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NOTES ON NATIONAL LEGISLATION

IRELAND - TAX RESIDENCE FOR INDIVIDUALS

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The connecting factors for liability of individuals to taxation vary between different countries, but tend to involve some or all of nationality, habitual residence, residence to a particular degree, domicile, and the location of the profits, gains or assets sought to be taxed. It is not uncommon for two or more countries to claim taxation from an individual in respect of the same income or gains and to a great extent the existence of double taxation treaties mitigates what could otherwise be a multitude of tax charges. Where there is no treaty protection, or incomplete treaty protection, adverse results can arise, necessitating a solution which will often involve the use of structures or aspects quite extraneous to the business or investment activity being undertaken.

In Ireland, the concepts of residence and ordinary residence are the primary connecting factors for liability of individuals to taxation on their worldwide income and capital gains. An individual who is not domiciled in Ireland is liable to tax on foreign (non-Irish and non-UK) income and gains only to the extent such income and gains are remitted into Ireland.

The Finance Act 1994 has introduced major changes in relation to tax residence. These changes will be relevant to any person leaving, returning or coming to Ireland for the first time or those who live in Ireland and work abroad. For the first time rules regarding tax residence have been set out in legislation.

Though intended in part to ensure that certain high net worth individuals cannot easily escape the charge to Irish tax by ceasing to be resident for a short period, the new rules will actually have a much wider application, as they will affect any

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person who plans to move to or from Ireland. Therefore any individual who may be affected is advised to review his position.

Residence

Irish residents are subject to Irish tax on their worldwide income and capital gains. Individuals are subject to income tax on their income arising in a tax year (6th April to the following 5th April).

From 6th April 1994 onwards an individual will be resident in Ireland for tax purposes where he is in Ireland for either a total of

- 183 days in any tax year, or
- more than 30 days in any tax year, where the total number of days in that tax year **and** the previous tax year exceed 280. ["lookback rule"]

Formerly any part of the day was counted as a whole day in considering whether a person was Irish tax resident. However, the new provisions only take account of a day where a person is present at the end of the day (i.e., midnight) in Ireland. This relaxation will be of particular benefit to foreigners who make regular day trips to Ireland for business purposes.

Where an individual satisfies these tests, but is not domiciled in Ireland, he will still obtain relief in that his foreign income will only be subject to Irish tax if it is remitted to Ireland.

Ordinary Residence

An individual will be ordinarily resident in Ireland where he has been resident in Ireland for each of the three preceding tax years. An individual will only cease to be ordinarily resident in Ireland when he has not been resident in Ireland for three consecutive tax years.

Ordinary residence has always been a connecting factor for capital gains tax. Its significance has been extended by the Finance Act 1994. It is now also a connecting factor for all types of income wherever arising, except income derived from a foreign trade or profession, or from a foreign office or employment, which is conducted or performed wholly outside Ireland. Incidental duties of an employment performed in Ireland will be ignored for this purpose.

This will have the unfortunate consequence that an individual who has left Ireland will remain in the Irish tax net for a three year period, unless an applicable double tax treaty overrides Irish ordinary residence by the provisions of a tie-breaker clause. Under Ireland's self-assessment system of taxation, he will be obliged to file a return and pay any tax due. While failure to do so may lead to the issuing of an assessment, and the imposition of interest and penalties, the capacity of the Irish Revenue Commissioners to enforce a tax charge must be seriously questioned in the case of an individual who is outside the jurisdiction and who has no assets in the jurisdiction. The application of the concept of ordinary residence would be much more satisfactory if done on a "wait and see" basis, so that ordinary residence would only apply to a departing individual if he was resident in Ireland for any of the three tax years following the year of departure.

Reliefs

Certain new reliefs have been introduced while other reliefs, previously given by way of Revenue Concession, have been confirmed.

Emigrants and Immigrants Relief

This relief applies to employment income and will be of particular benefit to those moving employments from one country to another during a tax year. The relief does not extend to investment income or capital gains.

Where :

- A person arrives in Ireland during a tax year who will be Irish tax resident for that year and also for the following year; or

- Leaves Ireland during a tax year with the intention of staying abroad for the rest of that tax year and remaining non-Irish tax resident for the following tax year,

he will be exempt from Irish tax on any foreign employment earnings arising prior to his arrival in Ireland or after his departure from Ireland. In both of these cases the individual's entitlement to personal allowances will not be reduced for the time spent outside Ireland during a tax year.

Irish Residents Working Abroad

A new relief has been introduced which allows Irish employees who, as part of their employment duties, work abroad for more than 90 days in any one tax year to obtain a deduction from their employment income. In calculating this 90 day period the following rules will apply:

- Only periods of at least 14 consecutive days may be included.

- Up to 15 days will be discounted to account for holiday time.
- Time spent in the UK will not qualify.

This relief will not be available to civil servants, employees of certain semi-state bodies or directors of companies not carrying on a trade or profession.

Personal Allowances for European Union Nationals

A new relief has been introduced further to a recommendation by the EU, which enables nationals of Member States who are non-Irish tax resident to benefit from Irish personal tax allowances. The amount of the allowances will depend upon the proportion of their worldwide income which is subject to Irish tax. However, where that proportion is 75% or more, full Irish personal allowances are available.

Prior to this change, individuals who were not resident in Ireland could generally only obtain Irish personal allowances under the terms of an appropriate double tax agreement. The basic personal allowance for the tax year 1994/95 is IR£2,350 for a single person and IR£4,700 for a married couple taxed together . Other relevant allowances concern incapacitated children, dependent relatives, Irish health insurance contributions, unreimbursed health expenses, and blind and elderly persons.

Effective Date

The new provisions introduced by the Finance Act 1994 are effective from 6th April 1994, subject to certain transitional reliefs. In the case of individuals who have left Ireland at any time since the tax year 1991/92, their tax residence since that time may have a bearing on whether they will become ordinarily resident in Ireland in tax years from 1995/96 onwards.

The various changes introduced by the Finance Act 1994 are for the most part welcome, in that they clarify the concept of tax residence and ordinary residence, which had previously been applied by reference to old case law and Revenue practice. The new provisions will facilitate foreign individuals, particularly those of high net worth, choosing Ireland as a second home in circumstances where their presence in Ireland will not cause tax residence to arise. The introduction of the new reliefs are also to be welcomed for Irish based taxpayers. However, the introduction of a three-year ordinary residence period after leaving Ireland, and the consequent continuing liability to capital gains tax, and to income tax on investment income, is anomalous and will lead to practical difficulties. It is likely that tax practitioners will lobby the legislators to have this anomaly removed.