

Intercontinental Grouping of Accountants and Lawyers



SHARING INFORMATION, BUILDING RELATIONSHIPS

IN THIS ISSUE

LETTER FROM THE PRESIDENT
P.1

CALENDAR
P.2

QUESTIONS OF LIABILITY ARISING FROM THE PAYMENT OF TAXES AND SOCIAL SECURITY CONTRIBUTIONS AT THE POINT OF INSOLVENCY
P.3

USING IRELAND IN INTERNATIONAL TAX PLANNING
P.5

THE PRESENT FINANCIAL AND ECONOMIC CRISIS
P.16

CONFERENCE HIGHLIGHTS: INDIA
P.18

LETTER FROM THE PRESIDENT

Dear Friends and Colleagues,

After another exceptional AGM in Chandigarh hosted by the whole Sarin family, I would like to give you a brief update on the progress and changes that were decided at our Annual Meeting.

First of all let me present to you your new Board of Directors and their functions:

Executive Board

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The Annual meeting focussed mainly on ethical dilemmas and their influence on professional conduct and how the conflict over values affects business in the world and particularly in India. This debate was animated by the distinguished Prof. Dipankar Gupta. We were very privileged to have such a renowned speaker at our meeting. The afternoon was reserved for the very interesting presentation of the I.T. experts Mr. Puneet Vatsayan and our own very special I.T. man Munish Jauhar, the creator of the IGAL website.



In between the speeches we were able to have 8 presentations out of the 15 potential new members. This is quite an impressive turnout; over 50% of them were able to attend the AGM and some at very short notice. Those who were unable to attend, some of who we were able to meet in Bucharest, had difficulty getting a VISA, but have promised to attend the next AGM in

Venice – Italy.

Our network is continuing its investment in the updating and performance of the website and through this we were pleased to welcome 15 new members of which 7 are provisional until they attend an AGM.

Accepted and present at the AGM:

- An Accountant from Lebanon
- An Accountant from Turkey
- An Accountant and Lawyer from Poland
- An Accountant from the Netherlands
- A Lawyer from Cyprus
- An accountant from Nigeria
- An Accountant from Mauritius
- Accepted provisionally
- An Accountant and Lawyer from Jordan
- An Accountant from Cyprus
- An Accountant from Ecuador
- An Accountant from Indonesia
- An Accountant from Malta
- A Lawyer from Saudi Arabia

I would also like to inform you that 7 other firms are in the process of being admitted and if any of you know of a firm in your country or a neighbouring country that would be interested in joining us please let Beverley know. We are currently looking for an accounting firm in New York and a Law firm in Italy.

I must insist once again that all IGAL firms should have a website with a link to the IGAL site in order to improve and promote their businesses. Beverley can give you the details of our webmaster who would be more than pleased to help you with this, as he did the members present at the meeting in India. As Beverley does not have access to make changes in the members section please let her know if you find any mistakes or wrong information, we were recently informed by a member of such an incident and it has been changed by the administrating webmaster. It is now possible to have photographs posted to the

website, let Beverley have them and she will post them to the appropriate meeting. The procedure of how to view these photographs on the members section will be sent to you shortly.

Another important issue covered at the AGM, was the setting up of a Tax Committee. Initially, Peter Gassen – Schneider & Partners, only contacted the Accountants. However, at the AGM he realized that in several countries it is the Lawyers who deal with Tax, this now means that anyone, Accountant or Lawyer, interested in joining the team is more that welcome. Contact Beverley and she will relay any documents or information to Peter.

Those of you who are not “Tax inclined” do not want to be beaten so we are looking into setting up a Labour Law committee in 2012, you will be contacted in the New Year on this subject.

The Newsletter is another marketing vector in our network; therefore please let Beverley have any interesting information about changes in your firm or your country.

Beverley will also be sending you the insert to be printed in the directory of your firm so that you can check and change any incorrect information concerning your firm.

Before ending my message, I would just like to inform those of you who knew him, but who are not yet aware of the passing of John Fitzgerald, all our sympathy is with Sheila and John:s family.

I realize that I perhaps haven’t communicated with you all as often as I should but I will make it my “New Year’s Resolution” to do so.

IGAL is an essential and useful tool for all its members let’s keep it that way by us all taking an active part in the daily running of it by contributing, you only get out what you put in!

Please do not hesitate to contact me with your suggestions to make IGAL an even better organisation.

Finally my very best wishes to you all including your family. Have a wonderful festive season and a Healthy, Wealthy and a Happy 2012 to you all.

Carl-Gustav Lönnborg



**IGAL DIRECTOR OF
MARKETING/NEWSLETTER**

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Newsletter Submissions

Kindly note that all newsletter submissions:
must be submitted electronically by
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The Intercontinental Grouping of
Accountants and Lawyers (IGAL) is
a leading business network of legal
and accounting firms whose members
offer superior services related to legal,
financial, tax and insolvency matters
to companies and individuals with
international activities; as well as expert
and personal assistance to reduce the
obstacles of doing business in a foreign
environment and at a distance.

IGAL CALENDAR

Midterm – BRUSSELS

27 -29 April 2012



Annual – VENICE

24-28 October 2012



**A. QUESTIONS OF LIABILITY ARISING FROM THE
PAYMENT OF TAXES AND SOCIAL SECURITY
CONTRIBUTIONS AT THE POINT OF INSOLVENCY**

In its judgement of January 25, 2011 (File: II ZR 196/09) the Federal Supreme Court decided that the managing director of a private limited company (GmbH) can not be held liable pursuant to §64 clause 1 Limited Liability Companies Act (GmbHG), if he pays VAT and income tax after entering the point of insolvency. Likewise the managing director can not be held liable either for the payment of employees' contributions to social insurance after entering the point of insolvency.

The defendant was the managing director of a private limited company against the assets of which insolvency proceedings have been opened. The plaintiff is the insolvency administrator. Before the commencement of insolvency proceedings but after entering the point of insolvency the defendant made payments to the tax office to settle the arrears in payment of income tax as well as VAT and he/she also made payments to the AOK to settle outstanding social security contributions. The plaintiff claims compensation for these payments from the defendant.

No obligation to pay compensation for taxes paid - conflict of duties

The Federal Supreme Court concluded that the payment of VAT and income tax subsequent to entering the point of insolvency is compatible with the diligence of a prudent businessman pursuant to § 64 clause 2 Limited Liabilities Companies Act (GmbHG) and that an obligation to pay compensation according to § 64 clause 1 Limited Liability Companies Act (GmbHG) does not exist. Because in this case the managing director of a limited liability company is confronted with a conflict of duties. On the one hand there is an interdiction of payment pursuant to § 64 clause 1 Limited Liability Companies Act (GmbHG) after entering the point of

insolvency. On the other hand he/she commits a summary offence effecting a fine, if he/she does not pay taxes that are due to the tax office and he/she is also held personally liable.

Tax arrears

Even when paying tax arrears the conflict of duties plays a part. Because the voluntary payment of tax arrears has to be assessed in his/her favour when imposing the fine and personal liability has to be dropped as well. That is the reason why in this case there is no obligation to pay compensation according to § 64 clause 1 Limited Liability Companies Act (GmbHG).

