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Corporate Tax 2023

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Ireland: Law & Practice
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IRELAND

Law and Practice

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

1.1 Corporate Structures and Tax Treatment

Businesses in Ireland tend to incorporate in order to take advantage of the benefits of separate legal entity status and limitation of liability. Ireland enacted amended and consolidated company law legislation in 2014 (the Companies Acts 2014), which 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.

The limited company has traditionally been the most popular form for incorporated trading business, and is likely to remain so. Companies involved in the issuance of listed debt securities are formed as DACs. Investment funds are incorporated as investment companies or as Irish Collective Asset Management Vehicles (ICAVs).

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 two 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, where a company is carrying on an active business in Ireland on a regular or habitual basis and with a view to realising a profit, it should be considered to be trading for tax purposes.
- 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.

In October 2021, the Irish Minister for Finance announced that Ireland would sign up to the

OECD's Inclusive Framework, which was intended to reform international tax rules in order to address the challenges arising from the digitalisation of the global economy. As part of its implementation, a new corporation tax rate of 15% will be introduced in Ireland for large groups – specifically, groups with an annual consolidated revenue in excess of EUR750 million.

The EU Directive on minimum taxation was published in the EU Official Journal on 22 December 2022. EU member states must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2023.

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 25% 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 company's corporation tax liability, and is available on a group basis in the case of group companies. The tax credit is calculated separately from the normal deduction of the R&D expenditure in computing the taxable profits of the company.

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.

The R&D tax credit is now payable under a new three-year fixed payment schedule. This change was introduced by amendments included in the most recent Irish Finance Act (Finance Act 2022), which was published on 20 December 2022.

Knowledge Development Box

In 2016, Ireland introduced 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 6.25%. A potential 30% uplift in the qualifying expenditure is available, capped at the total amount of acquisition costs and group outsourcing costs.

Finance Act 2022 confirmed the extension of the knowledge development box relief for a further four years.

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 is acquired prior to 14 October 2020 and held for more than five years, there is no clawback of the allowances on a disposal (unless the asset is sold to a connected company that wishes to claim allowances). If an intangible asset is acquired on or after 14 October 2020, a clawback or "balancing charge" will only 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

At the start of 2022, Ireland introduced a new tax credit for the digital gaming sector, which will operate as a refundable corporation tax credit for qualifying expenditure incurred in the design and development of digital games. The tax credit will be 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 will also apply.

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), which was transposed into Irish law in Finance Act 2021 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.

Finance Act 2022 introduced certain amendments to the ILR. The most significant of the changes is updated relieving provisions for qualifying long-term infrastructure projects, which now include the provision, upgrade, operation or maintenance of a large-scale residential development.

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 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 (SDCA) (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 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 at a rate of 3% at the outset. The introduction of the tax will be gradual, with a two-year lead-in time for land zoned before January 2022 and a three-year lead-in time for land zoned after January 2022. This tax is intended to replace the vacant site levy when it comes into operation.

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 close 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 income tax at their marginal rate on the gross amount of any dividend received from an Irish company (whether that company is a closely held company or otherwise), with a credit for any dividend withholding tax (DWT) suffered.

Withholding tax at 25% is deducted from payments of dividends by Irish-resident companies to both Irish and non-Irish-resident individuals.

Irish-resident individuals are liable to CGT at a rate of 33% on the sale of shares in an Irish com-

pany (whether that company is a close 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;
- minerals in Ireland and rights or interests associated with mining for or searching for minerals in Ireland; or
- exploration or exploitation rights in the Irish Continental Shelf.

Finance Act 2022 implemented welcome changes to the Irish Key Employee Engagement Programme (KEEP) share option scheme, which are relevant to SMEs and start-up businesses. KEEP 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).

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 for:

- interest paid in Ireland to a bank carrying on a bona fide banking business;
- interest paid by such 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); 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).

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

Finance Act 2019 introduced new changes to Ireland's transfer pricing rules, in part to bring Ireland's transfer pricing legislation in line with the 2017 OECD Transfer Pricing Guidelines, and has 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 is evidenced by an increase in Ireland's number of MAP cases in 2018, which rose by over 33% in the 12 months up to January 2019, and then rose again in 2019 by more than 50%.

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.

Although the increasing number of MAP cases would indicate that a proliferation of disputes has occurred in recent years, the prevailing view is that Irish Revenue (as the Irish Competent Authority), where provided with comprehensive supporting transfer pricing documentation by the taxpayer, has shown an ability to resolve disputes on a principled basis that reflects the merits of the Irish taxpayers' position.

The Irish government has invested in tax administration to reflect the new international tax architecture, including with respect to MAPs and bilateral APAs, which it considers to be important for taxpayer certainty.

