

EU Caselaw & Irish Tax Update

TTN New York

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Overview

- Whistle-stop tour of key developments
- Irish Tax Developments
- ECJ and European Developments

Irish Tax Developments

- 12.5% Rate
- R&D and other IP developments
- Tax Treaty Developments
- Transfer Pricing Adjustments
- Taxation of Foreign Dividends

12.5% Tax Rate

- *“Not for changing upwards”*
- Ireland Inc brand and image
- 12.5% = Headline Rate
- Effective Tax Rate competition

R&D Regime

- Enhanced regime introduced
- 20% to 25%
- Mixed Use Buildings can qualify
- Monetise tax credits

R&D Tax Regime

- Base year fixed – missed opportunity
- What are our competitors doing?
- Perhaps further “tweaking required”
- Powerful combined with an IP tax regime

Other IP Developments

- Relaxation of know-how rules
- Introduction of IP tax regime
- Irelands' Smart Economy Agenda
- Re FDI – powerful & competitive story to tell (sell!)

Tax Treaty Developments

- Extension of certain domestic provisions
- Current tally of DTAs
- Kinsella Case (re: pre-CGT treaties)

Transfer Pricing Adjustments

- Finance (No.2) Act 2008 changes
- Cannot claim for adjustment put through the accounts
- Must use correlative adjustment treaty mechanism or EU Arbitration Convention

Taxation of Foreign Dividends

- FII GLO decision
- 12.5% rate in Ireland for qualifying foreign dividends
- Trading profits criteria
- Tax residence criteria

Taxation of Foreign Dividends

- Portfolio Shareholdings
- “Good” and “Bad” flows
- De-minimus exception (75% test)
- Impact of non-EU/treaty group member

Taxation of Foreign Dividends

- Rationale for 12.5% rate
- Reality of the 12.5% rate
- How can exemption system = credit system?!?
- BAT Industries decision

European Caselaw

- CFC and Dividend Group Litigation v CIR
- Lidl Case
- Renneberg Case
- Cobelfret Case

Infringement Proceedings

- German Tax Depreciation challenge
- German & Bulgarian withholding tax challenges
- Austrian challenge re donations
- Marks & Spencer Commission request

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