European Tax Newsalert

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Ireland

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Irish Finance Bill 2012

On February 8, 2012, the Irish Minister for Finance released the Irish Finance Bill 2012 which continues the pro-business focus of Irish economic policy. The Finance Bill includes numerous provisions; we have summarized the key points of interest for US multinational companies below.

Research & Development tax credit regime

The Bill includes a number of positive changes to further enhance the Research and Development ("R&D") tax credit regime. The key measures include:

- Increased flexibility for companies to benefit from the R&D tax credit. Companies claiming an R&D tax credit will now, in certain instances, be able to use it to reward key employees. Companies now have the option to surrender a portion of their R&D credit against the taxable income of key employees (although the credit cannot reduce the employee's effective tax rate below 23%). Typically, key employees spend 75% or more of their employment duties on R&D.

- The introduction of a limited, volume-based approach for calculating the tax credit. Going forward, the first €100,000 of qualifying R&D expenditure will now benefit from the 25% R&D tax credit on a volume basis (thus ignoring the 2003 base year spend).

- New provisions to facilitate the transfer of R&D tax credits in the context of group reorganizations. These provisions also extend to the transfers of certain buildings, upon which the R&D credit has been claimed.

Group loss relief

Prior to Finance Bill 2012, a group for Irish loss relief purposes could not exist where it was necessary to trace through a company not resident in an EU member state (or Iceland or Norway) in order to establish the necessary 75% group relationship between the surrendering company and the claimant company. In practice, the most frequent difficulties arose where it was necessary to trace through a parent company resident in Switzerland or the United States. The Bill's changes mean that it is now possible to trace through companies resident in a country with which Ireland has a double taxation agreement. The changes will also make it possible to trace through companies quoted on certain recognized stock exchanges (or 75% subsidiaries of companies so quoted) in order to determine whether a corporation tax group exists for loss relief purposes. These changes will apply for accounting periods ending on or after January 1, 2012.

Start-up companies

To support the government's commitment to promote job creation and start-up businesses, Finance Bill 2012 gives legislative effect to the Budget 2012 announcement to extend the corporation tax and capital gains tax exemption for start-up companies. The exemption will now apply to new companies that commence trading in Ireland during 2012, 2013 and 2014.

Foreign withholding taxes

The Bill introduces a number of positive legislative clarifications on the computational rules which provide relief for foreign tax on royalties and interest. In effect, the changes provide a form for pooling tax deductions (not credits) related to foreign tax on royalties and interest. The pooling is, however, limited to companies where the royalty/interest income is taken into account in computing a company's trading income.

The measures provide that taxpayers can aggregate royalties/interest sourced from non-treaty countries from which non-creditable foreign tax has been deducted. And, to the extent possible, taxpayers can use the foreign tax applicable to that income pool to reduce the amount of such income subject to Irish tax. These changes will apply for accounting periods ended on or after January 1, 2012. For royalties only, to the extent that the amount of the foreign tax exceeds the amount of such royalties subject to Irish tax, taxpayers can use the excess to reduce the aggregate of any other foreign royalties from which no foreign tax has been deducted. This change will apply to foreign tax incurred on royalties received on or after January 1, 2012.

Cross border mergers

Irish company law now allows Irish companies to merge with other EU companies without liquidating. The Bill provides a new relief where an EU company merges into its EU parent and transfers all of its assets and liabilities. For such mergers on or after January 1, 2012, the parent company will no longer be considered to dispose of the share capital of its subsidiary.

Foreign dividends

The Bill introduces a favorable amendment for the tax treatment of certain foreign dividends received by Irish resident companies. Currently, dividends received by an Irish resident company are subject to a 12.5% tax rate if received from a trading company which is: 1) resident in an EU member state, 2) resident in a territory with which Ireland has concluded a tax treaty, or 3) part of a quoted group. The Bill extends these provisions to include dividends received from trading companies resident in a territory that has ratified the Convention on Mutual Administrative Assistance in Tax Matters and it will apply to dividends received on or after January 2012.

Special Assignment Relief Program ("SARP")

Finance Bill 2012 has enhanced the Irish SARP which reduces personal income tax for individuals assigned to Ireland where certain conditions are met. Many of the restrictions which limited the attractiveness of the old regime have been removed.

