Responsiveness

ARTHUR COX

EXPECT EXCELLENCE

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Tax Group Briefing

Uses of Ireland for German Companies

Ireland has a number of important attributes which make it stand out as an excellent location for establishing business. Attracting foreign direct investment remains a key focus for Ireland and a number of global businesses (such as SAP, Allianz, Bayer and Deutsche Bank) have located part of their European operations here. At an event hosted last year by the German Irish Chamber of Industry and Commerce in Frankfurt, the Chamber chief executive Ralf Lissek estimated that there are 300 German companies operating in Ireland, employing more than 20,000 workers. This demonstrates how many German corporates view Ireland as an excellent location for business.

Ireland has a number of advantages over other jurisdictions and offers a wide range of opportunities for German banks and corporates. It is an EU Member State and a member of the Eurozone. Ireland is an English speaking jurisdiction with a geographical location which offers easy access to both the EMEA and North American markets. Ireland has a highly-skilled workforce, with one of the highest levels of third level education among workers in Europe. Among these workers there is a strong focus on business-related disciplines, over 60% of graduates in the last five years have qualified in business, information communications and technology , engineering or science. In addition, approximately 35% of Ireland's workforce are under 26 years of age which, when coupled with an expected growth in population of 30% by 2020, guarantees a supply of highly educated workers into the future.

A favourable tax regime, including a large network of double taxation treaties and a strong legal and regulatory environment are just some of the excellent reasons for businesses locating in Ireland. One particular advantage for German companies considering investment in Ireland is the 12.5% corporation tax rate for trading companies. Ireland operates a unitary tax system with no local or regionalised taxes so this 12.5% headline rate is the effective tax rate for trading companies. Ireland has 62 double taxation agreements in place including one with Germany. Ireland represents an excellent base for German companies and other multi-nationals to effectively and efficiently manage the profits, functions, and

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shareholdings associated with their international businesses. Furthermore, Ireland has no specific CFC regime, no capital duty taxes and no thin capitalisation rules all of which confer further benefits for companies utilising Ireland as a corporate base.

Ireland and Germany

Ireland's reputation as the Land of Saints and Scholars is similar to Germany's reputation as "**das Land der Dichter und Denker**". Cultural exchanges between the two countries have occurred over the centuries, from Saint Killian of Würzburg who traveled to Germany as part of the spread of Christianity across Europe, as far back as the Eighth Century, to Nobel Prize winner Heinrich Böll publishing his "Irish Journal" in 1957 recounting his travel in Ireland. To this day, a Gaelic Football and Hurling Club named after Saint Killian exists in the Unterfranken region in Germany and St Killian's Deutsche Schule in Dublin educates hundreds of Irish and German students each year, illustrating the cultural and educational links between the two countries.

Arthur Cox

Arthur Cox has been at the forefront of developments in the legal profession in Ireland for almost 100 years. We provide a comprehensive service to an international client base ranging from multinational organisations, banks and financial institutions and established global leaders to government agencies and new players in emerging industry sectors. Our domestic Irish client base is also exceptionally strong and we regularly provide advice to government departments, semi-state bodies, credit institutions as well as Ireland's biggest public listed companies.

Arthur Cox advised the Irish Government and the Department of Finance on the establishment of the National Asset Management Agency ("**NAMA**") in 2009 and continue to represent NAMA. The establishment of NAMA represents a unique plan to mitigate the impact of distressed assets on the balance sheets of Irish credit institutions. Between €500 million and €1 billion worth of debt secured German assets will be transferred from Irish lenders to NAMA and NAMA is committed to halving its balance sheet by 2015 so these assets are likely to be disposed of. This is likely to create significant opportunities and will see a further increase in transactions spanning both jurisdictions.

Our German Practice

Arthur Cox's links with German clients go back as far as the 1920's when Arthur Cox himself acted in the Irish national electrification scheme being out in place by the Irish Government. Siemens Schuckert provided much of the expertise for the construction of a hydroelectric scheme on the River Shannon in Ireland. Arthur Cox was asked to advise Siemens in their negotiations with the Irish Government. It was of no little help to the negotiations that Arthur conducted their meetings in German! The negotiations proved successful and marked an excellent beginning to the association between Arthur Cox and Germany. Siemens remain a client of the firm today, showing our focus on long term relationships with clients.

Arthur Cox also represent a number of German clients across a wide range of business sectors. Our German clients include SAP, Siemens, Lufthansa, Commerzbank, Allianz, Deutsche Bank and Depfa Bank and areas of advice given include corporate, banking and structured finance, financial regulatory, employment and property. We also advise a number of our Irish clients on agreements entered into with German partners in the food, technology and pharmaceutical industries.

Arthur Cox is also a member of the German-Irish Chamber of Commerce and the German-Irish Business Lawyers Association.

Potential Uses of Ireland for German Companies

Examples of structures which have been successfully implemented in Ireland include:

Tax Efficient Holding Company structures: Private holding companies incorporated and tax resident in Ireland provide tax efficient mechanisms for holding shares in subsidiary companies, and EU subsidiaries in particular. Not only do such companies benefit from certain tax exemptions but the governing company law regime offers great flexibility. Many private companies and family holding vehicles have chosen Ireland as the base of their European or intermediate holding companies. Advantages for holding companies in Ireland include dividends being payable without withholding tax to countries with which Ireland has a double taxation agreement, certain capital gains tax exemptions on share disposals, a lack of CFC legislation, no thin capitalisation rules and relief from stamp duty on share transfers within 90% groups. Recently, a Middle Eastern investor used an Irish holding company to acquire and hold their stake in a large listed German manufacturer.

