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Ireland: An attractive location for investment

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For many years, Ireland has been an attractive location for multinationals to set up their European hub. Ireland was a popular location for manufacturing since the 1950s and over more recent decades has attracted many multinationals centralising key functions (e.g. supply chain, intellectual property (IP) development and exploitation) as well as many companies in the financial services sector.

Ireland has had a tax policy that supports foreign direct investment (FDI) for many years. The corporation tax rate of 12.5% is a key pillar of that policy, supported by other key attractive reliefs and incentives, such as IP relief, the Knowledge Development Box and R&D tax credits, which we will discuss in further detail below.

However, there are many other reasons why multinationals set up Irish operations. Availability of talent (either in Ireland or the ability to attract talent from across the EU, which is particularly the case in the technology and social media area), much improved infrastructure, the ease of access to North America and Europe, time-zone, improved cost competitiveness, together with being an English-speaking member of the Eurozone all contribute to Ireland's attractiveness as a location for investment.

In light of the overall attractive package that Ireland offers, it is unsurprising that Ireland is home to nine of the world's top 10 pharmaceutical companies, nine of the world's top 10 global software companies and all of the top 10 "Born on the Internet" companies.

Intellectual property reliefs

Many multinationals, particularly those in the technology/social media and life science industries have operations in Ireland exploiting worldwide/non-US IP rights. There are a variety of offshore and onshore IP holding platforms used by these multinationals.

In recent years, there have been some changes to the Irish corporate tax residence rules, with the aim of protecting Ireland's reputation, particularly given the ever-increasing focus on the "double Irish" structure. Due to those changes, all companies incorporated in Ireland on or after January 1 2015 will be treated as resident in Ireland for tax purposes. There is one exemption (treaty exemption) to this rule, whereby a company that is regarded as resident in a country with which Ireland has a double taxation agreement (DTA), will be considered as a resident of that other country under the terms of that DTA. Grandfathering provisions were also introduced so that companies incorporated on or before December 31 2014 may continue to be treated as non-Irish residents until December 31 2020, subject to the satisfaction of certain conditions.

IP amortisation

Given the favourable onshore IP regime (i.e. tax relief for the amortisation of qualifying IP) and the increased focus of aligning profits with substance, we expect a significant number of multinationals to bring their IP onshore to Ireland over the next few years as many of those multinationals have their European/non-US principal companies located in Ireland with significant functions undertaken in Ireland. Also, we continue to see new entrants using Ireland as a gateway to Europe. A number of these companies are locating their IP, as well as certain key functions, in Ireland.

Knowledge Development Box

The Knowledge Development Box (KDB) was introduced last year and is available to companies for accounting periods commencing on or after January 1 2016. The KDB provides for a 6.25% effective rate of corporation tax on qualifying profits related to qualifying IP assets which are the result of qualifying R&D activities carried out by the Irish company. Qualifying IP assets for the purposes of the KDB are, namely, patents and copyrighted software. As the KDB is based on the OECD modified nexus approach, in order for the IP to qualify, the R&D giving rise to the IP must have been carried out in Ireland or outsourced to a third party.

A number of multinationals carry out R&D activities in Ireland entitling them to generous R&D tax credits (25% credit for qualifying expenditure, which is refundable in certain circumstances). The R&D activities carried out in Ireland, however, may be insignificant in the overall scale of R&D activities carried out globally (e.g. in the US or India) to develop the group's IP. However, where significant R&D is taking place in Ireland or where it is outsourced to third parties (e.g. clinical trials in the life sciences industry), there may be an opportunity to claim the KDB.

Competitive IP regimes have been a feature of many countries in recent years. However, given Action 5 of the OECD BEPS Project, other countries have to amend their regimes to become OECD compliant as previous regimes are no longer available to new entrants from June 30 2016. It will be important for the KDB to remain competitive as new regimes are introduced in other countries and that it is enhanced, as necessary.

Talent

Attracting and retaining talent is vital to Ireland's competitiveness as a location for FDI. In particular it will be even more important in a post-BEPS environment given the increased focus on substance. Being home to Europe's youngest population as well as most of the top multinationals across a number of industries, Ireland has developed and attracted talented individuals from across the world, but from Europe in particular. However, increases in the personal tax rates during the recession years provide some challenges.

The Irish Special Assignee Relief Programme (SARP) regime was introduced a few years ago to provide a more attractive income tax regime for foreign employees assigned to Ireland. In addition, recent reductions in the rates of the Universal Social Charge (USC) for individuals are welcome in helping to reduce the overall effective rate of personal tax in Ireland for employees in all sectors, including the multinational sector. As signalled by the Minister for Finance, more needs to be done in this area so that Ireland continues to succeed in attracting senior executives to work in Ireland and we hope to see further reductions over the next few years.

