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EDITOR’S PREFACE

The objective of this book is to provide tax professionals involved in disputes with revenue authorities in multiple jurisdictions with an outline of the principal issues arising in those jurisdictions. In this, the second edition, we have continued to concentrate on the key jurisdictions where disputes are likely to occur for multinational businesses.

Each chapter provides an overview of the procedural rules that govern tax appeals and highlights the pitfalls of which taxpayers need to be most aware. Aspects that are particularly relevant to multinationals, such as transfer pricing, are also considered. In particular, we have asked the authors to address an area where we have always found worrying and subtle variations in approach between courts in different jurisdictions, namely the differing ways in which double tax conventions can be interpreted and applied.

Perhaps it is merely a perception from a jurisdiction whose prime minister has publicly vilified a multinational for complying with the national tax laws, but tax avoidance seems to have become the new international evil. As such, this book provides an overview of each jurisdiction’s anti-avoidance rules and any alternative mechanisms for resolving tax disputes, such as mediation, arbitration or restitution claims.

We have attempted to give readers a flavour of the tax litigation landscape in each jurisdiction. The authors have looked to the future and have summarised the policies and approaches of the revenue authorities regarding contentious matters, addressing important questions such as how long cases take and situations in which some form of settlement might be available.

We have been lucky to obtain contributions from the leading tax litigation practitioners in their jurisdictions. Many of the authors are members of the EU Tax Group, a collection of independent law firms, of which we are members, involved particularly in challenges to the compatibility of national tax laws with EU and EEA rights. We hope that you will find this book informative and useful.

Finally, I would like to acknowledge the hard work of my colleague Federico Cincotta in the editing and compilation of this book.

Simon Whitehead
Joseph Hage Aaronson LLP
London
February 2014
Ireland

John Gulliver and Robert Henson

I INTRODUCTION

The Irish landscape for tax dispute resolution provides a platform to avoid litigation through various means, including various systems of qualifying disclosures, correspondence and by liaising with the specialist Large Cases Division of the Irish Revenue (the Revenue). Additionally, where there is a dispute between a foreign tax authority and the Revenue, the Revenue may provide assistance in challenging foreign taxing rights of Irish tax-resident companies’ profits through the mutual agreement procedure in Ireland's double taxation treaties.

The system of litigating tax disputes follows a similar pattern to that in England and Wales. Typically, tax disputes are dealt with in the first instance before the Appeal Commissioners in a non-public hearing. An entire rehearing of the case before the Appeal Commissioners can occur in the Circuit Court when initiated by the taxpayer.

Where there is a dispute at law on an Appeal Commissioner's findings or that of the Circuit Court, recourse can be made to the Irish High Court and ultimately the Irish Supreme Court. EU matters can be referred to the Court of Justice of the European Union, or indeed an appeal made there as part of the litigation process. Constitutional challenges may only be made after other means of litigation have been exhausted.

Litigating through the Appeal Commissioners and courts requires the hiring of specialist tax litigation counsel. This process is typically time-consuming and lengthy.

Costs can be substantial, although they can to some extent be restricted at the Appeal Commissioners’ level; however, if an advance finding of fact occurs at that level, it cannot be overturned easily.

1 John Gulliver and Robert Henson are tax partners at Mason Hayes & Curran.
Of late, the Revenue has been successful in litigating aggressive domestic tax avoidance under the Irish general anti-avoidance provision contained in Section 811 of the Taxes Consolidation Act 1997.

II COMMENCING DISPUTES

i Initiating tax disputes

Tax disputes usually start by way of an appeal by the taxpayer against a notice of assessment raised by the Revenue. Tax disputes may also arise where a settlement cannot be reached during the course of a Revenue audit.

