Answer-to-Question-_1_

Ireland has been focused on attracting foreign direct investments since the 1950's, using tools such as:
- An attractive tax rate (12.5% for trading entities),
- Beneficial tax regimes, such as a knowledge development box, which grants a rate of 6.25% for qualifying R&D
- A good international reputation, with a stable tax and legislative environment
- A well developed network of Double tax treaties
- A well educated work force, with English as their main language, which adds to the attraction of the country for multinational enterprises

For the past couple of decades, and most particularly snce the release of the BEPS (Base Erosion and Profit Shifting) project by the OECD in 2013, the international tax landscape has changed dramatically. The reason was that there was an increasing feeling that the multinational enterprises (MNE) were using the mismatches between tax law in the different jurisdictions where they operated, as well as the double tax agreements, in their advantage, to reduce their tax bill. These multinational companies ended up paying less tax than companies operation locally in one juridiction, which was percieved as unfair. To prevent this, the OECD developed 15 action plans, aiming to reduce or eliminate the agressive tax planning in MNE's.

As soon as the OECD project was released, Ireland embraced it but making it clear that they remained in favour of fair tax competition.

Several reforms in the Irish tax legislation took place in response to BEPS over the past decade:
- In Finance Bill 2019, there was a full reform of the Irish Transfer Pricing (TP) Rules, which aims to ensure that transactions between related companies are at arm's length and

not used to shift profits to lower tax jurisdictions or erode the tax basis of jurisdictions with higher tax rates. Some of the main poits included were the extension of the TP rules to non-trading transactions, and plans to extend to small and medium enterprises in the near future; more personnel hired by Revenue TP department to ensure compliance; increased focus on substance, meaning that ther should be a connection between the profit allocation and the activities actually carried on in one jurisdiction (for example, if a Cayman Islands subsidiary is the owner of a patent, however the patent was fully developed in Ireland, then the ownership should be overlooked and the profits should be attributed to Ireland; Increased requirement for transfer pricing documentstion, including Local files, Master Files and Country by Country reporting, to allow the tax authorities of the different countries where the MNE's operate to have a clearer picture of their operations and assess the risk of tax avoidance schemes being implemented

- The Irish residency rules changed from 2015, where it was establised that companies incorporated in Ireland would be treated as Irish residents unless there was a base for them to be considered resident of another country
- Exchange of information with other countries has been enhanced. From 2021, DAC 6 has been incorporated into Irish legislation, which is an automatic exchange of information with other Eurpoean Union(EU) countries in relation to arrangements made by companies which bear specific characteristics ("hallmarks") common to tax avoidance arrangements. One example would be cross border loans between connected companies bearing a unilaterla safe harbour interest rate (hallmark E1). For example, if a US company issues a loan to an Irish company using US safe harbour rate, this has to be informed by the Irish company to Revenue, which is in shared by Revenue with the EU.
- Interest Limitation rules. Applicable from 1 January 2022, this rules aim to limit interest deduction to a maximumof 30% of EBITDA. This will be in addition to interest dedutibility limitations already in place in Irish legislation, such as S.247

and S.249 (interest as a charge and recoveries of capital)
- Controlled Foreign Company (CFC). Normally, profits from non-Irish subsidiaries are only taxed in Ireland once dividends are received. If dividends are not distributed, these profits could remain un-taxed in low tax countries indefinitely. The CFC legislation aims to tax in Ireland undistributed profits from foreig subsidiaries before they are distributed, provided that the profits are linked to Irish activities.
- Dispute resolution mechanisms, to provide more certainty to tx payars, as well as tools to avoid double taxation.Some of these are: Mutual Process Agreements (MPA), Advanced Price Agreements (APA), Correlative relief, possibility of arbitration
- Multilateral Agreement: Ireland has applied the Multilateral agreement to update most of the double tax agreements to the latest recommendations of the OECD
- Pillar II - Work is being sone at the moment to incorporate the recommendations of Pillar II, minimum global tax rate for Multinational Groups. Ireland was one of the few countries to push back on this legislation at first, when the OECD mentioned a minimum global tax rate of "at least" 15%, demanding that the wording be changed to @minimum tax rate of 15%".
- Exit tax for companies migrating from Ireland of 12.5%
- The Irish General Anti Abuse Clause, which has been in place for many years, has been seen as BEPS compliant.

