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In this article, Burke and Quinn examine recent changes in Irish law and how they affect the tax transparency of various foreign entity types.

Introduction

Section 1009A of the Irish Taxes Consolidation Act 1997,[1] inserted by the Irish Finance Act 2025,[2] represents a significant development in Irish tax law: the first statutory codification of the principle that a foreign body corporate can be treated as fiscally transparent where it is "substantially similar" to an Irish partnership. While the provision does not fundamentally depart from Ireland's long-standing resemblance-based approach to entity classification — an approach that traces its origins to cases such as the U.K. case of *Memec PLC v. Inland Revenue Commissioners* — it provides a statutory grounding for practitioners and businesses who have historically relied on a patchwork of case law, Irish Revenue guidance, and analogy to determine how foreign entities should be characterized.[3]

Whether a foreign entity — such as a Delaware limited partnership, a Delaware statutory trust, a U.K. limited liability partnership, or a U.S. limited liability company — is treated as transparent or opaque for Irish tax purposes can be critically important and determine key tax issues, such as access to double tax treaty benefits, the application of anti-hybrid rules and pillar 2; and influence the structuring of cross-border investment funds and corporate groups. For entities held by Irish resident entities in international structures, the question is not merely academic; it goes to the heart of when and how income is taxed and whether double taxation can be relieved.

The new provision must be understood in light of the U.K. Supreme Court decision in *Anson*

[1] Taxes Consolidation Act, 1997, section 1009A.

[2] Finance Act 2025, section 36 (Dec. 23, 2025).

[3] *Memec PLC v. Inland Revenue Commissioners*, [1998] STC 754.

v. HMRC.[4] It emphasized members' entitlement to profits "as they arise" — a test that, if applied rigorously, could expand the category of entities treated as transparent. Irish Revenue has expressly declined to endorse the *Anson* approach in full,[5] yet the new statutory language may implicitly give it greater purchase in Irish law than Revenue's published guidance suggests.

This article examines section 1009A, how it fits into the existing legal framework, and its practical implications for common structures involving foreign partnerships, LLPs, and LLCs. It also offers some observations on the uncertainties that remain and the guidance practitioners will need from Revenue as section 1009A is applied in practice.

Tax Transparency: Importance in Fund Structures

The question as to whether certain foreign legal entities should be considered "tax transparent" or "look through" for Irish tax purposes has become increasingly important in recent years. This is frequently seen in practice with complex cross-border investment funds and multinational structures involving Irish entities combined, in particular, with U.S. and Cayman Islands limited partnerships, companies, and LLCs, where the question as to whether that foreign entity is "transparent" or "opaque" for Irish tax purposes is critical to the structure.

In a typical Irish fund structure, U.S. and non-U.S. investors would invest through foreign entities (feeder funds) into an Irish corporation that holds interests in foreign entities (asset-holding entities) that hold financial assets, such as credit, royalties, or insurance. Investing through foreign entities may be necessary, for regulatory reasons, to segregate assets or liabilities or because it's more familiar to counterparties or simplifies fund operations.

If the assets originate in the United States, the Irish corporation may be entitled to the benefits of the Ireland-U.S. double tax treaty regarding U.S.-source income if it meets the conditions under the limitation-on-benefits article.[6] The 1999 protocol[7] to the treaty provides that income derived by fiscally transparent persons will be regarded as that of the Irish corporation to the extent it is treated as such under Irish law. Hence, the importance of determining whether the foreign entity is "transparent" for Irish tax purposes.

Transparency: What Does It Mean?

"Tax transparency" is not a term of art. It is shorthand for arrangements where an entity — typically a partnership or trust — is not itself the taxpayer.[8] Instead, its members or beneficiaries are taxed on both distributed and undistributed income and gains, as though they owned the entity's underlying assets directly. Under Irish tax law, the Irish partnership is the paradigm "transparent" entity.[9] Profits and gains arising to an Irish partnership are not taxed on the partnership itself. Instead, the profits and gains are allocated (per the partnership agreement) and taxed directly to the members. Some trusts are also transparent (but they are not further discussed in this article). By contrast, a company is the paradigm "opaque" entity because it is a separate legal entity that is chargeable in its own right.

