

Insurance Briefing
Series

Insurance Tax Update



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Foreign Branch and Foreign Tax Credit

Carry Forward of Unrelieved Foreign Tax

- Currently foreign tax paid by a company on branch profits can be credited against Irish corporate tax payable on those profits.
- Foreign tax credits can be “pooled” whereby excess foreign tax credits relating to one branch can be used to shelter Irish corporation tax on profits from other branches.
- Finance Act 2010 provides that unused foreign tax credits can be carried forward for set off against Irish corporation tax on foreign branch income in future years.

Foreign Dividends

- Prior to Finance Act 2010, foreign dividends from EU or tax treaty countries paid out of trading profits are subject to corporation tax at a rate of 12.5%.
- In addition, dividends from companies resident in non EU/non treaty countries were taxed at 25%.
- Three favourable changes have been introduced in respect of foreign dividends received on or after 1 January 2010

Foreign Dividends – Finance Act 2010

- I. Dividends paid out of trading profits of a company resident in a non treaty country will be taxable at 12.5% where the shares of either:
 - (a) the company, or
 - (b) its 75% parent,are regularly traded on a recognised stock exchange in Ireland, the EU or a tax treaty country.
- II. Foreign dividends received by an Irish company which holds less than 5% of the foreign company will be exempt from tax. Dividend income must be trading income of the Irish company.
- III. The rules for identifying the underlying profits out of which foreign dividends have been paid are simplified.

Dividend Withholding Tax

- While there are a wide number of exemptions from DWT, the documentation required could be onerous which required auditors certification and certification of tax residence for foreign companies.
- Self certification regime was introduced with effect from the passing of the Finance Act 2010 (i.e. 3rd April 2010).
- Auditors certificate and certificate of foreign revenue authority no longer required.

Anti-Avoidance

Migration of Residence/ Dividends out of foreign profits

- Anti-avoidance legislation is proposed which would deny tax exemption for dividends received by an Irish company from a connected Irish resident company.
- Applies if paying company became resident in Ireland on or after 3 April 2010 (i.e. the date the Finance Act was passed).
- Applies if dividend is paid out of profits arising before the paying company became resident in Ireland and is treated as foreign dividend for corporation tax purposes.
- Credit will be available for foreign tax suffered on the profits out of which dividend is paid.
- Legislation will not apply where the paying company was before it became resident not controlled by Irish residents.

Interest Payments to Treaty Residents

- Broadly, payments of yearly interest are subject to withholding tax at a rate of 20% unless relief applies.
- Generally, relief available where interest is paid to a company which is resident in an EU/ treaty jurisdiction.
- Relief now subject to additional requirement that the income is “liable to tax” in the EU/ treaty country in question.
- Relief now also extends to interest payments made to company resident where a treaty is negotiated but not yet in force.
- Exemption from income tax on Irish source income is now subject to interest income being “liable to tax” in the treaty country.
- Applies to interest payments made from 3rd April 2010

Ireland as a Home for Intellectual Property

Intellectual Property – Finance Act 2010 Improvements

- Reduction in clawback period to 10 years
- Certain Software may now be included in regime
- Definition of “Know-how” is expanded

Royalties Receivable - Unilateral Relief

- Foreign tax relief for tax suffered on royalty income from non treaty countries
- Royalty income must be part of Case I trade

Royalties Payable - WHT

- 20% WHT does not apply if paid to company in EU/DTA location
- Recipient country must generally apply tax to such royalty income
- Bona fide requirement
- Exemption from Irish income tax for recipient.

Purchase of own shares by a quoted company

- Premium on redemption treated as a distribution
- Notification to Revenue of redemption payments 12 months after period end
- Aims to catch share redemptions in lieu of dividends (CGT versus Income Tax)
- Effective for payments on or after 4 February 2010
- Brings quoted companies in line with all other companies

Levy on Life Assurance

- Finance Act 2009 introduced a 1% levy on life assurance premiums.
- Finance Act 2010 provides for exclusion from the levy in respect of pension business and reinsurance business.
- Due date brought forward to the 25th of the month after each quarter end.

