

**Dillon Eustace
Financial Services
Release
Finance Bill 2010**

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

Contents

Finance Bill 2010 Financial Services Release

Introduction	Page 2
Key Highlights	Page 2
Investment Management Package of Measures	Page 3
Islamic Finance	Page 4
Operating Leases	Page 4
Foreign Dividends	Page 5
Irish Dividend withholding Tax	Page 5
Double Tax Relief for Companies with Foreign Branches	Page 6
Incentives to attract non-Irish domiciled individuals to work in Ireland	Page 6
Others	Page 6




FINANCE BILL 2010 – FINANCIAL SERVICES RELEASE

Introduction




The Minister for Finance made reference in his Budget in December 2009 to the importance of the financial services industry and his intention to introduce changes to enhance the competitive position of the Irish Financial Services industry. As a result a number of specific and general measures have been introduced in the recent Finance Bill (the “**Bill**”) to support the theme of encouraging the continued and further use of Ireland for a broad range of financial services.

Key Highlights

Specific Financial Services Industry Incentives

-  A series of changes to encourage the continued use of Ireland as a domicile for collective investment funds and a location for the provision of management services to UCITS funds domiciled in any EU jurisdiction (see “Investment Management Package” of measures below).
-  The extension of Ireland’s favourable financial services tax regime to cover Islamic financing.
-  Favourable changes to the taxation treatment of operating leases.

General Incentives also benefiting the Financial Services Industry

-  Traders/dealers in shares, banks, and insurance/reinsurance companies etc (who normally are taxable at the 12.5% tax rate) will be exempt from tax on certain foreign dividends.
-  For corporates, the extension of the circumstances of when the 12.5% tax rate applies to foreign dividends (as opposed to the 25% tax rate).
-  The introduction of a self-assessment system to make it simpler for non-Irish tax residents to receive Irish dividends free of Irish withholding tax.

- ▣ Improvements in the double tax credit relief available to companies with foreign branches.
- ▣ Extension of the tax measures introduced in 2008 to assist companies in Ireland to attract non-Irish domiciled individuals to work in Ireland.

Investment Management Package of Measures

UCITS IV

The UCITS IV Directive is designed to facilitate the further development of the cross border funds market in the EU; however tax has been identified as one of the main barriers to the successful implementation of the UCITS IV Directive. In this regard the Bill proposes a series of measures to help funds that are seeking to benefit from the implementation of UCITS IV Directive.

Amongst other things the UCITS IV Directive provides that UCITS management companies located in one EU jurisdiction may manage UCITS funds domiciled in another EU jurisdiction. There are concerns in various EU member states that the appointment of a management company could bring a foreign UCITS within the charge to tax in the management company's home jurisdiction. The Bill provides that in the case of an Irish management company managing a non-Irish UCITS, which is not otherwise Irish tax resident, the non-Irish UCITS will not be taxable in Ireland as a result of appointing an Irish UCITS management company (i.e. the management company will not be bring the profits of the foreign UCITS within the charge to Irish tax) and such funds will be treated as foreign funds for the purposes of Irish unit-holders with comparable tax rates to investments in Irish regulated funds.

Stamp Duty

The Bill provides for relief from stamp duty arising on the transfer of funds assets under fund mergers and reorganisations thereby providing for the effective reorganisation of funds into a Master/Feeder structure (which are now permitted under UCITS IV). However it should be noted these provisions are not restricted to UCITS and therefore this should increase Ireland's attractiveness as a jurisdiction of choice for the amalgamation of non-UCITS.

The Bill also removes a potential technical exposure to Irish stamp duty arising on the transfer of assets between different sub-funds within the same unit trust. These provisions will be effective from the passing of the Act.

Non-Irish Resident Declarations

Irish regulated funds are required to deduct exit tax when making a payment to an investor unless the funds are in possession of a declaration by the investor to the effect that the investor is either not resident or ordinarily resident in Ireland for tax purposes or is an exempt Irish investor. As the vast majority of Irish domiciled funds in the international funds sector are distributed solely to non-Irish residents, it is considered that the current requirements present a disproportionate administrative burden on industry. In addition, existing procedures under the European Anti-Money Laundering legislation already highlight any investor holding an Irish passport or address. Consequently the Bill contains provisions that will permit non-resident investors to invest in an Irish fund without the need to make a declaration of non-residence. In order to do so the funds must obtain approval from the Irish Tax Authorities. Typically, the approval will apply to funds that are marketed exclusively outside of Ireland. This provision will be effective from the passing of the Act.

Irish Management Company – Extension of Category of Exempt Irish Investors

The Bill amends the definition of an Irish fund management company to exclude references to IFSC and Shannon financial services operations (i.e. a technical amendment to update the definition of a “qualifying management company”). The purpose of this is to remove the uncertainty that existed with regard to the status of such entities as exempt Irish investor’s as a result of defunct terminology in the current definition. Exempt Irish investors may receive a return of their investment in Irish funds free of Irish withholding tax, so the extension of the withholding tax exemption for certain categories of Irish investors is welcomed. This provision will be effective from the passing of the Act.

Removal of technical exposure to capital acquisitions tax for non-Irish investors in foreign funds administered in Ireland

The Bill removes a technical exposure to Irish gift and inheritance tax (capital acquisitions tax) in respect of non-Irish domiciled funds that are administered in Ireland (where the share register is maintained here). This provision will be effective from the passing of the Act.

Islamic Finance

The Bill extends the tax treatment (both direct and indirect taxes) applicable to conventional finance transactions to Shari compliant financial products which are the same in substance as conventional finance products. The proposed amendments will apply from 1 January 2010. The ability to structured Shari compliant financial compliant products in a tax efficient manner is welcomed, although as Shari law is complex it is not quite clear yet whether the new provisions cover all potential scenarios. That is expected to become clearer over the coming weeks and months.

