

## Update on Irish Double Taxation Agreements

Ireland has an extensive and expanding network of double taxation agreements (“DTAs”), having signed comprehensive DTAs with 63 countries, 55 of which are in effect. Following the execution of a DTA by both contracting states, various legal procedures must be followed in each jurisdiction in order to bring the new agreement into force. The entry into force provisions of most DTAs provide for the new agreement to take effect in Ireland with effect from 1 January of the calendar year following that in which legal procedures are completed by both countries to enable the DTA to enter into force. As a result, there is often a gap of a number of years between the signing of a DTA and the date from which the new agreement takes effect and may be relied on by residents of each contracting state.

In addition to benefits which accrue to treaty residents on the coming into effect of the DTA, there are a number of Irish domestic law benefits which take effect immediately once a DTA is signed by both contracting states and before the procedures have been completed to bring the new agreement into force. These are discussed further below and are currently of particular relevance in relation to transactions entered into between Irish residents and residents of:

- Hong Kong,
- Armenia,
- Bosnia & Herzegovina,
- Albania,
- Kuwait,
- Montenegro,
- Morocco and
- United Arab Emirates.

### ***New DTAs which came into effect in 2011***

Between 2008 and 2010, Ireland signed new DTAs with:

- Georgia,
- Moldova,
- Singapore,
- Serbia and
- Turkey.

Legal procedures to bring these DTAs into effect have been completed by each government and the new agreements took effect from 1 January 2011. A summary of the reduced rates of dividend and interest withholding tax applying pursuant to these DTAs is set out in the table below.

### ***New DTAs signed which will come into effect in the coming years***

Ireland signed a DTA with Hong Kong on 22 June 2010. Legal procedures to bring the agreement into force were completed by both governments in early 2011 and the new agreement will be effective from 1 January 2012.

Throughout the course of 2009 and 2010, Ireland signed DTAs with

- Bosnia & Herzegovina,
- Albania,
- Kuwait,
- Montenegro,
- Morocco and
- United Arab Emirates.

Legal procedures to bring these DTAs into effect were completed by Ireland during 2010 and 2011. When equivalent legal procedures have been completed by the other contracting states, these new agreements will take effect in accordance with the provisions thereof.

On 14 July 2011, Ireland signed a DTA with Armenia. Legal procedures to bring this new agreement into effect must be completed by both contracting states before the entry into force provisions of the DTA will take effect.

***Irish Domestic Law Benefits for Residents of Countries with which Ireland has signed a DTA (which has not yet come into effect)***

There are certain provisions of Irish domestic law that extend benefits to residents of EU member countries and countries with which Ireland has entered into a DTA. The definition of persons entitled to avail of these benefits under Irish domestic legislation includes residents of countries “with the government of which arrangements have been made which on completion of the procedures.....will have the force of law”. As a result, once a DTA is signed by both contracting states, the following Irish domestic law benefits can be availed of immediately, even though the DTA is not yet in force:

• ***Payments of dividends from Ireland – dividend withholding tax***

Dividends can be paid free from withholding tax by Irish companies to individuals and companies that are tax resident in countries with which Ireland has signed a DTA, provided a declaration to that effect has been submitted to the paying company. It is important, however, that the company receiving the dividend is not under the control of Irish resident persons when seeking to avail of this exemption.

• ***Payments of interest from Ireland – interest withholding tax***

An exemption from interest withholding tax applies under Irish domestic legislation in respect of interest paid by a company or a regulated investment fund in the ordinary course of trade or business carried on by that entity where:

- the interest is paid to a company which is resident for tax purposes in an EU or tax treaty country which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or
- where the interest is exempted from the charge to income tax under the provisions of a DTA or would be so exempted if the DTA had taken effect in accordance with the entry into force provisions set out therein when the interest was paid, except where such interest is paid to that company in connection with a trade or business carried on in the State by the receiving company through a branch or agency.

• ***Taxation of foreign dividends received***

Generally, dividends received by an Irish resident company from a foreign company are subject to tax in Ireland at a rate of 25%. Where the dividend is paid out of the “trading profits” of a foreign company which is resident in an EU or tax treaty country, the Irish company may elect to tax the dividend at the 12.5% rather than the 25% rate. Dividends paid out of the trading profits of a subsidiary in a country with which Ireland has signed a DTA to its Irish parent can now be taxed at 12.5% on election by the Irish company. This is important for Irish companies with interests in trading companies resident in DTA countries having a corporation tax rate higher than 12.5%. Prior to this provision taking effect, an additional liability to tax would have arisen on repatriation of profits to Ireland. Following the execution of a DTA with Ireland however, no additional Irish tax should arise. This is on the basis that Irish domestic legislation also allows credit for underlying tax suffered (in addition to dividend withholding tax), in both treaty and non-treaty countries, on the profits out of which the dividend is paid. In non-treaty cases, a 5% Credit for underlying tax on foreign dividends received from non-treaty jurisdictions is available where the Irish company holds a 5% shareholding in the foreign company.

Foreign dividends received by Irish regulated investment funds are exempt from Irish tax.

