BYRNE WALLACE

YOUR
LEGAL
BUSINESS
PARTNERS

Why Ireland?

Tax Considerations

A guide to business tax in Ireland

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ByrneWallace is one of Ireland's largest law firms. Our clients are leading, innovative and growing public and private enterprises active in all key industry sectors.

Driven by client needs
Over the years we have earned a reputation within Ireland and internationally as a leading business law firm with an award-winning approach to client service. We offer clients more than excellent transactional and specialist advice. We want to be recognized as "Your Legal Business Partners", delivering the full benefits of a trusted legal business partnership. This means that we challenge ourselves to find ways of adding business insight as well as legal excellence.

Delivering solutions
We look to devise solutions and uncover opportunities, not just point to problems. Our job is to understand our clients, their markets and their business goals and objectives – and to tailor our services accordingly. In addition to first-rate legal expertise, we apply commercial knowledge, insight and a practical understanding of the totality of the issues to all our client work.

Resourced for success
With over 40 partners and a total staff of almost 300 people in our main offices in Dublin, we have the scale and experience to ensure that we deliver on our promises in a timely, efficient and cost-effective manner. We are accessible, approachable and properly resourced to deliver the level of service you require.

Expanding
We recently opened our New York office to cater for the legal needs of our US clients looking to expand into Ireland and the rest of the EU. Through our association with leading Northern Ireland law firm Mills Selig, we meet the needs of our clients throughout the island of Ireland.

Providing focused expertise
We are a full service practice with our services divided into the following areas:

- Banking and Finance
- Capital Markets
- Corporate
- Corporate Restructuring and Insolvency
- Data Protection
- Dispute Resolution (litigation)
- Employment Law
- EU and Competition/Regulatory
- Green Economy
- Health Services
- ICT, Software & Digital Media
- Inward Investment
- Life Sciences
- Outsourcing
- Projects, Energy and Natural Resources
- Property
- Tax

Award-winning
- First Irish law firm to achieve ISO 14001 (2010)
- First Irish Law firm to win Professional Services Green Award (2010)
- Client Service Law Firm of the Year (Chambers & Partners, 2008)

Why Ireland?

Over several decades Ireland has become a magnet for foreign direct investment (FDI). Ireland is the global base of choice for some of the world's largest corporations. FDI generates more jobs per capita in Ireland than in any other country. **So what are the principal reasons why Ireland is so successful in attracting investment?**

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Why Ireland?

Market Access

Ireland is a member of the European Union (EU), with over 500 million consumers. Within Europe, Ireland is the only English speaking country which uses the euro, apart from Malta. The European mainland is readily accessible through Ireland's main ports and airports. Therefore more and more International companies use Ireland as their base to expand from here into the rest of Europe, while availing of the benefits a leading foreign direct Investment location has to offer.

12.5 % Tax rate

Ireland offers one of the lowest corporation tax rates in Europe. The National Recovery Plan 2011-2014 and the Budget 2011 both confirm Irelands position on maintaining the 12.5% corporate tax rate as a cornerstone of Irish taxation policy. Irish tax resident companies benefit from a corporation tax rate of 12.5% on trading profits and certain distributions received from foreign trading subsidiaries. The scope of activities which may be considered to be trading is quite broad and can include the development and exploitation of intellectual property. A company is tax resident in Ireland if it is incorporated in Ireland or if Ireland is the place of central management and control of the company. Irish tax law also contains extensive reliefs for expenditure in relation to intellectual property and research and development.

Foreign Trade

The 2010 Index of Economic Freedom rates Ireland as Europe's most economically free country and the fifth in the world in this regard.

One of the main export items are agricultural products, but information & communications technology, chemical components and pharmaceutical products, medical and healthcare devices are also very important. Ireland is also beginning to emerge as a leading economy in the renewable energy sector.

The World Competitiveness Yearbook 2010 ranked Ireland 19th out of 58 countries worldwide for goods export as a percentage of GDP.

US investment has been particularly important to the Growth and Modernisation of Ireland providing a multiplier effect with new technology, export capabilities, and employment opportunities. As of year-end 2010,the stock of US foreign direct investment in Ireland stood, at $165 billion, more than the total for China, India, Russia, and Brazil – the BRIC countries – combined. There are approximately 600 US subsidiaries currently in Ireland employing around 100,000 people and supporting work for a further 250,000 out of a working population of 2 million spanning activities from manufacture of high-tech electronics, computer products, medical supplies, and pharmaceuticals to retailing, banking, finance, and other services. Ireland is also an important European research and development center for US firms in Europe.

