

Irish Finance Bill 2024 – Implications for International and Irish Business

What You Need to Know

The Irish Finance Bill 2024 (the "Bill") was published on 10 October 2024. The Bill introduces several key measures that are particularly relevant to international investors, companies, investment funds and securitisation companies operating in Ireland. Below is a detailed summary of the most pertinent provisions and their implications.

Dividend Participation Exemption for Certain Foreign Dividends

The Bill proposes a significant change to the manner in which foreign dividends are treated in Ireland.

Ireland currently operates a worldwide corporate tax regime which considers all profits, including foreign source dividends, of an Irish tax resident company to be within the scope of Irish tax. The current system allows for a foreign tax credit on foreign source dividends, up to the amount of Irish tax payable, with the common result that there is little incremental tax payable in Ireland. This system has often been criticised for being overly complex.

The proposed changes aim to introduce a simpler alternative system which taxpayers can opt into. The new system will exempt qualifying foreign dividend and other distribution income from Irish corporation tax.

That exemption will apply to distributions received on or after 1 January 2025 and will be subject to the following conditions;

- a) The geographical scope will be limited to dividends received from companies'

resident in EU/EEA state or in a jurisdiction with which Ireland has a double tax agreement ("DTA") at the date the distribution is made and throughout the five-year period prior to this date.

- b) The parent company must be either Irish resident or an Irish branch of an EU/EEA company and not generally exempt from foreign tax.
- c) The parent company must hold at least 5% of the ordinary share capital of the foreign subsidiary for a continuous period of at least 12 months prior to the payment.
- d) The distribution must constitute income in the hands of the parent company and cannot be deductible for foreign tax purposes.
- e) The dividend must be paid out of the profits of the subsidiary recognised in its profit and loss account. If not, the dividend must be paid out of the assets of the company, and a hypothetical sale of the shares must qualify for the existing capital gains exemption for shares.

The exemption can be claimed by election in the tax return for the tax period in question.

The regime will not apply to Section 110 companies.

Pillar Two Measures

The Bill updates the Irish tax legislation on the OECD 15% global minimum tax ("Pillar Two") to align it with the third and fourth sets of Administrative Guidance published by the

OECD in December 2023 and June 2024 respectively.

There are several technical amendments to the CbCR safe harbour based on the December 2023 guidance. They include measures to restrict the potential misuse of the safe harbour through "hybrid arbitrage arrangements". A new "simplified calculations" safe harbour is introduced for non-material constituent entities of a Pillar Two group that are not fully consolidated for accounting purposes in the group financial statements.

Following the June 2024 guidance, a new definition of hybrid entity is introduced, and an amendment allocates certain covered taxes to a hybrid entity or reverse hybrid entity from its owners, which impacts the entities' effective tax rate ("ETR") calculation.

Ireland generally imposes a qualified domestic top-up tax ("QDTT") on entities that are not members of a Pillar Two group but that meet a €750m annual revenue threshold on a standalone basis. The Bill now exempts certain standalone investment undertakings from this QDTT.

There are also several technical amendments relating to the order of utilisation of loss-related deferred tax assets in the Pillar Two rules.

Section 110 Companies / Securitisation Entities

The Bill introduces a partial exemption from the QDTT for "securitisation entities" that have entered into one or more "securitisation arrangements" (as defined in the Bill). The exemption, which in an Irish context is potentially relevant to a section 110 company, is based on the June 2024 OECD guidance referred to above.

The exemption only applies where the relevant Pillar Two group has at least one other entity in Ireland that is not a securitisation entity. Where the exemption applies, the QDTT top-up tax

which would have been imposed on the Irish securitisation entities is reallocated proportionally to the Irish non-securitisation entities.

Investment Funds

The Bill provides several measures to support the investment funds sector:

Exclusion from QDTT

Standalone regulated investment funds are excluded from the scope of Ireland's QDTT, providing certainty and reducing compliance burdens.

VAT Exemption for Limited Partnerships

The Bill clarifies the VAT exempt status of management of alternative investment funds (AIFs) which are managed by an authorised or registered AIFM in Ireland. This is particularly material for structures involving 1907 Limited Partnerships.

Management of Irish regulated investment management funds, such as ICAVs and Unit Trusts has long been VAT exempt. However, this did not apply to other AIFs managed by an AIFM authorised or registered in Ireland. This negatively impacted the ability to manage Irish 1907 Limited Partnerships using an Irish AIFM. The Bill corrects this treatment. This measure will be welcomed by the Irish investment and private equity community who are increasingly utilising 1907 Limited Partnerships as a vehicle for investment.

Property Related Changes / Real Estate

The Bill introduces changes to the stamp duty regime and property-related taxes:

Stamp Duty:

The Bill introduces a new 6% rate for residential property acquisitions over €1.5 million and an increase from 10% to 15% for bulk acquisitions of residential properties.

The 6% rate applies to the element of the purchase price above €1.5m. A purchaser will pay 1% on the first €1m of consideration, 2% on the element between €1m and €1.5m and 6% on the balance. There are relieving provisions for acquisitions where there was a binding contract in place prior to 2 October 2024.