No claim for compensation because of paying employees' contributions to social security insurance.

This conflict of duties also exists when paying the employee's contributions to social security insurance at the point of insolvency, so that once again there is no claim for compensation. Because due to failure of payment the managing director is held liable and liable to pay damages. Therefore, the payment of employees' contributions to social security insurance at the very point of insolvency is compatible with the diligence of a prudent businessman as defined in § 64 clause 2 Limited Liability Companies Act (GmbHG). This also applies to the payment of contributions in arrears. In this case, too, the conflict of duties applies since the managing director can achieve with his/her payment impunity, exemption from and mitigation of punishment or a closing of the preliminary proceedings as well as an exemption from compensation claims.

Breach of duty of care by paying employer's contributions

However, the payment of employer's contributions to the social security insurance contradicts the diligence of a prudent businessman. It is only the withholding of employees' contributions that can be preceded and justifies liability for damages. Consequently, with respect to the employer's contributions, the conflict of interest is absent and the managing director is liable for damages as defined in § 64 clause 1 Limited Liability Companies Act (GmbH).

Practical considerations

In case of a possible point of insolvency it has to be specifically taken care of which claims of the social insurance bodies have to be paid. In doing so, special attention has to be paid to the fact, that all employees' contributions to social security insurance were paid so that no criminal offence can be invoked. In case of tax demands one has to observe, that non-payment represents a summary offence. The payment of employer's contribution at the time of the point of insolvency triggers the obligation to pay compensation as specified in § 64 clause 1 Limited Liability Companies Act (GmbHG).

Dr. Steffen Schleiden

B. USING IRELAND IN INTERNATIONAL TAX PLANNING

Ireland has developed a strong track record in attracting foreign direct investment from Multi-National Companies ("MNCs") operating in the Information and Communications Technology, Life Sciences and Financial Services sectors, including Digital Media, Engineering, Consumer Brands and International Services.

One strong force pulling MNCs to choose Ireland as their strategic European base is the Irish Government's commitment to maintaining an environment conducive to incentivising foreign investment. Ireland's low trading corporate tax rate of 12.5%, together with other tax incentives specifically introduced to attract foreign direct investment make Ireland an attractive location in international tax structuring and planning. In this article, I intend to focus and provide some detail on the tax incentives which are driving MNCs to centralise international operations in Ireland.

Irish Tax Residence and the low corporation tax rate

Generally speaking, a company is tax resident in Ireland if it is incorporated in Ireland (with some exceptions) or if it is 'centrally managed and controlled' from Ireland.

The standard rate of corporation tax applicable to Irish tax resident companies is 12.5%, which applies generally to trading profits. Historically, Ireland has also operated a 10% corporate tax rate relating to 'manufacturing' activities, but this regime is being phased out and will no longer apply after 31 December 2010. 'Passive' or non-trading income, including interest, rents etc is taxable at the higher rate of 25%, as is income from certain 'excepted' trading activities such as the exploitation of oil, gas and mineral resources. To avail of the 12.5% trading rate, a commercial rationale for the Irish operations needs to exist, with real value being added to the Irish economy and employees located in Ireland with the requisite skills and experience to carry out the functions of the trade in Ireland.

In recent announcements, the Irish Government have reiterated their commitment to retaining the domestic 12.5% corporate tax rate, by recognising it as the cornerstone of Irish industrial policy, and all Irish political parties have committed to

maintaining this position going forward. Even in recent weeks, with the advent of direct dialogue between the Irish Government and representatives of the International Monetary Fund, the Irish Government has committed to maintaining this corporate tax rate and have given strong indications that this position will not change.

Other Incentives

In addition to its low corporate taxation environment, Ireland has also introduced a number of incentives to further promote foreign direct investment, including:

- A very beneficial withholding tax regime, with withholding tax generally avoidable on dividends, and reduced or zero withholding tax applying to interest and royalties paid to or from an Irish Holding company to or from an EU country or a country with which Ireland has concluded a Double Tax Agreement (“DTA”);
- Limited Transfer Pricing rules (Transfer Pricing rules were introduced in 2009 to comply with OECD guidelines but are not aimed at being revenue generative);
- No CFC regime;
- No Thin Capitalisation rules;
- Participation Exemption from Capital Gain Tax (“CGT”) on qualifying share disposals;
- Favourable Intellectual Property (“IP”) regime;
- Attractive Research & Development (“R&D”) credit regime;
- Access to an extensive DTA network (72 DTA’s signed, 60 in effect at 1 January 2011, and increasing)
- Favourable Foreign Tax Credit regime;
- No Capital Duty, and multiple exemptions or reliefs available in respect of Irish Stamp Duty;
- Generally the same VAT regime as other EU countries.

The above makes Ireland a world class location for Holding Companies, Headquarter Companies, Shared Service Centers, IP structures, Central Entrepreneur/Principal structures and R&D centers.

Using Ireland to reduce the Effective Tax Rate (“ETR”)

Many MNCs currently wishing to structure European or European/AsiaPac operations efficiently to ensure that group ETR is minimised leverage Ireland’s low corporate tax rate to achieve this goal. One such structure used is the Central Entrepreneur (“CE”) structure. Under a CE business structure, the CE company is the entrepreneur which contracts with customers and bears all commercial risks. The CE also contracts with foreign subsidiaries (and third parties) for production, R&D, sales support etc via an arrangement that works on the basis of costs and commissions.

The CE takes title to all raw materials, owning them throughout the production process until delivery to customers. It also owns the IP inherent in the goods produced by the manufacturer. Where goods are required to be manufactured, the raw materials are delivered at the CE company’s request to the toll manufacturer/contract manufacturer which effectively provides processing services to the CE. The CE assumes purchases, R & D, production and distribution, stock management, marketing strategy development, sales and purchases, treasury, financial and administrative functions in respect of its global market.

