

Green wave: business opportunities in the new green economy



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THE DEVELOPMENT OF GREEN ENTERPRISE IN Ireland is seen as an essential part of the Irish government's strategy for economic revival. The 'green economy' is a growing force, with the environmental goods and services sector in Ireland estimated to be worth between €4.3bn and €5.2bn last year.

Environmental targets imposed at European Union (EU) level and compliance with EU legislation are key drivers in the development of the green economy in Ireland. Growing awareness of the consequences of climate change, rising energy prices, and increased demand for environmentally friendly and sustainable products are fuelling similar development worldwide.

At government level, green stimulus packages have been introduced in several jurisdictions, most notably in the US with the Obama administration's American Recovery and Reinvestment Act 2009 (the 2009 Act). The 2009 Act allocated approximately US\$38bn to the energy sector and includes US\$20bn of tax incentives over the coming ten years. Among other things, the 2009 Act includes a three-year extension to the tax credit for wind energy (due to expire at the end of this year), with the credit increased to 30% of the investment, along with an extension until end of 2013 for geothermal and biomass renewable energy projects.

The Irish government has followed suit and is seeking to drive investment in the green economy through incentives such as green funds, grants and tax relief. It is also encouraging companies to become more environmentally friendly through increased regulation. Governmental support for the green economy in Ireland has been evident in several agencies, ranging from the Industrial Development Agency Ireland (IDA) and Enterprise Ireland to more specialised organisations such as Sustainable Energy Ireland, the Environmental Protection Agency, the Science Foundation of Ireland and the Marine Institute. The green economy remains high on the political agenda. In May Ministers Eamon Ryan and Mary Coughlan announced the establishment of a high-level action group with the remit of:

'Mobilising our talents across the public and private sector to position Ireland at the forefront of the new global green economy.'

OPPORTUNITIES

Political and economic rhetoric aside, what does the new approach mean for Irish companies and where do the opportunities lie? The green economy comprises many sectors, including:

- renewable energy technology;
- clean technology;
- pollution and emissions control;
- waste management and recycling;
- energy management (including eco-construction);
- water supply and wastewater treatment; and
- environmental consultancy.

At both an international and domestic level, the sectors that are regarded as having the strongest growth potential are clean technology and renewable energy technology. In the renewable energy sector, Ireland's target under the EU Renewables Directive 2008 is to derive 16% of its energy from renewable sources by 2020. However, the Irish government has instead set a target of 40%, which will necessitate significant investment and expansion of the renewable energy market.

CLEAN AND GREEN

Clean technology comprises those products, systems and services that reduce energy consumption and emissions, and use materials from more sustainable sources. Renewable energy technology makes use of wind, water, biomass and biofuels, geothermal and solar resources for the generation of electricity. Naturally, there is considerable overlap between 'cleantech' and renewables such as combined heat and power (CHP) systems. High-profile projects, such as the Irish government's recently announced electric vehicles project (and memorandum of understanding to car manufacturer, Renault), have increased public awareness of the cleantech sector. On the renewable energy side, Irish success stories such as tidal developer, OpenHydro, wind energy company, Airtricity, and biomass CHP company, Imperative Energy, have promoted interest and investment in the domestic renewable

'Behind many of the success stories of the renewable energy sector in Ireland lies an abundance of SME cleantech and renewable energy projects designed to create the next wave of technologies and investment opportunities.'

energy sector. Behind these success stories lies an abundance of small and medium enterprises (SME) cleantech and renewable energy projects designed to create the next wave of technologies and investment opportunities.

FINANCE

International investment in cleantech and renewables has increased dramatically in recent years, driven both by climate change and environmental protection issues, and the convergence of the cost of fossil fuels and renewable energy. The Copenhagen Climate Conference in December is likely to result in a huge increase in investment in carbon reduction projects, and will make the carbon market the world's largest commodity market. In 2008 clean technology venture investments in the US, Europe, China and India totalled an estimated US\$8.4bn, according to Cleantech Group. Venture capital investment, which is widely recognised as a leading indicator of overall investment patterns, saw its seventh consecutive year of growth in the cleantech and renewables sector. Such investment may increase dramatically in the US with the passing of the Clean Energy and Security Act 2009, which introduces a mandatory cap-and-trade system across the country. According to the published research, the top clean technology sectors in 2008 were solar, biofuels, transportation and wind.

