Irish Music Rights Organisation

Irish Tax Advice Memo

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Strictly private and confidential

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This report has been prepared by PricewaterhouseCoopers based on the instructions provided by Sarah Sweetnam, Director of Finance, Distribution & HR at Irish Music Rights Organisation CLG. Our advice is provided under our Letter of Engagement with Irish Music Rights Organisation CLG dated 30 April 2018.

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Background and Overview

Background & Engagement Preamble

Background

We understand the following:

- Irish Music Rights Organisation CLG ("IMRO") is a company limited by guarantee.
- IMRO engages with members within the music industry to manage their royalty collections and copyright issues.
- We understand that IMRO administers the performing right in copyright music on behalf of its members (songwriters, composers and music publishers) and on behalf of members of the international overseas societies that are affiliated to it.
- We understand IMRO´s function is to collect and distribute royalties arising from the public performance of copyright works (i.e. music used anywhere outside of the domestic environment) through its licensing agreements with music users.
- We understand IMRO is seeking advice in relation to the Irish tax implications of gifts and inheritances of copyrights.
- We understand IMRO intends to include contents of this paper on their website for its users. Please note our advice is based on current Irish tax law and practice and is subject to any changes in law or practice that occur in the future. We have no obligation to update this paper in the future. We advise IMRO to include a disclaimer on their website stating that the information provided is correct at today's date and is subject to change in the future. IMRO members should consult their tax advisors prior to implementing any advise set out in this paper.

Engagement Preamble

- When there is a lifetime transfer (i.e. a gift) of an asset, the following taxes should be considered:
  - Capital Gains Tax ("CGT") on the transfer of the asset;
  - Capital Acquisitions Tax ("CAT") on the acquisition of the asset;
  - Stamp duty on the acquisition of the asset.
- A transfer on death (i.e. an inheritance) involves CAT only as there is no CGT on death nor is stamp duty applicable to property you inherit under a will or on intestacy.
- Furthermore, the purpose of this memo is to provide an overview of the Irish tax implications in respect of gifts and inheritances of copyrights under the relevant tax heads.

CGT

Scope of CGT

Who is liable to CGT?

- Under Irish tax legislation, where an Irish resident individual makes a disposal or transfers an asset (other than cash) by way of a gift, that individual is subject to Irish CGT on any gain which may arise.
- The gain to be taxed for CGT purposes is arrived at by taking the sales proceeds (or market value for the purposes of a gift) and deducting the cost of the asset ('base cost'). The appropriate tax rate is then applied to the taxable gain to give the tax amount that is payable.
- Special rules apply to non-resident individuals. Such individuals are liable to CGT on gains on the disposal of "specified assets". The definition of specified assets include land, building and minerals in Ireland or unquoted shares deriving the greater part of their value from same.
- Please refer to Appendix One for further details on the rules surrounding tax residency in Ireland.

Situs of copyrights

- Copyrights or rights/licences to use any copyright material, patent, trade mark, or design are situated in Ireland if they, or any rights derived from them, are exercisable in Ireland.
- Copyrights would not be regarded as "specified assets" referred to above.
- Therefore a gift of Irish copyrights will be within the charge to Irish CGT if the person disposing of the rights is either resident or ordinarily resident in Ireland. If the person disposing of the rights is neither resident nor ordinarily resident in Ireland, then they should not be liable to Irish CGT on the disposal of the rights.

CGT rate

- The current rate of CGT is 33% which is applied to gains made from the disposal or transfer of an asset.

Annual Exemption

- For individuals, the first €1,270 of gains (after deducting losses) are exempt from CGT in each tax year. An individual is entitled to this exemption whether they are resident or non-resident. The exemption cannot be transferred to a spouse or civil partner.

CGT Relief

Retirement Relief

- There is a CGT relief available in respect to certain disposals or transfers of business assets by an individual aged 55 years or over. Where all the relevant conditions are met, gains realised on the disposal or transfer of qualifying assets are relived from CGT.