Corporate Migrations: A number of NYSE and NASDAQ listed companies (among them Accenture, Willis, Cooper, Ingersoll Rand and Covidien) and London Stock Exchange listed companies (among them Shire, Experian and UBM) have undergone corporate migrations and have established their domicile in Ireland. In another endorsement of Ireland as an excellent location for holding companies, another NYSE listed company James Hardie recently moved its domicile from the Netherlands to Ireland by converting to a European company (Societas Europaea (SE)). Also the implementation of the EU Merger Directive mean there are even greater mechanisms available for European companies to move their place of incorporation to Ireland.

Our briefing on Corporate Migrations can be accessed here:

http://www.arthurcox.com/whats-new/publications/briefing_corporate_group_corporate_migration_autumn2009.html

Finance: Special purpose vehicles (SPVs) for structured finance transactions, including financings for international groups, repackagings, synthetic and cash flow CDOs, asset-backed commercial paper programmes, securitisations, LPN structures and a host of other financing transactions are common in Ireland and are designed to minimise tax leakage and maximise returns for investors. The favourable treatment of SPVs has recently been extended to allow the securitisation of aircraft assets. These transactions have made Ireland into a global hub for financial services and allow Ireland offer maximum benefits to companies and investors in countries such as Germany.

We have represented a number of funds that have used Irish vehicles to acquire shares in German listed companies and German debt, particularly debt secured on German real estate.

An outline guide to Establishing SPVs in Ireland can be accessed here:

http://www.arthurcox.com/whats-new/publications/Establishing_spvs_in_ireland_autumn2008.html

Intellectual Property: There are numerous advantages for multi-national companies with large Intellectual Property ("**IP**") portfolios who locate and manage these portfolios in Ireland. The effective corporation tax rate can be reduced to as low as 2.5% for Irish companies whose trade involves the exploitation of intellectual property. The Irish IP regime is broad and applies to all types of IP. A generous scheme of capital allowances as well as a tax credit for money invested in research and development in Ireland offer significant incentives to companies who locate their activities in Ireland.

A well-known global company recently moved the ownership and exploitation of an IP portfolio worth approximately $7 billion to Ireland.

A guide to effectively utilising an Irish IP Holding company can be accessed here:

http://www.arthurcox.com/whats-new/publications/ireland_as_a_location_intellectual_property_trading_company_october2010.html

Cross Border Mergers: The implementation of Directive 2005/56/EC on Cross-Border Mergers across countries in the European Economic Area has facilitated mergers between companies located in places like Ireland and Germany. Limited companies that are capable of merger under German law can now merge into an Irish limited company, and vice versa, with the original merging company ceasing to exist on completion of the merger. A Cross Border Merger streamlines the process for transferring companies and their assets and liabilities, between jurisdictions. A Cross Border Merger into Ireland will be generally tax neutral from an Irish perspective and there may be an additional benefit available by claiming tax relief in Ireland for losses which would be unavailable in other countries. Examples of Irish/German Cross Border Mergers we have advised on include LBBW and Dexia Bank.

A brief guide to Cross Border Mergers in Ireland can be accessed here:

http://www.arthurcox.com/whats-new/publications/briefing_tax_group_cross_border_mergers_autumn2009.html

Trading 12.5% - Establishing operations in Ireland: As mentioned above, a corporation tax rate of 12.5% applies to profits of trading companies. This is relatively low when compared to other jurisdictions and is a main factor in foreign companies locating here. The scope of what is considered to constitute "trading activities" is quite broad and would include most manufacturing activities as well as other businesses. Passive (or non-trading) income of a company is taxed at 25%. There are no barriers to foreign companies locating here. German groups with a large presence in Ireland include SAP, Siemens, BASF, Enercon, Allianz, Bayer, Bertelsmann and Hannover Re.

A brief guide to Tax in Ireland can be accessed here:

http://www.arthurcox.com/whats-new/publications/in_brief_tax_guide_autumn2010.html

Funds: Ireland is a leading on-shore location for global funds, there is currently approximately €700 billion in net assets in funds domiciled in Ireland. Ireland offers a highly regulated funds environment and requires independent custody and administration arrangements for all its funds. The Irish funds regime provides for both UCITS and non-UCITS funds, Ireland has been the fastest growing UCITS funds domicile and UCITS funds account for almost 80% of Irish domiciled funds. In addition to being subject to a legal and regulatory framework that is tailor-made for the funds industry, there are a number of beneficial tax provisions for funds domiciled in Ireland. These include there being no Irish tax levied on regulated funds and also no annual subscription tax for funds, which marks Ireland out from other jurisdictions. Arthur Cox has advised numerous German investment managers and promoters on the establishment of UCITS and non UCITS funds in Ireland and on other matters relating to the operation of Irish funds. Companies we have advised include Allianz Global Investors and M.M. Warburg & Co.

A guide to funds in Ireland can be accessed here:

http://www.arthurcox.com/whats-new/publications/ucits_and_non-ucits_funds_in_ireland_autumn2010.html

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