Operating Leases

Prior to the Bill only lessors under finance leases could elect to be taxed in accordance with their accounting results, rather than to calculate their profits in accordance with the capital allowances/tax depreciation regime. This was necessary as otherwise lessors would be confined to claiming capital allowances/tax depreciation over 8 years on assets which had a shorter economic life ("short life assets"). The Bill extends this taxation treatment to operating leases if certain conditions are met. Essentially the extension of the favourable tax treatment of operating leases is extended to new lessors of operating leases and/or existing lessors in respect of the increased value of all short life assets let on an operating lease above a base threshold amount calculated on the 2009 results of the lessor (and/or lessor's group). This provision will apply to accounting periods ended on or after 1 January 2010.

An anti-avoidance measure has been introduced to prevent both lessors and lessees claiming capital allowances/tax depreciation on the same leased asset. This provision will apply from the date of the passing of the Act.

Foreign Dividends

Foreign dividends are currently taxed (unless the recipient is a charity, pension fund etc) at either 12.5% or 25%. For traders/dealers in shares, foreign dividends are currently taxed at 12.5%. In addition, foreign dividends are typically taxed at 12.5% for banks and insurance/reinsurance companies (unless the foreign shareholding is held "outside" of the bank or insurance/reinsurance's companies normal trading activities, when it is then taxed at 25% unless in the case of a life insurance company such foreign dividends are part of policyholder profits when they are then exempt from tax). The Bill provides for an exemption from tax for such traders/dealers, banks, insurance and reinsurance companies in respect of foreign dividends (forming part of their trading activities) where they hold less than 5% of the

shares of the foreign company paying the dividend. So in certain cases the rate of tax will be reduced from 12.5% to 0%.

In addition, currently foreign dividends which are taxable normally at 25% (so corporates and traders/dealers, banks, insurance and reinsurance companies acting in a non-trading capacity) are in certain circumstances taxed at 12.5%. The 12.5% rate in such cases is currently confined to foreign dividends paid out of trading profits of companies located in a country with which Ireland has a double tax treaty and/or is located in an EU member state. The 12.5% rate in such circumstances will be extended to dividends of companies located in non-treaty/non-EU location where the company paying the dividend is quoted on a recognised stock exchange in another EU member state or a tax treaty country (or is owned directly or indirectly by such a company). On the same theme the rules for identifying the underlying profits (whether trading or non-trading profits) have been simplified which should make it easier to identify those foreign dividends qualifying for the 12.5% tax rate.

The above provisions will apply to foreign dividends received on or after 1 January 2010.

Irish Dividend Withholding Tax

Ireland currently operates an extensive exemption from Irish dividend withholding tax ("DWT"). However, the administrative procedures to claim this exemption can be onerous. Therefore, the introduction of a self assessment system whereby the recipients of the dividends self-certify whether they satisfy one of the many exemptions from Irish DWT is very welcomed. This change applies to dividends paid after the passing of the Act.

Double Tax Relief for Companies with Foreign Branches

Irish tax resident companies are taxed on their foreign branch profits. Foreign taxes paid by the company on those branch profits can be credited against Irish tax payable on those profits. In addition, Ireland operates a pooling mechanism whereby excess foreign taxes relating to one branch can be used to offset Irish tax payable on profits from other branches. However, the current rules do not currently permit excess foreign taxes arising on foreign branch profits not utilized in a current accounting period to be carried forward indefinitely and offset against tax on future branch profits. That will now be permissible and the new provisions will apply in respect of accounting periods ended on or after 1 January 2010.

Incentives to attract non-Irish domiciled individuals to work in Ireland

In 2009 a special assignment relief was introduced aimed at encouraging key overseas talent to come to Ireland. Its application was very limited as it only applied to employees coming to Ireland from countries outside the EEA (i.e. the EU member states and Iceland, Norway, Liechtenstein) and which had a double tax treaty with Ireland. With effect from 1 January 2010 the relief has also been extended to foreign employees from the European Economic Area. In addition the minimum time which the employee must remain working in Ireland has been reduced from 3 years to 1 year.

The relief basically provides that the maximum earnings on which Irish tax will be paid by such an employee will be the higher of actual earnings and benefits received in or remitted to Ireland or the first €100,000 plus 50% of earnings and benefits in excess of €100,000.

Others

In 2009 Ireland introduced a 1% levy on various insurance products sold to Irish persons. The levy has been amended to exclude pension and reinsurance business. This levy does not apply to insurance companies selling products to non-Irish investors.

The Bill this year includes the introduction of a limited form of transfer pricing regulations. For the financial services industry, its introduction will be largely neutral. In particular, the transfer pricing regulations will not apply to special purpose vehicles established under Section 110 of the Taxes Consolidation Act 1997 (as amended). Please visit <http://www.dilloneustace.ie/publications/taxation> for our separate transfer pricing release.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax.: +353 1 667 0042

Cork

8 Webworks Cork,
Eglinton Street,
Cork, Ireland.
Tel: +353 21 425 0630
Fax: +353 21 425 0632

Boston

26th Floor,
225 Franklin Street,
Boston, MA 02110,
United States of America.
Tel: +1 617 217 2866
Fax: +1 617 217 2566

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie

website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

David Lawless

e-mail: david.lawless@dilloneustace.ie
Tel : +353 1 667 0022
Fax: + 353 1 667 0042

Sean Murray

e-mail: sean.murray@dilloneustace.ie
Tel : +353 1 667 0022
Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2010 Dillon Eustace. All rights reserved.

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.
www.dilloneustace.ie

In alliance with Arendt & Medernach