IRELAND

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INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

A reduced rate of capital gains tax ("CGT") of 20% (as opposed to the standard rate of 33%) has been introduced for entrepreneurs and the self-employed with effect from 1 January 2016. The reduced CGT rate will apply to the disposal in whole or in part of a trade or business up to a maximum lifetime limit of €1 million of net chargeable gains. The relief will be available to the individual owners of a trade or business on the disposal of all or part of that trade or business. The individual must have owned the chargeable business assets for a continuous period of 3 years in the 5 years immediately prior to the disposal of the assets. Relief will apply to the disposal of shares in a private company provided the individual owned at least 15% of the shares in the company (or 15% of the shares in a holding company which holds 100% of the shares) and was a full time working director for at least three years before the sale. Relief will not apply to disposals of the following assets:

- shares, securities or other assets held as investments
- development land
- assets on the disposal of which no chargeable gain would arise
- assets personally owned outside a company, even where such assets are used by the company.

Certain anti-avoidance measures were introduced in Finance Act 2015. Of particular relevance to M&A deals is a provision to counteract schemes which are designed to avoid a CGT charge on the sale of Irish shares by non residents. Such schemes involved transferring cash to the company prior to the sale to ensure that the shares derived their value from cash rather than Irish land or buildings, and were therefore outside the scope of Irish CGT.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

In general Ireland's tax legislation already covers many of the areas which the BEPS project has focused on e.g. anti-avoidance and mandatory disclosure. In addition, recently Ireland has introduced a number of measures with a strong focus on BEPS compliance, including Country-by-Country reporting. Ireland has signed up to the Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports. Ireland was one of the countries which participated in the development of the Multilateral Instrument pursuant to Action 15. It has not yet been made public as to what reservations it will invoke. However it is expected that it will choose a Principle Purpose Test instead of a Limitation of Benefits clause to prevent treaty abuse.

The Irish law implementing the EU Parent Subsidiary Directive was amended in Finance Act 2015 to introduce broader anti-avoidance measures. These changes ensure that the reliefs provided for under the PSD will not apply where arrangements are in place which are not genuine, and where the main purpose, or one of the main purposes of such arrangements is to obtain a tax advantage which defeats the objective of the PSD.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES AMONG ACQUISITIONS MADE THROUGH A SHARE DEAL VERSUS AN ASSET DEAL IN YOUR COUNTRY?

Buyer's Perspective

Stamp duty

The stamp duty on the transfer of shares is 1% of the consideration paid or of the market value if higher. However, provided certain conditions are complied with, an exemption from stamp duty is available on the sale of shares where the amount or value of the consideration is €1,000 or less.

For asset deals, the stamp duty rate is 2% of the consideration paid or of the market value if higher. There is an exemption on the sale or transfer of certain intellectual property such as patents and trademarks. Where assets are capable of being transferred by delivery and are transferred by delivery and not pursuant to any written instrument, then no stamp duty applies.

VAT

The purchase of shares is a VAT-exempt activity. Therefore, a company which incurs costs in relation to the acquisition of shares in a newly acquired entity is not generally entitled to recover the VAT on such costs.

However there are specific circumstances where the Irish Revenue Commissioners ("Revenue") accepts that a company which has acquired shares can recover a portion of the VAT incurred on such costs. See section 11 below for further detail.

Generally the transfer of assets is subject to VAT. However, where the assets transferred constitute a business or part of a business capable of being operated on an independent basis, the transfer is deemed not to be a supply for VAT purposes. This exemption applies to the transfer of tangible and intangible assets. It also applies even if the business has ceased trading.

Base cost and deferred gain

In an asset deal the purchaser's base cost in the assets will be the price paid for the assets. This will be relevant for any future sale of the assets.

In a share deal the purchaser's base cost is represented in the shares acquired. To the extent that the target company owns assets which have a base cost of less than their current market value, a deferred or latent gain exists. Such a deferred gain is often taken into account by purchasers in deciding on the price for the shares. However since the stamp duty is less on a share sale than on an asset sale, this may also be taken into account in the pricing.

