

Doing Business  
in IRELAND



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# 1. About Us

## Andersen Global

**Andersen Global**® was established in 2013 as an association of legally separate, independent member firms, with a worldwide presence and comprised of professionals that share a common background and the same vision no matter the location where they are.

Our growth is a byproduct of the outstanding client service delivered by our people, the best professionals in the industry and our objective isn't to be the biggest firm, it is to provide best-in-class client services in seamless fashion across the globe.

Our professionals are selected based on quality, like-mindedness, and commitment to client service and each and every one of the professionals that are a part of Andersen Global share our core values.

Andersen Global was established to create an enduring place – ONE FIRM where clients across the globe are afforded the best, most comprehensive tax and legal services provided by skilled staff with the highest standards.

Outstanding client service has and will continue to be our top priority.

## About Andersen in Ireland

**Andersen in Ireland** provides a wide range of tax, accounting, financial advisory and related consulting services to individual and commercial clients in Ireland and internationally.

We specialize in providing taxation and business advice to high net worth individuals and companies, expanding into Ireland, Europe, Middle East, Africa (EMEA), Asia-Pacific (APAC) and the U.S. We can assist with optimizing their tax position on business and personal matters; structuring acquisitions, mergers and disposals; and all other Irish tax matters. We also provide accounting support to companies of all sizes as well as tax and business advice to small and medium-sized enterprises and start-ups operating in Ireland.

## 2. Country highlights



Post Brexit, Ireland is Europe's only member state where English is the primary business language. Ireland has a strategic location on one of the major sea and air routes between northern Europe and North America. The telecommunications infrastructure in Ireland is competitive and fully developed. Ireland has the youngest population in Europe with 40% of the population under 29 years of age and with high standards of education and a skilled and capable work force. The value proposition of talent and technology infrastructure enables Ireland to provide a first-class setting for investment. The Irish Government continues to pursue a pro-business economic policy by providing funding and other support incentives. The country is currently experiencing a sustained expansion phase driven by a growth in employment, increase in disposable income and in turn, increase in consumer expenditure.

- Ireland is home to the top 10 pharmaceutical companies in the world. (Source: IDA statistics)
- Eight of the top 10 global software companies have settled in Ireland. (Source: IDA statistics)
- Home to the 10 top Born on the Internet Companies (Source: Connect Ireland)
- Five of the top 10 companies in the Forbes list of the World's Most Innovative Companies are located in Ireland. (Source: IDA Ireland)
- Home to over 50% of the top financial services organizations globally (Source: Enterprise Ireland)
- Ireland is ranked first for flexibility and adaptability in the Eurozone. (Source: IMD World Competitiveness Yearbook, 2017)
- Ireland is ranked as the 11th best country in the world to do business in. (Source: Forbes)

### Republic of Ireland Profile

Population	4.8 million
Size	70,273 km <sup>2</sup>
Capital	Dublin
Other Major Cities	Galway, Cork, Limerick
Currency	Euro
Language	English
Time Difference	GMT + 0.00 (Daylight Saving +1 hour)
Economic Environment	<ul style="list-style-type: none"> <li>• GDP grew by 6.7% in 2018, well above the EU average.</li> <li>• Ireland is near full employment levels.</li> <li>• Ireland faces certain economic changes in light of Brexit, however, underlying economic activity remains robust, driven by construction investments and labor market developments.</li> </ul>
Political and Legal System	<ul style="list-style-type: none"> <li>• Stable parliamentary democracy governed by the Oireachtas which consists of the President and two Legislature houses.</li> <li>• The Irish Government is elected for five-year terms with the Taoiseach, currently Leo Varadkar, leading the government.</li> <li>• Long-standing member of the European Union and United Nations.</li> <li>• Irish legal system is based on common law, legislation, the Irish Constitution and EU law.</li> <li>• Northern Ireland is part of the United Kingdom and operates a separate system to the Republic of Ireland.</li> </ul>
Financial Infrastructure	<ul style="list-style-type: none"> <li>• Banking sector is governed by the Central Bank of Ireland.</li> </ul>
International Airports	<ul style="list-style-type: none"> <li>• Dublin, Shannon, Cork, Knock, Belfast (Northern Ireland)</li> </ul>

## Concessions and Investments Incentives

Due to Ireland's membership of the EU, as with other EU countries, state aid rules limit the number of concessions and investment incentives available. It was in this context that Ireland abolished a number of favorable tax regimes and replaced them with a 12.5% corporation tax rate applicable to all active trading income.

The Industrial Development Agency (IDA) offers support to businesses looking to establish in Ireland. Support can come in the form of logistical support or grant aid. Grants tend to be available for supporting employment in more disadvantaged areas of the country, for adoption of greener technology, or for supporting research and development (R&D).

Support, via the tax system, is also available for R&D, via a 25% repayable tax credit, tax depreciation for the acquisition of intellectual property and income from certain intangible property can be subject to a lower effective rate of tax (see below).

Qualifying film production work can be eligible for tax credits, with the credit equal to 32% to 37% of the spend, depending on where the film is produced, and the cap being EUR 70 million per film.

Ireland currently operates an immigrant investor program where in return for a minimum investment of EUR \$1 million in certain asset classes Irish residency can be obtained.

Relief against income tax can be granted to individuals investing in certain start-up companies, however, this is of most benefit to Irish resident individuals who will have the tax capacity to utilize the relief against their Irish tax liability.

Relief is available for Renewable Energy companies in the form of additional tax deductions for investing in the Green Energy sector.

Where conditions are met, Participation Exemption from Capital Gains Tax on disposals of worldwide subsidiaries can mean that gains on disposals of qualifying shareholdings will be exempt from capital gains tax and enhanced foreign tax credit relief will, in many cases, result in an effective exemption from corporate tax.

Where companies are considered part of a group (e.g., a 75% subsidiary of another or both are 75% subsidiaries of the same EEA parent) losses may be group-relieved between group members with tax residence in any EU Member State including Ireland.

Tax depreciation may be claimed on capital expenditure in the form of capital allowances. Irish tax legislation provides for capital allowances on plant and machinery, building allowances and certain energy efficient equipment.

Tax efficient share incentive plans allow employees to participate in the success of the group and assists in attracting and

retaining the best people. Such plans provide a cost-effective and tax efficient method for remunerating key executives.

