Investing in Ireland

A dynamic, knowledge-based economy - 2022

Grant Thornton

Foreword

Ireland represents a strategic European base due to our pro-business, low corporate tax environment and skilled workforce. As a result of these and other factors, more than 1,600 multinational companies have chosen Ireland as their investment platform.

Peter Vale - Partner
Head of International Tax

Ireland's low rate of corporation tax (12.5%), holding company regime, Research and Development (R&D) tax credit, Knowledge Development Box (KDB) and Intellectual Property (IP) relief make it a very popular choice for inward investment. Companies based in Ireland view it as a uniquely attractive location in which to do business.

Ireland remains committed to its corporation tax rate of 12.5%. Under the OECD Pillar Two rules, Ireland will adopt the 15% minimum effective tax rate, however, this minimum rate will only apply to Multinational Enterprises (MNEs) with consolidated revenues exceeding €750m. Therefore, the 12.5% rate will continue to apply for companies below this threshold. Ireland's domestic legislation to implement the 15% minimum effective tax rate will follow the EU Directive.

The global tax landscape continues to evolve, with many countries introducing new digital taxes, broadly aimed at raising tax revenues in market jurisdictions. Despite the changes, and even perhaps as a result of them, Ireland retains a remarkable position as an even more compelling location in which to do business.

Grant Thornton has prepared this guide to set out the tax advantages of Ireland as an investment platform and a jurisdiction which facilitates FDI.

This guide has been prepared for the assistance of those interested in doing business in Ireland and includes legislation in force at 1 January 2022.
It does not cover the subject exhaustively but is intended to answer some of the important and broad ranging questions that may arise. When specific issues occur in practice, it will often be necessary to refer to the laws and regulations of Ireland and to obtain appropriate accounting, tax and legal advice.

Peter Vale
Partner - Head of International Tax

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An evolved landscape

The last ten years has seen significant upheaval in the global tax environment, with more changes expected. Ireland has fully embraced this new landscape.

Despite initial concerns, changes in the global landscape have broadly been very positive for Ireland, with the closer alignment of taxable profits and real substance acting in our favour.

Following the publication of the OECD Base Erosion Profit Shifting (BEPS) project in 2015, many groups fundamentally altered their tax structure, with valuable intellectual property moving from traditional offshore locations to onshore jurisdictions such as Ireland.

Since then, more tax changes have been introduced at local, EU and OECD/global level, broadly aimed at reducing the opportunity for tax avoidance.

The changes include some notable provisions, such as:

- new controlled foreign company (CFC) legislation;
- a new multilateral instrument (MLI) fundamentally altering numerous global tax treaties; and
- new EU tax directives (ATAD), tackling issues such as hybrid mismatches, exit taxes and interest limitation rules, the latter being particularly important for ireland.

Notwithstanding the scale of the global tax changes introduced within a relatively short time period, the OECD moved ahead with its "Pillar One" and "Pillar Two" proposals. Pillar One is aimed at reallocating a portion of the profits of very large groups to market jurisdictions. Pillar Two proposes the introduction of a new global minimum tax rate.

While Ireland has embraced both Pillars, neither Pillar One nor Pillar Two have been formally implemented, although many countries have taken unilateral measures recently to introduce aspects of both.

The key elements of Pillar One include:

- taxing rights over 25% of the residual profit of the largest and most profitable MNEs would be re-allocated to the jurisdictions where the customers and users of those MNEs are located;
- tax certainty through mandatory and binding dispute resolution, with an elective regime to accommodate certain low-capacity countries;
- removal of digital services taxes and other similar measures; and
- the establishment of a simplified and streamlined approach to the application of the arm's length principle in specific circumstances, with a particular focus on the needs of low capacity countries.

Ireland has agreed to the OECD Pillar Two initiative to introduce a minimum effective corporate tax rate of 15% for MNEs, where consolidated revenue exceeds €750 million. Ireland has worked hard in retaining its longstanding 12.5% corporation tax rate for groups that do not exceed this threshold, and following successful negotiations by the Irish Government with the OECD and EU, the lower 12.5% corporation tax rate will continue to apply for qualifying companies.

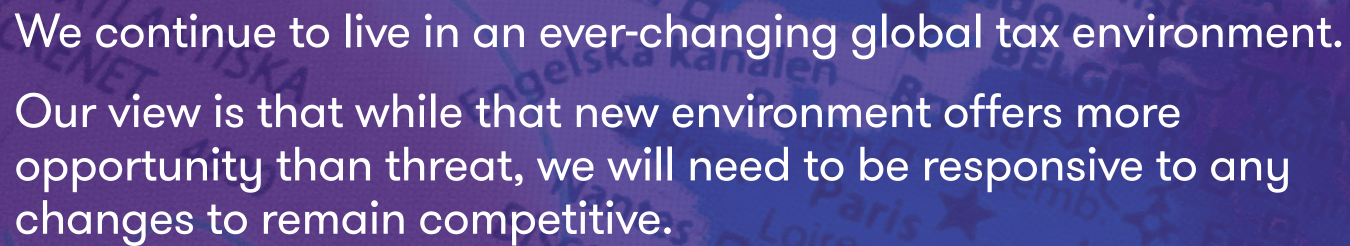
The main elements of Pillar Two include:

- a global minimum effective corporate tax rate of 15% on all MNEs with annual revenue exceeding €750 million;
- a separate subject to tax rule (STTR) to be introduced for certain intra-group cross-border payments, such as interest and royalties, that are subject to taxation on receipt below the 9% STTR minimum rate. If tax on the payment is below the 9% STTR minimum rate, a taxing right (or additional taxing right, as the case may be) will be granted to the source jurisdiction. The STTR is not yet finalised; and
- carve-out to accommodate tax incentives for substantial business activities.*

*This is a substance-based carve-out of 5% of the carrying value of tangible assets and payroll which will reduce the tax base on which the global minimum 15% tax rate will be applied. Over a ten year period, the amount of income excluded will be 8% of the carrying value of tangible assets and 10% of payroll, declining yearly by 0.2 percentage points for the first five years, and by 0.4 percentage points for tangible assets and by 0.8 percentage points for payroll for the last five years. This may aid multinationals within the scope of Pillar Two who continue to locate their employees and tangible assets in Ireland.

In September 2022 the EU Commission announced proposals to introduce a single set of rules for EU companies to calculate their taxable base and ensure a more effective allocation of profits between the Member States. The BEFIT proposal ("Business in Europe: Framework for Income Taxation") replaces the proposal for a Common Consolidated Corporate Tax Base (CCCTB) and is intended to be based on a formulary apportionment and a common tax base. The EU plans include a consultation on BEFIT at the end of 2022 with adoption expected by the end of 2023.

Ireland's 12.5% rate of corporation tax remains attractive when compared with the US federal rate of 21% which, together with state tax rates, is likely to see US businesses taxed at more than double the Irish tax rate. In our view, as the vast majority of US groups set up in Europe for commercial reasons, having a low corporate tax rate will continue to make Ireland an attractive place for investment.



We continue to live in an ever-changing global tax environment.

Our view is that while that new environment offers more opportunity than threat, we will need to be responsive to any changes to remain competitive.

Why invest in Ireland?

Ireland has an attractive tax, regulatory and legal regime, which when combined with its open business environment and dynamic, knowledge based economy culminates in Ireland being regarded as a world class location for international business.

Ireland represents a strategic European base due to our pro-business, favorable corporate tax regime and skilled workforce. As a result, more than 1,600 multinational companies have chosen Ireland as their investment platform according to the Department of Enterprise, Trade and Employment (DETE). Over a third of multinationals have operations here for more than 20 years, demonstrating both commitment to Ireland and the value offered in return.

As a committed member of the Eurozone and the EU single market, Ireland's reputation as a destination of choice for Foreign Direct Investment (FDI) is unrivaled. Continuing the trend as the fastest growing economy in recent years, the Irish economy had the fastest growth rate in the EU in 2021. This position is expected to continue over the next two years according to IMF forecasts.

Ireland has a highly skilled, educated, young and multicultural population. Ireland has one of the most educated workforces in the world. The share of 25-34 year olds in Ireland with a third level qualification is 62.9%, compared to an OECD average of 47.1% according to OECD data.*

Ireland has a very favourable holding company regime and a number of high profile groups have their European and global headquarters in Ireland to access the benefits here including Apple, Twitter, LinkedIn, Facebook, Vodafone, Microsoft, Amazon and Pfizer.

TikTok, Workday, Merek and Amcor are among many multinationals that have announced plans for significant investment in Ireland over the coming years.

Ireland provides a very favourable tax environment to encourage business development and sustain rewarding investment.

Tax reliefs form an important part of the total incentive package available to overseas companies establishing a business in Ireland. These reliefs establish Ireland as a favourable location for multinational corporations to base their regional headquarters and holding companies.

Multinational Companies (MNCs) tend to consolidate their financing, regional head office and R&D activities in one location. Ireland is well-equipped to cater for all these requirements.

Ireland weathered the financial impacts of COVID-19 relatively well. The Government has been credited with taking sensible options early on, which mitigated the effects of COVID-19 on the Irish economy. Stimulus measures introduced by the Irish Government have helped the Irish economy recover from the knock it has taken from COVID-19.

In the final quarter of 2022, the Irish Government introduced targeted measures in tackle inflation and the increasing cost of living. Some of the measures announced as part of Budget 2023 took effect in 2022 while most others are introduced with effect from 2023. The budget package was announced against a backdrop of strong exchequer revenues in 2022 and a strong labor market. The resulting impact of the package of measures remains to be seen but initial indications are that Budget 2023 has made a comprehensive range of interventions to help the Irish economy offset some of the inflationary pressures.

The Irish advantage

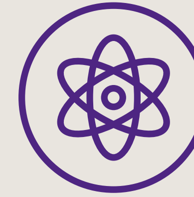
12.5%
corporation tax and extensive treaty network

Stable
political environment and respected regulatory regime

Highly skilled
knowledge - based economy

Flexibility
responsiveness and innovation

Experience
delivering global business services



300+
medtech companies

Experienced
and innovative leaders

Excellent
research facilities and capabilities

Irish
government partnering

Attractive IP
tax regime including KDB

1,400+
home to 1,400+ overseas companies

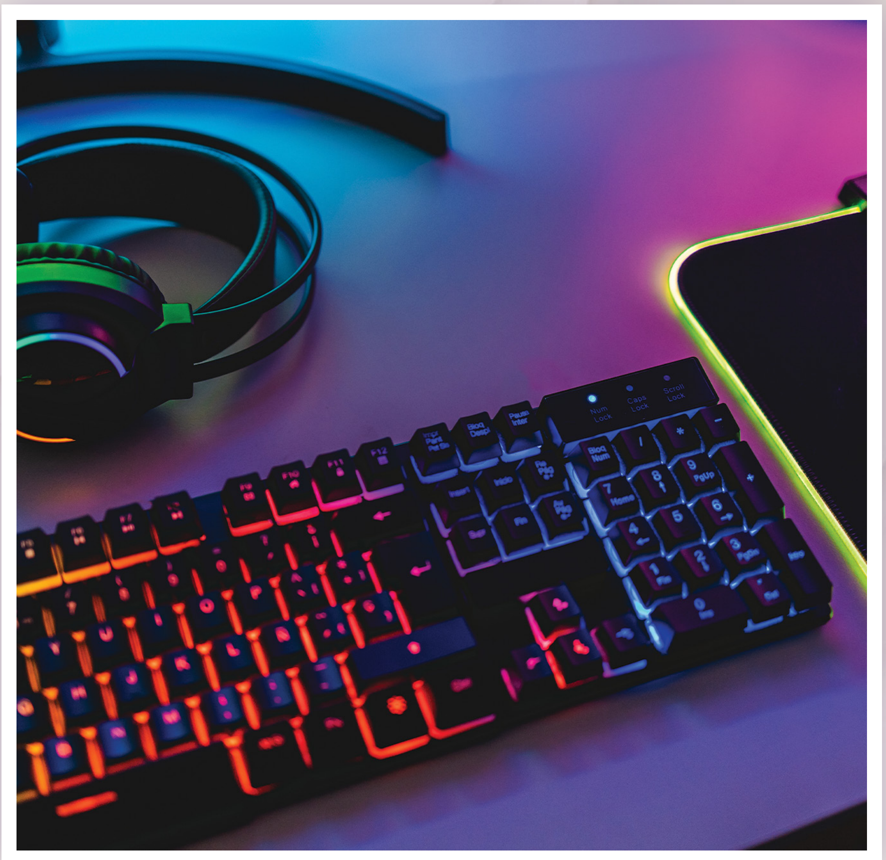
16/20
top global software companies

Tax advantages of Ireland

There are many tax benefits for companies investing in Ireland, either with fully fledged trading operations or with global holding company structures.

