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Corporate Tax 2024

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Ireland: Law & Practice
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Maples Group

IRELAND

Law and Practice

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Maples Group advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey, Luxembourg and the Marshall Islands through its leading international law firm, Maples and Calder. With offices in key jurisdictions around the world, the Maples Group has specific strengths in the areas of corporate tax, commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, the Group leverages this local expertise to deliver an integrated service offering for global business initiatives.

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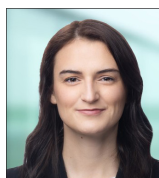

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

The Companies Acts 2014 provides for the following forms of incorporated entity:

- private company limited by shares (LTD);
- designated activity company (DAC);
- public limited company (PLC);
- company limited by guarantee (CLG);
- unlimited company; and
- investment company.

Most often, businesses gravitate towards the LTD model due to its familiarity and simplicity. However, DACs and Irish Collective Asset Management Vehicles (ICAVs) are utilised by companies involved in the issuance of listed debt securities and investment funds respectively.

Entities with separate legal form are taxed separately.

1.2 Transparent Entities

In Ireland, partnerships and limited partnerships are treated as transparent for tax purposes. Partnerships are generally used for investment purposes and also by certain professional services firms (eg, accountants and solicitors). In addition, pension funds may make use of a particular form of tax-transparent investment fund called a common contractual fund (CCF).

1.3 Determining Residence of Incorporated Businesses

A company that has its central management and control in Ireland is considered resident in Ireland, regardless of where it is incorporated. A company that is incorporated in Ireland is considered resident in Ireland, except where the company is regarded as not being resident in Ireland under a double taxation treaty between Ireland and another country.

The term "central management and control" is, in broad terms, directed at the highest level of control of the company. The Irish Revenue Commissioners ("Irish Revenue") and the Irish courts emphasise the location of the meetings of the board of directors.

1.4 Tax Rates

Ireland currently has three rates of corporation tax.

- A 12.5% rate applies to the trading income of a company that carries on a trade in Ireland (including certain qualifying foreign dividends paid out of trading profits). There is no precise definition of what constitutes trade for this purpose but, broadly, a company should be considered to be trading for tax purposes if it is carrying on an active business in Ireland on a regular or habitual basis and with a view to realising a profit.
- A 25% rate applies in respect of passive or investment income, profits arising from a possession outside of Ireland (ie, foreign trade carried on wholly outside of Ireland) and profits of certain trades, such as dealing in or developing land and mineral exploration activities.
- A new 15% rate was introduced in the Finance Act (No 2) 2023 pursuant to the implementation of the OECD Pillar Two rules in Ireland and applies by way of a top-up tax on Irish companies that are part of a multinational group with an annual turnover exceeding EUR750 million.

Separately, a 33% rate applies to capital gains. The same capital gains rates also apply to gains earned by individuals directly or through transparent entities.

Personal income is subject to tax at rates of up to 55%.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

Corporation tax is imposed on the profits of a company (including both income and chargeable gains), wherever they arise, for the fiscal year or "accounting period" of the company. The accounting period cannot exceed 12 months.

The starting point for determining taxable profits is the profit of the company according to its statutory accounts, subject to any adjustments required by law. The more important items that are not deductible when calculating the tax-adjusted profits include the following:

- any capital expenses;
- any expenses not wholly or exclusively incurred for the purposes of the trade or profession;
- general provisions for bad debts (specific bad debts and specific bad debt provisions are deductible);
- dividends or other distributions paid or payable by the company; and
- certain specific expenses, including business entertainment costs, interest on late payment of taxes, general provisions for repairs and certain motor leasing expenses.

A tax deduction is not available for accounting depreciation. However, capital allowances are available in relation to qualifying capital expenditure on land and buildings, plant and machinery and certain intellectual property.

Chargeable gains that do not form part of the trading profits are calculated in accordance with capital gains tax rules.

2.2 Special Incentives for Technology Investments

R&D Tax Credit

A 30% tax credit for qualifying research and development (R&D) expenditure exists for companies engaged in qualifying in-house R&D undertaken within the European Economic Area (EEA). This credit may be set against a compa-

ny's corporation tax liability, and is available on a group basis in the case of group companies. The first portion of a claim on R&D expenditure has also been increased to EUR50,000, which is payable in full in cash.

Qualifying R&D activities must satisfy certain conditions and, in particular, must seek to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty. Where a company has insufficient corporation tax against which to claim the R&D tax credit in a given accounting period, the tax credit may be credited against corporation tax for the preceding period, may be carried forward indefinitely or, if the company is a member of a group, may be allocated to other group members.

For accounting periods ending on or after 1 January 2023, the R&D tax credit may now be paid out to all claimants, regardless of the corporation tax position, in three instalments over three years. Companies with R&D tax credit claims of more than EUR50,000 will receive the three refunds over three years in a 50%/30%/20% split.

