IWP Dublin Conference

Destination Ireland – 21 & 22 July 2015

Tax Planning Opportunities for non-domiciled persons in Ireland and the United Kingdom - an executive summary of the Irish tax regime for non-domiciled persons moving to Ireland

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1 Introduction

This paper provides a high level overview of the Irish law on residence and domicile and discusses the tax implications of a non-domiciled individual moving to Ireland. In particular, this paper considers the potential liability to income tax, capital gains tax and capital acquisitions tax while resident in Ireland.

2 Residence Test

In Ireland an individual's tax status is determined by their tax residence and their domicile. As such, it is worth giving an overview of the current law as it applies to residence and domicile, and the implications of having a particular residence and domicile status.

In Ireland, a person's residence status is assessed on the basis of the number of days spent in the jurisdiction. A person will be regarded as Irish tax resident if they are:

(a) Present in the State for a period of 183 days or more in the tax year (which is the calendar year), (the "**183 day rule**");

(b) Present in the State for a period of 280 days or more in the current and previous tax year, subject to the provision that where a person is present in Ireland for 30 days or less, they will not be regarded as resident in that tax year. If a person is present during any part of the day, they are considered to be resident for the full day for the purposes of the residence rules (the "**280 day rule**").

If a person is present in Ireland during any part of the day, they will be considered resident for the full day for the purpose of residence rules.

In practice, in light of the requirements for residence under (b) above, an individual may spend up to 139 days in Ireland on a yearly basis and still avoid becoming tax resident.

Under Section 820 of the Taxes Consolidation Act 1997 ("**TCA 1997**"), an individual becomes ordinarily resident in Ireland for a tax year after he or she has been resident in the State for three prior consecutive tax years. The legislation provides that an individual who has become so ordinarily resident in Ireland for a tax year, shall not cease to be so ordinarily resident until after that individual has had three consecutive years in which they have not been resident in the State.

3 Domicile

Under Irish law, Irish domicile is a common law concept and has never been defined by statute. It is a totally distinct concept from residence. In layman's terms, it is often described as a person's natural home.

There are three forms of domicile; domicile of origin, domicile of dependence and domicile of choice. Every person is born with a domicile of origin, as soon as a person is born they are attributed a domicile of origin. Usually this is the domicile of a person's father. A child is incapable of acquiring an independent domicile until they reach the age of 18.

Until a child turns 18 years of age, their domicile of dependence will change if their father changes his domicile during that time.

A domicile of choice can be acquired by establishing a physical presence in a new jurisdiction with the intention to reside there indefinitely.

4 Income Tax and Capital Gains Tax ("CGT") implications of residence and domicile

4.1 Irish resident and Irish domiciled

An individual who is Irish resident and domiciled is liable to Irish income tax on their worldwide income and Irish CGT on their worldwide gains.

4.2 Irish resident and non-Irish domiciled

An individual who is resident in Ireland but non-Irish domiciled is subject to Irish tax on Irish source income and gains and on foreign income and gains under the remittance basis of taxation. In order words, the individual will pay Irish tax on:

(i) Irish source income and gains; and

(ii) Foreign income and gains to the extent they are remitted.

(iii) In addition, Irish income tax will be payable on foreign employment income to the extent it relates to Irish duties, irrespective of where the income is paid.

4.3 Non-Irish resident, Irish ordinarily resident and non-Irish domiciled

A non-Irish domiciled individual who has ceased to be resident but continues to be ordinarily resident, is liable to Irish tax only on their Irish source income and gains and separately on their foreign income and gains to the extent remitted into Ireland, with the exception of:

(i) Income from a trade, profession, office or employment, all the duties of which are carried out outside Ireland; and

(ii) Other foreign income which is less than €3,810.

4.4 Non-Irish resident and non-Irish ordinarily resident

If an individual is not resident and not ordinarily resident in Ireland, then he or she is only subject to Irish income tax on Irish source income and income from a trade, profession or employment to the extent it is exercised in Ireland.

Irish CGT will be payable in relation to the disposal of what are known as " specified assets" such as land and minerals in the State, assets situated in the State and used for the purposes of a trade carried on by the individual in the State at the date of disposal and on the disposal of shares in an unquoted company where the shares derive the greater part of their value from land or minerals in the State.

This treatment applies regardless of the individual's domicile status.