Some of these include:

- low corporate tax rate of 12.5%* for active businesses;
- a tax exemption on capital gains from the disposals of qualifying shareholdings;
- attractive R&D tax credit regime;
- capital allowances for expenditure on intangible assets;
- reduced corporate tax rate of 6.25% on profits arising from patented inventions, copyrighted software and certain other specific asset classes;
- low (if any) tax on foreign dividends and flexible onshore pooling of foreign tax credits;
- tax free sales of most subsidiaries (participation exemption);
- EU approved stable tax regime with access to an extensive and expanding treaty network and EU directives;
- credit for tax on foreign branch profits;
- generous domestic law withholding tax exemptions;
- preferential tax regimes in place for regulated collective investment funds and securitisation vehicles;
- no capital duty on equity investments;
- IP stamp duty exemption;
- a **Special Assignee Relief Programme (SARP)** to reduce the cost to employers of assigning skilled individuals from abroad to take up positions in the Irish based operations of their employer;
- a foreign earnings deduction for employees working temporary in certain countries; and
- a Digital Games Relief to encourage development in the digital gaming sector.



Taxation of companies

Liability to tax

A company that is tax resident in Ireland is liable to Irish corporation tax on its total profits wherever arising. Companies not tax resident in Ireland are only liable to corporation tax on profits generated by an Irish branch or agency.

Since 1 January 2015 all Irish incorporated companies are considered tax resident in Ireland, unless they are considered tax resident in another location by virtue of a tax treaty which Ireland has with that other territory.

In addition, any company which is considered to be managed and controlled in Ireland will be considered Irish tax resident.

The changes to the tax residence rules were introduced in Finance Act 2014 and the changes took effect from 1 January 2015 for companies incorporated on or after 1 January 2015. For companies incorporated prior to that date, the provisions applied from 1 January 2021 (or earlier in certain circumstances e.g. where there is a change in the nature or conduct of the business).

Tax rates

In 2022, the standard rate of corporation tax in Ireland is 12.5% on trading income. A rate of 25% applies to non-trading income and certain trades. The lower rate represents one of the lowest 'onshore' statutory corporate tax rates in the world. The Irish government continues to be committed to retaining this rate.

Ireland's 12.5% tax rate, along with a number of other incentives and tax reliefs, result in Ireland being regarded as an extremely attractive location in which to do business.

Negotiations on the OECD's Pillar Two proposals continue. Pillar Two will introduce a minimum effective corporate tax rate of 15% for certain MNEs.

The statutory definition of a trade for Irish tax purposes is vague – a trade "includes every trade, manufacture, adventure or concern in the nature of a trade". Thus, the question of whether a trade exists should be reviewed in light of the six badges of trade (as drawn up by the UK HMRC on the taxation of profits and income), along with the Irish tax authorities' (Revenue) precedents and case law.
Broadly, the higher the level of activity and number of transactions, the more support there is to assert that a trade exists.
Revenue have also indicated that the following factors would be important when considering whether or not a trade exists:

- commercial rationale;
- real value added in Ireland; and
- level of employees in Ireland.

If requested, Revenue will issue advance opinions as to whether proposed operations will constitute a trade for Irish tax purposes. It is critical that this is requested in advance of any activity commencing.
It is also important to ensure that a company is not regarded as tax resident in another territory other than Ireland. A company may be subject to taxation in another jurisdiction at higher rates than those prevailing in Ireland, if it is considered tax resident in that other jurisdiction. While the question of whether or not a company is tax resident solely in Ireland can be complex, there are a couple of key points to note. Firstly, the location of all board meetings of the company should be Ireland. Key strategic decisions should be made at these meetings. Secondly, a majority of the directors should be Irish tax resident.

Broadly, the level of substance in Ireland will determine whether the company is trading. In this regard, the presence of employees actively engaged in the business of the company will be a key determinant of trading status.

12.5%

lower rate represents one of the lowest 'onshore' statutory corporate tax rates in the world.

Start-up companies
New or start-up companies, which are incorporated on or after 14 October 2008 and which commence trading between 1 January 2009 to 31 December 2021, are exempt from corporation tax on their trading income and certain gains if they meet certain conditions.

This relief applies for three years from the commencement of the trade. Where the relief is claimed from 2011 onwards, it is restricted based on the level of employer's PRSI paid.

To encourage employment, the relief is linked to employer's PRSI, subject to a maximum of €5,000 per employee and an overall limit of €40,000. The relief also allows any unused relief (arising from a shortage of profits) to be carried forward for use in future years. However, the relief will continue to be limited by the amount of employer's PRSI paid in the year.

Conducting business in Ireland

In considering business entities in Ireland, a distinction needs to be made between unincorporated and incorporated bodies. A significant feature of an incorporated body is that it has a legal status separate from its owners and is capable of suing and being sued in its own name.

Incorporated bodies include private limited companies, public limited companies and unlimited companies. An unincorporated body may be a sole proprietorship or a partnership.

Companies operating in Ireland are governed by the Companies Acts 2014 and related statutory instruments.

Formation

The following is a brief summary of the main requirements when incorporating a company in Ireland:

- a company must have the intention of carrying on an activity in Ireland;
- details of the place or places in Ireland where it is proposed that the company will carry on its activity and the place where the central administration of the company will normally be carried on (full business postal address) must be provided;
- at least one of the directors is required to be resident within the EEA or the company must obtain an insurance bond; and
- private companies have no minimum capital rules.

It is likely to take approximately five working days to incorporate a company and the Registrar of Companies will then issue a certificate of incorporation.

Types of entities - Private Limited Companies (Ltd)

Private Limited Companies (Ltd) are the most common form of business entity used in Ireland. The essential feature of an Ltd is that the liability of members is limited to the amount, if any, remaining unpaid on the shares held by them. A company is regarded as a separate legal entity and therefore, is separate and distinct from those who run it.

To qualify as a Private Limited Company the company must:

- limit the maximum number of members to 149;
- have a minimum of one director;
- have a company secretary, that can be an individual or body corporate - where there is a single director, they cannot also act as the company secretary;
- not list debt securities;
- restrict the members' right to transfer shares;
- prohibit any invitation to the public to subscribe for shares;
- is required to show the word 'Limited' (which may be abbreviated to "Ltd") in its name; and
- have a single document constitution which sets out details of the company's share capital and how it is regulated in accordance with the Companies Act 2014.

The Ltd does not have a principal objects clause and will have no restriction on the type of trade or transaction it can enter into, it will have the same legal capacity as a natural person.

Designated Activity Companies (DAC)

A Designated Activity Company (DAC) is a company which is formed for a particular purpose or to carry on a specific activity.

A DAC can be limited by shares or guarantee. It must have a minimum of two directors but can have a single member. A DAC's constitution will contain a Memorandum and Articles of Association. The Memorandum of Association will contain an objects clause that sets out the principle activity of the company, together with ancillary objects outlining in general style transactions the company can undertake. It is common for such objects to contain clauses around borrowing, providing security and such like.

A company may seek to register as a DAC for both legal and commercial reasons.
For example a company which wishes to raise finance by the issuance of debt, is a credit institution or insurance undertaking will be legally required to register as a DAC.
Another reason that a company may seek to register as a DAC, is where a company is set up and there is a commercial requirement to set out the purpose or the objective of the company (e.g. joint venture or SPV).

A DAC is required to show the words Designated Activity Company, (which may be abbreviated to DAC) in its name.

Public Limited Companies (PLC)

Public Limited Companies (PLC) have the same essential characteristics as private limited companies, i.e. the liability of members is limited to the amount of nominal capital subscribed, but the key differences are:

- shares in a public limited company are freely transferable;
- there is no restriction on the maximum number of members;
- a minimum of €25,000 of share capital must be issued and maintained;
- shares may be issued to the public and may be listed on a stock exchange; and
- certain additional reporting and capital requirements apply to such companies.

The word public refers not to the listing of the company's shares on a stock exchange, but rather to the facility to issue shares under a general public offering.

The constitution sets out the objects and rules of the company. There is no upper limit on the level of the issued share capital, but a minimum of €25,000 of share capital must be issued, of which 25% must be paid up.

The name of a public limited company must include the letters "PLC". In all other respects, public limited companies are similar in nature and form to private limited companies.
In practice, PLCs are seldom used by inward investors since the facility to issue shares to the public is often not of interest to such investors, while the minimum requirements in relation to the number of members and issued share capital can prove unnecessarily burdensome.

Unlimited Company

This is a form of business entity where there is no limit on the member's liability, if the company's assets are insufficient to discharge the creditors.
As a result of the risk of unlimited liability, inward investors do not often use these companies.
An unlimited company must include Unlimited Company or the letters "UC" at the end of its name. Unlimited companies must have a minimum of two directors.

In all other respects, unlimited companies are similar in form to private limited companies.
Some unlimited companies can avoid the filing of their financial information on public record.

In practice, the use of unlimited companies is confined to particular situations where the members may wish to avoid the public disclosure associated with filing of accounts with the Registrar of Companies or where a limit on members' liability is not required.

Disclosure of beneficial owners

It is a requirement under Irish law that a company must disclose their beneficial owners within five months of incorporation on public record. This is a separate filing to their filing with the Companies Registration Office. In simple terms a beneficial owner is any natural person that owns and/ or controls in excess of 25% of the company, either directly or via a group structure.

Where a corporate entity is listed as the shareholder it is necessary to look through the group structure of the companies to identify the natural persons that own and control the shares.
Any changes to beneficial owners must also be notified as they occur.
Where no such natural person can be identified we can provide further advices on what must be disclosed. This information is available for public searching at a nominal fee.

Companies incorporated in other countries trading in Ireland

Foreign companies (i.e. companies incorporated outside Ireland) may conduct business in Ireland through a branch. There is a distinction between trading into Ireland (i.e. distance selling) and trading in Ireland, where one may have established a presence thus creating a permanent establishment.

Branch

For Irish company law purposes, a branch is a division of a foreign company trading in Ireland that has the appearance of permanency, a separate management structure, the ability to negotiate contracts with third parties and a reasonable degree of financial independence. EU regulations have been implemented that impose a similar registration regime on branches, to that imposed on local companies.

Foreign companies setting up a branch in Ireland are required to file basic information with the Registrar of Companies.

This includes the date of incorporation of the company, the country of incorporation, the address of the company's registered office, details regarding the directors of the company the name and address of the person responsible for the branch's operation within the state and the name of a person resident in the state, who is authorised to accept service of documents on behalf of the branch. The foreign company's constitution (duly certified and legalised as required), certificate of incorporation and audited accounts must also be filed with the Registrar of Companies.

A foreign company trading in Ireland through a branch is also required to annually file its financial statements of the company with the Registrar of Companies.
This may be a disadvantage for some foreign companies where they are not required to make their financial information public. Separate branch financial statements are not required for such filing, although they are required for tax return preparation purposes.
As with Irish incorporated entities, changes in previously notified information must be reported to the Registrar of Companies.

Finance Act 2021 implemented legislation providing for the 'authorised OECD approach' (AOA) for the attribution of income to a branch of a non-resident company operating in the State. A welcome change for taxpayers, the AOA provides greater clarity and certainty on the basis for allocating income and expenses to branches, further aligning Irish legislation with international practice.