Ireland offers a numbers of tax neutral funds vehicles and related entities for collective investments.

Tax depreciation may be claimed on capital expenditure in the form of capital allowances.



## 4. Ways of doing business

### Overview

When setting up a business in Ireland, it is important to be familiar with the different types of entities and to choose the right type for your venture. When a company is formed in Ireland under the Companies Acts, it becomes a separate legal entity and the shareholders enjoy limited liability. Therefore, it is the company and not the shareholders who would be held liable in the event of litigation.

### Types of Business Organizations

#### Private companies

##### *Company Limited by Shares (LTD)*

A company limited by shares is known as a Limited company (LTD). The liability of the members is limited to the amount paid on their shares. Private Limited Companies have

between one and 149 members and have a single document constitution. Unlike other companies established in Ireland, a limited company does not include an objects clause which would restrict the activities it could undertake. An LTD must have at least one director and a company secretary which must be a separate person. Unlike other forms of companies described below, an LTD does not need to hold an Annual General Meeting (AGM) and has the option of adopting written procedures instead.

##### *Designated Activity Company (DAC)*

A Designated Activity Company is a private company with share capital or a private company limited by guarantee with a share capital. A DAC must have at least two directors and a company secretary and must convene an Annual General Meeting within 18 months of its financial year end. The liability of the DAC members is limited to the amount paid on their shares, or in the case of a DAC



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limited by guarantee, to the amount which members have guaranteed to contribute to the company on a winding up. Like an LTD company, it can also have between one and 149 members. Unlike an LTD company, a DAC is restricted in the activities which it can undertake as it has an objects clause in its constitution which describes the principal objects for which the company was incorporated (e.g., a rental company or a holding company). An example of a DAC would be a company that is incorporated for a specific purpose where the shareholders wish for the capacity of the company to be clearly defined.

#### *Private Unlimited Company (ULC)*

This is a private company with unlimited liability meaning that members are liable to contribute to the liabilities of the company in the event of a winding up. Similarly to a DAC, a ULC must also have two directors and a

company secretary and must convene an Annual General Meeting.

## **Public Companies**

### *Public Limited Company (PLC)*

PLC's may offer shares to the public by listing them on a stock exchange and are more commonly seen among larger companies. A PLC must have at least one member, however, there is no maximum limit on the number of members which a PLC may have with all members having limited liability. A PLC has a two-document constitution and must include an objects clause. PLC's must have a minimum share capital of EUR 25,000, of which at least 25% must be fully paid up upon incorporation.

### *Public Unlimited Company (PUC/PULC)*

Shareholders in unlimited companies have unlimited liability for the debts of the company. There are two types of public



unlimited companies under the Companies Act 2014: Public Unlimited Company with share capital (PUC) and Public Unlimited Company without a share capital (PULC). In the case of a PULC, the liabilities are guaranteed by members. A PUC and PULC may list debt securities and must have a two-document constitution.

## **Other Types of Legal Entities**

### *Guarantee Companies (CLG)*

CLG's are commonly used for not-for-profit organizations such as charities or sports clubs as they secure the benefits of separate legal personality and of limited liability but are not required to raise funds from the members. In the event of winding up, the liability of the members of the CLG is limited to the amount that they guarantee in the constitution of the company.

### *Branch of a foreign corporation*

Where a foreign corporation wishes to set up a branch in Ireland, registration must take place within one month of the establishment of the branch in the Ireland. Companies from a Member State of the EEA must file the prescribed form to register a branch, while an alternative form exists for non-EEA member state who wish to register as a branch. The Constitution of the Head Office company is also required for the branch, together with the certificate of incorporation and the latest accounts for the company. Documents should be translated to English where they are not already in either English or Irish.

### *Partnerships and Limited Partnerships*

A partnership consists of at least two persons and there is normally a maximum of 20, with certain financial partnerships having up to 50 persons. A partnership is not a separate legal

entity and does not have a legal personality distinct from the partners, and therefore the partners are personally liable to their clients. A partnership may adopt a business name where they do not use the names of the partners who comprise the partnership.

A limited partnership must have at least one general partner who has unlimited liability for the partnership's debts, with limited partners only being exposed to the extent of their partnership capital.

Limited Liability Partnerships with separate legal personality are only available to law firms at this time.

### *Various Funds Vehicles*

Ireland offers a large range of funds vehicles in different legal forms. Most offer tax neutrality other than where the majority of funds invested in Irish real estate, or where the investors are Irish tax resident.

### *Societas Europaea (SE)*

SE's are public limited liability companies formed under EU Regulation. An SE can be formed either by a merger or as a holding or subsidiary company, or in cases where there is a conversion of a plc to SE. They require members from different Member States unless an SE itself is setting up a subsidiary SE.

### *European Economic Interest Group (EEIG)*

EEIG's allow businesses within the EU to engage in cross-border commerce. This enables and develops the economic activities of an EEIG's members. An EEIG requires a minimum of two members, who are either companies or natural persons, from different Member States.



## Setting up a Business

Setting up an entity in Ireland is generally not complex and can be completed within one week if a standard constitution is used. Companies and business names in Ireland are registered by the Companies Registration Office (CRO). In forming a company, the business will need to prepare the company's Constitution in the format required by the Companies Act 2014 followed by the completion and filing of required forms with the CRO. Tax registration can take an additional time of two to four weeks.

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Generally speaking, any individual can act as a director of an Irish company unless specifically disqualified. The Companies Act 2014 sets out a requirement that at least one director of an Irish company must be EEA resident. This requirement can be dispensed with where there is a real and continuous link with economic links carried out in the State. Where a company has no EEA resident director, the company must enter a bond for a sum of EUR 25,000 as security for the payment of fines which is generally provided by one of a number of insurance firms at a cost of circa EUR 1,600.

A person can be a director of a maximum of 25 companies under Irish Company Law. However, a director of a holding company and one or more of its subsidiaries are considered to be one directorship for the purpose of this test.

## Corporate Compliance

### Directors Obligations

Directors have an obligation to act in good faith in the exercise of their powers as director. They must consider what is in the best interest of the company and in the best interests of the members of the company taken as a whole. They have a wide-ranging list of duties to ensure that the company complies with the Companies Acts, such as producing a director's report for the financial statements and convening annual general meetings.

