International tax seminar

11th September 2019

The Maryborough Hotel, Cork

©2019 Grant Thornton Ireland. All rights reserved.

Peter Vale

Partner

© 2019 Grant Thornton Ireland.

Agenda

- **Introduction** – Peter Vale, Grant Thornton
- **EU Tax update** – Seamus Coffey, Lecturer of Economics, UCC
- **International Tax Developments** – Peter Vale, Sarah Meredith and Sasha Kerins, Grant Thornton
- **UK Tax Developments** – Matt Stringer, Grant Thornton UK
- **Panel Discussion** - Peter Vale, Seamus Coffey, Matt Stringer

© 2019 Grant Thornton Ireland.

How sustainable are favourable tax policies for future Irish economic development?

Seamus Coffey

Tax and FDI: Sins of Commission

- **Export Profits Tax Relief** (1956)
  - 0% effective tax on profits from export sales
- **Manufacturing Relief** (1980)
  - 10% tax rate on profits from manufacturing
- **Headline Rate** (2003)
  - 12.5% tax on all trading profits

Tax and FDI: Sins of Omission

- **Residence Rules**
  - Adopted from the British system in the 1920s.
  - Based on test of management and control.
  - Over time countries moved to test of incorporation
  - So too did Ireland in 1999 except….
  - …. for certain Irish-registered subsidiaries of foreign-owned companies.

- **Transfer Pricing**
  - Always an implicit part of Irish tax law.
  - OECD standards formally adopted into Irish law in 2010.
  - Only for trading activities but grandfathered to 2020.
  - Does not cover non-trading or capital transactions.

Success?

Each year in Ireland, US companies:

- Spend €7 billion on **personnel costs** on their 100,000 direct employees,
- Undertake around €3 billion of **capital expenditure** on tangible goods,
- Buy €4 billion of **goods and services** from Irish suppliers,
- Make around €6 billion of **Corporation Tax** payments to the Exchequer.

€20 BILLION A YEAR, EVERY YEAR

There's a reason tax and FDI is front-page news.

The Sectors of our Success

Contribution of US companies to the business economy in Ireland, 2014

	Total	Manufact-uring	Wholesale and Retail	Information and Comm.	Other Sectors
	€m	€m	€m	€m	€m
Production Value	143,604	71,262	8,511	60,722	3,109
Goods Purchased for Resale	36,497	1,476	25,069	13,676	757
Turnover	**171,972**	**70,425**	**27,533**	**70,148**	**3,866**
Total Purchases of Goods/Services	(134,486)	(48,837)	(20,518)	(57,777)	(7,353)
Gross Value Added	**45,327**	**23,614**	**3,950**	**16,616**	**1,148**
Personnel Costs	(6,532)	(3,457)	(822)	(1,454)	(800)
Gross Operating Surplus	**38,795**	**20,157**	**3,128**	**15,162**	**347**
Investment in Tangible Goods	2,497	81	288	1,526	602
Number of Enterprises	849	180	195	148	326
Number of People Employed	102,957	48,382	15,175	20,109	19,291

Source: Eurostat

External Threats?

OECD

- Base Erosion Profit Shifting project (BEPS)

EU

- Common Consolidated Corporate Tax Base (CCCTB)
- State Aid Investigations
- Anti Tax-Avoidance Directives

UK

- Lower rate
- Exclusion from from EU state aid rules

US

- Destination Based Cash Flow Tax (DBCFT)
- Tax Cuts and Jobs Act
- Lower rate/Switch to territorial system (GILTI)

In a “sweet spot”

Ireland is currently in a sweet spot for investment, employment and Corporation Tax from US MNCs:

- The companies want to **invest abroad**.
- **Historic interaction** with US tax rules (by design or by default).
- Sectors undertaking **large capital investment** such as in bio-pharma or data centres.
- Companies have **substance** and employees here.
- BEPS project designed to **align profit with substance**.
- Country-by-country **reporting.**
- US companies are onshoring some of their **internally-generated intangible assets**.

How much success?

Relative importance

- The **contribution** of US companies to the business economies of the EU.

Relative success

- The **distribution** of US companies' contribution to the business economies of the EU.

Contribution of US companies to business economies[1] of the EU15, 2014

	Gross Operating Surplus	Personnel Costs	Persons Employed	Gross Investment in Tangible Goods*
Belgium	8.2%	7.2%	3.1%	4.2%
Denmark	4.3%	4.4%	3.1%	2.5%
Germany	4.3%	4.5%	2.2%	3.4%
Ireland	**56.8%**	**13.3%**	**8.3%**	**10.2%**
Greece	0.7%	1.4%	0.4%	0.4%
Spain	2.8%	3.6%	1.7%	4.0%
France	2.8%	4.5%	2.3%	2.0%
Italy	2.4%	4.4%	1.9%	2.8%
Luxembourg	14.7%	7.6%	5.4%	5.2%
Netherlands	10.5%	7.6%	4.0%	5.7%
Austria	2.8%	3.2%	1.7%	1.8%
Portugal	2.5%	3.6%	1.7%	1.7%
Finland	-0.1%	3.8%	2.1%	5.0%
Sweden	3.6%	4.1%	2.8%	1.3%
United Kingdom	9.3%	9.2%	6.0%	5.9%
Mean (ex. Ire)	**4.8%**	**4.8%**	**2.6%**	**3.3%**
Median	**3.7%**	**4.4%**	**2.2%**	**3.4%**

