Hovione
Irish Tax Planning Strategies
23 April 2009 *

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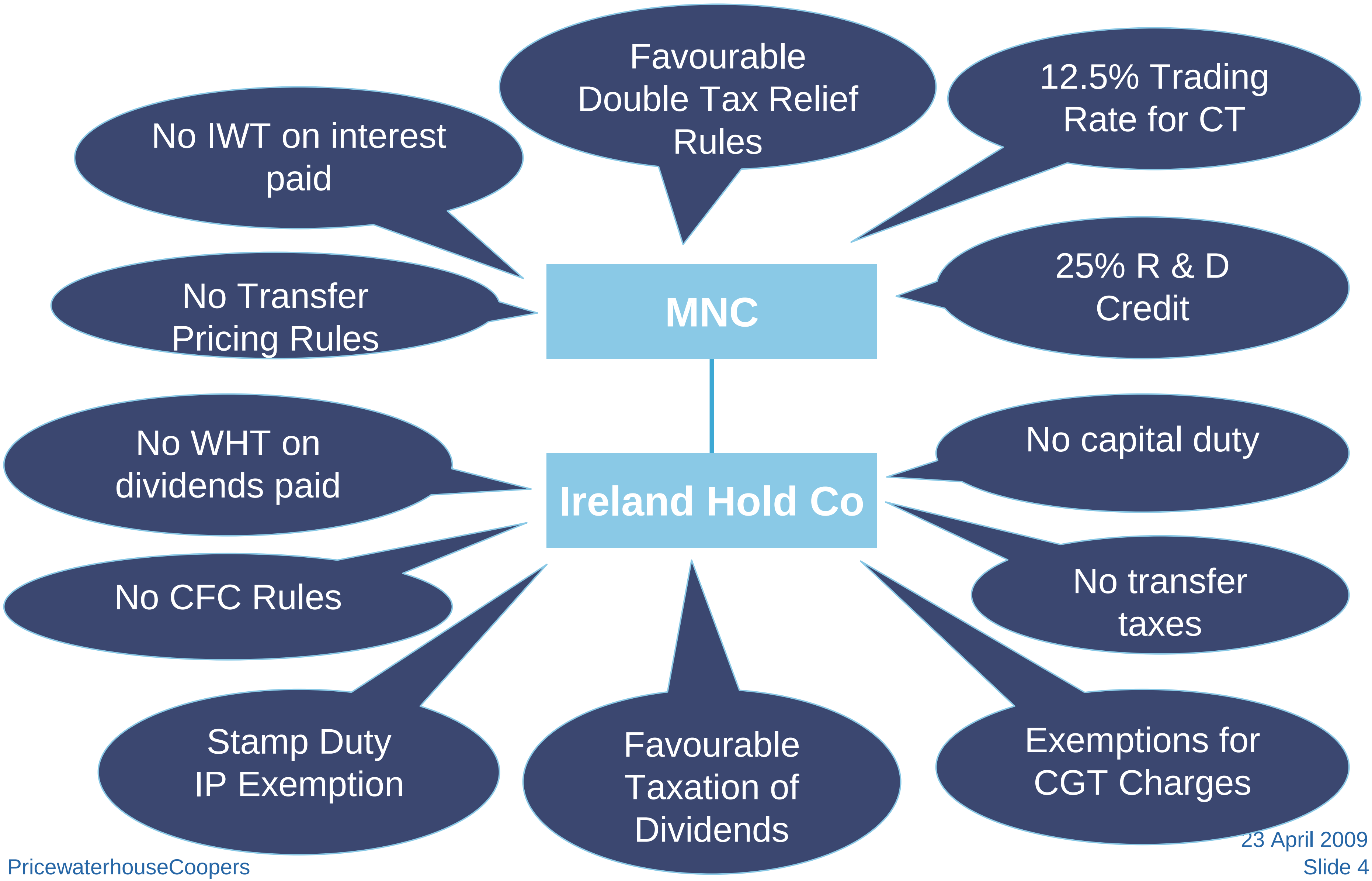
Agenda

