

The International Comparative Legal Guide to: Corporate Tax 2008

A practical insight to cross-border Corporate Tax work



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1 General: Treaties

1.1 How many income tax treaties are currently in force in your jurisdiction?

Since signing its first double tax treaty in 1952, Ireland has established an extensive income tax treaty network. At present, Ireland is a party to 44 international tax treaties, which include all EU countries. A new treaty with Chile has recently been concluded and will become effective for tax periods in 2008. New treaties with Argentina, Egypt, Georgia, Kuwait, Malta, Macedonia, Moldova, Morocco, Thailand, Tunisia, Turkey, Ukraine, and Vietnam are currently being negotiated.

1.2 Do they generally follow the OECD or another model?

With the exception of the Ireland - USA tax treaty, the treaties to which Ireland is a party are all based on the OECD Model Convention (the "Convention"). In certain circumstances the language and terminology of the Convention do not mirror that used in Irish legislation. In these instances the treaties should be interpreted unconstrained by technical rules of Irish law, or by Irish legal precedent, but on broad principles of general acceptance.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

A tax treaty does not become part of the domestic law of Ireland unless and until it becomes incorporated into the domestic law of Ireland by a Statutory Instrument. The treaty will then enter into force from the date determined by the treaty and will have effect in relation to each tax covered from the dates determined by the treaty.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation of benefits" articles)?

In general, Ireland has avoided wide limitation of benefits provisions but has instead made specific provisions in particular treaties. For example, the Ireland-US Agreement includes a specific limitation of benefits provision. In addition, more specific anti avoidance rules are contained within certain articles, such as the Interest article of the Ireland-UK treaty which provides that Ireland will not give up its taxing rights if broadly the main purpose or one of the main purposes of the creation or assignment of a loan is to take advantage of the article.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

On being incorporated into Irish domestic law, the provisions of a tax treaty will prevail over Irish domestic legislation to the extent that there is a conflict.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Stamp duty is charged on certain documents either executed in Ireland or relating to Irish property or certain actions taken in Ireland. The tax payable is either a fixed duty or a percentage of the value of the transaction (for example stamp duty of 1% of the consideration applies on the transfer of shares in an Irish company whilst stamp duty of between 1% and 9% can apply on the transfer of real property situated in Ireland). There are numerous exemptions from the charge to stamp duty and, with careful planning, it is often possible to minimise the stamp duty payable.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Ireland has VAT, with the principal legislation being the Value-Added Tax Act 1972 (as amended) which gives effect to the various EC Directives. There are four main rates of VAT:

- the standard rate of VAT is 21% (this rate applies to any supply of goods or services which is not exempt, zero-rated or subject to the reduced rate of VAT);
- the reduced rate of VAT is 13.5% (e.g. property, newspapers, magazines, provision of holiday accommodation, cleaning and maintenance services);
- the 4.8% rate which applies to the supply of livestock and live greyhounds and the hire of horses; and
- the zero-rate of VAT is 0% (eg certain foods, books, children's wear).

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

The exclusions from VAT are as permitted or required by the Directive on the Common System of VAT (2006/112/EC) and some examples of exempt supplies are:

- certain supplies of land;
- banking, financial services and insurance services; and
- medical and dental services.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Input tax is only recoverable by a taxable person (a person who is or is required to be registered for VAT).

Input tax on supplies wholly used to make taxable supplies is generally deductible in full. Input tax wholly used to make exempt or non-business supplies is not deductible. Where a taxable person makes both taxable and exempt supplies and incurs expenditure that is not directly attributable to either, the VAT on the expenditure must be apportioned between the supplies. There are a number of methods that may be used to apportion such VAT generally based on the ratio of taxable supplies to non-taxable supplies

2.5 Are there any other transaction taxes?

A person supplying or disposing of assets may be subject to income tax, corporation tax or capital gains tax on the disposal proceeds. Further details are set out below.

2.6 Are there any other indirect taxes of which we should be aware?

Customs duties are generally payable on goods imported from outside the EU. Excise duties are levied on particular classes of goods (e.g. alcohol and tobacco). Insurance premium tax is charged on the receipt of a premium by an insurer under a taxable insurance contract. There are certain environmental taxes such as climate change levy, plastic bag levy.

3 Cross-border Payments

3.1 Would there be any WHT on royalties paid by a local company to a non-resident?

Patent royalties are subject to a withholding obligation of 20% although many exemptions are available. Copyright royalties are in general not subject to withholding tax. The requirement to deduct tax at source does not apply to a royalty payment to a corporate shareholder where:

- the Irish company is a 51% subsidiary of the recipient provided that the recipient is resident in an EU Member State;
- the provisions of Council Directive 2003/49/EC (Directive on Interest and Royalties) apply; or
- that shareholder is resident for tax purposes in a jurisdiction with which Ireland has a double taxation agreement in force and that agreement provides for a 0% rate of withholding tax.