Under section 25A of the TCA 1997, companies are required to compute the 'relevant branch income' as the amount of trading income arising through or from a branch from any property or rights used or held either by or for the branch are required to be computed as if it were an unrelated and independent company. This involves taking a separate entity approach which differentiates the branch and other parts of the company as two separate and distinct entities for tax purposes.

The new AOA provisions will apply to accounting periods from the 1 January 2022 onwards. In line with the general transfer pricing rules, the implementation date of AOA for small and medium-sized enterprise is subject to a Ministerial Commencement Order.

Holding company regime

Ireland has a very favourable holding company regime and a number of high profile groups have recently moved their headquarters to Ireland to access the benefits here. The following features underpin the appeal of locating a holding company in Ireland from a tax perspective and many of the features are explained further in later sections.

Participation exemption
There is an exemption from Capital Gains Tax (CGT) on the disposal of shares by a company resident in Ireland, where a number of conditions are met. The shares being disposed of must be in a company which is resident in an EU or treaty country. There is further detail on this within the section CGT exemption on share disposals.

Foreign dividends
There is an effective exemption from Irish tax for foreign dividends. Qualifying dividends are taxable at the 12.5% tax rate and a flexible foreign tax credit system permits a tax credit and/or deduction, in respect of taxes paid on foreign profits and other foreign withholding taxes. Other non-qualifying dividends may be taxable at 25%, with the credit system also applying to such dividends.

In addition to the above, the amount of double taxation relief for certain dividends from EU and EEA sources is increased. The credit for foreign tax can now be calculated by reference to the nominal rate of tax in the source country, where this gives a higher double tax credit than would otherwise be applicable.

The additional tax credit is not eligible for pooling of credits for foreign tax or for carry forward of relief for excess foreign tax credits.

There is also a system of onshore pooling of tax credits to deal with situations where foreign tax on some dividends exceeds the Irish tax payable, while on other dividends the foreign tax is below the Irish tax liability. The pooling provisions allow excess credits to be offset against Irish tax on the other foreign dividends received. Unused credits may also be carried forward indefinitely for future use subject to the exceptions noted above.

Foreign branches
Double tax relief is available for tax suffered by foreign branches and the pooling provisions referred to above, apply for unused foreign tax credits relating to foreign branches. Where there is an Irish trade also profits on foreign branches are taxed at a rate of 12.5%.

Intellectual Property (IP) relief
Under Ireland's IP regime, amortisation of specified intangible assets is tax deductible in line with the accounting treatment, against the income derived from such IP. Alternatively, an election can be made to spread the expenditure over a 15 year period in the form of an allowance. By availing of this scheme, the effective tax rate can be significantly reduced Please see Intellectual Property (IP) regime.

In addition, a stamp duty exemption is available on the sale, transfer or other disposition of qualifying IP. In 2020, changes were made to legislation removing the exemption from balancing charges for assets acquired after 13 October 2020.

Further to the above, the KDB, which took effect from 1 January 2016, allows companies to avail of a 6.25% tax rate on profits arising on certain IP assets which are the result of qualifying R&D activity in Ireland.

Therefore, holding IP in Ireland can effectively complement an Irish holding company structure. See IP section for further details on this, together with the KDB.

Withholding taxes

There are exemptions available in respect of withholding tax on dividend repatriations and interest payments made to EU or treaty countries. Also, patent royalty payments to EU or treaty countries should be exempt from withholding tax subject to satisfying certain conditions.

Access to treaties and EU directives

Ireland has an extensive treaty network with 76 different countries, 73 of which are in effect The agreement with Ghana is not yet in effect. These agreements allow the elimination or mitigation of double taxation. Where a double tax agreement does not exist with a particular jurisdiction, unilateral provisions within domestic Irish tax legislation, may result in credit relief against Irish tax for any foreign taxes paid. Furthermore, Irish companies may access the EU directives, which can be beneficial from a tax perspective.

Controlled Foreign Company (CFC) regime

In line with Ireland's obligation to comply with the EU's Anti- Tax Avoidance Directive (ATAD), Finance Act 2018 introduced Controlled Foreign Company (CFC) rules into Irish tax legislation.

These rules are an anti-abuse measure designed to prevent the diversion of profits to low/no tax jurisdictions, with the principal objective being to change behaviour as opposed to being a revenue generating measure. Irish CFC rules are effective for accounting periods commencing on or after 1 January 2019.

These rules are complex, containing many definitions and targeted anti-avoidance rules. In this regard, at Grant Thornton, we would recommend specific tax advice be sought in relation to structures/arrangements currently in place. However, we have set out the main principles within this update.

What is a CFC?

A CFC is a company, which is not resident in Ireland, but is **controlled** by a company or companies resident in Ireland. The proposed legislation has adopted a wide definition of control, which extends beyond the minimum requirement set out in the ATAD.

How does a CFC charge arise?

A charge arises where a CFC has undistributed income **and** a chargeable company performs relevant Irish activities in relation to the CFC group. A chargeable company is an Irish company which performs, either itself or through a branch or agency, relevant Irish activities on behalf of a CFC group.

Relevant Irish activities are significant people functions or key entrepreneurial risk taking functions performed in Ireland on behalf of the CFC. Broadly, these functions are relevant to legal/beneficial ownership of assets or the assumption and management of risks.

Undistributed income is calculated as distributable profits for a period less any relevant distributions made in respect of that period. It is worth noting that capital gains are excluded from the CFC charge.

In terms of the rate that would be applied to the undistributed income, the CFC charge will be computed at 12.5% where the income arises from the conduct of a trade while in other scenarios it would be 25%.

Exclusions and exemption

There are a number of exclusions and exemptions from the CFC charge, which have been outlined below.

Essential purpose exemption

If the CFC did not hold assets or bear risks under an arrangement where the essential purpose was to secure a tax advantage, no CFC charge should apply in the period.

Non-genuine arrangements tests

CFC legislation only applies to non-genuine arrangements. Therefore, a CFC charge only arises where:

- the CFC would not own the assets or would not have borne the risks which generate all/part of its undistributed income, but for the significant people; and
- it would be reasonable to consider that the relevant Irish activities were instrumental in generating that income.

Effective tax rate exemption

If the tax **paid** by a CFC is more than 50% of the tax that would have been paid if the CFC was Irish tax resident, then no CFC charge should apply. These calculations should be computed by reference to Irish tax rules, incorporating chargeable and capital gains and applying the relevant Irish tax rate to the undistributed income. In practice, they may be complex to work through.

CFC Rules Finance Act 2020 changes

Controlled foreign company ("CFC") anti-avoidance provision provide that the following exemptions will not apply to the extent the CFC is resident in a country listed on the EU list of non-co-operative jurisdictions for tax purposes:

- low margin profit exemption (where the margin on operating costs is less than 10%);
- effective tax rate exemption; and
- low accounting profit exemption (where profits are less than €75,000).

The above anti-avoidance provisions are in effect for accounting periods commencing on or after 1 January 2021.

There are a number of technical changes to the anti-hybrid legislation, such as ensuring there is no economic mismatch as a result of a CFC charge to tax.

Transfer pricing exemption

A CFC charge should not apply to transactions subject to Irish transfer pricing rules or priced on an arm's length basis. Consequently, transfer pricing is expected to become of increasing importance and we would stress the importance of having robust transfer pricing documentation in place.

Other exemptions include:

- low margin profit exemption (where the margin on operating costs is less than 10%); and
- low accounting profit exemption (where profits are less than €75,000).

Grace period for newly acquired subsidiaries

No CFC charge arises for the first 12 months from the acquisition of a CFC. This provides corporations with time to restructure the operations. However, where that CFC continue to be a CFC for the second period, the CFC charge from that initial 12 month period will fall due in the later period. Conversely, if a restructuring takes place whereby it ceases to be a CFC in the second period, the initial CFC charge is permanently negated.

Recommendations

At Grant Thornton we would strongly recommend that all groups with Irish entities be reviewed, particularly Irish headquartered groups, in order to ascertain whether an Irish company may have a CFC. The hallmarks of a CFC would typically be non-Irish subsidiaries with low effective tax rates and significant reserves/profits. In tandem with this, a review of the significant people functions relevant to the assets and risks generating the income would be required. There will be future reporting requirements, in conjunction with a charge to tax where a CFC is in existence, hence increasing the necessity to conduct this analysis in a timely manner.

Research and Development (R&D) tax credit

The R&D tax credit is a very significant tax break given that it represents a potential 25% refund of costs incurred, regardless of whether any corporation tax has been paid.

Combined with the standard corporate tax deduction for R&D expenditure (valued at 12.5%), companies incurring qualifying R&D can claim a tax benefit of €37.50 for every €100 expenditure. The purpose of the R&D tax credit is to encourage both foreign and indigenous companies to undertake new or additional R&D activity in Ireland. This is a very valuable relief for qualifying entities.

The R&D credit can be used as follows:

- credit offset against corporate tax in the first instance;
- available as a cash refund (subject to a limit of the remitted payroll taxes) where there is an insufficient corporation tax liability; and
- key employee reward mechanism – R&D staff effectively receive part of remuneration tax free (certain criteria apply, see below).

A significant change introduced in 2012, permits companies which are in a position to offset their R&D tax credit against their corporation tax liabilities, to surrender a portion of the credit to reward 'key employees' who have been involved in the development of R&D. In essence, these key employees may receive part of their remuneration tax-free and their effective rate of income tax may be reduced to a minimum of 23%. Broadly, the employee may not be a director or hold more than 5% in the company, at least 50% of their duties must pertain to R&D and the amount of the R&D tax credit that may be surrendered is capped at the corporation tax liability of the company.

In our experience, while many companies are carrying out qualifying R&D work, only a limited amount are actively claiming the credit. The main reason for companies not claiming the credit is the persisting misconception that it relates solely to laboratory work.

Many companies across all sectors are involved in some form of innovation or process improvement and look to achieve or resolve a scientific or technological advancement or uncertainty. In many cases, the related costs will qualify for the R&D tax credit. The R&D tax credit is available in respect of expenditure such as salaries, consumables used in the R&D process, plant and machinery used wholly or partly for R&D purposes. The credit is also available in respect of buildings used wholly or partly for R&D purposes, subject to certain conditions.

The range of activities to which the R&D tax credit can apply is extremely wide. Scientific or technological improvements to plant performance, production output and existing processes are examples of activities carried out by many companies, which can qualify for the R&D tax credit.

The R&D tax credit claim must be filed within 12 months of the company's year-end, thus there is an incentive to consider whether any immediate action is required. Having the appropriate documentation in place is critical.

Expenditure on scientific R&D
In the past, only qualifying R&D expenditure in excess of the 2003 R&D spend qualified for the R&D tax credit. However, from 2015 onwards, the full amount of qualifying R&D expenditure will be eligible for the R&D tax credit, regardless of the 2003 base year spend.

This credit will be in addition to any existing deductions or capital allowances for R&D expenditure excluding IP relief. It should be noted that the R&D activities must be carried out in the **European Economic Area (EEA)**.

Outsourcing R&D
Expenditure incurred on R&D activities outsourced to a third party or third level institution can be included in an R&D tax credit claim to the extent that:

- payment to the third party is limited to 15% of the company's overall R&D spend (5% for a third-level institution);
- a third party to whom the R&D is outsourced does not claim an R&D tax credit for the work it has been contracted to carry out. The company must notify the third-party provider in writing that it cannot also claim the R&D tax credit for the relevant R&D;
- for periods ending on or after 1 January 2014, companies can claim the greater of the current percentage-based limits (15% or 5% of the company's in-house spending) or €100,000; and
- the total amount claimed must not exceed the qualifying expenditure incurred by the company itself in the period.

Accounting for R&D
A very positive aspect of the R&D tax credit is that under FRS102 it may be recognised 'above the line'.