- Overview of the Irish corporate tax system
- Why locate in Ireland ?
- Accessing the 12.5% rate
- What are MNC’s doing here ?
- Example of tolling arrangement between Hovione and Potential Customers

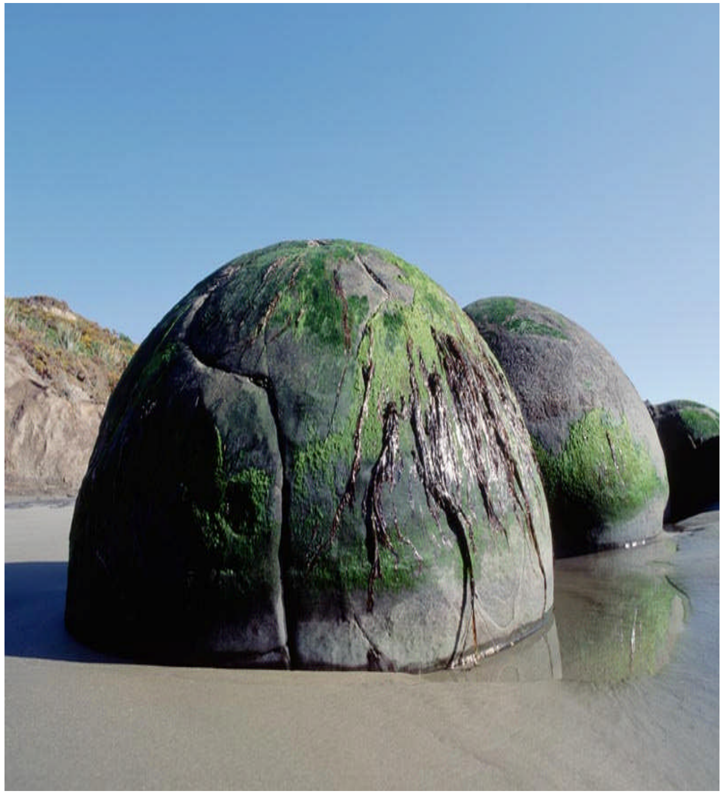
Overview of the Irish tax system

- Key attributes
- Tax rates
- What companies qualify for Irish 12.5% rate

Some Key Attributes



Tax Rates



- 12.5% on trading profits
  - Products/services
- 25% on passive income
  - Interest income
  - Rental income
- 25% on capital gains if not exempt

What companies qualify for Irish 12.5% rate

- Irish resident company
- Irish branch of foreign company

Why Locate in Ireland?

Tax benefits

1. Longevity of 12.5% rate (no time limit)
2. Certainty regarding applicability of 12.5% rate (Irish Revenue advance opinion)
3. New liberal regime for Intellectual Property
4. No restriction on related party interest deductions
5. No transfer pricing legislation

Why Locate in Ireland?

6. Wide access to double tax treaties (45)
7. Capital gains tax exemption for certain share disposals
8. Ability for foreign investors to exit Ireland tax free
9. Liberal withholding tax regime (interest, dividends, royalties)
10. Availability of double tax relief for foreign income
11. Liberal R&D regime

Why Locate in Ireland?

Other benefits

1. Favoured location for investment into Europe
2. EU membership – gives investor ready access to EU
3. “Business friendly” government
4. Well educated, highly motivated and productive workforce
5. Competitive labour costs

Accessing the 12.5% rate
Revenue Guidance

- Only available for “trading” activities
  - No prescribed activities
  - Revenue will look at each case separately
  - Combination of factors in each case will determine trading position
  - No minimum employment level
  - No advance certification required (opinion possible)