3.2 Would there be any WHT on interest paid by a local company to a non-resident?

Interest paid by an Irish resident company may be subject to withholding tax. In general, unless the circumstances falls within one of the many domestic exemptions from withholding tax or treaty relief is available, an Irish resident company must deduct

withholding tax at 20% on payments of interest. There are numerous domestic exemptions, such as where interest payments are made by a company to the extent that:

- The interest is paid in the ordinary course of business of the payer and the recipient is a company that:
 - is tax resident in an EU Member State (other than Ireland), or in a territory with which Ireland has a double tax treaty; and
 - does not have an Irish branch or agency, with which the interest is connected.
- The interest is paid on securities that are quoted on a recognised stock exchange and the interest payments are made:
 - by a non-Irish paying agent; or
 - by, or through, an Irish paying agent; and
 (a) an appropriate form of declaration of non-residence is provided to the paying agent by, or on behalf, of the person who is the beneficial owner of the notes or bonds and entitled to the interest (or where the provisions of tax legislation deem the interest to be that of some other person, by that person); or
 (b) the notes are held in a recognised clearing system (such as Euroclear or, Clearstream, Luxembourg, or DTC).
- The interest is paid to a person resident in a jurisdiction with which Ireland has a double taxation agreement and which provides for a 0% rate of withholding tax.

3.3 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Ireland does not have "thin capitalisation" rules

3.4 If so, is there a "safe harbour" by reference to which tax relief is assured?

Ireland has no "safe harbour" rules.

3.5 Would any such "thin capitalisation" rules extend to debt advanced by a third party but guaranteed by a parent company?

Ireland does not have "thin capitalisation" rules.

3.6 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Dividends paid by a resident company are generally subject to dividend withholding tax at the standard rate of income tax (currently 20%) unless the paying company has received all of the requisite documentation before payment of the dividend and the shareholder falls within one of the following categories of exempt shareholders:

- Irish resident companies, pension schemes, charities, certain sporting bodies, collective investment undertakings, employee share ownership trusts, designated brokers in relation to Special Portfolio Investment Accounts, and qualifying fund managers in relation to Approved Retirement Funds;
- individuals who are residents of an EU Member State or of a country with which Ireland has a double taxation treaty provided that the individual is neither resident nor ordinarily resident in Ireland;
- companies which are resident in an EU Member State or in a country with which Ireland has a double taxation treaty and which are not ultimately under the control of Irish residents;

- non-resident companies which are ultimately controlled by persons who are resident for tax purposes in an EU Member State or in a country with which Ireland has a double tax treaty;
- non-resident companies which are quoted and traded on a recognised stock exchange (of an EU Member State or of a country with which Ireland has a double tax treaty) or on such other approved stock exchange (or whose 75% parent, or, if owned by 2 or more companies, each of its 100% parents, are so quoted and traded).

3.7 Does your country have transfer pricing rules?

Ireland has only limited transfer-pricing legislation. Section 1036 of the Taxes Consolidation Act, 1997 seeks to prevent transfer pricing between a resident and a non-resident person where the non-resident person controls the resident and the profits of the resident are either nil or less than the ordinary profits which might be expected to arise from that business. This is not a provision that is often invoked in practice.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The standard rate of corporation tax on trading profits in Ireland is 12.5%. A rate of 25% applies to non-trading and foreign source income. The 25% rate also applies to certain land dealing activities and income derived from working minerals and petroleum activities.

In order to avail of the 12.5% rate of corporation tax which applies to trading income, a company would have to derive income from a trade which is actively carried on in Ireland. It is essential therefore that the profit making apparatus of the trade is located in Ireland and that the activity is controlled in Ireland.

Whilst company capital gains are generally subject to corporation tax, the gains are re-worked to ensure that the tax is charged at an effective 20% rate.

4.2 When is that tax generally payable?

Corporation tax operates on a self-assessment basis. Preliminary corporation tax (which must be equal to or greater than 90% of a company's final liability for the accounting period) is payable not later than the 21st day of the month preceding the end of the accounting period. A company must submit its corporation tax return in Form CT1 to the Revenue Commissioners within nine months of the end of the accounting period to which the return relates. If this date is after the 21st of the ninth month the filing date is brought forward to the 21st of the ninth month. Any balance of tax due must also be paid at this time.

Special provisions exist for small companies and new or start-up companies with corporation tax liabilities not exceeding €150,000.

4.3 What is the tax base for that tax (profits pursuant to commercial accounts subject to adjustments; other tax base)?

Irish trading profits are computed in accordance with Irish Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) subject to any adjustment required by law.

