IRELAND - AN OPTIMAL LOCATION

A GUIDE TO ITS CORPORATE TAX REGIME
Global Expertise, Local Specialists

Philip Lee is a business law firm with offices in Dublin, Brussels and San Francisco. We hire and retain the brightest legal minds in each of our practice areas, with consistent quality as our guiding principle. We deliver innovative and practical advice to our clients at home and abroad.

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Other useful information on investing in Ireland

idaireland.com/business-in-ireland
The Industrial Development Authority ("IDA") is the Irish state authority which provides support, information and grant aid to new companies incorporated in Ireland.
enterprise-ireland.com
Enterprise Ireland is a state authority which also provides significant support for new business activities.
sfi.ie
Science Foundation Ireland encourages the research, development and export of new technology in Ireland and provides grants and support to new and existing businesses operating in this area.

IRELAND
AN INTERNATIONAL GATEWAY

Ireland ranks No. 1 in the world for inward investment when scored for quality and value
IBM Global Locations Trends Report, December 2013

Ireland is rated 1st in the Eurozone for ease of doing business
IDA, What makes Ireland great, makes Ireland great for business, June 2013

Over the last thirty years Ireland has become one of the preferred jurisdictions for multinational companies to base their main operating companies or other key functions. The activities carried out in Ireland by these companies include finance, intellectual property, research and holding companies. Indeed Ireland has regularly been the largest recipient of foreign direct investment from key jurisdictions such as the US.

The reasons for multinational companies setting up their operations in Ireland are numerous, but in various surveys over many years, a number of prominent factors have emerged:

• Ireland is a long standing member state of the EU. Also a member of the eurozone.
• Ireland has a highly skilled and mobile work force.
• Ireland is an English speaking country.
• There is a significant IT sector with very good broadband and cloud-based facilities.
• Ireland has a developed regulatory regime.
• Significant tax advantages with a transparent and user-friendly tax system.
• Deep historic links with the US.
• A common law system which is very similar to the UK and therefore is familiar to international companies.
• Significant governmental support for inward investment, including grants and financial incentives.

10 key tax characteristics of the Irish system

1. The rate of corporation tax on trading income is 12.5%.
2. Generous holding company regime whereby holding companies are exempt from tax on the sale of subsidiaries where certain conditions are met.
4. Generous reliefs on the acquisition and development of intellectual property.
5. A comprehensive range of tax treaties with over 71 jurisdictions.
6. No Controlled Foreign Corporation (CFC) or thin capitalisation rules.
7. No capital taxes on incorporation of a company and limited capital taxes on transfer of assets to Ireland.
8. A wide range of exemptions and reliefs from withholding tax on payments and taxation of foreign receipts.
9. Remittance basis of taxation available for foreign employees.
10. Ireland is an OECD “white-listed” country.

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AN OVERVIEW OF THE IRISH TAX SYSTEM

Corporation Tax
Corporation tax is payable by an Irish resident company at 12.5% of its trading profits, whereas corporation tax is chargeable at 24% on any passive or non-trading income. Companies which are resident in Ireland may be subject to a range of other taxes depending on their activities within the jurisdiction.

The 12.5% rate of corporation tax on trading profits has been in place for over 15 years. All of the main Irish political parties are committed to preserving this rate of tax and despite the economic crisis, the retention of the 12.5% rate of tax is a shared priority among all of the main stakeholders in the Irish political and economic spheres. All of the main Irish political parties have repeatedly stated the rate is vital for continued economic growth and sustained stability. During the period from 2009-2012 when the financial crises was at its worst the corporation tax was never on the agenda for change and successive Irish Governments have indicated that it is not negotiable. With the easing of the financial crisis, Ireland’s exit from the ‘bailout programme’ and its return to the international bond markets, the corporation tax rate should continue to remain very secure at 12.5%.

Ireland’s taxation system is fully compliant with all OECD guidelines. This endorsement combined with the commitment across the Irish political spectrum provides great confidence and certainty in relation to the advantages of Ireland as a location to do business, in particular as regards the availability of the 12.5% rate of corporation tax. Indeed, depending on the activities of a company the actual rate of corporation tax paid can be significantly lower, as explained further below.