Knowledge Development Box

Ireland has an OECD-compliant "knowledge development box" for the taxation of certain intellectual property. The amount of expenditure incurred by a company in developing, creating or improving qualifying patents or computer programs ("qualifying expenditure") is divided by the overall expenditure on such assets before being multiplied by the profits arising from such assets (eg, from royalties and net sales). The result is effectively taxed at 10%. A potential 30% uplift in the qualifying expenditure is available, capped at the total amount of acquisition costs and group outsourcing costs.

Capital Allowances on Provision or Acquisition of Intangible Assets

Capital allowances (tax depreciation) are available for companies incurring capital expenditure on the provision of intangible assets for the purposes of a trade. The relief applies to a broad range of intangible assets (eg, patents, copyright, trade marks, know-how) that are recognised as such under generally accepted accounting practice, and are listed as "specified intangible assets" in the Irish tax legislation. The relief is granted as a capital allowance for set-off against profits arising from the use of the intangible assets. The write-off is available in line with the depreciation or amortisation charge in the accounts or, alternatively, a company can elect to take the write-off against its taxable income over a 15-year period.

Where the intangible asset was acquired prior to 14 October 2020 and is held for more than five years, there is no claw-back of the allowances on a disposal to an unconnected buyer. If an intangible asset is acquired on or after 14 October 2020, a claw-back or "balancing charge" will arise on the disposal of that asset if the sales proceeds are in excess of the "tax written down value" of the asset. The allowance can be surrendered by way of group relief or carried forward if unused.

Digital Gaming Tax Credit

In 2022, Ireland introduced a new tax credit for the digital gaming sector, which operates as a refundable corporation tax credit for qualifying expenditure incurred in the design and development of digital games. The tax credit is available at a rate of 32% of qualifying expenditure, with a maximum limit of EUR25 million per project. A per project minimum spend requirement of EUR100,000 applies.

2.3 Other Special Incentives

Certain reliefs and incentives may apply for companies involved in shipping, financial services, property development, forestry, farming, film production and mining businesses.

2.4 Basic Rules on Loss Relief

Ireland distinguishes between losses arising from trading income and losses arising from non-trading income. Trading losses are computed in the same manner as trading profits. Trading losses may be offset against non-trading profits, but are adjusted on a "value basis" so that they do not reduce the non-trading income more than they would have reduced the trading income.

Broadly, the following actions apply to trading losses, in the following order:

- trading losses can be set off against other profits of the company (before charges) in the same accounting period;
- trading losses can be set off against profits (before charges) of the previous accounting period of corresponding length, if the company carried on the trade in that period;
- trading losses of one Irish company (or of an Irish branch of an EU company) can be set off against the profits of an Irish resident company or Irish branch of an EU company in the same corporate group as the company that has excess trading losses; and
- trading losses can be carried forward on an indefinite basis and set off against future profits derived from the same trade.

2.5 Imposed Limits on Deduction of Interest

In general, trading companies can only take a deduction for interest incurred wholly and exclusively for the purposes of the trade. Interest expenses incurred on funds borrowed to purchase, repair or improve rented premises are allowed as a deduction against the related rental income. Interest incurred by a company on funds borrowed to acquire shares in, or loan money to, certain other companies can be allowable in full against the total profits of the company (as a charge on income), providing specific conditions are met.

While there are no "thin capitalisation" rules that apply in Ireland, it is nonetheless possible in certain limited cases for the interest to be reclassified as a distribution, preventing such interest from being tax-deductible.

The EU Anti-Tax Avoidance Directive (EU ATAD) contains a fixed ratio interest limitation rule (ILR), and applies to accounting periods commencing on or after 1 January 2022. The ability to claim a tax deduction for the excess interest is restricted to 30% of EBITDA (earnings before tax and before deductions for net interest expense, depreciation and amortisation). The Irish ILR legislation incorporates a number of important exemptions and exclusions in line with EU ATAD, including an exemption for "standalone entities" and entities whose net interest expense is less than EUR3 million per annum.

Companies can elect to operate the ILR on a single entity or on a local Irish group basis. Moreover, where the taxpayer is part of a consolidated worldwide group for accounting purposes, the indebtedness of the overall group at a worldwide level may be considered for the purposes of providing additional relief under one of two grouping rules.

2.6 Basic Rules on Consolidated Tax Grouping

The concept of consolidated tax grouping for corporation tax purposes does not exist in Ire-

land. Trading losses may be offset on a current-year basis against the taxable profits of another group company.

Both the claimant company and the surrendering company must be within the charge to Irish corporation tax. To form a group for corporation tax purposes, both the claimant company and the surrendering company must be resident in an EU country or an EEA country with which Ireland has a double tax treaty. In addition, one company must be a 75% subsidiary of the other company, or both companies must be 75% subsidiaries of a third company. The 75% group relationship can be traced through companies resident in a "relevant territory" – ie, an EU member state, an EEA treaty country, or another country with which Ireland has a double tax treaty.

2.7 Capital Gains Taxation

Capital gains other than gains from development land are included in a company's profits for corporation tax purposes and are charged to tax under a formula, with the effect that tax is paid at the prevailing capital gains tax (CGT) rate, which is currently 33%.

