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International Tax

Ireland Tax Alert

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Finance Bill 2014: Impact on multinational corporations

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Ireland's Finance Bill 2014 was published on 23 October 2014, to bring into effect the budget announced on 14 October. Significant measures relevant to the multinational sector are included in the Finance Bill, such as:

- The grandfathering of "double Irish" structures created before 1 January 2015, and the change in tax residence rules for Irish companies incorporated after that date;
- Enhancement of the Irish onshore intellectual property (IP) regime; and
- Enhancement of the Irish R&D tax credit regime.

Further details on the law changes contained in Finance Bill 2014 to give effect to the above measures announced in Budget 2015 are below.

Although not contained in Finance Bill 2014, the Minister for Finance, in his budget speech, also committed to putting in place a "knowledge development box" along the lines of the patent and innovation boxes that have existed for many years in countries that compete with Ireland for foreign direct investment. The proposed new regime would aim to complement the existing onshore IP regime and attract new inward investment, and would provide a strong commitment to the international business community and investors in relation to the government's foreign direct investment policy. The knowledge development box will not be introduced until the results of the current EU review of patent box/IP box regimes are known and likely will be legislated for in Finance Bill 2015, or possibly earlier if the results become known. This law will be important, given that Ireland needs to have a competitive and sustainable offering to compete for global IP-based investment. Base erosion and profit shifting (BEPS) developments on transfer pricing may focus on different rules for attribution of profits and rewards than in the past, which would reinforce the necessity and importance of having an appropriately low-taxed onshore Irish knowledge development box regime that covers a wide range of IP.

Closure of the double Irish structure

In Budget 2015, the Minister announced that, with effect from 1 January 2015, no new structures will be able to avail of the double Irish regime and that a grandfathering period of six years will apply to structures in existence as of 31 December 2014.

To give effect to this change, Finance Bill 2014 has amended the residence rules to provide that companies incorporated in Ireland after 1 January 2015 will be deemed to be tax resident in Ireland, while companies incorporated in Ireland before 1 January 2015 will be deemed to be tax resident in Ireland from 31 December 2020. This change will not apply to Irish-incorporated companies that currently are tax resident in a treaty country by virtue of management and control, nor will it apply to non-Irish incorporated companies that are managed and controlled in Ireland.

Therefore, there is a window for companies to implement double Irish structures if they are to avail of the six-year grandfathering period provided for in Finance Bill 2014, which should provide companies with sufficient time to consider alternative IP structures that could be implemented after the outcome of BEPS and potential US tax reform has been evaluated.

Enhancement of the Irish onshore IP regime

Since its inception in law in Finance Act 2009, Ireland's onshore IP regime, which is based on expenditure incurred, has been continuously enhanced. Notwithstanding that it is expenditure-based, it has been used in the last few years by a number of companies. Budget 2015 announced a further significant enhancement of the Irish onshore IP regime. The minimum IP-related profits that must be subject to the Irish corporate tax trading rate of 12.5% will be reduced from 20% to 0%. This will have the effect of reducing the minimum effective tax rate on IP-related profits from 2.5% to 0%. The mechanism by which this restriction currently operates restricts the deduction for the aggregate of IP capital allowances/tax depreciation and associated interest expense to 80% of IP-related profits; the new law removes this 80% restriction.

Finance Bill 2014 provides the relevant law changes to give effect to this enhancement to the Irish onshore IP regime and reduce the minimum effective tax rate on IP activities to 0%.

Finance Bill 2014 also extends the scope of the Irish onshore IP regime to include certain acquisitions of customer lists as from 1 January 2015, which further enhances Ireland as an IP location, given that customer lists may have significant value attributed to them (often based on brand value) and, to date, these lists have not qualified for tax relief under Irish tax law. However, customer lists acquired directly or indirectly in connection with the transfer of a business as a going concern will continue not to qualify for relief.

Enhancement of the R&D credit regime

The R&D tax credit scheme is an important source of finance for developing Irish businesses and for larger multinationals in competing for global R&D projects.

The tax credit currently is based on the incremental spend in excess of a company's R&D spend in 2003, which results in the law penalizing companies that carried on extensive R&D activities in 2003. In a very positive development for both domestic and multinational companies, the Minister announced in the budget that the base year will be removed from 1 January 2015. This development was part of a broader response by the Minister to a changing international environment, to ensure that Ireland continues to attract and retain companies of real substance offering real jobs.

This should provide greatly needed funds to companies that previously were restricted from claiming the full value of the credit due to the existence of a high base year spend in 2003, and also should reduce administration related to record maintenance and tracking.

Finance Bill 2014 gives effect to this change and provides the necessary law changes for the removal of this base year restriction.

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