

AUTUMN 2009

Tax Group Briefing

Uses of Ireland for Middle East Investors

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Introduction

For many years Ireland has offered a number of financial services solutions for investment structures which operate both within and outside the European Union. This strategy has been very successful for European, Asian and North American investors. Recent Irish Revenue clarifications, forthcoming legislation and tax treaties and the regulatory environment are all giving Ireland an advantage over other EU jurisdictions for Middle East investors.

Examples of transactions or structures that have been implemented successfully in Ireland include:

- > **Tax Efficient Holding Company Structures:** Irish private holding companies are a tax efficient means of holding shares in subsidiary companies; particularly EU subsidiaries. These companies benefit from a number of tax exemptions and a flexible company law regime. Many private companies and family holding vehicles use Ireland as their European holding or intermediate holding company regime.
- > **Corporate Migrations:** NYSE/NASDAQ listed companies (**Covidien, Ingersoll Rand, Accenture, Willis**) and London Stock Exchange listed companies (**Experian, Shire, UBM, WPP**) have undergone corporate migrations and are now domiciled in Ireland. James Hardie Industries (a NYSE listed company) has recently announced that it is moving from the Netherlands to Ireland. The creation of the European company (**Societas Europaea (SE)**) and the introduction of the EU Merger Directive have significantly increased the mechanisms which are now available for companies to move their place of incorporation to Ireland.
- > **Financing Vehicles:** Special purpose vehicles (SPVs) for structured finance transactions, including financings for international groups, repackagings, synthetic and cash flow CDOs, asset-backed commercial paper programmes, securitisations, LPN structures and a host of other financing transactions are common place in Ireland.
- > **Family Trusts:** Family trust arrangements can be structured and managed in Ireland which can interact with Irish holding companies and finance companies to achieve the benefits generated by companies and deliver them to family arrangements.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

There is a current international trend away from investing in so-called tax havens. Ireland is a member of the EU and also a founder member of the OECD and is not a tax haven jurisdiction which makes it more attractive in the current environment, but careful tax planning is required at an early stage of any transaction. Some investors take comfort in the fact that Ireland has a developed corporate legal system and tax structure.

Other advantages of setting up structures in Ireland include:

- › Ireland has an extensive list of double taxation treaties. Double tax treaties with Ireland are due to be signed with the **United Arab Emirates, Bahrain, Kuwait, and Saudi Arabia** by the end of 2009.
- › The Irish Revenue have issued guidance on the Irish tax treatment of Shari'a law compliant funds, ijarah arrangements, takaful (insurance) and retakaful (reinsurance) arrangements and family (life) takaful arrangements. Broadly, these are given the beneficial tax treatment that is given to their western equivalents.
- › Ireland is a member of the EU and is the only English-speaking jurisdiction in the euro-zone.
- › Like the UK and the U.S., Ireland is a common law jurisdiction and its legal concepts will be recognised by most investors.
- › Ireland is an "on-shore" jurisdiction and top class professional and administration services are available locally.
- › Ireland as a jurisdiction requires the minimum of changes to the operation of an existing company while at the same time offering maximum flexibility in terms of company law, regulation and tax.
- › Since its establishment in 1987, Dublin's International Financial Services Centre ("IFSC") has developed into a significant global financial centre. A wide range of financial services companies are based there engaging in activities ranging from banking and mutual fund management to corporate treasury, equipment leasing and insurance services. The IFSC is serviced by an extensive network of major banks, brokerage firms and professional advisers.
- › Ireland is in an optimum time zone, which ensures global service coverage.
- › The Irish government has a strong commitment to maintaining Ireland as a centre of business excellence.
- › Ireland has an advanced telecommunications infrastructure, with state-of-the-art optical networks and international connectivity.

New Double Taxation Treaties with Ireland

Ireland has an extensive list of double taxation treaties with 52 countries that produce over 90% of the world's GDP. A list of the current "relevant territories" is set out below.

Most of the Irish domestic exemptions (e.g. from interest and dividend withholding tax) that flow from these double tax treaties will apply as soon as the agreements are signed and one does not need to wait for ratification to obtain the Irish benefits of the treaties. This is certainly advantageous as it can often take time for a treaty to be ratified after it has been signed. Accordingly once these countries sign, they will immediately become "relevant territories" and, for example, interest and dividends can be paid to residents of those countries without withholding tax. The United Arab Emirates, Bahrain, Kuwait, and Saudi Arabia are due to sign double taxation agreements with Ireland by the end of 2009 and these countries will become "relevant territories" from signature of the agreements for interest and dividends purposes.