Source: Eurostat

1 The business economy is NACE sectors B to N, excluding K, and S95

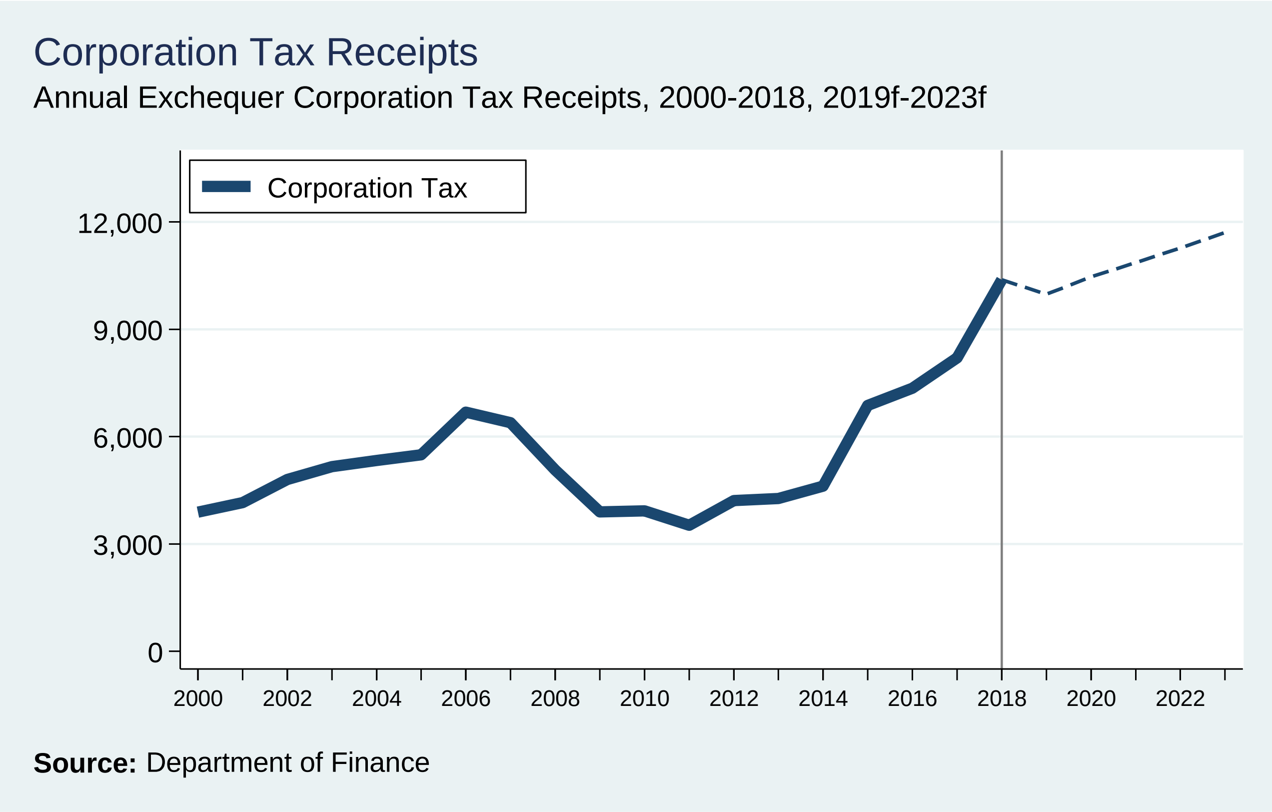
*Excluding NACE N Administrative and Support Service Activities

Distribution of US companies' contribution to the business economies of the EU, 2014

	Turnover	Gross Operating Surplus	Employees	Personnel Costs	Gross Investment in Tangible Goods	Actual Individual Consumption
Belgium	5.3%	3.9%	2.3%	3.8%	3.7%	2.8%
Denmark	1.0%	1.2%	1.4%	1.6%	1.2%	1.8%
Germany	16.0%	13.9%	16.5%	20.3%	17.5%	20.0%
Ireland	**10.3%**	**21.8%**	**2.7%**	**3.1%**	**6.7%**	**1.1%**
Greece	0.1%	0.1%	0.2%	0.2%	0.1%	1.4%
Spain	3.8%	2.6%	4.7%	4.6%	4.3%	7.5%
France	10.5%	3.4%	9.8%	14.1%	8.4%	15.6%
Italy	6.5%	3.8%	7.1%	7.6%	8.3%	12.0%
Luxembourg	2.1%	0.8%	0.4%	0.4%	0.3%	0.2%
Netherlands	9.9%	8.0%	5.7%	6.5%	5.4%	4.2%
Austria	1.2%	1.0%	1.2%	1.6%	2.4%	2.2%
Portugal	0.6%	0.4%	1.3%	0.7%	0.4%	1.3%
Finland	1.1%	0.0%	0.8%	1.0%	0.7%	1.5%
Sweden	1.7%	1.5%	2.2%	2.8%	2.1%	2.9%
United Kingdom	24.6%	31.8%	29.6%	26.2%	29.4%	17.9%
Non-EU15	6.7%	7.7%	16.5%	6.4%	10.6%	8.2%
EU28	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: Eurostat