The Holding Company Regime

The principal benefits of locating a holding company in Ireland are the exemption from the charge to Irish capital gains tax in respect of the disposal of qualifying shareholdings in subsidiaries and the beneficial regime for the taxation of foreign dividends. While there is no specific participation exemption, to the extent that dividends are received from companies resident in the EU or in a tax treaty country such as the US and are payable out of the trading profits of such subsidiaries, those dividends are taxed in the hands of an Irish holding company at the lower 12.5% rate. Although Ireland imposes a dividend withholding tax and withholding on interest payments (both at 20%), domestic law provides for wide exemptions from these obligations, particularly for dividend payments.

Research and Development (R&D)

Ireland offers a very competitive Research and Development Tax Credit system. In 2010 50% of IDA Ireland supported Foreign Direct Investment were in research and development, valued at over €500 million. According to the latest IBM Global Trends report 2010 Ireland is placed 9th globally for estimated total jobs in Research and Development. Ireland offers a tax credit of 25% of incremental expenditure by a company, or group of companies incurred wholly and exclusively on research and development.

“ Ireland was ranked 10th worldwide for the number of jobs created in business support services, including call centers, shared services centers and business outsourcing in a study undertaken by IBM highlighting the role of foreign direct Investment”

" Ireland has the third highest proportion of science, maths and computer graduates in the 20-29 age group within the EU"

Extensive Tax Treaty Network

Ireland has signed double taxation treaties with 62 countries. New treaties with Turkey, Serbia, Georgia and Moldova are in force since January 2011. New treaties were signed with Hong Kong, Singapore and the United Arab Emirates among others and will have to be ratified. Updated treaties with Germany, Belgium and Switzerland will be signed shortly.

The National Recovery Plan 2011-2014

The Irish Government's National Recovery Plan 2011-2014 announced on the 24th of November 2010 aims to deal with Ireland's current fiscal challenges but will continue to improve Ireland's attractiveness to overseas investors and help to sustain Ireland's projected levels of economic growth. Key measures in the plan are aimed at overseas investors, supporting Research and Development and focusing on job creation.

Business Environment

Ireland offers a pro business attitude, this is apparent when looking at successive Governments policies, the approach taken by Government Agencies and the working culture. Ireland has a stable constitution based parliamentary democracy, an excellent transport network and a very advanced telecommunication network. Ireland was ranked third within the EU for its ease of doing business according to the *World Bank Doing Business 2011 Report.*

Highly skilled Work Force

Almost 50,000 graduates leave Irish colleges every year. A large percentage of these with degrees in business studies, science and engineering and most speak a second language. According to the *Eurostat Yearbook 2010* Ireland has the third highest proportion of science, maths and computer graduates in the 20-29 age group within the EU. Also according to the *IMD World Competitiveness Yearbook* Ireland ranks fourth regarding the availability of skilled labour. This makes Ireland a very attractive place to locate.

Cost Competitive

One of the few good things to come out of the global economic downturn has been a pressure on costs. With rents, both office and private and salaries falling dramatically in the last two years, Ireland has becoming increasingly cost competitive. As a consequence Ireland was ranked 10th worldwide for the number of jobs created in business support services, including call centers, shared services centers and business outsourcing in a study undertaken by IBM highlighting the role of foreign direct Investment.

IDA and Enterprise Ireland

Ireland has recognised for a number of years the need to assist foreign companies who wish to invest here. Several Agencies were founded. The main Agencies today are the IDA and Enterprise Ireland. ByrneWallace has a very good working relationship with both the IDA and Enterprise Ireland and can facilitate relevant introductions.

The IDA provides foreign companies with help and guidance for setting up operations in Ireland and can also help companies who have already set up operations here. Various grants and financial assistance to companies locating here are available and it is advisable to get into contact with the IDA from the start of the planning process in order to avail of all possible assistance.

The IDA's strategy *Horizon 2020* is focused on employment intensive services and R&D. There may be Capital grants available for example for site development, or grants for training of the work force and the IDA also has a number of business parks where companies can locate.

Enterprise Ireland is assisting Irish Companies and foreign companies in the food, drink and timber sector who wish to set up in Ireland.

Ireland is a very attractive location for business and we hope that this guide will help you and your company to fully appreciate Irelands offering. Any queries, we are happy to assist.

Ireland's Tax Advantages

The favourable tax environment is a cornerstone of Ireland's inward investment success. Utilizing this advantage is a valuable tool for tax-efficient overseas investment and Ireland is increasingly being chosen as the home of the low tax "principal" company in several significant international corporate structures.

Corporation Tax

The scope of Irish corporation tax is largely dependent on the residence status of a company. Broadly speaking, an Irish tax resident company is liable to Irish corporation tax on its worldwide income and gains, no matter what their source or nature, though specific exemptions do exist for certain types of income such as distributions from other Irish resident companies and patent income.

