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## ■ THE FINANCE BILL 2008

The Finance Bill 2008 was published today. The Finance Bill is expected to be enacted before 5<sup>th</sup> April 2008. Among the changes it proposes are the introduction of a number of measures designed to establish Ireland as a location of choice for vehicles intending to trade in the carbon credit markets and to extend the types of assets that can be securitised by Irish securitisation vehicles. In addition the Finance Bill proposes to reduce the rate of corporation tax on certain dividends received from companies resident in an EU member state or Irish treaty country to 12.5% from 25%.

### Securitisation and Structured Finance

In recent years, Ireland has become an increasingly popular jurisdiction for the establishment of special purpose securitisation vehicles for structured finance transactions, particularly repackagings, synthetic and cash flows CDOs, asset backed commercial paper programmes, credit card receivables, mortgages, loan participation note structures and a host of other receivable financing transactions. The favourable tax laws which apply to securitisation vehicles established under Section 110 of the Taxes Consolidation Act 1997 enable such vehicles to be, in most cases, tax neutral. The securitisation amendments that are proposed in today's Finance Bill should enable Ireland to continue to develop as a centre for vehicles that deal in carbon credits as well as insurance securitisations and transactions in partnership interests.

#### Carbon Credits

The Finance Bill 2008 proposes to:

- (i) allow Irish securitisation vehicles established under Section 110 of the Taxes Consolidation Act 1997 to acquire all types of greenhouse gas emission allowances and interests in such greenhouse gas emissions allowances (e.g. contracts to acquire greenhouse gas emission allowances etc.); and
- (ii) confirm that no stamp duty would arise in Ireland on the acquisition of greenhouse gas emissions allowances or any interest in such allowances;

If the Finance Bill is enacted, it is expected that these changes will have effect from the passing of the Finance Bill.

In addition to the changes proposed in today's Finance Bill, the Revenue Commissioners of Ireland have also recently confirmed the VAT treatment that will apply to the acquisition and disposal of greenhouse gas emissions allowances. This clarification is important as it confirms that VAT suffered by vehicles that are dealing in greenhouse gas emissions allowances in Ireland should be recoverable.

In our view the above amendments are substantial developments and should result in Ireland developing as a location of choice for vehicles dealing in the carbon credit markets.

#### **Insurance and Reinsurance Securitisations**

The Finance Bill 2008 also proposes to introduce a legislative basis for securitisations of insurance and reinsurance policies. Previously the Revenue Commissioners of Ireland had given confirmations on a case by case basis that such contracts of insurance and reinsurance were "qualifying assets" (i.e. they could be held by an Irish securitisation vehicle). The changes proposes to put this practice on a statutory footing.

#### **Partnerships**

Opinion had been divided on whether a partnership interest was a "qualifying asset". This firm had taken the view in the past that certain partnership interests could be "qualifying assets" so long as either (i) the partnership interest was itself a financial asset (e.g. an interest in a mutual fund or collective investment scheme that was structured as a partnership) or (ii) the partnership itself was transparent under its governing law (e.g. an English law partnership) and the underlying assets were themselves "qualifying assets".

The proposed change removes this uncertainty and confirms that an interest in financial assets held through a partnership is a "qualifying asset".

## **Overseas Dividends**

Countries adopt different approaches to corporate taxation of dividends. Historically Ireland has adopted a hybrid system. Dividends received by an Irish resident company from another Irish resident company are generally tax-free. Dividends from non-Irish companies are generally taxable at 25%. In the past few years an increasingly flexible credit system has developed. This permits a credit for foreign underlying tax and foreign withholding tax. An on-shore pooling system eliminates tax on dividends received in most corporate structures. The pooling system permits surrender of excess credits within a corporate group and an indefinite carry forward. If double taxation relief available under a treaty is less generous than unilateral relief the company may claim unilateral relief.

Today's Finance Bill proposes a reduction in the rate of Irish tax applicable to dividends paid out of trading profits of companies resident in an EU member state or a country with which Ireland has a double tax treaty ("trading dividends"). An Irish resident company in receipt of trading dividends can elect to treat all trading dividends as being subject to tax at the 12.5% rate of tax. The Irish resident company can claim credit for tax on the profits out of which the trading dividend was paid and any excess credit can be used to set off against tax on other trading dividends only.

Dividends other than trading dividends ("non-trading dividends") will continue to be subject to tax at the 25% rate and any excess credit from non-trading dividends can be used to offset tax on both trading dividends and non-trading dividends.

This change eliminates the anomaly whereby dividends from non-Irish trading companies were taxed at the 25% rate where such profits earned by an Irish company directly would be taxed at the 12.5% rate. The new rules will apply to dividends received on or after 31<sup>st</sup> January 2008.

## Contacts

For further information on the potential impact of these changes please contact any of the following lawyers:

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