The approach to "transparency" differs between jurisdictions. In the United States, it is largely a matter of taxpayer choice, which means it's simple and certain.[10] Elsewhere, it's typically a

[4] *Anson v. HMRC*, [2015] UKSC 44.

[5] Irish Revenue, "Tax and Duty Manual," Part 35C-00-02, para. 3.3 (last updated Apr. 2025) (stating that *Anson* is limited to its particular facts and treaty context).

[6] Convention Between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains, at art. 23 (July 28, 1997).

[7] Convention Amending the Convention Between the Government of Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains Signed at Dublin on 28 July, 1997 (Sept. 24, 1999).

[8] Tax and Duty Manual, *supra* note 5, at Introduction.

[9] *Id.* at para. 1.2.2.

[10] Section 301.7701-1 to 301.7701-3 (the "check-the-box" regulations, which permit eligible entities to elect their classification for U.S. federal tax purposes).

legal test, such as whether an entity resembles a partnership (Ireland), whether members are entitled to profits as they arise (U.K.),[11] or whether the entity meets specific statutory criteria (the Netherlands).[12] These tests are more complex to apply and therefore less certain.

Transparency: The Irish Framework

In Ireland, the classification of foreign entities for tax purposes has followed a two-stage approach derived from *Memec*,[13] which was adopted in the Irish case of *Quigley v. Harris*.[14] First, one must determine the entity's characteristics under its governing law. Second, one must assess whether, for the specific Irish tax provision, those characteristics are more akin to an Irish company (opaque) or an Irish partnership (transparent). Irish Revenue's Tax and Duty Manual[15] (TDM) lists the indicia to be considered, but none is determinative on its own. Foreign entities do not fit neatly into the concept of an Irish company or an Irish partnership: The indicia are often inconclusive or point both ways. A brief look at the leading U.K. cases of *Memec* and *Anson* illustrates the challenges of the resemblance approach.

Context: The U.K. Cases

In *Memec*, a U.K. public limited company entered into a German "silent partnership" with a German GmbH, which held shares in trading subsidiaries.[16] The PLC paid the GmbH an amount in return for 87 percent of its net profits. The question presented was whether the PLC was entitled to a foreign tax credit on the basis that dividends paid by the subsidiaries were paid to the PLC?[17] The Court of Appeal compared the characteristics of an ordinary English or Scottish partnership with the German silent partnership and concluded that there was a significant mismatch. The GmbH held the shares, ran the business, and was responsible for its debts/liabilities. The PLC did not carry on any business in common with the GmbH and risked nothing but its capital contribution. Nor did it have a proprietary right, legal or equitable, in the shares or dividends — only a right to a share of net profits under its agreement with the GmbH.[18] Accordingly, the silent partnership was not like an English partnership, and therefore not transparent, so dividends were paid to the GmbH, not the PLC. Despite the emphasis on a proprietary right, the court nevertheless considered a Scottish partnership to be transparent, even though its partners had no legal or equitable right to the assets of the partnership.[19]

The question in *Anson* was whether, for the purposes of the U.K.-U.S. treaty,[20] a member of a U.S. LLC was subject to tax in the U.K. on the "same income" on which he had paid U.S. tax.[21] Applying *Memec*, the First Tier Tribunal (Tax Chamber) (FTT) held that he was. The FTT made a finding of fact based on expert evidence that Mr. Anson was entitled, by virtue of the LLC Act[22] and the LLC's constitutive documents, to a share of the profits of the LLC as they arose because profits and losses were allocated to his capital account periodically. The timing of cash distributions and whether they were discretionary were not considered relevant. In the High Court and the Court of Appeal, the judges held that the absence of a proprietary interest in the LLC's assets and income was fatal to Mr. Anson's case, but the U.K. Supreme Court rejected this. Giving the only judgment, Lord Reed stated that if Mr. Anson was entitled to profits as they arose, as the FTT found,

[11] *Anson*, UKSC 44.

[12] Decree of the State Secretary of Finance of 11 December 2009, CPP2009/519M BNB 2010/58. For a summary of the Dutch position, see also Michael McGowan, *Classifying Entities and the Meaning of 'Tax Transparency': The UK Perspective*, section 7.3 (2023).

[13] *Memec*, STC 754, at 764-766.

[14] *Quigley v. Harris*, [2008] ITR 153.