### Secretary Obligations

Every company is required to have a company secretary who is an officer of the company. The company secretary may also act as a company director. A company secretary's role is generally administrative rather than managerial in nature. Secretary's responsibilities include ensuring that important documentation is properly executed with directors, providing administrative support to board of directors and facilitating proper communications relating to board decisions and shareholders. Other common duties include convening meetings, ensuring statutory forms and completed and delivered to the Companies Registration Office (CRO), keeping minutes of meetings and distributing copies of accounts to members.

### Company Compliance Obligations

It is essential that companies disclose all required information to the CRO. Companies who fail to comply with these obligations face sanctions which could result in an involuntary wind up of the company, fines or in extreme cases imprisonment. Therefore, it is critical that management of a company are fully aware and compliant of their filing responsibilities.

### Maintain and Disclose Proper Books of Account

Companies must maintain and disclose proper and accurate books of account. Accounts should contain all transactions of the company and portray a true and fair view of the financial position of the company. Accounts should be available if an audit is required and comply with the requirements and standards of the Companies Acts. Companies have a statutory duty to disclose signed annual financial statements consisting of an income statement, statement of financial position, and where an audit is required, a directors and auditors report.

**Companies must maintain and disclose proper and accurate books of account.**

### Filing of Annual Return

A statutory obligation is imposed on companies to prepare an annual return. All companies must provide an annual return, with the filing fee to the CRO with details which are of relevance to the public, such as the address of the registered office, and details of the company's shareholders and directors. Company accounts are usually annexed to the annual return, with the exception of a company's first annual return. The first annual return of a company is due 6 months following incorporation before becoming an annual requirement. Penalty fees apply to late filings along with the loss of an audit exemption for smaller companies. A late filing penalty of EUR 100 immediately becomes due on the date following the filing deadline with a EUR 3 penalty per day

accumulating until the annual return is filed up to a maximum fine of EUR 1,200.

## Foreign Companies

Foreign companies establishing a branch in Ireland must register with the CRO within 30 days of their establishment in Ireland. Foreign companies establishing in Ireland must also provide a copy of their constitution, a certificate of incorporation, copies of latest accounts, details of any previous changes in names, certified English translations of documents which are not either in English or Irish and a filing fee.

## M&A

Companies that are looking to accelerate their growth, consolidate a market position or broaden their scope of services through combining synergies with other companies or groups may seek achieve their ambition through a merger or acquisition.

### A typical M&A deal process includes:

- Developing an acquisition strategy – Developing a good acquisition strategy revolves around the acquirer having a clear idea of what they expect to gain from making the acquisition – what their business purpose is for acquiring the target company (e.g., expand product lines or gain access to new markets).
- Set the M&A target acquisition criteria – Determining the key criteria for identifying potential target companies (e.g., profit margins, geographic location, or customer base).
- Search for potential acquisition targets – The acquirer uses their identified search criteria to look for and then evaluate potential target companies.
- Begin acquisition planning – The acquirer makes contact with one or more companies that meet its search criteria and appear to offer good value; the purpose of initial conversations is to get more information and to see how amenable to a merger or acquisition the target company is. The acquirer may produce a Letter of Intent at this point outlining initial interest in the target company and outlining the basics of one of a number of deal structures.
- Perform a valuation analysis – Assuming initial contact and conversations go well, the acquirer asks the target company to provide substantial information (current financials, etc.) that will enable the acquirer to further evaluate the target, both as a business on its own and as a suitable acquisition target. The acquirer would typically sign a Non-Disclosure Agreement (NDA) at this stage to ensure sensitive target company information is only disclosed to the extent that it is relevant to the potential acquisition, is treated with utmost privacy and security and is not disclosed to any other party.
- Negotiations – After producing several valuation models of the target company, the acquirer should have sufficient information to enable it to construct a reasonable offer. A Letter of Offer is usually produced by the acquiring entity at this point. Once the initial offer has been presented, the two companies can negotiate terms in more detail and Heads of Terms outlining the agreed terms of the deal at a high level are drafted.
- M&A due diligence – Due diligence is an exhaustive process that begins when the offer has been accepted; due diligence aims to confirm or correct the acquirer's assessment of the value of the target company by conducting a detailed examination and analysis of every aspect of the target company's operations – its financial metrics, assets and liabilities, legal risks, tax history and tax risks, customers, human resources, etc.
- Purchase and sale contracts – Assuming due diligence is completed with no major



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concerns arising, the next step forward is executing a final contract for sale; the parties will make a final decision on the type of purchase agreement, whether it is to be an asset purchase or share purchase depending on the associated commercial, tax and legal issues surrounding the deal. Together with the Share Purchase, Business Purchase or Asset Purchase Agreements, other legal agreements will likely be required such as Shareholders Agreements, Deeds of Tax Indemnity, Disclosure Letters, Detailed Legal Warranties and Indemnities etc.

- Financing strategy for the acquisition – The acquirer will, of course, have explored financing options for the deal earlier, but the legal agreements governing the terms of finance on funds borrowed to fund the deal typically come together after the purchase and sale agreement has been signed.
- Closing and integration of the acquisition – The acquisition deal closes, and management teams of the target and acquirer work together on the process of merging the two firms in terms of people, property and processes.

### **Structuring an M&A Deal**

One of the most complicated steps in the M&A process is properly structuring the deal. There are many factors to be considered, such as antitrust laws, securities regulations, corporate law, rival bidders, tax planning, accounting issues, contracts, market conditions, forms of financing, and specific negotiation points in the M&A deal itself.

### **Dissolution And Liquidation**

Terminating a company by liquidation involves the company being dissolved, where its assets are realized and distributed to the owned parties. Forms of liquidation and termination of a business include:

#### **Voluntary Strike Off**

The termination of a company may be completed by a voluntary strike off. This can be requested by the

shareholders or directors of companies which cease to trade or never began trading, provided they have no outstanding creditors. A company that has been voluntarily struck off can be reinstated by any creditor proving that the company owed a debt to that creditor that was never paid prior to strike off, up to 20 years after the date of strike off. This is a formal procedure which is less expensive than a liquidation.

