



International Tax

Ireland Tax Alert

27 May 2014

BEPS consultation process launched

Ireland's Minister for Finance launched a base erosion and profit shifting (BEPS) consultation process on 27 May 2014. Ireland has played a very active role in the OECD BEPS initiative to date. The purpose of the consultation is to gather views on how Ireland's tax system may need to change in response to a changing international tax landscape.

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

In October 2013, the Irish government published an international tax strategy statement containing a set of policy objectives and commitments as to how Ireland will deal with international corporate tax policy issues. The three key factors in Ireland's strategy to attract inbound investment are re-emphasized in the BEPS consultation paper:

- 1) **Rate:** There is 100% commitment to retaining the 12.5% corporation tax rate.
- 2) **Regime:** Ireland's tax policy is "playing fair but playing to win." Ireland is evaluating the competitiveness of its overall corporate tax regime on an ongoing basis, as it recognizes that countries increasingly are competing for mobile foreign direct investment.
- 3) **Reputation:** The BEPS process, as well as other international developments, has placed an increased focus on a number of international tax structures. It is recognized that tax reputation also is a key factor in winning mobile foreign direct investment. As part of the process of maintaining and enhancing Ireland's tax reputation, Finance (No. 2) Act 2013 introduced changes to ensure that Irish incorporated/registered companies cannot be "stateless" in terms of their place of tax residence.

Consultation process

As part of the preparations for the budget 2015 (to be announced in October 2014), the Minister is examining ways in which the Irish tax regime's competitiveness may be enhanced and Ireland's reputation may be protected. It is acknowledged that a public consultation on the potential implications of the BEPS project in an Irish context is necessary, as the tax system may need to change in response to a changing international tax landscape.

In particular, the consultation process seeks views on the following issues:

- The OECD BEPS Action Plan, including the following 2014 actions:
 - Treaty anti-abuse provisions;
 - Country-by-country reporting;
 - Hybrid mismatch arrangements; and
 - Preferential regimes (e.g. patent box for intellectual property (IP) income) and substance requirements;
- Other BEPS actions;
- Company residence rules for the 21st century; and
- The digital economy.

Ireland recognizes that one of the goals of BEPS is to ensure that taxation rights are better aligned with real economic activities. This, in turn, presents opportunities for Ireland to serve as an onshore location for international business operations. Ireland is well placed to take advantage of these opportunities, due to the availability of skilled talent and Ireland's much-improved economic competitiveness in recent years.

Clearly, Ireland can support substance-based activities. The merits of substance-based regimes are being debated at an EU level, and the EU currently is undertaking a review of European IP regimes, including the issue as to whether such regimes should be activity/substance-focused or expenditure-focused. The consultation process affirms that Ireland wishes to ensure that its future IP tax regime adheres to best practices that result from the EU review, due in June 2014. In addition, the Minister is seeking views on how such a regime should apply in an Irish context, to ensure that Ireland is competitive in a global marketplace in the future.

Related to the alignment of taxation rights with economic activities, the consultation seeks a review of the appropriateness of Ireland's company residence rules. Any changes to the existing residence rules would likely impact commonly used IP holding structures, such as the Irish-incorporated nonresident or "double Irish" structures and likely would arise only after a substantial grandfathering period. Typically, a grandfathering period would provide certainty to companies in the medium-term and allow companies sufficient time to alter their structures/assess alternative Irish-centered IP regimes, as necessary. The fact that the structure of a new IP regime would be known during that time would facilitate decision-making.

Comments

The consultation period runs to 22 July 2014. The outcome of this consultation process will feed into budget 2015, which is expected to be published on 14 October 2014.

In a changing international tax environment, it is welcome that the Minister is seeking feedback from interested parties on changes that may be necessary to enhance Ireland's competitiveness for global multinationals in a post-BEPS environment.

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