Residence and compliance
When is a company resident in Ireland?
A company is resident in Ireland when it is:

a. incorporated in Ireland;

b. managed and controlled in Ireland (subject to provisions of any double taxation treaty and certain limited exceptions under Irish law).

The question of management and control is determined by reference to case law and is generally taken to be the place where board meetings are held and key management and strategic decisions of the company are taken.

As indicated, the general rule of residency is subject to exemption and for certain defined companies, incorporation in Ireland will not necessarily in itself result in the company being tax resident. In particular, where a specified class of Irish incorporated company is under the control of tax residents of certain other territories, namely those within the European Communities or with whom Ireland has signed a double tax treaty, it will not be considered tax resident in Ireland.

The exception is now however subject to restriction. In relation to all companies incorporated after 24 October 2013, and 1 January 2015 for all other companies, where the exemption would result in the company not being resident for tax purposes in any other territory, the company will be regarded as resident in Ireland for tax purposes if incorporated in Ireland.

When is a company trading in Ireland?
There is no statutory definition of when a company is trading in Ireland. The question of whether a company is trading is looked at on a case by case basis and various factors need to be considered. It is important however to note that there are no restricted activities which a company can carry out or needs to carry out in order to be considered a trading company. Indeed it is possible that a company with as few as two or three employees can be considered to be trading for corporation tax purposes.

The Revenue Commissioners (“Revenue”), the authority responsible for administering Ireland’s taxation system, have a pre clearance mechanism to assist any companies resident in Ireland. In addition, as regards to whether the company will be deemed to be considered to be trading. The clearance is not binding upon the Revenue as if there is an issue as to trading status it will be decided by an individual Inspector of Taxes, however it is very unlikely that an individual Inspector would come to a different view where clearance is obtained.

The Irish government and its agencies are however very focused in ensuring that companies have a real substance and presence in Ireland and are not just “brass plate” operations.

Compliance
Irish resident companies must account for any tax liabilities under a self-assessment system. Most taxes, including corporation tax, income tax, payroll tax and value added tax (sales tax) are filed online. The Revenue carry out a random audit process on companies and, where a company is subject to an audit, it has the opportunity to make a disclosure of any non-compliance prior to a full audit commencing. The effect of such a disclosure is to reduce any statutory penalties for the underpayment or under declaration of tax.

Other Taxes

PAYROLL TAX
Employers must deduct all employee payroll taxes from gross pay, with the employee receiving the net pay. Employers must account for the employee’s income tax liability, known as Pay as You Earn (“PAYE”) to Revenue. In addition employers must pay an employer’s contribution known as pay related social insurance (“PRSI”) at the rate of 10.75% on all salaries paid to employees in Ireland.

CUSTOMS DUTY
Any goods imported into Ireland from EU countries are not subject to customs duty as a member state of the EU. However, imports from outside the EU will be subject to customs duty at point of entry, similar to other EU jurisdictions.

VALUE ADDED TAX (VAT)
VAT is similar to US sales tax and is an EU-wide tax. The aim of VAT is to make taxes an ultimate end user of goods and services and therefore in business transactions it should not represent a net cost to a company. There are certain activities which fall outside the VAT regime and therefore any VAT charged on such activities is a turnover cost and not merely a cash-flow cost. In particular, financial services and financial transactions are not subject to VAT (though there are exemptions for fund providers). There are a number of different VAT rates, ranging from a current top rate of 23% to a 0% rate. There is a reduced rate of VAT on various activities including services relating to property and hotel expenditure.

CAPITAL TAXES
Ireland has a capital taxes regime which applies on the execution of certain documentation. This tax is known as “stamp duty” and generally applies to the purchase of capital assets such as land and shares. There is however no capital tax on incorporation of a company or the issue of new shares in a company. The rate of stamp duty is 1% on transactions relating to shares and 2% generally otherwise.