The remainder profit of the company in liquidation following payment of the debts and return of the share value to the shareholders, shall be distributed to the shareholders in proportion with the paid-up capital share and their privileges, unless otherwise stipulated under the articles of association. In case a privilege for liquidation share is stipulated, the dispositions of articles of association shall apply.

Following the end of the liquidation, the books and the documents including those related to liquidation shall be kept pursuant to principles of keeping the documents and the term that the documents shall be kept (5-10 years). Following the end of the liquidation, the trade name is deleted by trade registry upon the request of the liquidator.

The disputes between shareholders and liquidators shall be resolved under simple procedure for judgment. The court shall grant its decision within 30 days. Thus, the disputes shall be resolved quickly and the decision will be available within a determined term.

### **Directors' duties and liabilities**

The company is managed and represented by the BoD. The BoD members are expected to fulfill certain duties and responsibilities against shareholders, creditors and the company. As

per Article 336/5 of the TCC, Board Members are obliged to perform their duties and obligations with almost diligence in accordance with the laws and AoA to protect the interest of the company as part of principal of good faith. (Simply, they should behave as a prudent merchant while representing the company). They are also responsible from the financial condition of the company, therefore they are required to follow-up and track the financials and make future projections about the financial condition of the company continuously. If the BoD members violate their duty by their fault, they can be held liable against the shareholders and especially creditors.

### **Creditors Voluntary Liquidation**

This is where an insolvent company voluntarily decides to go into liquidation and is usually initiated by the company's directors upon a declaration of solvency.

### **Members Voluntary Liquidation**

This type of liquidation usually occurs when the business has come to a natural end, for example, the directors decide to retire, or the business has run its course. It is also often used to wind up a dormant company that no longer serves a use.

### **Compulsory Liquidation**

This usually occurs on instruction of a court. An Official Liquidator is appointed by the court to liquidate the company. A liquidator must be independent to the company.







Ireland strives to maintain a fair and efficient tax system.

## Overview

Ireland strives to maintain a fair and efficient tax system. The government of Ireland has implemented attractive reliefs through the Finance Bill to incentivize and encourage certain types of spending and enhance inward investment in Ireland. Ireland is widely known for its 12.5% corporation tax rate for trading companies which has attracted many multinational companies to its shores. The Irish Revenue Commissioners is the Government agency responsible for customs and tax and operates a self-assessment system. This places the onus on the taxpayer to comply with the law and pay the correct taxes.

## Corporate income tax

Irish corporation tax is charged on the worldwide profits (income and gains) of Irish tax resident companies and certain branches of non-resident companies. Ireland operates a 12.5% standard corporate tax rate to the active profits of trading companies in Ireland. The Irish government imposes a corporation tax rate of 25% on the passive income of non-trading companies, and 33% on capital gains. An effective 6.25% tax rate can apply to profits gathered from patents on copyright software (see knowledge development box below). The vast majority of companies in Ireland qualify as trading companies and can avail of the 12.5% corporation tax rate, while companies in receipt of passive income (e.g., rental income, etc.) are taxed at 25% on that source of income.

## Company Residence

Irish resident companies are subject to Irish corporation tax on their worldwide income and gains. Non-resident companies carrying on a trade in Ireland through a branch or agency are only subject to Irish tax on the profits of that branch, income from disposals of assets used in that branch and any other Irish source income.



Recent Finance Acts have introduced amendments to Irish corporation tax residency legislation to address anti-avoidance measures. Currently, Irish company residency rules can be divided into two categories, being those incorporated in Ireland before 1 January 2015, and those incorporated after 1 January 2015. Where a company is incorporated in Ireland on or after 1 January 2015, it is deemed to be Irish tax resident. This is the rule unless the company is treated as tax resident in another country under a Double Taxation Agreement. A transition period up to 31 December 2020 exists for companies incorporated before 1 January 2015 to allow companies time to arrange their affairs. As of 1 January 2021, companies incorporated before 1 January 2015 are deemed to be Irish tax resident. Again, the exception exists where the company is treated as tax resident in another country under a Double Taxation Agreement. There are cases where a company incorporated before 1 January 2015 will be treated as Irish tax resident before the end of the transition period. This is when a company has both a change of ownership and a major change in the nature and conduct of the business. Under these circumstances, the company will be treated as Irish tax resident from the date of the change in ownership. This is in addition to the existing central management and control test legislation.

Under the management and control rules, a company is resident in the place where it is

centrally managed and controlled. However, where the strategic control of a non-Irish incorporated company is clearly taking place in Ireland then the company in question is deemed to be Irish tax resident. The central management and control test cannot be determined on one factor alone and instead, would involve satisfying a range of criteria. Examples of demonstrating central management and control could include holding all director meetings in Ireland, the preparation of financial statements in Ireland, having a head office located in Ireland, etc.

### **Intellectual Property Relief**

Companies which locate their IP trade in Ireland, can benefit significantly from Ireland's favorable IP tax regime. Companies which repeatedly invest in IP can effectively write their IP capital expenditure off against the income streams generated by the expenditure. The relief allows companies to claim capital allowances on the acquisition or development expenditure of specified intangible assets incurred on or after 7 May 2009 by either:

- Deducting for tax purposes the amortization, depreciation or impairment charge included in the accounts, or
- Electing to claim the tax of 7% in the first 14 years and 2% in the 15th (final) year.

The definition of IP assets for the purpose of this relief includes the acquisition of, or the licence to use:

- Patents and registered designs
- Trademarks and brand names
- Know-how
- Domain names, copyrights, service marks and publishing titles
- Authorization to sell medicines, a product of any design, formula, process or invention
- Customer lists acquired otherwise than directly or indirectly in connection with the transfer of a business as a going concern
- Goodwill, to the extent that it is directly attributable to qualifying assets

Finance Act 2017 has introduced an 80% cap in respect of IP acquired after 11 October 2017. This means that only 80% of income derived from the IP asset can be sheltered. Any excess deductions can be carried forward and offset against IP profits in succeeding years. Assets acquired between 8 May 2009 and 10 October 2017 could be fully sheltered by the capital allowances and interest.

