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### Focus on: IRELAND Business tax measures for 2010



According to the Minister of Finance's Budget Speech, the following are the main business tax measures for 2010.

Due to the importance of Ireland's corporation tax regime, the prevailing 12.5% corporation tax rate is confirmed. The 3-year corporation tax relief for start-up companies will be extended to trades set up and commenced in 2010 as well as 2009. This relief was introduced in Budget 2009 and legislated

for in the 2009 Finance Act. However, the legislation has not yet become effective and is subject to the issue of a ministerial order pending completion of a review by the EU in the context of State aid rules.

The extension of the relief to 2010 means that new start-up companies which commence to trade in 2010 will be exempted from both corporation tax on trading income and on capital gains on the disposal of trade-related assets, in each of the first 3 years for which the trade is carried on, to the extent that their tax liability for that year does not exceed EUR 40,000. Marginal relief is available for companies with annual liabilities of between EUR 40,000 and EUR 60,000.

The relief does not extend to all trades. Trades which are subject to corporation tax at a rate of 25% (e.g. land dealing and exploration-related trades) and companies carrying on certain professional services trades are excluded. The legislation also includes anti-avoidance provisions to exclude new companies which take over pre-existing trades. There are special rules for the transport of passengers and goods, to comply with the EU *de minimis* aid regulation.

The accelerated capital allowances scheme for energy-efficient equipment will be enhanced to include refrigeration and cooling systems, electro-mechanical systems, and catering and hospitality equipment.

No new measures were announced with respect to the R&D Tax Credits regime. However, a key priority of the Department of Enterprise, Trade and Employment will be to support the research capacity built to date through the Strategy for Science, Technology and Innovation. This will be delivered through Science Foundation Ireland's research teams and links with industry, and Enterprise Ireland's company research and commercialisation agenda. It is, therefore, possible that further enhancements to the R&D Tax Credit regime will be introduced in the Finance Bill.

Some new measures to improve the effectiveness with which Revenue can deal with tax avoidance schemes will be introduced.

### UNITED KINGDOM

### Business taxation in pre-budget report for 2010-11

On 9 December 2009, the Chancellor presented to Parliament the Pre-Budget Report for 2010-11. The main business taxation proposals are the following.

- The expected increase of the corporation tax rate for small companies has been deferred for one year. For the 2010 financial year such a rate will therefore remain at 21%.
- worldwide debt cap legislation will be amended
- a reduced rate of corporation tax applying to income from patents will be introduced (Patent Box);
- The Controlled foreign company (CFC) legislation will be under consultation early for reforming;
- The abolishment of the condition requiring that any intellectual property deriving from the R&D to which the expenditure is attributable be owned by the company making the claim for relief will be proposed.

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## SWITZERLAND

### New VAT law enters into force

The new legislation regarding value added tax (VAT) enters into force as per 1 January 2010. The new VAT law basically does not contain major material changes, and it still broadly follows the VAT system as applicable in the European Union. It was enacted to correct deficiencies detrimental to the Swiss economy, and to improve the collaboration between taxpayer and tax authorities. In particular, the revision is based on the following principles:

- tax neutrality for enterprises;
- legal certainty for enterprises; and
- tax efficiency.

The main features of the reform include:

- all domestic enterprises are taxable persons, without the applicability of a minimum annual turnover. However, enterprises with a turnover below CHF 100,000 (CHF 150,000 for certain non-profit organizations) may file an application for de-registration;
- foreign enterprises, which provide certain services to non-taxable recipients, are taxable persons. These services include telecommunication services, electronic services and the supply of electricity power or natural gasoline in pipes;
- the place of supply of services is – as a catch-all-clause – at the place of the recipient. Exceptions apply to medical services, travel agencies, education, science, sports, art and culture, passenger transport, accommodation, services in connection with real estate, international development cooperation;
- voluntary taxation of supplies and services by a taxable person does not require the tax authorities' permission. The possibilities of a voluntary taxation are broadened (with the exception of certain financial and insurance services);
- the applicability of net tax rates (*Saldosteuersätze*) is extended to taxpayers with a total taxable turnover of CHF 5 million provided that the tax payable does not exceed CHF 100,000. In addition, there are relaxed time frames for electing between net tax rates and effective tax rates apply (exceptions for public institutions);
- a reduction of deductible VAT no longer applies if an enterprise receives donations, unless the receipt constitutes public subsidies;
- improved predictability of legal decisions, e.g. VAT authorities are required to publish internal practice without delay; and
- self-assessment of taxes by the taxpayer is completed with an assessment by the tax authorities (in particular regarding estimation of input and output VAT). In addition, the taxpayer may require the tax authorities to perform a tax inspection.

