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International Tax

Ireland Tax Alert

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Finance Bill 2013 published

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Finance (No. 2) Bill 2013, presented to the Irish parliament on 24 October 2013, incorporates the measures announced in the budget on 15 October and introduces a number of additional measures relevant to investment in Ireland. This alert looks at both the Finance Bill changes and the budget announcements.

Ireland's corporate tax strategy: The three "Rs"

The three key factors in Ireland's strategy to attract inbound investment are:

- Rate;
- Reputation; and
- Regime

Rate: The Finance Minister restated the long-standing government policy of retaining the 12.5% corporate tax rate, adding that the government is fully committed to this rate.

Reputation: The Minister acknowledged the international focus on tax matters, noting that this focus has created a global challenge for which global action is required. The Minister confirmed that Ireland will play an active role in the OECD Base Erosion and Profit Shifting (BEPS) initiative, ensuring that Ireland is part of the solution and not part of the problem. To paraphrase the Minister, the overall tax policy is "playing fair, but playing to win," which provides multinationals with guidance on the Irish government's policy and approach.

A new International Tax Strategy Statement has been published that contains a set of policy objectives and commitments for how Ireland will deal with international corporate tax policy issues. The main emphasis is on openness and transparency, with particular focus on Ireland's support of exchange of information initiatives and active contribution to OECD and EU measures to tackle harmful tax competition, while at the same time remaining competitive.

Regime: The International Tax Strategy Statement affirms that Ireland is committed to maintaining an open, transparent, stable and competitive corporate tax regime.

The only structural change to Ireland's regime included in the Finance Bill is a measure addressing "stateless companies" in order to eliminate arbitrage

opportunities using the tax residence rules of Ireland and those of its treaty partners.

Ireland currently has a place of incorporation test, which applies in certain limited circumstances, as well as a management and control test. The Finance Bill includes a measure under which, where an Irish-incorporated company is not tax resident in any location because it is managed and controlled in a tax treaty country that determines tax residence according to the place of incorporation/registration, the company will be treated as tax resident in Ireland under Ireland's place of incorporation test. This change will impact a small number of Irish-incorporated companies, generally subsidiaries of US multinational companies that are not currently tax resident in Ireland because they are managed and controlled in the US.

The change will immediately impact new companies incorporated in Ireland on or after 24 October 2013. It will affect existing Irish-incorporated companies as from 1 January 2015, which should give them sufficient time to restructure.

Exit tax regime

In response to a number of decisions of the Court of Justice of the European Union (most notably the 2011 decision in the *National Grid Indus* case) and the notification received by Ireland from the European Commission in relation to Ireland's current exit tax regime, the Finance Bill introduces a new provision allowing for the deferral of an exit tax charge arising on the migration of the tax residence by a company from Ireland to another EU/EEA member state. Under existing rules, assets are deemed to be disposed of at market value immediately before migration, although there are broad exemptions, so that this tax rarely arises.

Under the measures in the Finance Bill, which are in line with EU law, a company may elect to defer any immediate exit tax charge and instead pay the tax in six equal annual installments, or within 60 days of the date of disposal of the assets on which the Irish tax charge arises. However, interest will be levied on the deferred tax until the full amount is paid, which limits the cash flow benefit of the deferral. Interest charges commence broadly nine months after the migration date where corporation tax applies to the deemed disposal, or 31 October of the tax year following the migration where capital gains tax (CGT) applies. The maximum deferral period is 10 years from the date of the migration. Where the tax has not otherwise become due and payable by that point, the tax will become due and payable on that date.

This provision will apply to migrations taking place on or after 1 January 2014. Given the broad exemptions under the existing provisions, the necessity for using this new provision should arise only in very limited circumstances.

Research and development (R&D)

Two key enhancements are being made to the R&D tax credit regime:

- The threshold of qualifying R&D expenditure for which no base year comparison is required will be increased from EUR 200,000 to EUR 300,000; and
- The limit on the amount of outsourced R&D expenditure for which a tax credit may be claimed will be increased from 10% to 15% of the qualifying R&D spend.

These measures will have effect for accounting periods commencing on or after 1 January 2014.

In addition, where a company makes an incorrect R&D tax credit claim and surrenders the R&D tax credit to an employee, the tax underpaid as a result of the incorrect claim may be reclaimed from the company instead of the employee. However, where the claim is found to be deliberately false or overstated, the tax reclaimed in the company's hands will amount to twice the value of the credit surrendered to the employee.

Personal tax rates/Social security rates

There has been no increase to income tax rates or social security rates, which is in line with the government's program.

Immigrant Investment Programme

The Immigrant Investment Programme, which was launched in 2012, enables non-EEA nationals who meet specified criteria, including investment criteria, to avail of Irish residency for a defined period. The current list of qualifying investment options will be extended to include investments in an Irish REIT. An effective date for the change has not been announced.

Film withholding tax

A new withholding tax will be applied to payments by a company that avails of film relief, to any person with respect to "artistic services" provided by an individual who is resident outside the EU/EEA. "Artistic services" include any services provided by an individual in giving a performance in film or television, which may be seen by the public. The withholding tax will apply at 20% (the current standard rate of personal income tax in Ireland), but will not apply where the payments represent emoluments that are otherwise subject to taxation in Ireland.

The new tax will become effective on such day as the Minister for Finance may appoint by order.

CGT exemption for property

A CGT exemption currently applies to gains from the disposal of property situated in Ireland or in an EEA member state that is acquired between 7 December 2011 and 31 December 2013 and held for at least seven years. This exemption is being extended to include property acquired during 2014.

Entrepreneurship

A number of measures are being introduced to encourage entrepreneurship.

In particular, a new CGT relief will be introduced, subject to Ministerial Order once EU approval is obtained. Under this measure, an individual who disposes of assets on which CGT has been paid will be entitled to a tax credit where the individual reinvests the proceeds into chargeable business assets (broadly, new productive business assets costing not less than EUR 10,000) in the period from 1 January 2014 to 31 December 2018. The new assets will have to be held for at least three years before their disposal. The tax credit, which will amount to the

lower of the CGT paid on the previous asset disposal or 50% of the CGT on a disposal of the replacement assets, will be available for offset against the CGT on disposal of the replacement assets. Relief also will be available for subsequent reinvestments and disposals of chargeable assets where the reinvestment takes place before 31 December 2018.

Top-slicing relief for *ex gratia* payments

The tax relief available to individuals who receive a lump sum payment on redundancy or retirement will be amended. Top-slicing relief, designed to ensure that the tax rate paid on the lump sum does not exceed the individual’s average tax rate for the previous three years, is being abolished entirely for payments made on or after 1 January 2014.

Stamp duty

The Finance Bill provides for an exemption from the usual 1% stamp duty charge for the transfer of shares in Irish companies traded on the Enterprise Securities Market (ESM) of the Irish stock exchange. This exemption will come into effect upon the issue of a Ministerial order.

9% VAT rate

The reduced VAT rate of 9% introduced to stimulate the tourism sector was scheduled to expire at 31 December 2013. This reduced rate is being retained, with no new expiry date included in the Finance Bill.

Tax on savings

The rate of deposit interest retention tax (DIRT) and the rates of exit tax on life assurance policies and investment funds will be increased to 41%. This is a significant increase from the previous rates of 33% and 36%. This rate will apply to all such payments, regardless of their frequency. Previously, different rates applied to annual or more frequent payments (33%), compared with payments made less frequently than on an annual basis (36%). The change will be effective for payments made on or after 1 January 2014.

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