### **Research & Development Tax Credit**

Companies engaging in qualifying R&D expenditure, will be entitled to a generous tax credit of 25% of the expenditure incurred in an accounting period. The credit is available together with a deduction for the expenditure, resulting in cumulative deductions of 37.5%. The R&D tax credit is initially set off against the company's current corporation tax liability with the excess being carried back to previous liabilities.

Where a company does not have a tax liability in the current or previous period, it can claim a repayment in cash of the R&D tax credits in three equal installments over a three-year

cycle. This results in a compelling cash tax advantage to the company in question. Any R&D tax credits not utilized to offset tax in the current or preceding year or not granted to the company in the form of repayable credit, can be carried forward in perpetuum to offset against future tax liabilities.

### **Knowledge Development Box Relief**

Knowledge Development Box relief is an additional corporation tax relief for qualifying companies. Ireland is the first country to implement the KDB relief which principally links IP and R&D reliefs, despite these being two separate, standalone reliefs. Where a company qualifies for KDB, it may be entitled to a deduction equal to 50% of its qualifying profits. This means that qualifying profits may be taxed at 6.25%. In order to qualify for this relief, the company must source its income from either a qualifying parent, computer programs or certain intellectual property in the case of smaller companies. To avail of the KDB relief, the qualifying company's accounting period must begin on or after 1 January 2016. A company may qualify for KDB if it creates an IP asset from qualifying Research and Development activities that earns income (e.g., a computer program or qualifying patent protected invention). In addition to the effective tax rate of 6.25%, R&D tax credits, IP amortization and other reliefs may also apply.

### **Dividend Exemption**

Dividends and distributions received by one Irish resident from another Irish resident company are exempt from corporation tax. Foreign dividends from trading subsidiaries are taxed at 12.5% with a full credit for any foreign tax or underlying tax paid on the distributed profits normally resulting on an effective tax rate of 0% on foreign dividends.

## Holding Company Regime

Ireland is a favorable location for holding companies. Companies can avail of Irish tax relief for interest and borrowings used to acquire share capital of qualifying subsidiaries. One must be aware that developments at an OECD and EU level may result in significant restrictions on the tax deductibility of some interest payments.



Under certain conditions, the Irish holding company regime provides for an exemption from tax on chargeable gains arising from the disposal of shares, or assets related to these shares, in certain subsidiaries. This broadly applies to active subsidiaries which are resident in a country with which Ireland has an effective tax treaty and in which the Irish company owns more than 5% of the ordinary share capital for a period of 12 months.

Dividends while taxable in Ireland may allow for generous double tax relief credits and pooling mechanisms such that in practice limited tax is due.

## Personal income tax

Self-employed individuals will have to account for taxes on their earnings and include it in their annual income tax return (Form 11) which is due to be filed mid-November each year. Those who are not self-employed will have their employment income taxed at source. Their employer must pay the deducted taxes to Revenue on a monthly or quarterly basis by submitting a payment statement on Revenue's Online System (ROS). A range of tax credits are available to taxpayers depending on individual circumstances which reduce one's tax liability.

Tax 2019	Rate
Income Tax	<ul style="list-style-type: none"><li>• 20% standard rate up to EUR 35,300, increasing based on marital status and circumstances</li><li>• Balance taxable at 40%.</li></ul>
Universal Social Charge (USC)	<ul style="list-style-type: none"><li>• First EUR 12,012 – 0.5%</li><li>• Next EUR 7,862 – 2%</li><li>• Next EUR 50,170 – 4.5%</li><li>• Balance – 8%</li></ul>
Pay Related Social Insurance (PRSI)	<ul style="list-style-type: none"><li>• Employee – 4%</li><li>• Employer - 10.85%</li></ul>

## Residence

An individual's residence status for tax purposes is essential in establishing their charge to tax in Ireland. The below description explains how individuals of different residence statuses come within the charge to tax.



- **Resident** – An individual who is present in the State for 183 days in the tax year, or; 280 days over two years with at least 30 days in each year. A day is counted if the individual is present in the State for any one time during a day.
- **Ordinary resident** – An individual is classified as being ordinary resident where he or she is considered resident in the State for three consecutive years. Once an individual is ordinary resident in Ireland, he or she will not cease to be ordinary resident until they are non-resident for three successive tax years.
- **Domicile** – This is a legal concept, not defined in Irish legislation that impacts an individual's charge to tax. Essentially, it questions where an individual's permanent home which is normally determined by a person's place of birth (domicile of origin), unless he or she moves his or her permanent home to another jurisdiction (domicile of choice). Individuals resident in Ireland but not Irish domiciled are subject to Irish income tax only on Irish source income and income remitted to Ireland, which has to be earned overseas since they became Irish residents.

The table below outlines the scope of Irish tax which individuals are subject to, based on their residence status.

Tax Status	Taxable On
Resident, Ordinarily Resident/Non- Ordinarily Resident, Irish Domiciled	Worldwide Income
Resident and Ordinarily Resident, Non-Domiciled	<ul style="list-style-type: none"> <li>- Irish Source Income</li> <li>- Foreign employment income to the extent duties of employment are carried out in Ireland</li> <li>- Other foreign income to the extent that it is remitted to Ireland</li> </ul>
Non-Resident, Ordinarily Resident, Irish Domiciled	<ul style="list-style-type: none"> <li>• Worldwide Income except for:               <ul style="list-style-type: none"> <li>- Income from a trade or profession, no part of which was carried out in the State</li> <li>- Other foreign income, provided it does not exceed EUR 3,810</li> </ul> </li> </ul>
Non-Resident, Non-Ordinarily Resident, Irish Domiciled	Irish source income

## Non-resident

The table below outlines the scope of Irish tax which individuals who are neither resident, nor ordinarily resident nor domiciled in Ireland are subject to Irish Personal Taxes and Capital Gains Tax.