Answer-to-Question-_2

1) David and his wife have been living in the UK since 2019, therefore it can be implied that David is currently a UK resident. However, he had always lived in Ireland before, therefore he was ordinarily resident in Ireland. He will only lose his ordinary residency once he has resided outside of Ireland for 3 years. Since he only moved to the UK in 2019, he will still be ordinarily resident in Ireland until fiscal year 2023. As regards the domicile, since he has always lived in Ireland, it could be implied that he is Irish domiciled, unless he does not have the intention to return to Ireland and has chosen another domicile.

Being Ordinarily resident and domiciled in Ireland, David is liable to CGT on gains made both on his Irish and Foreign properties, with credit available for foreign taxes suffered.

David should have filed tax returns for all the properties that he disposed of. He still has the obligation, because the 4 year time limit for revenue to make enquiries only applies after a complete tax return has been filed.

As regards Revenue's query, David has to respond within 30 days of having received the query and his response should be as follows:

Capital disposals are covered by Article 626B (participation exemption), which establishes an exemption for capital gains made in relation to capital distributions, as long as they are not considered income, the ownership is at least 5%,they are located in a DTA country and they have been owned by 12 months or more.

All of the above conditions are satisfied in relation to the funds received for the wind up of the Polish Company.

The reason why this has to be considered a capital gain instead of income is that the distribution arose on liquidation of the company, therefore the source has been disposed of.

2) Income tax and stamp duty

3) Due to the Irish exchange of information between OECD countries, David's enquiry would be reported to the UK and the Polish tax authorities, which could attempt to tax David on the disposal of the foreign company if this was taxable under their tax systems.

Answer-to-Question-_3

1) Ireland has double tax agreements (DTA) with Japan and Holland. There is no double tax treaty with Bermuda.

The main methodologies to extract cash from the subsidiries would be:

a. Via interest, if there were loans from Kingdom PLC to the subsidiaries.

- If this was the case, the interest received would be taxable in Ireland at 12.5% (if trading).
- Any Withholding tax suffered in the paying countries would be relieved as a credit up to a certain point, and the remainder as a deduction (with unilateral relief granted for interest received from non-DTA countries. However, it's noted that dividends are the only transactions in the Japanese Sub's FInancial Statements, therefore I understand that there are no loans in place.

b. Via dividends. The subsidiaries could pay dividends to the parent up to a limit of their distributable reserves. In this case, the surplus cash coincides with the distributable reserves in every case, so from an accounting perspective, an extraction via dividend distribution would be possible.

- Dividends received would be taxable in Ireland at 12.5% if they were generated by trading activities and they originted in DTA countries, or at 25% otherwise. In this case, the Japanese and the Dutch copanies have a trade, therefore it can be assumed that the profits are generated by trading activities and would be taxable in Ireland at 12.5%. As regards the Bermuda company, Bermuda is not a DTA country, therefore dividends received from this subsidiary would be taxable at 25%.
- As regards Withholding tax (WHT) , for dividends

from DTA countries, there is a limit in the OECD model tax convention of 5% WHT when the parent receiving the dividend owns more than 10% of the shareholding (which is the case here beacuse these are 100% subs)

- In relation to double tax relief for foreign taxes suffered, Ireland grants double tax relief both for WHT as well as foreign underlying tax of profits generating the dividends (capped by the Irish Measure of the Foreign tax). There is a possibility of pooling this relief with other dividends taxable at the same rate, as well as carry forward the amount unrelieved indefinitely.

2) Irish Corporation tax if all the subsidiaries declare dividends to the limit of their distributable reserves:

i)
Dividends @ 12.5% EUR12m
Dividends @ 25% EUR20m

ii)
Underlying tax suffered
Japan EUR7m @ 25%
Netherlands EUR5m @5%
Bermuda NIL

iii)Minus
Underlying tax relief (grossed up at the lower of foreign effective tax rate and Irish tax)
Japan EUR7m*0.125/0.875
Netherlands EUR5m*0.05/0.95

I unfortunately don't have a calculator to do the computations

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Answer-to-Question-_5

To: The CFO
Subject: Evaluation of Ireland as a possible IP holding location

At your reuqest, we will describe the main implications for a US based MNE to relocate the ownership of International IP to Ireland.