Seller's Perspective

Double taxation

The sale of assets in a company will typically result in 2 layers of taxation, and corporation tax will be payable by the company in respect of any chargeable gains or balancing charges triggered on the sale of the target assets. CGT or income tax or corporation tax will also be payable in the hands of the ultimate shareholders, depending on whether the proceeds from the sale are distributed upon a subsequent liquidation of the company or as a dividend. In contrast, the sale of shares avoids double taxation on the extraction of the sale proceeds. Share sales typically only trigger a single layer of taxation — either CGT or corporation tax in the hands of the selling shareholder. In addition, in certain circumstances where a company disposes of shares it will be exempt from CGT under the participation exemption regime (see section 15 below).

Losses

In a share sale, where a target company has losses, it may be possible for the losses to be used going forward (see section 8 below). However, in an asset sale, it is not possible to purchase losses.

VAT recoverability

Generally the transfer of assets is subject to VAT. However, depending on the VAT status of the seller and purchaser, where the assets transferred constitute a business or part of a business capable of being operated on an independent basis, the transfer is not deemed to be a supply for VAT purposes. This applies to transfers of tangible and intangible assets and applies even if the business has ceased trading.

There are provisions under Irish VAT legislation which may allow a company to recover VAT incurred on costs associated with the transfer of a business or part of a business.

The transfer of shares is VAT-exempt under Irish VAT legislation. Therefore, where costs (eg professional fees) are incurred by a vendor and those costs have a direct and immediate link to the sale of the shares, the VAT on such costs is generally irrecoverable under Irish legislation (apart from transactions involving non-EU clients (i.e. qualifying activities).

EU case law suggests that VAT on costs incurred in a disposal of shares may in certain circumstances be recoverable where a holding company disposes of shares in a subsidiary to which it has supplied management services to.

Exiting a group

If a company leaves a group as a result of a sale of shares, a CGT charge may arise where an asset has been acquired from a group member within the previous 10 years.

Anti-avoidance

Anti-avoidance legislation provides that, where dividends or distributions are made in connection with the disposal of shares in a company, these can be taxable as part of the proceeds of the disposal of the shares. This provision applies where the amount of the dividends paid to a company is more than would reasonably be expected to be made if there were no disposal of the shares.

4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

In share deals in Ireland, no step-up in value of any assets of the target company is possible.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL IN YOUR COUNTRY?

No specific tax depreciation is available for goodwill in Ireland. However tax relief is available in Ireland on capital expenditure incurred by companies on the acquisition of intangible assets, including goodwill which is directly attributable to these intangible assets.

The definition of an ‘intangible asset’ which qualifies for this relief is very wide and includes patents, trademarks, brand names, domain names, any copyright, computer software, know-how generally related to manufacturing or processing and customer lists (except where such customer lists have been provided directly or indirectly in connection with the transfer of a business as a going concern).

The relief is designed to provide tax allowances broadly equal to the write-off to the profit and loss account available under normal accounting rules for capital expenditure incurred on the provision of specified intangible assets.

Under the relief, the capital expenditure incurred to acquire intellectual property can be written off either in line with the accounting write-off or over a 15-year period. If a company makes this election, a rate of 7% will apply for years 1 to 14 and of 2% for year 15. Certain clawback provisions may apply if the asset is disposed of within 5 years of acquisition.

6. WHAT ARE THE LIMITATIONS TO THE DEDUCTIBILITY OF INTEREST ON BORROWINGS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

In considering whether any limitations apply to the deductibility of interest on borrowing, it is necessary to look at the various bases upon which a deduction can be claimed:

- **Tax deduction against trading income**

The general principle is that where interest is incurred wholly and exclusively for the purpose of a trade carried on by the company in the period in which the interest is accrued, it is allowable as a trading expense.

- **Tax deduction against rental income**

In general interest on money borrowed to purchase, improve or repair a rented property is allowed as a deduction against the related rental income in arriving at the taxable rental income under Case V of Schedule D of the Irish Taxes Consolidation Act.

