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IRISH TAX MONITOR

The Roundtable February 2023

Section 110

Can you explain the purpose of the “double trade” test and how it works. In your response, can you also outline recent guidance under Section 110: entitlement to treatment.

Michelle Adams, Manager, Financial Services Tax, BDO: In accordance with Section 110 TCA 1997, qualifying companies compute their profits in accordance with the provisions applicable to Case I. When looking at several provisions within the Tax Acts which are applicable to Case I, some specifically apply to Case I, such as Section 81 TCA 1997, and some specifically apply to a trade, such as Section 76D TCA 1997. This caused confusion on whether the provisions which applied to a trade would be applicable to a Section 110 company. Revenue provided further guidance and included within the Section 110 Tax and Duty Manual (i.e. Part 04-09-01), that their position would be that “trade” and “Case I” should be generally used synonymously throughout the Tax Acts. This removed any uncertainty when



Michelle Adams

applying the provisions which state “trade” or “Case I”.

However, shortly before Christmas, the Revenue guidance was updated to “provide clarification on the “double trade test””. The Revenue guidance now notes that there are provisions within the Tax Acts which apply a “double trade”

test, specifically calling out section 452(2)(a)(ii) as an example of same. The meaning of the “double trade test” would be where there is a requirement for the company to be carrying on a trade and the specific expense/income would be as a result of this trade. For example, Section 452 TCA 1997 refers to “a trading expense in computing the amount of a company’s income from the trade”.

The Revenue guidance states that in order for these provisions to apply, a qualifying company must ensure that the income/expense is in itself of a trading nature. It is not sufficient to rely on the “Case I” basis of calculation of a qualifying company alone, to meet the “double trade” test.

The introduction of “double trade test” concept into the Section 110 guidance means that practitioners must consider the trading nature of a Section 110 company. This is the first time a distinction between a trading Section 110 company and a non-trading Section 110 has arisen. During TALC discussions, Revenue confirmed that in determining the trading status of a qualifying company the usual criteria (i.e. Badges of Trade) apply.

Digitalisation and VAT

As part of its response to the digitalisation of the economy the EU Commission has issued proposals to change the EU VAT system. What are the key points in the Commission's proposals?

Philip Nolan, VAT Partner, BDO: On 8 December the European Commission launched its long-awaited proposals to modernise the VAT rules within the EU collectively known as "VAT in the Digital Age package" ("ViDA").

The ViDA consists of three key parts, which are very briefly summarised below:

- **Digital reporting and E-invoicing** the introduction of e-invoicing and a two working day digital reporting requirement for all intra-community business supplies on a transaction-by-transaction basis with effect from 1 February 2028.
- **The Platform economy** the introduction of a "deemed supplier"

for VAT purposes for certain platforms in the short-term accommodation rental and passenger transport sectors with effect from 1 February 2025.

- **The Single VAT registration** the extension of the reverse charge rule for intra-community business supplies and the One Stop Shop for certain supplies to private consumers together with the introduction of new rules for the transfer of own goods with effect from 1 February 2025.

The proposed rules are extensive and complex and will take some time to fully digest. To become effective, the proposed measures must be unanimously approved by all EU member states (which will be challenging), so they will be subject to robust debate during 2023 and possibly further revised.

However, affected businesses should begin to familiarise themselves with the proposals so they can assess the likely impact on their business. In particular, on the digital reporting and e-invoicing side, the new requirements will put an additional burden on businesses who

need to review the extent to which existing systems will be able to cope



Philip Nolan

with the new e-invoicing (both issuing and receiving e-invoices), and digital reporting requirements under the proposals.