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IRISH TAX MONITOR

Domestic consolidated corporate tax regime

In its response to the Government consultation on the implementation of BEPS Pillar Two, Aircraft Leasing Ireland asks for consideration of further flexibility within the Irish corporate tax regime ‘given the significant impact that the Rules will have on Irish companies’. It suggests the introduction of a consolidated tax regime in Ireland for domestic corporate tax (which could then be followed by Pillar Two). Can you outline how such a regime could benefit aircraft leasing groups and Irish groups in general?

Ted O’Byrne Tax Consultant, Maples Group: The concept of a consolidated tax regime currently exists across a number of EU and common law jurisdictions. Its introduction in Ireland would involve significant overhaul of Irish tax legislation. However, the concept of fiscal unity is not completely alien to Irish tax practitioners and has some historic resonance within the aviation sector.

At its simplest any consolidated tax regime involves the formation of a single domestic economic unit with an obligation to file a single tax return on behalf of all of the consolidated subsidiaries. It has some particular attractions for the aviation industry. Aviation groups typically involve a large number of companies, each of which holds a single aircraft asset. This is driven, not by tax but primarily by the



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requirement to insulate each asset from bankruptcy and liability risk. The result is frequently an astonishing number of companies.

From a compliance perspective, the flexibility to elect to file a single return could be attractive to a group with a large number of subsidiaries. That is particularly true when considered against the backdrop of the increased administrative burden which Pillar Two will bring with the additional requirement to file a GloBE Top-Up Tax Returns (and noting that the call for such a regime came in the context of the Pillar Two consultation).

The concept of an “interest group” which was introduced in the Interest Limitation Rules, also has some similarities to the concept of a

consolidated group, as the position of the group, as a whole, can be used to allow for higher amounts of tax deductible interest. In a highly leveraged sector such as aviation, this can be very beneficial.

Historically, Irish Revenue practice allowed single asset entities to be regarded as trading where they were part of a group which was focused on trading assets. This allowed an entity to benefit from the characteristics of a group. However, this aspect has come under greater scrutiny of late.

Consolidation may therefore lead to greater simplicity and certainty for aviation lessors. However it would present a significant challenge for legislators. Firstly the distinction between trading (taxed @12.5% with deductions available for arm’s length trading expenses) and non-trading income (taxed at 25% with more limited deductions available) would add significant complexity to the process of forming a consolidated tax return regime. Whether or not trading status could be applied on a consolidated group basis is a key question if introducing such a regime. Secondly, the treatment of capital allowances, including those which are ring-fenced, would also be critical in a group or consolidated return context. Finally, certain jurisdictions which operate a consolidated tax regime still require the tax payer to prepare supporting tax computations on an entity by entity basis. This may reduce the administrative benefits for larger corporate groups.

All that said, given the introduction of tax consolidation under both interest limitation rules and Pillar Two, a consolidated tax regime does seem to have some attractions. However, given the level of involvement required to prepare the implementing legislation for Pillar Two ahead of Finance Act 2023 it is likely that this issue will not be dealt with this year. Nonetheless, the motivation behind the appeal, including a call for the simplification of the Irish tax system and the retention of Ireland’s competitiveness in the aircraft leasing industry has some merit and the response of the Department of Finance will be of considerable interest to both Irish tax practitioners and industry stakeholders.