The deduction is limited to 75% of the interest accruing on or after 7 April 2009 on loans for the purchase, improvement or repair of residential rental property, including foreign property loans. The deduction of interest on loans used to purchase, repair or improve rented commercial property is unrestricted.

- **Interest as a charge on total income (for companies and individuals)**

Subject to certain conditions, interest relief may be available to a company or an individual on interest paid on monies borrowed to acquire shares in or loan money to a trading company or a company whose business consists wholly or mainly of holding stocks, shares or securities in such a company. A company can also claim interest relief on loans applied in acquiring an interest in or loaning money to a company whose income arises wholly or mainly in the form of rents or other income from property. However relief is not available to an individual in such circumstances.

Subject to a number of conditions being met, interest relief is available and can be treated as a 'charge'. This means that it can be off-set against the company's total profits or, in the case of an individual, against the income for the year of assessment in which the interest is paid. The charge can also be used against profits in other group companies subject to certain conditions. It should be noted that this is a complex area which is subject to a number of detailed anti-avoidance provisions.

7. WHAT ARE USUAL STRATEGIES TO PUSH-DOWN THE DEBT ON ACQUISITIONS?

In the case of a share purchase, assuming that the conditions set out above in relation to interest as a charge are satisfied, interest relief may be available as a charge in respect of the interest paid on the funds borrowed to acquire the shares. Such interest is deductible against the total profits of the company. However to the extent that there is excess interest, such current-year interest can be surrendered within a corporation tax group (i.e. a 75% group). The interest surrendered can be off-set against the other company's total profits, minimising its tax.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

In general there are no particular rules allowing a deemed interest deduction for equity contributions or a deduction for paid in capital.

Subject to certain restrictions, relief may be available to companies in respect of interest on monies borrowed to purchase, directly or indirectly, a trading company or a company whose income derives wholly or mainly from rents or other income from property.

Ireland does not have thin capitalisation rules.

9. ARE LOSSES OF THE TARGET COMPANY(IES) AVAILABLE AFTER AN ACQUISITION IS MADE?

General rule for using trading losses forward

Subject to anti-avoidance legislation, in general a trading loss in an accounting period may be carried forward indefinitely for off-set against the trading income from the same trade in succeeding accounting periods.

Anti-avoidance legislation on sale of shares

Where shares in a loss-making company are sold, specific rules apply to carrying losses forward. The legislation provides that relief for the losses forward is not available where:

- Within any period of 3 years there is both a change in the ownership of a company and (whether earlier or later in that period or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- At any time after the scale of the activities in a trade carried on by a company has become small or negligible and before any considerable revival of the trade, there is a change in the ownership of the company.

The legislation defines ‘major change in the nature or conduct of a trade’ as including:

- A major change in the type of property dealt in, or services or facilities provided, in the trade, or
- A major change in customers, outlets or markets of the trade.

Following a spin-off (known as a “three-party-share-for undertaking swap”) it should be possible for losses carried forward to be transferred where a trading company ceases to carry on a trade and thereafter another company carries it on, provided there is substantial identity in the ownership of the trade before and after the change. In order for losses to be available the following conditions must be met:

- there must be a transfer of and succession to a trade;
- an interest in the trade of at least 75% belongs to the same person at some time within one year before the change and at sometime within two years after the change; and
- between the times when the ownership test is satisfied, the trade is carried on only by a company within the charge to corporation tax.

There are no specific rules related to the transfer of losses on a domestic merger of private companies. The provisions which apply to spin-offs may be relevant for mergers depending on the circumstances. However it is likely that Revenue confirmation would need to be sought on the point.

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

If the Irish target company has claimed any reliefs, allowances or credits any such claims should be reviewed to ensure such amounts were properly claimed. In particular where a target company has claimed research and development tax credits, it should be considered whether the activity would fall within the definition of “research and development" and whether the target has retained all necessary documentation. This is an area which Revenue scrutinise quite closely.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

Stamp duty is payable on the transfer of shares in Ireland at a rate of 1% of the consideration paid for the shares or of the market value, whichever is the higher. It is worth noting that there is no stamp duty on the issue (as opposed to the transfer) of new shares.