[15] Tax and Duty Manual, *supra* note 5, at para. 4.2.

[16] *Memec*, STC 754, at 755.

[17] *Memec*, STC 754, at 763.

[18] *Memec*, STC 754, at 765.

[19] McGowan, *supra* note 12, at section 2.9.6 (2023) (pointing out two Scotland-specific reasons for treating Scottish partnerships as transparent: the definition of "firm" (Partnership Act 1890, section 4(2)), and the judicial desire to apply U.K.-wide tax legislation uniformly across the United Kingdom).

[20] Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and on Capital Gains (July 24, 2001).

[21] *Anson*, UKSC 44, at para. 29.

[22] Limited Liability Company Act, 6 Del. C. sections 18-101 et seq.

then it followed that he was taxed by reference to the same income.[23] Lord Reed did not expressly state that the LLC was transparent, as this was not strictly necessary to decide the case.

In both cases, the legal question (whether a dividend was paid to a member of a partnership (*Memec*) or whether a member was taxed on the income of the LLC (*Anson*)) was key, demonstrating that questions of "transparency" arise in specific legal contexts. Moreover, the facts and expert evidence are crucial and can vary widely from one entity to another depending on the law of formation, the contractual/constitutional matrix, and the underlying economics. The bright line of "company or partnership" often encounters shades of grey.

Partnership vs. Body Corporate

Despite the importance of the concepts of "partnership" and "body corporate" to the question of transparency, neither is defined for Irish tax purposes, so one must look to general Irish law.

The Partnership Act 1890[24] remains the primary source of partnership law in Ireland. Section 1(1) provides that a partnership is "the relation which subsists between persons carrying on a business in common with a view to profit."[25] Subject to the terms of the partnership agreement, each partner has an undivided beneficial interest in all of the partnership's assets. Each partner's interest comprises a future entitlement to a share of the surplus assets' monetary value. This means that, strictly speaking, a corporate partner does not "beneficially own" specific partnership assets (including shares in another company held by the partnership).[26]

The Limited Partnership Act 1907[27] adds an important layer to this analysis. A limited partner is only liable up to the amount of their capital contribution and cannot take an active part in the business without losing their limited liability. Yet the arrangement is a transparent partnership for Irish tax purposes. Moreover, it can be said to exhibit a limited form of perpetual succession.[28] All this is valuable when comparing foreign partnerships with similar features.

A "body corporate" is understood to mean a succession or collection of persons having, in the estimation of the law, an existence and duties distinct from the individual persons who form it from time to time.[29] All companies incorporated in Ireland are bodies corporate, but Irish partnerships are not. Revenue's TDM lists[30] common corporate indicia derived from *Memec*, such as separate legal existence, issuance of share capital, business carried on by the entity rather than jointly by members, rights to profits only when distributed, and assets/liabilities sitting with the entity alone rather than the members. Moreover, the Tax Appeal Commissioners recently held that a Delaware LLC was a body corporate primarily because it was *capable* of enjoying perpetual succession under Delaware law.[31] As a result, Irish Revenue added this to the TDM as a key feature of a body corporate.[32]

A foreign "partnership" could, in principle, be regarded as a body corporate for Irish tax purposes if it is a separate legal entity with perpetual existence such that it, rather than its members, carries on the business, owns the assets, and incurs the liabilities and the members lack entitlement to profits as they arise. While a Scottish partnership should not, considering comments in *Memec*, be considered a body corporate, other foreign "partnerships" with separate legal personality may. For example, the

[23] *Anson*, UKSC 44, at para. 121.

[24] Partnership Act 1890, *supra* note 19. The same act applies in both Ireland and England as it was enacted when they were part of the same political union.

[25] *Id.* at section 1(1).

[26] However, for capital gains tax grouping, it is understood from practice that Irish Revenue permits tracing affiliations through partnerships in certain circumstances.

[27] Limited Partnerships Act 1907, section 4.

[28] *Id.* at section 6(2) (providing that "a limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained or realised.")

[29] Henry Murdoch, *Murdoch's Dictionary of Irish Law* (2016).

[30] Tax and Duty Manual, *supra* note 5, at para. 4.2.

[31] *Susquehanna International Group Ltd v. Revenue Commissioners*, 17TACD2019 (2019). Although the case was appealed on other grounds (whether the LLC was a U.S. tax resident), the decision on whether the LLC was a body corporate was accepted by Irish Revenue.