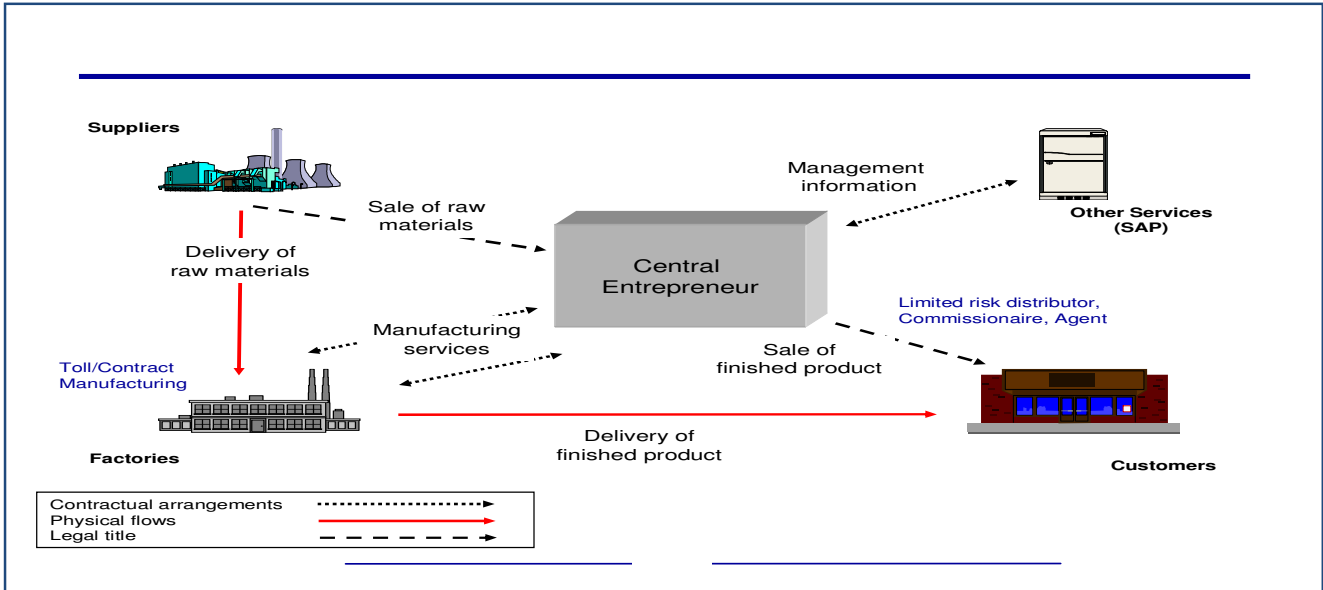


Fig. 1 – Central Entrepreneur Model

The two most commonly implemented CE models are the Commissionaire Model and the Limited Risk Distributor Model.

Commissionaire Model

This type of CE structure involves the subsidiaries that are resident outside of Ireland converting into “commissionaires”, which involves the subsidiary transferring all its stock, debtors and creditors to the principal. The commissionaire is now the representative of the principal in its local market. It does not enter into contracts with the local customers. Legal title for the goods passes directly from the principal to the customer. The in-country commissionaire merely presents to customers with the products and prices offered by the Irish parent. The commissionaire receives a commission from the principal for this service. This is usually calculated on a cost plus basis. The commissionaire is acting in his own name, but on behalf of and at the risk of the principal. It is important to ensure that the commission agent neither concludes contracts nor takes title of the goods. By minimising the activities that the foreign commissionaire is involved in, the amount of income that will be taxable in the foreign country will be minimised and a higher proportion will be taxable at 12.5% in Ireland. It will also be necessary for the group to be able to provide clear evidence that these functions take place in

Ireland. From the point of view of the customer, they are generally unaware of the commissionaire arrangement, as they are dealing with the commissionaire for the supply of goods and will not know what relationship the principal plays in the overall arrangements.

Undertaking to restructure the MNC Group to a commissionaire model would involve an Irish company becoming the principal company for the group. A transfer pricing report would need to be undertaken in order to ensure that the risk of a challenge by the local tax authorities on the profits earned by the commissionaire is minimised. Once the report has been finalised and the structure implemented, intra-group agreements that support the recommended transfer pricing model will need to be put in place and all the related documentation that provide evidence of the reasonableness of the transfer prices will need to be stored and made available to the local tax authorities if they are requested.

The other area of risk that is associated with the commissionaire model is the attribution of part of the profit of the principal to a permanent establishment in the country of the commissionaire particularly in common law countries such as the UK. If the foreign tax authority were to successfully argue that part of the profits of the principal are attributable to a PE in the country in which the commissionaire is located, this may result in that element of the Principal’s profit also being taxed in that country at the higher local rates.

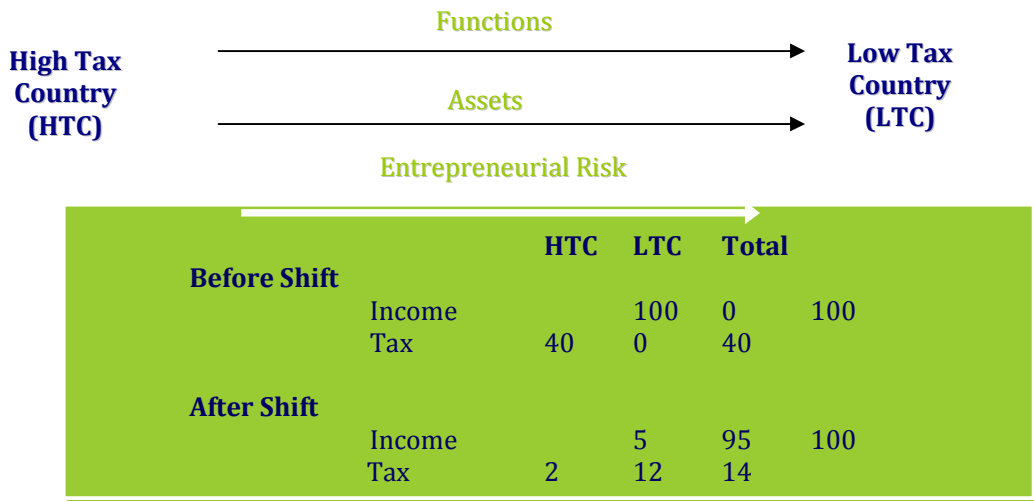
Limited Risk Distributor Model

Another variation of the CE structure is the limited risk distributor (“LRD”) model. Under this structure the foreign subsidiaries will convert to LRD’s. The LRD concludes the contracts with the local customers. Flash title of the goods passes from the principal entrepreneur to the LRD. Title then passes to the customer. Physical delivery of the goods is directly from the principal entrepreneur to the customer. This model maximises the amount of profit that is taxable in the low tax country such as Ireland as the inventory risk and ownership along with the business functions and associated risks are centralised in the principal entrepreneur. Under the LRD Model, as the local LRD takes title to the goods delivered to the customer, it is usually more difficult for foreign Revenue Authorities to

challenge the mark-up earned by the LRD, and as such there is generally a lower risk of the local tax authorities attributing part of the profits of the principal entrepreneur to a PE abroad than the commissionaire structure.

There will be higher reported sales in the local LRD than if it had been a commissionaire as the LRD bears more risk than the commissionaire in this structure due to the fact that it is concluding the contracts on its own behalf. However the inter-company contracts can be structured in such a way that leaves most of the risk (and therefore reward) with the principal entrepreneur. A transfer pricing study would also need to be carried out for the same reasons as described under the commissionaire model.

Fig. 2 – Effects of implementation of Central Entrepreneur Model



As the idea of a ‘commissionaire’ is a civil law concept, some MNCs adopt a hybrid structure involving both commissionaires in civil law territories, with other models such as LRD or undisclosed agency arrangements in common law or other territories.