International landscape

The OECD BEPS Project issued final papers across many of the actions in October 2015 although further work continues in some areas. Ireland has engaged constructively with the BEPS process. As mentioned above, some changes to our corporate tax residence rules were introduced in 2013 and 2014. However, there are a number of other important elements of the international landscape that may have an impact on Ireland:

- The EU Anti-Tax Avoidance Directive (ATAD) finalised in June 2016 includes a number of provisions (e.g. interest deductibility restrictions and controlled foreign company (CFC) rules) that will need to be introduced into Irish law in the coming years. We expect a public consultation process to be introduced by the Irish Department of Finance next year to seek views on how the ATAD provisions should be implemented in Ireland;
- Recent EU state aid decisions regarding Ireland and other EU member states have further increased media and public focus on international tax matters. Protecting Ireland's reputation is paramount;
- Over the coming months, the UK authorities are likely to try to provide reassurance and bolster public and business sentiment following the UK's decision to exit the EU (Brexit). Indeed, it has already been indicated that in order to offset any slowdown in the UK market, the UK will actively pursue tax strategies to attract and retain FDI. In particular, a further potential reduction in the corporate tax rate to 15% has been mentioned. In addition, if the UK leaves the EU, in the absence of state aid rules, it has been suggested that the UK may have additional flexibility to introduce more targeted tax and other incentives to attract investment. In our view this may be restricted to some extent, given the UK's commitment to the OECD's BEPS process, and driving the agenda around international tax reform at the G8;
- While Brexit will not result in any change to the Irish tax regime, in terms of FDI, a strong focus must be placed by the Irish government on ensuring that Ireland continues to have a pro-business tax regime that is competitive with what is on offer in the UK (and indeed elsewhere). The certainty and ongoing commitment to the 12.5% tax regime remains a key factor in influencing the attractiveness of Ireland *vis-à-vis* other locations when assessing the tax implications; this is in contrast to other jurisdictions, where concerns remain that a change of government and tax policy approach could see a u-turn on lower corpo-

rate tax rates and other tax policies. Therefore, the certainty that Ireland delivers around its tax rate, reputation and tax regime is of paramount importance; and

- From a financial services perspective, a critical issue for financial services companies is the ability to passport their operations from a regulatory perspective seamlessly from one EU location to another, under EU regimes. Given that these passporting rights may be lost post-Brexit, some companies are now considering the need to relocate some UK-based operations to ensure continuity of service. Ireland has proven to have the right infrastructure to support UK financial services businesses considering expanding or establishing an EU footprint.

In response to changes in the global tax framework, companies across the world are reviewing their global operations to ensure that they comply with both EU and OECD standards. As a result, it is vital that Irish government policy continues to support initiatives that help Ireland remain an attractive destination for investment, and to do so in a way that is compatible with the priorities established under the OECD BEPS Project and the EU ATAD. Ireland remains committed to the 12.5% corporation tax rate. The benefits of that very competitive rate should not be under-estimated at a time where multinationals appreciate a sustainable low corporation tax rate without any “exotic” tax planning. However, as mentioned above, clearly, Ireland’s tax regime is only one element of Ireland’s offering in terms of attracting FDI. Therefore it is important that Ireland’s cost competitiveness is retained and even improved and that the government supports increased availability of both commercial office space and residential housing and further invests in the pipeline of graduates in science, technology, engineering and maths (STEM) subjects.

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Karen Frawley is an international tax partner with nearly 19 years' experience advising a broad range of clients including public bodies, multinational companies, Irish public limited companies and large Irish indigenous companies.

Karen is a leader in Deloitte Ireland's life science industry practice and works with a number of leading medical devices and pharma companies in relation to Irish tax issues such as intellectual property structuring, inversions and business model optimisation. She has particular expertise in advising clients in relation to corporate group reorganisations, M&A transactions and structuring of cross-border transactions.

She also leads the tax management consulting team and has significant expertise in the area of assisting organisations with the management of the tax function, including the design of tax policies and the management of tax risk, as well as the use of tax technology and tax data analytics.

Karen joined Deloitte as a trainee in 1997. She is an associate of the Irish Taxation Institute (CTA) and fellow of the Institute of Chartered Accountants in Ireland (ACA), having achieved a top three placing in the admittance exams for both qualifications. She regularly presents at international tax seminars on Irish, EU and global tax developments.

Karen is a council member of the Irish Taxation Institute and current chair of the Institute's policy and technical committee.

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Lorraine Griffin is head of tax at Deloitte Ireland and an international and M&A tax partner in Deloitte's Dublin office. She advises a broad range of indigenous Irish companies, private equity houses and multinational companies, covering a wide variety of both Irish and international tax issues.

Lorraine has significant corporate tax and international tax experience. She specialises in international tax, advising multinationals on investing into Ireland and domestic groups on outward investments, and has significant expertise in the areas of intellectual property, corporate restructurings and mergers and acquisitions. This has also included structuring investments into and outside of Ireland, including financing arrangements, manufacturing and supply chain tax aspects. Lorraine works closely with Deloitte's transfer pricing specialists to review the transfer pricing positions of many of her clients and to structure them appropriately, particularly in the context of the 12.5% tax rate in Ireland.

Lorraine advises clients in a range of industries, including technology and telecommunications clients, as well as a range of consumer business clients, but with a particular focus on the life sciences sector, advising various bio-pharma and medical device multinationals.