The transfer of shares or other securities in a company is exempt from VAT.

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

If acquisition costs are capitalised they will form part of the base cost of the asset for CGT purposes and as such will not be deductible as a trading expense. Such acquisition costs should be deductible on a future sale of the property.

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

The purchase of shares is a VAT-exempt activity. Therefore, a company which incurs costs in relation to the acquisition of shares in a newly acquired entity is generally not entitled to recover the VAT on such costs.

However there are specific circumstances where Revenue accepts that a company which has acquired shares in a new entity can recover a portion of the VAT incurred on such costs. Where the purchaser plays an active part in the management of the newly acquired entity and provides services such as accounting, administration or marketing services, then a portion of the VAT incurred on the costs can be recovered by the purchaser. Revenue reviews each transaction on a case-by-case basis. Therefore each transaction should be reviewed individually to determine whether the purchaser of the shares is entitled to an element of VAT recovery on the costs incurred.

Generally the transfer of assets is subject to VAT. However, depending on the VAT status of the seller and purchaser, where the assets transferred constitute a business or part of a business capable of being operated on an independent basis, the transfer is deemed not to be a supply for VAT purposes. This exemption applies to the transfer of tangible and intangible assets. It also applies even if the business has ceased trading. Certain conditions need to be met in order for the exemption to apply. There are provisions under Irish VAT legislation which may allow a company to recover VAT incurred on costs associated with the transfer of a business or part of a business.

Particular care should be taken to analyse the detailed rules which apply to immovable property.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION BY FOREIGN COMPANIES?

A company that is non-resident in Ireland is generally only liable to Irish CGT on the disposal of 'specified assets', including land and buildings in Ireland and the shares of an Irish company which derives its value, or the greater part of its value, from Irish land or buildings.

A foreign company should be aware that when acquiring shares in an Irish company which derives its value, or the greater part of its value, from Irish land or buildings, the purchaser is obliged to withhold 15% of the consideration and remit same to Revenue unless the vendor provides a Form CG50 (CGT Clearance Certificate) (see point 14 below for further detail). This will be relevant on a future sale of the shares in any such Irish company as Revenue will only issue a Form CG50 to a non-resident where the non-resident has:

- satisfied Revenue that they have no CGT liability; or
- satisfied Revenue as to the amount of the CGT liability and that the tax will be paid by the non-resident.

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL ENVIRONMENT THROUGH MERGERS OR A TAX GROUP?

The Companies Act 2014, which commenced on 1 June 2015 introduces a statutory framework for mergers and divisions between private companies in a purely national context for the first time under Irish law. Previously, mergers between private companies could generally only be implemented if there was a cross-border element to the transaction and by obtaining court approval. The Act allows for a merger of private domestic companies, without the need for court approval. The Irish tax legislation has not yet been updated to specifically allow domestic mergers to take place on a tax neutral basis and as such Revenue confirmations may be required in the event of a merger.

Subject to certain conditions it should be possible for a group to reorganise in a tax neutral manner. Relief is available from corporation tax, CGT and stamp duty on intra-group transfers. It should be noted that the definition of a “group company” or “associated company” differs for CGT, corporation tax and stamp duty. Any such reliefs may be clawed back if the group relationship is broken within particular time limits.

16. IS THERE ANY PARTICULAR ISSUE TO CONSIDER IN CASE OF TARGET COMPANIES OF WHICH MAIN ASSETS ARE REAL ESTATE?

Withholding tax obligation

A withholding tax applies where, on a purchase of shares in a company, the consideration exceeds €500,000 and the shares (other than shares quoted on a stock exchange) also derive their value or greater part of their value directly or indirectly from land and buildings in Ireland, minerals in Ireland or any minerals or mining rights, exploration, exploitation right in a designated area.

