Key Budget 2015 Measures for TMT

The Technology Media and Telecommunications (TMT) sector is vital to Ireland's economy, from an FDI perspective where Ireland is home to the Top 10 'Born on the Internet' companies and 9 of the Top 10 Software companies, as well as a strong indigenous sector.

In a widely anticipated move, the "Double Irish" structure, used by many US technology/social media companies will be abolished effective from 1 January 2015 but existing structures are grandfathered until 31 December 2020. However, in a largely positive announcement for companies, the Minister for Finance has outlined a roadmap on tax policy and measures to enhance Ireland's intellectual property regime and underpin the Government's commitment to making Ireland a destination for the best and most successful companies in the world.

There has been a strong recovery in the Irish economy particularly throughout 2014. A significant part of this recovery has been driven by foreign direct investment and the many multinationals operating in Ireland and therefore today's measures are welcome to continue to support that sector. However, Irish-owned businesses continue to face significant challenges. Given the improved outlook for the coming years, this Budget presented an opportunity to assist indigenous companies to drive growth in their businesses. Unfortunately a number of changes in this area fell short in a TMT context when compared with reliefs available in our nearest competitor, the UK, for indigenous growing technology companies.

Corporation Tax Regime

The Minister reaffirmed the Government's commitment to the 12.5% corporate tax rate as settled tax policy and outlined measures towards providing a competitive tax environment for companies operating in Ireland. A number of these measures including more competitive IP regimes and an enhanced R&D Tax Credit Regime are covered in more detail below.

Other incentives which were included in the Budget are the extension of the 3-year corporation tax relief for start-up companies and the extension of the accelerated capital allowances scheme for energy-efficient equipment for a further 3 years. Both of these extensions are welcome to companies operating in the TMT sector.

Double Irish Structure

In a widely anticipated move, the "Double Irish" structure will be abolished effective from 1 January 2015. The structure has gained widespread international media attention in recent years with a number of high-profile cases garnering unprecedented scrutiny from the OECD, the US and a number of countries, especially in Europe. The structure exploits different tax rules, particularly in the context of the US and Irish tax law.

To address the reputational concerns arising from the intense focus of the Double Irish structure (predominantly used by US multinationals, especially on the TMT sector), the Minister has announced that with effect from 1 January 2015, no new structures will be in a position to avail of the Double Irish regime. A grandfathering period of 6 years has been announced for structures in existence as at 31 December 2014. This grandfathering period will allow companies to continue to avail of the existing Double Irish regime and its benefits up to 31 December 2020 and also provides companies with a timeline to explore alternative beneficial IP structures.

Intellectual Property/Innovation

IP is typically a key component to business models in the TMT sector. The Budget made two positive changes to the taxation of IP-related profits, which may benefit both indigenous and multinational companies.

The Minister announced a new "Knowledge Development Box" regime. A consultative process has been announced to develop a best in class regime similar to IP / Patent Box regimes in existence elsewhere in Europe. Several IP regimes are currently the subject of a

review under the EU's Business Code of Conduct Group, the outcome of which is expected by the end of 2014. This new Knowledge Development Box regime will aim to complement the existing onshore regime, attract new inward investment and have a low and sustainable tax rate aligned with our competitors.

The onshore regime provides for amortisation on an accounts basis of defined IP acquired, which to date gives a minimum effective tax rate of 2.5% on taxable profits. The onshore regime is not subject to the EU Code of Conduct review currently being undertaken in respect of IP / Patent Boxes in Europe, as it is a tax depreciation relief. Effective 1 January 2015, the current onshore regime will remove the minimum level of corporate tax and widen the definition of IP. The announcement of the improvements to the existing onshore IP regime, particularly the removal of the minimum corporate tax level and the widening of the definition of IP is a welcome enhancement of the current onshore regime which means that, subject to meeting the relevant criteria, corporate tax could be very low.

R&D Tax Credit Regime

The R&D tax credit scheme is an important source of finance for developing Irish businesses, particularly in the TMT sector. However, as the tax credit is currently based on the incremental spend in excess of a company's R&D spend in 2013, the current regime penalises companies which had been carrying on extensive R&D activities in 2003. In a very positive development for both domestic and multinational companies, the Minister has announced that the base year will be removed from 1 January 2015. This should provide greatly needed funds to companies who were previously restricted from claiming the full value of the credit due to the existence of a high base year spend in 2003.

