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FINANCE BILL 2010

GOOD NEWS FOLLWING PUBLICATION OF THE IRISH FINANCE BILL

The Irish Finance Bill was recently published. It contains a number of measures that increases Ireland's attractiveness as a place in which to do business. A summary of the key measures that are of interest include the following:

Special Assignment Relief

A special assignment relief was introduced in Finance Act (No.2) 2008 to attract key talent from overseas. The relief applied to non Irish domiciled individuals who are nationals of non EEA countries and with whom Ireland has a tax treaty. Following publication of the Bill, some of the conditions have been relaxed and the relief has been widened. The relief now applies to EU and EEA nationals who are non Irish domiciled and the period of assignment to Ireland is reduced from one year from three years. The changes will apply to individuals who come to live and work in Ireland on or after 1 January 2010.

Introduction of transfer pricing

Section 38 introduces new transfer pricing provisions to be applied to trading transactions between associated persons. These provisions are intended to consolidate and expand on existing legislation and to align Ireland with international standards by adopting the OECD arms length principles.

Many companies affected by the transfer pricing legislation are members of large international groups that trade internationally and are already subject to international transfer pricing requirements. For such companies, the concepts of international transfer pricing rules are well understood and all they will have to do is adapt such principles into their Irish operations.

The introduction of transfer pricing in Ireland will provide greater scope for Irish companies to challenge transfer pricing adjustments from other territories. Ireland is now a low tax onshore location with transfer pricing legislation.

Taxation of foreign dividends

Dividends paid by a trading company resident in a non treaty location can now avail of the 12.5% rate of corporation tax on such dividends where the company is owned by a publicly quoted company.

Dividend withholding tax

Non resident companies receiving dividends from Irish resident companies have to comply with dividend withholding tax procedures and such procedures are relaxed and self assessment procedures are introduced in respect of dividends paid to corporate resident in double taxation treaty locations.

Double taxation treaty measures

Ireland has signed new double taxation treaties ("DTA") with Albania, Bahrain, Belarus, Bosnia & Herzegovina, Georgia, Moldova, Serbia and Turkey and many more are expected in the short to medium term. Ireland now has 56 treaties signed.

Unilateral credit relief for royalties

Unilateral credit relief will now be available to all trading companies in respect of withholding taxes on royalty income from non-treaty countries. This applies to royalties received on or after 1 January 2010.

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Royalty withholding tax exemption

Currently withholding tax applies to patent royalties and other annual payments. An exemption from Irish withholding tax will be available in respect of such royalty payments paid to residents or permanent establishments in EU or tax treaty countries (except Ireland) where the recipient is liable to tax in that territory in respect of the payment.

Cross border mergers

The provisions of the EU mergers directive are incorporated into Irish law such that the transfer of trade and assets in a cross border merger will not give rise to a balancing charge. The company acquiring the trade will step into the shoes of the transferor for capital allowances purposes. This legislation takes effect from 1 January 2010.

R&D tax credits

The Bill has introduced a number of measures in respect of R&D credits within large groups. Expenditure incurred on R&D activities before a company commences to trade may be included in the R&D tax credit calculation. The amount of expenditure on which the credit is based is the amount the company would have been entitled to claim had it been trading when the expenditure was incurred.

Intangible Assets

A number of enhancements to the intangible assets scheme have been introduced. The period for which a specified asset must be used in the trade to avoid a clawback of relief is reduced from 15 to 10 years. The definition of know-how has been broadened and capital expenditure on intangible assets incurred before commencement to trade will qualify for relief.

Carry Forward of Unrelieved Foreign Tax on Branch Profits

Where an Irish company has a foreign branch, a credit for foreign tax paid by a foreign branch is available when computing the liability to Irish corporation tax. Any excess credits may be pooled and offset against profits of other branches arising in the same year. Previously any credits remaining after pooling were lost. This provision is amended such that excess credits can now be carried forward and offset against corporation tax in future periods.

EU hub for international funds industry

The Minister for Finance announced in his budget speech that he would introduce significant measures which should assist Ireland “to become the European hub for the international funds industry”. The proposed measures will provide clarity regarding the tax treatment that will apply to foreign funds that are managed from Ireland under the recently adopted UCITS IV arrangements. It provides certainty that the trading activities of the Irish UCITS management company should not result in the non-Irish domiciled funds coming within the charge to Irish tax. The provisions also include proposals to exempt the need for non-resident declarations for non-resident investors in Irish funds which should reduce the regulatory burden for the industry.

The Bill proposes an exemption from stamp duty for transfers of assets between certain unit trusts. It also proposes extending the exemption from stamp duty for funds in cases of reconstruction or amalgamation to cover situations where the units issued by the Irish fund in exchange for the assets transferred are issued directly to the foreign fund rather than to its unit holders

Islamic financing arrangements

The Bill introduces provisions to facilitate Islamic Financing to be undertaken from Ireland. The tax treatment applicable to conventional financial transactions has been extended to Shari’a products which are in substance the same as the conventional products. This is achieved by inserting a new Part 8A into TCA 1997. Essentially this Part treats the return on a ‘specified finance transaction’ as interest for the purpose of the Tax Acts.

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