Substantial Shareholder's Relief

Disposals by a company of a substantial shareholding in a subsidiary company that is resident in an EU member state or a country with which Ireland has concluded a double tax treaty are exempt from CGT if, at the time of the disposal:

- the subsidiary company carries on a trade, or the activities of the disposing company and all of its 5% subsidiaries taken together amount to trading activities; and/or
- the disposing company holds or has held at least 5% of the ordinary share capital and economic interest in the subsidiary company for 12 months, beginning not more than two years before the disposal.

Intra-Group Relief

Relief from CGT is available where both the company disposing of the asset and the company acquiring the asset are within a CGT group. A CGT group consists of a principal company and all its effective 75% subsidiaries. In addition, the shares must be within the charge to corporation tax on capital gains both before and after the transfer.

The effect of the relief is that both the company disposing of and the company acquiring the asset are treated as if the shares were acquired for such consideration as would secure that neither a gain nor a loss would accrue to the disposing company (that is, the acquiring company takes the shares at the same base cost as applied to the disposing company).

Paper-for-Paper Reconstructions

Where shares are transferred as part of a bona fide scheme of reconstruction or amalgamation and certain additional conditions are met, no CGT arises for the disposing shareholders, and the acquiring shareholders are deemed to have received the shares on the same date and at the same cost as the old shares. The relief will only apply where the company acquiring the shares has – or as a result of the transaction will have – control of the target company, or where the share-for-share exchange results from a general offer made to the members of the target company.

2.8 Other Taxes Payable by an Incorporated Business

Stamp duty and VAT may be payable by companies on particular transactions.

Stamp Duty

Stamp duty is a tax on certain instruments (primarily written documents). Generally, unless exempted, stamp duty is chargeable on a document if the document is both:

- of a type set out in Schedule 1 to the Stamp Duties Consolidation Act 1999 (this lists the different categories of document to which stamp duty applies, including conveyances or transfers on sale of stocks or marketable securities and property); and
- executed in Ireland or, if executed outside Ireland, relates to something done or to be done in Ireland.

Generally, the purchaser or transferee is liable to pay stamp duty arising on a written instrument, and a return must be filed and stamp duty paid within 44 days of the execution of the instrument.

Stamp duty is charged on either the consideration paid for or the market value of the relevant asset, whichever is higher. The main categories of instrument to which stamp duty applies and the applicable rates of the duty are as follows:

- transfers of shares or marketable securities: 1%;
- transfers of commercial property: 7.5%; and
- transfers of residential property:
  - (a) 1% on consideration up to EUR1 million; and
  - (b) 2% on the balance of consideration in excess of EUR1 million.

Stamp duty may also be chargeable in connection with certain leases and rent payments.

There are a number of reliefs and exemptions, including:

- associated companies relief on transfers between companies where the transferor and transferee are 90% associates at the time of execution and for two years afterwards; and
- exemptions for transfers of intellectual property, non-Irish shares, land, loan capital, aircraft and ships.

VAT

VAT is an EU transaction-based tax that is chargeable on the supply of goods and services in Ireland by a taxable person in the course or furtherance of a business. The top rate of VAT is 23% and certain services (such as “financial services”) are VAT exempt. VAT is also chargeable on:

- goods imported into Ireland from outside the EU;
- the purchase of certain services from suppliers outside Ireland; and
- the intra-EU acquisition of goods.

Zoned Land Tax

A new zoned land tax was introduced by the Finance Act 2021 to encourage residential construction. The tax applies to land that is zoned as being residential or for a mix of uses, including residential use that is serviced but has not yet been developed for housing. The tax will be based on the market value of the land and apply at a rate of 3% at the outset.

2.9 Incorporated Businesses and Notable Taxes

Incorporated businesses operating in certain industries may be subject to additional taxes, such as relevant contracts tax (RCT) and professional services withholding tax. Incorporated businesses are also required to withhold income tax on payments to employees and directors of the company (pay-as-you-earn income tax, or

PAYE), and to withhold tax at 20% from payments of interest, dividends and certain royalties (unless exempted). They must also pay social insurance contributions in respect of employees.

3. Division of Tax Base Between Corporations and Non-corporate Businesses

3.1 Closely Held Local Businesses

Most closely held local businesses operate in corporate form.

3.2 Individual Rates and Corporate Rates

Further detail on closely held companies is set out in **3.3 Accumulating Earnings for Investment Purposes**. Closely held companies that are professional services companies are liable to a surcharge on both undistributed investment and rental income and professional income. This surcharge is 15% of 50% of the annual undistributed professional income, and 20% of all of the company's undistributed investment and rental income.

In addition, Irish Revenue guidelines note that the mandating, allocating or routing through a firm or company of remuneration arising from an individual having or exercising an office or employment does not mean that the remuneration is taken outside of that individual's income tax rules.

3.3 Accumulating Earnings for Investment Purposes

For Irish tax purposes, a closely held company is a company controlled by five or fewer "participators", or by any number of participators who are directors. A "participator" is a shareholder or a person having an interest in the company's capital or interest.

Closely held companies are subject to a tax surcharge on investment income (including interest and distributions) or rental income that is not distributed within 18 months of the end of the company's accounting period. This surcharge is 20% of the undistributed income and is intended to act as a disincentive to individuals using corporates as personal holding companies and availing themselves of corporation tax rates that are lower than the tax rates applicable to individuals.