The Minster's announcement that the Revenue Commissioners plan to publish new guidelines to enhance clarity on the administration of the R&D tax credit is also welcome, and should mean greater certainty for businesses who claim R&D tax credit relief. In order to address the lack of consistency in communication from Revenue and to enhance clarity for industry, we would recommend that a central specialist unit of research and development scheme experts should be put in place.

Companies should review their activities to ensure that all qualifying expenditure incurred is benefitting from the R&D credit regime, particularly in light of these positive changes, and that all claims in respect of the year ended 31 December 2013 are made before 31 December 2014.

The Employment and Investment Scheme (EIIS)

Take up of the EIIS scheme has been low since its introduction in 2011. The changes in last year's Budget, which removed EIIS investments from the high earners restriction, have been built on in Budget 2015 by raising the amount companies can raise in any one year to €5m, increasing the holding period by 1 year and including medium-sized companies in non-assisted areas and internationally traded financial services subject to certification by Enterprise Ireland. While this is welcome to companies in the TMT sector, as investors only receive 30% tax relief up front on investment, with the remaining 11% four years later, the Minister could have gone further and allowed all relief upfront. Hopefully, it will be enhanced or overhauled in future budgets to compete more favourably with similar regimes in other countries, including the UK.

Expanding into new markets

The Foreign Earnings Deduction ("FED") was put in place to encourage Irish business to expand into new markets and drive export business. The relief provides for a level of additional tax relief on the earnings of individuals, generated during periods spent working outside Ireland. The Finance Bill will extend the list of qualifying countries which, at present, is essentially the BRICS countries (Brazil, Russia, India, China and South Africa) and a number of African countries, to include Chile, Mexico, and some countries in the Middle East and Asia. In addition, the calculation of "qualifying days" has been reduced to 40 days, and travel days are included, to recognise the realities of business travel for many businesses.

Attracting and retaining talent

Given the global shortage of skills in the TMT space, an attractive tax regime for mobile employees is very important. Given positive changes to the visa process for technology employees, our visa process is now best in class and supports Ireland in attracting talent.

A Special Assignee Relief Programme (SARP) was introduced in 2008 to provide a measure of tax relief for mobile employees locating in Ireland. Some key changes in Budget 2015 include the removal of the upper salary threshold (previously €500,000) and the reduction in the requirement to be employed abroad prior to arrival to 6 months, both of which are welcomed. As the programme is currently only available to the multinational and large Irish corporate sector, it would be advantageous for it to be expanded to indigenous companies to help Irish-owned firms attract and retain the specialist skills they require from overseas countries. It remains to be seen if the Finance Bill will introduce measures which will result in the extension of the relief to indigenous companies.

Budget 2015 sees the introduction of a number of measures as part of a 3-year plan to reduce the overall marginal rate of tax for low- and middle-income earners. This includes a cut in the top rate of income tax from 41% to 40%, a reduction in the level of Universal Social Charge (USC) payments for individuals earning income of less than €70,000 and an increase in the standard rate band for individuals to €33,800.

In an FDI context, the enhancement of the existing Special Assignee Relief Program (SARP) and signals to further reduce the income tax rate in future years is a welcome move, particularly at a time where the focus of the OECD's BEPS project is aligning substance with taxing rights and key people functions.

B2C VAT changes effective 1 January 2015

Historically, the EU VAT rules obliged the supplier of electronically supplied services to private consumers to charge VAT at the rate applicable to these services in the country in which the supplier was established. For example, a UK supplier supplying electronic services to an Irish customer would charge UK VAT and pay it over to the UK authorities. Under the new rules, the UK supplier will now charge Irish VAT which will still be paid over to the UK authorities, but who will then remit it to the Irish tax authorities.

The Irish authorities and businesses supplying these services to private consumers will have similar obligations in respect of electronically supplied services which are supplied from Irish-based businesses to private consumers. However, because Ireland had a higher VAT rate than many other EU Member States the Government expects that Ireland will have a net gain to the exchequer over the coming years as a direct result of these new European VAT rules. An additional €100m is to be collected in VAT in each of the coming two years and Ireland's VAT revenues are then to increase again over the following three years from €125m to €150m each year.

As the changes take effect from 1 January 2015, companies that supply electronically supplied services to private consumers in the EU should ensure that their systems will be capable of dealing with the new obligations and carry out appropriate testing of same.

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