A non-Irish resident company can also come within the scope of Irish corporation tax where it carries on activities in Ireland through a branch. Such non-resident companies are subject to Irish corporation tax on the profits of that branch. However, as Irish tax law treats a branch and its parent company as one and the same entity for legal purposes, no withholding taxes are imposed on the repatriation of branch profits to its parent.

In general, a company is tax resident in Ireland if it is incorporated in Ireland, which is known as the place of incorporation test. However, the general rule is not followed in certain circumstances:

- If the company is under the ultimate control of a person resident in an EU Member State or in a country with which Ireland has a double tax treaty, or which itself is, or is related to, a company whose principal class of shares is substantially and regularly traded on a stock exchange in an EU country or treaty country
- If the company carries on a trade in Ireland or is related to a company that carries on a trade in Ireland.

In these circumstances, a company is deemed to be tax resident where its central management and control resides. There is no statutory definition of what constitutes management and control and instead case law is relied upon to provide guidance. The available body of case law indicates that many factors need to be considered but the most important and overriding of these are the place where the directors of the company are resident and the place where board meetings are held.

Rates of corporation tax

The rate of corporation tax charged is dependent on the nature of the profits. In general, trading profits and certain distributions received from foreign trading subsidiaries are liable to corporation tax at 12.5%. All other income is liable to corporation tax at 25%.

There is no definition provided in Irish tax law as to what constitutes trading for corporation tax purposes other than to say that the following activities are specifically excluded:

- dealing in or developing land;
- working minerals; and
- petroleum activities.

Profits from these activities are therefore liable to corporation tax at 25%.

In addition, despite pressure being exerted by other EU member states, the Irish Government, as part of the *National Recovery Plan 2011-2014*, reaffirmed its commitment to maintaining the 12.5% corporation tax rate.

What constitutes a trade?

As mentioned above, under Irish tax law there is no guidance as to what constitutes trading profits for the purposes of the 12.5% corporation tax rate. There are however a number of other non-statutory sources of guidance as to what constitutes a trade for these purposes:

- a list of factors, known as the "badges of trade" and published by the UK Royal Commission on the Taxation of Profits in 1955, which are generally accepted as being indicative of trading activity;
- available case law; and
- guidance published by the Irish Revenue Commissioners.

" The 2010 Index of Economic Freedom rates Ireland as Europe's most economically free country and the fifth in the world in this regard"

Perhaps the most useful of these sources is the guidance published by the Revenue Commissioners. In this guidance, as well as the more traditional activities which they deem to constitute trading, the following are also included:

- activities relating to the development and exploitation of intellectual property rights;
- corporate treasury functions;
- investment management activities;
- distribution activities; and
- activities relating to the carrying out of research and development.

Holding Company Regime

One of the key facets of the favourable tax regime in Ireland is its attractiveness as a holding company location for multinational groups. This attractiveness is supported by a number of incentives:

- exemption from the charge to Irish capital gains tax in respect of the disposal of qualifying shareholdings in subsidiaries;
- 12.5% rate of corporation tax on dividends received from companies resident in the EU or in a country with which Ireland has a tax treaty and are payable out of the trading profits of such subsidiaries;
- limited transfer pricing rules and no relevant thin capitalisation or controlled foreign corporation rules for foreign income;
- significant exemptions from withholding tax on dividend and interest payments made by an Irish holding company; and
- an extensive and very favourable network of 62 double taxation treaties.

Intellectual Property Regime

Over the past number of years Ireland has emerged as the pre-eminent jurisdiction for multi-nationals to locate their intellectual property and the management and development activities associated with it. This is not only due to the favourable corporation tax rate for trading profits but also as a result of a suite of other tax incentives surrounding intellectual property and intangibles.

Tax relief on acquisition cost of intellectual property and intangibles

Tax relief is available in respect of capital expenditure on the acquisition of a wide range of intellectual property and intangible assets, including patents, trade marks, brand names, know how, domain names, scientific processes and goodwill (to the extent that it is related to any of the above intangible assets).

The tax deduction may be claimed either in line with the accounting depreciation charge included in the company's financial statements or by electing for a 15 year write down period. However, the deduction is restricted such that it cannot exceed 80% of the profits associated with the exploitation of the relevant intellectual property or intangibles for which the deduction is claimed.