- If the transfer consists of copyrights held as an investment, Retirement Relief does not apply.

- However, if copyrights are actively managed as part of a trading business relating to the copyrights, then there may be scope for this relief to apply. Specialist tax advice should be sought in these circumstances.

Filing & Administrative Obligations

Pay & File requirements

- There are specific payment and filing requirements in relation to disposals or transfers for CGT purposes.
- The transferor is the accountable person and must ensure that a payment of any CGT liability is made to Revenue. The transferor must ensure that details of the disposal/transfer are disclosed on their tax return for the relevant year.
- The date of disposal/transfer determines the pay and file deadline for CGT:
    - For disposals made between 1 January – 30 November ('the initial period'), a payment must be made by 15 December of the same year;
    - For disposals made between 1 December – 31 December ('the final period'), a payment must be made by 31 January the following year.
- For example, if the disposal/transfer date of an asset was 1 June 2021, the relevant pay and file deadline would be 15 December 2021.
- However, if the disposal/transfer date of an asset was 1 December 2021, the relevant pay and file deadline would be 31 January 2022.

CAT

Scope of CAT

Who is liable to CAT?

- Under Irish tax legislation, a gift or inheritance is subject to Irish CAT where one of the following conditions are met:

  1. The disponer (i.e. the giver) of the gift or inheritance is Irish tax resident or ordinarily resident at the date of the gift or inheritance;
  2. The beneficiary (i.e. the receiver) of the gift or inheritance is Irish tax resident or ordinarily resident at the date of the gift or inheritance; or
  3. The property transferred as a gift or inheritance is situate in Ireland.

- Special rules apply to non domiciled individuals. Such individuals are not regarded as resident or ordinarily resident in Ireland for CAT purposes unless they have been resident in Ireland for 5 consecutive tax years immediately preceding the tax year in which the benefit is taken.

- Please refer to Appendix One for further details on the rules surrounding tax residency in Ireland.

Situs of copyrights

- Copyrights of all kinds are situate in Ireland provided they are protected by the Copyright and Related Rights Act 2000 and are enforceable in the State.
- Where the rights are sited in Ireland then a transfer of those rights will be within the charge to Irish CAT regardless of the residency position of the donor or the beneficiary.
- If protected by the legislation of foreign jurisdiction, then the copyright is situate in that jurisdiction.
- Where the rights are not sited in Ireland then there will only be a charge to Irish CAT on a transfer of those rights where the beneficiary or the disponer is resident or ordinarily resident in Ireland.

CAT rate

- The current rate of CAT is 33% which is applied to the market value of the asset at the date of the gift or inheritance less:

  - any exemptions;
  - consideration paid for the gift;
  - certain costs/liabilities; and
  - any unused amount of the beneficiary's lifetime tax-free threshold.

Scope of CAT

CAT Group Thresholds

- The taxable value of a gift or inheritance may be reduced by the CAT group threshold applicable to the beneficiary.
- There are three group thresholds that apply from 9 October 2019:
    - **Group A - €335,000 tax-free threshold:** A gift or inheritance made to a child, step-child (or parent of the disponer in certain limited circumstances).
    - **Group B - €32,500 tax-free threshold**: A gift or inheritance made to a parent, brother, sister, niece, nephew, grandparent, grandchild, lineal ancestor or a lineal descendant of the disponer.
    - **Group C - €16,250 tax-free threshold:** A gift or inheritance made to a beneficiary not covered by the Group A or Group B thresholds such as in-laws or non-blood relatives (referred to as "strangers").

Small Gift Exemption

- The first €3,000 of the total taxable value of all taxable gifts taken by a beneficiary from any one disponer in a calendar year is exempt from tax and is not taken into account in computing CAT payable.
- This small gift exemption applies to gifts only (inheritances do not qualify for the exemption).