Holding Company Regime
Ireland has a comprehensive regime to encourage domestic and international companies to incorporate holding companies in Ireland. The regime is known as the substantial shareholdings exemption (“SSE”) exempts from tax gains on a sale of shares in a “qualifying subsidiary”. The conditions that need to be satisfied in order for the shares to be sold tax-free are:

a. the shares being sold must be shares in a trading company or the overall group must be a trading group;

b. the shares being disposed of must be owned for at least 12 months of a 24 month period ending on disposal;

c. the shareholding must equate to 5% of the issued share capital of the qualifying subsidiary;

d. the qualifying subsidiary must be resident for tax purposes in an EU Member State or in a country Ireland which has a double taxation treaty; and

e. the qualifying subsidiary must not derive over 50% of its value from Irish mineral or mining rights or land.

There is no requirement for active participation in the qualifying subsidiary or for the shares to be held for trading purposes or for the holding company to have had control of the qualifying subsidiary.

Example
An Irish holding company of an international group owns shares in subsidiaries throughout the EMEA. In addition the group identified a possible target in an EMEA country with which Ireland has a double taxation treaty. The Irish holding company acquired 8% of the shares in the target company and discussions took place with the management of the target company regarding an acquisition of a greater shareholding. After 15 months the conclusion was reached by the Irish resident holding company that no joint venture or commercial arrangement could be reached with the target company and it was decided it would dispose of the shares. The shares have increased by 30% in value in the interim. The Irish resident holding company can dispose of the shares tax free.
1. Research and development (“R&D”)

A 37.5% Deduction

Ireland has a generous R&D tax credit system whereby an Irish resident company is entitled to claim a corporation tax credit of 25% of the incremental spend on qualifying R&D expenditure carried out in the European Economic Area by a company within the charge to Irish corporation tax. The combined result of the normal corporation tax deduction of 12.5% and the R&D credit means an effective tax deduction at 37.5% on R&D expenditure.

What Qualifies?

In order for R&D activities to qualify for the credit the activities must involve systematic, investigative or experimental activities in the field of science or technology being basic research, private research or experimental development.

Revenue guidelines for R&D tax credit, December 2012

All of the R&D work need not be carried out by the company itself. It is possible to sub-contract some of the R&D work and still claim the relief. Where the company has not carried out the work itself then the amount of the relief depends on who has carried out the work. If the work has been subcontracted to a university then the credit is equal to 5% of the expenditure incurred by the company itself or €100,000, whichever is the greater.

Alternatively, if the work has been carried out by an unconnected party other than a university, then the relief is restricted to 15% of the expenditure incurred or €100,000, whichever is the greater. The credit is also available for qualifying expenditure on building facilities used for R&D purposes. The qualifying expenditure includes not just construction but also refurbishment of a building or structure to facilitate R&D, if at least 35% of the building is used for R&D purposes. What is particularly beneficial is that the full R&D credit of 25% may be claimed in the year which the expenditure was incurred. There is a claw back of the credit where the building is sold or ceases to be used for R&D within a ten year period.

Credit, Relief and Tax Free Payments

The R&D tax credit first used to reduce the corporation tax liability on profits of the accounting period. However, as many companies are not profitable initially the Irish government allows the R&D credit to be used in a number of different ways. For example, the credit can also be used to pay “key employees” remuneration tax free. If the credit is still unused it can be carried back against corporation tax in the previous accounting period or carried forward indefinitely against future profits.

In addition a company may apply for a refund of corporation tax or employer’s taxes that have been paid. The amount of any refund is limited to the greater of:

- the payroll liabilities – ie PAYE, employers’ and employees PRSI and any levies accounted for by the company in the accounting period in which the R&D expenditure was incurred, or
- the corporation tax paid by the company in the preceding ten accounting periods. Finally, the R&D credit can be surrendered within corporate groups (this is only relevant for the other group companies within the Irish tax system).