The 6% rate is not intended to apply to multi-unit purchases of apartments. Therefore, the 6% rate does not apply to a purchase of three or more units in an apartment block. This will require scrutiny in some cases.

Acquisitions of apartments are also excluded from the 15% rate for bulk purchases.

Vacant Homes Tax

Increase in the rate from five times to seven times the basic Local Property Tax rate.

Stamp Duty & Virtual Credit Cards

The Bill aims to modernise how stamp duty charges are imposed on debit cards, combined cards, credit cards, and charge cards. Historically, cards in 'electronic format', i.e. online virtual cards, did not appear to be subject to the stamp duty charge. However, draft legislation clarifies that stamp duty will now extend to all electronic cards.

The amount being levied on charge cards is also being brought in line with credit cards. Previously, charge cards were subject to a €30 per-card stamp duty charge. This resulted in a high cost for users with multiple charge cards, whilst credit card users were subject to a reduced stamp duty charge of €30 per account. From 2025 onwards, the €30 stamp duty levy for charge cards will be imposed on a per-account basis rather than per-card. This measure will bring the levy for charge cards in line with the current amount paid on credit cards and reduce the financial burden on users who maintain multiple charge cards under a single account. These changes are a welcome clarification to the charges imposed on all cards and will ensure significant stamp duty charges

will not arise on temporary or virtual credit cards.

OECD Pillar One

A number of amendments are to be made to Part 35A of the Taxes Consolidation Act, 1997 ("TCA") aimed at integrating specific elements of the OECD BEPS Pillar One initiative into Ireland's transfer pricing rules. Specifically, Amount B of Pillar One focuses on simplifying transfer pricing rules. It establishes a streamlined approach for determining the arm's length amount for certain marketing and distribution arrangements.

In February of this year, members of the OECD/G20 Inclusive Framework agreed to a political commitment concerning 'covered jurisdictions' for Amount B, effective from 1 January 2025. This commitment is known as Phase One of Amount B.

Under this political commitment, Inclusive Framework members have committed to respecting the Amount B outcomes determined under the Phase One rules, as specified in the OECD Pillar One - Amount B guidance. The approach agreed to under this commitment will apply if a covered jurisdiction, with which there is an existing bilateral tax treaty, adopts this approach. The list of covered jurisdictions, finalised and agreed upon in June, comprises 66 low and middle-income countries as classified by the World Bank Group.

The Bill provides for Ireland's political commitment in respect of Amount B of Pillar One. Where all the conditions contained in the provision are satisfied, the arm's length consideration in respect of a qualifying arrangement transactions between MNE constituent entities based in Ireland and in "covered jurisdictions" may be determined in accordance with the OECD Pillar One - Amount B guidance. It is intended to have effect for accounting periods beginning on or after 1 January 2025. The new provisions also include additional documentation requirements and certain anti-avoidance rules.

Entrepreneurs and Investors

Angel Investor Relief

"Angel Investor Relief", a measure originally included in Finance (No. 2) Act 2023 but had not yet come into effect, provides for a reduced rate of capital gains tax for individuals who make qualifying investments in innovative start-ups and SMEs. It reduces the rate of capital gains tax to 16%, or 18% in the case of investments made by partnerships. The Bill provides for the replacement of the existing legislation along with certain modifications to the operation of the relief. One positive change is the increase to the lifetime limit on gains to which that reduced rate applies from €3 million to €10 million.

The Bill outlines the scope of companies that may qualify for the relief and also provides for various technical amendments to the relief to ensure that it will operate efficiently. It has introduced a reporting requirement pursuant to which qualifying companies will be required to report certain details of the investment to Irish Revenue.

The relief will only apply in respect of the disposal of eligible shares that are issued on or before 31 December 2026. The commencement of the relief remains subject to Ministerial Order which, it is understood, will be issued shortly.

EII, SURE and SCI

The Bill extends Employment Investment Incentive ("EII"), the Start-Up Relief for Entrepreneurs ("SURE") and the Start-Up Capital Incentive ("SCI") for a further two years to the end of 2026. This extension aligns with the expiration date of the EU General Block Exemption Regulation ("GBER"), the EU legislation under which these three reliefs are classified as permissible EU State Aid.

As announced in the Budget, the EII scheme is being amended to increase the limit on the amount that an investor can claim relief for such

investments to €1,000,000 per year of assessment from 1 January 2025. Currently, the maximum investment on which a taxpayer can claim relief is €500,000 per year of assessment where the EII shares are held for a minimum period of four years.

In addition, the rate of relief which applies to follow-on investments is to be increased to 35% for investments made within the 7/10-year eligibility period, with 20% applying thereafter. This amendment applies in respect of shares issued on or after 1 January 2024. The rules are further amended to provide that the income tax relief available is subject to the maximum tax relief thresholds provided for under GBER. The Bill also makes some technical amendments to the conditions to be met by a company regarding increases in employment or expenditure on R&D+I.

The SURE scheme limit has been increased to €140,000 per annum over seven years, with a new maximum total of €980,000. The same change to the rate of relief from 20% to 35% for follow-on EII investments will also apply to SURE claims.