- Outsourcing permitted but trade must not be wholly carried on outside Ireland

Accessing the 12.5% rate
Revenue Precedents

- Substance is key for “trading” status

- Revenue identified the following criteria to demonstrate substance:
  - Irish employees with requisite skills and experience to carry out functions of Irish trade
  - Irish employees involved in negotiation of contracts
  - Companies business is “active” rather than “passive”
  - Decision making takes place in Ireland
  - A commercial rationale for the Irish operation (profit motive)
  - Real value added to the Irish economy

Accessing the 12.5% rate
Revenue Precedents

- Other factors :
  - A real presence in Ireland (i.e. office space and people in Ireland)
  - Income commensurate with the substance
  - The frequency or number of income generating transactions
  - Transactions with unconnected persons
  - Books of account held in Ireland
  - Supplementary work on or in connection with the property realized

Accessing the 12.5% rate
The Process

- Ireland operates a self assessment system
- Up to each company to determine whether trading or not
- Can be challenged by Revenue
- Opportunity to apply to Revenue for a ruling on the trading/substance issue
- Request would outline the proposed activities of the Irish company
- Revenue would then issue a formal opinion

Accessing the 12.5% rate Revenue Precedents

Revenue has given positive trading opinions on the following activities:

- Group treasury and finance operations
- Leasing operations
- IP exploitation
- Pharma industry
  - Marketing and distribution
  - Commercialisation
  - Acquiring and developing Pharma IP/direct sales and licencing

Accessing the 12.5% rate
Steps to take to ensure trading status is secured

- Engage a number of Irish based employees
- Maximise the functions of the Irish employees
- Specify functions of the Irish employees in their contracts of employment
- Secure an Irish premises from which the Irish employees operate
- Manage and control from Ireland – hold regular board meetings
- Add value to the product

What are MNC's doing here?

- IP Exploitation
- Shared Service Centres
- Global Supply Chain
- Financing Activities
- Group Procurement
- Manufacturing and Distribution

Example of tolling arrangement between Hovione and Potential Customers

Definitions

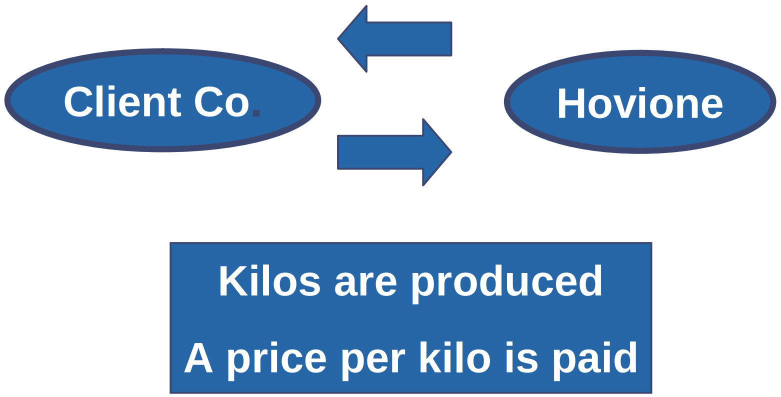
CCM: Client Company Manufacturing (API)