2. Intellectual Property

Corporation tax and capital tax relief

Ireland is one of the foremost jurisdictions for the location of intellectual property trading companies and holding companies. There are significant reliefs for any acquisition of intellectual property which is widely defined in the Irish legislation. There are no capital taxes on the acquisition of intellectual property, whether developed in Ireland or elsewhere. In addition capital expenditure incurred by companies on the acquisition of certain “specified and intangible assets” allows a tax write-off in the form of capital allowances against the company’s taxable income.

The specified intangible assets include:

- Patented and registered designs
- Certain plant breeder’s rights
- Trademarks, brands, brand names, domain names, service marks
- Copyright or related rights
- Knowhow, generally relating to manufacturing or processing
- Any authorisation required in order to sell a medicine, a produce or any design, formula, process, or invention for the purposes intended
- Any rights derived from research prior to authorisation of the items mentioned in the bullet points above
- Computer software or a right to deal in or use such software
- Application for grants or registrations of patents, trademarks, copyrights
- Goodwill to the extent that is directly attributable to the specified intangible assets listed above
- Where such property is acquired, then in addition to no capital taxes on acquisition, the write off can be set against all taxable income over a fifteen year period. This is subject to two criteria:
  - The aggregate amounts of allowances are capped at 80% of profits from the relevant trade in the accounting period. The unused allowances are carried forward
  - The assets must not be sold within ten years of acquisition or else there is a claw back of the relief claimed

The interaction of these provisions effectively allows an Irish intellectual property holding company to reduce its overall tax liability to an effective 2.5% rate where intellectual property is located and exploited out of Ireland.

This effective rate, in addition to the research and development credits listed above, makes Ireland a very attractive location for the development and exploitation of intellectual property.

Withholding Tax on Payments

A company may pay patented royalties to payments to foreign resident company free of withholding tax. In order for the payments to be made without withholding tax, the recipient company must be resident for tax purposes in another EU state or a country with which Ireland has a double taxation agreement.

Furthermore, since 2010 royalties paid to an offshore entity in respect of foreign registered patents can be paid without withholding tax, even where the recipient is not resident in a jurisdiction with which Ireland has a double taxation agreement, where prior approval is obtained from the Revenue and certain conditions are met.

Taxation of Royalty Receipts

If payment is received from a country with which Ireland has a double taxation treaty, then there should be no withholding tax on the payment. However, in circumstances where there is no double taxation agreement and there is a withholding tax, unilateral credit is available to Irish intellectual property companies where the receipts are taxed as trading income (see above).
IRELAND AS A FINANCIAL SERVICES LOCATION

Funds Industry
Ireland is one of the leading global locations for the establishment of regulated investment funds and is also one of the key locations for fund administration, custody and management services.

Regulated Funds
The reason that so many regulated funds have established in Ireland is that effectively there is little to no Irish tax liability on their activities. The key provisions contained in the Irish tax code are as follows:

- Investors can roll up returns on a gross basis. The tax on income and gains of income and gains are exempt irrespective of an investor’s residency.
- There are no capital taxes (stamp duty) on the establishment, transfer or sale of units or shares in Irish regulated fund.
- Many of the services provided to a fund are exempt from VAT, which is normally a case for financial services businesses.
- There is no withholding tax on income distributed by the fund or redemption of the units by the fund to a non-Irish resident investor. It does not matter what jurisdiction the investor is located in provided they are non-Irish resident. Previously it was necessary to get a declaration to demonstrate that the investor is not an Irish resident, however where the Revenue is satisfied that the investor has taken sufficient measures to ensure that the relevant unit holders are not resident and not ordinarily resident in Ireland, there is no need to provide a declaration.
- It is possible to re-dominate a fund to Ireland and avoid any Irish tax on the re-domination. It is however of course necessary to look at the investors personal tax position.

Securitisation and Structured Financial SPVs
Ireland has a very favourable tax regime for the use of special purpose vehicles (“SPVs”) in structured financial transactions such as securitisation and acquisition of distressed assets, regardless of the location of the assets.