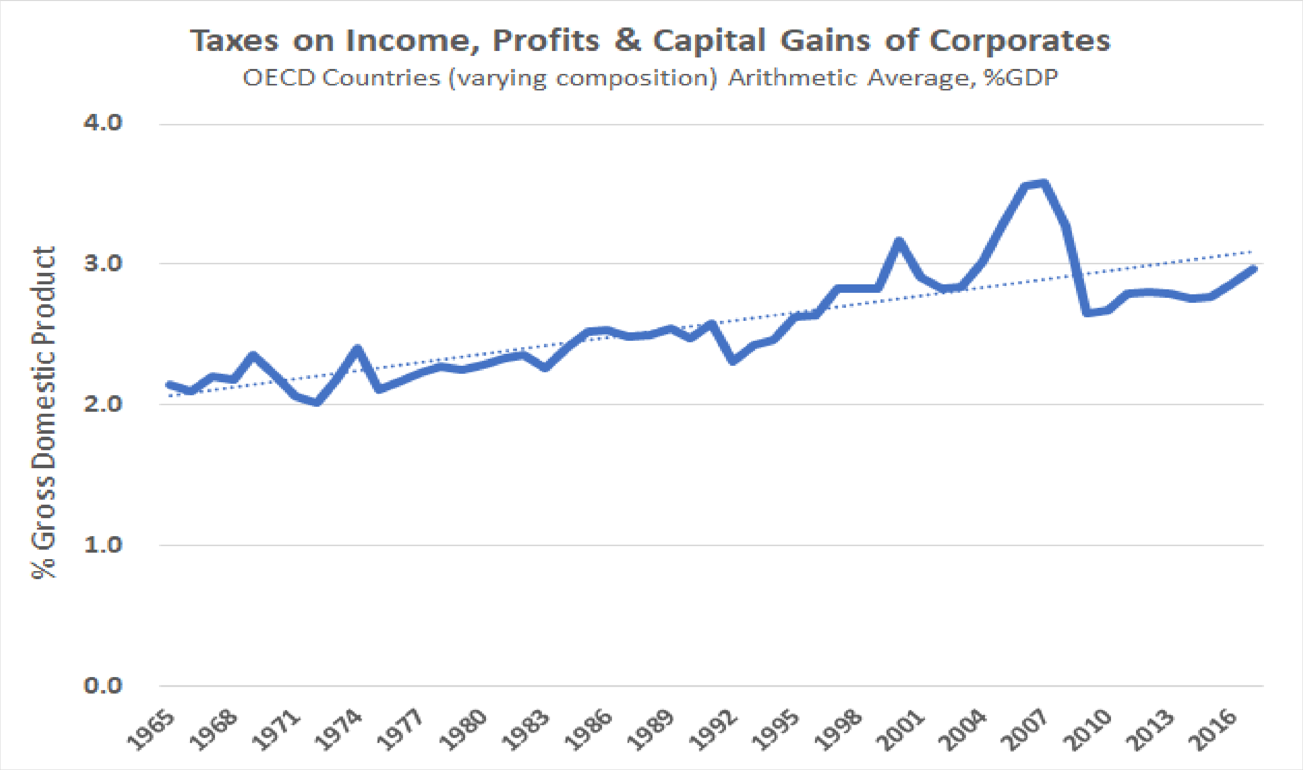
An unintended success?



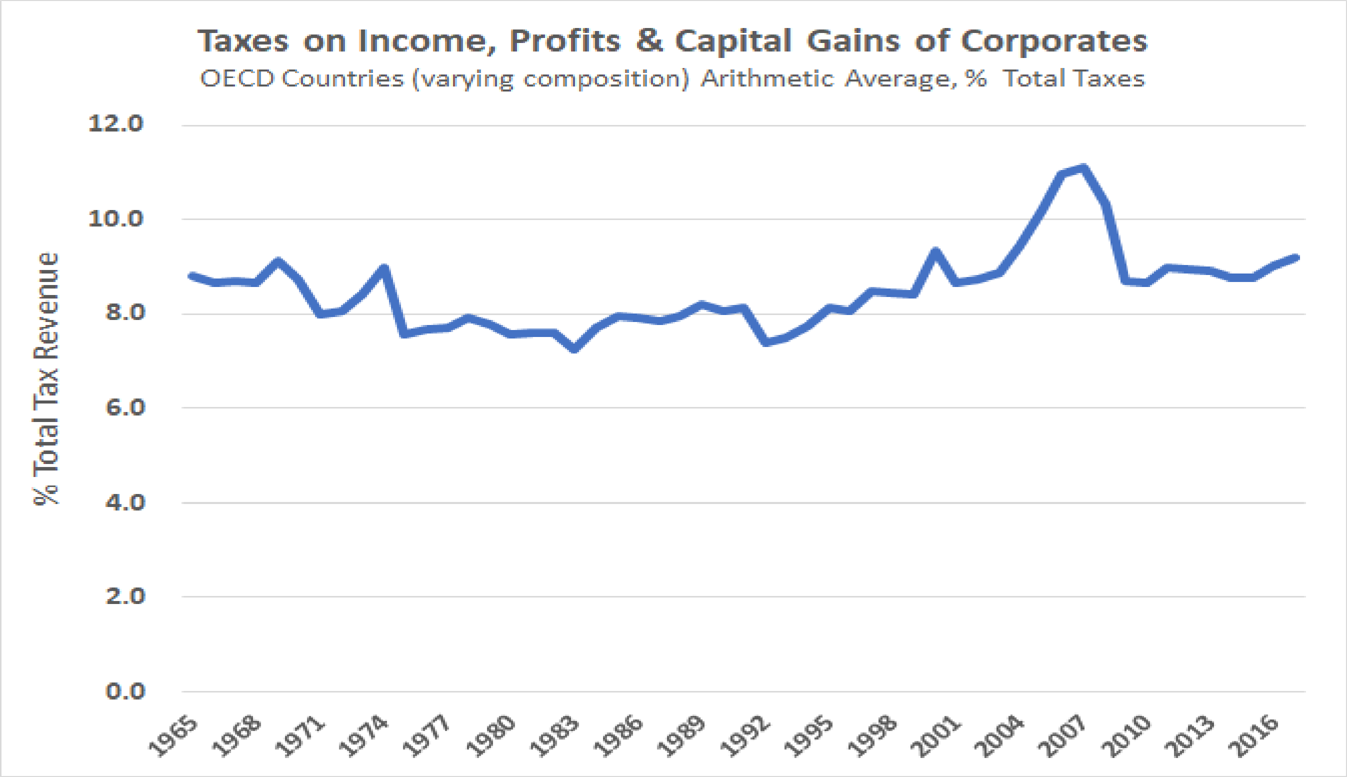
An unintended failure?

- The profits linked to the **onshoring of intangibles** added €45 billion of GDP and GNP in 2018.
- The gross profits are offset by **capital allowances** (depreciation) before Taxable Income is determined.
- In 2015, a **€26 billion** increase in intangible related profits was offset by a **€26 billion** increase in capital allowances for the acquisition of intangibles.
- Outcome
  - Additional Corporation Tax: nil
  - Extra EU contribution: c.€200 million
- **80% cap** introduced in Budget 2018 will raise €150 million – but only for new claims.