[32] McGowan, *supra* note 12, at section 2.9.7, states that while an entity lacking "perpetual succession" cannot be a "body corporate," it is doubtful whether the presence of "perpetual succession" prevents an entity from being a "partnership."

French société en nom collectif (SNC) in *Dreyfus* (1929)[33] was held by the U.K. Court of Appeal to be like a company because profits accrued to the SNC; the members had no automatic entitlement to those profits. Having said that, the U.K. tax authorities, applying *Memec*, have sometimes treated civil-law partnerships as transparent, including SNCs, so *Dreyfus* may be confined to its particular facts.[34]

U.K. Law vs. Irish Law

Anson caused ripples in the U.K. market in 2015 because it ran counter to HM Revenue and Customs' then position that an LLC was generally opaque for U.K. tax purposes. However, HMRC subsequently confirmed that they would not change their practice of treating U.S. LLCs as companies within group structures.[35] While *Memec* is law in Ireland by virtue of *Quigley*, *Anson* has only persuasive authority. In their TDM, Irish Revenue states that *Anson* is limited to its particular facts and treaty context and not of broader application.[36]

Is *Memec* even compatible with *Anson*? The Supreme Court in *Anson* did not overrule *Memec*. Indeed, Lord Reed noted that the FTT had followed the *Memec*-style resemblance methodology but criticized later appellate reasoning that fixated on "proprietary interest" in assets rather than whether members are entitled to the profits as they arise. In the U.K., the resemblance approach remains valid, but greater weight must be given to entitlement to profits as they arise and to avoiding confusion between assets and profits. In Ireland, the resemblance approach applies, but no single factor is determinative. However, the discussion in *Anson* of what profit entitlement means should have persuasive authority before an Irish Court.[37]

Entitlement to Profits as They Arise

Whether it is the key litmus test or one of many, it is essential to understand what it means to say a member is entitled to profits as they arise. At root, it refers to a situation where the member automatically becomes entitled to their share of profits generated by a business at the moment those profits arise, before and independently of any subsequent distribution. This is contrasted with a corporate structure in which profits belong to the company in the first instance and only become the property of shareholders through a formal mechanism, such as a dividend declaration.

An entitlement to profits as they arise does not necessarily require a proprietary interest in the entity's underlying assets. *Anson* clarified that such an entitlement can be a right in personam (a contractual or personal right) rather than a right in rem (a proprietary right).[38] This is illustrated by the Scottish partnership, where partners have no direct proprietary interest in partnership assets (because the partnership has separate legal personality) yet are still entitled to profits as they arise.

"Profits" and "assets" are conceptually distinct: Profits are an accounting measure of a business's results, whereas assets are a property law concept. Partners can be entitled to profits as they arise, even if the firm (and not the partners) beneficially owns the partnership's assets. A restriction on the distribution of profits (i.e., cash payments) is not the same as a restriction on an underlying entitlement to those profits.

The test can be difficult to apply in practice. Many legal systems do not address who is entitled to an entity's profits except in the context of distributions. Practitioners seeking to classify a foreign entity may find that local law simply does not provide a clear answer. Moreover, a general partner will often have wide discretion over profit allocation and cash retention. Hence, the concept of entitlement to profit as it arises has been described as "slippery in the extreme"[39] and an abstract point "with little real world relevance."[40]

[33] *Dreyfus v. Inland Revenue Commissioners*, [1929] 14 TC 560 (CA).

[34] HM Revenue and Customs, "INTM180030-Foreign Entity Classification for UK Tax Purpose: List of Classifications of Foreign Entities for UK Tax Purposes" (last updated Mar. 23, 2026). This list notes entities that HMRC has previously classified as transparent or opaque. It has no statutory force and provides no detail as to why a particular determination was made. No such list is maintained by Irish Revenue.

[35] HMRC, "HMRC Response to the Supreme Court Decision in George Anson v HMRC (2015) UKSC 44," Revenue and Customs Brief 15 (Sept. 25, 2015).

[36] Tax and Duty Manual, *supra* note 5, at para. 4.2.

[37] *Id.* at para. 3.3.

[38] *Anson*, UKSC 44, at paras. 38-40 and para. 120.