Closely held companies that are professional services companies are liable to a surcharge on both undistributed investment and rental income and professional income, as further described in **3.2 Individual Rates and Corporate Rates**.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Irish-resident individuals are liable to CGT at a rate of 33% on the sale of shares in an Irish company (whether that company is a closely held company or otherwise).

Non-Irish-resident individuals are generally only liable to Irish CGT on the sale of unquoted shares in an Irish company if those shares derive the majority of their value from land and buildings in Ireland and certain mining or exploration rights. The Irish Key Employee Engagement Programme (KEEP) share option scheme, which applies to SMEs and start-up businesses, provides for a tax-efficient employee share option scheme whereby, broadly, no tax charge arises when KEEP-compliant share options are exercised by an employee. Instead, a CGT liability will arise when the employee actually disposes of them.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

The treatment set out in **3.4 Sales of Shares by Individuals in Closely Held Corporations** also applies to dividends from quoted companies and gains on the disposal of shares in quoted companies.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

DWT at the standard income tax rate of 25% applies to dividends and distributions made by Irish tax-resident companies.

There are a wide range of exemptions from DWT where the dividend or distribution is paid by an Irish-resident company to certain parties, including:

- another Irish tax-resident company;
- companies that are resident in an EU member state (other than Ireland) or a country with which Ireland has concluded a double tax treaty, and that are not controlled by Irish residents;
- companies that are under the control, directly or indirectly, of a person or persons who are resident in an EU member state or a country with which Ireland has concluded a double tax treaty and are not controlled by persons who are not resident in that country;
- companies whose shares are substantially and regularly traded on a recognised stock exchange in another EU member state or country with which Ireland has concluded a double tax treaty, or where the recipient company is a 75% subsidiary of such a company or is wholly owned by two or more such companies; and
- a company resident in another EU member state with at least a 5% holding in the Irish paying company (under Directive 90/435/EEC on the taxation of parent companies and subsidiaries – the Parent-Subsidiary Directive).

These exemptions are subject to the new Outbound Payment Rules (see below).

Interest Withholding Tax

Irish tax legislation provides that tax at the standard rate of income tax (currently 20%) is required to be withheld from payments of Irish-source interest.

However, a large number of exemptions from the requirement to withhold on payments of interest are available, including:

- interest paid in Ireland to a bank or by a bank in the ordinary course of business;
- interest paid to a company that is resident in an EU member state or a country with which Ireland has signed a double tax treaty, where that territory imposes a tax that generally applies to interest receivable in that territory by companies from outside that territory;
- interest paid to a US corporation that is subject to tax in the US on its worldwide income;
- interest paid in respect of a “quoted Eurobond”, provided certain other conditions are met (however, this exemption is also subject to the new outbound payment rules – see below); and
- interest paid to certain Irish entities, including qualifying companies for the purposes of Section 110 of the Taxes Consolidation Act, 1997 (as amended) (TCA), investment undertakings and certain government bodies.

Withholding Tax on Patent Royalties

Withholding tax at a rate of 20% applies to payments of a royalty or other sum paid for the use of a patent.

Withholding tax will not apply to royalty payments that are made to associated companies resident in another EU member state, nor to royalties paid by a company in the course of a trade or business to a company that is resident in a country with which Ireland has a double tax treaty.

It has been Irish Revenue's administrative practice since 2010 not to charge withholding tax on royalties payable under a licence agreement executed in a foreign territory that is subject to the law and jurisdiction of a foreign territory (subject to the Irish company obtaining advance approval from Irish Revenue).

Outbound Payments

The Finance (No 2) Act 2023 introduced new taxation measures that apply to transactions between entities that are "associated" where the recipient is resident in or established under the laws of a jurisdiction on the EU list of non-co-operative jurisdictions or a "zero-tax" jurisdiction (referred to as "specified territories"). Where an Irish company makes relevant payments of interest, dividends or royalties to associated entities in specified territories, withholding tax will apply at the standard Irish rate applicable to that payment subject to certain exceptions. Accordingly, the rules potentially override the exemptions for interest and dividends listed above. The rules apply from 1 April 2024 for new transactions; arrangements that were in place prior to 19 October 2023 are grandfathered and will not be impacted until 1 January 2025.

4.2 Primary Tax Treaty Countries

Ireland is an open jurisdiction that encourages investment from all countries; no specific countries are preferred for investing in Ireland. Many US, UK, European, Asian and Gulf Co-operation Council companies invest directly in Irish companies.

4.3 Use of Treaty Country Entities by Non-treaty Country Residents

Generally, the use of a treaty by a tax-resident beneficial owner should be respected.

4.4 Transfer Pricing Issues

Ireland first introduced transfer pricing in 2011, which only applied to trading transactions involving the supply and acquisition of goods, services, money or intangible assets between associated persons or companies. Updated Irish transfer pricing provisions introduced in January 2020 extended the rules to non-trading income and capital transactions.

