



Grant Thornton

An instinct for growth™

Tax and legal update

Issue 11 - July 2017

This issue:

- multilateral convention;
- involuntary strike off period to be reduced;
- Relevant Contracts Tax (RCT) – Receivers and Mortgagees-in-Possession (MIP);
- mixed appointments; and
- filing a stamp duty return on Revenue Online Service (ROS) when property is being sold through a Receiver or MIP.

Jillian O’Sullivan

T +353 (0)1 680 5850
E jillian.osullivan@ie.gt.com

Sarah Meredith

T +353 (0)1 680 5784
E sarah.meredith@ie.gt.com

Clare Fitzgerald

T +353 (0)1 433 2432
E clare.fitzgerald@ie.gt.com

Janette Maxwell

T +353 (0)1 680 5779
E janette.maxwell@ie.gt.com

Lorcan O’Rourke

T +353 (0)1 436 6477
E lorcan.orourke@ie.gt.com

Multilateral convention

The Multilateral Convention (MLI) was signed on 7 June 2017 in Paris and is a single instrument that ultimately alters several thousand double tax treaties currently in existence.

The MLI is a direct output of the OECD’s Base Erosion and Profit Shifting (BEPS) global tax anti-avoidance drive. The objective was to create one instrument that altered various clauses in existing double tax treaties, without the need for multiple lengthy bilateral negotiations to alter individual tax treaties.

The articles in the new MLI combat perceived tax avoidance and make it more difficult for companies to avoid a tax presence in another jurisdiction, as well as improving dispute resolution processes.

Not all changes are obligatory and countries retain the right to reserve their current position in these situations.

The net result of the above is that an Irish company operating in several jurisdictions is likely to be faced with greater complexities in establishing its overseas tax position, as well as higher overseas tax costs on the assumption that the changes will bring certain activities within the overseas tax net that were previously excluded.

Consequently, we are likely to see more disputes in the future as different Revenue authorities look to tax the same profits. There has been significant work putting in place appropriate dispute resolution frameworks to deal with this expected development, including a binding arbitration process where agreement between Revenue authorities cannot be reached.

Involuntary strike off period to be reduced

The Companies Registration Office (CRO) has just announced that the period between a missed annual return filing deadline and the commencement of strike off proceedings against such companies, is to be reduced from the current period of one year down to 200 days (circa six months). Up to now, the CRO did not usually commence their involuntary strike off procedure against companies in default until an annual return was at least a year late and the filing penalty had reached the maximum fine of €1,200. The consequences of strike off can be very serious for a company:

- the assets of the company become the property of the State on dissolution;
- it ceases to act as a legal entity as and from the date of strike off;
- the protection of limited liability is also lost from the date of strike off and if trading continues after this date, the owners are considered to be trading in their personal capacity; and

- directors' face the possibility of a disqualification order being made against them by the High Court, on the application of the Director of Corporate Enforcement, pursuant to Section 842(h) of the Companies Act 2014, with the length of any disqualification period being a matter for the court.

Aside from late annual returns, the Registrar of Companies may also initiate strike off procedures where a company:

- is in default of Section 137(1) of the Companies Act 2014 and is trading without an European Economic Area (EEA) resident director or there being a bond in place;
- is being wound up and the CRO has reasonable cause to believe that no liquidator is acting; or
- has not filed a Form 11F CRO with Revenue following a request under Section 882 of the Taxes Consolidation Act 1997. In such cases, Revenue will instruct the CRO to commence the strike off process.

Please contact us if you currently have an annual return late for filing for whatever reason or if you have any CRO related query.

Relevant Contracts Tax (RCT) – Receivers and Mortgagees In Possession (MIP)

On 16 June 2017, Revenue published updated guidelines on tax consequences of Receivership and Mortgagees In Possession (MIP) in part 04-00-01 of its Operational Manual. Although no significant changes were made to the guidelines surrounding RCT, the guidelines do emphasise that all aspects of RCT are applicable to Receivers and MIPs. By way of example, Revenue consider that the deduction of RCT by the

Receiver or MIP as principal contractor and the offset by Revenue of RCT against outstanding taxes must be applied as normal.

As a three year compliance history does not exist for a newly appointed Receiver or MIP, an automatic deduction rate of 20% is applied by Revenue. Nevertheless, the 0% could be applied where the Receiver or MIP has a good compliance history and the risk to Revenue is minimal.

Mixed appointments

Revenue recently issued an eBrief (49/17) and updated the tax and duty manual (Part 05-01-06) to include a section on 'mixed appointments' where an employee falls both within the terms 'travelling appointment' and 'site-based' employee.

Where an employee holds a 'travelling appointment' for 75% or more of their workdays in a tax year and is site-based or otherwise engaged for the balance of the tax year, expenses of travel and subsistence may be reimbursed free of tax for the whole of the tax year. Therefore, the employer's premises or the employee's home, whichever is closer to the temporary work location, may be treated as the base for the purposes of calculation of mileage and subsistence expenses.

Filing a stamp duty return on Revenue Online Service (ROS) when property is being sold through a Receiver or Mortgagees In Possession (MIP)

If a property is being sold by a Receiver and the Receiver is a party to the instrument, please note the below instructions issued by Revenue in their guidelines on tax consequences of Receivership and Mortgagees In Possession (MIP) in part 04-00-01 of its

Operational Manual.

- on the 'instrument category' screen, tick the box to indicate that the Receiver is acting in a fiduciary capacity for the vendor; and
- on the 'instrument party details' screen:
 - input the tax reference number of the mortgagor/borrower into the 'vendor' field;
 - select the fiduciary capacity from the drop down menu;
 - input the name of the receiver; and
 - click on the 'add vendor fiduciary capacity' button.

Revenue have also confirmed that valid tax reference numbers in respect of each party to an instrument are required in order to file a stamp duty return.

However, Revenue appreciates that difficulties can arise when mortgagors/borrowers who are individuals do not co-operate with the requirement to provide a valid tax reference to a Receiver. In this scenario, where every other possible avenue to obtain a valid tax reference number has been exhausted, Receivers may input the tax reference number obtained from Revenue in respect of the particular receivership (rather than the vendor's tax reference number).

Revenue also clarified that the names that will appear on the stamp certificate are the names attached to the Receiver and to the vendor in Revenue's systems.

If property is being sold by a MIP, the MIP is the actual vendor and not acting in a fiduciary capacity. Therefore, the MIP's own tax reference number should be input in the e-stamping return in the field relating to the 'vendor'.

Taxation of exam setters, exam correctors, invigilators, etc.

Revenue have issued an eBrief (no. 48/17) in relation to exam setters, exam correctors, invigilators, etc. and whether they should be seen as engaged under a 'contract of service' (employees) or under a 'contract for service' (self-employed).

As always in these types of scenarios, the facts of each case are considered individually and will determine whether a particular individual is either an employee or self-employed. However, in Revenue's view and per recent guidance, exam setters, exam correctors and invigilators, etc. who are engaged by the state sector, private colleges or associations are likely to be employees and therefore liable to tax under the PAYE system (to include PRSI and USC).

Over 1,000 people operating from offices in Dublin, Belfast, Cork, Galway, Kildare, Limerick and Longford.

 www.grantthornton.ie

 #GTtax

 Grant Thornton Ireland