Following Finance Act 2019, the R&D tax credit was to increase to 30% for small and micro companies (i.e. less than 50 staff, turnover or balance sheet total less than or equal to €10m). This change is subject to EU approval and is not yet in place. Please note the threshold to assess whether a company qualifies as a "small and micro company" applies on a global basis. This credit is also now available for pre-trading expenditure against VAT and payroll taxes which is a welcome change for businesses operating at initial development stage.

Finance Act 2019 has also increased the limit on spending to third-level institutions available for inclusion as a tax credit. Previously this limit was restricted to 5% of the overall R&D. This limit has now been increased to 15%. The limit will be the lower of 15% of the spend and €100,000, again supporting collaboration between industry and third-level institutions.

25%

potential refund of costs incurred

Intellectual Property (IP) regime

This regime provides tax relief for expenditure incurred by companies on "specified intangible assets". These provisions further support Ireland's attractiveness as a knowledge-based economy.

To claim the tax relief, companies must actively 'trade' with their newly acquired intangible assets, thereby ensuring that there is an active involvement with the assets and presumably a resultant increase in learning/knowledge in Ireland.

What types of intangible assets are covered?
The definition of specified intangible assets is quite broad and includes patents, patent rights, design rights, trademarks, brand names, licences, copyright, computer software, know-how and goodwill associated with the foregoing. The relief also applies to customer lists (except where acquired in connection with the transfer of a business as a going concern).

What is the relief?
The allowances available for tax purposes will generally follow the standard accounting treatment applicable to the amortisation of intangible assets however, an election can be made to spread the expenditure over a 15 year period (7% in years one to 14 and 2% in year 15), where shorter.

For IP additions before 12 October 2020, no balancing allowance/charge event will occur once the intangible assets are sold five years after acquisition, provided that the intangibles are not acquired by a connected company, itself entitled to a deduction for the intangibles under this section.

In 2020, changes were made to legislation removing the exemption from balancing charges for assets acquired after 13 October 2020. For assets acquired prior to this date, no balancing charge arises where the asset is held for a period over 5 years.

Is there a cap on the allowances available?
Finance Act 2017 included a change to Ireland's existing capital allowances regime for intangible assets acquired after midnight on 10 October 2017. The change introduced a restriction on the amount of allowances available, together with a restriction on interest incurred to acquire the intangibles used in the trade. The aggregate of the allowances and any related interest incurred on acquisition of the intangibles cannot exceed 80% of the trading income from the 'intangibles' trade (which in certain cases is treated as a separate trade).

The 80% restriction was in place up to 31 December 2014 and removed with effect from 1 January 2015. As noted, Finance Act 2017 reimposed the 80% restriction.

Where either allowances or interest are restricted, the excess can be carried forward and treated as incurred in the following period, with any excess in that period carried forward to the next period and so on for each succeeding accounting period.

Can the intangibles be acquired from an existing group company?

Expenditure on specified intangible assets acquired from a group company will qualify for the new allowances. It is worth noting that intangible assets, acquired from another Irish group company will only qualify for the new allowances, if the companies jointly elect to dis-apply the CGT group relief provisions, thereby triggering a potential CGT event for the transferor. However, if there are losses available in the group, it could be possible to mitigate the CGT exposure.

Anti-avoidance

The section provides that the acquisition of the intangible assets must be for an arm's length amount and must be done for bona fide commercial reasons. The acquisition of the intangibles must not have the avoidance of tax as its main purpose or one of its main purposes.

Restriction on interest for investing companies

There is a restriction in respect of interest incurred on borrowings used by a company to invest (by way of loan or equity) in another company, which itself uses the funds to acquire specified intangible assets. The restriction is calculated by reference to the interest that would have been allowed if the company acquiring the intangible assets had itself taken out the loan.

Some observations on the rules

Where it fulfils commercial objectives, both companies and individuals holding specified intangible assets, should consider the merits of transferring the intangible assets to an appropriate trading company, in order to access the benefits of the regime. If there are tax losses available, there may be little or no tax cost associated with such a transfer, while there will be on-going tax deductions in the transferee company.

The regime complements the new Knowledge Development Box (KDB), see page 23 for further details. Thus, there are now both cost and income based IP regimes, resulting in Ireland being a compelling choice for FDI.

As a results of the above, we are seeing an increasing amount of IP move from traditional off-shore tax havens to on-shore locations, such as Ireland.

Knowledge Development Box (KDB)

The broad objective of the KDB is to promote innovation and provide an incentive whereby profits arising from patented inventions, copyrighted software and certain other specific asset classes can effectively be taxed at a reduced rate of 6.25%.

Any royalty or other sum in respect of the use of a qualifying asset or income reasonably attributable to a qualifying asset, can benefit from the reduced rate. Broadly the relief is linked to the qualifying R&D expenditure incurred by the Irish company as a proportion of its overall global R&D expenditure. This makes the KDB very attractive to companies that carry on a significant element of their R&D activities in Ireland.

The KDB will also be attractive to large groups that are capable of isolating individual qualifying assets, the R&D for which is carried on in Ireland.

What is a qualifying asset?

For the purposes of the KDB, a qualifying asset is copyrighted software, certain patented inventions, plant breeders' rights, protection certificates for medicinal products, plant protection certificates and computer programs within the meaning of the Copyright and Related Rights Act 2000. To ensure the KDB includes patents granted by the Irish Patent Office, legislation was enacted to ensure Irish patents include a substantive examination for novelty and inventive steps. Unexamined patents which are certified before 1 January 2017 may also be included.

Small and Medium Sized Enterprises (SMEs) benefit from an expansion of the definition of IP to include inventions that are certified by the Controller of Patents, Designs and Trademarks as being novel, non-obvious and useful.
For the purposes of the KDB relief, SMEs are companies with annual income from IP not exceeding €7.5 million and group turnover not exceeding €50 million.

What income qualifies for the relief?

The following income generated from the qualifying assets qualifies for the relief:

- royalty income;
- licence fee income; and
- where a sales price includes an amount which is attributable to a qualifying asset, a portion of the income from those sales calculated on a just and reasonable basis.

Any marketing related IP such as trademarks, brands, image rights and other IP used to market goods or services cannot be a qualifying asset.

How does the relief work?

The mechanics of the KDB relief are to allow a tax deduction of 50% of the qualifying profits from the R&D activities, thereby resulting in an effective tax rate of 6.25%.

In arriving at the qualifying profits figure, there is a calculation required that broadly looks at the percentage of the R&D activities carried on by the Irish company, including third-party outsourced costs ('qualifying expenditure'),
as a proportion of the overall expenditure incurred on the qualifying asset (including acquisition costs and outsourcing costs, both group and third party).

The formula can be summarised as follows:

$$\frac{QE+UE}{OE} \times QA$$

QE = Qualifying Expenditure on qualifying asset
UE = Uplift Expenditure
OE = Overall Expenditure on qualifying asset
QA = profit from relevant Qualifying Asset.

How is qualifying expenditure and overall expenditure defined?

Qualifying expenditure is expenditure incurred by the company, wholly and exclusively in the carrying on of R&D activities in an EU member state, the consequences of which lead to the development, improvement or creation of the qualifying asset.

Outsourcing costs incurred in relation to a person which is not a member of the group/company, wherever the location of that R&D activity, which is engaged to carry on R&D activities on behalf of that company will be treated as if it were expenditure incurred by the company. However, any group outsourcing costs are specifically excluded as qualifying expenditure.

Overall expenditure refers to the company's overall expenditure on R&D in respect of the qualifying asset, including all outsourced costs (including to group companies) together with any acquisition costs incurred by the company in relation to the qualifying asset (either from a group company or a third party).

It should be noted that in establishing the amount of tax relief each year under the KDB, the expenditure figures, both qualifying and overall, will include amounts of historic expenditure. The rules in relation to this key aspect are set out at the end of this page.

The exclusion of group outsourcing costs and acquisition costs will dilute the benefit of the KDB for many multinational corporations. To partially mitigate this, there is a provision for an uplift in the amount of qualifying expenditure.

What is "uplift expenditure"?

An additional "uplift expenditure" is allowed to increase the qualifying expenditure on the qualifying asset. The uplift expenditure is the lower of:

- 30% of the qualifying expenditure; or
- the aggregate of the acquisition costs and group outsourcing costs.

How does this calculation appear in my corporation tax return?

The 6.25% rate will not appear on the face of the corporation tax return. The KDB qualifying activities are treated as a separate specified trade. The profits of this specified trade should be calculated separately from the other activities
of the company. The relief is obtained in the form of an additional trading expense against the profits of the specified trade, which will equal 50% of the qualifying profits
(12.5% x 50% = 6.25%).

What happens if I have a number of qualifying assets but it is not possible for me to identify the overall income and expenditure on each qualifying asset?

Owing to the interlinked nature of many qualifying assets, it is not always possible to identify the breakdown of income and expenditure on each asset. This scenario is overcome using the "family of assets" approach. A family of assets permits the smallest grouping of identifiable qualifying assets for which income and expenditure is reasonably identifiable, to utilise the KDB as if the "family of assets" was one qualifying asset.

What happens if I have not started trading, but have incurred expenses relating to qualified assets?

Any pre-trading expenditure which is qualifying expenditure shall be deemed to have been incurred in the first accounting period of the company, therefore allowing the expenditure.

When is it effective?

The relief is available to companies for accounting periods beginning on or after 1 January 2016 and before 1 January 2027.

How many years of expenditure are included in the formula?

For accounting periods beginning on or after 1 January 2016, but on or before 31 December 2019:

- acquisition costs shall include both current costs and historic costs incurred prior to 1 January 2016;
- group outsourcing costs include costs incurred prior to1 January 2016 and where such costs relate to more than one qualifying asset, those costs shall be apportioned on a just and reasonable basis; and;
- qualifying expenditure (as referenced above) incurred during the three years prior to the year in which the first claim is made, together with the current year (restricted). However periods prior to that may be included where there is sufficient supporting documentation.

For accounting periods beginning on or after 1 January 2020:

- acquisition costs shall include costs incurred prior to 1 January 2016;
- group outsourcing costs include costs incurred prior to 1 January 2016 and where such costs relate to more than one qualifying asset, those costs shall be apportioned on a just and reasonable basis; and
- qualifying expenditure may include any amount incurred prior to 1 January 2016 where there is sufficient documentation.

What documentation must I have?

A company must have records available which track:

- overall income from the qualifying asset;
- qualifying expenditure on qualifying assets; and
- overall expenditure on the qualifying asset.

The company must also show how such expenditures and income are linked to the qualifying asset.

Other provisions:

- the KDB provisions should have no impact on claiming capital allowances on IP;
- the KDB may impact on cash refund claims made under the R&D tax credit regime. Broadly, the R&D tax credit is calculated as if the KDB regime was not in place. This should only present a cashflow timing issue;
- should there be a trading loss in respect of a qualifying asset in an accounting period, 50% of the loss will be available for offset in the normal manner; and
- if a company is subject to transfer pricing rules, the apportionment and application of all qualifying income and qualifying expenditure must be in line with transfer pricing rules. For smaller companies, income and expenses should be apportioned on a just and reasonable basis.

Employee tax incentives

Special Assignee Relief Programme (SARP)
Such a scheme aims to improve the quality of human capital and provide incentives for employees to settle in Ireland, as income tax rates have been recognised as a stumbling block for senior members of multinational corporations in moving to Ireland.
The SARP offers a significant tax reduction and could lead to a greater number of employee transfers to conduct new ventures and operations in Ireland.

There are various conditions which need to be satisfied to avail of relief under the SARP. Broadly, these are as follows:

- the employee must arrive between 2012 and the end of 2022;
- it applies to employees of companies incorporated and tax resident in double tax treaty countries, tax information exchange agreement countries or associated Irish companies;
- the employees must not have been tax resident in Ireland for the five tax years immediately preceding the tax year in which the relief is claimed. The relief is then available for five consecutive tax years;
- the employee must have a minimum base salary of €75,000 per annum; and
- emuneration such as Benefits-In-Kind (BIK), bonuses and stock options are excluded when calculating the minimum salary base of €75,000.