The Irish tax code has special provisions where a SPV requires or manages an interest in qualifying assets. Qualifying assets include:

- Shares and Loan and Lease portfolios;
- Hire Purchase Contracts;
- greenhouse carbon offsets;
- Contracts of Insurance and Reinsurance;
- Bills of exchange, commercial paper, promissory notes and all other kinds of negotiable bill or transferable instruments.

An SPV which purchases qualifying assets is subject to tax at a 25% rate but is permitted to calculate its corporation taxes as trading income rather than investment income. In basic terms this allows expenses wholly and exclusively incurred for the operation of the SPV to be deducted from gross profits for tax purposes (this is different to investment companies which may only deduct certain limited expenses). In addition these SPVs are not subject to Irish transfer pricing rules as they are deemed to be investment companies and not trading companies. Most SPVs are funded by profit participating loans which are tax-deductible but which can be paid without withholding tax.

The main conditions to qualify as a SPV are that the company must be Irish tax resident and that the qualifying assets in respect of the first transaction carried out by the SPV must be in excess of €10 million. Finally, for noteholders resident in EU or countries with which Ireland has a double taxation agreement (full list is at the end of this publication), no Irish tax liability will arise on interest paid by the SPV’s. Noteholders not resident in these countries, while technically liable to Irish tax, are not subject to Irish tax by the Revenue. This is because there is an unpublished practice whereby Revenue do not pursue such persons where such persons otherwise not subject to tax in Ireland, and do not seek to claim a refund in respect of the Irish source income which has been subject to tax.

OTHER KEY TAX ATTRIBUTES FROM AN INTERNATIONAL PERSPECTIVE

Transfer Pricing
Ireland has one of the most favourable transfer pricing regimes in the OECD, introduced in a limited format in the last few years. There are limited documentation requirements in Ireland, and transfer pricing documentation created by a counterparty in an OECD jurisdiction can generally be relied upon to support the Irish position. Also, as the regime was only recently introduced it is unlikely to change in the near future. There is an exemption for “small and medium size enterprises” from the transfer pricing rules. Small and medium sized enterprises are groups with less than 250 employees and either a turnover of less than €50 million or assets of less than €43 million. Adjustments are only necessary under the Irish system where Irish profits have been understated; however considering the low rate of corporation tax rate in Ireland, in practice it is unlikely that businesses would seek to understate Irish profits and the general view is that the legislation is therefore unlikely to be heavily utilised by Revenue.

Withholding Tax on Dividend Payments
There is no withholding tax on the payment of dividends from Irish resident companies to countries in the EU, or countries with which Ireland has double taxation treaty. In addition, there is no withholding tax on payments to companies not resident in a country with a double taxation treaty, where those companies are ultimately controlled by companies resident in a country with which Ireland has signed a double tax treaty. For example, it is possible to pay dividends from Ireland to a Cayman-resident company exempt from Irish withholding tax where the ultimate beneficiary of that Cayman resident is a US resident corporate. This is subject to certain compliance requirements and filing documentation prior to the payment. Where the exemption does not apply then withholding tax must be deducted at the standard rate of 20%.

Thin Capitalisation / CFC
There are very limited thin capitalisation rules and no controlled foreign corporation (“CFC”) rules imputing overseas income to Ireland.

Receipt of Dividends & Foreign Tax Credits
An Irish resident company is exempt from tax on dividends received from another Irish resident company. Ireland has a comprehensive unilateral foreign tax credit system which effectively allows most holding companies established in Ireland to receive payments from non-resident companies without any further tax liability in Ireland. The foreign tax credit system provides for a system of onshore pool and a credit can be claimed for any foreign tax, including withholding taxes on profits out of which dividends have been paid, and local or state taxes. Where the foreign resident payers are trading companies, then the foreign pool credits are taxed at a 12.5% rate and where the foreign resident companies are passive or investment companies, then the tax rate is 25%. Accordingly, where the overall blended foreign tax rate is greater than or equal to the Irish tax rate, there is no Irish tax liability.

Incentivising Management
Ireland has recently introduced a number of additional incentives for overseas individuals moving to Ireland or Irish individuals who are operating in the BRICS countries (Brazil, Russia, India, China and South Africa).