Some International Perspective



Some International Perspective



Conclusion

Global tax developments

European Union

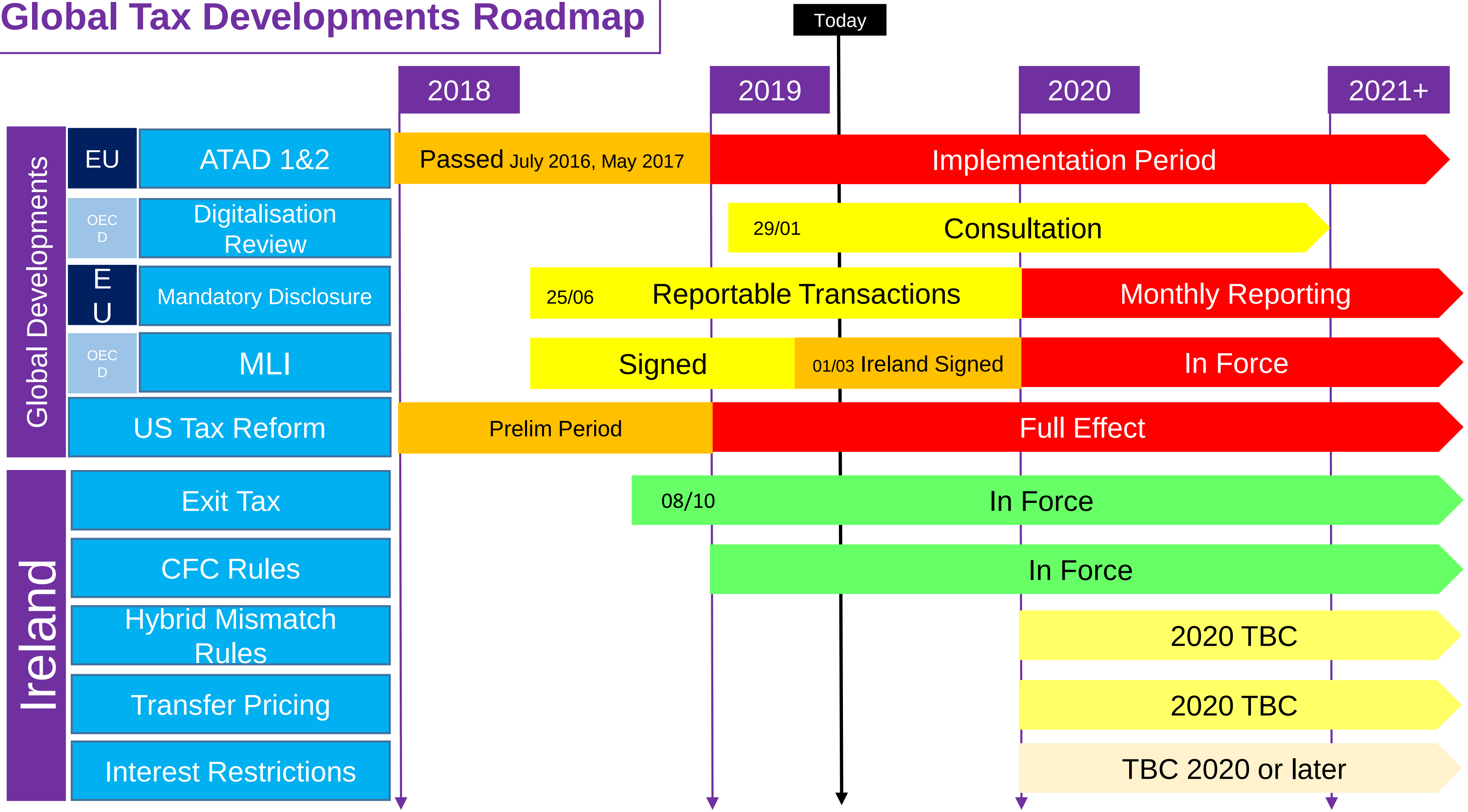
- ATAD 1&2
- Digital Services Tax
- Common Consolidated Corporate Tax Base (CCCTB)
- Mandatory Disclosure Rules

Global

- BEPS 1 – October 2015
- BEPS 2 – OECD Digitalisation consultation
- OECD Multilateral Instrument
- Country by Country Reporting
- US Tax Reform
- Brexit…..

© 2019 Grant Thornton Ireland.

Global Tax Developments Roadmap



OECD BEPS Reports: Autumn 2015
15 Action Points

Coherence

2 Hybrid Mismatch Arrangements

3 CFC Rules

4 Interest deductions

5 Harmful Tax Practices

Substance

6 Preventing Tax Treaty Abuse

7 Avoidance of PE Status

8 TP - Intangibles

9 TP - Risk and Capital

10 TP - Other High Risk Transactions

Transparency

11 Measuring & Monitoring BEPS

12 Disclosure Rules

13 Transfer pricing documentation and Country by Country Reporting

14 Dispute Resolution

Others

1 Digital Economy
15 Multilateral Instrument

© 2019 Grant Thornton Ireland.

EU Anti-Tax Avoidance Directive, July 2016 – ATAD 1

Article	ATAD 1 Provision	Implementation Timeline
4	Interest Limitation Rule	1 January 2019 or, where national targeted rules for preventing BEPS are equally effective, the end of the first full fiscal year following agreement between the OECD members on a minimum standard with regard to BEPS Action 4, but at the latest until 1 January 2024.
5	Exit Tax	1 January 2020
6	General anti-abuse rule	1 January 2019
7&8	CFC Rules	1 January 2019
9	Hybrid Mismatch rules	Subsequently amended in ATAD 2

© 2019 Grant Thornton Ireland.

Anti-Tax Avoidance Directive 2, May 2017 – ATAD 2

Article	ATAD 2 Provision	Implementation Timeline
9	Hybrid Mismatches	1 January 2020
9A	Reverse Hybrid Mismatches	1 January 2022

© 2019 Grant Thornton Ireland.

Grant Thornton
An instinct for growth™

Ireland

How is Ireland Reacting?

© 2019 Grant Thornton Ireland.

