THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES

Faculty of Taxation

Tax Representation

TAXREP 9/03

Ireland's removal from CFC Exempted Countries List

Letter submitted in April 2003 to the European Commission in respect of Ireland's removal from the CFC Exempted Countries List

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IRELAND'S REMOVAL FROM CFC EXEMPT COUNTRIES LIST

INTRODUCTION

1. We have set out below the contents of the letter submitted by the Tax Faculty to the European Commission in connection with Ireland's removal from the CFC Exempt Countries' List in September 2002.

WHO WE ARE

2. The Institute is the largest accountancy body in Europe, with more than 123,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).

4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter "TAXline" to more than 11,000 members of the ICAEW who pay an additional subscription.

LETTER TO THE EUROPEAN COMMISSION

5. The text of the letter sent to the European Commission is reproduced below:

> "We are writing to draw your attention to the action of the UK Government in September 2002 in relation to a fellow EU member country, Ireland, which we believe is contrary to the EU charter.
>
> Prior to September 2002, subsidiaries of UK companies established in Ireland were outside the UK CFC rules unless they were:
>
> 1. Companies obtaining relief or exemption from (Irish) tax under Chapters 1 and 2 of Part 14 of the Taxes Consolidation Act 1997
>
> 2. Holding companies having income exempted from tax under section 44 in Chapter 3 of Part 3 of the Taxes Consolidation Act 1997.

On 20 September 2002, the UK Government laid a Statutory Instrument *The Controlled Foreign Companies (Excluded Countries) (Amendment No. 2) Regulations 2002* (SI 2002 No 2406) before Parliament. This came into force on 11 October and has the effect of treating all subsidiary companies of UK parent companies which are resident in Ireland as automatically within the UK CFC legislation unless they satisfy one of the general statutory exemptions set out in section 748(1)(a) to (d), ICTA 1988.

The reason for the change is set out in the Inland Revenue Press Release dated 23 July 2002 which is reproduced at the end of this letter [see Appendix].

We believe the action of the UK Government may contravene Article 43 of the European Treaty by constituting a restriction on the freedom of establishment of nationals of a member state in the territory of another member State.

We would welcome your views on the above matter."

6. The text of the Inland Revenue Press Release which accompanied the above letter is reproduced in the Appendix.

IKY
2-04-03

Appendix

Text of Inland Revenue Press Release dated 23 July July 2002 announcing the removal of Ireland from the list of countries where Controlled Foreign Corporations ('CFCs') can enjoy automatic exemption

Companies resident in Ireland are currently automatically exempt from the UK's CFC rules if, broadly:

- 90% or more of their income arises locally in Ireland; and

- they are not entitled to certain tax benefits.

The Government of the Republic of Ireland announced in 1999 the repeal of these tax benefits and the introduction of a programme of progressive reductions in its rate of CT for trading income. With effect from 1 January this year the lower rate of CT was reduced to 16% and that rate will be further reduced, to 12.5%, from next January.

In the light of this, it is no longer possible readily to distinguish between Irish CFCs that have been established there for genuine commercial (as opposed to tax) reasons and therefore inappropriate automatically to exempt them. The Government therefore proposes to remove Ireland from the list of countries where CFCs can enjoy automatic exemption.

The remaining five CFC exemptions will continue to apply to Irish CFCs. Those carrying out genuine commercial activities will, for example, continue to be able to benefit from the exemption designed for such companies. UK owners of Irish CFCs will only be liable to a charge under the UK's CFC rules if one of the main purposes of the CFC is to achieve a reduction of UK tax by a diversion of profits from the UK.

To allow companies to consider any implications for their business the Government does not propose to make the appropriate amendment to the relevant regulations until 20 September. When made, this amendment will take effect 3 weeks later in relation to accounting periods beginning on or after 11 October 2002.

A further News Release will be issued when the regulations are laid before Parliament. If, exceptionally, given the nature of the intended change to the regulations people wish to make any comments on the above proposals, they should be sent, by Tuesday 17 September, to:

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Victory House
30-34 Kingsway
London WC2B 6ES