In December 2012, the Revenue announced its intention to monitor compliance with Ireland’s transfer pricing rules through the use of transfer pricing compliance reviews (TPCRs). A TPCR is a self-review by the taxpayer of its compliance with the transfer pricing rules. It is not an audit or a Revenue investigation; nor is it necessarily a precursor to an audit. The Revenue acknowledges that the TPCR will act as an information-gathering exercise, enabling the Revenue to receive important information (such as facts and data on a particular company or group’s business structure, related-party transactions and transfer pricing methodologies used). The Revenue has indicated that in some instances the TPCR will result in a transfer pricing audit. This is likely to apply where the Revenue is not satisfied with the TPCR, or it has raised queries following receipt of the TPCR and such queries were not adequately addressed.

If, during the course of a Revenue audit, the Revenue and the taxpayer cannot reach a settlement and there is a technical dispute, an application can be made to have this referred to the Appeal Commissioners. In a Revenue audit situation, an application for an internal or external review can also be made by the taxpayer if the Revenue issues a notice of opinion in relation to a penalty being imposed and the taxpayer disagrees with the opinion.

In the case of an appeal against a notice of assessment, the taxpayer must make written notice of the appeal within 30 days of the date of the notice of assessment.

ii Self-correction

The Revenue has issued a Code of Practice for Revenue Audits (the Code of Practice) to provide taxpayers with guidelines relating to the audit process. The Code of Practice notes that the Revenue wishes to facilitate taxpayers who discover errors after submission of the relevant tax returns and wish to regularise this position. Therefore, as a general rule, a taxpayer may ‘self-correct’ their tax return without incurring a penalty, by notifying the Revenue in writing of the adjustments required and paying any interest due. The Code of Practice provides, in the case of VAT returns, that where the net underpayment of VAT is less than €6,000, the amount of the tax can be included (without interest or notification to the Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made. The taxpayer must comply with particular time limits for self-correction as set out in the Code of Practice. The benefit of self-correction does not apply where the Revenue has notified the taxpayer of an audit, or contacted the taxpayer in relation to an investigation into the taxpayer’s tax affairs.
iii Time limits
In situations where a taxpayer does not file a return (or makes one with which an inspector of taxes is not satisfied), the inspector may make an assessment that in his or her judgement ought to be made. As a general rule, an assessment cannot be made more than four years after the end of the accounting period to which it relates. No time limit applies where any form of neglect (as defined) or fraud has been committed by or on behalf of the taxpayer.

This four-year period applies generally to corporation tax, income tax and capital gains tax. The Revenue is generally prohibited from making enquiries related to raising an assessment after the expiry of the period of four years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period, unless at that time the inspector had reasonable grounds for believing that the return was insufficient due to its having been completed in a fraudulent or negligent manner.

iv Disclosure regime
An important element in Irish tax disputes is the ‘voluntary disclosure’ regime. With effect from 24 December 2008, the disclosure regime has moved from Revenue practice to having a legislative basis. Broadly, the regime allows a taxpayer to make a ‘prompted qualifying disclosure’ or an ‘unprompted qualifying disclosure’. The disclosure must be made in writing and be accompanied by payment of tax and interest, but not penalties. To be a ‘qualifying’ disclosure, the taxpayer must provide complete information and full particulars of all matters giving rise to a tax liability under each tax head. By making a qualifying disclosure in relation to matters giving rise to a tax liability, a taxpayer can avoid prosecution and publication on the periodic list of tax defaulters. A further benefit of making a qualifying disclosure is that the penalties may be mitigated. The level of penalty arising depends on the category of default, (e.g., deliberate behaviour or carelessness), and the level of mitigation of penalty will depend, *inter alia*, upon whether the taxpayer cooperates with the Revenue.

There is also a separate disclosure regime for Ireland’s general anti-avoidance provision.

v Revenue rulings
While it is possible to apply to the Revenue for a ruling in relation to certain matters, these rulings are not legally binding.

vi Freedom of information requests
The Freedom of Information Act allows people to request access to records, amendments of records or reasons for a decision of a public body, including the Revenue. This can be a useful tool for taxpayers.
III THE COURTS AND TRIBUNALS

i The courts
An appeal of a notice of assessment is held before an Appeal Commissioner. The taxpayer has the right to have an appeal reheard by a Circuit Court judge if dissatisfied with the Appeal Commissioner’s decision. The Revenue does not have this right.