For individuals arriving from 1 January 2015, the requirement to be tax resident in Ireland only has been removed, which will allow employees to avail of the relief even if they retain tax residence in their home country.

The provisions have also been relaxed where employees are required to perform duties outside of Ireland.

The employee must be hired by the relevant employer six months prior to moving to Ireland. Relief cannot be sought if the Foreign Earnings Deduction (FED), cross border relief or R&D relief are already applicable. Relief under the SARP is available through the payroll.

There are certain administrative requirements to avail of the SARP relief.
The employer must deliver an annual return to Revenue and certify that the person complies with SARP conditions within 30 days of the employee's arrival in the state to perform their duties.

Foreign Earnings Deduction (FED)
The FED applies to any tax resident who is working temporarily in certain qualifying countries (such as Brazil, Russia, India, China, South Africa, Singapore, Chile and Mexico) for the tax years up to 2022.

The FED results in a deduction against an individual's income tax liability and the maximum deduction permitted is €35,000. For an employee to qualify they must spend at least 30 days abroad during a continuous 12-month period and trips must be at least three days in length (to include travel days) to be considered part of the 30 days required. The relief is calculated in the following manner:

- number of qualifying days abroad multiplied by net employment income divided by the number of days in the tax year in which employment was held; and
- state and semi-state employees may not avail of the FED, along with those involved in other tax relief programmes such as SARP, trans-border relief and split-year relief. Claims are filed in the yearly income tax return.

Key Employee Engagement Programme (KEEP)

Under the KEEP incentive, gains realised on the exercise of qualifying share options granted between **1 January 2018** and **31 December 2023** by employees and directors, will not be subject to income tax, USC or PRSI. In order to qualify for KEEP, an option must be exercised within ten years of the grant. However, the gain will be subject to Capital Gains Tax (CGT) on subsequent disposal of the shares.

Finance Act 2018 doubled the ratio of share options to salary and increased the total value of options the company can now grant to the particular employee, up to a maximum of €300,000 (previously €250,000) in any period.

An employee or director will cease to be a qualifying individual for the purposes of the scheme, if they acquire beneficial ownership of more than 15% of the ordinary share capital of the qualifying company. A limit of €3 million applies on the market value of issued, but unexercised KEEP share options that a company may have on issue at any given time. The €3 million overall KEEP limit remains for companies and employees and are not restricted from entering into future KEEP arrangements with future employers. This measure will be subject to a commencement order as it will be necessary, in accordance with state aid rules, to notify the European Commission of the change.

Capital Gains Tax (CGT) exemption on share disposals

Capital Gains Tax (CGT)
CGT is payable at 33% on chargeable gains made by individuals, trusts, unincorporated bodies and companies. Capital gains are determined by the difference between the proceeds of disposal and the original cost of the asset. A disposal takes place whenever the beneficial ownership of an asset transfers. Assets include all forms of property, whether in the state or not.

Participation exemption
There is an exemption from tax on capital gains for Irish-based holding companies on disposals of shareholdings in EU/double tax treaty resident (DTA) companies. The exemption will apply where the following conditions are satisfied:

- the parent company must hold a minimum of 5% of the subsidiary's ordinary share capital for a period of over 12 months over the preceding 24 months;
- the investee company must be resident in an EU state (incl. Ireland) or treaty country; and
- at the time of disposal, the investee must exist wholly or mainly for the purposes of carrying on a trade (or the group and investee taken together must satisfy the trading test).

The exemption doesn't apply to the disposal of shares in a subsidiary, where that subsidiary derives the greater part of its value from relevant assets. Broadly, relevant assets are Irish land, Irish minerals or mineral rights azd certain exploration or exploration rights.

Entrepreneur's relief
From 1 January 2017, a CGT rate of 10% (rather than the standard rate of 33%) applies to the net chargeable gain arising on the disposal by an individual of chargeable business assets. For gains on qualifying assets disposed of 1 January 2016 to 31 December 2016, the rate of CGT was 20%. The lower rate of 10% (or 20% for disposals in 2016) shall be subject to a lifetime limit of €1 million. Thus based on current CGT rates, the maximum tax benefit is €230,000.

To qualify for the relief, a number of conditions must be satisfied including conditions in respect of the assets, period of ownership and working time in the business.

Finance Act 2020 contained a minor change to the 5% shareholding requirement for CGT Entrepreneur Relief.

Previously an individual was required to hold at least 5% of the shares in a qualifying company for a period of at least three out of the five years immediately prior to a disposal. The amendment provides that the qualifying shareholding requirement can be met where an individual holds at least 5% of the shares in a qualifying company for a continuous period of at least three years at any time prior to the disposal.

The amendment applies to qualifying disposals from 1 January 2021.

Foreign dividends

Taxation of foreign dividends in Ireland

Foreign dividends received from a trading company, resident in an EU member state or a country with which Ireland has a tax treaty, are taxed as an Irish corporate at 12.5% provided the dividend has been received out of trading profits.

There should also be a credit available for foreign tax paid on the dividend. From 1 January 2013, the amount of double taxation relief for certain dividends from EU and EEA sources increased following developments in EU law. The credit for foreign tax can be calculated by reference to the nominal rate of tax in the source country, where this gives a larger double tax credit than would otherwise be applicable.

The additional tax credit under these provisions is not eligible for pooling of credits for foreign tax or for carry forward of relief for excess foreign tax credits.

The 12.5% rate extends to foreign dividends paid from non-treaty countries where the company is owned directly or indirectly by a publicly quoted company. This treatment also applies to non-EU, non-treaty partner states that have ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Where foreign dividends are sourced from non-trading profits or are from a company not resident in an EU member state, tax treaty country or OECD country that has ratified the convention referred to above, such dividends are generally taxed at 25%.

Where part of a dividend is paid from non-trading profits with the balance being paid from trading profits, the non-trading balance will generally be taxed at 25%.
However, there is a de minimis rule such that where over 75% of the dividend is paid from trading profits, the entire dividend may be taxed at 12.5%.

Double taxation relief

Ireland operates a system whereby credit relief is available in respect of foreign tax paid on underlying profits out of which dividends are paid. Broadly, if foreign profits are taxable at a higher rate of tax than the Irish tax rate applicable to the foreign dividends, no further Irish tax should arise upon receipt of the foreign dividends in Ireland.

Tax credit pooling

Onshore pooling allows withholding taxes and underlying taxes to be pooled together and they may then be offset against any Irish tax arising on foreign dividends.
However, excess tax on foreign dividends taxable at 12.5%, may not be offset against foreign dividends taxable at 25%. The excess tax credits may be carried forward indefinitely against Irish tax arising on future foreign dividends.

Potential move towards a territorial tax system

The Irish government is considering a potential move towards a territorial corporation tax system. A territorial exemption would simplify how double taxation relief would be available for certain dividends, and bring Ireland in line with most other OECD and EU member states. We await further developments on this over the coming months.

EU parent subsidiary directive

The 2003 EU parent subsidiary directive deals with parent companies with subsidiaries in other EU member states. Effectively, it seeks to eliminate withholding tax and reduce double taxation of the profits out of which the dividends arose. The directive applies to parent companies and their 5% subsidiaries.

Where dividends are paid from a subsidiary to a qualifying parent company, the following reliefs should apply:

- no withholding tax is to be deducted from the distributions by the subsidiary's country of residence;
- no withholding tax is to be deducted by the parent company's country of residence; and
- the parent company's country of residence is to exempt the parent company from corporation tax or allow a credit for the underlying corporation tax or foreign tax suffered by the subsidiary. The credit method is used in Ireland.

Withholding taxes and FATCA

Dividend withholding tax

A withholding tax of 25% applies to dividends and other profit distributions made by an Irish resident company. However, there are extensive exemptions available to include dividend payments to:

- Irish resident companies;
- companies resident in an EU or tax treaty country;
- pension funds;
- individuals resident in an EU or tax treaty country; and
- companies controlled by tax treaty residents.

There is a self-assessment basis for withholding tax exemption in respect of dividend payments to corporates and this has alleviated administrative obligations (subject to certain declaration forms being in place prior to the dividend payment).

The EU parent subsidiary directive may also eliminate dividend withholding tax obligations.

Royalties

Withholding tax at 20% may apply to patent royalty payments but where the recipient is resident in an EU or treaty country, such withholding taxes may be eliminated.

Even in cases where the recipient is resident in a non-treaty country, the withholding tax is generally exempt subject to obtaining advance clearance from Revenue.

Interest

A 20% withholding tax may apply to interest payments made on loans and advances capable of lasting 12 months or more. However, if such interest is paid in the course of a trade or business to a company resident in the EU or a treaty country in which that income is normally taxed, no withholding tax should apply. Even where the interest is not taxed in the recipient country, relief for withholding tax may still be available. In this case, certain disclosures may be required.

To summarise, there are a number of domestic exemptions, treaty provisions and provisions of the EU directives which provide for an exemption from withholding taxes in Ireland.

In practice, withholding tax of any description is rarely an issue in Ireland.

FATCA

In 2012, Ireland concluded an **Inter-Governmental Agreement (IGA)** with the US in relation to the US **Foreign Account Tax Compliance Act (FATCA)**. FATCA is a tax information reporting and withholding tax regime introduced to minimise tax leakage in the US.

Broadly, FATCA requires non-US financial institutions to report details of US account holders to the IRS or suffer high levels of US withholding tax (at 30%). Under the agreement, Irish financial institutions may report directly to Revenue rather than being required to report to the IRS. Irish financial institutions will be treated as FATCA compliant and will not be subject to the 30% withholding tax on US source income / proceeds, provided they comply with the requirements of the implementing Irish legislation. This is a very positive development for the Irish funds and broader financial services industry.

Common Reporting Standard (CRS)

CRS is the OECD's automatic exchange of information framework that has been enacted in Irish domestic tax law. CRS creates a multi-lateral reporting regime which mandates that financial institutions must report information to Revenue relating to account holders, that are tax resident in any of the jurisdictions which have adopted CRS.

The key difference between FATCA and CRS is that, where FATCA is primarily focused on identifying US persons, the requirements of CRS require due diligence of nearly all of a financial institution's account holders and a greatly increased reporting burden.

Over 100 jurisdictions (including all jurisdictions in the EU and nearly all other major jurisdictions) have signed agreements to implement CRS into domestic legislation.

The earliest adopters, including Ireland, have legislated that CRS commenced on 1 January 2016 with other jurisdictions joining in subsequent years. Irish financial institutions must report the details of these accounts to Revenue by 30 June of the year following the year for which a return is required.

CRS does not contain the threat of withholding tax being applied to payments (in contrast to FATCA) but Irish domestic legislation will allow Revenue to charge significant penalties for non-compliance.

Foreign branch profits

Trading profits earned by an Irish resident company in a foreign branch or agency are taxable in Ireland at 12.5%, with a credit available for any foreign tax paid on the branch profits.

This allows such a company to reduce its Irish corporation tax liability by the foreign tax suffered on the profits of the branch or agency. Where the foreign tax on branch profits in one country exceeds the Irish tax on those profits and no credit can be given for the balance of the foreign tax, it may be possible to rely on pooling provisions.

The pooling provisions allow such surplus foreign tax to be credited against tax on branch profits in other countries in the year concerned. Also, any foreign tax not credited in the period in which it is paid, can be carried forward for credit in subsequent periods.
There is also unilateral credit relief for foreign tax paid by a company that has a branch or agency in a country with which Ireland does not have a tax treaty.

Other foreign income (including royalties)

Foreign taxes borne by an Irish resident company (or EU branch), whether imposed directly or by way of withholding, may be available for credit relief in Ireland. The calculation of the credit depends on the nature of the income item but in all cases, the credit is limited to the Irish tax referable to the particular item of income.

