

IFS Newsalert

International Financial Services (IFS) - Ireland



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PwC Ireland Financial Services Tax Group

PwC is a leading provider of tax services to business in Ireland's IFS sector. This group provides advice and news on Irish and international tax issues - and tax-related business issues - affecting IFS businesses in Ireland. Specialisms within the group include banking, treasury, asset finance, securitization, insurance, and investment management.

For issues relating to this new alert please contact your usual PwC contact or the specialists listed at the end of this article.

Message from Enda Faughnan, Leader of Financial Services Tax in PwC Ireland

Welcome to the first issue of IFS Newsalerts. This is a new publication from PricewaterhouseCoopers Ireland dealing with topical tax and tax-related issues and developments of interest to international financial services businesses. Our specialist financial services teams hold regular discussions on issues such as: changes in Revenue practice; developments in tax legislation; changes in the business environment which may impact on tax (e.g. IFRS, IAASA); administrative burdens involved in complying with tax legislation etc. Every few weeks IFS Newsalerts will highlight areas that have featured in those discussions. This is intended to help you to address any issues promptly, and to stimulate debate within the financial services community. If you have any comments on the issues raised, other issues, or indeed on the format of IFS Newsalerts, we would be delighted to hear from you.

This first issue focuses on the recent announcement of the commencement of the holding company legislation enacted in Finance Act 2004.



Commencement of New Holding company legislation

As most readers will be aware, the Finance Act 2004 contained a number of measures designed to improve Ireland's attractiveness as a holding company location. In particular the Act provides for the exemption from tax of capital gains arising on the disposal of significant shareholdings in trading subsidiaries resident in the EU or in countries with which Ireland has tax treaties. It also provides for the improvement of Ireland's regime for taxing dividends from foreign subsidiaries. Implementation of the legislation has been delayed pending EU approval. On 24 September, the Minister for Finance signed the Commencement Order bringing the measures into effect.

The proposal to introduce the legislation was first announced on Budget day, 3 December 2003, and it was stated to be effective from the publication of the detailed legislation in the Finance Bill. The European Commission, however had to be satisfied that the legislation was in compliance with European law. Consequently, although we have known the details of the legislation since the publication of the Bill in February 2004, its effective date was subject to the making of a Commencement Order by the Minister for Finance, pending agreement of the terms of the legislation with the Commission.

While Department of Finance officials were reluctant to make any comment as to the Commission's concerns it was clear that the matter was being considered by the Commission section dealing with State aids. It appeared that the only aspect of the legislation which could fall foul of the State aid rules was the value thresholds (€15m for a 10% holding, and €50m for a 5%

holding). Although in their terms these thresholds applied equally to all companies it was arguable that they amounted to an indirect discrimination in favour of inward investors - which would be caught by the State aid rules.

The press release confirms what we suspected. The clearance from the EU Commission was indeed in relation to State aids, and to address the Commission's concerns the value thresholds are to be replaced by a flat 5% shareholding requirement. This can only be done by amending the legislation, and the necessary provisions are to be included in the Finance Act 2005 - subject of course to the approval of the Oireachtas (the Irish Parliament).

One other feature of the Commencement Order is that the effective date is to be 2 February 2004. This reflects the fact that following the Budget day announcement, a number of companies entered into negotiations believing that the transaction would qualify for CGT exemption. If the effective date of the legislation were delayed, these companies would face significant tax liabilities they did not expect at the time of commencing negotiations. However, this approach may effectively amount to a retrospective denial of relief for losses, and it remains to be seen how this issue is to be dealt with.

A final issue to watch is other possible changes we may see to the legislation in the Finance Act 2005. As well as the changes required by the Commission, we may see the inclusion of anti-avoidance provisions, so as to prevent the relief being abused in the domestic sector. Naturally we will await the substance of any such proposals, but when the time comes the business community should be prepared to give its views. Anti-avoidance legislation will have to apply to the international sector as well, and it would be unfortunate if it had the result of complicating the relatively clear message in the existing legislation.

Conclusion

The Commencement Order is excellent news for Ireland as an inward investment location, and for the IFS community in particular. It is unfortunate that the opportunity to spread this news to international investors was stalled by the intervention of the EU Commission. But now that the Commission's concerns have been addressed the time has come to spread the word with renewed vigour!

Ireland is now of particular interest as a holding company jurisdiction in the following circumstances:

- for groups, whether international or domestic, with global or regional headquarters operations in Ireland
- to facilitate tax-efficient repatriation of profits or redeployment of cash within an international group
- to hold subsidiaries or significant strategic shareholdings (e.g. in private equity transactions) that have scope for significant capital appreciation and that may be spun off or sold in the future
- where a jurisdiction is required that does not have controlled foreign corporation (CFC) legislation
- where it may be important to achieve a tax free unwind of the holding company at some stage in the future.

For further details on Ireland's holding company regime please visit our website: www.pwc.ie

If you have any comments on the content of this publication, or have any other issues you would like to raise, please contact your usual tax contact within PricewaterhouseCoopers, or one of the following:

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