

# **Revised tax treatment of royalty income, with effect from 1 January 2016, under the terms of the Ireland-Estonia Double Taxation Convention, 1997**

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## 1. Overview

Ireland's Double Tax Convention (DTC) with Estonia came into effect in 1999. It contains a provision whereby the tax treatment of royalty income under the Convention may be revised if more favourable terms are subsequently agreed by Estonia with another OECD country. Estonia subsequently agreed such terms with Switzerland and those terms apply to the Ireland-Estonia DTC with effect from 1 January 2016.

## 2. Background

- 1.1 Ireland's DTC with Estonia was signed on 16 December 1997 and came into effect on 6 April 1999.
- 1.2 Article 12 of the DTC concerns the taxation of royalty income.
- 1.3 Paragraph 1 provides that royalties arising in one State and paid to a resident of the other State may be taxed in the other State, that is, the State of residence.
- 1.4 Paragraph 2 provides that such royalties may also be taxed in the State where they arise, that is, the State of source. The State of source may tax the royalties at a rate of either 5% or 10%, depending on the type of royalty payment.
- 1.5 Paragraph 3 defines the term "royalties"; it includes payments "for the use of, or the right to use, industrial, commercial or scientific equipment".
- 1.6 Paragraph 6 of the Protocol to the Ireland-Estonia DTC provides that, in relation to Article 12 – Royalties, any exclusions to the definition of royalties and any exemption from Estonian tax on royalties arising in Estonia which Estonia might agree in a Convention signed with an OECD country subsequent to the signature of the Ireland-Estonia DTC, are automatically to apply to the Ireland-Estonia DTC. This type of provision is commonly referred to as a "most-favoured nation" clause.

## 3. Revised tax treatment with effect from 1 January 2016

- 1.7 On 25 August 2015, Estonia signed a Protocol to its Convention with Switzerland in relation to royalties. This entered into effect on 1 January 2016. The Protocol provides that royalties are taxed only in the residence State and amends the definition of royalties to exclude payments for the use of, or the right to use, industrial, commercial or scientific equipment.
- 1.8 As Switzerland is an OECD country with which Estonia has agreed exclusions to the definition of royalties and an exemption from Estonian tax on royalties arising in Estonia, similar terms are to be regarded as applying to Article 12 – Royalties of the Ireland-Estonia DTC.
- 1.9 Accordingly, with effect from 1 January 2016, Article 12 of the Ireland-Estonia DTC is to be read as if there is no source taxation and as if the definition of royalties does not include payments made for the use of, or the right to use, industrial, commercial or scientific equipment.