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Inversion of UK plcs to Ireland

Some tax considerations to be addressed

Since April 2008 an increasing number of multinationals have moved the tax residence of their corporate headquarters to Ireland. U.K. groups such as Shire Pharmaceuticals, Henderson, Charter, United Business Media and WPP are now headquartered in Ireland.

Why Ireland?

Ireland's 12.5% rate of corporation tax was and continues to be a big factor in attracting large multi-national tax groups to set up operations in Ireland. This initially led to growth in the financial services, pharmaceutical and technology sectors. However, in recent times, it is Ireland's treatment of profits made by foreign subsidiaries of Irish resident companies that has been attracting attention and encouraging, in particular, UK firms to move their holding companies to Ireland and become tax resident there in order to reduce their tax burden.

In accordance with general principles, an Irish holding company with a foreign subsidiary should only be taxed on the profits of the subsidiary once its profits are repatriated by way of dividend. Controlled foreign company (CFC) rules refer to the timing of taxing profits of companies with business operations in foreign jurisdictions and these rules seek to impose exceptions to the general rule such that profits of a subsidiary may be attributed to the parent and therefore taxable when the profits arise. The UK tax regime has such rules and these rules create a substantial regulatory compliance burden as UK firms with overseas subsidiaries have to manage the interaction between the UK tax system and the systems in the various countries it operates subsidiaries from in order to minimise their CFC exposure.

Therefore, it is the low rate of corporation tax and the UK CFC regime that has encouraged large UK plcs to set up Irish holding companies and become resident in Ireland for tax purposes. Recent developments in the UK, in particular changes to the personal taxation regime, has pushed other UK companies further down the path of migration and in these cases key individuals are relocating to Ireland also.

Irish holding company - taxation of foreign subsidiaries

Dividends received by an Irish resident company from a foreign subsidiary are liable to tax at 12.5% or 25%. In general terms the 12.5% rates applies to dividends paid by subsidiaries resident in EU/DTA countries and subsidiaries resident in non DTA countries that are members of a group quoted on a recognized stock exchange. It is possible to get a credit for withholding tax deducted at the time of payment of the dividend and for underlying tax paid by the subsidiary. In general terms if the foreign tax rate exceeds the Irish tax rate, full credit should be available for the foreign taxes suffered. Should excess foreign tax credits arise, the onshore pooling provisions allow excess credits to be offset against the Irish tax arising on other foreign dividends where the foreign tax on those dividends is less that the Irish tax on the same dividend. Unused credits can be carried forward to future periods indefinitely. With appropriate planning, it may be possible to ensure that no additional tax arises on foreign dividends received from high tax and low tax jurisdictions.

Other characteristics of Irish tax system

The other characteristics of the Irish tax system that make it an attractive location for Irish holding companies are as follows:

- Participation exemption from Capital Gains Tax is available on certain disposals of subsidiary companies.
- Dividends and other profit distributions received by an Irish resident company from another Irish resident company are exempt from tax.
- Irish domestic law has extensive exemptions from dividend withholding tax
- Irish legislation does not contain thin capitalisation provisions
- Transfer pricing provisions are limited to trading transactions between connected companies.
- If the Irish holding company is incorporated in a haven location, no Irish stamp duty arises on share transactions on the relevant stock exchange
- Ireland has an extensive tax treaty network
- It is an attractive location in which to own and exploit IP

The migration process

The most common mechanism by which an Irish holding company is set up in Ireland is that a new parent in incorporated in Jersey or Guernsey to acquire the existing parent. The migration can be achieved by way of a cancellation scheme of arrangement approved by the local court or a share-for-share exchange, whereby shareholders agree to cancel or swap their shares in the existing parent or holding company in return for shares of an equivalent amount in the new parent or holding company. It may be necessary to carry out an intra-group reorganisation at the same time.

The reason for using a company incorporated in Jersey or Guernsey is that such companies do not attract a charge to Irish stamp duty on share transactions.

It is important that the new holding company will be managed and controlled and therefore tax resident in Ireland. This is a key requirement. Therefore, all board meetings must be held in Ireland, and care must be taken to ensure that UK residence is not re-established. All major decisions relating to the strategic direction of the company must be taken in Ireland and ideally at least one director should be tax resident in Ireland. It is not necessary for the UK plcto re-locate its centre of operations from the UK to Ireland.

Other factors

Ireland is a member of the EU, has a legal system based on common law similar to the UK and is an English speaking country. These factors facilitate the trouble free adoption of Irish corporate residency by UK plcs.

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