Status	Taxable On
<p><b>Personal Taxes</b> Neither Resident, Ordinarily Resident or Domiciled</p>	<ul style="list-style-type: none"> <li>• Irish source income               <ul style="list-style-type: none"> <li>- Generally Irish interest can be paid free of withholding tax to identified treaty residents.</li> <li>- Dividends from Irish companies can generally be paid free of withholding tax where the beneficial owner is an identified treaty resident.</li> <li>- Income from Irish funds vehicles can generally be paid free of withholding tax other than where the recipient is an Irish resident or where the fund is significantly invested in Irish real estate.</li> <li>- Non-residents are generally subject to basic rate income tax at 20% on rental income from Irish real estate. Interest on borrowings to acquire the real estate is often deductible.</li> <li>- Non-residents may be subject to 20% tax on Irish sourced royalty income unless protected by a tax treaty.</li> <li>- Non-residents can be subject to full Irish tax and social security on self-employment or employment income where such activities take place in Ireland. Tax and Social Security contribution agreements may apply to mitigate any Irish liabilities.</li> </ul> </li> </ul>
<p><b>Capital Gains Tax</b> Neither Resident, Ordinarily Resident or Domiciled</p>	<ul style="list-style-type: none"> <li>• Gains on disposal of Irish specified assets only               <ul style="list-style-type: none"> <li>- e.g., Land, buildings, mineral and exploration rights situated in Ireland or</li> <li>- Unquoted shares in a company which derive the greater part of their value from the above.</li> </ul> </li> </ul>

## Indirect taxes

### VAT

In Ireland, the standard rate of VAT is 23% with reduced VAT rates of 13.5% and 9%, while livestock is vatable at 4.8%. Specified items are exempt from VAT such as the provision of financial or medical services. Ireland zero-rates (exemption with deduction) a number of basic items.

VAT registered entities and individuals in Ireland usually submit their VAT returns to the Revenue Commissioners bimonthly. It is

often the case, where an entity's purchases exceed its sales, a refund of VAT becomes due. Otherwise, the VAT liability is payable to Revenue on the return due date. The obligatory requirement to register for VAT depends on whether the turnover of a business or individual exceeds, or is likely to exceed, the VAT thresholds. Where VAT thresholds are not reached, the option still exists in some cases to make an election to register for VAT. The principal VAT thresholds which require an individual or a company to register for VAT in Ireland are as follows:

- EUR 37,500 – Supply of services only.
- EUR 35,000 - For taxable persons making distance sales into the State.
- EUR 41,000 - For persons making acquisitions from other European Union Member States.
- EUR 75,000 - For persons supplying goods.

In addition to the filing of VAT returns, certain statistical reporting is also mandatory when conducting business transactions with other EU member states. A VAT Information Exchange System (VIES) return must be filed where a trader supplies goods and/or services to another taxable person in an EU Member State. This is an informational return and provides a mechanism to check the validity of claims to zero-rating. Intrastat submissions are more detailed returns which apply when monthly returns are EUR 500,000 on importation of goods or EUR 635,000 on exportation of goods. The Intrastat is an informational return for goods only.

Upon application to Revenue and subject to their discretion, VAT group between closely linked individuals or entities may be formed where a group of entities can be treated as one person with one member remitting the VAT returns. Each member is liable for the payment of their liabilities. Under the VAT grouping, the requirement of charging VAT and issuing VAT invoices can be dispensed with for inter-group transactions.

### **Customs and Excise**

As part of Ireland's EU membership and access to a single marketplace, Ireland enjoys duty-free imports from EU member states. Where goods are imported from outside the EU, customs duty may apply at the rates specified by the EU.



**Stamp duty is a charge on written documents used when transferring property.**

Excise duty applies to items such as alcohol, sugar sweetened drinks and tobacco and is separate from customs duty with different applicable rates.

## **Real Estate Taxes**

### **Stamp Duty**

Stamp duty is a charge on written documents used when transferring property. Typically, stamp duty arises on a conveyance of sale, an assignment of a lease, a policy of insurance etc. The rate of stamp duty varies depending on the category of the document which is being stamped.

- Stocks or marketable securities are stampable at 1%. Transfers of shares which do not exceed consideration of EUR 1,000 are exempt from stamp duty, while shares deriving their value from non-residential land are chargeable to stamp duty at 6%.

- For leases, stamp duty can vary from 1% to 12% on the annual average rent depending on the duration of the lease.
- For leases up to 35 years – 1% of annual average rent.
- For leases greater than 35 years but less than 100 years – 6% of annual average rent.
- For leases over 100 years – 12% of average annual rent.
- Stamp duty on the premium on a lease can vary from 1% to 6%. In contrast to a lease, licenses are not liable to stamp duty.
- Residential property is stampable at 1% on the value up to EUR 1 million, while the excess over EUR 1 million is stampable at 2%.
- There is an exemption from stamp duty for intangible assets, and most debentures.
- Most other property will fall under the 6% stamp duty rate.

Property deriving their value from Irish real estate is stampable to the rate applicable to real estate and not the rate applicable to other assets.

Group relief is available on transfers within groups where one company directly or indirectly owns 90% of the other company, or if a parent company owns 90% of both companies. When available, the relief can reduce stamp duty to nil.

Stamp duty is payable within 30 days (44 days when e-Stamping is used) of a document being executed. Interest, surcharges and penalties may apply to the late payment of stamp duty.

## Rates

Where a non-domestic property, rates may be payable to the local authority.

## Inheritance and gift taxes

Capital Acquisitions Tax (CAT) is a tax on gifts and inheritances. The beneficiary is taxed at 33% where the value of the benefit received exceeds their allowable threshold limit. Depending on the beneficiaries' relationship with the disposer, this life-time limit can currently be up to EUR 320,000 tax free in group A, EUR 32,500 in group B and EUR 16,250 in group C.

## Scope

In order to be within the scope to Capital Acquisition Tax, inheritances or gifts are taxable when one of the following applies:

- The beneficiary is resident or ordinary resident in the State at the date of the gift or inheritance,
- The disponent is resident or ordinary resident in the State at the date of disposition, or;
- The property passing by way of gift or inheritance is property situate in the State, such as Irish property, Irish shares or Irish bank accounts.

The residency rules are covered in detail in the Personal Taxes section above, however, for the purpose of CAT, a foreign domiciled individual will be deemed to be non-resident and non-ordinarily resident in Ireland unless he or she has been resident in Ireland for all of the 5 consecutive tax years preceding the date of the benefit.



## Small Gift Exemption

When receiving a gift, each person is entitled to receive one small gift per annual which is exempt, up to the value of EUR 3,000, from any one disponent in a given tax year.