In these cases, under Section 980 of the Taxes Consolidation Act 1997, the purchaser must withhold from the consideration and remit to Revenue tax amounting to 15% of the consideration unless the vendor provides a Form CG50 (CGT Clearance Certificate). A CG50 is also required when the consideration for the shares exceeds €500,000, the shares were acquired following a reorganisation and the ‘old shares’ fell within the category of shares outlined above.

The 15% withholding tax obligation does not apply if the seller obtains a CG50 from Revenue and delivers it to the purchaser prior to the consideration being paid.

VAT

Ireland has complex rules for VAT on property which should also be closely examined. A capital goods scheme tracks the use of a property over a 20-year period to ensure the VAT recovered reflects the use of the property over the period. An annual review will establish if there are any adjustments to be made. There are also record-keeping requirements over the life of the capital good.

Close company

A close company is a company which is controlled by 5 or fewer ‘participators’. When there is surplus rental and investment income, a close company surcharge applies (at a current rate of 20%) if such income has not been distributed by the close company within 18 months of the end of the accounting period.

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

There is no fiscal unity or consolidated tax grouping in Ireland. However, group relief may be claimed where one member of a group is entitled to surrender its trading loss to another member of the same group. In order to be deemed a member of a group, the following conditions must be satisfied:

A) one company must be a 75% subsidiary of the other company or both companies must be a 75% subsidiary of a third company;

B) the parent must hold 75% of the ordinary share capital of the subsidiary;

C) the parent must be beneficially entitled to not less than 75% of the profits available to equity holders; and

D) the parent must be beneficially entitled to not less than 75% of the assets available for distribution on a winding-up.

The 75% group relationship may be traced through companies resident in the EU, an 'EEA treaty country' or another country with which Ireland has a double taxation agreement (a "relevant territory"). In addition, in determining whether one company is a 75% subsidiary of another company for the purpose of the group relief provisions, the other company must either be resident in a 'relevant territory' or quoted on a recognised stock exchange in a 'relevant territory' or on another stock exchange approved by the Minister for Finance.

In general the surrender of losses is only allowed by Irish resident companies, or, in certain cases, branches of companies which are resident in the EU or an 'EEA treaty country' that are within the charge to corporation tax in Ireland and such losses may only be surrendered to an Irish resident company. However in certain circumstances losses that are incurred by a subsidiary company which is resident in an EU Member State or an EEA state with which Ireland has a double tax treaty may be surrendered to an Irish parent company. It must be shown that the loss being surrendered to the Irish parent company cannot be utilised in any other way by the foreign subsidiary.

In addition, group relief may be claimed from capital gains tax where there is a 75% direct or indirect EEA group (the CGT group does not extend to treaty countries beyond the EEA).

18. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY?

CGT for residents

The current rate of Irish CGT is 33%. Individuals who are resident or ordinarily resident and domiciled in Ireland are liable to Irish CGT on their worldwide gains. The charge to CGT applies to individuals, trusts, unincorporated bodies and companies in the case of development land gains.

Companies resident in Ireland are taxed on chargeable gains, other than for development land, at the same rate as CGT, but the tax falls under corporation tax liability. As a general rule, companies incorporated in Ireland are resident in Ireland. However an Irish incorporated company regarded as not resident in Ireland by virtue of a tax treaty is treated as not being tax resident in Ireland. A company can also be tax resident in Ireland (whether it is incorporated here or not) if its central management and control is exercised in Ireland.

CGT for non-residents

A company that is non-resident or an individual who is neither resident nor ordinarily resident is liable to Irish CGT on the disposal of 'specified assets', including land and buildings in Ireland and the shares of an Irish company which derives its value, or the greater part of its value, from Irish land or buildings.

An individual who is resident or ordinarily resident in Ireland but not domiciled is liable on gains from the disposal of Irish situate assets in full and on gains from the disposal of foreign assets to the extent that the gains are remitted into Ireland.

