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## ■ THE FINANCE BILL 2008

The Finance Bill 2008 was published on 31<sup>st</sup> January and 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, to benefit holding companies, to provide relief for investment in energy efficient equipment and to introduce a tax on petroleum extraction.

### Carbon Credits

In recent years, Ireland has become an increasingly popular jurisdiction for the establishment of special purpose vehicles for structured finance and securitisation 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, effectively tax neutral. The changes that are proposed in the Finance Bill should enable Ireland to develop as a centre for vehicles that deal in carbon credits.

The Finance Bill 2008 proposes to confirm that no stamp duty will arise in Ireland on the acquisition of greenhouse gas emissions allowances or any interest in such allowances with effect from 5<sup>th</sup> Decemeber 2007.

The Finance Bill 2008 also proposes to allow Irish securitisation vehicles established under Section 110 of the Taxes Consolidation Act 1997 to acquire all types of greenhouse gas emissions allowances and interests in such greenhouse gas emissions allowances (e.g. contracts to acquire greenhouse gas emissions allowances etc.).

If the Finance Bill is enacted, it is expected that these changes will have effect from the passing of the Finance Bill, but we will lobby to have these back dated to the date of introduction of the stamp duty changes.

In addition to the changes proposed in the 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 changes are substantial developments and should result in Ireland developing as a location of choice for vehicles dealing in the carbon credit markets.

## Profit Resource Rent Tax

The Finance Bill 2008 introduces a Profit Resource Rent Tax which applies to any petroleum lease entered into pursuant to an exploration licence awarded by the Irish Minister for Communications, Energy and Natural Resources after 1<sup>st</sup> January 2007. This tax will be charged in addition to the normal corporation tax rate of 25% that currently applies to profits from petroleum activities in Irish territory.

The tax applies when the “Profit Ratio” of a “Taxable Field”, as calculated for an accounting period of a company, is greater than or equal to 1.5.

A “Taxable Field” is an area (e.g. of land, sea bed etc.) in respect of which a petroleum lease has been entered into following on from an exploration licence that was granted by the Irish State.

The “Profit Ratio” is broadly:

- (a) the total cumulative profits derived from the field from 1<sup>st</sup> January 2007, less any losses incurred and after corporation tax has been paid over;
- divided by
- (b) the total cumulative expenditure on the field from 1<sup>st</sup> January 2007.

The Profit Ratio is calculated in each accounting period. The new tax is only imposed where the Profit Ratio exceeds 1.5 in that accounting period. The rate of the new tax increases if the Profit Ratio for that accounting period increases and is levied as follows:

Profit Ratio	Profit Resource Rent Tax
4.5 or more	15%
3 - 4.5	10%
1.5 - 3	5%
Less than 1.5	Nil

## Accelerated Capital Allowances for Energy Efficient Equipment

The Finance Bill proposes to introduce a scheme whereby certain designated classes of energy-efficient equipment purchased for the purposes of a trade will benefit from accelerated capital allowances. The classes of eligible equipment and the relevant criteria will be specified in a list to be prepared by the Minister for

Communications, Energy and Natural Resources and the list will subsequently be maintained by Sustainable Energy Ireland. The scheme will initially run for a trial period of three years.

The particular tax benefit is that capital allowances of 100% (i.e. a full deduction) will be available in the first year in which the expenditure is incurred on the equipment covered by the scheme. Expenditure must be above a certain threshold in order to avail of the increased allowance. The designated technology classes and relevant thresholds are as follows; (i) €1,000 for motors and drives; (ii) €3,000 for lighting; and (iii) €5,000 for building energy management systems. The Bill clearly states that the scheme is limited to new energy-efficient equipment purchased by companies, and will not extend to equipment that is leased, let or hired. The allowance is not available to individuals or other non-companies.

The scheme is subject to EU approval and will therefore be introduced by means of a commencement order. It is intended to bring Ireland into line with other jurisdictions in providing 100% relief for energy efficient expenditure. It is not yet clear precisely what equipment will qualify for the accelerated allowances and we await regulations to clarify this point.

## 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.

The 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”). The

paying company/group must meet certain trading-related conditions. 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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### CONOR HURLEY

Conor is Head of Tax at Arthur Cox. Previously he was a tax partner at an international law firm in London where he was also Head of the Investment Funds Tax Practice. Conor advises on the tax aspects of a wide range of international and domestic tax matters, capital markets, structured finance, financial products, banking, mergers and acquisitions, corporate recovery, insolvency, restructuring and other areas. He has written numerous articles and spoken at various conferences on capital markets tax and related topics.

[conor.hurley@arthurcox.com](mailto:conor.hurley@arthurcox.com)

Tel: +353 1 618 0577



### CAROLINE DEVLIN

Caroline is a partner in our Tax Group. She advises domestic and international companies on tax planning, and has extensive experience in advising on tax planning and structuring aspects of securitisations, tier 1 instruments and other structured products. Caroline also advises on tax aspects of mergers and acquisitions, and other tax planning areas.

[caroline.devlin@arthurcox.com](mailto:caroline.devlin@arthurcox.com)

Tel: +353 1 618 0585



### FINTAN CLANCY

Fintan is a partner in Arthur Cox’s Tax Group. Previously he worked in a City of London headquartered international law firm and in the London office of a New York headquartered international law firm. He advises companies on tax planning, including the tax aspects of acquisitions, disposals reorganisations and securitisation. He also advises hedge funds, financial institutions and multi-nationals on financial and structured products.

[fintan.clancy@arthurcox.com](mailto:fintan.clancy@arthurcox.com)

Tel: +353 1 618 0533

#### DUBLIN

Earlsfort Centre  
Earlsfort Terrace  
Dublin 2  
Ireland

T: +353 1 618 0000  
F: +353 1 618 0618

[mail@arthurcox.com](mailto:mail@arthurcox.com)  
[www.arthurcox.com](http://www.arthurcox.com)

#### BELFAST

Capital House  
3 Upper Queen Street  
Belfast BT1 6PU  
Northern Ireland

T: +44 28 9023 0007  
F: +44 28 9023 3464

#### LONDON

29 Ludgate Hill  
London EC4M 7JE  
England

T: +44 20 7213 0450  
F: +44 20 7213 0455

#### NEW YORK

570 Lexington Avenue  
28th Floor  
New York NY 10022  
USA

T: +1 212 759 0808  
F: +1 212 688 3237