

## IRISH INCOME TAXATION IMPLICATIONS

### Income Tax

The receipt of rental income by an Irish Resident individual will have implications under both Irish and UK tax law. UK tax law applies across the whole of the United Kingdom, even though most other laws differ between England and Wales and the other part of the UK.

Under Irish Tax Law a person who is an resident (or “ordinarily resident”) in Ireland and is Irish domiciled will be subject to Irish Income Tax on his or her entire world wide income. Unless an individual’s income tax is fully accounted for through deduction at source under PAYE, an individual must make a self assessment return in respect of all his or her income in a tax year (which is now the calendar year) by 31 October the following year. There is generally an obligation to pay preliminary tax for the current year by 31 October in that year.

The obligation to make a return of rental income arises irrespective of the fact that there may be no ultimate tax liability. An individual with rental income from any source in the world must keep records to enable returns to be made of the tax due. The records must be kept in written or electronic form and must be retained for at least 6 years.

The rules for calculating any Irish Income Tax liability on foreign rent are the same as the rules applying to Irish rents. Although the rules are the same, the rental income is categorised as foreign source income. This has certain consequences including, in particular, that certain tax allowances and capital allowances (e.g, “S23” type reliefs) which are available for offset against Irish rental income, will not be available.

Expenditure on rates, services, maintenance and repair, insurance and management (not capital expenditure) and interest on monies borrowed (not capital repayments) for

the purchase, improvement or repair of the property are deductible. No deduction is allowed for pre-letting expenses and expenses between lettings. Letting agents and negotiation fees will generally be allowable. Expenses incurred between lettings are allowed under certain conditions. The cost of furniture can be written off at 12.5 % per annum.

Strictly speaking, losses from foreign source income are not permitted to be rolled forward. By concession, the Revenue allow a loss to be carried forward and set against income on future rentals on the same property.

Irish Income Tax is always assessed in Euro. Monies received should be converted into Euros after receipt. The amount when converted into Euro is the figure to take. If the items are numerous, a translation of the foreign currency amount at an average rate will be allowed.

### **Double Tax Credit**

The rules in regard to Double Taxation are intricate. The Irish-UK Double Taxation Treaty provides for credit for any UK Tax payable on the rents against corresponding Irish Tax. Because the property is situated in the UK, it has primary taxing rights (i.e. Ireland gives the credit). The manner in which the credit is calculated is not based on comparison of tax rates but looks at the actual effective rate of tax payable in both countries. The credit is calculated on the basis of the effective rate of tax. The net effect (broadly speaking) is that tax is payable at the higher of the two countries' rates.

The Irish UK Double Tax Treaty allows for complete exemption for certain Irish and UK pension funds operating in the other country. Therefore such funds can, subject to certain conditions, be exempt from Income tax in Ireland and in the UK.

### **Different Types of Purchaser**

The above sets out the general position for an Irish domiciled and resident person, who holds rental property in the United Kingdom. Depending on circumstances, other significant factors may come into play. The following are some significant exceptions and provisions that are relevant to rental income.

Certain classes of pension fund, including self directed pension funds have exemption from both Irish and UK tax in respect of their income. This has facilitated the common practice of Irish Pension Funds purchasing UK property.

Certain Irish Investment Products are taxed in a unique way. Generally collective investment products, such as life assurance policy funds, unit trusts and similar funds are subject to a single tax at either 20 or 23% with no further taxation liabilities. Prior to the Irish Finance Act 2007, it was possible to create co-ownership and partnership type arrangements in relation to property which fell within the collective investment definition so as to be subject only to 20% or 23% tax. However, since Finance Act 2007 products set up after this date will only receive special treatment concerned when they are regulated collective investments (e.g life assurance funds or mutual funds). This considerably narrows the scope for use of this tax planning device.

The rules regarding Non-Irish Domiciled individuals were changed very significantly by the Finance Act 2008. Domicile is a legal concept that refers to a person's long term permanent home. A person who was not born in Ireland and who is living in Ireland for a period but intends to return to another country in the long term, is not likely to have Irish domicile. Up to 2008, an Irish resident non-domiciled individual was liable for all income arising in Ireland and the UK. He or she was liable to tax on foreign income (i.e. non-Irish, non-UK) only to the extent that it is actually remitted into Ireland. This rule has now been modified so that the remittance basis applies to UK income. Therefore, UK domiciled Irish resident individuals will only be liable to Irish income tax on foreign

income (including UK rent) to the extent that it is remitted into Ireland. An equivalent change has been made on the UK side, which will benefit Irish domiciled UK residents.

Irish resident companies are subject to the same income tax rules as individuals. The rate of company tax for foreign investment income is 25% (not 12.5 %) Further issues arise for Irish resident individuals in extracting monies from the company. A 20% surcharge may arise in respect of undistributed income i.e. not paid out as a dividend within 18 months of the end of the accounts period.

When a company is a non Irish resident for tax purposes (controlled from outside Ireland) and complies with certain other tests it will generally not be liable to Irish Income Tax on foreign investment income at all. However, there are rules which deem capital gains earned by a non-resident company to be taxable on the Irish shareholders. The positions are complicated and would depend on individual circumstances. The rules in respect of income tax are not as severe as in the case of Capital Gains.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.