Ireland’s new IP regime

Ireland introduced new legislation providing extensive tax incentives for IP from May 2009

which encompasses a wide definition of IP. The new IP regime allows for the 12.5% trading corporate tax rate which applies in respect of trading operations to be reduced further by allowing for a tax deduction for interest paid on monies borrowed to purchase IP used in an Irish trade, and also a deduction for tax depreciation (known as ‘capital allowances’) on the qualifying IP assets purchased. These deductions, coupled with the already low 12.5% trading corporate tax rate, can result in a very low overall effective tax rate, as low as 2.5%. In addition, if it is desirable to

migrate the IP offshore in the future, a tax-free exit is achievable based on current rules. The definition of IP for the purposes of obtaining the

tax deductions is very wide and includes the types of assets outlined in *Fig.3*.

Fig. 3 – IP included in Irish IP tax incentive regime



The new legislation provides for a deduction of up to 80% of the interest on loans used to acquire the IP and the tax depreciation arising on the purchase of the IP, with the excess allowances available for carry forward and used against trading profits in future periods. Tax depreciation is allowed in line with the accounting treatment or over 15 years at 7% per annum for long life IP assets (patents, brands, brand name, trade names, copyrights, etc., as well as associated rights and goodwill), with a tax depreciation rate of 12.5% per annum applying to other non-IP assets (plant, machinery, equipment etc).

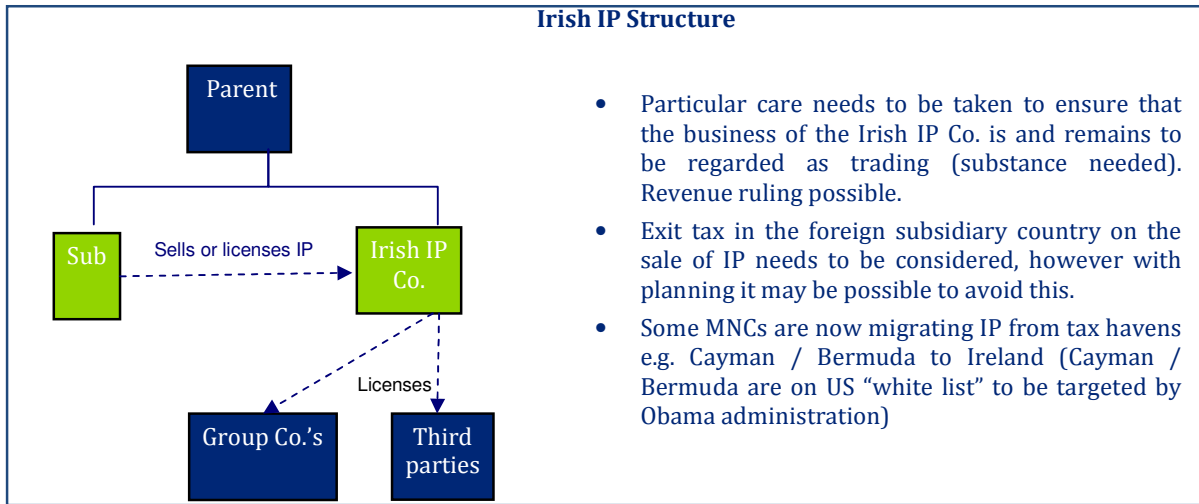
IP can be transferred intra group to avail of the new regime subject to a CGT charge if there is a gain on transfer, however depending on where the IP is located, it may be possible to minimise any associated CGT on transfer with adequate tax planning.

In the context of US parent companies, the Irish subsidiary would secure the cash benefit from the

tax relief, while it is possible for the US parent to secure an accounting book benefit under US GAAP on consolidation of the Irish company’s results on intra group acquisition. In the context of EU or other parent companies, EU/DTA exemptions apply to reduce or eliminate withholding tax on certain royalty receipts, an Irish Stamp Duty exemption would apply on the transfer of the IP, and tax credits at 25% are available for qualifying R&D expenditure. In addition, Irish Government cash grant aid is available for Research, Development and Innovation (“RD&I”) projects in Ireland.

With regard to the reliefs provided by the new Irish IP regime, MNCs are increasingly viewing Ireland as an excellent IP location which can secure an effective 2.5% tax rate for IP related trading activities. With IP values significantly reduced, now is the ideal time to transfer IP to Ireland to avail of these tax and commercial benefits, an example of which is shown at *Fig. 4*.

Fig. 4 - New Irish IP regime



R&D Tax Incentives

A credit of 25% of the incremental expenditure on revenue items, royalties and plant and machinery related to R&D can be offset against a company’s corporation tax liability in the year in which it is incurred. A credit of 25% is also available for the relevant expenditure incurred on a building/structures. Relevant expenditure is broadly defined as the expenditure on the portion of the building used for qualifying R&D activities, provided that at least 35% of the building is used for these activities over a four year period.

The credit available is deductible in full in the year the expenditure is incurred. Any unused credit can be carried back and used to reduce the corporation tax liability of the preceding accounting period. Where a credit is not fully utilised in the current or preceding accounting periods the excess can be offset against future corporation tax payable or it can be paid in cash to the company by the Revenue Commissioners over three years subject to certain limits.

For the purposes of the credit, “R&D” means basic research, applied research or experimental development that seeks to achieve scientific or technological advancements and the resolution of scientific or technological uncertainty, and therefore is applicable to a wide range of activities

Financing Location

The 12.5% rate of corporation tax can also apply to group finance vehicles situated and operating

carried out by companies operating in almost any industry. As well as the Life Sciences and Technology industries, successful claims for the credit have been filed in respect of Financial Services operations (for development of proprietary systems in fund administration, mathematical/financial modelling, pricing/valuation models), the Agri-Food sector (in relation to improvements in manufacturing processes – even where these were not made available outside of the company in question) etc. Any Irish tax resident trading company which undertakes R&D activities in Ireland or within the EEA is entitled to the credit, although restrictions apply where tax relief is available for expenditure incurred in that EEA country. This additional 25% tax credit for qualifying R&D spend, in addition to the normal trading deduction on which the trading corporate tax rate of 12.5% applies means that the effective value of the tax relief available is 37.5%, on income taxable at 12.5%.

In addition to the tax incentives available for R&D, the body responsible for attracting FDI into Ireland, the Industrial Development Authority (“IDA”), have a specialised focus RD&I, offering grant aid for training and feasibility support and other support grants.

in Ireland. Profits on interest earned in these financing activities qualify for the low corporate

tax rate as long as the level of activity of the finance company is such that the company is deemed to be actively trading, and the company has sufficient substance in Ireland.

A common international financing structure used by MNCs with pan European operations involves the use of an Irish securitisation company (normally referred to as a ‘Section 110’ company) using cash injected into it by way of a loan from a Luxembourg resident group company, to invest in qualifying financial assets (e.g. loans to other members of the group, the purchase shares in a target subsidiary etc).

