

## UPDATES & OTHER TIDBITS

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### Tags

Beneficial Ownership  
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### WEALTH TAX BURDEN IN IRELAND DOES NOT ENTAIL RESIDENCY UNDER U.S.-IRELAND TAX TREATY

On March 3, 2017, the U.S. Court of Federal Claims (the “Court”) ruled that a taxpayer’s liability for the domicile levy in Ireland does not qualify him as a resident of the country under the U.S.-Ireland Income Tax Treaty (the “Treaty”).<sup>1</sup>

Under Irish tax law, individuals are subject to income tax depending on whether they are resident, ordinarily resident, or domiciled (regardless of whether resident) in Ireland. The term “domicile” is not defined in the Irish tax code. It is a common law concept that seeks to determine the country with which an individual has the closest links and regards as its “permanent home.”

A special levy applies to certain Irish-domiciled individuals, irrespective of their tax residency. This domicile levy is €200,000 payable annually by individuals (i) who are Irish domiciled, (ii) who enjoy annual “worldwide income” of over €1 million, (iii) who own Irish assets valued at over €5 million on December 31 in that year, and (iv) who have a final Irish income tax liability for that tax year of less than €200,000.

In the case before the Court, Mr. McManus, a citizen of Ireland living in Switzerland, won \$17 million (€18,669,400) in a backgammon tournament that took place in the U.S. in 2012. The I.R.S. withheld \$5,220,000 (€5,733,000) of the earnings. Contrary to the U.S., Ireland does not tax gambling winnings and the Treaty does not address their tax treatment.

Mr. McManus acknowledged that he was not liable to Ireland’s income tax, corporation tax, or capital gains tax but only to the domicile levy, and he attempted to argue that he did not owe taxes to the U.S. since he was a resident of Ireland under the Treaty in 2012. Article 4(1)(a) of the Treaty defines a resident as “any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature.” The Irish tax authorities provided advice regarding Mr. McManus’ residency, stating that “an individual’s residence status for Irish tax purposes is determined by the number of days he or she is present in Ireland during a tax year” and that “the payment of the Domicile Levy does not entitle John P. McManus to receive treaty benefits in accordance with the provisions” of the Treaty. Based on this, the I.R.S. asserted that Mr. McManus was not a resident of Ireland in 2012 and was not entitled to a refund.

<sup>1</sup> *McManus v. United States* (2017 BL 66227, Fed. Cl., No. 1:15-cv-00946, March 3, 2017).

The Court held that Mr. McManus's payment of Ireland's domicile levy did not make him a resident for Treaty purposes. The Court relied on O.E.C.D commentaries, which state that to be "liable to tax" under Article 4 a person must be subject to comprehensive or full taxation, such as an income tax on the full amount of the person's worldwide earnings. Given that the domicile levy is capped, this tax is not "full" and not "substantially similar" to Ireland's income tax.

Secondarily, the Court rejected the argument that the withholding on gambling earnings violated the Treaty's nondiscrimination provisions, because it was barred by the substantial variance doctrine which blocks arguments in court not raised in the refund claim.

## CAYMAN ISLANDS INTRODUCE BENEFICIAL OWNERSHIP REGISTER REGIME

Cayman government's plan for a centralized register of companies' beneficial ownership information has been implemented. On April 7, 2017, the Cayman's Legislative Assembly approved the regulations requiring companies and limited liability companies ("L.L.C.'s") to create and maintain beneficial ownership registers.<sup>2</sup> The registry is not open to the public and is only accessible by the approved Cayman Islands authority, mainly on lawful request by U.K. law enforcement agencies.

The following companies fall within the scope of the regime ("In-Scope Entities"):

- Companies incorporated or registered by way of continuation under the Companies Law (2016 Revision), including ordinary resident and non-resident companies, special economic zone companies, and exempted companies (including exempted limited duration companies and segregated portfolio companies)
- L.L.C.'s

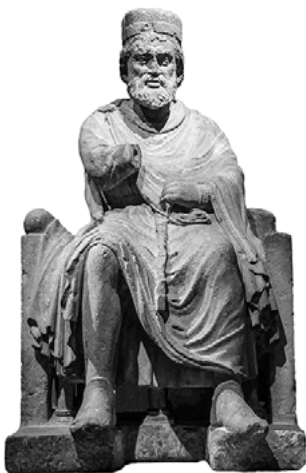
A number of exemptions exists (e.g., publicly traded companies and registered funds). If no exemption applies, companies must take "reasonable steps" to identify

- whether any individual is a qualifying "beneficial owner" (as described below) of that In-Scope Entity, and
- whether any legal entities that are registered in the Cayman Islands (including as a "foreign company") would meet the definition of a beneficial owner in relation to that In-Scope Entity if they were an individual rather than a legal entity (a "relevant legal entity").

This obligation may require an In-Scope Entity to correspond with, and give formal notices to, persons whom it knows, or has reasonable cause to believe, are relevant legal entities or would be if registered in the Cayman Islands. Persons who receive such notice must respond within one month of receipt, as it is a criminal offence to fail to do so.

According to the regulations, a beneficial owner is an individual who meets one of

<sup>2</sup> The Cabinet, *The Beneficial Ownership (Limited Liability Companies) Regulations, 2017*.



***“At present, no official deadline has been published, but the government had previously indicated that In-Scope Entities must establish registers no later than June 30, 2017.”***

the following conditions:

- The individual holds, directly or indirectly, more than 25% of the shares in company.
- The individual holds, directly or indirectly, more than 25% of the voting rights in company.
- The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors.

If no individual meets the foregoing conditions, an individual, trust, partnership, or other non-legal person may be classified as a beneficial owner if it has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company or L.L.C. through an ownership structure or interest described above, other than solely in the capacity of a director, professional advisor, or professional manager.

Otherwise, if no individual satisfies any of the conditions above, but the trustees of a trust or the members of another legal vehicle that is not a legal person (such as a general partnership) satisfy one of the conditions set out above in relation to an In-Scope Entity in their capacity as trustees or members, then such persons will be beneficial owners for the purposes of the beneficial ownership regime if such persons have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the activities of that trust or other vehicle, other than solely in the capacity of a director (or manager), professional advisor, or professional manager.

At present, no official deadline has been published, but the government had previously indicated that In-Scope Entities must establish registers no later than June 30, 2017.