Establishing a Holding Company in Ireland

The Irish holding company regime has a number of features that make Ireland an attractive location for Middle East investors. In addition to the many advantages to investing in Ireland outlined above, the main taxation benefits of establishing a holding company are:

Dividends

Profits from an Irish company are usually paid out by dividend. No withholding applies to dividends paid to residents of "relevant territories" if the correct forms are filed.

Non-Irish dividends received by an Irish company are generally subject to Irish tax at the rate of 25%, with a 12.5% rate now applying to dividends paid out of trading profits of a "relevant territory" company or group. There is a flexible credit system which, enables underlying tax within the subsidiaries to be accessed efficiently and pooled. In the vast majority of cases this eliminates incremental tax in Ireland. Trading profits are traced through tiers of companies, so that when a dividend is paid out of trading profits of a lower tier subsidiary ultimately to its Irish parent, the 12.5% rate can apply. Where an Irish company has a shareholding of 5% or less in the dividend paying company, there is no requirement that the dividend be paid out of trading profits as the 12.5% rate will always apply to such "portfolio" dividends.

Under the EU Parent-Subsidiary Directive, an Irish company is entitled to receive dividends from a company resident in another EU Member State without withholding tax if a minimum 5% holding and, a maximum holding period of 12 months is satisfied. Local rules sometimes improve this position.

Capital Gains Tax (“CGT”) Exemption on Share Disposals

Ireland has a comprehensive exemption from CGT on the disposal of shareholdings. Broadly, the conditions for the exemption are:

- › the Irish company must have continuously held at least 5% of the share capital of the company being disposed of for at least 12 months within the two years prior to the disposal (which facilitates selling shares in stages);
- › at the time of sale, the company whose shares are being sold must be resident in a **relevant territory** (see list below) or in Ireland; and
- › at the time of sale, the company whose shares are being sold must either be (i) a trading company or (ii) part of a trading group with its parent (i.e. where more than 50% of the group's consolidated business consists of active businesses and ignoring intra-group transactions).

Controlled Foreign Company (“CFC”) and Transfer Pricing

Ireland does not have CFC legislation so an Irish holding company is not usually subjected to tax on its earnings from foreign subsidiaries until a dividend is paid to Ireland.

As Ireland does not have formal transfer pricing legislation and there are no general requirements to price or seek to price trading activities between companies or groups of companies at an arms length basis. Limited transfer pricing rules do apply in certain tax incentive areas but these do not have general application. This has obvious advantages in terms of lack of bureaucracy and detailed transfer pricing reports. Furthermore Ireland does not have detailed thin capitalisation rules and there is no specific debt: equity ratio required of Irish resident companies.

Stamp Duty

The sale of shares in Irish incorporated companies gives rise to stamp duty at the rate of 1%. There are reliefs for transfers within a 90% group provided, inter alia, that the buyer or seller does not leave the group within two years from the date of transfer and for reconstructions into EU incorporated companies. Other strategies for eliminating stamp duty exist. There is no capital duty on share issues.

Establishing a Financing SPV in Ireland

The predominant reasons for Ireland's popularity as an SPV location are its favorable tax regime, the fact that it is an “on-shore” jurisdiction and the professional and administration services that are available locally.

Entity-level tax - Section 110

Section 110 of the Irish Taxes Consolidation Act provides that the taxable profits of a company (a “Section 110 Company”) are computed broadly on an accruals basis. As profit participating debt is usually used to extract all material profit, the taxable profit of a Section 110 company is usually small. This small profit is taxed at 25%.

The criteria to qualify as a Section 110 Company include:

- › that it is an Irish resident company that carries on in Ireland the business of holding or managing “qualifying assets” and no other business;
- › that a “qualifying asset” consists of any financial asset, or any interest (including through a partnership) in a financial asset. A “financial asset” includes shares, bonds, other securities, futures, options, swaps, derivatives and similar instruments, invoices and all types of receivables, obligations evidencing debt (including loans and deposits), leases and loan and lease portfolios, hire purchase contracts, acceptance credits and all other documents of title relating to the movement of goods, bills of exchange, commercial paper, promissory notes, greenhouse gas emissions allowance, contracts for insurance and reinsurance and all other kinds of negotiable or transferable instruments; and
- › that the minimum market value of qualifying assets acquired or held on the day the SPV first acquired qualifying assets must be greater than €10million. This is a once off test for the SPV and it is a cumulative threshold for all qualifying assets held or acquired by the SPV on that day.

Withholding tax

Numerous exemptions from Irish interest withholding tax exist. These include interest paid on listed debt or commercial paper, interest paid to residents of a **“relevant territory”**, and interest paid to another Section 110 company (which facilitates multi-company structures). No prior clearance is needed to pay the interest gross in those cases. As noted above, we expect that Ireland will sign treaties with Kuwait, United Arab Emirates, Bahrain and Saudi Arabia by the end of 2009 and when this happens, interest can be paid gross to residents of those countries without prior clearance.