Under this structure, cash would be lent to the Irish Section 110 financing company (“Irish S 110 company”) through a profit participating loan note (“PPN”) issued by a Luxembourg resident group company (“LuxCo”). PPN’s are essentially debt instruments in respect of which interest is payable, however the amount of interest is usually determined with reference to the profits of the issuer. This means that interest on these notes is treated as tax deductible interest in Ireland, but is treated as a dividend received for Luxembourg tax purposes. Irish S 110 Company then utilises this cash to acquire relevant assets (e.g. a loan book, shares in a target company etc). Dividends or Interest received by the Irish S110 company on its investments can be paid to LuxCo under the PPN’s

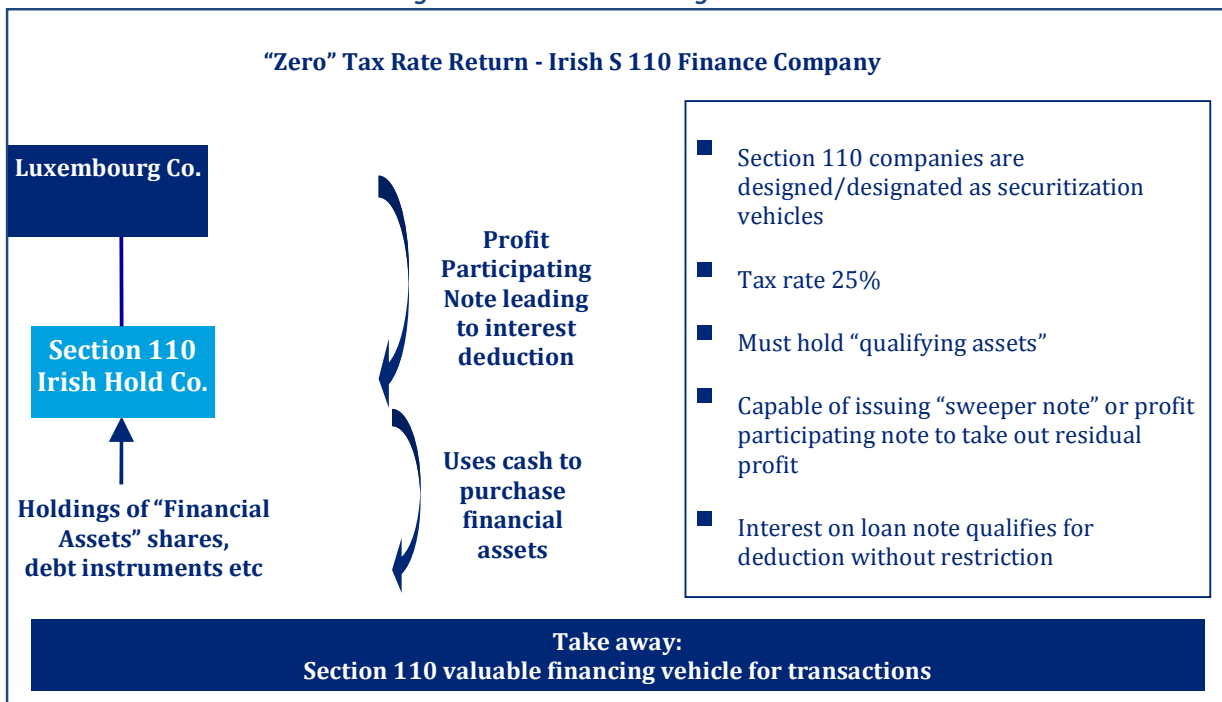
(excluding perhaps a small reserve amount), without deduction of any withholding tax in Ireland.

The Section 110 status allows the Irish S 110 company to deduct interest paid to LuxCo on the PPN’s for tax purposes, resulting in nominal / or no taxable income for Irish tax purposes. The Irish S 110 company is not considered to be trading, and therefore any profits would technically be liable to Irish tax at the passive corporate tax rate of 25%, however the legislation governing these companies provides for a full interest deduction on the PPN, and therefore these companies are normally structured such that only a small residual profit is left in Ireland, with the remainder being “swept” to Luxembourg by virtue of the PPN.

As mentioned above, LuxCo will treat receipts under the PPN’s as dividends for Luxembourg tax purposes. As Luxembourg provides for participation exemption for dividends received, these dividends are not taxed in Luxembourg. This effectively provides for an Irish tax deduction on the interest paid with no tax pick-up on that income in Luxembourg.

The merits of this type of financing structure are clear, and as such this structure is used by many MNCs in group financing or for the acquisition of target companies, see Fig.5

Fig. 5 – Irish S110 Financing Structure

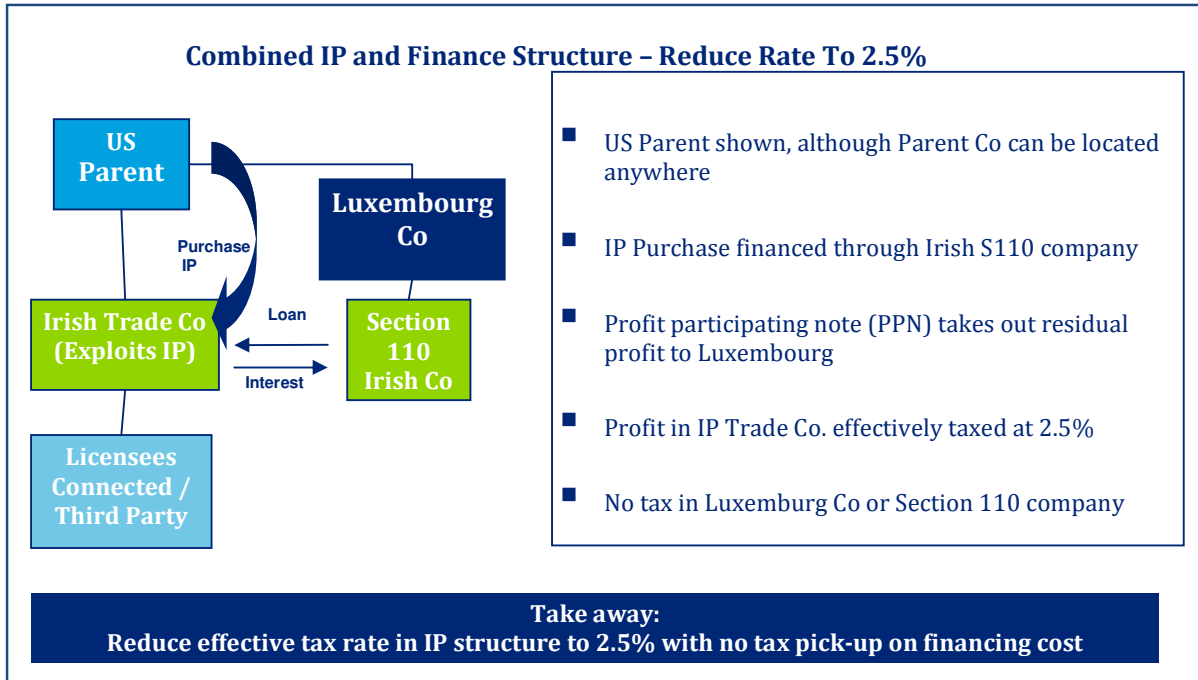


Where the investment made by the Irish S 110 company is in shares in an Irish or foreign subsidiary, tax can also be avoided on any profits realised on disposal. The acquisition of most types of foreign financial assets will usually be exempt from Irish Stamp Duty; however it should be possible to structure an acquisition to eliminate

Irish Stamp Duty even where the exemption does not apply.