The rules require that transactions between associated persons should take place at arm's length, and that the principles contained in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration, as updated in January 2022, must be followed when analysing whether a transaction has been entered into at arm's length.

If Irish Revenue determines that a transaction was not entered into at arm's length and has had the effect of reducing profits or increasing losses, an adjustment will be made by substituting the arm's length consideration for the actual consideration.

4.5 Related-Party Limited Risk Distribution Arrangements

Ireland should follow OECD norms and guidelines in relation to the application of transfer pricing rules.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

Ireland introduced changes to its transfer pricing rules in 2019, partly to bring Ireland's transfer pricing legislation in line with the 2017 OECD Transfer Pricing Guidelines. The amendments have applied since 1 January 2020.

4.7 International Transfer Pricing Disputes

There has been an increasing trend for taxpayers and tax authorities to seek resolutions to transfer pricing disputes through the use of mutual agreement procedures (MAPs). This has been viewed as a success by Irish Revenue, with 92% of transfer pricing MAP cases resolved by agreement to fully eliminate double taxation in 2022. Ireland has also tied with Denmark to win the "co-operation" category for having the most MAP cases fully resolved through agreement by a pair of jurisdictions in 2022. These statistics demonstrate Ireland's high efficacy rate in processing transfer pricing cases.

Irish Revenue operates a formal bilateral advanced pricing agreement (APA) programme. APAs are conducted under the MAPs of the relevant treaty where there are transfer pricing issues involving more than two tax jurisdictions, of which Ireland is one. If requested by the taxpayer, Irish Revenue is also willing, in such cases, to consider conducting multilateral meetings with the other tax administrations subject to the terms of the relevant double tax treaties and the agreement of the other tax administrations.

5. Key Features of Taxation of Non-local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Irish Revenue allows for compensating adjustments where a MAP request is made and successfully resolved by Irish Revenue and any other relevant competent authorities. No particular difficulties are faced by claimants where double taxation conventions apply, with Irish Revenue seeking to implement best practice in line with the OECD's Manual on Effective Mutual Agreement Procedures.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-local Corporations

Non-resident companies that carry on a trade in Ireland through a branch or agency are subject to corporation tax in the same manner as local companies.

5.3 Capital Gains of Non-residents

Non-Irish tax-resident companies are liable for tax on gains arising from the disposal of certain assets, including:

- land and buildings in Ireland (relief from CGT may be claimed in respect of real estate acquired between 6 December 2011 and 31 December 2014 if it was held for a period of at least seven years);
- unquoted shares or securities deriving their value or the greater part of their value directly or indirectly from the above assets; and
- assets situated in Ireland that are used, held or acquired for business carried on in Ireland through a branch or agency.

The recent Tax Appeals Commission Decision on Irish Real Estate Loans confirmed that loans

secured on Irish land are within the scope of Irish CGT. By applying principles decided only months earlier in the case of Cintra, the High Court held that the loans were secured on Irish land and therefore constituted an interest in the land and within the charge to CGT. This decision is significant for non-Irish resident investors, such as international banks and investment funds, that acquire or sell Irish loans secured on Irish land because such transactions may be subject to Irish CGT or at least Irish tax filing and tax clearance obligations.

5.4 Change of Control Provisions

Change of control provisions could arise in relation to the indirect disposal by a non-resident of an Irish land-rich company, as explained under **5.3 Capital Gains of Non-residents.**

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

OECD standards would be expected to be applied in the determination of the income of foreign-owned local affiliates selling goods or providing services.

5.6 Deductions for Payments by Local Affiliates

The basic rule for the allowance of deductions for Irish corporation tax purposes is that the expenses must have been incurred wholly and exclusively for the purposes of carrying on the trade or profession.

5.7 Constraints on Related-Party Borrowing

Other than as set out below, Ireland does not operate what would be considered statutory thin capitalisation rules.

In broad terms, an Irish-based borrower should be entitled to a tax deduction for payments of interest to a non-local affiliated lender. However, there are certain restrictions that would need to be considered, including but not limited to the following:

- the interest payments should be an arm's length amount;
- the interest payments may be subject to withholding tax if the lender does not fall within relevant exemptions (see **4.1 Withholding Taxes** for details of potential exemptions);
- if the interest expense exceeds its interest equivalent income, the ability to claim a tax deduction for the excess interest may be limited to 30% of EBITDA (see **2.5 Imposed Limits on Deduction of Interest**);
- in certain cases, payments to a non-EU 75%-related affiliate may be recharacterised as a distribution subject to dividend withholding tax and disallowed as a deduction; and
- where a company borrows to finance the acquisition of shares, there may be a restriction if the lender is related to the borrower, under Section 247 of the TCA.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Foreign income is not exempt from corporate tax. A company that is tax-resident in Ireland is subject to corporation tax on all its profits, wherever they arise, at either 12.5%, 15% or 25%.

6.2 Non-deductible Local Expenses

This question is not applicable in Ireland.