Stamp Duty

The issue or transfer of debt issued by Section 110 Companies is exempt where the money raised by such debt is used for the purposes of the Section 110 Company's business. Stamp duty can apply on the acquisition of Irish assets, but should not be payable on the transfer of non-Irish assets and a wide variety of exemptions exist for financial transactions.

VAT

Section 110 Companies are usually engaged in exempt activities, and so will generally have limited ability to recover any VAT charged to them. Exemptions apply which can be availed of to minimise irrecoverable debt (i.e. management services can be supplied exempt from Irish VAT). It is also possible for the SPV to obtain a VAT registration number in Ireland, thus facilitating the elimination of non-Irish VAT costs. Following the implementation of the EU VAT package on 1 January 2010, VAT will become more of a concern for EU finance vehicles. The existing exemptions and structures in Ireland should eliminate any negative effect for Irish SPVs.

Family Trusts

Ireland has a very well developed infrastructure and legal system in relation to family trusts. Broadly, it inherited UK trust law and judicial decisions which provide a significant level of protection for beneficiaries. A large number of professional trustee service providers exist that can be utilised to manage Irish trusts. There are significant tax and planning benefits with using an Irish trust. For example, where the settlor and beneficiaries are not resident, ordinarily resident or domiciled in Ireland and the trust assets are not Irish situate property, an Irish trust administered by trust professionals would not give rise in most cases to Irish tax. In addition, we have developed structures that enable Irish holding companies and Section 110 companies to be held in such trusts without causing Irish tax to arise at the trust level. This enables the family trust to effectively access all the benefits of an Irish holding company and financing company structure while also availing of all of the benefits of an Irish trust. Irish trusts are an effective succession planning tool and enable assets to be transferred between family members or on death.

Shari'a Compliant Structures

For a number of years, the Irish regulatory authorities have approved Shari'a compliant funds that utilise Irish fund structures. More recently, the Irish Revenue Commissioners have published guidance on *ijarah* arrangements, *takaful* (insurance) and *retakaful* (reinsurance) arrangements and family (life) *takaful* arrangements. Broadly, *ijarah* arrangements are treated in the same way as an operating lease, finance lease or hire purchase agreement depending on their individual features. This means that all of the benefit of Ireland's favourable leasing regime will apply to these structures. For example, an Irish leasing company will be taxed at 12.5% on its net profit, computed in accordance with normal accounting principles. Tax deductible depreciation and deductible interest usually reduces the effective tax rate. Payments under the leases by the Irish company are not subject to withholding tax.

Takaful (insurance) and *retakaful* (reinsurance) arrangements are treated as insurance and reinsurance respectively for Irish tax purposes. Under Ireland's "gross roll-up regime" insurance companies are taxed only on their profits (and not on policyholder profits) at the rate of 12.5%. Deductions are available for technical reserves and for other normal deductible items. No tax arises for non-Irish resident policy holders. Accordingly, it is possible to set up efficient *takaful*, *retakaful* and family (life) *takaful* arrangements in Ireland in accordance with Shari'a principles.

Summary

Ireland has developed as a very favourable location for investors across the world to use as a base for holding and managing European, Asian and North American assets and investments. Recent developments including the anticipated tax treaties with a number of Middle East countries, the clarification from Revenue in relation to Shari'a compliant structures, Ireland's holding company regime and Ireland's finance company regime provide attractive and efficient solutions to Middle Eastern investors who wish to use Ireland as a base to invest in Europe or North America or as a means of managing their assets or risks. The Irish legal and financial services market is sophisticated and adapts to the particular needs of investors. In addition, the regulatory authorities and Revenue authorities are approachable and will in most cases give comfort or feedback in relation to particular structures as the need arises.

List of Relevant Territories

(UAE, Kuwait, Bahrain and Saudi Arabia to be included as soon as the relevant agreements are signed, which is expected by the end of 2009)

Australia	Luxembourg
Austria	Macedonia
Belgium	Malaysia
Bulgaria	Malta
Canada	Mexico
Chile	Moldova
China	Netherlands
Croatia	New Zealand
Cyprus	Norway
Czech Republic	Pakistan
Denmark	Poland
Estonia	Portugal
Finland	Republic of Turkey
France	Romania
Georgia	Russia
Germany	Serbia
Greece	Slovak Republic
Hungary	Slovenia
Iceland	South Africa
India	Spain
Israel	Sweden
Italy	Switzerland
Japan	United Kingdom
Korea	United States of America
Latvia	Vietnam
Lithuania	Zambia

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