This appeal is a full rehearing of the case. An application for such a rehearing must be made within 10 days of the Appeal Commissioner’s determination. Immediately following the determination of the Appeal Commissioner, either party may declare its dissatisfaction with the determination as being ‘erroneous in point of law’, and may within 21 days of the determination require the Appeal Commissioner, by notice in writing, to state a case for the opinion of the High Court. The decision of the High Court can be appealed to the Supreme Court, whose decision will be binding.

In an audit situation, where there is no agreement on the liability to a penalty or where the agreed penalty is not paid, the penalty will be determined by a relevant court. The relevant court will be the District Court, the Circuit Court or the High Court, depending upon the level of penalty in question. The jurisdictional limits of each court as and from 3 February 2014 are as follows:2

- District Court – amounts up to €15,000;
- Circuit Court – amounts up to €75,000; and
- High Court – amounts in excess of €75,000.

In October 2013 a consultation on the reform of the appeals system was launched by the Irish government, with emphasis on the role, function and structure of the Appeal Commissioner. Reform in this area is welcome, particularly the government’s proposal to establish an effective system for the reporting of decisions of the Appeal Commissioner.

ii Judicial review
Where a person claims that the Revenue’s procedures are unjust and contravene natural justice, or disagrees with a tax or duty statute (e.g., there is no disagreement with the interpretation of the statute, but rather with the statute itself), that person may seek, in the High Court, a judicial review of the particular infringement.

iii Non-court procedures
A taxpayer can use the Revenue’s complaint and review procedure to review decisions of the Revenue. The first procedural step is for the taxpayer to make a formal complaint to its local tax office. If the complaint cannot be resolved, or if the taxpayer is unhappy with the response, it can request a local review, which is normally carried out by the manager of the local tax office, although the taxpayer can request to have the local review carried

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2 The jurisdictional limits applicable prior to 3 February 2014 were:

- District Court – amounts up to €6,348.69;
- Circuit Court – amounts up to €38,092.14; and
- High Court – amounts in excess of €38,092.14.
out by a manager in the regional or divisional office. Where a taxpayer is dissatisfied with the local review, a request can be made to have the case reviewed by an independent internal or external reviewer, who will make a final decision. A request for an internal or external review should be submitted within 30 working days of the date of the local review decision. Adjudication on points of law is generally a matter for the Appeal Commissioners and the courts, and a reviewer will only intervene where it is satisfied that the Revenue opinion is clearly incorrect. Disputes with regard to civil penalties applicable to audit and investigation matters, enforcement proceedings and settlements involving publication will not be dealt with under the complaint and review procedure.

A taxpayer can also submit a complaint to the Office of the Ombudsman, which examines complaints about the administrative actions of government departments and offices, including the Office of the Revenue Commissioners.

IV PENALTIES AND REMEDIES

Various provisions in Irish tax legislation impose different levels of fixed penalties depending on the tax default. Fixed penalties typically arise where a taxpayer fails to comply with provisions of the tax code but a liability to tax may not necessarily arise (e.g., failure to file particular returns).

Tax-geared penalties also apply in situations where the tax default gives rise to a tax liability. The tax-geared penalty varies in accordance with the category of tax default, whether the taxpayer made a qualifying disclosure (prompted or unprompted), and whether the taxpayer cooperated with the Revenue. The highest penalty is 100 per cent of the underpaid tax, and this arises in cases of deliberate default on the part of the taxpayer, where there was no qualifying disclosure and the taxpayer did not cooperate with the Revenue. As set out in Section II, supra, the disclosure regime provides for the mitigation of penalties where a qualifying disclosure is made to the Revenue. The level of mitigation is reduced for a second or subsequent qualifying disclosure.

