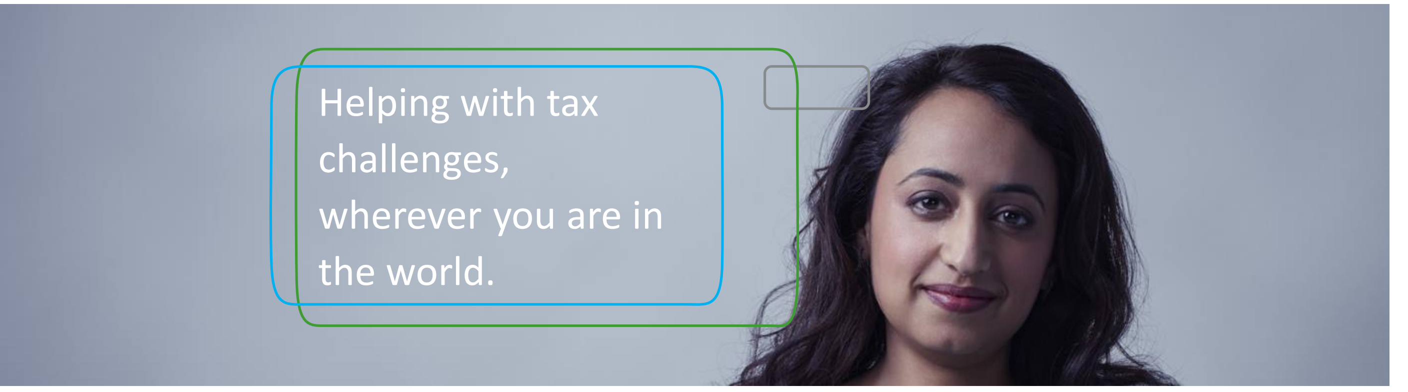

Tax flash – Review of Ireland’s corporation tax code

On 12 September, a report on Ireland’s Corporation Tax Code was published by Minister Paschal Donohoe T.D. (Finance and Public Expenditure & Reform), which makes a number of recommendations for future changes to Ireland’s corporation tax regime.

The review was undertaken by Mr. Seamus Coffey who was appointed as an independent expert in October 2016.

The terms of reference for the review included: tax transparency; avoiding preferential treatment; further implementing Ireland’s international commitments; delivering tax certainty; maintaining competitiveness; and maintaining the 12.5% corporation tax rate. Among the key highlights/recommendations are:

Tax transparency

The Review acknowledges that Ireland has reached the highest standards with regard to tax transparency. It further recommends that Ireland should continue its drive towards tax transparency through appropriate exchanges of information with other jurisdictions. Ireland’s tax regime has already been fully endorsed by the OECD's Global Forum with the recent awarding of the highest international rating on tax transparency and exchange of information.

Intellectual Property

The Review notes the impact of the on-shoring of IP on Ireland's national accounts in recent years, particularly in 2015, with a significant rise in the value of intangible assets held in Ireland. The current regime allows a company claim tax depreciation on 100% of the capital expenditure incurred on the acquisition of IP. Prior to 2014, there was a cap of 80% on the amount of intangible asset allowances that could be set against related intangible asset income. The Review recommends the reinstatement of this cap. It is not clear whether any change to the amount of intangible allowances available would be grandfathered for companies that have already migrated intangible assets to Ireland or whether it will be confined to future transfers to Ireland. It is possible that the reinstatement of the 80% cap will be one of the measures in the Review to be included in Budget 2018, to be announced next month. Any changes to the Irish intangible asset regime could have a negative impact on Ireland’s attractiveness for FDI internationally.

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Transfer Pricing

The Review recommends the following changes to Ireland's domestic transfer pricing legislation, which should be implemented before the end of 2020:

- Extension of the transfer pricing legislation to transactions, the terms of which were entered into before 1 July 2010.
- Extension of the transfer pricing legislation to account for non-trading transactions and capital transactions in order to reduce the risk of aggressive tax planning.
- Extension of the transfer pricing rules to SMEs, having regard to whether the imposition of the administrative burden associated with keeping transfer pricing documentation on SMEs would be proportional to the risks of transfer mispricing occurring.
- Ireland should adopt the transfer pricing documentation requirements outlined in BEPS Action 13 and adopt the 2017 OECD Transfer Pricing guidelines (rather than 2010).

Introduction of a Territorial Regime

The EU ATAD requires Ireland to introduce a CFC regime by 1 January 2019. The Report recommends that Ireland moves to a territorial system (rather than a worldwide basis) of taxation and either introduce a participation exemption on dividends and branch profits or amend Schedule 24 TCA 1997 (double tax relief provisions) with a view to simplifying the calculation of foreign tax credits on dividends, branch profits, interest, royalties and leasing income with a view to maintaining competitiveness.

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