Ireland publishes proposed Law on “Stateless” Companies

On 15 October 2013, the Irish Minister for Finance announced proposals to prevent “stateless” Irish incorporated companies avoiding a charge to Irish corporation tax on their profits.

The draft proposed legislation was published on 24 October 2013.

Summary of Proposals

Irish tax resident companies are subject to Irish corporation tax on their worldwide profits wherever arising. Profits from a trade are taxed at 12.5%.

The primary test of corporate residence in Ireland is the location of “central management and control.”

In certain situations Irish incorporated companies are deemed to be Irish tax resident.

The proposals extend the situations in which an Irish incorporated company will be regarded as Irish resident.

From 1 January 2015, an Irish incorporated company (which was incorporated before 24 October 2013) can no longer avoid a charge to Irish tax through maintaining central management and control in a “relevant territory” where such company would have been tax resident in that relevant territory had they also been incorporated there.

For example, an existing Irish incorporated company, which is managed and controlled in the US after 1 January 2015, would be deemed to be Irish tax resident and would be subject to Irish corporation tax on its income from 1 January 2015.

However, the proposals are not expected to create an incremental tax cost for companies incorporated in Ireland before 24 October 2013, as such companies can implement new governance processes ahead of the 2015 effective date.
For companies incorporated in Ireland on or after 24 October 2013, the new legislation takes immediate effect and therefore newly incorporated companies in Ireland which are managed and controlled outside of Ireland will need to carefully adhere to the new rules going forward.

The proposals do not affect a situation where a tie-breaker in a double tax treaty provides that an Irish company is resident in the treaty partner location and not in Ireland.

The proposals in no way affect the charge to Irish tax on foreign incorporated companies. If the central management and control of such an entity is maintained in Ireland that foreign corporation will be Irish tax resident. Non-resident companies continue to be taxed on profits attributable to a permanent establishment in Ireland.

Action required

Existing Irish incorporated companies which are currently outside the scope of Irish corporation tax due to central management and control being maintained outside Ireland should consider the impact of the rules proposed effective 1 January 2015.

In particular, Irish companies which could be regarded as managed and controlled in the US will need to review their governance processes and potentially Board composition.

Companies incorporated in Ireland on or after 24 October 2013 which are managed and controlled outside of Ireland need to adhere to the new rules with immediate effect.

Endnotes

1. A “relevant territory” essentially refers to an EU Member State or a territory with which Ireland has a Double Tax Treaty.
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