Taxation of IP

As announced by the Minister for Finance in his budget statement on 10 October 2017, the level of capital allowances that may be claimed in respect of acquired intellectual property ("**IP**") will be capped at 80%. Currently, under Irish law, the cost of IP acquired by a company may be written off against taxable profits either in accordance with the IP amortisation in the financial statements or on a straight line basis over 15 years. Under this amendment, taxpayers that acquire IP on or after 11 October 2017 will be permitted to relieve a maximum of 80% of annual taxable profits. Excess allowances may be carried forward to future years. Taxpayers who acquired IP before that date will not be impacted.

Taxation of intra-group transactions

The Bill extends the parameters of what will be considered to be an Irish group for the purposes of chargeable gains. Currently, a company may only be treated as a member of an Irish chargeable gains group if it is tax resident in an EU Member State. Under the Bill, companies that are tax resident in double tax treaty partner jurisdictions may also be treated as members of an Irish chargeable gains group. This change will apply from 1 January 2018.

Relief from Irish stamp duty is also available in respect of transactions involving associated companies under existing Irish law. A technical amendment has been made to those rules to ensure relief claimed will not be clawed back in circumstances where the transferor company is liquidated (or ceases to exist on a merger). The change reflects an administrative practice frequently applied by the Irish Revenue Commissioners. The change will apply from the date of the passing of the Bill (likely to be towards the end of December 2017).

Taxation of mergers and updates to take account of company law changes

On 1 June 2015, Ireland's company law was consolidated and modernised on the commencement of the Companies Act 2014. A number of changes were made to Irish company law and new legal mechanisms were introduced to provide for mergers and divisions of Irish companies. The Bill updates Irish tax law to confirm that:

- relief from stamp duty will be available in respect of mergers by absorption or in circumstances where the merger is in the nature of a reconstruction; and

- following a merger or division, the successor company (or companies in the case of a division) assumes the Irish payment, filing and reporting obligations of the transferor company. In addition, any rights to repayments of tax (including correlative adjustments) are assumed by the successor company.

A number of technical amendments are made under the Bill to update the existing company law references in Irish tax legislation to the Companies Act 2014. While the stamp duty changes will apply with effect from the passing of the Bill, the majority of the changes that reflect the changes to Irish company law are deemed to apply from the commencement of the relevant company law changes.

Taxation of non-Irish residents

Important changes have been made to the charge to capital gains tax for non-Irish residents. As a general rule, non-Irish residents are only charged to Irish capital gains tax on the disposal of certain assets that have an Irish nexus (eg Irish real estate or the assets of a business carried on through an Irish branch). Those assets are termed 'specified assets'. On the sale of a 'specified asset', the purchaser is usually required to withhold 15% of the purchase price unless the seller produces a clearance certificate issued by the Irish Revenue Commissioners (known as a CG50).

Shares or securities deriving the greater part of their value from Irish real estate are regarded as specified assets unless those shares are listed on a regulated stock exchange. Under the Bill, those shares or securities will be required to be 'actively and substantially traded' in order to fall outside the charge to capitals gains tax. That concept is undefined. This change may impact non-Irish residents holding debt securities secured over Irish real estate. The change will apply to all disposals made on or after 19 October 2017.

Ratification of the Multilateral Instrument

Under the Bill, Ireland will take the first step in the ratification process of the Multilateral Instrument. Following the passing of the Bill, the Irish Government must pass an order to ratify the Multilateral Instrument and a ratification instrument must be deposited with the OECD. A number of waiting periods must also expire before the Multilateral Instrument becomes effective to update any of Ireland's double tax treaties. It is anticipated that the earliest date from which any of Ireland's double tax treaties will be updated under the Multilateral Instrument will be 1 January 2019.

Investment funds and section 110 companies

In Finance Act 2016, significant changes were made to the tax treatment of Irish investment funds holding Irish real estate and assets deriving the greater part of their value from Irish real estate ("**IREFs**") and to the tax treatment of companies qualifying under section 110 of the Taxes Consolidation Act ("**section 110 companies**") holding debt secured over Irish real estate and other assets deriving their value from Irish real estate. Some technical amendments have been made to that legislation:

- no withholding tax will be imposed on payments made by IREFs to certain retirement funds;
- in some cases, if advance clearance is obtained from the Irish Revenue Commissioners, it will be permissible for payments to be made by IREFs free from withholding tax where the ultimate recipient would be entitled to a refund of any tax withheld;
- a new facility has been included for qualifying intermediaries holding units in IREFs on behalf of pension funds, charities and credit unions to make declarations on behalf of investors so that payments may be received free from withholding tax;
- connected persons holding more than 10% of the units in an IREF will not be permitted to avail of treaty exemptions from withholding tax on dividend payments – this previously only applied on a single unitholder basis; and

- the section 110 rules have been amended so that shares in companies that hold real estate will be regarded as 'specified mortgages' and accordingly, any profits or gains earned from those shares may give rise to a tax charge.

All of these changes are effective from 19 October 2017.

Separate to those changes, the Bill introduces a requirement for regulated investment funds to file annual financial statements in electronic form with the Irish Revenue Commissioners. This obligation will be introduced on a phased basis.

Real estate

As announced on Budget Day, the rate of stamp duty applicable on transfers of non-residential property will increase from 2% to 6%. The increased rate will apply to transfers of all non-residential real estate and to other commercial property including goodwill.

The increased rate will apply to all instruments executed on or after 11 October 2017. However, if the parties had entered a binding agreement in respect of the transfer by 10 October 2017 and complete the transaction on or before 31 December 2017, the increased rate will not apply.

On Budget Day, the Minister announced that a refund of the increased stamp duty rate would be available where commercial real estate was acquired for the purpose of developing residential units, provided the development commenced within 30 months of the acquisition. Details of the refund programme will be announced as the Bill passes through the legislative process (currently expected early in November).

In line with the announcement made on Budget Day, the Bill provides that taxpayers who acquired real estate between 7 December 2011 and 31 December 2014 and held that real estate for at least four years (but no more than seven) will be exempt from capital gains tax on disposals made on or after 1 January 2018. Taxpayers who hold real estate acquired during that time for longer than seven years will be entitled to a proportionate reduction in any capital gains charge arising on disposal.

Interest as a charge

Interest on loans used to acquire shares in trading companies, real estate holding companies or holding companies of trading companies is treated as a charge on income and is deductible under Irish tax law. Similar interest payable on loans used to on-lend to those types of companies is treated in the same way. In line with the practice of the Irish Revenue Commissioners, the category of companies that may be acquired or on-lent to under this provision has been extended under the Bill to include intermediate holding companies and holding companies of real estate owning companies. These changes apply to interest on loans made on or after 19 October 2017.

Sugar tax

In line with announcements made during last year's budget statement, Ireland will introduce a tax on drinks with added sugar in the form of an excise tax. The provisions are subject to EU State aid approval but it is anticipated that they will commence on 1 April 2018.

The tax will be applied to sugar sweetened drinks with a sugar content of 5 grams or more per 100 millilitres at a rate of 20 cent per litre. A second rate of 30 cent per litre will apply if the sugar content exceeds 8 grams per millilitre.

Next steps

The Bill will now proceed through the legislative process. During this time, amendments will likely be made to the Bill. It is expected that the Bill will be passed into law before the end of December 2017.