

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

BDO KNOWS: INTERNATIONAL TAXATION

A PUBLICATION FROM THE BDO UK/US TAX DESK



SUBJECT

THE UNITED KINGDOM GOVERNMENT HAS INTRODUCED LEGISLATION THAT PROVIDES FOR DEVOLUTION OF CORPORATION TAX RATE SETTING POWERS TO THE NORTHERN IRELAND ASSEMBLY (“NIA”) FOR CERTAIN TRADING PROFITS ARISING IN NORTHERN IRELAND

SUMMARY

The Corporation Tax (Northern Ireland) Act 2015 became law in the United Kingdom in March 2015, and, in November 2015, the Northern Ireland executive and UK and Irish governments agreed a set of actions that should, among other things, facilitate the implementation of a corporation tax rate reduction in Northern Ireland.

The law provides that the NIA may, by way of resolution, set a rate of corporation tax on certain profits arising in Northern Ireland that is different from the main rate of corporation tax in the United Kingdom (currently 20 percent). The expectation is that the rate of corporation tax that will apply to profits arising in Northern Ireland will be reduced to 12.5 percent. This is the same as the current rate of corporation tax in the neighboring Republic of Ireland.

BACKGROUND AND DETAILS

The United Kingdom Government is committed to creating the most competitive tax system in the G20 to both stimulate UK growth and encourage foreign direct investment. Recognizing that the Northern Ireland economy has been over-dependent on the public sector in the past and that it cannot compete effectively with the low tax jurisdiction across the land border of Ireland, it is anticipated that the lowering of the corporate tax rate will stimulate growth, lead to job creation, and increase private-sector investment in the country.

CONTACT:

ROBERT PEDERSEN, Partner and International Tax Practice Leader
(212) 885-8398 / rpedersen@bdo.com

JOE CALIANNI, Partner,
Washington National Tax Office
(202) 904-2402 / jcalianno@bdo.com

ROBERT M. BROWN, Partner
(412) 281-6018 / rmbrown@bdo.com

INGRID GARDNER, Managing Director UK/US Tax Desk
212-885-8268 / igardner@bdo.com

SCOTT HENDON, Partner
(214) 665-0750 / shendon@bdo.com

MONIKA LOVING, Partner
(404) 979-7188 / mloving@bdo.com

CHIP MORGAN, Partner
(310) 557-7517 / cmorgan@bdo.com

BRAD RODE, Partner
(312) 233-1869 / brode@bdo.com

WILLIAM F. ROTH III, Partner,
Washington Tax Office
(616) 776-3761 / wfroth@bdo.com

JERRY SEADE, Principal
(713) 986-3108 / jseade@bdo.com

The Corporation Tax (Northern Ireland) Act 2015 empowers the NIA to set a corporation tax rate by way of resolution. The power to set the rate is only exercisable once the commencement financial year has been appointed by the UK Government by way of statutory instrument. To date, no such commencement order has been made. While the legislation provides that the rate set could be as low as zero percent, it is expected that a rate of 12.5 percent will be implemented effective from April 1, 2018.

Once in force, the Northern Ireland tax rate will apply to certain trading profits arising in Northern Ireland. There are separate regimes for Small and Medium-sized Enterprises (“SMEs”) and for large companies which are discussed in more detail below

SME regime

SMEs (i.e., those companies belonging to groups with less than 250 employees, and with either less than €50m turnover or €43m balance sheet total) that have employees in Northern Ireland will qualify for the reduced rate of corporation tax on all of their qualifying UK profits on the basis of an “in/out” test. If at least 75 percent of both working time and workforce expenses of company employees in the United Kingdom relate to time those employees spend in Northern Ireland, then 100 percent of the qualifying profits of the company will benefit from the Northern Ireland corporation tax rate. If the 75-percent test is not met, then none of the profits will qualify for the reduced rate.

Large company regime

Large companies are required to determine whether they have a Northern Ireland Regional Establishment (“NIRE”), i.e., a permanent establishment in Northern Ireland. If so, then the qualifying profits attributable to that NIRE will benefit from the reduced rate. The tests for determining whether a company has a NIRE and if so how profits are allocated broadly follow the UK rules for permanent establishments. Only profits arising from genuine activities in Northern Ireland will therefore qualify for the 12.5-percent rate.

Qualifying profits

Only trading profits can benefit from the reduced rate in Northern Ireland, and certain trades and activities are excluded.

Excluded trades are:

- ▶ Ring-fence oil & gas activities
- ▶ Lending and investing activities
- ▶ Investment management
- ▶ Long-term insurance business
- ▶ Re-insurance business

Profits arising from back office functions of the excluded trades listed above, with the exception of oil & gas and re-insurance business, can also qualify for the Northern Ireland rate by election. In quantifying the profit arising from those qualifying back office functions, the statute provides for cost plus five percent.

BDO INSIGHTS

The United Kingdom has successfully implemented corporate tax reform to encourage inbound investment, stimulate growth, and create jobs. However, at 20 percent (reducing to 18 percent by April 1, 2020), the corporation tax rate in Northern Ireland cannot compete with 12.5 percent in Dublin across the border. The proposed rate reduction for Northern Ireland should level the playing field, and United States multinational companies looking to invest in the United Kingdom might therefore consider whether Belfast, rather than elsewhere in the United Kingdom, is a viable location for their business.

This alert has been prepared in consultation with BDO International member firms for general informational purposes only and should not be construed as tax advice. As such, you should consult your own tax advisor regarding your specific tax matters.

The Tax Practice at BDO is among the largest tax advisory practices in the United States. With 63 offices and more than 450 independent alliance firm locations in the United States, BDO has the bench strength and coverage to serve you.

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For more than 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. The firm serves clients through 63 offices and over 450 independent alliance firm locations nationwide. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,408 offices in 154 countries.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information, please visit www.bdo.com.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.