Transfer Pricing

Introduction to new Transfer Pricing regime

- A formal transfer pricing regime will be introduced for accounting periods **beginning on or after January 1, 2011**
- Legislation will apply to arrangements involving:
 - the supply and acquisition of goods, services, money, or intangible assets;
 - where the person making the supply and the person making the acquisition are associated; and
 - the profits or gains or losses arising from the relevant activities are within the charge to tax as trading income
- Arrangement defined as any agreement or arrangement of any kind whether or not it is legally enforceable
- Irish Revenue have indicated that they do not see this as new law, but formalising existing principles into a codified regime

Ireland's New Transfer Pricing Regime – Key Aspects

- The new regime relates only to transactions that are within the charge to tax in Ireland as trading activities under Case I or Case II (i.e. Trading transactions)
- Insurance Sector – 12.5% applies to certain investment income.
- 25% rate applies to “pure” investment income and not integral to trade of the company or attributable to the regulatory capital of the company.
- The following are within the remit of the new legislation – goods, services, money and intangible assets.
- Arrangements involving “money” – no further detailed definition and potentially very wide in scope especially for insurance sector.
- Certain activities (i.e. interest free loans and royalty free structures), which are not trading transactions, will not be within the remit of the legislation.

Ireland's New Transfer Pricing Regime – Key Aspects

- Upward only adjustment to income/ downward only adjustment to expenses.
- No facility to adjust down income or to increase expenses.
- Documentation requirement may be satisfied by counterparty documentation in place. Issue for certain cross border and reinsurance operations where no transfer pricing regime in foreign jurisdiction.
- Timing of documentation – not necessarily contemporaneous but must be in place at the time the tax return is filed.
- Available on request to Revenue within a period of not less than 21 days.

Ireland's New Transfer Pricing Regime – Key Aspects

- In order to fall within the scope of the regime, the person making the supply and the person making the acquisition must be “associated”.
- Broadly, the associated test is met if there is more than a 50% shareholding connection between to companies either directly or indirectly.
- SME exemption where global staff headcount <250 and either the global turnover is €50m or less or global balance sheet total is €43m or less.
- Law is silent on Advance Pricing Agreements (APAs). Unilateral APAs are not available.

Window of Opportunity: 1 July 2010

Grandfathering of Existing Arrangements



Grandfathering of existing arrangements

- Grandfathering will apply for all arrangements, the terms of which are agreed before July 1, 2010.
- Arrangements in place or new agreements entered into before 1 July 2010 will automatically fall outside the remit of transfer pricing.
- Consider setting 2011 premium levels before 1 July 2010 to avail of grandfathering if feasible.
- Need to review intercompany agreements, such as loan agreements, cost-share agreements, management recharge agreements, back-office support service agreements, IP licence agreements, etc.
- Of particular relevance where counterparty affiliated entity in a jurisdiction with no transfer pricing regime (e.g. Bermuda and Cayman). Documentation requirement to be satisfied.

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Services

Setting the Scene

- Marginal income tax rates increased by 8.5%
 - Income levy 6%
 - Health levy 2.5% to 5%
 - Current rate is 52%
- Recent statement by Minister of Finance that there is no room for increase
- Capital gains tax rate increased from 20% to 25%

“...transform how we tax incomes, to simplify it, to make it fairer and more broadly based.”

- 2011 - introduce a universal social contribution replacing PRSI, Health Levy and Income Levy
- Income tax to apply on a progressive basis

New Measures

- High Earners Income Restriction - 2007 rules revised
 - Limitation on the Specified Reliefs that can be claimed
 - Entry point for restriction to apply €125,000 (previously €250,000)
 - Full restriction to apply from €400,000 (previously €500,000)
 - Minimum effective tax rate now approx. 30% (previously 20%)
- Domicile levy
 - Domiciled in AND a citizen of Ireland in the tax year (including Irish tax residents); and
 - Worldwide income for the tax year is more than €1 million; and
 - Market value of Irish property on the valuation date is in excess of €5 million
 - Provision ensures a minimum of €200,000 income tax to be paid in Ireland
- Remittance basis for Irish citizens not ordinarily resident in Ireland
 - Removed from 01/01/2010

Opportunities - New Staff

- Finance Act 2010 extends relief in respect of overseas assignees working temporarily in Ireland:
 - Extended to employees of EEA resident companies previously resident in EEA countries
 - Reduced assignment period of 1 year
- Relief reduces Irish income tax for higher paid foreign assignees
 - Relevant emoluments €150k effective tax rate reduced from 33.5% to 26.6%
 - Relevant emoluments of €200k effective tax rate reduced from 35% to 25%
 - Savings enhanced for employers in tax equalised cases
- Employer Job Incentive Scheme - PRSI Holiday for the first 12 months