Ireland's actions and commitments to adopting BEPS & ATAD

No.	Commitment	Action to be taken by Ireland
1	CFC Rules	Legislation introduced in Finance Act 2018, which took effect from 1st January 2019.
2	Exit Tax	Rules changed in Budget 2019 wef 9th October 2018. Legislation introduced in Finance 2018. Rate: 12.5% subject to CGT anti-avoidance rules
3	General Anti-Abuse rule	No action required as Ireland already has robust longstanding GAAR
4	Multilateral Instrument	Ireland deposited instrument of ratification with the OECD on 29th January 2019
5	Interest limitation rules	Public consultation held in late 2018 – early 2019. Timing of legislation to be determined following further engagement with European Commission. Expected as early as 1 Jan 2020. TBC

© 2019 Grant Thornton Ireland.

Ireland's actions and commitments to adopting BEPS & ATAD

No.	Commitment	Action to be taken by Ireland
6	Hybrid Mismatch Rules	Public consultation held in late 2018 - early 2019. Legislation expected to be introduced in Finance Act 2019, to take effect from 1 January 2020.
7	Transfer Pricing Rules	Public consultation ongoing - concluded in April. Legislation expected to be introduced in Finance Act 2019, to take effect from 1 January 2020
8	Consideration of a Territorial Regime	Public consultation scheduled for Q2 2019 seeking further input on alternative options of moving to a territorial regime or conducting a substantial review and simplification of the rules for the computation of DTR.

© 2019 Grant Thornton Ireland.

Irish Implementation of BEPS & ATAD

Multilateral Instrument (“MLI”)

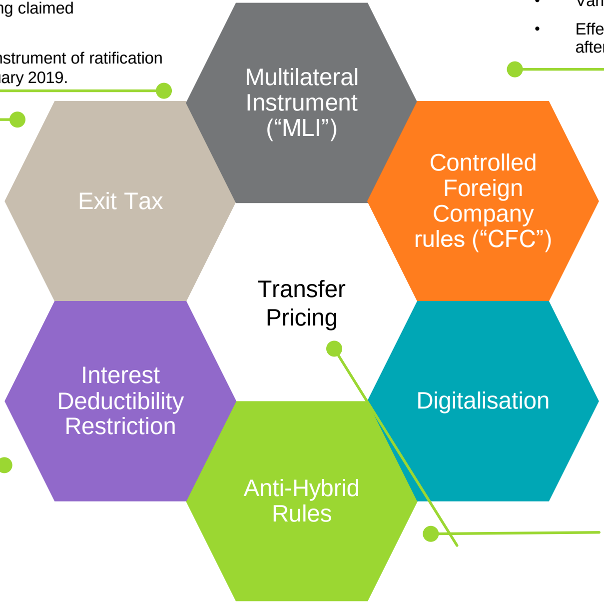
- Designed to efficiently update the worldwide tax treaty network in line with certain OECD BEPS recommendations.
- Introduction of strong anti-avoidance rules to prevent treaty benefits being claimed inappropriately.
- Ireland deposited its MLI instrument of ratification with the OECD on 29 January 2019.

Exit Tax

- New 12.5% exit tax introduced in Finance Act 2018 in respect of transactions on or after **10th October 2018**.
- Applies when an Irish company migrates tax residence or an Irish branch transfers certain assets to its head office in another jurisdiction.
- Ireland had previous exit tax rules which applied a rate of 33% to certain taxable gains.
- The new exit tax rules replace the previous rules which is a positive development (i.e. 12.5% rate vs 33%).

Interest Deductibility Restriction

- EU member states required to introduce interest limitation rules.
- Rules will limit Irish tax deductions for interest expenses (yet to be formally introduced).
- In line with OECD recommendations, restriction will be based on 30% of EBITDA.
- De-minimis amount of interest could apply (€3m).
- No clear timeline yet when these measures could be introduced into Irish law.



Controlled Foreign Company rules (“CFC”)

- Finance Act 2018 introduced complex CFC rules into Irish tax legislation.
- Broadly an anti-abuse measure designed to prevent diversion of profits to low/no tax jurisdictions.
- Various exemptions and re-structuring opportunities.
- Effective for accounting periods commencing on or after **1 January 2019**.

Digitalisation

- Pressure at EU level to introduce a digital tax for online tech companies (e.g. Google, Facebook, Amazon etc.).
- Proposal that 3% digital sales tax would apply to revenues rather than profits.
- UK plans to impose 2% tax on revenues generated in the UK for such companies.
- OECD have launched a US/EU backed programme in Feb 2019 to find a consensus on how to deal with the challenge of the digitalised economy.
- Threat to Ireland’s corporate tax regime.

Transfer Pricing

- Ongoing Public Consultation
- Incorporate OECD 2017 TP guidelines
- Master File, Local File, CBCR
- Removal of grandfathering for pre 1 July 2010 arrangements by 1 January 2020
- Extension of TP rules to SMEs
- Extension of TP rules to non-trading transactions & capital transactions

Anti-Hybrid Rules

- Complex rules that can deny tax deductions or increase the Irish tax base where certain payments result in double deductions or deductions without a corresponding taxable income amount.
- Common with US check-the-box elections.

© 2019 Grant Thornton Ireland.

Controlled Foreign Company Legislation

- Introduction of CFC IN Finance Act 2018 as part of the EU Anti-Tax Avoidance Directive (ATAD)
- Objective is to change behaviour as opposed to this being revenue generating
- Effective for accounting periods commencing after **1 January 2019**
- Ireland has introduced legislation under Option B – the **transactional approach** – importance of a nexus to Ireland
- A CFC charge arises where a CFC has **undistributed income** and **relevant Irish activities** in relation to the CFC group are performed by a chargeable company
- Relevant Irish activities are:

    (1) **significant people functions** or

    (2) **key entrepreneurial risk-taking functions**

performed **in Ireland** on behalf of the CFC

© 2019 Grant Thornton Ireland.

