A “Double Irish” for Life Sciences Companies

Michael E. Burke

Many U.S. life sciences are basing their international operations and tax structure in Ireland. We continue to receive such inquiries from clients about the potential benefits of such a structure. This Bulletin briefly will discuss the issues your company should consider with such a move and why your company might want to consider it (or decide it’s not right for you).

A U.S. life sciences company’s international structure should be tax-efficient, responsive to the company’s needs, and not be unduly burdensome on the company’s operations. An effective structure also should segregate U.S.-origin revenues from revenues derived from foreign markets. Given these considerations (and more) U.S. life sciences companies ‘have found what they are looking for’ (to paraphrase the Irish band, U2) through what has been termed the “double Irish” structure.

The first step in this “double Irish” structure is a U.S. life sciences company establishing two ‘top-level’ subsidiaries—one in Ireland (“Holding Co”) and (optionally) one in the Netherlands (“DutchCo”). Holding Co, in turn, would be ‘tax resident’ in a low-tax jurisdiction. DutchCo, if created, would be a wholly-owned subsidiary of Holding Co, and would use a check-the-box election to be a disregarded entity for U.S. tax purposes. Forming DutchCo is optional, but could provide an additional tax benefit as discussed below.

The U.S. life sciences company would next establish a second Irish subsidiary, “Operating Company”, which would be a wholly-owned subsidiary of DutchCo (or of Holding Co if DutchCo is not formed). Operating Company also would use a check-the-box election to be a disregarded entity for U.S. tax purposes. The United States would view all three subsidiaries as one Irish entity while Ireland would see three distinct corporations, one subject to Irish corporate tax (Operating Company) and the others exempt from it (Holding Co and DutchCo).

The next step is for the U.S. life sciences company to enter into a Cost Sharing Agreement (“CSA”) with Holding Co covering the developing and use of one or more intangibles, such as intellectual property rights. Each participant in a CSA has a separate interest in such cost shared intangible.

Next, Holding Co would license to Operating Company the intangibles subject to the CSA, and Operating Company would, in turn, sub-license such intangibles and/or use the intangibles in Ireland. Under the master license, Operating Company would pay royalties to Holding Co at an “arms-length” rate.

Operating Company’s profits would be taxed at Ireland’s 12.5% corporate rate, but it can deduct the royalty payments made to Holding Co as an expense of earning income. If DutchCo is established, Ireland’s 20% with¬holding tax on royalty payments exiting the country would be waived, and the substance of Operating Company’s profits could end up with Holding Co at a low effective tax rate. As an aside, the band U2 use a tax structure involving a “DutchCo” to more efficiently manage royalty streams from their song catalog.

U.S. life sciences companies should be aware that, even in the “double Irish” structure, royalty streams could still be taxable in the United States through subpart F of the U.S. Internal Revenue Code. Great care must be taken to ensure that the royalty/revenue streams of the controlled foreign corporation (Holding Co) are not considered foreign personal holding company income or foreign base company sales income. In most cases, the “double Irish” structure causes royalty payments to be defined as ‘derived from the conduct of an active business,’ and exempt from U.S. tax imposed through subpart F. Further, these roy¬alty payments also can avoid recognition under subpart F if the intangible property is used in the manufacture of goods in Ireland.

The “double Irish” structure may not be right for every U.S. life sciences company. For some, the costs associated with creating and maintaining that structure could outweigh the tax benefits. Other life sciences companies may not have a sufficient internal support infrastructure to properly maintain this structure. However, if a U.S. life sciences company is expecting significant international expansion (or is in the midst of that expansion), it should consider the “double Irish.”

Authors and Contributors

Michael E. Burke
Partner, DC Office
202.677.4046
michael.burke@agg.com

not *if*, but *how*.®

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a "business sensibility" approach, developing a deep understanding of each client's industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal's prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief "not if, but how.®" Visit www.agg.com.

Atlanta Office
171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: **http://www.agg.com/subscribe/**