Potential move towards a territorial tax system

Any future introduction of a territorial corporation tax system (for example, by way of a foreign branch exemption) would help simplify the current double tax system further and ensure Ireland remains an attractive location for investment.

VAT

Albeit the EU has standard rules on VAT, these rules may be applied differently in each EU member state. The following points are important from an Irish VAT perspective.

VAT compliance

All Irish VAT returns are filed electronically through Revenue's On-line System (ROS). The ROS system in operation in Ireland is viewed as efficient and relatively straightforward when compared with those in operation in other European countries.

VAT groups

Ireland operates an extensive VAT grouping system, which can be very useful where entities which are closely bound by financial, economic and organisational links make supplies to each other (for example, group charges or management fees).

The use of VAT groups generally allows charges to be made between the various members of the VAT group, without an obligation for VAT to be charged. This can be very important where holding companies are involved or where Special Purpose Vehicles (SPVs) exist which hold IP or other intangible assets.

Cash flow incentives for exports

Cash flow incentives exist for entities located in Ireland that supply goods in excess of 75% of their turnover to other EU locations or export to jurisdictions outside the EU. These entities may qualify for authorisation to purchase most goods and services at the 0% rate of VAT. This can provide a significant cash flow advantage for companies establishing their Europe, the Middle East and Africa (EMEA) region operations in Ireland.

Financial services

Ireland has a well-developed financial services sector. Many funds and similar investment vehicles are domiciled in Ireland. Ireland provides for an exemption from VAT for a wide variety of management services received by such entities. This is important, as most of these entities would not be in a position to recover any VAT paid to a supplier and this would therefore represent an absolute cost to the entity.

The recovery of VAT in respect of share transactions is a complex area. However, VAT incurred by a holding company raising capital from a third party, which is used to fund the acquisition of shareholdings in subsidiaries and the management of those subsidiaries may be recoverable, provided the transaction is structured appropriately. There is also a "VAT-friendly" regime in Ireland in respect of aircraft leasing companies. There are a significant number of such companies located in Ireland.

Supply of electronic-services within the EU

Ireland is the preferred choice of location for a range of companies which provide electronic services within the EU. Previously, some providers of such services (whose customers are private individuals) located their businesses in jurisdictions with lower VAT rates. However, since 1 January 2015, the relevant VAT rules changed to make those services subject to VAT at the local rates where the consumer is located. Instead of registering for VAT in multiple jurisdictions, it is possible to register in one country under a scheme called the Mini One Stop Shop (MOSS) and pay the appropriate liability to each country through an online portal.

In a welcome development, which has further simplified the VAT reporting obligations of businesses engaged in e-commerce, the scope of the MOSS was extended to the One Stop Shop (OSS) with effect from 1 July 2021 to include the following transactions:

- B2C supplies of services where the EU member state of consumption is the place of supply;
- Intra-EU distance sales of goods;
- certain domestic supplies of goods facilitated by electronic interfaces; and
- distance sales of goods imported from third countries and third territories in consignments with an intrinsic value of a maximum of €150.

VAT changes

In light of current inflationary pressures, the 9% VAT rate applying to the supply of electricity and gas is being extended to 28 February 2023. The VAT rate of 9% applying to the tourism and hospitality sector is expected to be discontinued from 1 March 2023 and revert to the 13.5% rate.

Transfer pricing

A transfer pricing regime was introduced in Ireland from 2011, which provides for arm's length pricing to apply to intra-group transactions. The OECD principles are to be followed in this respect.

What transactions are affected?
Inter-company trading transactions such as the provision of management services, intra-group transfers of trading stock, certain IP licensing and treasury and finance operations such as cash pooling performed centrally for a group, are all affected by the transfer pricing rules. Non-trading and certain capital transactions are now also within Ireland's transfer pricing regime (see below).

Are there any exemptions?
There is an exemption for SMEs. To fall within the exemption, the enterprise (including group companies) must have fewer than 250 employees and either group turnover of less than €50 million or gross assets of the group must be less than €43 million worldwide.

While SMEs are currently outside the scope of Irish transfer pricing. Finance Act 2019 provides for the extension of transfer pricing to SMEs, but subject to Ministerial Commencement Order, not yet in place.

What if profits are understated?
If profits are understated, there will be an adjustment made to substitute the arm's length consideration for the actual consideration. The standard interest and penalties regime is likely to apply to any such adjustments.

There are provisions for counterparty adjustments to allow a reduction in taxable profits to the affected counterparty. However, this may not always provide for a zero sum tax impact, as the transaction may be treated differently in the books of the counterparty.

Key changes and developments
The Irish transfer pricing regime has been brought in line with the 2017 OECD Guidelines. Broadly, this means that OECD concepts such as DEMPE (Development, Enhancement, Maintenance, Protection, and Exploitation of intangibles) are now on a legislative footing in Ireland, with a focus on value creation as a driver of profit allocation, not simply contractual entitlements. This focus on substance will require a review of existing arrangements.

Activities that are deemed to be non-trading or 'passive' in nature and which are taxable at the higher rate of 25% are now within the scope of the transfer pricing regime. This means that intra-group financing arrangements that were previously outside the scope of Irish transfer pricing will now need to be reviewed. Non-trading transactions between Irish companies will generally be outside the scope of Irish transfer pricing, but the position needs to be reviewed on a case by case basis.

Other changes include:

- the extension of transfer pricing to capital transactions with a market value of over €25 million (although market value will often regardless apply under existing CGT rules);
- the removal of the grandfathering exemption for arrangements in place at 1 July 2010;
- future extension of transfer pricing to SMEs, subject to Ministerial Order; and
- more onerous documentation requirements.

Finance Act 2021 introduced revised provisions relating to "Ireland to Ireland" transactions. The revised provisions introduced a streamlined principles-based approach which provides greater clarity when compared to its predecessor. The revised provisions apply to chargeable periods beginning on or after 1 January 2022.

Documentation

Under the legislation, companies are obliged to retain such records as may reasonably be required to demonstrate that the income has been computed at arm's length.

In cases where a taxpayer is required to prepare a local file and/or master file, such documentation must be in place no later than the date on which the tax return for the chargeable period is due to be filed. Furthermore, the documentation must be provided to Revenue within 30 days of a written request and there are significant penalties for non-compliance.

BEPS

Transfer pricing is a key strand of the BEPS project currently being undertaken by the OECD. As part of this, standardised documentation will be required from a transfer pricing perspective. There will be a global standard for documentation requirements with a common template for Country-by-Country (CbC) reporting, blueprints for a global master file and local transfer pricing documentation.

Country-by-Country (CbC) reporting

In order to enhance transparency in our tax system, Ireland has implemented the CbC reporting regime as outlined in the BEPS project. This applies for accounting periods commencing on or after 1 January 2016. A notification is required to be filed with Revenue on or before the final date of the accounting period to which the CbC report relates.

Any group with consolidated turnover in excess of €750 million is required to file a CbC report in their chosen jurisdiction and make a notification in every country in which they have a presence.

OECD 2022 Transfer Pricing Guidelines

It is worth noting that Finance Act 2022 is expected to update Ireland's transfer pricing regime to reference the OECD's 2022 Transfer Pricing Guidelines (rather than the 2017 Guidelines which are currently legislated for).
This will ensure that Ireland's tax system keeps in step with international best practice.

Authorised OECD Approach (AOA)

Finance Act 2021 introduced the AOA to the attribution of profits to branches/permanent establishments ("PE") into Irish domestic law. This applies to all accounting periods beginning on or after 1 January 2022.

The OECD AOA is a mechanism to attribute the same profits to an Irish branch of a foreign company in a manner that it would have earned at arm's length if it had been an independent legal enterprise performing the same or similar functions under the same or similar conditions. The new legislation also means that Irish branches now have to maintain additional specific documentation.

Summary

Companies are obliged to retain documentation to support relevant intergroup transactions.

It is a requirement that this documentation is in place when a company files its corporation tax return.

Therefore we would encourage companies to consider their intra-group transactions and assess the requirement to prepare, implement or review agreements for the purposes of ensuring they are considered arm's length for transfer pricing purposes. Furthermore, groups should ascertain whether they have any CbC filing or notification requirements.

Irish tax treaty network

Tax treaties reduce taxes of one treaty country for residents of the other treaty country in order to reduce double taxation on the same income. The Irish tax treaty network continues to be expanded and updated.

The treaties are generally based on the OECD model treaty.
See appendix 1 for a listing of the 73 jurisdictions with which Ireland has a double tax treaty in force.

Where relief under a treaty is less favourable than unilateral relief or in cases where there is no treaty in place, unilateral relief may be available. In particular, this may apply to dividends and interest.

A new treaty agreement with the Netherlands came into effect on 1 January 2021.
In addition, a new agreement with Kosovo will come into effect on 1 January 2023.
The new treaties with Ghana and Kenya were signed on 7 February 2018 and 23 July 2021 respectively. Procedures to ratify the treaties are underway.

Protocols amending the existing tax treaties with Switzerland and Germany came into effect on 1 January 2021 and 1 January 2022 respectively. Procedures are underway to ratify Protocols amending the existing treaties with the Isle of Man and Guernsey.

Negotiations have concluded for new treaties with Oman and Uruguay, as well as a Protocol to the existing treaty with Mexico. These are subject to ratification procedures to bring them into effect.

Where a double taxation agreement does not exist, there are provisions within the Irish taxes acts which allow unilateral credit relief against Irish tax, for tax paid in the other country in respect of certain types of income (e.g. dividends and interest).

In June 2017, government representatives from 68 jurisdictions signed up to the Multilateral Instrument (MLI), which is designed to efficiently update the worldwide tax treaty network in line with certain of the OECD's BEPS recommendations.

The MLI resulted in amendments to more than 2,000 treaties worldwide and is likely to have a significant impact on existing and future international tax planning.
Ireland is a signatory to the MLI and it entered into force for Ireland on 1 May 2019.

To date, approximately 100 countries have signed up to the MLI.

Grant aid assistance

Government incentives
Ireland offers an extremely cost competitive business environment with operating costs among the lowest in Europe. An important part of the incentive package offered is the availability of generous grants towards initial start-up costs.

A variety of grants are available which can be specifically tailored to meet the needs of each company. These cash grants may be non-repayable and are administered by Enterprise Ireland or **Industrial Development Authority (IDA)** Ireland (Ireland's agency responsible for overseas investment). Proposed investment projects are assessed by IDA Ireland against a number of criteria. Grant levels are determined by negotiation and grant payments are structured in a way that best suits the financing requirements of the company. The EU, as part of its social and regional development policy, contributes towards the funding of industrial development.

Employment and capital grants
Employment and capital grants are designed to stimulate employment growth outside Dublin and Cork and are available to existing and new companies. The grants are designed to incentivise employment creation in Ireland and for the expansion of new activity.

These grant are available to large companies investing in specific regions of Ireland outside of Dublin and Cork. SMEs can avail of these incentives once they meet criteria for establishing their presence in Ireland.

Research Development and Innovation (RD&I) grants
Research Development and Innovation (RD&I) grants are open to all client companies planning or engaging in RD&I activity. Companies submit proposals on potential investments in R&D in areas such as manufacturing process development, new product development and service innovation.

JobsPlus scheme
JobsPlus is an employer incentive which encourages and rewards employers who employ jobseekers on the live register. It is designed to encourage employers and businesses to employ people who have been out of work for long periods. Eligible employers who recruit full-time employees on or after 1 July 2013, may apply for the incentive, which will initially operate on a pilot basis. The Department of Social Protection will pay the incentive to the employer monthly in arrears over a two year period. It will provide two levels of regular cash payments, a payment of €7,500 and €10,000 broadly depending on the age and length of unemployment.

Training grants
Training grants are available to companies who want to expand capability and up-skill their existing employees. Grants are particularly focused on companies who are looking to achieve a step change in productivity and/or diversification of the products or services delivered from their site, but exclude routine operational training.