Controlled Foreign Company Legislation

Exemptions

1. Essential purpose test
2. Non-genuine arrangements
3. Transfer pricing / arm’s length transactions
4. Effective tax rate exemption
5. Low profit margin exemption
6. Low accounting profit exemption
7. Grace period for newly acquired subsidiaries

Practical Recommendations

- Review group structure to identify any CFCs and consider restructuring where appropriate – hallmarks include lack of taxation in residence State and people in Ireland driving profits booked at the CFC level
- What level of work is required for completion of Form CT1 for 2019? Revenue guidance to issue shortly.
- Importance of commercial rationale in structuring
- CFC regime to form a consideration in M&A transactions

© 2019 Grant Thornton Ireland.

OECD Multilateral Instrument (MLI)

"Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS"

- MLI published on 24th November 2016
- Signing Ceremony, incl. Ireland on 7 June 2017 – 68 Countries
- Implements BEPS recommendations for international tax changes to combat aggressive tax planning.
- 4 of the BEPS Actions made specific recommendations for changes to treaties
- MLI provides mechanism for countries to transpose those BEPS recommendations into existing bilateral tax treaties – as opposed to having to renegotiate 3000+ DTAs.
- Recommendations – Minimum Standards v Best Practice that countries can choose to adopt.
- MLI provides for Optionality which allows for countries to opt for various measures within the MLI.
  - where both parties to a DTA have opted for the same choice, then on ratification, such measures are adopted within the bilateral DTA

© 2019 Grant Thornton Ireland.

OECD Multilateral Instrument (MLI)

- Ireland indicated its choices when signing up to the MLI in June 2017.
- Ireland deposited our instruments of ratification with the OECD on 29 January 2019.
- In bilateral situations, the MLI measures comes into force on the expiry of 3 months after the ratification of the MLI by the second party, although the actual effective date may vary – e.g. WHT may be the following 1 January.

BEPS Action	Title	Ireland's Position
2	Hybrid Mismatch Arrangements	• Consistent tax treatment across different countries on entity classification. • Best Practice rule on tie-breaker for dual resident companies
6	Preventing Treaty Abuse	• Principal Purposes Test adopted as opposed to modified LOB Article.
7	Artificial Avoidance of PEs	• Adopted article on anti-fragmentation rule. • Reserved position on Commissionaire arrangements, etc. constituting a PE, pending further work by OECD.
14	Improving Dispute Resolution	• Adopted standard time limits and procedures for DTA disputes • Consistent position on corresponding adjustments

© 2019 Grant Thornton Ireland.

Interest Limitation Rules

- Public Consultation - November 2018 – February 2019

- Scope expected new interest limitation rules
  - Borrowing costs deductible up to 30% of EBITDA
  - EBITDA may be calculated on a group basis
  - No restriction on exceeding borrowing costs up to €3m
  - No restriction on borrowing of standalone entity
  - Grandfathering provisions for:
    a. Loans concluded before 17 June 2016, but not for subsequent changes of such loans
    b. Loans used to fund certain long-term public infrastructure projects

© 2019 Grant Thornton Ireland.

Interest Limitation Rules

- Scope (contd.)
  - Consolidated group ratio rule - equity to total assets
  - Options relating to carry forward of unused interest
  - Interaction with existing domestic provisions (Sections 81, 97, 247 etc)?
  - Financial undertakings - Member States can choose not to apply interest restriction to certain financial undertakings - financial undertaking defined with reference to regulatory status rather than activities

© 2019 Grant Thornton Ireland.

Hybrid Mismatch Rules

Aim:

To prevent an outcome where there is a double deduction **or** a deduction with no income inclusion arising from the use of a hybrid entity or hybrid instrument

When does it take effect?

EU Member states will be required to implement most of the provisions of the Directive by **1 January 2020**, although the rules governing reverse hybrids will not come into force until 1 January 2022.

Finance Act 2019

Types of Hybrid mismatches:

- Financial Instrument mismatches
- Hybrid Entity mismatches
- Reverse Hybrid mismatches
- Permanent Establishment mismatches
- Dual Resident mismatches
- Imported mismatches

© 2019 Grant Thornton Ireland.

Hybrid Mismatch Rules

When might the rules apply?

Applies to situations between:

1. **Associated taxpayers** in two or more jurisdictions; or
2. **Structured arrangements** between parties in two or more jurisdictions;

that arise from differences in the characterisation of a financial instrument <u>or</u> entity,

and result in:

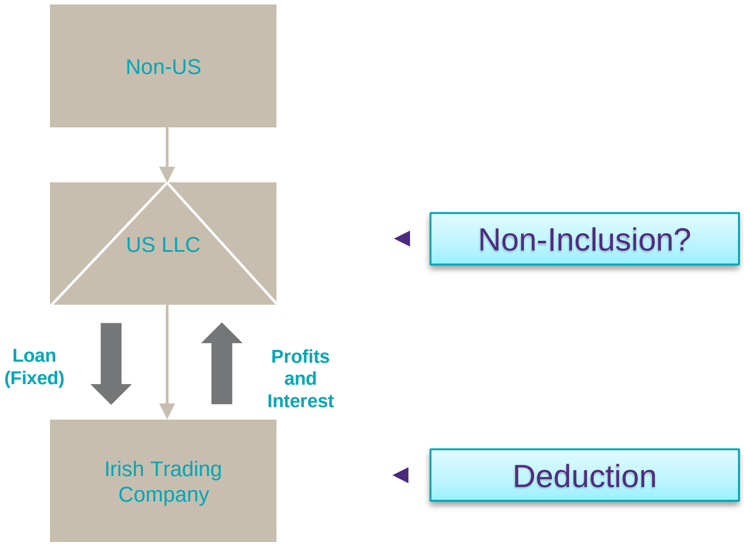
i. A double deduction (i.e. a deduction for the same payment, expense or loss in two jurisdictions) – **Double Deduction outcome,** or

ii. A deduction without inclusion (i.e. a payment that is deductible for tax purposes in the payers jurisdiction but is not included in the taxable income of the receiving taxpayer) – **Deduction/No Inclusion outcome**

© 2019 Grant Thornton Ireland.