5 Remittance basis of taxation

5.1 Income tax

As outlined above, an individual who is resident or ordinarily resident in Ireland but not domiciled is liable to Irish tax on Irish source income on foreign source income only to the extent that it is actually remitted into the State. A remittance occurs when funds or property are transferred and imported into Ireland and may occur where, for example, funds are transferred into Ireland for the purpose of paying a bill or other expense, such as a credit card liability. The remittance basis of taxation does not apply in respect of employment income, insofar as that income relates to the performance of duties in the State. Foreign employment income referable to foreign workdays still qualify for the remittance basis of taxation. Where relevant employees meet certain conditions, there are reliefs provided by s.825A TCA 1997 for qualifying employments on income earned outside the State or alternatively under the more recent Special Assignee Relief Programme (s825c TCA 1997).

There are anti-avoidance provisions included to prevent the avoidance of tax by taking out an overdraft / loan and paying it off abroad out of foreign income.

Loans are not income. The principle is that a remittance based taxpayer could use loans in Ireland or abroad for the purpose of meeting day to day expenses. The loan account if transferred to a foreign branch of the bank could in theory be paid from foreign earnings. This is known as a constructive remittance. Section 72 TCA 1997 provides that any foreign income applied abroad by an Irish ordinarily resident individual in satisfaction of:

(i) borrowings and related interest in Ireland;

(ii) borrowings outside Ireland and remitted here; or

(iii) borrowings to satisfy the above type of loans

are to be treated as having been received in Ireland as a remittance of foreign income.

In calculating an individual's taxable remittances for income tax purposes, any remittances of capital (as opposed to remittances of income) are disregarded. As such, remittances from foreign capital sources are not within the charge to Irish income tax (but may be subject to CGT).

Income earned at a time when an individual is not resident in the State is considered to be capital in nature and is not liable to Irish income tax. However, it should be noted that in the event that an individual becomes Irish tax resident in a given year then any remittances in the year of arrival which were regarded as coming out of foreign source income and which were earned between 1 January of that year and the date of arrival are instead to be regarded as taxable remitted income.

5.2 **CGT**

The remittance basis of taxation also applies to capital gains. Where a chargeable asset is disposed of, the proceeds will include a return of some or all of the capital cost of the asset but may also include an element of gain. It is this gain that may be subject to Irish CGT.

If an asset is sold and a capital loss is made, then there will be no gain on which Irish CGT will be charged. No relief is given for any losses accruing on the disposal of such assets, whether or not the proceeds of the disposal are remitted into Ireland.

6 Capital Acquisitions Tax ("CAT")

CAT is the generic name for the tax that applies to gifts and inheritances in this jurisdiction. CAT is currently charged at the rate of 33% (subject to certain tax free thresholds discussed below).

Since the enactment of the Finance Act 2000, CAT can apply where any of the following four conditions are met:

(a) the assets, the subject of the benefit are Irish situate assets; or

(b) the beneficiary is resident or ordinarily resident in Ireland for the year of assessment in which the date of the benefit falls; or

(c) the disponer (i.e. the provider of the gift or inheritance) is resident or ordinarily resident in Ireland at the date of the benefit; or

(d) the benefit is taken under a discretionary trust created after 1 December 1999 and the settlor is resident or ordinarily resident in Ireland at either:

   (i) the date of the creation of the trust;

   (ii) the date of the benefit from the trust; or

   (iii) the date of death (in the case of a benefit taken after this date).

Therefore where an individual has an Irish domicile this will not in itself give rise to CAT liability, save for one exception whereby CAT may still be charged in respect of distributions from a trust that was established by an Irish domiciled settlor pre 1 December 1999.

In circumstances involving a foreign domiciled individual the rules relating to CAT liability are somewhat different. Under Section 6 of the Capital Acquisitions Tax Consolidation Act 2003 ("**CATCA 2003**"), a foreign domiciled person will not be deemed to be resident or ordinarily resident in Ireland for CAT purposes until he or she is resident for five consecutive years preceding the date of the benefit. In addition, once that individual is within the charge to CAT, they will remain so until they are no longer Irish resident or ordinarily resident.

In calculating a CAT liability, an individual may avail of what is known as a '*group threshold*' which entitles an individual to take a portion of a gift or inheritance tax-free. The level of an individual's group threshold is dependent on the proximity of their relationship with the disponer. In cases where a gift of inheritance passes from one spouse to another, this will not be subject to CAT. Children beneficiaries currently have a tax free threshold of €225,000. In addition, a beneficiary can receive a gift of up to €3,000 per annum from any number of disponers known as the small gift exemption.

July 2015

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