An individual who is temporarily non-resident in Ireland may, under Irish anti-avoidance legislation, be liable to Irish tax on any chargeable gain realised on a disposal during the period in which such individual is non-resident.

Participation exemption regime (applies only to companies)

Subject to certain conditions, capital gains realised on the disposal by an Irish resident company of shares in another Irish company or in companies resident in another EU country or a country with which Ireland has a double taxation treaty will generally be exempt from Irish CGT provided the following criteria are met:

- The shares disposed of must be held in a company that is, at the time of the disposal, resident for tax purposes in either an EU member state (including Ireland) or a country with which Ireland has a double taxation treaty
  - The company that disposes of the shares must, either directly or indirectly:
  - hold least 5% of the company's ordinary share capital
  - be beneficially entitled to at least 5% of the profits available for distribution to equity holders of the company, and
  - be beneficially entitled in the case of a winding up at least 5% of the assets available for distribution to equity holders

for a consecutive period of 12 months ending not more than 2 years before the date of disposal

- Either the subject company alone or, alternatively, the combination of the subject company, the disposing company and every other company in which the disposing company holds a 5% or more equity interest, considered as a whole, must exist wholly or mainly for the purposes of carrying on a trade or trades
- The shares disposed of must not derive their value or the greater part of their value from land or mineral rights in Ireland, or be held as part of a foreign business fund

The exemption extends to disposals of certain assets related to shares, including options over shares, securities convertible into shares or options to acquire securities convertible into shares.

19. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES ARE REINVESTED?

Generally, there is no rollover relief available in Ireland.

20. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

There are no requirements for holding or finance companies to have a certain level of substance. However where a company has no substance in Ireland this will impact on the company's VAT recoverability and the corporate tax rate which will apply. It would be necessary to consider whether any foreign tax implications would arise in such circumstances and whether benefits under the relevant tax treaty would be available.

21. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

As indicated above at section 15, the Irish tax legislation has not yet been updated to specifically allow domestic mergers to take place on a tax neutral basis and it is necessary to look at each situation on a case-by-case basis to determine the tax consequences. As such Revenue confirmations may be required in the event of a merger.

Stamp Duty

Cross border mergers effected under the EU Regulations should not be subject to stamp duty. Relief from stamp duty may be available on domestic mergers and spin-offs provided certain conditions are met. Revenue confirmation may be required in certain cases.

Capital Gains Tax

Relief from CGT should be available in respect of a pre-sale spin-out known as a "share-for-undertaking three party swap". This involves the Target's business being transferred to a new company set up outside the group in consideration of the issue of shares to the shareholder of the Target. A specific indemnity is usually sought for any liabilities (including tax liabilities) related to the reorganisation.

CGT relief should be available in respect of cross-border mergers effected under the EU Regulations. In respect of domestic mergers, CGT relief should be available subject to certain conditions. Revenue confirmation may be required in certain cases.

VAT

No VAT should arise on a transfer of shares as part of a spin-out/merger. Transfer of business relief may apply to any transfer of assets such that any such transfer taking place pursuant to a merger/hive-out should not be deemed to be a supply for VAT purposes.

MANAGEMENT INCENTIVES

22. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES?

Approved Share Option Scheme

Income tax relief will be available where a right to acquire shares in the company is granted by the company to its employees or directors and exercised in accordance with a share option scheme that has been approved by the Revenue Commissioners. A three year claw back provision applies. In order to qualify for an approved share option scheme, the scheme must be made available to all employees and directors at the same time in similar times subject to a maximum service requirement of three years. There is scope to include a "key employee" element to an approved share option scheme but the scheme cannot be limited to key employees only. The total number of shares granted to key employees or key directors cannot exceed 30% of the total number of shares in respect of which rights have been granted to all employees and directors under the scheme. Where a share option scheme has not been approved by Revenue, income tax and CGT at the normal rate will apply. Entrepreneurial relief will apply to the liability to CGT where the individual disposing of the shares holds at least 5% of the company's ordinary share capital. In such circumstances, CGT will be chargeable at 20% rather than the standard rate of 33%.

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