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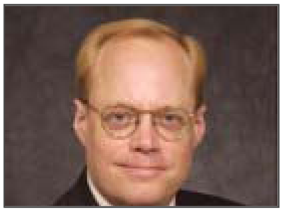

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Ireland Corks Double Irish Tax Deal, Closing Time For Apple, Google, Twitter, Facebook

Ireland has bowed to EU and U.S. pressure to cork ‘double Irish’ tax deals. Ireland is the go-to place for Apple, Google, Twitter, and Facebook, not to mention big pharma. At 12.5%, Ireland’s corporate tax rate trounces the U.S. rate of 35%. But these companies don’t pay that 12.5% under the double Irish structure that is a high-tech standard.

A double Irish funnels royalty payments for intellectual property from one Irish-registered subsidiary to another. The latter is usually in a country with no corporate income taxes. But Brussels has pushed hard for closing time, though generous grandfather rules will keep these companies imbibing for years. In that sense, while Ireland may have to change some of its tax code and even cork the Double Irish, there’s still time.

The money is astounding. Facebook flipped more than $700 million to the Cayman Islands in a Double Irish. Google used the Double Irish and the Dutch Sandwich, saving billions. Google and Microsoft cut their overseas tax rates to single digits with Dublin-registered subsidiaries designated as tax resident in Bermuda.

The IRS isn't alone in its criticism. The EU and OECD (Organization for Economic Cooperation and Development) say Ireland gave sweetheart tax deals to Apple amounting to illegal state aid. But when is the last call? With grandfathering, there's no immediate threat and there could even be a run on the structures. The double Irish will close as of January 2015, but companies in place can keep their structures until December 31, 2020.

This liberal phase-in may make the U.S. and EU mad, but it seems a shrewd move to keep the Irish economy moving. Besides, there will be new tax deals to be had in Ireland. Ireland's Finance Minister Michael Noonan is introducing a patent box to encourage intellectual property held in Ireland. It should especially appeal to tech groups, which may get additional incentives to store data there.

The campaign against Ireland's low corporate tax rates has been fierce for some time. U.S. Treasury Secretary Jack Lew has said that "we must address the persistent issue of 'stateless income,' which undermines confidence in our tax system at all levels." In May 2013, the Senate Permanent Subcommittee on Investigations said Apple avoided $9 billion in U.S. taxes in 2012 alone via offshore units with no tax home. Calling it the "holy grail of tax avoidance," Sen. Levin claimed that Apple saved billions by claiming companies registered in Ireland are not tax resident anywhere.

Apple's CEO Tim Cook testified it was nothing illegal. But Ireland is now in the hotseat. The EU says lowering rates is unfair tax competition. But lower corporate tax rates were a key to the Irish turnaround, at least until the crisis of 2008 and 2009. Slashing tax rates to 12.5% brought companies, jobs and wealth to Ireland. In fact, some say that Ireland's low corporate taxes are not incidental to Ireland's economy, but are critical to it

U2 singer Bono has generally supported Ireland, saying, "Tax competitiveness has brought our country the only prosperity we've known." Defending Ireland against the EU attack, he noted, "That's how we got these companies here. . . We don't have natural resources. We have to be able to attract people." Bono has not weighed in on the double Irish or the allegations of illegal aid to Apple.

The double Irish involves forming a pair of Irish companies to turn payments on intellectual property into tax-deductible royalty payments. The U.S. parent company forms a subsidiary in Ireland. The parent signs a contract giving European rights to its intangible property to the new company.

In return, the new subsidiary agrees to market or promote the products in Europe. Thus, all the European income—that previously would have been taxed in the U.S.—is taxed in Ireland instead. Then the Irish company changes its headquarters to Bermuda. No Irish tax, no Bermuda tax, and no U.S. tax.

Finally, the parent forms a second Irish subsidiary that elects to be treated as disregarded under U.S. tax law—by filing a one-page form. The first Irish company (now in Bermuda) can license products to the second Irish company for royalties. The net result is one low 12.5% Irish tax compared to 35% in the U.S. Even this tax can be reduced, since the royalties going to the Bermuda company are deductible.

Tax people will be scrambling to create new structures, but there's some breathing room. And when new structures are developed, I'll bet Ireland will have a role.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.