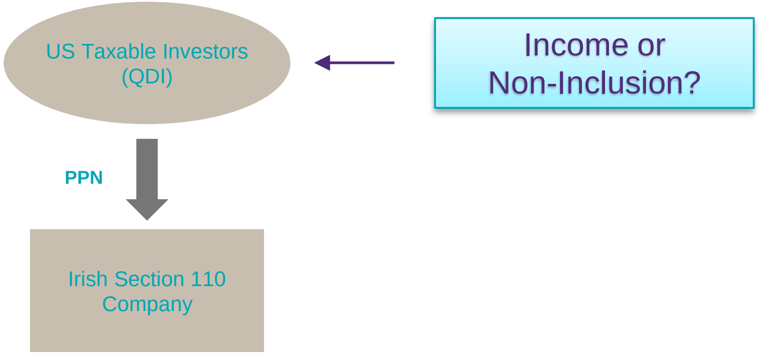
Hybrid Mismatch Rules

Example 1: Hybrid Entity mismatch



Outcome: Deduction may be denied in Ireland…

Example 2: Financing / Section 110 Financial Instrument Mismatch



Outcome: Deduction may be denied in Ireland…

© 2019 Grant Thornton Ireland.

Transfer Pricing

- Dept of Finance public consultation just completed
- OECD 2017 TP guidelines need to be incorporated into Irish law
  - Expectation is changes WEF 1 Jan 2020
- New Concepts
  - Master File, Local File, CBCR – already in
  - Move to DEMPE & economic substance and risk pricing model rather than legal ownership of IP
- Key Changes from 2010 TP Rules
  - Removal of grandfathering for pre 1 July 2010 arrangements by 1 January 2020
  - Extension of TP rules to SMEs
  - Extension of TP rules to non-trading transactions & capital transactions

© 2019 Grant Thornton Ireland.

Economic Substance

A framework for thinking about this – risks and people

Risks and people:

- what are the key functions, assets and risks?
  - health and safety
  - raw materials – quality and price
  - protecting the secret recipe and the brand
  - marketing
- why are those functions / risks important?
- who manages them day-to-day?
- who are the brains behind the show?
- where are those people located?
- who finances the risks

- RACI

© 2019 Grant Thornton Ireland.

Economic Substance – cont'd

A framework for thinking about this

Think:

- Responsible
- Accountable
- Consulted
- Informed

© 2019 Grant Thornton Ireland.

UK Tax Hot Topics

Multilateral Instrument

- Alters treaty positions from late 2018/early 2019. Impact varies on a country by country basis, depending upon which clauses each have adopted
- Main impact in UK expected to be on Tax Residence resolution and Principal Purpose Test for WHT – including substance requirements focus

Diverted Profits Tax

- Effective from 1 April 2015
- 25% tax on profits ‘diverted’ from the UK
- Targets two types of scenarios: avoided PEs and artificial profit diversion to low tax countries

Digital Services Tax

- From 1 April 2020
- 2% tax charge on gross revenues generated in the UK through certain digital platforms (social media, search engines and online market places)
- Groups with global annual revenue from in-scope activity >£500m and > £25m revenue linked to UK participation

Anti-Hybrid Rules

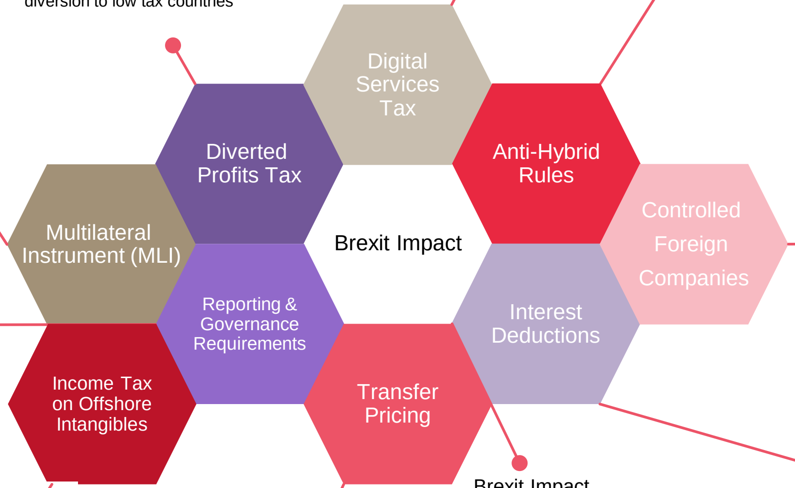
- From 1 January 2017
- Counteracts double deductions and deduction non inclusion outcomes arising from hybrid arrangements
- Hybrid arrangements includes hybrid entities (for example, US check the box election entities), hybrid financial instruments, and also dual resident companies, multi national companies, PEs and “imported mismatches” elsewhere in the group

Controlled Foreign Companies

- From 1 January 2013
- Recaptures profits diverted to group companies in low tax jurisdictions
- Indirect shareholdings included from 1 January 2019
- Substance based test, numerous exemptions (Tax rate, profit level, excluded countries etc.)
- Finance company exemption rules changed from 1 January 2019 following State Aid challenge

Reporting & Governance Requirements

- Criminal Finances Act for failure to prevent tax evasion of associated parties
- Changes to HMRC business risk review
- Tax Strategy reporting requirement
- Senior Accounting Officer rules



Income Tax on Offshore Intangibles

- Effective 6 April 2019
- 20% (income tax) charge on IP income of low tax companies where IP rights exploited in the UK
- Applies regardless of any UK tax presence
- Exemption where tax paid on relevant income >50% of the UK tax otherwise payable, for full treaty countries, or for full DEMPE
- £10m UK relevant income de-minimis

Transfer Pricing

- CbCR effective for financial years beginning from 1 January 2016
- Master file and local file documentation requirements for all but small entities