CAT Reliefs

Business Relief

- There is a CAT relief available in respect to certain gifts or inheritances of business assets, which provides a reduction of 90% in the taxable value of the relevant business property taken by the beneficiary.
- It is generally the practice of Irish and UK law to deny Business Relief in respect of copyrights. It is understood that in the UK, the HMRC argue that the value of the business lies in copyrights producing royalties and that when this is given away all that is being given is the holding of an investment.
- However, if copyrights are actively managed as part of a trading business which is capable of continuing after the death of the original artist, then there may be scope for this relief to apply. Specialist tax advice should be sought in these circumstances.

CGT/CAT Offset Credit

- Where CAT and CGT arise on the "same event" (i.e. the transfer of an asset for CGT purposes and the acquisition of the same asset for CAT purposes), a credit may be available for the CGT paid against the beneficiary's CAT liability.
- Therefore any CGT payable on the gift of a copyright may be used as a credit against any CAT payable on the gift.

Filing & Administrative Obligations

Pay & File requirements

- There are specific payment and filing requirements in relation to gifts and inheritances for CAT purposes.

- The beneficiary is the accountable person and must ensure that a Form IT38 (CAT return) is filed to Revenue along with the payment of any CAT liability.

- A beneficiary whose total benefits do <u>not</u> exceed 80% of their group threshold is not required to file a CAT return. However, there is still a requirement to file a CAT return where business relief is being claimed.

- The valuation date determines the pay and file deadline for CAT:
    - For gifts or inheritances with a valuation date between 1 January – 31 August, the pay and file deadline is 31 October of the same year.
    - For gifts or inheritances with a valuation date between 1 September – 31 December, the pay and file deadline is 31 October of the following year.

- For example, if the valuation date of a gift or inheritance was 1 June 2021, the relevant pay and file deadline would be <u>31 October 2021</u>.

- However, if the valuation date of a gift or inheritance was 1 September 2021, the relevant pay and file deadline would be <u>31 October 2022</u>.

- Generally, the pay and file deadline is extended to mid-November for those who pay and file online through Revenue Online Service (“ROS”).

Stamp Duty

Scope of Stamp Duty

Who is liable to stamp duty?

- Stamp duty is a tax on certain documents, typically transfer instruments. Under Irish tax legislation, a transfer instrument is within the charge to stamp duty on a gift of property if:
  - it is executed in Ireland, or
  - wherever executed, it relates to any Irish property, or anything done or to be done in Ireland.
- The accountable person for stamp duty is typically the recipient or transferee, except in the case of a gift or voluntary disposition, where both the transferor and transferee can be liable.

Stamp rates

- The rate of stamp duty applicable depends on the nature of the asset transferred:
  - The rate of stamp duty applicable to a transfer of non-residential property is currently 7.5%.
  - The rate of stamp duty applicable to a transfer of shares is currently 1%.

Stamp Duty Exemption

- There is a specific stamp duty exemption for testamentary instruments i.e. property inherited under a will or on intestacy is exempt from stamp duty.
- In addition, any document executed in connection with a transfer of qualifying intellectual property is exempt from stamp duty.
- Qualifying intellectual property consists principally of patents, trademarks, registered designs, design rights, inventions, domain names, trade names, brands, service marks, publishing titles, medicine/ product authorisations and copyrights within the meaning of the Copyright and Related Rights Act 2000.
- Therefore the gift of a copyright should be exempt from stamp duty once it falls within the meaning of the Copyright and Related Rights Act 2000.

Filing & Administrative Obligations

Pay & File requirements – Stamp Duty

- No stamp duty filings are required in order to rely on either the testamentary exemption or the IP exemption.
- If an exemption or relief does not apply, the date of execution of the stampable document determines the pay and file deadline for stamp duty. A stamp duty return must be filed and duty paid within 44 days of the stampable document being executed.
- For example, if the document is executed on 1 June 2021, the relevant pay and file deadline would be 15 July 2021.