6.3 Taxation on Dividends From Foreign Subsidiaries

Foreign dividends received by Irish companies are generally subject to corporation tax at a rate of 25%. However, dividends received by an Irish company from non-resident subsidiaries are subject to corporation tax at 12.5% if such dividends are paid out of the trading profits of a company that is resident in:

- an EU member state;
- a country with which Ireland has a double tax treaty;
- a country that has ratified the Joint Council of Europe/OECD Convention on Mutual Assistance in Tax Matters; or
- a non-treaty country, if the company is directly or indirectly owned by a quoted company.

Companies that are portfolio investors (ie, investors holding not more than 5% of the company and having no more than 5% of the voting rights) and that receive dividends from a company that is resident in an EU member state or a country with which Ireland has a double tax treaty will be subject to corporation tax on those dividends, at the 12.5% rate. Furthermore, where a company is a financial trader, such dividends may be exempt from corporation tax in certain circumstances.

6.4 Use of Intangibles by Non-local Subsidiaries

If an Irish company licenses intellectual property to a subsidiary, it will be subject to Irish corporation tax on the licence fees (or deemed licence fees if transfer pricing applies) received in respect of the licence. The rate will be 12.5% if licensing is part of the trading activity of the Irish company, or 25% if it is part of non-trading activity.

6.5 Taxation of Income of Non-local Subsidiaries Under Controlled Foreign Corporation-Type Rules

CFC income is that which arises to a non-Irish-resident company from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage. CFC income is attributed to the controlling company or a connected company in Ireland where that controlling or connected company has “significant people functions” (SPF) in Ireland. The CFC charge is based on an arm’s length measurement of the undistributed profits of the CFC that are attributable to the SPF.

Whether a CFC charge is imposed on an Irish controlling company will depend on the extent to which the CFC is regarded as having “non-genuine arrangements” in place, which will be the case in the following circumstances:

- where the CFC would not own the assets or would not have borne the risks that generate all, or part of, its undistributed income but for relevant Irish activities or SPF being undertaken in Ireland in relation to those assets and risks; and
- where it would be reasonable to consider that the relevant Irish activities were instrumental in generating that income.

The concept of SPF is not defined in the Irish implementing legislation but must be construed in a manner consistent with the use of that term in the “2010 Report on the Attribution of Profits to Permanent Establishments”. If there is no SPF in Ireland to which the management of assets and business risks can be attributed, no tax will arise under the new CFC rules.

The CFC charge applies to the undistributed profits that have been diverted to the low-taxed

CFC pursuant to non-genuine arrangements. The rate of Irish tax chargeable will depend on the nature of the income. In Ireland, trading income is taxed at 12.5% and non-trading income is taxed at 25%. A credit is available for any foreign tax paid by the CFC on its undistributed income.

6.6 Rules Related to the Substance of Non-local Affiliates

There are no applicable Irish rules relating to the substance of non-local affiliates.

6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates

Irish companies are subject to CGT on the sale of shares in directly held non-local affiliates under the normal CGT rules at a rate of 33%, unless the substantial shareholder's exemption or group reliefs apply (as described in detail under **2.7 Capital Gains Taxation**).

7. Anti-avoidance

7.1 Overarching Anti-avoidance Provisions

Ireland has a very broad general anti-avoidance rule (GAAR), which is intended to negate the effects of transactions that have little or no commercial reality but are primarily intended to avoid or reduce a tax charge, or to artificially create a tax deduction or tax refund. Irish Revenue may at any time deny or withdraw a tax advantage created through the use of a tax avoidance transaction by making or amending an assessment of that person.

In determining whether a transaction is a tax-avoidance transaction, regard should be had to the form and substance of the transaction, the substance of any other transactions directly or indirectly related to the transaction, and the final outcome of the transaction and any related transactions.

A person who enters into a tax-avoidance transaction shall be liable to pay a 30% surcharge of the amount of the tax advantage. However, no surcharge is payable by a person who has made a valid protective notification. A taxpayer can also avail themselves of a reduced surcharge amount if a "qualifying avoidance disclosure" is made to Irish Revenue.

Article 6 of the EU ATAD also introduces a broad general anti-avoidance provision. However, the existing GAAR is regarded as being broader than that contained in Article 6, so no further amendment is envisaged at this time.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

Ireland does not have a defined audit cycle for tax purposes: companies are subject to audit by the Irish tax authorities at any time. The time limit for enquiry by Irish Revenue into a tax return is four years from the end of the accounting period in which that return was filed, unless fraud or neglect is alleged.

9. BEPS

9.1 Recommended Changes

In response to the BEPS recommended changes, Ireland has introduced country-by-country reporting, updated its transfer pricing legislation and implemented the CFC, anti-hybrid and interest limitation rules under ATAD, among other measures.

Other recent Irish reforms include the EU Directive on minimum taxation, which introduced top-up taxes to achieve a minimum tax rate of 15% for groups with an Irish presence and an annual revenue in excess of EUR750 million (see **9.2 Government Attitudes**).

9.2 Government Attitudes

Ireland has insisted that transparency and substance are key components of the Irish tax regime, and is keen to ensure that Irish tax policy is continually in step with all OECD BEPS proposals. In that regard, Ireland has implemented the Directive that puts the Global Anti-Base Erosion (GloBE) rules on minimum taxation into effect across the EU, with effect for accounting periods beginning from 31 December 2023.