In fact, it is possible to use the S 110 financing structure to purchase IP being brought into Ireland to avail of the very favourable Irish IP regime. An example of this type of structure is outlined at Fig. 6.

Fig. 6 – Use S110 financing vehicle to purchase IP into Ireland



With regard to the above structures, it is worthwhile noting that, although Ireland introduced Transfer Pricing Legislation in 2009, the S110 structures outlined above are not affected by this legislation, as the legislation only applies to trading profits and the receipts in the Irish S110 company are not considered ‘trading’ profits.

In addition to the above, other types of financing structure are also commonly used in Ireland which achieve a tax deduction in Ireland with no tax pick-up in certain countries to which interest is paid.

Ireland as a Holding Company Location

Following the introduction of a number of key taxation reliefs and exemptions in recent years, Ireland has become a very attractive place for

MNCs to locate a holding company. I will go through each of the main tax incentives in turn. These incentives together with non-tax incentives such as those outlined at the end of this article make Ireland one of the most attractive destinations in Europe for multinational companies.

Dividend Income

Where a dividend is received by an Irish resident company from another Irish resident company, it is classified as ‘Franked Investment Income’ and is exempt from corporation tax. In addition, dividends received from foreign subsidiaries are taxable at the 12.5% tax rate where they are derived from trading profits of companies that are resident for tax purposes in EU/DTA countries, however full credit for withholding tax and tax on

underlying profits is available in respect of such dividends, which will normally mean that no incremental tax is paid on the receipt of same by an Irish Holding company.

Dividends from a company resident in a non DTA State are subject to Irish tax at 25%, as are dividends out of profits that are not regarded as trading profits. However, even in these cases, a credit will be available for withholding tax and underlying tax imposed on the foreign subsidiary, which can have the effect of reducing the Irish tax rate to zero where tax paid in the country of source is greater than 25%.

A system of onshore pooling applies where the foreign tax on dividends exceeds the Irish tax. Foreign tax credit pooling provisions will apply separately to dividends that are taxable at the 25% rate and to dividends that are taxable at the

12.5% rate. Any surplus of foreign tax arising on dividends taxable at the 12.5% rate will not be available for offset against tax on dividends taxable at the 25% rate. However, there will be no restriction in the case of dividends taxable at the 25% rate.

Ireland also operates a wide range of exemptions from withholding tax on interest and dividends paid to an Irish Holding Company and paid from an Irish Holding Company to that company's parent. Where EU Parent/Subsidiary or Interest and Royalties Directives apply, no claim is required to be made in respect of the exemption and no documentation is required to be completed (although legal and corporate governance procedures always need to be followed), whereas certain documentation is required for Irish domestic or DTA exemptions.

Participation Exemption

The disposal by an Irish holding company of shares in a subsidiary will be exempt from Capital Gains Tax ("CGT") where certain criteria are satisfied. The following conditions must be satisfied before the exemption will apply:

- The holding company must own a minimum of 5% of the shares in the subsidiary. This shareholding must include the right to 5% of the profits of the company and the right to 5% of the assets on a winding up. The minimum holding requirement can also be satisfied where the holding company is a member of a group and the shareholdings of members of the group are taken into account.
- This holding requirement must be satisfied for a continuous 12 month period and the disposal must take place within a two year period after meeting the holding requirement.
- The activity of a subsidiary company must consist wholly or mainly of the carrying on of a trade at the time of the disposal. This requirement can also be satisfied where the business of the holding company and companies in which the holding company has a direct or indirect ownership interest of at least 5%, consist wholly or mainly of the carrying on of one or more trades.

- The subsidiary company must be resident in the EU or a treaty country at the time of the disposal. Subsidiaries located in Ireland will also qualify, but the company cannot derive its value from Irish land, buildings or mineral rights.

The exemption also applies to the disposal of assets related to shares, for example 'option' arrangements etc. It is not necessary for the holding company to dispose of its entire shareholding in order for the gain arising on the disposal to be exempt; the gain arising will be exempt once the prescribed holding requirement is met.

Controlled Foreign Company ("CFC") Regulations

Ireland does not have any CFC regulations and therefore it is possible for an Irish company to hold shares in companies that are resident in other jurisdictions and not require the profits of the entity in the other jurisdiction to be repatriated to Ireland. Many other international holding company locations include CFC rules which can limit the range of countries into which they can invest.

Thin Capitalisation Rules

The ability of a holding company to finance its operations by means of borrowings is restricted in many territories due to the imposition of thin

capitalisation rules requiring that companies be financed in part by equity. This can limit a company's ability to expand its operations.

Whilst a higher equity investment offers the advantage of a higher base cost when the shares are ultimately disposed of, with regard to the repatriation of cash out of the group, dividends paid out of the group are not deductible for Irish tax purposes. Furthermore, equity does not offer the same flexibility as debt with regard to extracting cash from the company, as outside of an outright sale of the investment in the group, it will generally prove difficult to access cash invested through equity funding in the future.

Ireland does not have thin capitalisation rules provided that the rate of interest charged on debt does not exceed a reasonable rate. This allows international holding companies to be fully financed through debt. Accordingly a company with a nominal share capital is in a position to fund its operations by unlimited borrowings and the interest on those borrowings is fully deductible. In this regard it is possible to obtain a deduction in Ireland for interest incurred on borrowings which are used to invest in trading operations, or holding companies of trading operations, both in Ireland and overseas. A number of conditions must be satisfied to qualify for the relief and the interest deduction is granted on a paid basis against a company's total profits. In certain circumstances, interest may be treated as a distribution (and as such would not be deductible for tax purposes) under Irish tax legislation where such interest is paid outside the EU to non-resident parent companies, or to non-resident companies outside the EU where there is 75% common control. However, the interest will be deductible in most situations where it is paid to a company resident in an EU or DTA country.

Capital Duty and Stamp Duty

In addition to the above, Capital Duty on the issue of share capital was abolished in Ireland with effect from 7th December 2005. There are a number of exemptions and reliefs from Irish Stamp Duty relevant to an Irish Holding Company, including an exemption on the transfer of intellectual property, an exemption on the transfer of foreign shares, and associated companies relief (essentially group relief) on the

transfer of assets within a worldwide corporate group.

The above provisions make Ireland a very attractive Holding Company location and with the possible introduction of Anti-Tax haven legislation in the US and elsewhere, Ireland has recently become even more important for many MNCs with Cayman/Bermuda/other tax haven based Holding or IP holding companies. Ireland is not designated as a "tax haven" as outlined in The Stop Tax Haven Abuse Act and therefore we are seeing a number of corporate inversions into Ireland from Cayman/Bermuda etc, for example in May 2009 Accenture announced it was moving its headquarters to Ireland from Bermuda following changes to US tax rules. The number of corporate inversions into Ireland from jurisdictions such as the UK is also increasing as Ireland offers a more favourable regime than can be found in the home locations of these corporations. Recent companies that have established a headquarter location in Ireland include large UK listed companies such as Shire Pharmaceuticals, UBM and WPP.