Criminal penalties may arise where a person commits a ‘revenue offence’. On summary conviction, a person may be liable to a penalty of €5,000 or a term of imprisonment of up to 12 months, or both. On conviction of indictment, a person may be liable to a fine of €127,970 or a term of imprisonment of up to five years, or both.

Where an offence is committed by a body corporate, any person who was a director, manager, secretary or other officer, or a member of the committee of management or other controlling authority of the body at the time of the offence, can in certain circumstances be deemed to be personally guilty of the offence and proceeded against accordingly. This can happen where the offence was committed with the consent or connivance of the person concerned, or where the offence is attributable to any recklessness on the part of the person.

The Revenue has indicated in its Code of Practice that the following tax offences are most likely to be prosecuted:

- deliberate omissions from tax returns;
- false claims for repayment;
- use of forged or falsified documents;
- facilitating fraudulent evasion of tax;
e systematic schemes to evade tax;
f use of offshore bank accounts to evade tax;
g insidious schemes of tax evasion; and
h failure to remit fiduciary taxes (as distinct from minor delays in such remittance).

In 2012, there were a number of high-profile convictions resulting in imprisonment, illustrating the hard line being taken by the courts with regard to tax offences. This trend has continued in 2013 and convictions are likely to increase further in 2014.

The rate of interest on a late payment of tax is currently 0.0219 per cent per day on the unpaid tax.

V TAX CLAIMS

i Recovering overpaid tax
Overpaid tax should be refunded on a valid claim being made by the taxpayer. Such a claim will usually be made automatically on the filing of the appropriate tax return evidencing the actual tax liability of the taxpayer, compared with the tax paid. As a general rule, a claim for a repayment of tax must be made within four years of the end of the chargeable period to which the claim relates.

Where the repayment due arises from a mistaken interpretation by the Revenue in the application of the law, interest will be paid from the end of the chargeable period or, if later, when the tax was paid, until the repayment is made. Interest will not apply, however, for any period where the repayment is withheld as a result of tax returns not being filed.

In the case of all other repayments, interest will be paid from 93 days after a claim becomes a valid claim until the repayment is made. Interest will not apply, however, for any period where the repayment is withheld as a result of tax returns not being filed.

Prior to making a refund of any overpaid tax, the Revenue is permitted to offset an overpayment against any other tax liability (under any tax head).

ii Challenging administrative decisions

Legitimate expectation
In Ireland, it is generally accepted that to succeed in a claim based on a failure of a public body to respect a legitimate expectation, three matters as set out in the Supreme Court decision of Glencar Exploration v. Mayo County Council need to be established:

a the public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied, as to how it will act in respect of an identifiable area of its activity (the ‘representation’);

b the representation must be addressed or conveyed, either directly or indirectly, to an identifiable person or group of persons, affected annually or potentially in such a way that it forms part of a transaction definitively entered into or a relationship

between that person or group and the public authority, or that the person or
group has acted on the faith of the representation; and

- the representation must be such as to create an expectation reasonably entertained
  by the person or group that the public body will abide by the representation to the
  extent that it would be unjust to permit the public authority to resile from it.

Judicial review
In the 2012 High Court case of McNamee v. The Revenue Commissioners\(^4\) the taxpayer in
question had been issued with an opinion under Section 811 of the Taxes Consolidation
Act 1997 (Ireland’s general anti-avoidance provision, discussed further in Section VIII,
infra), and claimed that the Revenue was obliged, but failed, to issue notices under
Section 811 ‘immediately’ after it decided the transactions involved a tax advantage. The
transactions in question involved a form of financial straddles using government gilts
and foreign currency, which allegedly gave rise to artificial capital losses that were used to
shelter capital gains. The High Court found in favour of the Revenue, holding that the
relevant officer of the Revenue had to consider all the relevant criteria set out in Section
811 before issuing the notice, and that it had accordingly issued the notice of opinion
‘immediately’ after the Revenue officer formed the opinion that the transactions were
tax avoidance transactions.

Constitutionality of decisions
It is quite difficult for taxpayers to succeed in arguments that decisions of the Revenue
are unconstitutional. This is usually seen as a last resort where all other avenues
have been exhausted.