[39] Charles Yorke, "Anson: Entity Classification Revisited," *Tax Journal* (July 8, 2015).

[40] McGowan, *supra* note 12, at section 8.6.1.

Nevertheless, the legal form of the entitlement — as set out in the constitutive documents — remains determinative.

What Does Section 1009A Do?

The Finance Act 2025 was signed into law by the newly elected president of Ireland, Catherine Connolly, on December 23, 2025. It inserts section 1009A into the Taxes Consolidation Act 1997, which applies from January 1, 2026, onward. The section provides as follows[41]:

> 1009A. Notwithstanding any provision of the Tax Acts or the Capital Gains Tax Acts, as the case may be, a body corporate and each of its members shall be chargeable to tax or capital gains tax, as the case may be, on their respective income, profits or gains on the basis that the body corporate is a partnership and each of its members are partners in a partnership where —
>
> (a) the body corporate is incorporated, or formed, under the laws of a jurisdiction other than the State, and
>
> (b) having regard to the characteristics of that body corporate and the rights and obligations of each of its members, the body corporate is substantially similar to a partnership formed under the law of the State.

In summary, even if a foreign entity is a body corporate, it will be treated as transparent for Irish tax purposes where, having regard to the characteristics of that body corporate and the rights and obligations of each of its members, it is substantially similar to an Irish partnership.

The approach in section 1009A is of a piece with the existing resemblance approach. Are the characteristics of the foreign entity more like an Irish partnership (transparent) or an Irish company (opaque)? Even if it is a body corporate under foreign law, section 1009A provides that it may still be transparent for Irish tax purposes if its characteristics are *substantially similar* to an Irish partnership.

The main purpose of section 1009A is to provide a statutory anchor for classifying a foreign body corporate as transparent when, in substance, it operates like a partnership. However, it is reasonable to consider that it has the indirect effect of supporting conclusions on transparency regarding foreign partnerships or other hybrid entities that have separate legal personality or other quasi-corporate features. The fact that the Irish legislature is prepared to regard a body corporate as transparent must mean that having corporate-like characteristics is not fatal to transparency.

The obvious example is a U.K. LLP, which is a body corporate under general U.K. law but treated as a partnership for U.K. tax purposes. No doubt it should now be regarded as transparent for Irish tax purposes. However, it is not clear how a different conclusion would be reached regarding a U.S. LLC like the one in *Anson*. If the characteristics of the LLC and the rights and obligations of its members are more like those of a body corporate than a partnership under Irish law, it's hard to see how those characteristics would nevertheless be "substantially similar" to an Irish partnership and therefore transparent. For corporate groups that rely on LLCs being opaque, confirmation that this is the case would no doubt be welcome.

The major issue with the resemblance approach is that there is no guidance on what weight to give each of the characteristics listed in the TDM or, under section 1009A, how to determine whether they are "substantially similar" to an Irish partnership. It is reasonable to consider that, read alongside the TDM and case law, section 1009A directs attention to the economic hallmarks of partnership — particularly whether investors are entitled to profits as they arise, like in *Anson*. Conversely, features that are the inevitable consequence of being a body corporate — separate legal personality, entity-level title to assets, liability for debts, perpetual succession — are less critical where the constitutive documents allocate the profits from the business to the beneficial owners as they arise. Hence, despite Irish Revenue's mild disavowal of *Anson* in their TDM, section 1009A indirectly supports *Anson's* emphasis on profit entitlement

[41] Taxes Consolidation Act, 1997, *supra* note 1, at section 1009A.

as determinative of transparency, other things being equal.

Section 1009A was introduced without public consultation and without enumerating the characteristics to be considered. Practitioners have speculated that it may have been prompted by the authorities' concerns about tax planning for a particular structure. A reasonable reading is that the legislature did not intend a substantial departure from existing law but sought to provide a statutory anchor for classifying particular entities, such as the U.K. LLP, as transparent for Irish tax purposes, despite being a body corporate under local law. In meetings with practitioners, Irish Revenue stated that the purpose of the provision was to "place the current case law position on the classification of a foreign entity on a statutory footing."[42]

Another approach that could have been considered in Ireland would have been to adopt a rule under which Ireland would follow the classification adopted by a foreign entity's home jurisdiction when taxing its own residents who invest in that non-domestic entity. While this may have worked for fund structures where the Irish tax treatment aligns with the U.S. treatment, it would have been more problematic for corporate structures that rely on LLCs being opaque for Irish tax purposes. This approach, while appearing simple, would also have effectively delegated the determination of this important matter affecting the imposition and collection of Irish taxes to a foreign tax authority, which could change the treatment over time and thus the Irish tax impact. Instead, Ireland nailed its colors to the mast of the *Memec* resemblance approach, and section 1009A is consistent with this.

