UPDATE

Ireland as a Location for International Operating Companies

Ireland is one of the world's leading locations for international operating companies. The pro-business environment, attractive corporation tax regime, English speaking workforce and ease of access to European Union markets all combine to offer opportunities to businesses from all over the world.

Tax Treaty Network

Ireland has signed double tax treaties with over 70 countries. The network of treaty partner countries is set out in the Appendix and includes key tax and legal jurisdictions in Asia and the GCC region, as well as most of the world's major economies. In addition, negotiations have concluded for new treaties with Kenya, Kosovo, Oman and Uruguay. Negotiations have also concluded on Protocols to the existing treaties with Germany, Guernsey, the Isle of Man and Mexico.

Corporation Tax - Rate of Tax

Ireland has two rates of corporation tax - a 12.5% rate and a 25% rate. The 12.5% rate applies to trading income generated or received by an Irish company.

Generally, trading means the carrying on of business or the engaging in activities on a regular basis with a view to realising a profit. In analysing whether a company is carrying on trade, it is important to demonstrate that the company has the necessary "substance" in Ireland.

The Irish Revenue Commissioners, in considering whether an activity constitutes the carrying on of a trade, look to see whether there is commercial rationale for the type of situation proposed, whether there is real value added in Ireland and whether there are employees and / or directors in Ireland with sufficient levels of skill to actually carry on the trade. To achieve the necessary substance, both from an Irish and overseas perspective, the Irish company should have directors in Ireland and generally also employees in Ireland who are genuinely involved in the operation of the business and all decisions of importance in terms of the management and control of the business (at a strategic level) are undertaken in Ireland. We will be happy to discuss your particular fact pattern with you to explore whether the 12.5% corporation tax rate would apply.

A tax rate of 25% applies to non-trading (or passive) income such as investments and rental income and certain specified trades.

Tax Residency

To fall within the Irish tax regime and benefit from Ireland's treaties, a company must be resident in Ireland for tax purposes. Tax residency is primarily determined by the "central management and control test". Management and control relates to the decisions of strategic importance to the business of the company as opposed to the day to day administration of the company.

The main indicators of central management and control are that the majority of the board of directors are Irish resident and that all major business decisions affecting the company are made and approved in Ireland at board meetings which are held and chaired in Ireland. Ultimately, the residence of the company for tax purposes is a question of fact and it will, in each case, be necessary to demonstrate that the central management and control of the company is located in Ireland.

Calculation of Profits

Companies are subject to corporation tax on trading income on the full amount of the profit or gains of the year of assessment. An Irish trading company is entitled to deduct any revenue expenditure incurred "wholly and exclusively" for the purposes of the trade. Therefore, interest payments are generally tax deductible for an Irish trading company. Interest payments made to a non-EU 75% parent can be re-characterised as a non-deductible distribution. However, there is an exclusion from this re-characterisation where the interest is paid by a trading company to a treaty resident company and an election is made by the trading company. This should therefore allow deductibility of interest paid to a treaty country resident parent company.

A tax deduction (referred to as "capital allowances") is also available in respect of capital expenditure incurred by an Irish company on plant and machinery, industrial buildings and intellectual property. The rate of capital allowance available is typically 12.5% of the capital expenditure on a straight line basis over a period of eight years, or as determined by the accounts in certain cases.

Repayment of Profits

A central aim of Ireland's economic policy is to facilitate international investment. This means that there are a wide range of exemptions from Irish withholding tax on dividends (at a rate of 25%) and interest paid by an Irish company (at a rate of 20%) and in respect of capital gains realised by a foreign shareholder on a disposal of Irish shares. In particular, dividends and interest paid to a company resident in a tax treaty partner country should generally be exempt from Irish tax.

Research and Development (R&D) Tax Credits

R&D tax credits allow qualifying companies involved in the carrying on of R&D activities to benefit from a tax credit of 25% of incremental R&D expenditure (both capital and revenue) over the base year. The base year is the accounting period ending in 2003. The tax credit is in addition to the corporation tax deduction at 12.5% for qualifying expenditure.

The tax credit is used to reduce the company's corporation tax liability and any unused portion can be carried forward indefinitely. In certain circumstances the tax credits can be converted into cash payments from the Irish Government (this is useful for companies that are in a loss making position). The amount of money that can be claimed back is limited to the greater of (i) the corporation tax paid by the company for the preceding 10 accounting periods and (ii) the payroll liabilities for the period in which the expenditure on R&D activities was incurred. For a start-up company the limit will be the payroll taxes for the period in which the expenditure was incurred.

Tax credits are available to companies within the charge to Irish tax that undertake R&D activities within the European Economic Area. The relief may be available on a group basis in the case of group companies. The relief is generally available for R&D activities carried out in areas such as software development, engineering, medical sciences, pharmaceuticals, agriculture and horticulture.