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);
- minerals in Ireland and rights or interests associated with mining or searching for minerals in Ireland;
- exploration or exploitation rights in the Irish Continental Shelf;
- unquoted shares or securities deriving their value or the greater part of their value directly or indirectly from the above assets;
- assets situated in Ireland that are used, held or acquired for business carried on in Ireland through a branch or agency; and
- assets of a life assurance company that are situated outside Ireland but held in connection with the life business carried on by the company in Ireland, and that were used or held by or for the purposes of that company's branch or agency in Ireland.

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% 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;
- in a country with which Ireland has a double tax treaty;
- in a country that has ratified the Joint Council of Europe/OECD Convention on Mutual Assistance in Tax Matters; or
- in 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

Prior to ATAD, Ireland had very limited controlled foreign corporation (CFC) rules. However, ATAD-compliant CFC rules were introduced in Finance Act 2018, with the legislation taking effect for accounting periods beginning on or after 1 January 2019. Of the two frameworks available under ATAD, Ireland chose to adopt the "Option B" model.

Option B focuses on CFC income that is diverted from Ireland. Broadly, 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. A CFC will be regarded as having non-genuine arrangements 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 OECD report. 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 does have general anti-avoidance rules, which have recently been amended and are 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. The anti-avoidance rules mean that 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.

Where a person enters into a tax-avoidance transaction (ie, one that gives rise to a tax advantage contrary to general or specific anti-avoidance provisions), that person 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 Irish general anti-avoidance provisions are regarded as being broader than those 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.

9. BEPS

9.1 Recommended Changes

In response to the BEPS recommended changes, Ireland introduced country-by-country reporting, updated its transfer pricing legislation in line with 2017 OECD guidelines, and implemented the CFC, anti-hybrid and interest limitation rules under ATAD, among other measures.

Other recent reforms include ratification and implementation of the BEPS Multilateral Instrument, automatic exchange of information under CRS and implementation of Council Directive (EU) 2018/822 (DAC6).

9.2 Government Attitudes

The Irish government is committed to ongoing work on corporate tax reform, and last published an update to its 2018 Corporate Tax Roadmap in January 2021. The Roadmap lays out the next steps in Ireland's implementation of various commitments made through BEPS, along with other international initiatives. In this regard, Irish legislation concerning tax regulation has significantly increased over the last few years, and this effort is set to continue.

With respect to the Irish government's wider attitude, the Irish Department of Finance 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 BEPS proposals.

Like other EU member states, Ireland has until 31 December 2023 to transpose the EU directive implementing the Pillar Two Global Minimum Tax Rules. According to a statement given by the Irish Minister for Finance in October 2021, Pillar Two will impact approximately 56 Irish multinational companies and 1,500 foreign-owned multinational companies.

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 generally apply 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 in place by mid-2023, with Pillar One entering into force in 2024.

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 (overturned in 2020 by the EU courts and awaiting final judgment), 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.

9.4 Competitive Tax Policy Objective

Ireland has undertaken to review its corporate tax code regularly to ensure that new standards such as BEPS 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 reformsare 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 have 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, with effect from 1 January 2020 (1 January 2022 in the case of reverse hybrids).

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 for-

eign source dividends. The public consultation concluded in May 2022, and a limited territorial could be introduced in the future.

Previously, the policy rationale for not adopting a territorial tax system was that Ireland did not have CFC legislation to prevent the artificial diversion of profits to other jurisdictions. However, EU ATAD-compliant CFC rules were introduced into Irish law by Finance Act 2018. In addition, the recent introduction of extended transfer pricing rules, the ATAD ILR and anti-hybrid rules further protect Ireland's domestic tax base from the artificial diversion of profits and base erosion.

Notwithstanding the fact that the Finance Bill in 2023 will likely already have to deal with Pillar Two and the transposition of several EU Directives, among other things, many of the responses from stakeholders on the consultation say that it is important that Ireland introduces a limited territorial system of taxation.

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) on 7 June 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 current General Anti-Avoidance Rule 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. 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. Council Directive (EU) 2016/881 implemented these measures in May 2016, 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") was formally adopted and published in the EU Official Journal in November 2022, and entered into force on 21 December 2022.

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 will require 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 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, but 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.

Furthermore, Finance Act 2019 introduced new rules giving effect to DAC6. The EU DAC6 Mandatory Disclosure Rules legislation provides for the sharing of taxpayer information between the tax administrations of EU member states. DAC6 introduced a mandatory disclosure regime for certain cross-border transactions and came into effect on 1 July 2020.

9.12 Taxation of Digital Economy Businesses

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

On 13 October 2022, the EU Commission launched a public consultation entitled "Business in Europe: Framework for Income Taxation" (BEFIT), in accordance with which it aims to propose a directive by the third quarter of 2023 on 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.

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 apply, 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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