Depending on the company's proposed training expenditure, grant aid is available to all IDA client companies to help deliver their in-house bespoke training programmes.

Other
Grants may be available to support investment in upgrading machinery or equipment to support new projects. Incentives are also available aimed at assisting companies implement environmental initiatives.

Financial reporting and audit

All Irish companies are required to follow a number of financial reporting and audit requirements as imposed by Irish company law and EU directives.

In summary, the requirements are as follows:

- financial statements must be prepared in accordance with Irish Generally Accepted Acounting Principles (GAAP) or International Financial Reporting Standards (IFRS);
- Irish incorporated companies are required to have their financial statements audited by a registered auditor each year (however, certain exemptions are available); and
- companies with subsidiaries must generally prepare group accounts (there is an exemption based on the size of the group provided that the financial statements are not prepared under IFRS).

Accounting standards

In Ireland IFRS are currently only mandatory for consolidated group accounts of listed companies. All other companies have a choice of following IFRS or Irish GAAP. Irish GAAP takes the form of Financial Reporting Standards (FRS) 101, 102 or 105 and is governed by guidelines issued by the Financial Reporting Council as promulgated by the Chartered Accountants Ireland (CAI). There are certain differences between these principles and international principles, however, a significant amount of work has been carried out to align FRS with IFRS (the convergence project) and several Irish standards have been amended to mirror IFRS principles.

Filing/publication requirements

Irish companies are required to keep proper accounting records, which give a true and fair view of the state of the assets, liabilities and financial position of the company. The directors are also required to prepare financial statements once, at least in every calendar year.

Companies are also required to disclose details of their accounts at the Annual General Meeting (AGM) and to attach a copy of those accounts to the annual return filed with the CRO. These accounts are available for public inspection.

Audit requirements

All Irish incorporated companies are required to have their financial statements audited by a registered auditor, subject to the exemptions listed below. The audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors, in the preparation of the financial statements and whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed. If the auditor is satisfied with the above, a formal (unqualified) audit report will be issued.

Certain private limited companies and 'small groups' are exempt from having their financial statements audited, as well as companies that meet the definition of 'dormant' within the Companies Act. To qualify for the exemption the company or small group (with respect to the parent company, together with all of its subsidiaries) must meet two out of the three of the following criteria for both the current and previous accounting year:

- turnover less than €12 million;
- balance sheet total less than €6 million; and
- average number of employees below 50.

This exemption does not apply to the following entities:
- parent or subsidiary companies where the combined group exceeds the audit exemption thresholds;
- public limited companies;
- banks and financial institutions;
- insurance companies; and
- financial intermediaries.

This is an exemption from an audit only. It does not obviate the need to prepare and file financial statements. In both the previous year and the year concerned, the annual return and accounts must be filed at the CRO within the time limit specified in the Companies Acts.

Small companies may claim a size/abridgement exemption such that they only need to file:
- the balance sheet;
- the auditors report; and
- note to the financial statements.

The company must continue to make all annual returns on time as well as meet the exemption criteria, to ensure the entitlement to exemption is not lost.

Branches of foreign companies operating in Ireland are not required to have accounts audited independent of the company accounts to which they relate, however it should be noted that a copy of the company (not the branch) accounts must be filed with the Registrar of Companies within eleven months of the year end.

Group accounts

In addition to preparing their own accounts, parent undertakings are required to prepare consolidated group accounts and to lay them before the AGM at the same time as their own annual accounts.

Exemption from requirement to prepare group accounts

An exemption from the requirement to prepare group accounts shall apply to a parent company, that is a private company in any financial year if, at the balance sheet date of the parent undertaking in that financial year and in the financial year of that undertaking immediately preceding that year, the parent undertaking and all of its subsidiary undertakings together, on the basis of their annual accounts satisfy two of the following three conditions limits:
- the balance sheet total of the parent undertaking and its subsidiary undertakings, together does not exceed €6 million;
- the amount of the turnover of the parent undertaking and its subsidiary undertakings, together does not exceed €12 million; and
- the average number of persons employed by the parent undertaking and its subsidiary undertakings, together does not exceed 50.

However, a PLC cannot avail of the exemption, as it is expressed to apply only to parent undertakings that are private limited companies. Additional exemptions may be claimed where the parent undertaking is itself a subsidiary of another undertaking and certain conditions are met.

IFRS 15 (Revenue recognition)

IFRS 15 is a new accounting standard being implemented internationally which specifies how and when Revenue should be recognised in financial statements. IFRS 15 is expected to have a particular impact on companies who hold contracts with customers, e.g. telecommunication operators. IFRS 15 will now mandate these companies to recognise the Revenue when the transaction occurs and based on the performance of the contract, rather than when the customer will pay their cash obligations.

Asset management in Ireland

Ireland has long been noted as the domicile of choice for managers who are seeking to establish and service regulated funds which may be distributed globally.

Why Ireland for Asset Management?
Ireland stands out as the European domicile of choice for funds. It offers unrivalled expertise in the areas of fund administration, transfer agency, custody, tax, legal and audit services. Ireland offers a comprehensive suite of structured legal forms for both Undertakings for Collective Investment in Transferable Securities (UCITS) funds and non-UCITS Alternative Investment Funds (AIFs). Irish funds may take the form of:

- variable capital investment companies;
- Irish Corporate Alternative Vehicles (ICAVs);
- unit trusts;
- investment limited partnerships; or
- Common Contractual Funds (CCFs).

As of November 2020, there were 7,903 Irish domiciled funds with assets of approximately €3,214 billion.

In addition, in recent years Ireland has been the fastest growing international fund administration centre. In 2021, Irish administrators serviced 14,400+ Irish and non-Irish funds, with assets under administration of €5.4 trillion.

Ireland has a favourable tax environment for investment funds:

- investment funds are generally not subject to any fund tax
- no annual subscription tax is applied to Irish funds;
- no stamp duty is levied on fund units;
- no withholding taxes are deducted on payments from the fund to overseas investors, except in the case of some funds that hold Irish real estate assets and are deemed to be an Irish Real Estate Fund (IREF);
- no wealth tax for funds or their investors;
- for QIAIFs a withholding tax at 20% may apply on distributions from the fund and other taxable events where the investments are in Irish real estate or are linked to same;
- Ireland's corporate tax rate of 12.5% is one of the lowest in Europe and positions Ireland well with respect to UCITS pan-European management companies; and
- Irish funds are entitled to reduced rates of withholding taxes on dividends and interests under double taxation agreements (in certain instances) which can have a positive impact on the investment performance of Irish funds.

Irish Collective Asset Management Vehicle (ICAV)
The ICAV is a bespoke corporate vehicle designed for Irish investment funds offering an increased level of choice for fund promoters. It modernises the corporate fund structure through its own facilitative legislation and is incorporated with the Central Bank of Ireland providing a robust regulatory framework. Existing funds may convert or re-domicile to an ICAV. Umbrella structures may be established with a number of sub-funds each with segregated assets and liabilities and flexibility in terms of the accounting standards to be applied. Conceived specifically with the needs of investment funds in mind, it has proven particularly attractive to US investors as it is an 'eligible entity' for US tax purposes.

Real Estate Investment Trusts (REIT)

As part of an effort to attract investment into the Irish commercial property sector and enhance Ireland as a location for property investments, Ireland introduced an investment vehicle - a REIT in 2013. A REIT vehicle is an internationally recognised vehicle aimed to facilitate investment from non-resident institutional private equity and pension groups in Irish commercial property. A REIT takes the form of a listed company, which is used to hold rental investment properties and it must have a diverse shareholder base.
A REIT lessens the risk as the investment can have a diverse asset base.
Liquidity is also increased due to the REIT structure. The investor receives an after tax return similar to that of a direct investment in a property.

The debt limits within the REIT reduce exposure to negative equity.
The entry cost for a REIT investment is the price of a single share, thus small investors can gain access to the property market without mortgage borrowing or property transfer costs.

To eliminate the double layer of tax, a REIT is exempt from corporation tax on qualifying profits from rental property. Instead the REIT is required to distribute the vast majority of profits annually, which is treated as income or a capital
gain in the hands of the investor depending on the personal situation.

One primary objective is for REITs to complement the existing Irish funds industry offerings and to provide growth opportunities for the Irish financial services sector.
In addition, they may assist in the unwinding of National Asset Management Agency (NAMA) at the best possible return for the taxpayer. Several REIT investments have now been launched in Ireland.

Securitisation regime

Ireland has a very favourable tax regime for securitisation. Irish SPVs ensure that securitisation of loans and other assets are tax neutral. Irish SPVs are commonly used for tax structuring purposes by both financial institutions and mainstream corporate groups.

The benefits of an Irish SPV include:

- generally tax neutral from an Irish perspective;
- can hold a wide range of assets (including aircraft);
- can be formed as a public or private companies;
- profit participating interest payments should be tax deductible (subject to anti-avoidance considerations); and
- no withholding tax on interest payments made to persons resident in an EU/treaty country.

As of quarter 3 in 2020, total assets within Irish residential SPVs was €859.2 billion in approximately 2,709 vehicles.

With regard to securitisation companies, Finance Act 2016 restricted the deductibility of finance expenses in some instances where the assets of the company were secured on Irish real estate and related assets. The restrictions were extended in Finance Act 2017 to include profits derived from shares in companies which derive the greater part of their value from Irish real estate.

The deductibility restrictions do not apply to CMBS/RMBS transactions or to loan origination business carried on by the SPV.

Investment Limited Partnership (ILP)

The ILP legislation has been modernised with effect from early 2021 and an ILP can now be structured to suit all major investment strategies, suitable for private equity, private credit, real asset, loan origination and other private fund strategies. It brings it in line with comparable partnership vehicles in other leading jurisdictions. An ILP is an alternative investment fund ("AIF") and the establishment of an ILP is subject to the approval of the Central Bank of Ireland. An ILP is typically established as a Qualified Investor AIF (a "QIAIF") but may also be established as a Retail Investor AIF (a "RIAIF") and the new act allows an ILP to be established as an umbrella fund, with segregated liability between sub-funds.

An ILP does not have separate legal personality. The General Partner is responsible for managing the ILP's business and has personal liability for its debts and obligations ad contracts (directly or through its delegates) on its behalf.

A Limited Partner has limited liability up to the contributed capital (or up to the capital which it has undertaken to contribute) and can participate in a number of activities without forfeiting that liability. ILPs are recognises as tax transparent as a matter of Irish law. As such, the relevant income, gains and losses are treated as accruing directly to the partners in the proportions set out in the partnership agreement and no Irish withholding taxes applies to distributions made by the ILP.

Interest limitation rules

After some signaling, it had been clear that a change was going to be made in terms of Interest Limitation Rules as part of the Finance Act 2021 under the EU Anti-Tax Avoidance Directive (ATAD). New Interest Limitation Rules (ILR) came into effect from 1 January 2022 affecting all accounting periods on or after this date.

The ILR will impact all Irish companies and groups that have debt as part of its capital structure. However, there are also reliefs and exemptions available to companies that will alleviate the impact of ILR subject to certain conditions being met.

What is the aim of Interest Limitation Rules?
The aim of the ILR is to limit base erosion attempts by multinational enterprises and other companies through the use of excessive interest deductions and similar financing costs. The ILR does this by limiting the maximum tax deduction for net borrowing costs to 30% of a corporate taxpayer's EBITDA (as defined under tax principles).

The Government has used the new ILR to promote certain areas of Infrastructure and development that are needed in its long term plan to develop Ireland. The Government has put a specific emphasis on "Large scale assets" which include transport infrastructure, large scale housing developments and energy infrastructure projects.

What is the objective of the new Interest Limitation Rules?
The objective of these new rules is to ensure tax relief on financing costs is commensurate with the extent to which business activities are subject to corporation tax.

The new measure aims to cap "Exceeding borrowing costs" at 30% of EBITDA.