Changes introduced as part of Finance Act 2019 have enhanced the tax credit for small and micro companies, i.e. companies that employ less than 50 persons and whose annual turnover and / or annual balance sheet total does not exceed €10 million. For these companies, the rate has been increased to 30% and the cap on the amount of 'cash back' that can be received has been increased to the aggregate of twice the payroll tax liabilities for the relevant accounting period. In addition, small and micro companies conducting pre-trading R&D can now claim the tax credit before commencing trading.

Intellectual Property Regime

Companies carrying on a trade can claim a tax deduction on capital expenditure incurred on the provision of certain 'specified intangible assets' for the purposes of their trade. Intangible assets include patents, registered designs, trademarks, certain know-how, domain names and goodwill directly attributable to intangible assets.

The allowances will typically follow the accounting write-down but the company can elect for a fixed write-down period of 15 years (7% per annum and 2% in year 15). The allowances can be offset against income generated from managing, developing or exploiting the intangible assets or income from selling goods or services that derived their value from the intangible assets.

Allowances can be claimed where the intangible asset is acquired from another party (including an affiliate) (arm's length pricing rules apply). In the context of transfers of intangible assets between Irish group companies, allowances can be claimed where an election is made to opt out of certain capital gains tax group relief provisions.

Certain restrictions apply to the relief. The main restriction is that the aggregate amount of any allowance and related interest expense, i.e. interest incurred to acquire the intangible asset, in an accounting period cannot exceed 80% of the related annual income. Any unused allowances or interest can be carried forward indefinitely and used against related annual profits in future years. There is an exemption from Irish stamp duty on the transfer of specified intangible assets.

Further Information

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Tax

Andrew Quinn
+353 1 619 2038
andrew.quinn@maples.com

Lynn Cramer
+353 1 619 2066
lynn.cramer@maples.com

Corporate

Deirdre MacCarthy
+353 1 619 2754
deirdre.maccarthy@maples.com

Data, Commercial & Technology

Claire Morrissey
+353 1 619 2113
claire.morrissey@maples.com

May 2021

Appendix 1

Irish Double Tax Treaties (as at October 2020)

Maximum source country tax rates in Irish tax treaties for dividend, interest and royalty payments.

Country	Dividends	Interest	Royalties
Albania	5/10	7	7
Armenia	0/5/15	0/10	5
Australia	15	10	10
Austria	10	0	0
Bahrain	0	0	0
Belarus	5/10	5	5
Belgium	15	15	0
Bosnia Herzegovina	0	0	0
Botswana	5	7.5	5/7.5
Bulgaria	5/10	5	10
Canada	5/15	10	10
Chile	5/15	4/5/10	2/10
China	5/10	10	6/10
Croatia	5/10	0	10
Cyprus	0	0	0
Czech Republic	5/15	0	10
Denmark	0	0	0
Egypt	5/10	10	10
Estonia	5/15	10	0
Ethiopia	5	5	5
Finland	0	0	0
France	0	0	0
Georgia	0/5/10	0	0
Germany	5/15	0	0
Ghana*	7	0/7	8
Greece	5/15	5	5
Hong Kong	0	0/10	3
Hungary	5/15	0	0
Iceland	5/15	0	0/10
India	10	10	10
Israel	10	5/10	10
Italy	15	10	0
Japan	0	10	10
Kazakhstan	5/15	10	10
The Republic of Korea	0	0	0
Kuwait	0	0	5
Latvia	5/15	10	5/10
Lithuania	5/15	10	5/10
Luxembourg	0	0	0
Macedonia	0/5/10	0	0

Malaysia	10	0/10	0/8
Malta	5/15	0	5
Mexico	5/10	0/5/10	0/10
Moldova	5/10	5	5
Montenegro	5/10	10	5/10
Morocco	6/10	10	10
Netherlands	15	0	0
New Zealand	0	10	0/10
Norway	5/15	0	0
Pakistan	5/10	10	10
Panama	5	0/5	5
Poland	15	0/10	10
Portugal	15	15	10
Qatar	0	0	5
Romania	3	0/3	0/3
Russia	10	0	0
Saudi Arabia	0/5	0	5/8
Serbia	5/10	10	5/10
Singapore	0	5	5
Slovakia	0/10	0	10
Slovenia	5/15	5	5
South Africa	5/10	0	0
Spain	15	0	0/5/8/10
Sweden	0	0	0
Switzerland	0/15	0	0
Thailand	10	10/15	5/10/15
Turkey	10/15	10/15	10
Ukraine	5/15	5/10	5/10
United Arab Emirates	0	0	0
United Kingdom	5/15	0	0
United States	5/15	0	0
Uzbekistan	5/10	5	5
Vietnam	5/10	10	5/10/15
Zambia	7.5	10	8/10

* Treaty not yet in effect.