Application to Delaware Limited Partnerships

How does Irish law now apply to a Delaware limited partnership (DLP)? Under Delaware law,[43] a DLP is a separate legal entity from its partners and may have perpetual succession. However, it does not issue shares, and while it holds assets in its own name, it does so for and on behalf of the partners. The limited partners are passive; the general partner or a manager runs the business much like an Irish 1907 LP. In DLPs, partners would be allocated their share of net income as it arises for capital account and U.S. tax purposes, but cash distributions would be at the general partner's discretion and, in some cases, in accordance with a private-equity-style waterfall. Under Irish Revenue's approach, the overall pattern of characteristics should be examined rather than attributing decisive importance to any single factor. On this basis, the DLP would typically be regarded as more like an Irish partnership than an Irish company, and hence transparent. In the event of doubt, the partnership agreement can be amended to reinforce the analysis. In particular, the partners would be considered to have an entitlement to profits, even if the timing of realization is deferred and despite not having a right in rem under Delaware law to the assets or the income from those assets.

While section 1009A may not directly apply to a DLP, we would suggest that it provides indirect support for its transparent treatment in two ways. First, it demonstrates that the legislature favors treating foreign entities as transparent where their characteristics are substantially similar to those of an Irish partnership. This could support an interpretation of the existing common-law framework, which focuses on substance rather than form. Second, if the legislature is prepared to look through even bodies corporate where they are substantially similar to partnerships, it follows *a fortiori* that entities like a DLP, which is structured as a limited partnership, should more readily qualify for transparent treatment. On this basis, U.K. LLPs,[44] Scottish limited partnerships,[45] and Guernsey limited partnerships[46] should also be transparent in most Irish tax contexts. Their terms and operation typically align with partnership economics. U.S. LLCs are different. Ireland generally treats them as opaque.[47] Section

[42] Irish Revenue, "Minutes of Joint Meeting of Main TALC and TALC Direct and Capital Taxes Sub-Committee Meeting, 23rd October 2025," at 7 (Oct. 23, 2025).

[43] Delaware Revised Uniform Limited Partnership Act, 6 Del. C. sections 17-101 et seq., particularly section 17-201 (formation), section 17-219 (separate legal entity status), and section 17-801(1) (nonjudicial dissolution).

[44] Limited Liability Partnerships Act 2000, section 1.

[45] Limited Partnerships Act 1907, *supra* note 27.

[46] Limited Partnerships (Guernsey) Law, 1995, sections 1-3.

[47] *Susquehanna*, 17TACD2019.

1009A does not change that. Most LLCs will remain opaque because their legal form and member rights are not sufficiently close to those of Irish partnerships.

Where an Irish fund holds assets through a DLP, the U.S. and Irish tax treatment of the DLP as transparent should be aligned, reflecting the commercial reality of the arrangement. All profits of the DLP would be recognized in the accounts of the Irish corporation on a current-year basis. Such income would either be chargeable to tax in Ireland if the Irish corporation were a "qualifying company" within the meaning of section 110 of the Taxes Consolidation Act[48] or exempt from tax if it were an Irish-regulated fund.