The key exceptions from ILR include:

- where the relevant entity's net borrowing costs are less than €3 million (the de minimis threshold). If this threshold is breached, the ILR applies to the entire amount of the exceeding borrowing costs;
- where a relevant entity is a standalone entity - broadly meaning a company that has no associated enterprises or permanent establishments;
- long-term public infrastructure projects; and
- interest on legacy debt, being debt the terms of which were agreed before the terms of the EU ILR were agreed on 17 June 2016 (this can be lost if there have been modifications to the loan following this date).

A positive to be taken away from these new rules is that the €3 million limit is per company and not the entire group. This is quite a favorable condition compared to other local tax jurisdictions that impose the €3 million limit across the entire group.

Digital games tax credit

Finance Act 2021 introduced a new tax credit for the digital gaming sector. The relief will support digital games development companies by providing a refundable corporation tax credit for qualifying expenditure incurred on the design, production and testing of a game.

The relief will be available at a rate of 32%, on eligible expenditure of up to a maximum limit of €25 million per project. The section is subject to a commencement order as the relief will constitute State Aid and accordingly must be notified to and approved by the European Commission prior to commencement.

Why introduce a Digital Games Tax Credit?
The planned new tax credit for the digital gaming sector should allow Ireland to catch up with other jurisdictions (France, Germany, Canada etc.), many of which already have a Digital Games Tax Credit in place since as far back as 1998.

It is planned to offer incentives to gaming studios and developers to invest in Ireland and grow the industry in a similar way to the success of the Section 481 incentives for the film and television industries.

The Digital Games Tax Credit will support a rapidly growing industry
Over the years, video games have steadily risen in popularity. And with people looking for new ways to socialise and stay entertained, the trend has only accelerated. Gaming is now a bigger industry than movies and sports combined.

How the relief works
The relief will take the form of a corporation tax credit, the beneficiaries of which will be digital games development companies.

Relief will be available on expenditure incurred in the design, production and testing stages of the development of qualifying digital games, provided certain conditions are met. The credit will be 32% of the lowest of:

- Eligible expenditure
- 80% of total qualifying expenditure, or
- €25m

Relief will not be available for games primarily produced for the purposes of advertising or gambling.

What type of game qualifies?
The first thing that should be considered is whether the company is developing a qualifying 'digital game'. This is defined as a game that integrates digital technology, is capable of being published on an electronic medium and not less than three of the following classes of information, in digital form:

Text • Sound • Still images • Animated images

Expenditure on the design, production and testing of the digital game should be considered allowable for the purpose of this tax credit.

Development effort must be certified
The digital games corporation tax credit is subject to a cultural test, which will be administered by the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media.

Appendices

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year of entry into effect	Dividends (%)	Interest (%)	Royalties (%)
Albania	2012	5/10	0/7	7
Armenia	2013	0/5/15	0/5/15	5
Australia	1984	15	10	10
Austria	1964	10	0	0/10
Bahrain	2010	0	0	0
Belarus	2010	0/5/10	0/5	5
Belgium	1973	15	15	0
Bosnia and Herzegovina	2012	0	0	0
Botswana	2017	0/5	0/7.5	5/7.5
Bulgaria	2002	5/10	0/5	10
Canada	2006	5/15	0/10	0/10
Chile	2009	5/15	4/5/15	2/10
China	2001	5/10	0/10	6/10
Croatia	2004	5/10	0	10
Cyprus	1962	0	0	0/5
Czech Republic	1997	5/15	0	10
Denmark	1994	0/15	0	0
Egypt	2014	5/10	0/10	10
Estonia	1999	5/15	0/10	0/5/10
Ethiopia	2017	5	0/5	5
Finland	1990	0/15	0	0
France	1966	10/15	0	0
Georgia	2011	0/5/10	0	0
Germany	2013	5/15	0	0
Greece	2005	5/15	5	5
Hong Kong	2012	0	10	3

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year of entry into effect	Dividends (%)	Interest (%)	Royalties (%)
Hungary	1997	5/15	0	0
Iceland	2005	5/15	0	0/10
India	2002	10	0/10	10
Israel	1996	10	5/10	10
Italy	1967	15	10	0
Japan	1974	10/15	10	10
Korea Republic	1992	10/15	0	0
Kuwait	2013	0	0	5
Kazakhstan	2018	0/5/15	0/10	10
Latvia	1999	5/15	0/10	0
Lithuania	1999	5/15	0/10	0
Luxembourg	1968	5/15	0	0
Macedonia	2010	0/5/10	0	0
Malaysia	2000	10	0/10	8
Malta	2010	5/15	0	5
Mexico	1999	5/10	0/5/10	10
Moldova	2011	5/10	0/5	5
Montenegro	2012	0/5/10	0/10	5/10
Morocco	2012	6/10	0/10	10
Netherlands	1965	0/15	0	0
New Zealand	1989	15	10	10
Norway	2002	0/5/15	0	0
Pakistan	1968	10/no limit	No limit	0
Panama	2013	5	0/5	5
Poland	1996	0/15	0/10	10
Portugal	1995	15	0/15	10

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year of entry into effect	Dividends (%)	Interest (%)	Royalties (%)
Qatar	2014	0	0	5
Romania	2001	3	0/3	0/3
Russia	1996	10	0	0
Saudi Arabia	2013	0/5	0	5/8
Serbia	2011	5/10	0/10	5/10
Singapore	2011	0	0/5	5
Slovak Republic	2000	0/10	0	0/10
Slovenia	2003	5/15	0/5	5
South Africa	1998	0/5/10	0	0
Spain	1995	0/15	0	5/8/10
Sweden	1988	5/15	0	0
Switzerland	1965	10/15	0	0
Thailand	2016	10	0/10/15	0/10/15
Turkey	2011	5/10/15	10/15	10
UK	1976	5/15	0	0
Ukraine	2016	5/15	5/10	5
United Arab Emirates	2011	0	0	0
United States	1998	5/15	0	0
Uzbekistan	2014	5/10	5	5
Vietnam	2009	5/10	0/10	5/10/15
Zambia	2016	7.5	10	10

Appendix 2 – sample of companies located in Ireland

Companies involved in a wide range of activities in sectors as diverse as engineering, information communications technologies, pharmaceutical and R&D view Ireland as a uniquely attractive location in which to do business. These companies include the following.

ICT	R&D	Pharmaceutical/medical	Group treasury/cash pooling
Analog Devices	Dow Corning	Abbott Ireland	IBM Ireland
Apple	Xilinx	Allergan	Bristol Myers Squibb
Dell	IBM	Eli Lilly	Proctor and Gamble
Google	Intel	Merck Pharmaceutical	Newell Rubbermaid
Hewlett Packard	CRH	Johnson and Johnson	Pitney Bowes
Microsoft	Kerry Group	Tyco Healthcare	Alcatel-Lucent
Yahoo!		Boston Scientific	
Intel		Medtronic Ireland	
Meta		Smith and Nephew	
LinkedIn		Shire	
Dropbox		Alkermes plc	
SAP		Pfizer	
TikTok		AstraZeneca	
Ebay		Bausch and Lombe	

Appendix 2 – sample of companies located in Ireland

Engineering	Captive insurance	Financial services	Shared service centres
Allied Signal	Coca Cola	Citibank Europe	Citibank
Pratt and Whitney	Hertz	Paypal	Dell
		JP Morgan	Xerox
		Citco Fund Services Ltd	Yahoo!
		PNC Global Investment Servicing Ltd	EMC Ireland
		ABN AMRO	CRH
		Bank of America	Kellogg's
		Northern Trust	
		Deutsche bank	
		Western Union	

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Contacts

Bernard Doherty
Partner, Head of Tax
T +353 (0)1 680 5611
E bernard.doherty@ie.gt.com

Peter Vale
Partner, Head of International Tax
T +353 (0)1 680 5952
E peter.vale@ie.gt.com

Jarlath O'Keefe
Partner, Head of Indirect Taxes
T +353 (0)1 680 5817
E jarlath.okeefe@ie.gt.com

Jillian O'Sullivan
Partner, Tax and Legal
T +353 (0)1 680 5850
E jllian.osullivan@ie.gt.com

Vic Angley
Partner, Tax
T +353 (0)61 60 7935
E vic.angley@ie.gt.com

Brian Murphy
Partner, Tax
T +353 (0)1 680 5703
E brian.murphy@ie.gt.com

Sasha Kerins
Partner, Tax, Newbridge
T +353 (0)45 448 852
T +353 (0)1 6805 778
E sasha.kerins@ie.gt.com

Peter Legge
Partner, Tax, Belfast
T +44 (0)28 9587 1081
E peter.legge@ie.gt.com

Fergus Condon
Partner, Financial Accounting and Advisory Services
T +353 (0)1 680 5610
E fergus.condon@ie.gt.com

Sinéad Donovan
Partner, Financial Accounting and Advisory Services
T +353 (0)1 680 5653
E sinead.donovan@ie.gt.com

Shona O'Hea
Partner, Financial Accounting and Advisory Services
T +353 (0)1 680 5725
E shona.ohea@ie.gt.com

Tony Thornbury
Global Account Leader
T +353 (0)1 680 5613
E tony.thornbury@ie.gt.com

Gerard Walsh
Partner, Financial Accounting and Advisory Services
T +353 (0)21 427 7513
E gerard.walsh@ie.gt.com

Jargon buster

ATAD - Anti Tax Avoidance Directives - these requires all Member States of the EU to enact laws that largely implement OECD BEPS outcomes on a number of measures

BEPS - Base Erosion and Profit Shifting project - being run by the OECD. It aims to tackle instances where companies use tax structures to erode tax bases, increase a focus on linking taxable income to substance and improve transparency.

CFC - Controlled Foreign Companies - corporate entity that is registered and conducts business in a different jurisdiction or country than the country of tax residence of the controlling owners.

CGT - Capital Gains Tax - a tax chargeable on gains arising on the disposal of assets. Most forms of property to include an interest in property, eg a lease is an asset for CGT purposes.

DTA - Double Tax Agreement – an arrangement between two jurisdictions that mitigates the problem of double taxation, which can occur when tax laws consider an individual or company to be a resident of more than one jurisdiction.

EU - European Union - a group of European countries that participates in the world economy as one economic unit and operates under an official currency, the Euro.
The EU's goal is to create a barrier-free trade zone and to enhance economic wealth by creating more efficiency within its marketplace.

FDI - Foreign Direct Investment - an investment abroad whereby the company being invested in is controlled by the foreign corporation. There is usually a lasting interest by the direct investor in the direct investment entity, which is resident in an economy other than that of the investor.

IDA Ireland - Industrial Development Authority - Ireland's inward investment promotion agency, which is responsible for the attraction and development of foreign investment in Ireland.

IP - Intellectual Property - broad categorical description for the set of intangibles owned and legally protected by a company from outside use or implementation without consent. IP can consist of patents, trade secrets, brands, copyrights and trademarks or simply ideas.

KDB - Knowledge Development Box - the broad objective of the KDB is to promote innovation and provide an incentive whereby profits arising from patented inventions, copyrighted software and certain other specific asset classes can be effectively taxed at a reduced rate of 6.25%.

MNCs - Multinational Companies - corporations that have facilities and other assets in at least one country other than their home country. Such companies have offices and/or factories in different countries and usually have a centralised head office where they co-ordinate global management.

NAMA - National Asset Management Agency - a body created by the government of Ireland in late 2009, in response to the Irish financial crisis and to facilitate the availability of credit in Ireland.

OECD - Organisation for Economic Co-operation and Development – an organisation designed to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems.

PAYE - Pay As You Earn - it is an Irish payroll tax and this system of tax deduction applies to all income from offices or employments (including directorships and occupational pensions).

PRSI - Pay Related Social Insurance - a PRSI contribution is a form of social insurance payable by employers in respect of full-time employees and part-time employees.
It is also payable by full-time employees and part-time employees themselves (as there is both employer's PRSI and employees' PRSI).

R&D - Research and Development – an innovation or process improvement. It requires a systematic, investigative or experimental approach to be taken in a field of science or technology.

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