Where non-resident individuals move to Ireland for the first time after 2012 then, a proportion of their qualifying income is taxed at a lower rate than those who are generally tax resident in Ireland. This is known as the Special Assignee Relief Programme (“SARP”). Furthermore, where Irish individuals are sent overseas to one of the BRICS countries, a portion of that taxable income also falls out of account for Irish tax purposes where certain conditions are fulfilled, this is known as the Foreign Earnings Deduction.

Taking both these factors together, many companies have been incentivised to look at the individuals they are hiring or are increasingly considering moving to Ireland. Another factor which is relevant in incentivising management is that non-Irish domiciled employees (effectively individuals whose place of birth and/or centre of interest is outside Ireland) are only subject to tax in relation to remitted gains or income. This means that except for employment exercised in Ireland, all non-Irish source income and gains are not subject to Irish Capital Gains Tax or Income Tax where these sums are not remitted to Ireland.

Finally, as noted in the R&D section above, it is possible to utilise the R&D credit to incentivise key employees such as they receive certain payments tax free.
Ireland has signed a comprehensive double taxation agreement with seventy-one countries, of which sixty-eight are in effect. The agreements cover direct taxes, which in the case of Ireland are income tax, corporation tax and capital gains tax.

Current Agreements:

- Albania
- Armenia
- Australia
- Austria
- Bahrain
- Belarus
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Chile
- China
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Egypt
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Hong Kong
- Hungary
- Iceland
- India
- Israel
- Italy
- Japan
- Korea (Rep. of)
- Kuwait
- Latvia
- Lithuania
- Luxembourg
- Macedonia
- Malaysia
- Malta
- Mexico
- Moldova
- Montenegro
- Morocco
- Netherlands
- New Zealand
- Norway
- Panama
- Poland
- Portugal
- Qatar
- Romania
- Russia
- Saudi Arabia
- Serbia
- Singapore
- Slovak Rep.
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey
- United Arab Emirates
- United Kingdom
- United States
- Uzbekistan
- Vietnam
- Zambia

• Ireland signed new agreements with Ukraine on 19 April 2013, Thailand on 4 November 2013 and Botswana on 10 June 2014. The legal procedures to bring these agreements into force are now being followed.

• Negotiations for new agreements with Azerbaijan, Jordan, Ethiopia and Turkmenistan are at various stages.

• It is also planned to initiate negotiations with new agreements with other countries during the course of 2014.

Gavin McGuire

Gavin is head of the tax department and advises the firm’s clients on tax issues in corporate transactions, tax planning, tax litigation and dealing with Revenue.

Gavin has wide ranging expertise in corporate law and commercial transactions, corporation tax, income tax, capital gains tax, stamp duty, value added tax and Revenue enquiries. Gavin regularly advises on the tax and commercial aspects of M&A transactions, corporate finance, private equity and inward investment.

Gavin also has significant litigation experience both in tax and non-tax matters.

Gavin’s view is that what clients want is solutions to their commercial needs and he works closely with clients in achieving their aims in a tax efficient and commercially effective manner. His clients range from start-ups who wish to incentivise employees, to well-established business where the shareholders are looking at disposing of the business or transferring part of the equity on to a new generation.

Gavin joined Philip Lee in 2012 from another leading Dublin firm where he was head of tax and had been responsible for setting up the tax practice. Prior to this he worked in London for 8 years and worked in a “big 4” accountancy practice and subsequently with a large London law firm.

Gavin regularly lectures for the Institute of Taxation and has spoken at a number of their Annual conferences. He is also a moderator for the Institute of Taxation on a number of exams. He has spoken on numerous occasions at private client and corporate restructuring seminars held around the country. He also is regularly interviewed by the print and spoken media on various tax issues.

The information contained in this document is based on the interpretation of the relevant tax law and tax practice. As in all matters involving interpretation of law and practice, there can be no guarantee that the Revenue Authority or Court will necessarily agree to an interpretation. The views expressed in this document are based on current law practice and may change at any time hereafter.