Brexit Impact

- EU leaders have agreed to delay the deadline for Brexit until 31 October 2019
- There is a possibility of an earlier exit if the UK Parliament approves the Withdrawal Agreement before then
- Businesses must plan now for the impact of a ‘no-deal’ outcome
- International tax areas to discuss include WHT on certain payments between European Cos and the UK

UK Corporate Interest Restriction (CIR)

- Limits UK tax deductions for interest expense from 1 April 2017
- Deduction limited to 30% of tax EBITDA, or a worldwide group interest ratio

ATAD developments: the UK did it first

Article	ATAD Provision	Implementation Timeline
4	Interest Limitation Rule	Introduced with effect from April 1, 2017. 30% EBITDA cap with group ratio alternative + a net worldwide debt cap
7&8	CFC Rules	Originally in 1980’s, amended post Cadbury case from Jan 1, 2013. Mixture of Option A and B with broad exemptions followed by SPF / KERT testing for non-exempt CFCs.
9	Hybrid Mismatch rules	Introduced with effect from January 1, 2017 with counteraction rules for Deduction / Non-Inclusion or Double Deduction mismatches from hybrid entities, hybrid instruments, branch arrangements and dual resident entities. Also includes an imported mismatch rule.

What else is there not time to mention…

- Some changes to the above provisions and exit charge provisions to ensure they are “ATAD compliant”
- UK adopted MLI (notably including PPT and residence tiebreaker but not PE changes) – from January 1, 2019 for income tax & April 1, 2019 for corporation tax

What is the UK doing that is different to the rest of the EU?

Two key differences…

- BEPS Action 1 – Introducing a gross revenue based tax on certain digital revenues: **DST**
- BEPS Actions 5-10 – Tax avoidance using supply chain / IP & licensing models: **DPT**

Digital Services Tax (“DST”)

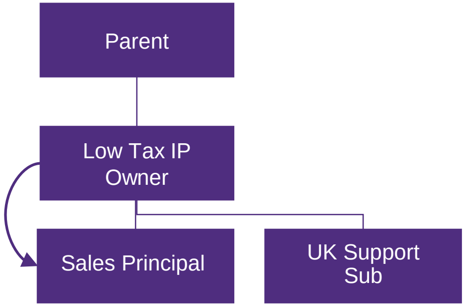
Overview

- From April 1, 2020, a new 2% tax on the gross revenue of certain digital businesses that derive significant value from users based in the UK
- Outside the scope of double tax treaties
- Aimed at only three types of business model:
  - **social media platforms** where users contribute content and ads are targeted at users
  - **search engines** that generate revenue from displaying ads targeted at their users
  - **intermediation platforms** that facilitate marketplace transactions between users
- A commitment from the UK to ensure that other internet businesses are not in scope – specifically mentions e-retailers, payment technology, sales of software or hardware and broadcasting
- Only large groups impacted – a two prong de minimis test applies (>£25m UK revenues & >£500m global revenues). Loss making groups will be out of scope and low profit margin groups will suffer a reduced rate
- UK released draft legislation for Finance Bill 2019/2020 on July 11, 2019. These notes are brief and no accompanying guidance has been provided to date. Consultation on the draft law closed this week.

Diverted Profits Tax (I & II)

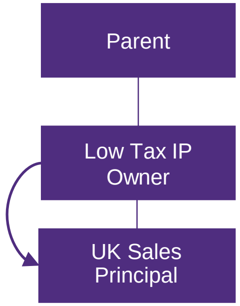
Overview

- Introduced April 1, 2015 in order to tax profits which have been diverted from the UK, at a penal rate of 25%
- DPT is not corporate income tax, so outside of treaty framework and usual procedure. Managed via a notification regime, and must be paid before any appeal can be heard
- A ‘transfer pricing solution’ can be reached
- Financing transactions outside the scope – limited to business model transactions



Avoidance of a UK PE

- Target is UK cost plus support function entity where low tax IP owner licenses rights to an IP principal outside of the UK (e.g. Double Irish or CV/BV)
- UK tax authority looking to argue that arrangements have avoided creating a UK PE of principal entity. Avoided profits allocated to the UK avoided PE.
- From June 2016 any royalties paid by principal to IP owner could be subject to DPT to the extent they are UK sourced (“DPT II”)



Transactions lacking economic substance

- Aimed at UK payments made (directly or indirectly) to low tax and low substance IP owner, where avoided profits allocated to UK Co

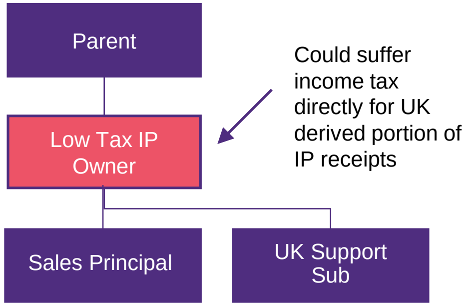
Offshore receipts in respect of intangible property (“ORIP”) a.k.a DPT III

Overview

- From April 6, 2019, a UK income tax charge (20%) on an offshore IP owner, to the extent they derive profits from IP that is used to generate UK sales
- This extends the DPT II provisions which levied a UK income WHT on royalties paid from one foreign party to another which had a UK source. DPT II required the payor to be within the scope of DPT (i.e. have an avoided UK permanent establishment). DPT III removes this need as the UK income tax is directly levied on the IP owner.
- The tax would be limited to the profits derived from UK sales – so requiring an apportionment mechanism of the IP owners profits to separate UK from non-UK
- Applies regardless of any UK tax presence

Exclusions

- £10m UK sales de-minimis (group wide)
- Exclusion where the IP owner is taxed at at least half of the UK corporation tax rate (9.5%, will be 8.5%)
- Exclusion where there is sufficient DEMPE substance in the IP owner (needs a claim)
- Exclusion where the UK has a “full” tax treaty with the IP owning jurisdiction



Grant Thornton
An instinct for growth™

Ireland

Panel Discussion & Q&A

Seamus Coffey, UCC

Matt Stringer, Grant Thornton UK

Peter Vale, Grant Thornton

© 2019 Grant Thornton Ireland.