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Tax update

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- existing holders of a VAT 56B Authorisation Certificate - renewal date is 31 October; and
- amendment to Section 110 of the Taxes Consolidation Act 1997 for inclusion in the forthcoming Finance Bill;
- FATCA - Relevance to trusts.

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Companies (Accounting) Bill 2016 - Filing requirements for private Unlimited Companies (ULCs) and new disclosure thresholds

The Companies (Accounting) Bill 2016 (the "Bill") aims to transpose EU Directive 2013/34/EU into Irish law and also includes various other ad hoc amendments to the Companies Act 2014 (the 'Act'). Under the current provisions of the Act, there is an exemption for ULCs from the requirement to file accounts with the Companies Registration Office (CRO). The exemption applies only to ULCs that are not "Designated ULCs" as defined by the Act.

The Bill amends the filing exemption by significantly expanding the definition of Designated ULCs. The proposed amendments to the filing exemption appear to catch most, if not all combinations of companies; bodies corporate and partnerships, both foreign and domestic, and effectively preclude the possibility of obtaining both the filing exemption and limited liability. The new Bill has raised the threshold for "small" and "medium" companies. In addition, a new category of "micro-companies" has been introduced with further relaxed filing obligations. The thresholds for these companies are outlined in the table below.

	Micro	Small	Medium
Net turnover	€700,000	€12,000,000	€40,000,000
Balance sheet total	€350,000	€6,000,000	€20,000,000
Average no. of employees	10	50	250

A company will fall within one of the given categories if it does not exceed two of the three thresholds in that category. We will continue to provide updated advice on developments as the Bill progresses through the legislative process.

Do you have any clients where their turnover from zero-rated intra-community supply of goods, exports and certain contract work that exceeds 75% of total annual turnover?

If so, they may be entitled to receive qualifying goods and services at the zero rate of VAT, regardless of the actual rate of VAT applicable to the good or service in question. We can assist with making an application to the Revenue on their behalf. This procedure is known as VAT 56B Authorisation Certificate.

Existing holders of a VAT 56B Authorisation Certificate - renewal date is 31 October

If any of your clients already have a VAT 56B Authorisation Certificate, it is important to ensure the validity of the Certificate. A VAT 56B is issued for a period of time as determined by Revenue. This may range from one year to three years, renewable in October. It is only possible to receive qualifying goods and services at the zero rate of VAT where the VAT 56B has not expired and is still valid.
If the VAT 56B has expired, the supplier will charge VAT as normal on the supply.

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Unfortunately the Authorisation Certificate is not automatically renewed and there is no guarantee that the Revenue will renew a VAT 56B. Advice should therefore be sought to ensure the VAT 56B will be successfully renewed.

The Minister for Finance, Michael Noonan T.D., has published a proposed amendment to Section 110 of the Taxes Consolidation Act 1997 for inclusion in the forthcoming Finance Bill to be published on October 11

The draft legislation proposes to tax profits and gains arising on the holding and managing of Irish property loans (specified mortgages) at a rate of 25% from 6 September 2016 with potentially limited scope for deductions for interest expense. Therefore, it will impact existing structures holding such loans with only a limited form of grandfathering permitted (to the extent that income and gains, whether realised or unrealised, arising prior to 6 September 2016 should not be impacted by the proposed changes). It is important to note however that Section 110 companies holding other types of assets are not impacted by the proposed changes. Further updates will be provided in upcoming editions.

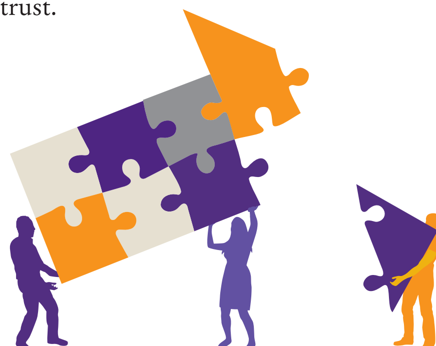
FATCA – Relevance to trusts

The main purpose of The Foreign Account Tax Compliance Act 2010 (FATCA) is to allow the US to collect tax from its non-residents. Ireland has given legislative effect to FATCA through the Financial Accounts Reporting (United States of America) Regulations 2014 (S.I. No 292 of 2014) and Section 891E TCA 1997. The application of FATCA to Irish trusts has been a discussion topic of late. An Irish trust may fall within its scope regardless of the fact that it has no US connections.

In summary, the following need to be considered to determine if an Irish trust will fall within the scope of FATCA:

- does it meet the definition of a Foreign Financial Institution (FFI). Revenue have advised that a trust will meet this definition where:
  - the trust is professionally managed; or
  - the trustee has engaged a financial institution to manage the financial assets of the trust.
- if not an FFI, the trust is considered to be a Non Financial Foreign Entity (NFFE):
  - no obligation to register with the US or to file returns with Revenue unless considered a passive NFFE, i.e. one where more than 50% of the assets produce passive income and is not considered an active NFFE.
- charities do not fall within the definition of FFI.

The above is a broad outline of the reporting requirements for Irish trusts under FATCA. Care should be taken to ensure that the circumstances of each trust are examined in detail to determine whether any reporting requirements arise under FATCA in respect of that trust.



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