Opportunities - Existing Staff

- Tax free benefits approved by Revenue (salary sacrifice)
- No risk and straight forward to implement
- PAYE, PRSI & Income and Health Levy savings for employees
- 10.75% saving for employers
- Annual small gift (€250)

No. of Employees	Non Cash	Cash	Savings €
50	€12,500	€28,250	15,750
100	€25,000	€56,500	31,500
150	€37,500	€84,750	47,250

Opportunities – Equity Based Remuneration

- Capital gains tax treatment even more favourable
 - Differential between income tax + levy rates and capital gains tax is now 27% (previously 23.5%)
 - Differential for life assurance policies 24%
- Savings of 10.75% for employer PRSI where equity remuneration awarded
- Health levy now applicable to equity based remuneration from 1 May 2009
- Accounting implications of any scheme need to be considered

Equity Based Remuneration

- Approved equity based plans
 - Employee Share Option Plan (“ESOP”)
 - Save As Your Earn (“SAYE”)
 - Approved Profit Share Scheme (“APPS”)
- Discretionary bonus plan can be integrated to APPS (€12,700 annual limit per employee)
- Similar terms may be too restrictive for some employers
- Could suit some organisations / start up scenarios

Unapproved Equity Plans

- Risk free
- Current low valuation base offers opportunities
- Restricted shares – possible to reduce overall tax rates from 52% to 35.8%
- Share options over restricted shares instead of unrestricted shares can reduce income tax / levies from 52% to 20.8%
- Forfeitable shares – future growth liable to 25%
- Other structures that are liable to capital gains tax rate of 25%
- Goal is to capitalise income tax early on low value – uplift is taxable as capital

Forfeitable Shares

- Performance / service conditions / deferral of awards normally means that tax is due on higher value of award at end of this period;
- Award forfeitable share with forfeiture where conditions not satisfied
- Tax on award date will be based on current low share price
- Employee must have funds to pay tax liability at award date
- Growth in share over the performance / service / deferral period qualifies for 25% tax rate on sale of share rather than 52% marginal tax rate on value of shares at end of period

Restricted Shares

- Normally full value of free share is taxable at award (52%)
- Restriction on sale / transfer of shares for specified period
- Maximum reduction possible from 52% to
 - 20.8% income at award date
 - Overall rate of 35.8% when potential CGT on untaxed element included
- Sliding scale of 1 to 5 year restricted period
- No risk
- Funding of tax due in year of award
- Can also apply to share option plans

Comparison between cash award and restricted share award

	Cash €	Restricted shares €	
Value	100,000	100,000	
Taxable value	100,000	40,000	(5 year + restriction)
41%	(41,000)	(16,400)	
5%	(5,000)	(2,000)	
6%	<u>(6,000)</u>	<u>(2,400)</u>	
Employee Tax:	<u>52,000</u>	<u>20,800</u>	(Self Assessment)
Employer Cost @ 10.75	<u>10,750</u>	<u>N/A</u>	
Total tax cost:	62,750	20,800	
Employee Benefit:	<u>48,000</u>	<u>79,200</u>	

Equity Related Awards – Reporting obligations

- Pre-2008 – share option plans
- 2008
 - Convertible securities
 - Forfeitable shares
 - Restricted shares
- Finance Act 2010 widely drafted
 - Employer or other person
 - Awards shares to a director or employee; and
 - Income tax may be chargeable in respect of the shares awarded
- Wide definition of “shares”
- Reporting for 2009 by 9 July 2010 (31 March for following years)
- Form RSS1 - composite form for all reporting obligations
- Do you know where your plan sits?

Social Security and cross border workers

- New EU provisions from 1 May 2010
 - “*...simplify and modernise existing legislation...*”
- Electronic Exchange of Social Security Information (EESSI)
- Short term assignees – now a 24 month initial period
- May be extended by mutual agreement
- Multi state workers – 25% duties test
- Employer obligations – deemed to have a place of business in the host state
- Transitional arrangements

Pensions

- Pensions - a “hot” topic for all employers and employees
- National Pensions Framework Document
 - €200k lump sum
 - ARF ability for DC schemes versus an annuity
 - 33% relief across the board
 - Automatic enrolment - targeting low and middle income earners, 2% employer contribution
 - Timing? 2011 vs 2014?