Pillar Two

The GloBE rules primarily operate through three new "top-up" taxes.

- The income inclusion rule (IIR) is a top-up tax levied on parent entities in respect of their own low-taxed income or the low-taxed income of their subsidiaries. This is effective from 31 December 2023.
- The undertaxed profits rule (UTPR) imposes tax on affiliate companies if the parent is not subject to an IIR in another jurisdiction. In most cases, this will apply from 31 December 2024.
- The qualified domestic top-up tax (QDTT) raises the effective rate of tax for the constituent entities in a group to at least 15%. This allows a jurisdiction to collect tax in respect of constituent entities in their own territory that another jurisdiction might have otherwise collected under the IIR. The QDTT applies from 31 December 2023.

To determine whether an entity or group is within the scope of the rules, the GloBE rules require an analysis as to what entities are or would be included in consolidated financial statements. Therefore, the accounting position is of primary significance.

A group that is below the EUR750 million revenue threshold will be outside the scope of the rules and there will be no change in the tax paid on its Irish profits. Ireland's long-standing 12.5% trading tax rate will remain applicable.

Pillar One

Ireland has fully supported the Pillar One proposals, in recognition of the fact that the way in which business is conducted has evolved and that the taxation system must evolve with it. It is recognised that there will be a cost to Ireland for this in terms of reduced corporation tax receipts, but overall it is considered that Pillar One will bring stability and certainty to the international tax framework and will help underpin economic growth, from which all can benefit.

Pillar One was initially planned to apply generally from 1 January 2023, but this has now been pushed back given the difficulties in reaching international agreement. The OECD plans to have a new Multilateral Convention finalised by the end of March 2024, with Pillar One entering into force in 2025.

9.3 Profile of International Tax

The emergence of the double Irish structure and its subsequent phasing out, along with the EC's Apple State Aid decision, raised the profile of international taxation in Ireland. The Irish media also comments frequently on international tax matters, such as BEPS and US tax reform, given its importance to Ireland as an open economy.

Whilst this has not influenced Ireland's implementation of BEPS, the Irish government has repeated its commitment to update in line with international rules and best practice.

The Advocate General (AG) of the Court of Justice recently released an update in the ongoing Apple State Aid case taken by the European Commission. This case concerns two transfer pricing rulings issued by Irish Revenue in favour of two entities of Apple that were incorporated in Ireland but tax resident in another jurisdiction. Ultimately, the AG recommended that the Court of Justice set aside the judgment and refer the case back to the General Court. Although not binding, the AG's opinion is seen as persuasive by the Court of Justice, whose decision is expected in 2024.

9.4 Competitive Tax Policy Objective

Ireland has undertaken to review its corporate tax code regularly to ensure that new standards such as BEPS and OECD initiatives that have global consensus are met while remaining competitive as the economy continues to grow. While introducing a minimum rate for larger enterprises (revenue greater than EUR750 million), the Pillar Two reforms are considered as "accommodating appropriate and acceptable tax competition aligned to key principles, such as substance and creation of real value, including Ireland's 12.5% rate".

For Ireland's tax policymakers, the key balancing task is to ensure that the implementation phase of BEPS would result in the country's tax regime being seen as meeting the standards for substance and transparency while maintaining the country's reputation as an open economy that encourages foreign direct investment and has a low rate of corporation tax.

9.5 Features of the Competitive Tax System

The Irish authorities firmly voiced their opposition to the EC's interim proposal for a "digital economy tax", with the Irish Minister for Finance emphasising the need for unanimity before any EU digital tax proposal can be agreed. Similarly, the Irish government has urged caution in respect of the proposed EU Common Corporate Tax Base, stating that discussions on harmonising tax across the eurozone are at a relatively early stage, and that much more technical analysis and discussion are needed.

9.6 Proposals for Dealing With Hybrid Instruments

Ireland has implemented legislation to address hybrid mismatch arrangements, as required by ATAD. One of the purposes of the anti-hybrid rules is to prevent arrangements that exploit differences in the tax treatment of a financial instrument under the tax laws of two or more jurisdictions to generate a tax advantage – ie, a "hybrid" situation.

9.7 Territorial Tax Regime

Ireland does not have a territorial regime, but rather taxes companies on a worldwide basis. However, as Ireland is party to a large number of tax treaties, the operation of a foreign tax credit system means that foreign tax paid on income can, in certain cases, be used to offset any Irish tax payable on the same income.

Furthermore, following a review of Ireland's corporate tax code that was commissioned by the Department of Finance in 2017, one of the recommendations was that consideration should be given to moving to a territorial system. In December 2021, the Department of Finance launched a public consultation on a possible move to a limited territorial system of taxation in

respect of the income of foreign branches of Irish resident companies and in respect of the payment of foreign source dividends. The Minister of Finance then announced in 2023 that such a participation exemption would be introduced in respect of certain foreign dividends in 2024, following consultation.

