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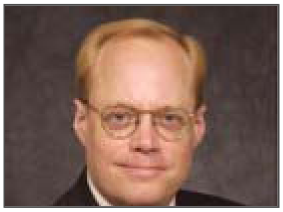

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TAXES 10/15/2015

U.S. Tax 35%, Ireland 12.5%, New Irish Tech Rate 6.25%, Any Questions?

You have to hand it to Ireland for pluck. After being accused of giving tax breaks, it is going even lower. Forget the sweetheart tax deals with Apple and other companies, and the famous Double Irish tax structure. Ireland has long been the go-to place for big pharma and tech. Companies like Apple, Google, Twitter, and Facebook could call Ireland their home away from home.

One reason is a corporate tax rate of 12.5%, which goes down easier than America's 35%. But companies have long avoided that 12.5% rate. The Double Irish became a standard to funnel royalty payments for intellectual property from one Irish-registered subsidiary to another. The latter is usually in a country with no corporate income taxes. Brussels pushed hard on Ireland to end those deals, but generous grandfather rules will keep these companies imbibing for years.

The countries that encourage them want business, and they will probably get it.

The move will hardly make Ireland a more demure neighbor. Many European countries already see the Emerald Isle as way too lax, or worse. Ireland did phase out the Double Irish, which was one of the country's most notorious tax tricks. The Double Irish tax deal closed in January 2015, but companies in place can keep their structures until December 31, 2020. Ireland is also trying to clean up its image with a kind of expanded transparency. But these changes may not be enough to pacify EU countries that think Ireland is a tax haven. And the Irish knowledge box may fuel the old criticism.

The concept of going offshore can sound odd to Americans. After all, individual Americans must pay U.S. tax on their worldwide income. Although they may claim foreign tax credits for taxes paid elsewhere, they can still end up with high U.S. taxes. But U.S. companies with patents and other intellectual property get a much better deal. Companies with IP often consider where it should be located. For example, the Netherlands, Belgium, France, the U.K., Ireland, Switzerland, Spain and even China can be appropriate jurisdictions for patent entities.

Although patents are the most appropriate type of IP, designs and copyrights can also be eligible. Even trademarks and trade names can work in some cases. Why do this? Think of it as splitting up income. Suppose that a company owns IP and produces and sells a product using it. How do you judge whether the revenue is from the IP, from manufacturing, or from sale?

It comes from all of them in many cases, and that invites putting the IP somewhere—quite legally—in which the IP revenue is taxed at a low rate. Pick a place that encourages R&D and other activities that will improve the IP. Some countries encouraging this activity require the R&D to be conducted in their own country.

What are the revenue sources from IP? The owner may derive income from licensing the IP, selling products or providing services using it. Licenses and sales may be to related parties, unrelated parties or both. In related party transactions, valuation is key. If a company's U.S. tax rate is 35%, but the rate on IP profits in Ireland is 6.25%, that's a healthy savings on every dollar. Even considering fees to set it up and a contingency fund to fight the IRS if needed, the savings can be huge.

In the U.K., HM Revenue & Customs started patent boxes in 2013, taxing them at 10%. Ireland does one better. As for America, some say it is time for the U.S. to implement a patent box tax regime to encourage domestic manufacturing. One proposal would require R&D activity in the U.S., making it more limited than many countries. Yet even this U.S. proposal has not come to fruition. But American companies seem to know that rich IP and low taxes go together. Plus, for inventors and flow-through entities, IP can produce capital gain rather than ordinary income. What's not to like?

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