R&D Tax Credit Amendments

There will be an increase in the threshold for the initial payable R&D tax credit instalment from €50,000 to €75,000. This enhancement marks an additional extension of the threshold, which had previously been increased from €25,000 to €50,000 in the Finance (No. 2) Act 2023. The new threshold of €75,000 will be applicable for claims made in accounting periods starting on or after January 1, 2025.

Amendments to Interest Limitation Rules

The interest limitation rules ("ILR") currently provide that payments under a finance lease are interest equivalent based on a formula. This formula makes sense where the lessor is taxed on the gross rental income but not if the lessor is taxed on the finance margin. A similar issue

arises in relation to payments by a lessee under an operating lease or a finance lease.

The Bill corrects these issues by providing that, with effect from 1 January 2025, where a lessor is taxed on the finance margin or a lessee is only deducting the finance element of a lease payment, the full taxable (or tax deductible) amount of those payments will be treated as interest equivalent for ILR purposes.

Outbound Payment Rules

Finance (No. 2) Act 2023 enacted measures to remove withholding tax exemptions from outbound payments of interest, royalties and dividends to associated entities in a "specified territory" (a zero-tax territory or one on the EU list of non-cooperative jurisdictions).

Certain payments are excluded where it is reasonable to consider that double non-taxation does not arise. For example, the measures do not currently apply where:

- a) an outbound payment is subject to a 'supplemental tax' which is defined as including a Pillar II top up tax or a 'foreign company charge' e.g. the US global intangible low taxed income ("GILTI") tax under US tax law; or
- b) the outbound payment is made out of profits or gains of the Irish entity and those profits or gains are within the charge to 'oreign tax'.

The Bill removes the reference to 'foreign company charge' in (a) possibly on the basis that it duplicates (b). It does mean that an outbound payment to a specified territory could be within scope even if the payment is subject to a 'foreign company charge' unless the underlying profits of the Irish entity are subject to 'foreign tax' and this will need to be carefully considered.

Leasing

The Bill introduces a number of changes to legislation which had been introduced in

Finance Act 2023 concerning "financing treatment".

Those changes include clarification around ownership requirements on the part of the lessor and now allow for the asset to be owned before it is made available to the lessee as opposed to the entry of the lease. This change had been requested and is intended to facilitate standard commercial practices. The proposed provisions will also now distinguish between finance leases to third parties and those with associated entities (an "associated relevant lease"), with less onerous requirements placed on third party leases. As part of the changes, a number of anti-avoidance provisions are introduced for associated relevant leases, which give rise to an Irish or foreign tax advantage.

The Bill also includes a ring-fencing provision for "balloon leasing" (a balloon lease is a lease where there is no uniformity of payments during the period of the lease) along with several new associated reporting requirements.

Stock Exchange Listings

The Bill provides for a new corporation tax deduction for expenditure incurred wholly and exclusively for the purpose of admitting to trading the shares of a company on a regulated market or multilateral trading facility in an EEA state.

The deduction will be available with respect to listings that take place from 1 January 2025 to 31 December 2029 and will be subject to an overall cap of €1m.

Pensions

The Bill provides for several changes to the operation of the standard fund threshold ("SFT") that were originally communicated by the Minister for Finance on 18 September. In line with those recommendations, an uplift in the level of the SFT is to be implemented on a phased basis, increasing by €200,000 per year

beginning in 2026 until 2029. This will result in a SFT of €2.8 million. From 2030 onwards, the SFT will be indexed by an earnings factor generated in line with the Earnings, Hours and Employment Costs Survey published by the Central Statistics Office.

The Bill includes related technical amendments to the definition of 'standard chargeable amount' to ensure that this limit, which is the portion of a lump sum that is taxed at the standard rate of income tax of 20%, remains unaffected as a result of the changes to the calculation of the SFT.

Transfers from PRSAs to vested PRSAs will be regarded as a benefit crystallisation event, which means an individual will have a chargeable excess tax liability if their pension entitlements exceed the SFT as of that event.

The Bill has also included provisions setting out the tax treatment for the new auto-enrolment pension scheme. This scheme will function similarly to other approved pension plans, with one important difference being that instead of offering tax relief on employee contributions, the Government will provide a top-up contribution.

Double Taxation Agreements

The Bill adds Oman to the list of countries with which Ireland has agreed a DTA and updates Ireland's agreement with Jersey (covering exchange of information) to ensure it is BEPS compliant.

Conclusion

The Bill reflects Ireland's proactive stance in adapting to global tax trends, best practice and standards. The introduction of the participation exemption for foreign dividends, updates to Pillar Two rules, and specific provisions for securitisation companies and investment funds are significant steps towards maintaining Ireland's competitive edge as a hub for international investment. These measures are expected to simplify tax compliance, reduce administrative burdens, and provide greater certainty for international investors and financial services entities operating in Ireland.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Dublin

Andrew Quinn

+353 1 619 2038

andrew.quinn@maples.com

William Fogarty

+353 1 619 2730

william.fogarty@maples.com

David Burke

+353 1 619 2779

david.burke@maples.com

October 2024

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.