9.8 Controlled Foreign Corporation Proposals

In Ireland, CFC rules apply to certain foreign subsidiaries, as discussed in **6.5 Taxation of Income of Non-local Subsidiaries Under Controlled Foreign Corporation-Type Rules**.

9.9 Anti-avoidance Rules

Ireland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2017. The MLI came into force in Ireland on 1 May 2019, adopting the principal purpose test (PPT) provisions in its double taxation conventions.

In respect of anti-avoidance rules, Ireland already maintains a long-standing general anti-abuse rule under its tax code. Following a review of the relevant provisions, the Irish tax authorities have indicated that an amendment of the GAAR will not be necessary. Consequently, the proposed double taxation convention limitation of benefit and anti-avoidance rules are unlikely to have a significant impact on Ireland in respect of inbound and outbound investors.

9.10 Transfer Pricing Changes

As Ireland has had transfer pricing rules since 2011, the changes are not expected to present any major hurdles to the Irish regime. The Finance Act 2019 introduced changes with effect from 1 January 2020 to bring the current regime in line with the new 2017 OECD Transfer Pricing Guidelines, which reflect the outcomes of BEPS Actions 8–10 and 13.

9.11 Transparency and Country-by-Country Reporting

Country-by-country (CbC) reporting provisions are part of Action 13 of the OECD BEPS Action Plan and the EU Commission's Anti-Tax-Avoidance Package. CbC reporting requires large multinational enterprises (MNEs) to file a CbC Report providing a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business. An EU Directive implemented these measures in May 2016, and they are applicable to MNE groups with an Irish presence and turnover exceeding EUR750 million.

The EU Directive on public country-by-country reporting (the "CbCR Directive") entered into force on 21 December 2022. It will be implemented in Ireland and applied from 22 June 2024.

The new rules require multinational groups with a total consolidated revenue of EUR750 million to report if they are EU-parented or otherwise have EU subsidiaries or branches of a certain size. The report also requires information on all members of the group (including non-EU members) within seven key areas (activities, number of employees, net turnover, profit or loss before tax, tax accrued, tax paid and accumulated earnings). The reporting requirements under the Directive will take effect from the commencement date of the first financial year starting on or after 22 June 2024.

The information must be broken down for each EU member state where the group is active, and also for each jurisdiction deemed to be "non-

co-operative" by the EU or that has been on the EU's "grey" list for a minimum of two years. Reports are to be published in an EU member state business register, and also on the companies' websites, where they are to remain accessible for at least five years. When the ultimate parent is not governed by the law of an EU member state, the reporting will generally have to be done by the EU subsidiaries or branches, unless the ultimate parent publishes a report including those subsidiaries and branches.

9.12 Taxation of Digital Economy Businesses

No changes have been discussed or proposed at a domestic level.

In 2023 the European Commission proposed a new directive entitled "Business in Europe: Framework for Income Taxation" (BEFIT). This directive will ultimately lay down a common set of rules for EU companies to calculate their taxable base with an allocation of profits between EU member states based on a formula.

The Commission argues that the proposal will reduce compliance costs by creating a coherent approach to corporate taxation in the EU, but the proposal and its predecessor (the common consolidated corporate tax base) have long been controversial and resisted by a number of member states, including Ireland.

In 2023, the Council of the European Union adopted new tax transparency rules for service providers facilitating transactions in crypto-assets for customers resident in the EU. This has brought crypto-asset providers and platforms providing services in relation to crypto-currencies and crypto-assets into the scope of the automatic exchange of information.

The EU DAC8 Directive (DAC8) will introduce disclosure and reporting obligations for crypto-intermediaries who facilitate transactions by EU customers. It will add digital financial products such as central bank digital currencies (CBDCs) to the scope of reporting under the existing DAC framework, to reflect the updated OECD Common Reporting Standard. DAC8 will also build on the EU's objective to promote global tax transparency in the digital market as it is expected to operate in conjunction with the existing EU Regulation of Markets in Crypto-Assets (MiCA).

These new reporting requirements on crypto-assets, e-money and CBDCs will enter into force on 1 January 2026 through DAC8.

9.13 Digital Taxation

The Irish government opposed the EC's interim proposal for a "digital economy tax", with the Irish Minister for Finance referencing the OECD reports on digital taxation and the need for broader international consensus on this issue, rather than EU-focused measures. The Irish government also published a reasoned opinion on 16 May 2018, addressed to the President of the EU Council, questioning the necessity of these measures. Accordingly, Ireland does support the OECD Pillar One initiative (see **9.2 Government Attitudes**).

9.14 Taxation of Offshore IP

Payments of patent royalties by an Irish resident company are typically subject to withholding tax at 20%. Patent royalties paid to associated companies resident in another EU member state or paid in the course of a trade or business to a company resident in a country with which Ireland has a double tax treaty are generally exempt from withholding tax. Irish Revenue issued a Statement of Practice in 2010, which effectively extends the relief from withholding tax on certain

patent royalties paid to non-treaty countries. To avail of the exemption, certain conditions must be met, including the fact that the royalty must be paid in respect of a foreign patent and the payment must be made in the course of the Irish paying company's trade. Prior approval from Irish Revenue will be required.

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