Thus, it is widely accepted that Ireland operates an open and transparent regime and in this regard Ireland has agreed a number of Tax Information & Exchange Agreements with its main trading partners.

The combination of these factors combined with the tax based incentives for choosing Ireland as a Holding Company location has meant that Ireland is now an established Holding Company location for the EMEA and Asia Pac operations of hundreds of MNCs.

New Transfer Pricing Rules

Finance Act 2010 introduced a formal transfer pricing regime for companies and branches within the charge to tax in Ireland on their trading activities for accounting periods commencing on or after 1 January 2011 in relation to any arrangement entered into on or after 1 July 2010. As discussed above, broadly speaking, Ireland's corporate tax rates are 12.5% for active or "trading" income, and 25% for passive income. The transfer pricing regulations will only apply to related party dealings entered into by a taxpayer engaged in a trade that is subject to tax at the trading tax rate of 12.5%. Therefore, income that is characterised as "passive income" and which is subject to tax at a rate of 25% will fall outside the

scope of the transfer pricing legislation. Passive income for the purposes of these rules may include interest, royalties, dividends and rents from property where the income arising is not derived from an active trade.

The new regime will only apply to related party arrangements involving “the supply and acquisition of goods, services, money or intangible assets”. As well as adopting the arm’s length principle, the new regime endorses the OECD’s Transfer Pricing Guidelines.

Any adjustments to income required as a result of the legislation are intended to operate in one direction only, facilitating an upwards adjustment to taxable profits where the profits of an Irish taxpayer are understated as a result of non-arm’s length transfer pricing practices. In any such situation the Irish tax authorities are empowered to re-compute the taxable profit or loss of a taxpayer where income has been understated or where expenditure has been overstated. In practice, given Ireland’s low corporation tax trading rate, this is unlikely to be of major practical concern to MNCs operating in Ireland. The introduction of transfer pricing rules brings the Irish tax regime into line with international norms in this area. This development upholds Ireland’s status as an onshore, well regulated and transparent low-tax regime. In addition, as there have always been two sides to every international related party transaction, multinationals in Ireland have long been aware of the need to comply with transfer pricing rules in counter-party countries. Effectively, these overseas rules have always impacted on the pricing arrangements of multinationals in Ireland, and the new Irish rules will help multinationals support and defend the level of income and expenses being attributed to their Irish operations. In this regard, the new transfer pricing regime can be seen as a broadly positive development for MNCs operating in Ireland.

Finally, the new legislation provides for an exemption from complying with the legislation where the Irish entity satisfies the Small and Medium sized Enterprise (“SME”) test and therefore SMEs fall outside the scope of the Irish

transfer pricing regime. The SME exemption applies where global staff headcount (excluding contractors) is less than 250; **AND either** the global turnover is less than or equal to €50m; **OR** the global gross balance sheet total (total assets before deduction of liabilities) is less than or equal to €43m. The SME test must be looked at annually to determine if the SME Exemption continues to apply.

Conclusion

To date, more than 1,000 MNCs have chosen Ireland as their strategic European base, attracted by Ireland’s pro-business, low corporate tax environment, track record of success and a young, innovative and highly skilled workforce. Indeed, one of the major advantages that Ireland now has as a central location for international operations is the ability to combine the benefits of its Holding Company regime with the low tax advantages of the 12.5% corporate tax rate which in some cases can be increased using models such as the Central Entrepreneur structure, an attractive location to exploit IP or to host Financing/Treasury activities and a very progressive and incentivised R&D strategy.

In addition to a progressive tax regime centred on foreign direct investment, non-tax incentive packages also exist for MNCs operating in Ireland, including capital grants, interest subsidies and loan guarantees, and grants for rent reduction, employment, training, undertaking R&D activities and technology acquisition. The availability and quantum of these incentives will mainly be determined by the location and quality of employment created.

If your clients are considering expansion into Europe through setting up an operation in Ireland or acquiring an Irish company, or are assessing a progressive location in which to centralise their pan-European/Asia-Pac businesses, then please make contact with Mark Gorman of Barr Pomeroy to discuss these matters further and explore opportunities for your client.



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Mark is responsible for advising a portfolio of clients across a range of sectors, including the energy, technology, telecommunications and media sectors, and has 11 years experience in practice, specialising in a range of issues including group reorganisations, property taxation, structuring of Irish operations for MNCs and other related domestic and international tax issues. Mark is a former Specialist Contributor and Co-Author of the Irish tax publication “Judge Irish Income Tax”., and is an Associate of the Irish Taxation Institute.

Clients have included: Yahoo plc, Datalex plc, Diageo plc, Hostelworld Group, FICO plc, Progress Software/Iona Technology Group.

C. THE PRESENT FINANCIAL AND ECONOMIC CRISIS



A. The international economic context

If, in some countries like China, India and other South-East Asian countries, the crisis can be considered part of the past, not all Western economies are showing significant signs of recovery, reacting in different and, at times, unorganised ways to the current situation.

Global growth increasing pace at the end of 2010 and beginning of 2011 seems to confirm recovery. Obviously, emerging countries are the driving force with an average 6.5% GNP (8-10% for India and China), but even industrialised countries are contributing.

In 2010, the US posted increased consumption with growth that reached 3.2% in the fourth quarter which seems to be continuing in 2011, heading towards 4%. Unemployment levels

remain a problem (over 9%) and public deficits could reach a record 11% of GNP in 2011.

Forecasts indicate that world GNP outside the Euro area will increase by about 4% in 2011 and remain at this level in 2012.

As far as Europe is concerned, doubled growth in Germany and France, around 4%, has accentuated and countries in the Mediterranean area, including Italy, are out of breath.

In addition to salvaging government spending, one of Europe’s greatest hurdles continues to be competitiveness, a problem it’s had for years and which, to be fixed, requires structural reforms (higher retirement ages, freezing wage indexation, lowering debt and taxes, incentives to export) that governments, in attempt to remain popular, are incapable of facing with the required determination.

The increase in raw materials and oil prices, also due to the recent conflicts in North African countries and throughout the Middle East, infer an increase in inflation rates. However, high unemployment and the consequent larger gap between the upper and lower classes, with increasingly lower purchasing power, has partially neutralised these inflationary drives with generally limited effects to date. Experts estimate 1.9% inflation rates in 2011 and 1.8% in 2012.

The need to balance budgets in various sectors lowers growth forecasts in the Euro area and Eurosystem experts have estimated annual GNP

growth in real terms at about 1.6% for 2011 and 1.7% for 2012.

Also worrisome, although dropping, is the unemployment rate which is around 10% in Europe. Ongoing political unrest (Iran, Afghanistan, Iraq, etc.) continues to negatively affect world recovery and the recent political explosions in North Africa and the Middle East create new emergencies in Europe and especially in Italy, generating new fear of a potential expansion of Islamic fundamentalism, at the same time, giving rise to new hopes of greater democracy in Islamic countries.