Lorraine is a former council member of the Irish Taxation Institute, and former chair of the Institute's tax policy and tax technical committee. She has lectured for the Irish Taxation Institute as part of their professional training programme and has given presentations at various seminars and conferences organised by the Institute and by Deloitte.

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Louise Kelly is an international tax partner with 15 years' experience advising multinational companies and Irish public limited companies on corporate and international tax matters.

She advises Irish and multinational companies, particularly those in the life sciences and technology industries in relation to appropriately tailored structures for both inbound and outbound transactions. Louise has been involved in advising on cross-border group restructures and developing intellectual property management and tax-aligned supply chain strategies for multinationals.

Louise is the M&A tax country leader for Deloitte Ireland and has advised corporates and private equity firms on multiple M&A transactions (both on the buy and the sell side).

Louise led Deloitte's Irish desk in New York for two years, and so brings a unique perspective in advising clients on setting up operations in Ireland and on undertaking group reorganisations.

Louise holds a Bachelor of Science degree in accounting from University College Cork. Louise is an ACA and AITI and was placed in the top five for the ICAI exams and placed first in the final exams for ITI. She is a regular author for Bloomberg BNA publications and is a regular speaker on international tax matters in Ireland and abroad.

Joan O’Connor

Joan O’Connor is a senior international tax partner based in Dublin, who led Deloitte’s Irish technology, media and telecommunications group until 2015. Joan has around 30 years of international tax experience in two of the Big 4 firms, in Dublin and London, covering a wide range of industries including technology, life sciences, telecommunications, online media and energy. She works with inbound multinational clients from the US, UK, Europe, China and Japan on outbound and inbound transactions, including managing and implementing supply chain assignments using Ireland as a principal company and shared services location for European and worldwide business operations. She previously headed the firm’s transfer pricing practice and R&D practice. She has spent extensive time in the US working with US clients.

Joan is a past president of the Irish Taxation Institute. She is a member of the taxation committee of the American Chamber in Ireland and the Irish Institute of European Affairs. She regularly contributes articles to the *Irish Tax Review*, *International Tax Review* magazine and its publications and Bloomberg BNA publications.

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Deirdre Power is an eminent and experienced financial services tax adviser and she leads the financial services tax practice of Deloitte in Ireland. She is a chartered accountant with more than 15 years' experience in advising financial services clients in the areas of investment management and funds, banking, securitisation, structured finance and leasing.

She has made a significant contribution to the Irish funds industry over the last 15 years, including being elected as chairman of Irish Funds for 2007-2008 (Irish Funds being the industry body in Ireland). She continues to play an active role in the industry and is currently a member of the Irish Funds Tax Steering Group.

Deirdre plays a role in developing the Irish tax framework, both in funds and banking, in the contributions she makes to the Irish Funds Steering Group and as a member of the banking and Treasury Tax Group, originally established by the Taoiseach's (Irish Prime Minister) Clearing House Group.

Her roles at Deloitte include membership of the Deloitte global asset pooling team, as well as the Deloitte European investment management team.

She was appointed to the board of Deloitte in Ireland in 2015.

From an asset-management perspective, she works with service providers and asset managers on all areas of their business including:

- Product structuring and set-up (alternative and mutual funds, CCF asset-pooling structures) across a range of diverse asset classes;
- Tax structuring strategies, including tax reclaims and relief-at-source claims;
- Tax reporting both in Ireland and in other jurisdictions; and
- Target operating models from a tax and operational perspective, particularly with the changing global tax landscape post BEPS, EU Anti-Tax Avoidance Directive (ATAD) and other EU, OECD and Irish tax changes.

Deirdre has spoken at many investment management and structured finance industry events and regularly writes on industry topics. She is (and has been) a mentor to many talented professionals within Deloitte Ireland as well as a network mentor to participants in the IMI 30% Club.

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Joanne Whelan is a tax partner with Deloitte. She is a qualified lawyer and tax adviser and a member of the Family Firm Institute. She leads Ireland's largest multi-disciplinary private client team. The team comprises a group of lawyers, accountants and tax advisers and this multi-disciplinary approach has enabled Joanne and her team to develop bespoke legal and tax solutions for a large number of Ireland's wealthiest families. She is also the head of the Deloitte corporate administration services department.

Joanne is recognised in the market as one of Ireland's leading experts in the area of gift and inheritance tax. She is the co-author of the Irish Tax Institute's publication "The Taxation of Gifts and Inheritances".

Joanne has extensive experience in advising private clients on all tax-related matters, including:

- Estate planning issues, such as taxation exposure on the transfer of wealth to the next generation by way of gift and inheritance;
- Assisting clients in designing and implementing a comprehensive succession and estate plan tailored to meet their specific needs, having regard to their asset profile and family requirements; and
- Advising on stamp duty issues including group reorganisations and amalgamations, on liquidations and by reason of foreign mergers and transactions between associated companies.

Joanne also leads the corporate administration services department, which provides a wide range of services to both public and private companies, including corporate formations and compliance, business name protection, corporate governance, alternative dispute resolution and employment law.