland was one of only three EU Member States to already have a mandatory disclosure regime in place prior to agreement of the Directive.

13. Ireland introduced ATAD-compliant **Controlled Foreign Company rules** in Finance Act 2018. These anti-abuse rules deter the diversion of profits from controlling companies in the State to offshore subsidiaries.

14. Ireland introduced an ATAD-compliant **Exit Tax** in Finance Act 2018. This applies a charge to tax on certain unrealised gains where a company migrates residence or transfers assets offshore such that they leave the scope of Irish tax.

15. In 2019 Ireland notified that our long-standing **General Anti-Abuse Rule (GAAR)** already met the required standard under ATAD.

16. The Revenue Commissioners entered into a **Competent Authority Agreement** with the Maltese tax authorities to shut down the structure known as the 'Single Malt'.

17. ATAD-compliant **anti-hybrid rules** were introduced in Finance Act 2019. These rules prevent arrangements that exploit differences in the tax treatment of a financial instrument or an entity under the tax laws of two or more jurisdictions to generate a tax advantage; referred to as a mismatch outcome.

18. Ireland's **transfer pricing rules** were comprehensively reformed in Finance Act 2019 to bring them into line with best international practice.

19. Revisions to Ireland's **capital allowances for intellectual property** were introduced in Budget 2021, with effect from 14 October 2020, to ensure such assets are fully within balancing charge rules in line with international best practice for such reliefs in other jurisdictions.

20. Finance Act 2020 introduced certain legislative defensive measures which will provide that Ireland's **Controlled Foreign Company rules apply more strictly** to companies with subsidiaries operating in jurisdictions that remain on the **EU list** of non-cooperative tax jurisdictions.

## Appendix 2 - International tax fora in which Ireland is involved

| Tax groups at the European Union | |
|---|---|
| Working Party on Tax Questions | The Working Party on Tax Questions handles all Commission legislative proposals relating to taxation, both direct taxation and indirect taxation. |
| High Level Working Party on Tax Questions | The High Level Working Party on Tax Questions is composed of high level representatives designated by Member States. It was established in 2001 to ensure coordination of work and achieve parallel progress on the all EU tax proposals. |
| Code of Conduct (Business Taxation) | On 1 December 1997, the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation, with the objective to curb harmful tax competition. The Code of Conduct is not a legally binding instrument but is a political commitment by Member States to ensure that countries do not engage in harmful tax competition. Recently the Code group has focussed on developing the EU list of non-cooperative tax jurisdictions. |
| Platform for Tax Good Governance | The Platform for Tax Good Governance assists the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation. It brings together expert representatives from business, tax professional and civil society organisations and enables a structured dialogue and exchange of expertise which can feed into a more coordinated and effective EU approach against tax evasion and avoidance. |
| EU Joint Transfer Pricing Forum | The EU Joint Transfer Pricing Forum (JTPF) assists and advises the European Commission on transfer pricing tax matters. The JTPF works within the framework of the OECD Transfer Pricing Guidelines and operates on the basis of consensus to propose to the Commission pragmatic, non-legislative solutions to practical problems posed by transfer pricing practices in the EU. |

| Tax groups at the OECD | |
|---|---|
| Committee on Fiscal Affairs/Inclusive Framework | The Committee on Fiscal Affairs is the group which leads the OECDs efforts on taxation and is attended by senior officials from all OECD Members.<br><br>The OECD has also established an inclusive framework on BEPS, which allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. |
| Forum on Tax Administration | The FTA aims to improve taxpayer services and tax compliance by helping tax administrations increase the efficiency, effectiveness and fairness of tax administration and reduce the costs of compliance. FTA collaborative work is organised under three pillars: supporting the international agenda; improving compliance; and future tax administration. |
| Forum on Harmful Tax Practices | The Forum on Harmful Tax Practices enables countries to work together to decide what are the appropriate limits of tax competition. All members of the forum, including Ireland, are reviewed to ensure they do not engage in harmful tax competition. |
| Taskforce on the Digital Economy | The TFDE is leading the OECD's work on examining how digitalisation affects global tax. |
| Working Party 1 on Tax Conventions and Related Questions | This working party is the body responsible for the development of the OECD Model Tax Convention and related guidance on tax treaty issues. |
| Working Party 2 on Tax Policy and Statistical Analysis | This working party is responsible for tax policy analysis and for statistical work. |
| Working Party 6 on the Taxation of Multinational Enterprises | This working party is the body responsible for the development of guidance on the interpretation of the arm's length principle in Article 9 of the OECD Model Tax Convention. This working party is carrying out the technical work in respect to Pillar One of the OECD/G20 blueprint reports. |
| Working Party 9 on Consumption Taxes | This working party assists member countries to secure appropriate and effective taxation outcomes through the development of the OECD International VAT/GST Guidelines and any other relevant outputs that address these issues. |
| Working Party 10 on Exchange of Information and Tax Compliance | This working party supports international co-operation on exchange of information amongst tax administrations and tax policy makers, with a view to enhancing countries' ability to tackle tax avoidance and evasion and to counter aggressive tax planning, and improving tax compliance. |

| | |
|---|---|
| Working Party 11 on Aggressive Tax Planning | This working party has responsibility for developing recommendations on addressing aggressive tax planning and is currently engaged on the technical aspects of the PIllar Two proposals. |

**Tithe an Rialtas. Sráid Mhuirfean Uacht,**
**Baile Átha Cliath 2, D02 R583, Éire**
Government Buildings, Upper Merrion Street,
Dublin 2, D02 R583, Ireland

T:+353 1 676 7571
@IRLDeptFinance
**www.gov.ie/finance**