4.4 If it otherwise differs from the profit shown in commercial accounts, what are the main other differences?

In calculating taxable profits a company may deduct revenue expenses incurred wholly and exclusively for the purposes of the trade. Business entertainment expenses and depreciation may not, however, be deducted, although a company may be entitled to capital allowances in respect of certain capital expenditure such as plant and machinery and industrial buildings.

4.5 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Yes. Ireland does not permit group companies to be taxed on the basis of consolidated accounts but the grouping rules achieve a degree of effective consolidation. A group consists in most cases of a parent company and its subsidiaries which may in turn have subsidiaries. The exact test for whether a group exists depends on the type of group, but the common factor is that a specified percentage of issued share capital is required to be beneficially held directly or indirectly by the parent.

Group Relief Losses

Trading losses (as well as certain excess capital allowances, management expenses and charges on income) of a company may be offset against the taxable profits of the corresponding accounting period of another group company provided that both companies:

- a) are tax resident in Ireland or in another Member State of the European Union or the European Economic Area and have an Irish branch subject to Irish corporation tax;
- b) satisfy a 75% common shareholding and entitlement to profits and assets on winding up test; and
- c) meet certain other conditions.

Following the judgment of the ECJ in *Marks and Spencer v David Halsey (C446/03)* on 13 December 2005, Ireland's loss relief legislation has been amended by Finance Act 2007 to provide in certain very limited circumstances for group relief to be given in Ireland for otherwise unrelievable losses incurred by companies that are resident in either another EC State or an EEA Member State with which Ireland has concluded a double tax treaty. The new rules apply from 1 January 2006. The requirements for this extended relief are as follows:

- the surrendering company must be directly or indirectly a 75% subsidiary of the claimant company (note that losses may only be utilised "vertically upwards");
- the losses of the foreign subsidiary must not be available for offset against profits in another jurisdiction;
- the losses of the foreign subsidiary must not be used at any time by way of offset against profits in the country where the losses arise (this includes a current year's claim, a group relief claim, a group relief claim in the same jurisdiction, a preceding year's claim or a carry-forward of losses);
- the losses are calculated in accordance with the laws of the surrendering state; and
- the losses must not be attributable to a trade carried on in Ireland through a branch or agency.

Group relief is also available to members of a consortium where the loss-making company is owned by a consortium. A consortium is one where five or fewer companies own between them all the ordinary share capital of a trading company or a holding company whose business consists wholly or mainly of the holding of shares in trading companies that are its 90% subsidiaries. The loss-making company cannot be more than a 75% subsidiary of any member of the consortium.

Claims for group relief must be made by the company using the losses within two years from the end of the surrendering company's accounting period to which the claim relates. The surrendering company must also notify the Inspector of Taxes of its consent to surrender the relief. Group relief can only be utilised against the profits of the corresponding accounting period. Therefore, losses carried forward or back may not be surrendered.

There are two ways of claiming relief for group losses: firstly, as an allowance as described above, and secondly, as a credit on the value basis. Trading losses are first grouped against trading income (ignoring excepted trades such as mining, land dealing, etc.) and any excess may be grouped against the corporation tax payable on passive income and/or gains by way of a credit.

Capital Gains Group

Relief from corporation tax on chargeable gains is available where a capital asset is transferred from one company to another within a 75% group. For the purposes of capital gains tax relief two companies will generally be in a group if one company is a 75% subsidiary of the other or both are 75% subsidiaries of a third company and provided certain other conditions are met. The parent company must not only hold 75% of the ordinary shares of the subsidiary but must also be entitled to 75% of any distributions and to 75% of the surplus assets in the event of a winding up. Both companies must generally be tax resident in Ireland or else the asset transferred must remain within the charge to Irish capital gains tax.

Subsequent to an intra-group transfer, a charge to corporation tax on chargeable gains will arise when either:

1. the asset is sold out of the group in which case tax is calculated by reference to the original cost and acquisition date of the asset when first acquired within the group; or
2. the company owning the asset leaves the group within 10 years of the time of acquisition of the asset, in which case the gain which would otherwise have arisen on the intra-group transfer is triggered and the company leaving the group is treated as if immediately after its acquisition of the asset it had sold and immediately reacquired the asset at market value at that time.

Stamp Duty

Transfers between group companies are relieved from stamp duty where certain conditions are met.

VAT Group

Transactions between group members (aside from real property transfers) are disregarded for VAT purposes provided an application has been made to register the companies as a VAT group and further provided that certain conditions are met.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, tax rates don't differ for distributed profits.

4.7 What other national taxes (excluding those dealt with in "Transaction Taxes", above) are there - e.g. property taxes, etc.?

Commercial rates are payable by the occupier of a business premises based on the rateable valuation attributed to those premises and the rate on valuation determined annually by the relevant local authority.

