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Tax

Tax and legal update

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- company law and Ultimate Beneficial Ownership (UBO); and
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Does your taxable business receive services from suppliers outside of Ireland? Are you aware of the VAT obligations?

VAT legislation provides that if a taxable business in Ireland (eg Company A in Dublin) receives a service from a supplier established outside of Ireland (eg. Company B in the US[1]), Company A is accountable for and liable to pay the VAT chargeable, as if Company A had supplied that service. Typical examples of the services that may be provided include consultancy, legal or accounting services.

Company A is obliged to 'self-account' for Irish VAT at 23% on a reverse-charge basis on the receipt of services received from Company B in the US. In order to do so, Company A must register for Irish VAT with Revenue.

The most important point to note is that there is a nil registration threshold for the receipt of reverse charge services from abroad. Therefore, if your business is receiving such services, regardless of value, it has an obligation to register for Irish VAT, notwithstanding that the normal VAT registration thresholds are not exceeded (ie €37,500 for services and €75,000 for goods).

Company A is required to account for VAT at 23% on the service received from Company B in Box T1 of the Irish VAT return (Form VAT3) as VAT on sales. Company A is entitled to a simultaneous input VAT credit based on the level of VAT recovery entitlement of the company (ie VAT on purchases as per Box T2 of the VAT return). Company A is obliged to register for VAT in Ireland from the date on which it receives its first reverse charge invoice to which Irish VAT applies.

Valuation date for inheritance tax

Early identification of the valuation date of an inheritance is crucial to avoid unnecessary interest and/or penalties arising to the beneficiary (person receiving the benefit).

The valuation date not only determines when the property inherited needs to be valued, it starts the clock on the filing of the CAT return, the tax payment and exposure to interest.

Valuation date	Pay and file deadline
Between 1 January and 31 August	31 October of that year
Between 1 September and 31 December	31 October in the following year

1 Section 34(a) of the VATCA 2010 provides that the place of supply of services from a business supplier to a business recipient (i.e. "B2B" supply) is the place where the taxable customer's business is established. Our example assumes the place of supply is therefore Ireland.

There can be several valuation dates where multiple benefits are taken from the same estate. The valuation date is the earliest date:

- on which the inheritance may be **lawfully retained**;
- of the **actual retention**; and
- of **delivery or payment** of the inheritance.

Example

Where a beneficiary receives an inheritance of a property, the valuation date can be any of the following

- **date of death:** eg where the beneficiary is living in the property at date of death and as such has actual retention;
- **date of grant of probate:** eg where the beneficiary is the administrator of the estate and therefore at the time they are granted probate have lawful retention; and
- **date of delivery/payment:** eg where legal retention of the property is obtained from the estate at a later date.

Therefore, it is essential that the valuation date is determined as early as possible, particularly where the date of death of the successor is immediately before the 31 August deadline and returns could be due within a two month window.

Company law and Ultimate Beneficial Ownership (UBO)

We have featured the Register of Beneficial Ownership in previous editions of our *Tax and Legal update* and here are the top four questions we have received from clients in relation to this new legislation.

1. What is an Ultimate Beneficial Owner (UBO)?

A UBO is a person who owns or controls more than 25% of the voting shares of an Irish company through direct or indirect ownership, ie shares held in their own name or shares held in trust for them. A UBO may also be able to use their control of a company by other means, examples may be through a shareholders agreement or having the power to appoint directors or senior management to the company.

2. What is a UBO register?

All Irish companies are required to create and maintain their UBO register with effect from June 2017. The register is required to show the name, date of birth, nationality, address, nature and extent of the beneficial interest held, date of entry and date of cessation as a UBO. The register is to be kept up to date and all companies will be required to file this information with the Companies Registration Office (CRO) within six months of the UBO filing launch date, *expected in Quarter two 2018*. We will notify you once this date has been confirmed as further guidance from the Department of Finance is expected shortly.

3. What happens if our company has no UBO?

As the register cannot be left blank, if a company has no UBO or if no UBO can be identified despite reasonable attempts to do so, then the directors and Chief Executive Officer (CEO) of the company are to be entered into the UBO register.

4. Is our UBO register made public and do we have to comply?

Access to the data submitted to the CRO will be provided to financial intelligence units, Revenue and state competent authorities only. An Garda Síochána and the Director of Public Prosecution will be responsible for enforcing compliance, with non-compliant companies subject to a Class A fine under the Companies Act 2014, which is a maximum fine of €5,000. Companies who continue to be non-complaint may be liable to a Class E fine of up to €500 per day.

Key Employee Engagement Programme (KEEP)

Revenue have released a new share schemes tax and duty manual which includes all existing guidance in relation to share schemes. The new manual includes detailed guidance on the operation of the new KEEP scheme introduced by the Finance Act 2017.

The KEEP is a share option scheme, aimed at SME's to assist in attracting and retaining key employees and applies in respect of share options granted during the period from 1 January 2018 to 31 December 2023.

Income tax is generally chargeable on any gains arising from the exercise of share options, where the individual acquired the share options in their role as an employee or director. However, gains arising on the exercise of qualifying shares under the KEEP will not be subject to income tax, USC or PRSI where the conditions of the scheme are met. Under the KEEP, an option must be exercised within ten years of grant.

There are conditions to be satisfied by the employee or director and the employer. There are also conditions to be satisfied in respect of the share option granted. Prior Revenue approval is not required in order to introduce the KEEP.

Capital Gains Tax (CGT) will arise on the subsequent disposal of the shares by the employee or director.

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