Research and Development Tax Credit

Under Irish tax law, a tax credit is available to companies in relation to certain expenditure on research and development (R&D) activities. The key features of the credit are as follows:

- 25% credit for incremental qualifying expenditure on R&D over the amount of expenditure incurred in the "base year", now 2003;
- the credit is granted in addition to the regular tax deduction available for R&D expenditure;
- in order to qualify, expenditure on R&D activities must seek to achieve scientific or technological advancement and involve the resolution of technological uncertainty;
- expenditure incurred on subcontracted R&D activities undertaken by a third party can also qualify for the credit to the extent that:
  - the expenditure subcontracted does not exceed 10% of the overall expenditure on R&D by the group; and
  - the subcontractor does not claim a credit for the expenditure.
- expenditure that is subcontracted to a qualifying third level institution can also qualify so long as it does not exceed 5% of the group's overall expenditure on R&D;
- the credit can also be refundable in certain circumstances where there is an insufficient corporation tax liability to utilise the full credit for the accounting period in which the expenditure was incurred. In this situation, the credit can be:
  - surrendered to other group companies;
  - carried back for offset against the preceding period corporation tax liability; or
  - claimed as a cash refund spread over three years (subject to certain limitations).

For companies claiming the credit, net tax relief of 37.5% of the qualifying spend can be available when the credit is combined with the regular tax deduction available for the expenditure.

Allowance for Expenditure on Know-how

Expenditure incurred in relation to the acquisition of know-how purchased from a third party and not as part of a trade is tax deductible. However, unlike the deduction for expenditure on scientific research, a deduction for expenditure on know-how is not available where it is not related to the trade being carried on by the company in question.

Know-how purchased from a related party or acquired as part of a purchase of a trade may qualify for book depreciation treatment.

Expenditure on Scientific Research

A deduction is available for revenue and capital expenditure on scientific research. This deduction is available even where the expenditure on the research is not related to the trade of the company in question.

A deduction against profits is also allowable for payments, whether capital or revenue in nature, to a body carrying on scientific research that is approved by the Minister of Finance or to an Irish university in order to undertake scientific research.

Regulated Fund Regime

Based on the back of its favourable tax and regulatory regimes, Ireland has emerged as a world leading location for the regulated funds industry.

From a tax perspective regulated funds are subject to what is known as a "gross roll-up" regime whereby income or gains are generally not taxed immediately and instead tax (known as exit tax) only becomes chargeable on payments or distributions out of the fund to investors. Furthermore, non-resident investors are exempt from any charge to Irish tax in respect of an investment in an Irish regulated fund.

Structured Finance Regime

Over a number of years, Ireland's structured finance legislation has been steadily enhanced such that now Ireland is one of the pre-eminent locations for the establishment of vehicles used in structured finance transactions.

Irish tax law ensures that structured finance vehicles established in Ireland (known as S.110 companies) suffer minimal Irish tax leakage in relation to their activities and also minimise withholding tax on payments of interest to investors in the vehicles.

In particular, Ireland has emerged as the location of choice for US life settlements securitisations due to our favourable tax treaty network which can minimise tax leakage in relation to US exit taxes.

Tax on Individuals

Income Tax

Ireland has a progressive system of income tax which is levied at two rates.

As of 2011, an individual is subject to income tax at 20% on their first €32,800 of income, though this is typically amended each year by the Minister for Finance. This threshold is increased when the individual is married. An individual is then liable to a rate of 41% on the balance of their income over and above the threshold.

In addition to income tax, individuals are also subject to two social contributions, known as the Universal Social Charge (c. 7%) and PRSI (c. 4%), on their income.

Scope of Income Tax

In order to be within the charge to Irish income tax, a person must either be resident, ordinarily resident or domiciled in Ireland.

A person will be deemed to be tax resident in Ireland if they spend:

- a total of 183 days in Ireland in any tax year; or
- a combined total of 280 days over two tax years (assuming a minimum of 30 days in each tax year).

If a person is resident in Ireland for three consecutive tax years, they then become ordinarily resident for tax purposes.

An individual is deemed to be domiciled in the country in which they have their permanent home. Domicile is generally determined initially by an individual's domicile of origin (generally the country where their father is domiciled when they are born) and will be regarded as domiciled in that country unless a domicile of choice is acquired.

Influence of domicile and residence

An Irish resident, ordinarily resident and domiciled person is liable to Irish income tax on worldwide income.

A resident and domiciled, but not ordinarily resident, person is liable to Irish income tax on Irish source income and on any other income to the extent remitted.

A resident but not domiciled person is liable to Irish income tax on Irish source income and on any other income to the extent remitted.

Our Foreign Direct Investment Team

Our dedicated team draws together extensive legal expertise and industry knowledge from key practice areas.

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Ursula is a tax lawyer, dual-qualified in Ireland and Germany, with over 15 years' experience in international taxation. She was formerly the head of the tax department in a large multinational.

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Dennis is a corporate transactional lawyer who heads the firm's Foreign Direct Investment team and acts for a broad range of US and Irish companies. Based in our New York office, Dennis' role is to provide Irish legal advice and know-how to US companies in as efficient a manner as possible.

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