- ***Exemption from capital gains tax on disposal of shares in subsidiary***

Irish domestic legislation also provides for an exemption from capital gains tax on gains arising to an Irish company on disposal of shares in a trading subsidiary which is resident in an EU or tax treaty country, provided certain conditions are met. Broadly, the Irish company must hold at least 5% of the ordinary share capital of the subsidiary for a continuous period of 12 months during the two years immediately preceding the disposal. This provides the possibility of a tax free exit mechanism for Irish holding companies of international groups with trading subsidiaries in countries which have signed a DTA with Ireland.

Irish regulated investment funds are exempt from Irish tax on disposal of their underlying investments.

### ***New DTAs under negotiation***

Ireland has completed negotiations with Panama, Saudi Arabia, Thailand and Uzbekistan and it is expected that new DTAs will be signed with these countries shortly. Negotiations are also underway for DTAs with Argentina, Azerbaijan, Egypt, Tunisia and Ukraine, with further new negotiations expected to commence throughout 2011.

### ***Amendment of existing DTAs***

Ireland and Germany signed a Protocol on 25 May 2010 amending the existing Ireland Germany DTA with effect from 1 January 2011. A revised DTA was also signed by Ireland and Germany on 30 March 2011 together with a Protocol to the new DTA and a Joint Declaration. These are yet to take effect, but the following provisions will be of particular interest to the Irish funds industry:

- A UCITS which is established in one contracting state will be treated, for DTA purposes, as an individual who is a resident of that contracting state and as the beneficial owner of the income it receives to the extent that the beneficial interests in the UCITS are owned by "equivalent beneficiaries". An "equivalent beneficiary" means a resident of the contracting state in which the UCITS is established, or any other state with which the contracting state in which the income arises has a DTA which provides (or domestic law provides) for a rate of tax with respect to that item of income that is at least as low as the rate claimed by the UCITS under the Ireland Germany DTA. Where 95% or more of the beneficial interests in the UCITS are owned by "equivalent beneficiaries", the UCITS will be treated as an individual who is a resident of the contracting state in which it is established and as the beneficial owner of all of the income it receives.
- A Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits under the revised Ireland Germany DTA.

As the availability of treaty benefits to Irish regulated investment funds continues to be a matter of debate, the clarity brought by these amendments is a welcome development. It is likely however that the changes will place additional administrative burden on administrators in demonstrating the necessary investor profile required to establish entitlement to reduced rates and exemptions under the Ireland Germany DTA.

Protocols to existing DTAs with Austria, Malaysia and South Africa were signed during 2009 and 2010. Legal procedures to bring these Protocols into effect were completed by Ireland in early 2011. When equivalent legal procedures have been completed by the other contracting state, the amendments outlined in these Protocols will take effect in accordance with the provisions thereof.

These amendments expand the exchange of information provisions in the Austrian, Malaysian and South African DTAs. The Protocol to the South African DTA, which was signed on 17 March 2010, will also provide that a Common Contractual Fund established in Ireland shall not be regarded as a resident of Ireland and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits under the revised Ireland South Africa DTA.

Reduced rates of dividend withholding tax applying under Ireland's new DTAs

<b>DTA</b>	<b>Reduced DTA rates of dividend withholding tax</b>	<b>Reduced rates of interest withholding tax</b>
Georgia	0% <sup>[1]</sup> / 5% <sup>[2]</sup> / 10%	0% <sup>[3]</sup>
Moldova	5% <sup>[4]</sup> / 10%	5% <sup>[5]</sup>
Singapore	0%	5% <sup>[6]</sup>
Serbia	5% <sup>[7]</sup> / 10%	10% <sup>[8]</sup>
Turkey	In the case of Turkey: 5% <sup>[9]</sup> / 10% <sup>[10]</sup> / 15%	10% <sup>[11]</sup> / 15%
	In the case of Ireland: 5% <sup>[12]</sup> / 15%	

For further information please contact the Tax Department at Mason Hayes & Curran.

[1] if the beneficial owner of the dividends is a company which is a resident of the other Contracting State which controls directly or indirectly at least 50 per cent of the voting power in the company paying the dividends and has invested at least €2 million (or its equivalent in the Georgian currency) in the capital of the company paying the dividends.

[2] if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends and has invested more than 100,000 Euros (or its equivalent in the Georgian currency) in the capital of the company paying the dividends.

[3] subject to certain limitations.

[4] if the beneficial owner is a company (other than a partnership) which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends.

[5] subject to certain limitations.

[6] subject to certain limitations.

[7] if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25 per cent of the voting power of the company paying the dividends.

[8] subject to certain limitations.

[9] to the extent that they are paid out of profits that have been subject to tax in Turkey as specified in paragraph 5, where the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the voting power of the company paying the dividends.

[10] where the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the voting power of the company paying the dividends.

[11] where it is paid in respect of a loan or other debt claim for a period exceeding two years or if the interest is received by a financial institution, subject to certain limitations.

[12] where the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the voting power of the company paying the dividends.

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