

M&A Update

Inversions: The View from Ireland

July 7, 2014

On June 25, 2014, Ireland's Taoiseach (Prime Minister) Enda Kenny and Minister for Finance Michael Noonan, among others, met with Cadwalader Chairman-elect and Corporate Group Co-Chair James C. Woolery in Dublin regarding foreign direct investment in Ireland and, specifically, the recent acceleration in U.S.-to-Ireland inversion transactions.

Observations

While there is bipartisan agreement in Ireland that its stable, 12.5% corporate tax rate is a cornerstone of the country's strategy to attract foreign direct investment, grow employment and generate economic growth, there is considerable sensitivity within the highest levels of the Irish government to Ireland being perceived as a tax haven by the European Union ("EU") and the U.S. Congress. The country's tax regime is coming under increasing scrutiny by the EU for the aggressive tax planning strategies undertaken by foreign multinationals¹, a practice termed "brass-plating."

Beyond reputational risk, senior officials note that a continuing trend of inversion transactions may place Ireland in an untenable fiscal situation: the gain in tax revenues from redomiciled corporations is more than offset by the concomitant inflation of Ireland's nominal Gross National Product, the basis for the calculation of the member states' contributions to the EU budget. The resounding concern is that Ireland bears the brunt of the reputational and economic impact of inversions but reaps little of the job creation, substantive investment, economic growth or other tangible benefits typically afforded by traditional foreign direct investment.

¹ In May 2013, the U.S. Permanent Subcommittee on Investigations reported that Apple, Inc. had used offshore entities in Ireland to shelter \$30 billion of net income from corporate tax during the period 2009-2011 and shift \$74 billion of worldwide income to Ireland during the period 2009-2012, where it pays a corporate tax rate of 2% or less. In June 2014, the European Commission opened its own investigation into Apple's international tax strategy and whether or not it constitutes a breach by Ireland of EU rules on state aid.

Takeaways

It is important that U.S. and other multinational corporations seeking to re-incorporate in Ireland do so with an eye towards making meaningful connections with the country. Although not a requirement, corporations should consider tangible investments beyond the requisite minimum of board meetings, including the establishment of accounting and treasury, legal, intellectual property and business development functions; the appointment of an Irish advisory board or resident Irish directors; and the establishment of regional trading or intellectual property hubs. Among other things, an inversion with these features has the potential dual benefit of driving a positive market reaction around the company's strategic goals in the EU and elsewhere, as well as protecting the deal from being singled out as an example of a "brass-plate" inversion. The rollout materials related to any inversion transaction should emphasize these investments. Taking steps such as these are key not only to navigating transactional, regulatory and reputational risk, but also to realizing the full strategic benefits conferred by an Irish domicile.

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If you have any questions, please contact any of the following attorneys or your Cadwalader contact:

James C. Woolery	+1 212 504 6200	james.woolery@cwt.com
Christopher T. Cox	+1 212 504 6888	chris.cox@cwt.com
Linda Z. Swartz	+1 212 504 6062	linda.swartz@cwt.com
Paul Dunbar	+44(0) 20 7170 8649	paul.dunbar@cwt.com