Revenue’s complaint and review procedure/Ombudsman
In cases where the dispute relates to allegations of unfairness towards a particular taxpayer
as distinct from the actual imposition of tax, it is most likely that the Revenue’s complaint
procedure should be followed or that the Ombudsman be consulted.

Revenue opinions
As noted in Section II, supra, Revenue opinions are not legally binding. The Revenue’s
guidance notes on providing technical assistance provide that an opinion given by the
Revenue is based on the specific facts relevant to that case and its particular circumstances
only. Any material change in the facts or circumstances could affect an opinion, and
any such changes should be brought to the notice of the office that gave the opinion
or interpretation so that the case can be reviewed. Further, it should be noted that an
opinion given in relation to a specific case should not be relied on in any other case.
Some opinions will arise from a unique set of circumstances. An opinion will be given on
the basis of the legislation as it exists at the time of the request. If this changes in advance
of the completion of the transaction, then the opinion may no longer be valid. Redacted
forms of opinions issued can be obtained through a freedom of information request.

\(^4\) [2012] IEHC 500.
iii Claimants

Only the party who files a tax return can bring a claim against the Revenue. In the case of a person who suffers unlawful tax (e.g., VAT), recovering such unlawfully imposed tax would generally be a matter of contract law between the parties. An aggrieved person would not have any recourse to the Revenue.

In group scenarios, except in the case of VAT, all parties file their own tax returns. It is generally a matter of contract law between the parties how they treat reliefs surrendered, and tax liabilities arising or reduced as a result of the use of group relief. Only the taxpayer filing the return can claim a refund of tax due to it.

VI COSTS

In the case of a hearing before the Appeal Commissioners, each side bears its own costs. The awarding of costs in tax cases before the courts follows the general rule that an order for costs to proceedings shall be at the discretion of the courts. In normal circumstances, costs are awarded on the basis of costs following the event, namely, the successful party is entitled to its costs. There is no specific category of cases that fall outside the general rule of costs. The courts may use their discretion, however, to award costs to the unsuccessful party where the matter at issue is one of ‘public interest’ and the interests of justice require the courts to do so.

VII ALTERNATIVE DISPUTE RESOLUTION

There are no specific provisions for alternative dispute resolution. Disputes are generally settled through negotiation during the audit process. Where agreement cannot be reached, litigation typically commences.

VIII ANTI-AVOIDANCE

Ireland’s general anti-avoidance legislation, as provided for in Section 811 of the Taxes Consolidation Act 1997, enables the Revenue to form the opinion that a transaction gives rise to a tax advantage, and that the transaction was not undertaken or arranged primarily for any reason other than to give rise to a tax advantage, and in such circumstances the transaction is known as a ‘tax avoidance transaction’. The Revenue is empowered to determine the tax consequences of the tax avoidance transaction, which may involve making any adjustment required to withdraw the tax advantage. There are two important exclusions provided for in Section 811. The first exclusion applies where a transaction was undertaken to realise profits in the course of the business activities of the person, and was not undertaken or arranged primarily to give rise to a tax advantage. The second exclusion arises where the transaction was undertaken or arranged for the purpose of benefiting from any relief, allowance or abatement provided by tax legislation, where the transaction would not result, directly or indirectly, in a misuse of the provision or an abuse of the provision having regard to the purpose for which it was provided.
On 14 December 2011, the Supreme Court issued its seminal decision in *O’Flynn Construction Limited & Others v. The Revenue Commissioners (O’Flynn)*. This was the first decision of the Supreme Court concerning Ireland’s general anti-avoidance legislation and the Supreme Court found in favour of the Revenue.

