On a Page - Irish Government Brexit Omnibus Bill

On 27 October 2020, the Irish Government published a Bill, the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 (or the Brexit Omnibus Bill 2020).

The Bill seeks to preserve continuing access to certain priority services, benefits and reliefs relating to the UK that might otherwise be denied when the Brexit Transition Period ends on 31 December 2020. It is understood that it will apply regardless of whether there is an agreement between the EU and the UK on the terms of their future relationship and / or a Free Trade Agreement (FTA).

Areas addressed in the Bill and high level intended outcomes are summarised on this page.

Taxation

A range of reliefs for arrangements currently dependent on the UK's EU status are preserved for individuals including the artist's exemption, charitable donations, third level student fees, UK authorised health insurers, the taxation of certain pension products, seafarers' and fishers' allowances, sportspersons reliefs, disposals of certain assets and investments, mortgage interest relief and certain compensation payments.

EU equivalent treatment is afforded to certain bodies such as stock exchanges, stock clearing intermediaries and other bodies to allow continuing access to Irish reliefs currently dependent on EU status, e.g. exemption from stamp duty for UK clearing houses.
Preservation of CAT agricultural relief to UK property and certain capital gains tax (CGT) reliefs, e.g. UK investments can be taken into account in calculating reliefs for venture capital fund managers, continuation of the 7 year CGT exemption on certain disposals of UK land.

Shares in UK companies / held by a UK trust can continue to be eligible for certain reliefs in respect of share schemes, e.g. in relation to clog shares, Key Employee Engagement Programme (KEEP).

A number of corporation tax reliefs are preserved, including group tax loss eligibility for Irish branches of UK companies, continued reliefs for certain charges on income, continued exclusion from scope of close companies' measures for loans to UK participators as well as continued eligibility of UK R&D activities in determining the amount of qualifying expenditure for the R&D tax credit.

Continued application of a range of reliefs for corporate reconstructions and amalgamations

Healthcare

Maintaining commitments derived from the Common Travel Area (CTA) including access to emergency, routine and planned healthcare.

Preserve eligibility for individuals with full eligibility for public healthcare, access to necessary healthcare during a temporary stay, reciprocal access to healthcare not available in the other State and healthcare reimbursement arrangements as well as ability to raise charges for UK healthcare costs.

Student Support

Continuing mutual provision of grant and other supports for Irish students in the UK and UK students in Ireland.

Social Welfare

Continuing mutual provision of grant and other supports for Irish students in the UK and UK students in Ireland.

Employees, Immigration

Protect employee wage related rights in the event of insolvency of a UK employer. Amend a range of technical provisions related to immigration including exchange of immigration data with the UK.

VAT & Customs

The introduction of postponed VAT accounting which will result, subject to certain conditions, in VAT due on importation of goods from the UK and other non-EU countries no longer being payable at the time of import for VAT registered persons but instead at the time of submission of the importer's VAT return.

For importers with full VAT recovery, no payment of import VAT should arise where the relief is applied. The application of the relief is not mandatory but if applied at import and VAT is not appropriately included in the relevant VAT return there can be severe penalties so it will be important to ensure the relief is operated correctly. Additional requirements, such as compliance with the customs legislation and tax rules, are being introduced to the VAT56 authorisation scheme. The VAT Retail Export Scheme is being amended such that UK based travellers may only avail of the scheme in respect of purchases of €175 or above.

Social Security

From 1 January 2021, the UK will no longer be party to EU Regulations on Social Security. The Bill ensures that the 2019 Convention on Social Security between Ireland and the UK will come into effect even where there is a delay in formal implementation by either party. The Convention ensures continuity of the Common Travel Areas social protection arrangements as well as providing for contribution arrangements for UK and Irish citizens who work across Ireland and the UK.

Transport

Recognition of a range of operators and qualifications to preserve cross border operation of railways and bus and coach passenger services.

Financial Services

Settlement finality: Temporary preservation of certainty in settling a range of transactions in shares, securities and other financial instruments including mutual recognition and access to existing clearance systems in line with EU contingency measures.

Insurance contract continuity: Measures to ensure Irish policy holders continue to benefit from insurance contracts underwritten by UK insurers even if they are no longer permitted to conduct new EU business. A number of insurance sector tax changes related to preserving the ability to impose levies on various insurance premia.

On a Page - What the Bill doesn't cover

A number of important taxation matters will change as a result of the UK's departure from the EU and are not covered in the Omnibus Bill. Some of these are summarised on this page, together with advice on intragroup payments from other countries to the UK.

Taxation measures not dealt with in the Bill

Taxation of Corporate Groups

The Bill does not generally seek to preserve reliefs that are based in EU law, either Directives or decisions of the European Court of Justice. As such a number of important provisions will no longer apply in respect of transactions involving the UK. These include, but are not limited to, the EU Parent Subsidiary and Interest & Royalties Directives, the EU Mergers Directive, certain tax credits, including notional credits, for taxes paid in the UK.
In some instances, Irish tax legislation provides similar reliefs to double tax treaty residents, e.g. withholding taxes on dividends and interest and therefore the impact may be minimal, subject to certain conditions.

Financial Services Taxation

A number of important reliefs / tax treatments in the financial services sector that are dependent upon EU Directives or the EU residence status of counterparties have not been preserved in the Bill. These include, but are not limited to, provisions relating to the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive, the Alternative Investment Fund Managers Directive (AIFMD), the tax treatment of "specified mortgages", Irish Real Estate Funds (IREFs) and Real Estate Investment Trusts (REITs) as well as the operation of Deposit Interest Retention Tax on inter-bank payments.

Social Security

For businesses with mobile employees, it will be important to understand whether any agreement on the future relationship between the UK and the EU provides for coordination on the treatment of social security obligations.

If not, the social security treatment of employees of UK employers or UK employees of EU employers working cross-border may be complex and lead to a liability to double social security contributions.

Information exchange

Unless agreed as part of the UK's future relationship with the EU, the UK will no longer be party to EU information exchange regimes, e.g. Country by Country Reporting or EU Mandatory Disclosure. As the UK will continue to be part of OECD exchange mechanisms the impact may be minimal in relation to some matters such a Country by Country Reporting.

However for others, such as EU Mandatory Disclosure, it may necessary to file a report both with UK and EU Member State tax authorities on the same arrangement.

International Taxation considerations

Intra-group payments

In many EU countries (including but not limited to Germany, Luxembourg, Portugal and Italy) relief from withholding taxes on interest, royalties or dividends is improved by EU directives, e.g. the Parent-Subsidiary directive. Payments from entities in such countries to UK resident entities after 1 January 2021 may be subject to withholding taxes (possibly at a relatively low rate if a double tax treaty applies).

Some countries have taken steps to address these issues at a national level. For example, the UK and Austria have recently agreed conditions under which withholding tax will be relieved on dividends.

In addition, payments from UK resident entities to entities resident in EU countries may also be subject to withholding taxes in the UK, e.g. interest if the EU Interest & Royalties directive is removed from the UK statute book.

Businesses should assess now (if they have not done so already) whether this will impact them and whether they can take steps to mitigate any impact.

Additional resources

Click here to access recent Brexit webinars and our communications to you in February and June on preparing for Brexit, which remain valid

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