Revised tax treatment of royalty income, with effect from 1 January 2019, under the terms of the Ireland-Lithuania Double Taxation Convention, 1997

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1 Overview

Ireland's Double Taxation Convention (DTC) with Lithuania 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 Lithuania with another OECD country. Lithuania has recently agreed such terms with Japan and those terms are now to apply to the Ireland-Lithuania DTC with effect from 1 January 2019.

2 Background

2.1 The Ireland-Lithuania DTC was signed on 18 November 1997 and came into effect for Corporation Tax on 1 January 1999 and for Income Tax and Capital Gains Tax on 6 April 1999.

2.2 Article 12 of the DTC concerns the taxation of royalty income.

2.3 Paragraph 1 provides that royalties arising in **one Contracting State** and paid to a resident of the **other Contracting State** may be taxed in that other State, that is, the residence State.

2.4 Paragraph 2 provides that such royalties may also be taxed in the State where they arise, that is, the source State. The source State may tax royalties at a rate of either 5% or 10%, depending on the type of royalty payment.

2.5 Paragraph 3 defines the term "royalties" and it includes payments "for the use of, or the right to use, industrial, commercial or scientific equipment".

2.6 Paragraph 6 of the Protocol to the DTC provides that, in relation to **Article 12 – Royalties,** any exclusions to the definition of royalties and any exemption from Lithuanian tax on royalties arising in Lithuania which Lithuania might agree in a Convention signed with an OECD country subsequent to the signature of the Ireland-Lithuania DTC are automatically to apply to the Ireland-Lithuania DTC. This type of provision is commonly referred to as a "most-favoured nation" clause.

3 Revised tax treatment with effect from 1 January 2019

3.1 On 13 July 2017, Lithuania signed a DTC with Japan. Article 12 of that DTC provides that royalties arising in Lithuania, as source State, are taxed only in the residence State, and the definition of royalties excludes payments for the use of, or the right to use, industrial, commercial or scientific equipment. The DTC came into effect as regards Article 12 on 1 January 2019.

3.2 As Japan is an OECD member with which Lithuania has agreed exclusions to the definition of royalties and an exemption from Lithuanian tax on royalties arising in Lithuania, similar terms are to be regarded as applying to Article 12 – Royalties of the Ireland-Lithuania DTC.

3.3 Accordingly, with effect from 1 January 2019, Article 12 of the Ireland-Lithuania DTC is to be read as exempting royalties arising in Lithuania 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.