B. The Italian economy in 2011

In this context, Italy, burdened by enormous public debt, has seen its modest recovery, experienced in 2010, slowed down. The need to salvage public finances impedes true real economy drive due to the impossibility of reducing the corporate and private tax burden and thus restraining both public and private investments.

The country, bringing up the rear of the G7 in growth, twelfth in Europe for GNP pro capita, can only improve economic and financial indicators through private savings to balance growing public debt (120% of GNP) and the deficit (5% of GNP), both way over the goals set by the treaty of Maastricht.

The government, weakened by the split in the majority coalition and bogged down by the scandals involving the prime minister and consequent and continuous "institutional conflicts", is incapable of any real durable proposal that can shake the country out of this stalemate.

The major reforms on the table for years have fallen on deaf ears; fiscal federalism, granting regions and towns tax autonomy, seems to lay the foundations for higher taxes, failing to meet the set goals.

The level of unemployment (about 8.5% without considering temporary layoffs) remains troubling, with rates for young adults nearer to 30% and a widened gap between the Central-North and South. 2010 was a record year for unemployment payouts, with 1.2 billion hours authorized involving 580,000 workers.

Despite the difficult situation, Italian industries showed signs of recovery in 2010 with increases in both orders (13.9%) and sales (10.1%) driven by

exports, higher than domestic demand, showing the best results since 2001.

Economic forecasts for 2011 state that Italy will confirm GNP growth at 1%; unemployment and inflation will continue to concern public opinion and politicians while exports should improve by an additional 8.1%.

C. Trend of the markets

Despite the current situation, the effects of market globalisation, with the strengthening of competitors from emerging countries, especially China and India where labour costs cannot be compared to European levels, are the greatest challenges for businesses.

The unquestionably improved quality of products, due to the industrial background created by localised European manufacturers, along with substantial incentives for exports they receive from their governments and need to find new markets to meet the higher internal production capacity, turn these manufacturers into aggressive competitors, always more welcome on global markets, especially in countries with weak economies and reduced financial resources.

The increasingly higher protectionism measures adopted by some emerging economies should not be overlooked, especially in China, also India and Brazil that make it difficult for European companies to access sometimes important job orders.

The effects of such measures, thanks to free trade agreements, also extend to surrounding countries, creating seriously difficult conditions for European companies.

Except for the minimum rate posted in June, Euro/US dollar exchange rates remained stable, helping exports. However, one of the negative aspects of world recovery included the increase in raw material and energy costs which, in addition to negatively impacting competition for future projects, weakened margins on acquired contracts.

Renato MURER

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D. CONFERENCE HIGHLIGHTS: INDIA



So Many heartfelt thanks to Niti Sarin for her hard work in planning such wonderfully creative opportunities for us to absorb many aspects of Indian Culture. At the beautiful Marriott Cafe Executive Chef Pallav Singhal gave us a fascinating talk and demonstration of classic Indian cuisine--complete with recipes, cookbook and apron! Not only highly informative but also quite delicious! All of us had a marvelous time learning the history of the Sari being shown the vast range of Sari fabrics, design and tying styles throughout India--then we all had a great amount of fun selecting and trying on a gorgeous array of saris. To complete our new looks was a gifted Henna artist to grace our hands and arms with beautiful designs. In the afternoon wonderful shopping excursions to Chandigarh were arranged - the favorite purchases being Saris and Pashmina shawls!



Punjabi Night:

The courtyard of the JW Marriott was transformed into a stunningly beautiful Punjabi village. We were delightfully greeted with heavily decorated elephants and camels and the bravest of us took once in a lifetime rides! The village was ablaze with lights, candles and beautifully set tables. Mac and Nitti started the evening talk with a wonderful presentation on the unique history of Chandigarh followed by a heartfelt welcome from the Chief Justice who was an honored guest. A wonderful bazaar of fabrics, jewelry and palm and tarot card

readers were fascinating. An enormous and wonderful array of fabulous Indian foods delighted every palate... it was almost impossible to try everything! In the midst of this wonderful time we thoroughly enjoyed a troupe of Indian women singing and martial arts and music presentation--energetic, exciting and it had all of us on our feet! This was an amazing celebration of the wonderful Indian culture! So many many "thank you" to Mac and Niti for a magical evening that we hoped would never end.

Diwali Night

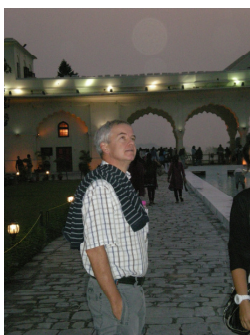
Mac and Niti's gracious and warm hospitality embraced us all at a most glamorous evening at their beautiful home. Arriving at their gate we heard the band play "Welcome to My World" and indeed we were about to savor a most exciting evening to celebrate the major feast of Diwali.

The evening started off with beautiful music and prayers and we all got a chance to present offerings of incense and flowers at the altar of Vishnu and Lakshmi (not sure this is entirely correct) This



festival of lights was reflected in the sparkling of thousands of lights draped on their gorgeous courtyard along with hundreds of lit candles. Wonderful appetizers, drinks and dancing to their wonderful band continued amidst all the enjoyment of our members. For dinner we walked into their backyard which had been transformed into a stunning panorama of twinkling lights and elegant dinner tables. A sumptuous dinner of many Indian specialties was thoroughly enjoyed by all. New friendships were made and old acquaintances were renewed in this magical setting on a beautiful Chandigarh night. All of us are truly grateful for Mac and Niti's impressive planning and tremendous creativity and care in making this special trip even more memorable.

Friday



On Friday afternoon a special trip to Pinjore was planned to see the breathtaking Pinjore Gardens; in the sun set, capturing the view of the Himalaya Foothills this tranquil setting amidst gardens and the multi-tiered marble fountains.

Cameras were flashing on the terrace as glasses of sparkling wine were passed and then on to top shimmering gala of luxurious tables and twinkling lights set around a gorgeous pool complete with terrific band that had us all kicking

of the pavilion for a festive cocktail party to enjoy the gorgeous setting. At North Park Mac and Niti spoiled us with another fantastic party...a

up our heels! The dinner and desserts were superb and a tremendous good time was had by all.

Saturday:

Saturday morning was a wonderful visit to the artistic genius of Nek Chand's Rock Garden--an unbelievable fantasy of art and nature combined into an eye popping array of stone, ceramic and design- waterfalls, statues and labyrinths.



At the end it was a terrific opportunity to meet the most impressive Mr. Chand where Mac presented him with a photo for his collection. After a delightful lunch at The Magic Wok we were taken to see the Chandigarh Open Hand Monument. With Mac resplendent in his robes we were given a tour of the High Court which is a landmark building designed by Le Corbusier.

Last but definitely not least was the gala Bollywood Night orchestrated to perfection by Mac and Niti.

Set in the elegance of the Grand Ballroom after a sumptuous dinner a fabulous staging of dance, song and music was performed. Highlights included IGAL couples up on stage dancing followed by the entire room up on their feet amidst the gorgeously dressed dancing troupe. A wonderful finale to a most memorable conference! Our trip to Chandigarh will always remain a most treasured memory.

Pam & Brian BROKATE