*O’Flynn* concerned a relief from corporation tax that was available to companies on profits earned from qualifying exports (export sales relief, which had long since been abolished). In addition, dividends received from an export sales relief company were also relieved from income tax in the hands of individual shareholders. *O’Flynn* involved a series of 40 individual steps undertaken over 50 days that resulted in two companies reducing their profits by making capital contributions to other companies (which were later written off), while the shareholders of both companies received dividends from other entities that were relieved from tax under the export sales relief scheme. In essence, the series of transactions involved shareholders of a company that did not benefit from export sales relief receiving dividends from another company, one which did benefit from export sales relief, so that the dividends received by the shareholders of the first company were not subject to tax.

The decision of the Supreme Court centred on whether the transactions involved constituted a misuse or abuse of a relieving provision (the export sales relief). The judgments (both majority and minority) provide a useful summary on statutory interpretation in Ireland and how it applies to taxing statutes. O’Donnell J, in the majority, held that Section 811 expressly requires the utilisation of a purposive approach to statutory interpretation. He noted that legislation in the form of Section 811 was specifically required to overcome the rejection by the Irish courts of a ‘substance over form’ approach to statutory interpretation. The Revenue, in forming its opinion under Section 811, is expressly required to consider the form and substance of the transaction. In addition, in considering whether there has been misuse or abuse of a relieving provision, this must be determined having regard to the purpose for which that relieving provision was provided. He noted that ‘[t]he function of the Revenue Commissioners, and on appeal the Appeal Commissioners, and the courts, is to seek to discern the intention of the Oireachtas and to faithfully apply it to the individual case’.

He went on to note that, in this case, ‘the form of the transaction was highly artificial and contrived’, and held that ‘a scheme which allows the shareholders in a non-exporting company to benefit from export sales relief on the profits of the non-exporting company, is surely a misuse or abuse of the scheme having regard to the purpose for which the provision is provided’.

In considering whether the second exclusion from Section 811 applies, there is no distinction between misuse or abuse, but ‘what is important is that full effect is given to the intention of the Section that only appropriate uses of the provisions get the benefit of the tax relief’.

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5 [2011] IESC 47.
6 The Irish legislative body.
IX DOUBLE TAXATION TREATIES

There have been very few cases before the Irish courts involving double taxation treaties. The most recent case, from 2007, concerned the tax residence of an individual who argued that she was resident in Italy for the purposes of the Irish–Italian double taxation treaty (Kinsella v. The Revenue Commissioners). The Revenue sought to argue that the treaty did not apply to Irish capital gains tax. The High Court found, however, that the treaty did apply to Irish capital gains tax, and that the individual had been resident in Italy in the year in question under the terms of the treaty.

As regards the interpretation of tax treaties, Ireland acceded to the Vienna Convention on the Law of Treaties with effect from 6 September 2006. In Kinsella, the court noted that even before this, it was clear from the decision of Barrington J in McGimpsey v. Ireland that, in interpreting an international treaty, the court ought to have regard to the general principles of international law, and in particular the rules of interpretation of such treaties as set out in Articles 31 and 32 of the Vienna Convention. These Articles require that a court interprets a treaty in good faith in accordance with the ordinary meaning to be given to its terms in their context, and in the light of the treaty’s object and purpose. Where such an interpretation leaves the meaning of the treaty ambiguous or obscure, or leads to a manifestly absurd or unreasonable result, then recourse can be made to supplementary means of interpretation.

Avoiding litigation is the preferable route for taxpayers and the Revenue alike. Therefore, in cross-border transactions, it is possible for taxpayers to enter into an advance pricing agreement (APA), agreeing with the Revenue the arm’s-length price for arrangements with related parties outside Ireland. The Revenue will engage with taxpayers and negotiate bilateral and multilateral APAs with countries with which Ireland has double taxation treaties. The conclusion of an APA will provide the taxpayer with certainty that its transfer pricing arrangements agreed thereunder are in compliance with Ireland’s transfer pricing rules, and thereby result in fewer disputes.

The Irish courts’ interpretation of the TFEU and the EEA will follow the interpretation rules for other international treaties (i.e., as set out in the Vienna Convention).