The Bill provides that a qualifying individual can take a tax deduction equal to 30% of the employment income liable to Irish tax (net of qualifying pension contributions) in excess of €75,000. The maximum income upon which relief may be claimed is €500,000. The relief will apply to individuals:

- asked by existing employer organizations to come to Ireland on or after January 1, 2012;
- with base salaries of €75,000 or more;
- who will exercise predominantly all their employment duties in Ireland for a minimum of 12 months;
- who were non-Irish resident for the five years immediately preceding the tax year of arrival in Ireland; and
- who were employed on a full-time basis by an associated employer outside Ireland for the entire 12 months immediately before arrival in Ireland.

Apparently, an individual is not prevented from qualifying for the relief if they have worked in Ireland prior to the 12 months immediately before arrival in Ireland, provided they did not previously trigger Irish tax residence.

International financial services

The Bill introduces a number of technical changes and initiatives for the International Financial Services Sector. Some of the key measures include:

- The Bill includes a relieving provision for the payment of "short" interest. Under this provision, payments by an Irish financial trading company to a company resident in a non-treaty country will now no longer be reclassified as a dividend, and will therefore be deductible for corporate tax purposes. In order for this provision to apply, the recipient country must tax foreign interest at a rate equal to, or greater than, the Irish 12.5% rate. If the recipient country taxes foreign interest at a rate of less than 12.5%, then relief will be given in Ireland at that effective tax rate. If the recipient country exempts foreign interest then no relief will be available in Ireland.

- Provisions which introduce unilateral credit relief for foreign withholding taxes on lease rental payments from countries with which Ireland does not have a tax treaty. This provision may be welcomed by the Irish aircraft leasing sector.

- Where the Central Bank has authorized an investment fund that has re-domiciled to Ireland from certain offshore centres, the Bill provides that the fund may declare that the unit holders are non-Irish resident, to ensure that no Irish tax charge arises for such non-residents. The declaration should identify any Irish-resident unit holders and the fund should consider their Irish tax obligations should they receive any payments. The Bill, through technical amendments, clarifies the tax exemption applying to payments made by Irish funds to non-resident investors.

- Provisions that confirm Irish resident investors will not incur tax on mergers (both inbound and outbound) involving an Irish fund with a fund located in a member state of the EU or European Economic Area ("EEA"), or an Organization for Economic Development ("OECD") country with which Ireland has entered into a double tax agreement. Effectively, the tax is deferred until the ultimate disposal of the replacement units. Any future gain on such units is calculated by reference to the original units cost. The Finance Bill also confirms that the transfer of units in the formation of certain master/feeder structures will not incur Irish tax.

- The Bill also includes a number of significant stamp duty exemptions available for collective investment vehicles.

Other measures of interest

- The Bill announces a new tax relief aimed at employees working in Brazil, Russia, India, China and South Africa (“BRICS”). This should encourage Irish-based employers to continue maximizing business opportunities in those countries. The relief will be calculated on the ratio of qualifying days spent in these countries to total days in the tax year. This ratio will be applied to income earned from the employment in a tax year, including share-based benefits but excluding termination payments, company cars and preferential loans.

- As announced in the Irish Budget 2012, the rate of Irish capital gains tax was increased from 25% to 30% effective in December 2011.

- As previously announced, the stamp duty rate on non-residential property has been significantly reduced from a top rate of 6% (on transfers exceeding €80,000) to a flat rate of 2%. This new 2% rate will not only apply to transfers of commercial & industrial land and buildings, but also to transfers of business assets such as goodwill, debtors, contracts, etc.

- The Bill clarifies that a 1% stamp duty rate applies on options transfers of Irish shares and it extends the stamp duty exemption available for transfers of shares/securities of foreign companies to cover a wider range of foreign legal entities.

- As announced in the Budget, the Bill introduces Irish capital gains tax relief for properties purchased between December 7, 2011 and December 31, 2013 when that property is held for seven years or more.

For more information, please contact:

Your international contacts in Ireland

Liam Diamond	*+353 1 792 6579*	*liam.f.diamond@ie.pwc.com*
Denis Harrington	*+353 1 792 8629*	*denis.harrington@ie.pwc.com*

Your international contact in the US

Harry Harrison	*+1 646 471 0729*	*harry.g.harrison@us.pwc.com*