## Business Relief

When one qualifies for business relief, they will receive a 90% reduction on the taxable value. Business relief is available for relevant business property which includes unquoted shares, provided the beneficiary on the valuation date after taking the benefit will:

- Own over 25% of the voting rights of the company, or;
- Own at least 10% of the aggregate nominal value of issued share capital and will have worked for the company for a period of five years ending on the date of the benefit.

In addition to the above criteria, the relevant business property must have been owned by the disponent for two years prior to the date of the gift or inheritance.

The relief is not available for shares in a company which consists wholly or mainly of:

- Dealing in currencies, stocks or shares, land or buildings
- Making or holding investments. A holding company will not be treated as an investment company provided that the subsidiaries themselves are not wholly or mainly investment companies

There is a clawback of business relief if within six years, the assets cease to qualify as relevant business property or if the business is sold and not replaced with other relevant business property within one year. Generally,



if the business property is sold and replaced with other property which would also have qualified for the relief, then the replacement property will also qualify and there will be no clawback of the relief.

## **Agricultural Relief**

Where an individual qualifies for agricultural relief, they can obtain a 90% reduction on the market value. In order to qualify for the relief, the beneficiary must be a farmer when the benefit is taken.

A farmer for the purpose of this relief is a person whose:

- Total market value of property is at least 80% agricultural property in an EU member state, and;
  - a. They hold a specified farming qualification and has farmed on a commercial basis, or;
  - b. They spend at least 50% of their working week farming on a commercial basis, or;
  - c. They lease the whole of the property to a person within part (a) or (b) above.

A clawback of agricultural relief applies where the property is disposed within six years of the date of gift or inheritance, or if the beneficiary ceases to qualify for the farmer rules stated above within six years. The tax which would have been payable if the relief was not claimed then becomes payable. A clawback will not arise where agricultural property is disposed and replaced by other qualifying agricultural property within 1 year (or 6 years in the case of a Compulsory Purchase Order).

## **Treaties U.S. and UK**

Ireland has currently only two Double Taxation

Treaties for CAT in place. These treaties are with the UK and the U.S. and can provide relief when tax may arise in each country.

Where there is no Double Taxation Treaties in place, unilateral relief is granted. This provides for a credit applicable to foreign property of the lesser of foreign tax suffered outside Ireland or the amount of CAT payable on the property.

## **M&A**

Taxes relevant to M&A deals typically include Capital Gains Tax (for the vendor), and Stamp Duty (for the acquirer) but the optimization of the deal structure through pre-deal M&A tax planning can bring many benefits. This includes structuring the deal for interest deductibility on any debt used to finance an acquisition or merger, planning for utilization of trading or capital losses between the acquiring and selling companies or groups, structuring for funds flows to avoid withholding taxes unnecessarily applying to repatriation of profits, payment of interest on debts or payment of intergroup royalties post acquisition, VAT planning on optimizing VAT position and minimizing administration through potential VAT grouping, ensuring participation exemption where applicable would apply on any on sale of non-core group assets post-merger or into the future, and many other tax optimization considerations.

A rigorous tax due diligence process can also help identify any areas of tax risk existing in the counterparty's business or structure prior to the substantive elements of any deal going ahead and this can either help the parties to make a decision on whether to go ahead with the deal, have the effect of reviewing the purchase consideration value to take

into account inherent tax liabilities existing in the other party's structure or can inform the details of a Deed of Tax Indemnity whereby one party indemnifies the other party for tax issues arising on their side of the deal post-closing that existed pre acquisition. Material value can generally be obtained through a good tax due diligence process.

Where an individual qualifies for agricultural relief, they can obtain a 90% reduction on the market value.





## Transfer pricing

Irish transfer pricing legislation generally follows OECD and EU norms in terms of methodology and documentation requirements.

The transfer pricing regime is restricted to dealings taxable at the 12.5% rate of corporation tax, with non-trading transactions currently falling outside of the scope of the regime. Contracts in place at the time Ireland introduced Irish transfer pricing rules in July 2010 are generally grandfathered. It is likely that the scope of Irish transfer pricing legislation will be extended to include non-trading transactions and grandfathered contracts with effect from 1 January 2020.

Small and medium sized enterprises are exempt from transfer pricing. These are companies with less than 250 employees and with a turnover of less than EUR 50 million or assets of less than EUR 43 million globally.

### Irish documentation requirements

The requirements for documentation under Irish transfer pricing law generally accord with EU and OECD norms in relation to both master and country files. If documentation exists within the group which deals with all transactions to which the Irish company is a party and such documentation complies with EU and OECD norms, Irish Revenue will normally accept that it complies with the Irish documentation requirements.

## Mutual Agreement Procedure and Advanced Pricing Agreements

Ireland has mutual agreement procedures in all of its tax treaties.

The MAP provisions generally provide for a corresponding adjustment to be made where the treaty counterparty has been subject to a transfer pricing adjustment. It is critical to note that in light of recent experiences, where corresponding adjustment requests were made at a level which could have been material to the overall Irish corporation tax take, Irish Revenue rigorously police the proper application of the mutual agreement procedure. It is imperative that Irish Revenue are involved in the process via MAP before any transfer pricing settlement is made with the other Fisc.

It is possible to agree a bilateral APA with Revenue under the Mutual Agreement Procedure of a tax treaty. Bilateral APA's will not be agreed where there is no DTA in place. The maximum term for bilateral APA is 5 years. There is an obligation on the part of taxpayers who have such an APA to notify Revenue of any material changes to their business. The APA ceases to be binding if material changes have been made and Revenue have not been notified.

### Transfer pricing audits

Revenue conducts both a transfer pricing compliance review program (TPCRP) and transfer pricing audits. If a taxpayer is notified

that they have been selected for a TPCR that they must do a self-review and produce a report on their transfer pricing for Revenue, in the specified format within three months. Since this is not a formal revenue compliance intervention, it is possible to make unprompted voluntary disclosures in respect of any anomalies discovered which will mitigate against penalties.

In addition to TPCR's, Revenue conducts transfer pricing audits based on a risk analysis. A TPCR which is not conducted to the satisfaction of the Revenue Commissioners may additionally lead to a transfer pricing audit.