Venture capital investment in clean technology is rapidly growing and, in the US, lags behind only IT and biotechnology

as an investment sector. In Ireland, funds launched in early 2009 such as the Bank of Ireland's new €100m green fund, which forms part of its recapitalisation package and focuses on renewable energy investment, and the Electricity Supply Board's (ESB) €200m Novus Modus venture fund, which focuses on cleantech investments, are indicative of the direction that the investment market is beginning to follow. Factors such as an abundance

of natural resources, a strong track record in the information and communication technologies (ICT) sector, and beneficial tax rates and incentives, are making Ireland an attractive investment destination. the Irish government can send to demonstrate their support for various technologies, and are a powerful incentive for ensuring entry into, and driving technological innovation in, a sector. The REFIT for onshore wind has proven to be a very successful incentive tool for wind projects, but planning and grid connection issues still remain a concern for developers in the area. In September the Irish government introduced substantial

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INCENTIVES

The Irish government has also introduced several incentives designed to attract investment and development in the cleantech and renewable sectors. These include:

- Renewable energy fee-in tariffs (REFITs) present one of the key signals that

new REFITs for biomass (including anaerobic digestion and high-efficiency CHP), at a rate of €120 per megawatt; offshore wind, at a rate of €140 per megawatt; and sea energies (tidal and wave), at a rate of €220 per megawatt. These new REFITs will act as significant incentives for project developers in many areas of the renewable energy sector.

- Research and development tax credits, in particular for the renewables sector, which arise from eligible expenditure that can be offset against a company's corporation tax liability.
- The accelerated capital allowances scheme for energy-efficient equipment, administered by Sustainable Energy Ireland. This targets the use of equipment, such as electric or alternative-fuel vehicles, by allowing 100% capital allowances for the first year in which expenditure is made.
- The electricity tax introduced at the end of last year, under the Finance Act (No2) 2008. This is a measure designed to encourage the use of electricity from renewable sources. Implemented on the heels of the EU Energy Tax Directive 2003, this tax is levied on business consumers unless their electricity is generated from renewable sources

PROPOSED CARBON TAX

- The carbon tax is to be based on the carbon dioxide content of fossil fuels produced or imported in Ireland. The rate of tax should be based on EU Emission Trading Scheme (ETS) pricing. A minimum price of €20 per tonne of carbon dioxide, below which the tax should not apply, is also suggested.
- The tax should be collected at the earliest practical point of supply. In general, there should be no preferential rates of carbon tax, although certain exemptions (eg special rates or rebates) may apply in relation to businesses with legally binding negotiated agreements to reduce emissions. Carbon tax should not apply to EU ETS participants. The tax should not be imposed on ETS participants to collect gains made from the free allocation of permits. The issue should be monitored and taxation may be appropriate in the future.
- Any phasing in of the tax should depend on the scale of the price. If the imposition of the tax were to cause only a slight price increase, then the Commission for Taxation (CT) would argue that a long lead-in time would not be necessary. Generally, the CT recommends that a two-year period would be an appropriate lead-in time for the tax.

or was used for environmentally friendly purposes.

- Carbon tax. The details of the tax were published by the Commission for Taxation (CT) in early September. It is anticipated that it will be introduced in the forthcoming budget and levied on fossil fuels, with a view to encouraging the use of renewables and focusing attention on the need to improve energy efficiency (see box on p53).

COMMENT

In recognition of the market opportunities that the green economy presents for clients, BCM Hanby Wallace established its own green economy group last year to bring together policy, regulatory, investment and legal expertise under one common banner. This has helped the firm to facilitate an exchange of ideas among

clients, prospective clients, policy makers and investors, and to assist in bringing new cleantech and renewable energy products and services into the market. For more information on the group, see: http://www.bcmhanbywallace.com/Services/Service_List/Green_Economy.

For in-house counsel, sectoral focus, and knowledge of relevant technical, financial and regulatory issues will be key. In particular, counsel will need to have a thorough understanding of relevant taxation measures and incentives, some of which are highlighted in this article. Furthermore, specific legal and accounting issues will continue to arise as technologies develop. Companies are increasingly focused on their carbon footprint, in particular from a corporate social responsibility (CSR) perspective. Businesses are giving greater consideration to the impact that their carbon

footprints may have on their market value, and how this might impact upon future due diligence. However, the treatment of carbon from an accountancy perspective remains ambiguous, with no clear international rules governing transactions involving carbon allowances. For in-house counsel addressing a variety of legal, regulatory and accounting issues, this can present their company with a business opportunity. The green economy offers significant opportunities for business in Ireland across a range of sectors. There is political will and ambition behind the green agenda, and significant momentum and finance both in Ireland and abroad. The green wave is coming... are you ready to catch it?

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