## BELGIUM

### Corporate Tax Program Law submitted to Parliament

On 25 November 2009, a program law containing fiscal and other legal measures was submitted to Parliament. The new provisions, unless indicated otherwise, should take effect from 1 January 2010 (assessment year 2011).

The most important corporate income tax proposals regard: participation exemption, payments to companies established in tax havens and notional interest deduction. There are also some tax measures for environmental protection.

To cover part of the costs resulting from the implementation of the decision in *Cobelfret* (C-138/07) in which the European Court of Justice held that the Belgian 95% dividend deduction is incompatible with the Parent-Subsidiary Directive 90/435/EEC, the valuation threshold for the application of the 95% dividend deduction would be raised from EUR 1.2 million to EUR 2.5 million. In addition, the 95% dividend deduction would remain applicable in case of a participation of 10%.

Following the European Court of Justice's decision in *Cadbury Schweppes* (C-196/04), the G-20 and OECD initiatives on transparency and exchange of information, a provision would be introduced that direct or indirect payments to companies established in tax havens are not deductible unless proof is provided that those payments are based on sound business reasons. Companies which in their countries of establishment are not subject to a tax rate of 10% are, in this context, deemed to be established in a tax haven. The list of all tax haven countries is contained in Royal Decree of 13 February 2003 and from now on it will be updated every 2 years. Belgian taxpayers are also obliged to declare those payments in their tax return.

The maximum percentage for the notional interest deduction would be reduced from 6.5% to 3.8% (small companies: 4.3%) for the assessment years 2011 and 2012.

As far as tax measures for environmental protection are concerned, costs incurred for the use of environment friendly cars with zero emission for business purposes would become deductible for 120%. Similarly, business costs made for use of petrol and diesel cars for business purposes would become 100% deductible for all cars with a CO2 emission below 60 g/km and only be deductible for 50% in case of a CO2 emission of 195 g/km for petrol cars and 205 g/km for diesel cars. The deduction of fuel costs for cars used for business and private purposes would be reduced to 75%, instead of the current 100% deduction.

## INTERNATIONAL MODELS

### Holding Companies regime in Cape Verde

Decree-Law no. 58/2009 of 14 December 2009 introduced a legal regime for holding companies, named *Sociedades Gestoras de Participações Sociais* (hereinafter "SCPS"). The main characteristics are summarized below.



- A SGPS can be incorporated as a private limited company, or as a public limited company.
- The SGPS's exclusive corporate purpose is the management of a portfolio of shares in other companies as a form of indirect economic activity. A SGPS may only provide technical, administrative and management services to companies in which they hold equity or with which they have entered into subordination contracts. For that purpose, a written service agreement shall be signed, stating the remuneration paid to the SGPS.
- To qualify for the holding regime, the parent company must hold a minimum stake of 10% in the share capital of its subsidiaries either directly or through holdings in other companies controlled by the SGPS. The holding should last for an uninterrupted period of at least one year.
- SGPSs are prohibited from acquiring, or from becoming the owner of, real property, except to the extent that those properties are necessary for its own establishment or for the establishment their subsidiaries. SGPSs may only own property acquired by adjudication in the context of enforcement proceedings brought against their debtors, and property derived from the liquidation of companies held, by "global transfer" (as defined), in line with Art. 233 of the Commercial Code.
- As a general rule, a SGPS cannot grant credit to other companies, except to companies controlled by the SGPS, companies where 10% of the voting share capital is held by the SGPS and companies acquired by the SGPS as a result of a merger or division.
- Unless the SGPS controls the company to which the credit is granted or unless the credit is granted under the form of a subordinated loan agreement, the credit granted by the SGPS cannot exceed the value of the holding shown in last balance sheet approved.
- A SGPS is obliged to comply with several administrative obligations. For example, it should provide, before 30 June of each year, a list of the subsidiaries recorded in the last approved balance sheet, and nominate an official accountant or auditor.

The general tax regime for resident companies in Cape Verde also applies to SGPSs. Accordingly, dividends received are excluded from corporate income tax, capital gains arising from transfer of shares held for more than 1 year are exempt from corporate income tax and shareholders loans are subject to stamp duties at the rate of 0.5%.

