Group Briefing
January 2016

Projected 12.5% Corporation Tax Rate for Northern Ireland from April 2018

BACKGROUND
As part of a package of reforms introduced by the Stormont House Agreement in 2014, the NI Executive agreed that legislative procedures for the devolution to Northern Ireland of control over the corporation tax rate should be implemented as soon as possible. The date committed to in this agreement was April 2017, however the implementation of these arrangements became delayed and further discussions were entered into resulting in the publication of a further reform document known as “The Fresh Start Agreement.”

The Corporation Tax (Northern Ireland) Act 2015, (the “NI Act”) was introduced in January 2015 and received Royal Assent on 26th March 2015. The NI Act inserts provisions into the Corporation Tax Act 2010 “The 2010 Act” for the Treasury (in connection with the NI Assembly) to implement a tax rate to be charged in Northern Ireland which is separate to the main UK rate known as the “Northern Ireland Rate.”

The tax base will not differ from the GB base, i.e. the assessment of taxable profits will continue to be computed using normal UK rates.

Until the right to set the rate of corporation tax is exercised by the NI Executive, the rate charged in Northern Ireland will be the UK main rate.

APPLICABILITY
Chapter 3 of the Northern Ireland Act provides for corporation tax to be charged at a rate set by the Northern Ireland Assembly on profits generated in Northern Ireland as distinct from other mainstream profits.

Qualifying Company Profits – (“SMEs”) Under the Act, the Northern Ireland Rate applies to the qualifying Northern Ireland trading profits of micro, small or medium-sized enterprises (“SMEs”) where the company’s employee time and costs fall largely within Northern Ireland. The required workforce component will be met where at least 75% of a company’s UK staff time and costs relates to work carried out in Northern Ireland.

Large Companies

The “Northern Ireland Rate” will also apply to the profits of large companies or corporate partners which do not meet the test for “SMEs” but have a Northern Ireland Regional Establishment (NIRE) which is defined as a fixed place of business in Northern Ireland. A large company (without a qualifying NIRE) can also qualify if it carries on business in NI through a dependent agent; but not through an independent agent.
EXCLUDED ACTIVITIES

Profits from the following trades which are excluded from the Northern Ireland Rate will be charged at the UK main rate:

- oil activities;
- lending and certain investment activity;
- specified investment management activities;
- long-term insurance;
- reinsurance;
- exploration and/or exploitation of a UK sector of continental shelf;
- the Act also makes provision for the Assembly to modify these trades and regulate “back office activities.”

CAPITAL ALLOWANCES AND RELIEFS

Additionally the Northern Ireland Act sets out the procedure for the application of the Northern Ireland Rate in connection with Capital Allowances of companies by, among other things, treating trade in Northern Ireland separately from the trade of a company elsewhere in the UK.

Chapter 3 of the “NI Act” also defines the way in which loss relief (under the Corporation Tax Act 2010) works if a company has Northern Ireland losses or mainstream losses. It sets out the methods for calculation of reliefs where companies sustain both Northern Ireland losses and/or mainstream losses.

COMMENCEMENT BY APRIL 2018

The rate regimes proposed by the Act are to be implemented by the NI Assembly for a financial year “to be appointed by the Treasury”. The original intention was that this would occur after the implementation of the Stormont House Agreement. However, as a result of the recent Fresh Start Agreement the Northern Ireland Executive has committed to an updated timeframe of April 2018 with a projected Northern Ireland Rate of 12.5%.

NEXT STEPS FOR BUSINESSES

The introduction of the lower Northern Ireland devolved rate will be a welcome boost for many businesses operating in Northern Ireland, whether small or large. It also has the potential to benefit both indigenous companies and large inward investors alike.

With a little over two years until implementation, it may seem as though the Northern Ireland devolved rate is still a long way off. However, now is the perfect time for businesses to consider their strategic response to the change. A key aspect of this will be building substance (e.g. employees, premises, etc.) in the province.

Businesses already operating here will have several questions to address, including how they can maximise value under the new rate, and potentially how to invest any increases in after-tax earnings. However, they may also need to consider their response to potential new market entrants or even acquisition bids from foreign investors.

For their part, inward investors will want to look very closely at doing business in Northern Ireland, weighing the costs and benefits particularly against the Corporation Tax structure of the Republic.

The business outlook is brighter now than for perhaps a generation, and with some planning, forethought and structure there are undoubtedly significant opportunities to be grasped.