ATT Welcome November 2020

Welcomes

28 October 2020

Ireland: a different country?

We had a very interesting meeting of the Professional Standards Committee in September.

Besides discussing the 2020 Annual Return, we discussed indemnity insurance for working in Northern Ireland. Tongue in cheek, it was suggested that maybe Northern Ireland is not considered part of the United Kingdom. This caused me to think back to the last time I visited the United States on holiday.

Invariably, when the locals hear my accent they ask where I come from. When I say Belfast in Northern Ireland I am met with a blank stare. When I say Ireland, the light comes on – they know where Ireland is, possibly because 10% of the population (around 33 million) of the US have full or partial ancestry to Ireland.

Is there really a distinction to be drawn between Northern Ireland (UK) and Ireland (not UK) on the international tax stage? Let us consider the double taxation agreements (DTAs) negotiated by the UK and by Ireland with third party countries. Some of them do make for interesting reading. I had the opportunity a few years ago to look at DTAs in relation to the payment of royalty income to a company incorporated in Northern Ireland (UK):

- Australia: Under Article 12 (Royalties) of the UK/Australia DTA, the rate of withholding tax is restricted to 5%. Under Article 13 (Royalties) of the Ireland/Australia DTA, the rate of withholding tax is 10%.
- Japan: Under Article 12 (Royalties) of the UK/Japan DTA, there is no withholding tax - royalty income is only taxable in the country of residence of the beneficial owner. Under Article 13 (Royalties) of the Ireland/Japan DTA, the rate of withholding tax is restricted to 10%.
- Poland: Under Article 12 (Royalties) of the UK/Poland DTA, the rate of withholding tax is restricted to 5%. Under Article 12 (Royalties) of the

Ireland/Poland DTA, the rate of withholding tax is restricted to 10%.

- Spain: Under Article 12 (Royalties) of the UK/Spain DTA, there is no withholding tax - royalty income is only taxable in the country of residence of the beneficial owner. Under Article 12 (Royalties) of the Ireland/Spain STA, the rate of withholding tax could be 5%, 8% or 10% depending on the nature of the royalties.

In Article 12 of both DTAs with the US there is no withholding tax; royalty income is only taxable in the country of residence of the beneficial owner.

I also had the opportunity to look at the Article dealing with sportspersons (rugby players) when they head off on international tours:

- South Africa: Under Article 16 of the UK/RSA DTA, income earned whilst playing in South Africa may be taxed in South Africa, unless the visit is 'supported wholly or mainly by public funds' from the country of residence, in which case there is no tax liability in South Africa. A similar exemption does not exist in the Ireland/RSA DTA.
- Argentina: The UK/Argentina DTA is like that with South Africa, except the phrase is 'substantially supported by public funds'. There is no DTA between Ireland and Argentina.

Where is all this leading? At the end of the transition period, I understand that EU legislation will no longer be effective in the UK (unless some agreement is reached between the UK and EU?). Since January 1992, the EC Parent and Subsidiary Directive (90/435/EC) prevents the imposition of withholding taxes on dividends paid by a company resident in one EU member state to a company resident in another EU member state (see bit.ly/3k1uUWF) where the company receiving the dividend holds at least 25% of the capital of the company paying the dividend. From January 2021, this Directive may no longer apply, meaning the EU resident subsidiary of a UK resident parent company may have to account for local withholding tax.

A list of DTAs the UK has can be found at bit.ly/318q8Pv.

The tax issues surrounding Brexit are not therefore restricted to indirect taxes (VAT and import duty), but will also impact other taxes, such as corporation tax and social security costs. As time continues to run down to 31 December 2020, I can see there are still some immediate direct tax issues to be highlighted for clients.

Continue to stay safe, and I hope to be back in the New Year.

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