Based on the international tax landscape, it is vital to consider the matter of substance before planning the relocation of the international IP. This means that an ownership contract is not enough to determine that the IP is actually owned by a certain subsidiary. There has to be real support such as the IP actually being developped in that country, risks being taken by that subsidiary and significant people functions being undertaken. If this is not the case, the contract could be overlooked and the profits generated by the IP could be claimed by the jurisdiction that actually developped it and/or bears the risk. The OCD guidelines place materian emphasis on DEMPE functions around IP for profit allocation. Additionally, the there is recient EU legislation (ATAD 3), preventing a company from benefiting from treaty benefits and EU directive benefits if they don't have enough substance.

To increase the substance, we suggest that the R&D function of the group is moved to the Irish subsidiary, hiring personnel and providing the entity with sufficient capital to ba able to fund the development of IP (take financial risk).

Once the substance is ensured, Ireland is a very attractive location for IP holding, for several different reasons:
- Low tax rate of 12.5%

- Knowledge development box, which further reduces the tax rate to 6.25%. This regime has been approved by the EU courts as being BEPS compliant
- Based on the Double tax treaties, royalties received should only be taxable in Ireland and not in the country that pays them. Therefore, no foreign WHT should be suffered. However, some countries apply WHT anyway.
- The EU interest and royalties directive grants WHT exemption for royalties reveived from EU based group companies
- If foreign WHT was suffered, the Irish legislation would grant credit relief (up to the limit of the tax that would be suffered in Ireland) and deduction relief for the rest. If the royalties were received from a non DTA country, Ireland would grant unilateral relief as a deduction plus a credit relief up to a maximum of the lower of 87.5% of the WHT suffered or 12.5% of the WHT suffered grossed up at the lower of Irish tax vs effective foreign tax.
- If there was ever a taxation disagreement with another country, Ireland has a very well developed dispute resolution mechanism. Therefore, if another country was to claim an upwards adjustment in tax saying tat some of the IP profits are attributable to them, the Irish company has the options of:
    - Accepting the adjustment and claiming correlative relief from Irish revenue. This is risky because Irish Revenue could disagree with the adjustment applied by the other country and not grant the relief.
    - Requesting a Mutual Agreement Prcedure (MAP) between both tax authorities where they would have to reach an agreement to prevent doble taxation before applying the adjustment.

An additional alternative, whoch would provide more certainty, would be to request an Advanced Pricing Agreement (APA), where the tax authorities of both countries would reach an agreement on who would tax the IP before the transaction starts.

It is of great importance that the Irish sibsidiary that holds the IP is not seen as a resident as a country other than Ireland.

To ensure this, in addition to incorporating the company under the laws of Ireland, it is important that the majority of the directors are Irish, that the company is managed from Ireland and that 3 or 4 board meetings take place in Ireland, with directors attending in person.

Please don't hesitate to contact us if you have any questions or require anything further.

Answer-to-Question-_7

1) Income tax for employees is collected through the PAYE (pay as you earn) system. The employers are responsible for deducting the taxes from the employee's salary.

PAYE is only applicable to Case E income, which is income from Irish employment.

When an employe performs all of their duties in Ireland, there is no doubt that the employer has to register for PAYE.

However, there are cases where an employee performs only some of their duties in Ireland. This has increased during the COVID pandemic, because people did not have to go to the office, and they could therefore perform their duties remotely from different countries.

In the case of temporary asignees (not Irish resident), PAYE is not due if they work in Ireland for 60 days or less in a year (employees from DTA countries) or 30 days or less in a year (employees from Non-DTA countries).
If an employee from a DTA country performs duties in Ireland for more than 60 days but less than 183 days, exemption from PAYE can be requested if certain conditions are met (e.g. the person is employed by a foreign employer, there is no intention to remain in Ireland for more than 183 days, the income is taxable in the other country, not employed by an Irish PE of the foreign employer).

If the person working remotely from Ireland performs decision making or commercial duties, their presence in Ireland could be consiered a permanent establishment of the Irish employer.

2) SARP is an Irish tax relief applicable to foreign employees relocating to Ireland, who earn more than EUR75,000 per year. This was implemented to attract highly qualified employers into Ireland. The relief is calculated as 30% of the yearly income above 75,000. It is only applicable to income tax, and not to USC or PRSI. These employees also benefit by some tax free payments in kind, such as a trip back to their home country per year, education for their children up to EUR 5,000 per annum and subsistence expenses.

FED is a relief applicable to Irish employees who work abroad in designated countries (Brasil, India, Pakistan, etc.) for a minimum of 30 days per year, in periods of not less than 3 days at a time. The relief is calculated as follows:
35,000*days spent in the country/total days in the year
The maximum tax reduction is therefore EUR14,000 (EUR35,000*40%)