Transparency, Pillar 2, and Anti-Hybrid Rules

The classification of foreign entities as transparent or opaque has significant implications beyond traditional Irish tax analysis, extending to the OECD's pillar 2 Global Anti-Base Erosion Rules,[49] as implemented in Ireland in Part 4A of the Taxes Consolidation Act 1997. For MNE groups using limited partnerships, LLCs, or other hybrid entities, the treatment of an entity as a "tax transparent entity" or "flow-through entity"[50] determines how its income and covered taxes are allocated among jurisdictions for calculating the jurisdictional effective tax rate, directly affecting whether a jurisdiction meets the 15 percent minimum rate threshold and where any resulting top-up tax liability is charged. This classification also affects Ireland's qualified domestic minimum top-up tax calculations, as that is computed by reference to the qualifying income or loss and adjusted covered taxes of constituent entities located in Ireland — meaning that if an intermediate holding vehicle is treated as transparent under section 1009A, its income may be allocated to its Irish owners rather than being computed separately, potentially altering the Irish jurisdictional ETR and any resulting top-up tax. Additionally, mismatches in entity classification across jurisdictions may trigger the anti-hybrid rules under Part 35C of the Taxes Consolidation Act, resulting in the denial of deductions or the inclusion of income. Practitioners advising on MNE group structures involving foreign partnerships or hybrid entities should therefore consider not only the immediate Irish tax consequences of entity classification but also the downstream effects under pillar 2 and the anti-hybrid regime.

Generally, the pillar 2 and anti-hybrid rules do not have a direct bearing on whether an entity is fiscally transparent under Irish law. One exception is the rule that targets entities treated as transparent in Ireland but opaque in the jurisdiction of their members (reverse hybrids).[51] In this scenario, undistributed income may go untaxed. Under certain conditions, the reverse hybrid rules would tax the Irish entity to the extent that income is not subject to tax in the hands of those members.

Conclusion

Section 1009A represents a relatively modest but meaningful development in Ireland's approach to the tax classification of foreign legal entities. Its primary function is to render certain foreign bodies corporate tax transparent where the statutory conditions are met. However, by establishing a framework rooted in the resemblance principle and focusing on substantive legal characteristics, the provision also indirectly sharpens the analysis applicable to foreign partnerships where classification was previously uncertain. This approach, whilst lacking the bright-line certainty of the U.S. check-the-box regime, offers sufficient flexibility to accommodate the diverse range of entity structures commonly encountered in international fund arrangements.

In practical terms, the application of section 1009A should yield reasonably predictable outcomes for the most frequently encountered foreign entities. Delaware limited partnerships, by virtue of partners' direct entitlement to their distributive shares of partnership income, should generally be treated as tax transparent for Irish purposes. Similarly, U.K. limited liability

[48] Taxes Consolidation Act, 1997, *supra* note 1, at section 110.

[49] OECD, "Tax Challenges Arising From the Digitalisation of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two)" (Dec. 20, 2021); Taxes Consolidation Act, 1997, *supra* note 1, at Part 4A.

[50] *Id.* at art. 10.2 (definitions); Taxes Consolidation Act, 1997, *supra* note 1, at section 111A.

[51] Taxes Consolidation Act, 1997, *supra* note 1, at part 35C, ch. 10A.

partnerships, despite being bodies corporate, should generally be regarded as transparent, assuming they are otherwise substantially similar to Irish limited partnerships in their key characteristics. By contrast, U.S. limited liability companies will typically be treated as opaque from an Irish perspective, especially if they are capable of perpetual succession.

The introduction of section 1009A also carries broader significance for Ireland's engagement with international tax initiatives. Entity classification is no longer merely a threshold question for computing Irish tax liabilities; it now has material downstream consequences for the application of the OECD's pillar 2 framework and for compliance with the anti-hybrid mismatch rules under the Anti-Tax Avoidance Directive.[52] Multinational groups must therefore ensure that their Irish entity classification analysis is robust and consistently applied across these overlapping regimes.

Notwithstanding these advances, areas of uncertainty remain. Irish Revenue has yet to issue comprehensive guidance on the operation of section 1009A, and the weight afforded to particular characteristics in the resemblance analysis is not prescribed. Practitioners would be well advised to structure partnership and operating agreements with care where classification outcomes are finely balanced and to document the basis for any transparency determination adopted.

Looking ahead, further administrative clarification from Irish Revenue would be welcome and may be forthcoming as the provision beds in. Section 1009A should be viewed as a foundation upon which greater certainty can be built, rather than a definitive resolution of all classification questions. For now, it provides a workable framework that should deliver quicker and more consistent outcomes, especially for fund managers, investors, and their advisers when analyzing the tax treatment of foreign entities used in Irish investment fund structures. ■

[52] EU Anti-Tax Avoidance Directive (EU Council Directive 2016/1164), as amended by EU Anti-Tax Avoidance Directive 2 (EU Council Directive 2017/952).