4.8 Are there any local taxes not dealt with in answers to other questions?

There are no other local taxes.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Irish resident companies are subject to corporation tax on their chargeable gains as well as on their income. The gains are re-worked to ensure that the tax is charged at an effective 20% rate. The chargeable gain is calculated after subtracting the indexed base cost of the asset along with incidental acquisition and selling expenses from the proceeds of sale of the asset. Indexation is allowed for periods of ownership up to 31st December 2001 only.

As with individuals, resident companies are liable to capital gains tax on their worldwide gains, but non-resident companies are only liable to the tax on the disposal of certain specified assets. The specified assets are as follows:

- Irish land and buildings;
- Irish mineral exploitation or exploration rights;
- unquoted shares deriving the greater part of their value from such assets; and
- assets used in a trade carried on in an Irish branch or agency.

Gains arising to an Irish company on the disposal of shares in certain subsidiary undertakings are exempt from corporation tax provided certain conditions are met. (See question 5.3 below.)

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

Capital gains of a company are generally subject to corporation tax at 20%. The trading income of a company is however generally subject to corporation tax at 12.5%. Non trading passive income is generally subject to corporation tax at 25%.

5.3 Is there a participation exemption or relief for reinvestment?

Ireland has a holding company regime which can exempt Irish resident companies on disposals by a company of substantial shareholdings. Gains arising to an Irish resident company on the disposal of shares in certain subsidiary undertakings will be exempt from corporation tax provided the following conditions are met:

1. the subsidiaries in whom the shares are being sold must be resident in Ireland, another EU Member State or a country with which Ireland has a double tax treaty in place;
2. the company making the disposal must have held at least 5% of the share capital of the subsidiary for a period of at least twelve months ending in the previous twenty-four months; and
3. at the date of disposal of the shares in the subsidiary, either (a) the subsidiary must carry on a trade; or (b) the business of the holding company, its 5% subsidiaries, the subsidiary company and its 5% subsidiary taken as a whole consists wholly or mainly of trading.

6 Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes imposed on the formation of a subsidiary.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

An Irish resident subsidiary would pay corporation tax on its worldwide income and gains whereas a branch operating in Ireland would be subject to corporation tax only on income arising from the activities of the branch or from property held by the branch in Ireland. The charge to Irish corporation tax imposed on a non-resident company only applies where the non-resident company is trading in Ireland through a permanent establishment. This means that a branch set up for investment purposes only and not carrying on a trade is not subject to Irish corporation tax, but will be subject to Irish income tax on Irish sourced income.

6.3 How would the taxable profits of a local branch be determined?

An Irish branch would be treated as though it was a distinct and separate legal entity dealing wholly and independently with the non-resident company.

Subject to any treaty provisions to the contrary, the taxable profits of an Irish branch or permanent establishment would comprise:

- trading income arising directly or indirectly through or from the branch or permanent establishment;
- income from property and rights used or held by or for the branch or permanent establishment; and
- chargeable gains accruing on the disposal of the assets situated in Ireland while the Irish trade is carried on and effectively connected with the operations of the branch or permanent establishment.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

No, it would not be subject to a branch profits tax.

6.5 Would a branch benefit from tax treaty provisions, or some of them?

A branch operation is normally not regarded as a resident of the jurisdiction in which the branch operates and therefore would not have full access to Ireland's double tax treaty network.

6.6 Would any withholding tax or other tax be imposed as the result of a remittance of profits by the branch?

No such tax would be imposed.

7 Anti-avoidance

7.1 How does your jurisdiction address the issue of preventing tax avoidance? For example, is there a general anti-avoidance rule or a disclosure rule imposing a requirement to disclose avoidance schemes in advance of the company's tax return being submitted?

Ireland has a general anti-avoidance provision contained in Section 811 of the Taxes Consolidation Act 1997. This section enables the Revenue Commissioners in Ireland to recharacterise any transaction (or part of a transaction) which gives rise to a tax advantage and which the Revenue believe was undertaken primarily to give rise to the tax advantage. It should be noted that the Revenue rarely invokes this provision. Whilst there is no requirement on taxpayers to voluntarily notify any scheme there is a facility for taxpayers to notify schemes that they believe may be at risk of being recharacterised. If the Revenue subsequently recharacterised the scheme, the penalties that the taxpayer would suffer would be substantially mitigated as a result of the fact that the taxpayer had notified the Revenue of the scheme.

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The Tax Group works on an integrated basis with teams in the corporate, finance, real estate, litigation and other practices in the firm. It also provides a strong "front-end" service, where our team of professionals takes the lead on advisory or transactional matters. The Group is comprised of tax advisers, whose various backgrounds and abilities enables us to provide a fully comprehensive and commercially sound business tax service to a wide range of domestic and international clients from all sectors.

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