



Why Ireland?

Ireland-China investment – tax considerations

Ireland is well established as an attractive location for international trade and has become one to the world's magnets for Foreign Direct Investment (FDI). This reputation has developed from a combination of Ireland's low corporate tax rate, highly comprehensive framework of Double Taxation Treaties (DTT) and favourable holding company regime.

In particular, the combination of the Ireland/China DTT and the Irish holding company regime gives rise to a number of potential tax efficiencies making Ireland a very favourable holding company location for companies planning to invest into China. It creates the following tax advantages, unique to Irish-Chinese trade:

1. No Chinese capital gains tax on the disposal of Chinese shares by an Irish holding company;
2. No Irish capital gains tax on the disposal of Chinese shares; and
3. A reduced rate of withholding tax of 5% on dividends paid from China to Ireland.

Capital Gains Tax

Article 13 of the Ireland-China DTT provides for an exemption from capital gains tax on all disposals, regardless of shareholding size, of Chinese shares. Therefore, this income comes only within the scope of Irish capital gains tax. However, the holding company regime provides for an exemption from capital gains tax arising on the disposal of shares in certain subsidiaries. The combination of these two principles provides investors with the opportunity to make a tax free exit from an investment made in China. The only two requirements that must be met are:

1. The Irish company must have held at least 5% of the shares in the Chinese company for a continuous 12-month period; and
2. The Chinese company disposed of is not operating in the real estate sector

This combination is unique, as both the Irish-Chinese DTT and the Irish exemption from capital gains tax, can be applied to companies doing business in both countries.

Dividends

Where dividends are paid by a Chinese subsidiary to its Irish parent holding company, these dividends will be subject to Chinese withholding tax at a rate of just 5%. This reduced rate will apply where the Irish company holds at least 25% of the voting power in the Chinese company. In Ireland, these dividends will be subject to the Irish corporation tax rate of 12.5%. This Irish tax may be reduced or eliminated whereby, under the Ireland-China DTT, a credit for any Chinese tax paid is available against the Irish tax charged on the dividends received. Ireland has also introduced full "onshore tax credit pooling" to reduce or eliminate any Irish tax on dividends received by an Irish company where it receives a number of different foreign dividends.

This dividend taxation is very attractive as Ireland is the only European country which offers such tax efficient treatment of dividends received from Chinese subsidiaries. For example, in countries such as the US, the UK and the Netherlands, these dividends are currently subject to Chinese withholding tax of 10% and the higher corporation tax rates in their respective jurisdictions.

Where profits are extracted from an Irish company by way of dividends, extensive exemptions are available against any Irish dividend withholding tax in the case of an internationally held Irish company.

Other Attractive Features of Ireland's Tax Regime

In addition to the capital gains tax exemption and the favourable treatment of dividends described above, other aspects of the Irish tax system facilitate tax efficient investment into China where an Irish holding company is used. For example:

1. Ireland does not have any controlled foreign corporation or thin capitalisation rules;
2. It has only limited transfer pricing rules;

3. The availability of a tax deduction for interest on monies borrowed to acquire certain shareholdings. Therefore, with no thin capitalisation rules, an Irish holding company can be financed efficiently principally by way of debt; and
4. The availability of an exemption from interest withholding tax where interest is paid by a company in the ordinary course of business to a company which is tax resident in the EU or in a country with which Ireland has a DTT.

Opportunities for Chinese looking to expand into the EU

Opportunities also exist for expanding Chinese companies to establish an EMEA (European, Middle East and African) hub in Ireland and have their profits taxed at 12.5% or less and avail of Ireland's treaty network. The Irish tax regime also provides an opportunity for Chinese companies to exit Ireland tax free by transferring its tax residence outside of Ireland. This will be attractive for any Chinese company considering establishment in Ireland.

There are also number of other tax advantages for companies who establish themselves in Ireland. These include a highly attractive research and development tax credit and a very favourable tax regime for Intellectual Property. It offers an exemption from corporation tax for certain start-up companies and an tax incentive for companies seeking to expand into the BRICS countries.

Ireland is also at an advantage for investment into and from China where non-tax factors are considered. These include the fact that Ireland is an English-speaking, common law jurisdiction and a long established member of the EU. It has a young, highly skilled and educated workforce and from a global perspective, it has a convenient location and timezone. China can benefit from Ireland's expertise in an number of well regarded and established Irish industries. This has been highlighted by recent announcements of co-operation between the two countries in the horseracing and dairy industries.

In the wake of the IMF/EU bank bail-out a growing number of opportunities will arise for Chinese investment in Ireland and elsewhere. Docks, ports and other major infrastructure assets will become subject to the State-asset disposal programme while opportunities to obtain strategic real-estate in Ireland, the UK, Europe, USA, and elsewhere will arise as NAMA begins to dispose of some of the €80 billion debt now under it's control.

Conclusion

The combination of the Ireland-China DTT with Ireland's holding company regime compares favourable against other popular regimes used for investing into China and Ireland can be seen as a gateway to China for foreign investment. This makes Ireland the ideal location for foreign investments in the growing China market. Moreover, opportunities also exist in Ireland for Chinese companies seeking to expand into the European and US markets and in this way, Ireland is well positioned to facilitate the international expansion of multinational corporates into and out of China.

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