Specifically, in relation to VAT, there have been a number of cases where the European Commission has taken cases against Ireland for its failure to comply with the Sixth VAT Directive. These cases have resulted in legislative amendments in Ireland. For example, the Commission took a case against Ireland challenging the VAT treatment of public authorities, which, under Irish law, were not obliged to charge VAT on the provision of certain services. This was seen as giving rise to a distortion of competition.

Again in relation to VAT, there may be discrepancies between the Sixth VAT Directive and how it is transposed into domestic Irish legislation. Many Member States offer detailed guidance on the interpretation of the Directive. For example, in the case of

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7 [2007] IEHC 250.
the management of regulated funds, a service that is exempt from VAT, many Member States have clarified the meaning of ‘management’, whereas Ireland has not. In practice, it is understood that the Revenue follows the approach of other Member States.

X AREAS OF FOCUS

As noted in Section I, supra, targeting domestic tax avoidance has been an area of focus recently. The Revenue's win in the O’Flynn case was seen as an important victory, indicating that Section 811 would stand up in the courts and should not therefore be taken lightly. It had been commonplace for some advisers to argue that Section 811 would not work, and that it would not be upheld by the courts. It was suggested that Section 811 was unconstitutional (not argued in O’Flynn) or that general anti-avoidance legislation could not take precedence over specific anti-avoidance legislation (argued unsuccessfully in O’Flynn). Taxpayers will need to be cognisant of Section 811 in all their tax planning and ensure that all transactions entered into can be commercially justified.

It is expected that the Revenue will continue to focus on artificial tax avoidance schemes and seek to challenge these under Section 811. This is particularly the case given its recent success in this area.

Transfer pricing is a relatively new concept in Ireland and, as noted in Section II, supra, the Revenue recently announced the introduction of self-reviews of compliance with transfer pricing rules. It is expected that this will also be an area of focus for the Revenue in the immediate future.

Finally, there has been an increase in the number of Revenue audits of research and development tax credit claims over the past years. These audits involve a comprehensive review of research and development tax credit claims from both a scientific or technological perspective (by a Revenue-appointed expert) and a financial or tax technical perspective (by a Revenue Inspector). In addition, the Revenue has recently issued a number of letters requesting a ‘self-review’ of research and development tax credits by claimants. The letter typically requires the claimant to answer a number of questions about the tax credit claimed. The self-review does not constitute a formal audit or a notification of a formal audit but may lead to such an audit based on the responses given.

XI OUTLOOK AND CONCLUSIONS

Ireland’s relatively low corporate tax rate of 12.5 per cent on trading income, together with the absence of a controlled foreign companies regime, a limited withholding tax regime and limited transfer pricing, means that Ireland is a focal point for international tax strategies. Increasingly, multinational corporations’ tax charges on profits are being analysed. To avoid and protect against non-Irish tax challenges to Irish structures, groups with operations in Ireland need to review existing arrangements to ensure the underlying intra-group written agreements and other legal documentation appropriately reflect the substance of that which occurs in Ireland. If the underlying legal structures are simply boilerplate intra-group agreements, the Irish tax-paying corporate should anticipate foreign tax authority challenges.
Appendix 1

ABOUT THE AUTHORS

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For more than 25 years, John has advised Fortune 500, FTSE 100 and other major multinationals in respect of international tax. He regularly works with some of the world’s leading tax lawyers and advises on transactions structured in and through Ireland.

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John was educated at the University of London (LLB (Hons)), is an associate of the Institute of Chartered Accountants and the Irish Institute of Tax, and is a UK Chartered Tax Adviser. John represents Ireland on the influential Paris-based ICC Commission on Taxation, which works with the G8 and G20 governments on international tax policy.

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Robert is a tax partner in the taxation department of Mason Hayes & Curran. He has advised a wide range of clients on leasing, funds and structuring investments. Robert has significant experience in advising clients on cross-border transactions and structuring inward investment into Ireland. He regularly advises on the use of Irish regulated funds and Irish special purpose securitisation companies for structuring international business in and through Ireland.
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