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Value Added Tax – 2010 Changes – Reverse Charges

Reverse Charge Services:

- Old Rule:

Every Service Liable to VAT in Supplier's Country **Unless** Specifically Excepted or Exempted (e.g. former Fourth Schedule Services VATable in Recipient's Country)

- New Rule:

Every Service Liable to VAT in Recipient's Country (Reverse Chargeable) **Unless** Specifically Excepted or Exempted

Fourth Schedule Repealed as All Services Therein No Longer Exceptions

Value Added Tax – 2010 Changes – VIES Returns

- Since 1993 Applied to EU Movements of Goods
- Since January 2010, Applies to **EU** Supplies of Services
- Completed by **EU** Suppliers Only (NOT by Recipients)
- Where EU VAT Registered Recipient “Is Liable to Pay the Tax”
- No Threshold - Filed Monthly/Quarterly
- Onus on Supplier to Seek a VIES Registration
- Data: Country Code, Recipient’s VAT Number, Total Value of Services
- Data Accessible by All Fiscal Authorities – Anti-Avoidance Measure

Value Added Tax–2010 Changes–Reverse Charges/VIES

- Previously the Question was:
- **Is this imported service liable to reverse charge VAT?**
- Since January 2010, Shift in Emphasis - Now the Question is:
- **Why isn't this imported service liable to reverse charge VAT?**
- Increase In Requests for Details of Customer's VAT Registration Number to:
 - Zero-Rate Services to Customer (To /From Ireland)
 - Complete VIES Returns (Irish/Other EU)
- Transfer of Insurance Contracts – Swiss Re - Now VATable?

Value Added Tax – Current Topics

- Passive Holding Companies in VAT Groups
 - EC Infringement Proceedings Against Ireland Being “Robustly” Defended
 - Ireland (& Others) Believe Domestic VAT Law Adheres to the EU Wording
 - EU Argues Domestic Position Not Within The “Spirit” of EU law
 - Revenue Still Permitting Such Groupings
 - Defeat for Ireland Could Impact on New and Continuing Grouping of:
 - Holding Companies - VAT Suffered on Costs
 - Captive Insurance Companies } - VAT Charged on
 - Captive Finance Companies } - Management Fees?

Value Added Tax – Current Topics

- Head Office ↔ Branch – More Relaxed But Watchful Approach
- Swiss Re: Revenue Looking for Industry Solution (Transfer of Business?)
- InsuranceWide.Com & Trader Media Group:
 - UK Court of Appeal Decision – HMRC May Petition Supreme Court (HoL)
 - Online introduction of Customers to Insurers
 - “Click through” commissions held to be VAT exempt
- Property Disposals – New Rules Can Permit Proportionate Deduction of Previously Disallowed VAT
- Investment Portfolio – Opportunities to Increase VAT Deductions
- Discretionary Investment Management – VATable v VAT Exempt

Value Added Tax - Transfer Pricing

- Applies to "Associated Persons" – Not On A Head Office ↔ Branch Basis
- Existing TP Rules Impact on Value of In-Bound Services
 - Irish Reverse Charge VAT
- Irish TP Rules Will *Generally* Impact on Value of Out-Bound Services
 - EU Recipient's Reverse Charge VAT
- Reverse Charge Value Based on Consideration Paid or Payable
- Need to Identify & Cost The VATable/Exempt Components Within the Services Agreement to Minimise Irish / Foreign Reverse Charge VAT
- Year-End Adjustment To Any Values-Based VAT Recovery Method

Value Added Tax - Transfer Pricing / Reverse Charges

- All Imported Services:-
 - IT Projects / Software
 - Training
 - Information: Bloomberg/Reuters
 - Staff Secondments – (senior executives?)
 - Underwriters
 - Loss Adjustors
 - Claims handling/Settlement
 - Treasury
 - Group Audit/Risk
 - “Establishment” Costs
- For Services Ex Ireland
 - May Improve Domestic VAT Recovery
 - Consider VAT Recovery Position of Affiliated EU Recipient

Value Added Tax – Legislation

- EU Review of VAT On Financial Services & Insurance:
 - Four Years On
 - Directive & Regulation Still in Draft
 - Low Priority for Spanish Presidency (Jan/June 2010)
 - High Priority for Belgium (July/Dec 2010)
 - Possible Implementation January 2012 – Maybe July 2011
- Recent VAT Act Amendments:
 - European Communities (VAT) Regulations 2009
 - NAMA Act 2009
 - Finance Act 2010
- Consolidated VAT Act Later in 2010 – Reshape the VAT Provisions



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