Valuation of assets

Valuation of assets

Valuation of assets

- "Open market value" is used when valuing an asset for CGT and CAT purposes. Open market value is the price which such asset would fetch if sold on the open market on the valuation date/date of disposal.
- In the case of valuing a copyright, it would be necessary to determine an open market value of the asset. This may need to be completed by a professional valuer in order to determine an accurate valuation at the date of gift or inheritance.
- Stamp duty is generally payable on the higher of the open market value of the asset or the consideration paid.

Artist Exemption

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Artist Exemption

- There is an income tax exemption available in certain circumstances for individuals (who are writers, composers, painters and sculptors) in respect of income arising from their artistic talents.
- A €50,000 cap applies to the artists' exemption. Where an artist's income does not exceed €50,000, no income tax applies to their income. Income exceeding that cap is taxable.
- The relief will only be granted in respect of a "work" which is original and creative and has cultural or artistic merit.
- There are guidelines to determine whether a work should qualify for the relief. Under these guidelines, the exemption extends to income arising indirectly from a qualifying work. However it only applies to the original artist and not to other individual who has received or may receive the rights.
- Further details on the Artist Exemption are set out in Appendix Two.

Application for gifts or inheritances of copyrights

- Based on the above, where an individual receives copyrights by way of gift or inheritance and would not be deemed the original artist of the work in which the copyrights relate, the exemption on the associated royalty income would not apply.

Appendices

Appendix One: Irish Residence & Domicile

Tax Residence

- An individual is resident in Ireland for tax purposes:
    - If they spend 183 days or more in Ireland in a tax year, or
    - If they spend an aggregate of 280 days in Ireland in the current tax year and the previous tax year (if they spend less than 30 days in Ireland in either tax year these days will be ignored in calculating the aggregate).
- Please note that you will be regarded as present in Ireland for a day if you are present at any time during that day.

Ordinarily Tax Residence

- An individual is ordinarily resident in Ireland once they have been Irish resident for each of the three preceding tax years.
- An individual will remain ordinarily resident until they have been non-resident for three continuous tax years.

Domicile Position

- Domicile is a legal concept which relates to where an individual has their personal and economic ties and where their permanent home is.
- Generally, an individual's domicile originates from their father at the time of their birth.

Appendix Two: Artist Exemption

Overview

- Artist Exemption is an income tax exemption available in certain circumstances for writers, composers, painters and sculptors in respect of income arising from their artistic talents.
- There is an upper limit of €50,000 on the income tax exemption. Income exceeding this cap is taxable.
- The exemption applies to income tax only and does not extend to PRSI or USC.

Conditions

- The relief is granted in respect of a "work" which is original and creative and has cultural or artistic merit. The entire artist's income from "the publication, production or sale" of qualifying works is exempt.
- A "work" includes:
  - a book (or other writing);
  - a play;
  - a musical composition;
  - a painting; or
  - a sculpture.
- The relief applies to an individual who is resident in the EU/EEA (deemed to include the UK for 2020) and not resident elsewhere or to an individual who is ordinarily resident and domiciled in the EU/EEA and is not resident outside the EU/EEA.
- The exemption extends to income arising indirectly from a qualifying work. For instance, it applies to income from the sale of the film or television rights of a book or a play. It also extends to income from recording of a play. However, it only applies to the original artist and not to anyone else who has purchased the rights.

Filing and Administration

- A formal claim for exemption must be made by filing an Artist Claim Form 2 and the exemption will only apply from the tax year in which the claim is made.
- Where an artist's income is either below or above the €50,000 limit, the individual must file a Form 11 tax return for the relevant tax year (i.e. even if the income is exempt from income tax).
- A claim for the artist's exemption is subject to a determination being made by Revenue. A claimant has the right of appeal if the Revenue Commissioners do not make a determination in relation to the claim within 6 months of the claim being made. The appeal must be made by notice in writing to the Appeal Commissioners within 30 days after the end of the 6-month period.

Thank you