CCT: Client Company Tabletting

Example of tolling arrangement between Hovione and Potential Customers

Standard Relationship

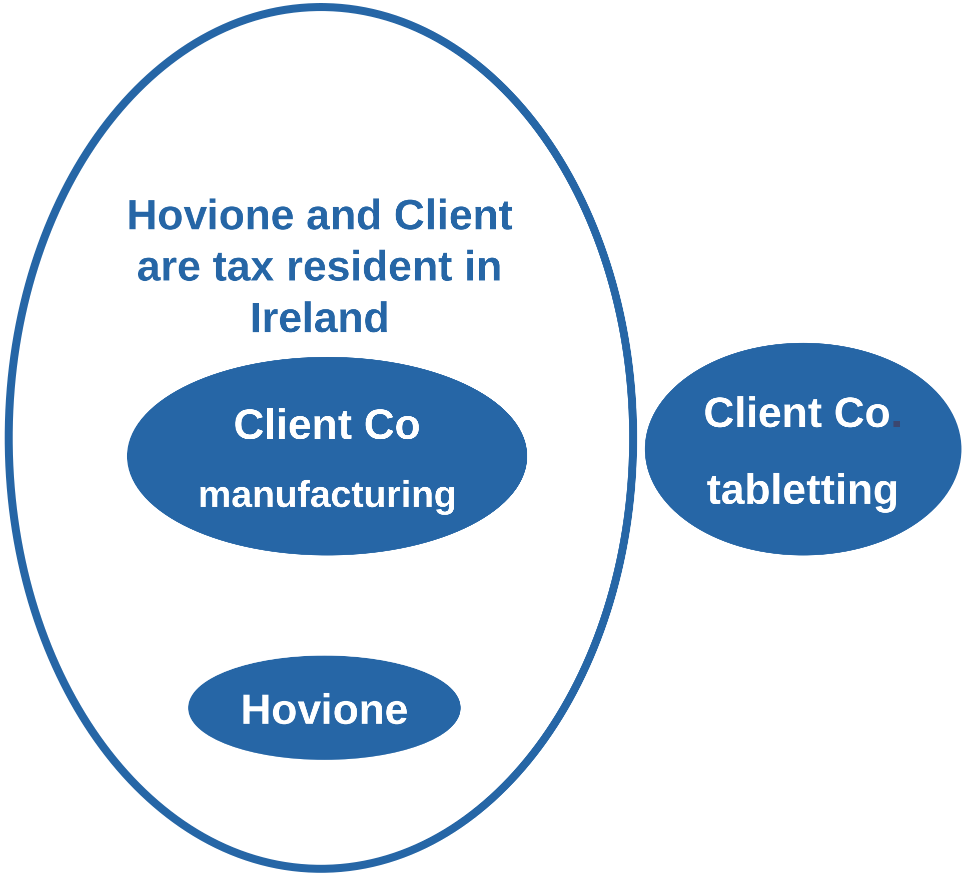
- 10 tons of API are made at the Hovione site
- Manufacturing costs $20m, Hovione's income
- Client has further $30m costs in tabletting and distribution
- Client sales to 3rd parties are $300m
- Net margin on this line is $250m
- Tax exposure is 30% = $75m



Example of tolling arrangement between Hovione and Potential Customers

Irish Tax Relationship

- CCM costs <$1m to operate
- CCM leases capacity at the Hovione Cork site for $4m for period X
- Hovione sells services to CCM $16m flat for period X
- CCM invoices CCT for API at $27,000/kg, total $270m
- CCM has Net Profits of $249m
- $249m pays 12.5% tax ($31m)instead of 30%; the savings are17.5% of $249m: $44m
- CCM and CCT are ultimately owned by the US / Japan based parents



Client leases capacity in Hovione Cork

Hovione invoices for the provision of services

Client manages the production, and takes risk

Example of tolling arrangement between Hovione and Potential Customers

- Customer needs to set up a tax resident entity in Ireland

- This entity needs to have staff with relevant expertise (i.e substance) that take decisions that result in manufacturing, foreign exchange and other risks – so that any profits arising in CCM are Irish profits, and not likely to be taxable elsewhere.

Example of tolling arrangement between Hovione and Potential Customers

- In addition the net profits need to meet two tests:
  - The $270m sales price to the CCT needs to be at arm's length and set on the basis of "market price less cost", CCT needs to be profitable like any other tableting and distribution operation;
  - The returns remunerate the IP/Patents. Large Pharma companies that have their tax strategies based in Ireland have ensured that the patents are owned by CCM, the Irish company. The high profits earned in Ireland are re.-invested in R&D

- Evidence shows that this approach is effective for US and Japan based groups

Contact

Eugene O'Riordan, Director

Tel: +353 21 425 4005

Email: eugene.a.oriordan@ie.pwc.com

Julie Cavanagh, Consultant

Tel: +353 21 425 4022

Email: julie.cavanagh@ie.pwc.com

Thank you

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