### Penalties

Ireland has a specific penalty regime applicable to transfer pricing. The normal corporation tax and misfiling related penalties apply equally to transfer pricing. This can result in penalties ranging from 3% to 100% of tax underpaid depending on whether the taxpayer self-identified the mistake, the seriousness of the deficiency and the level of cooperation given by the taxpayer. In addition, interest on underpaid corporation tax in Ireland is applied at a daily rate of 0.0219% which equates to an annual rate of just below 8%.

### Country-by-Country Reporting

Ireland adopted OECD country by country reporting requirements from 1 January 2016. The rules apply to MNE groups with consolidated revenues of over EUR 750 million, and can apply to an Irish parent company, and Irish surrogate parent company, or an Irish tax resident EU designated entity.

## Other Taxes

### Capital Gains Tax

Irish Capital Gains Tax (CGT) is chargeable at the rate of 33% on a gain arising on the disposals of chargeable assets. The residence status of an individual determines the extent to which they are chargeable to CGT. The methods for determining whether an individual is resident, ordinarily resident or domiciled in the State is the same as set out for Personal Taxes above.

Status	Taxable On
Resident/Ordinarily resident and Irish domiciled	Worldwide gains
Resident/Ordinarily resident but non-domiciled	Irish gains and all other gains to the extent that they are remitted into Ireland
Non-resident/Non-ordinarily resident but Irish domiciled	Irish specified assets only
Neither Irish resident, ordinarily resident or Irish domiciled	Irish specified assets only

Disposals of Irish specified assets which give rise to a gain will always be liable to Irish CGT, regardless of where the taxpayer is resident.

Irish specified assets are:

- Land, buildings, mineral and exploration rights situated in Ireland,
- Unquoted shares in a company which derive the greater part of their value from the above.

The following are common reliefs from Capital Gains Tax:

- **Capital Gains Tax Annual Exemption**  
All individuals (with the exception of those claiming retirement relief) are entitled to receive an annual exemption of EUR 1,270 against their chargeable gains in a tax year.
- **Retirement Relief (Capital Gains Tax)**  
Retirement relief is available to individuals aged 55 but below 66 years. It provides for relief on disposals to third parties where the consideration does not exceed the lifetime limit of EUR 750,000. This is reduced to EUR 500,000 where the individual has reached the age of 66 years. There is no requirement for the individual to actually retire from the business.

There is no limit on retirement relief where the individual is disposing of the business to a child. Child has quite a broad meaning for the purpose of the relief. Where the individual reached the age of 66 years, there is an upper relief limit of EUR 3 million which can be passed to a child under retirement relief.

Other conditions which must be satisfied for retirement relief to apply are:

- The vendor must have been a working director of the company for at least 10 years, during which time was a full-time working director for at least five years.
- The company must have been the vendor's family company for at least 10 years ending on the disposal date. This means that the individual must have held at least 25% of the voting rights or at least 75% of the voting rights provided the family together holds at least 75% of the voting rights.

- The company must be a trading company.
- The vendor must have owned the shares for at least 10 years.
- **Entrepreneurs Relief (Capital Gains Tax)**  
Entrepreneur relief provides a reduced rate of CGT of 10% (as opposed to 33%) for chargeable gains on company disposals up to lifetime limit of EUR 1 million. The relief can be used along with retirement when all conditions are met. The relief is available where the following criteria is met:
  - The individual must have owned at least 5% of the company,
  - He or she must have owned the shares for three of the last five years,
  - The company must carry on a qualifying activity (e.g., not an investment or land dealing company), and;
  - The individual must have worked at least 50% of his or her time for the company for the company for three of the last five years.

### Relevant Contracts Tax (RCT)

RCT is a withholding tax that applies to certain payments made by a principal contractor to subcontractors to ensure the subcontractors are tax compliant. RCT applies mainly to those working in the construction, forestry and meat-processing industries. The rate of tax withheld depends on the tax compliance of the subcontractor and can be either 0%, 20% or 35%. It is necessary for the principal to obtain a determination from Revenue to know which rate of tax is applicable for the subcontractor.



## Professional Service Withholding Tax (PSWT)

PSWT is a withholding tax at the rate of 20% which certain persons are obliged to withhold and pay over to Revenue when paying for professional services. Those who have suffered withholding taxes, can either claim a refund or apply for a credit for the PSWT held. It is essential to retain and submit the documents showing the tax deducted.

## Withholding Taxes

As a general rule Ireland operates a 20% withholding tax, but once Ireland has a tax treaty with a jurisdiction in which the recipient is resident, those rates are reduced to 0% regardless of the rate specified in the DTA. The only exceptions to this rule relate to funds or REITs invested in Irish real estate where the tax treaty rates may apply. Ireland has 73 effective tax treaties.

- **Dividends**

Irish dividend withholding tax applies to distributions by an Irish company. A broad number of exemptions are available, where the documentation supporting the exemption claim is with the company prior to the distribution being made. These exemptions may apply if either the shareholder, or the ultimate beneficial owner of the shareholder (in many cases) is resident in a jurisdiction with which Ireland has an effective tax treaty. Whether

a hybrid entity such as a US LLC can avail of tax treaty protection is currently being litigated through the Irish courts.

- **Interest**

Interest on deposit accounts can be paid free of withholding tax to non-resident, once appropriate tax forms are completed. Interest paid by an Irish company to a foreign bank can usually be paid without withholding tax. Interest paid by an Irish company to a treaty resident can usually be paid without withholding tax. Interest on quoted Eurobonds paid through a recognized clearing system can also be paid free from withholding taxes. In other cases, a 20% withholding tax may apply.

- **Royalties**

Royalties can generally be paid free of withholding tax to treaty residents. In other cases, a 20% withholding tax may apply.

- **Capital Gains Tax**

A withholding tax of 15% is deducted by a purchaser where there is a disposal of Irish assets by any person. The withholding tax arises where the consideration is in excess of EUR 500,000 or EUR 1 million in the case of residential property. The purchaser must pay the withholding tax to Revenue within 30 days and provide the vendor with the prescribed form showing the deduction of tax. The purchaser can then use this to claim a credit for tax withheld against his or her total CGT liability.





## 6. Employment matters



Individuals who are engaged in a contract of services are protected by employment legislation.

### Overview

Employers have a responsibility to ensure that their employees receive their basic employment rights.

Individuals who are engaged in a contract of services are protected by employment legislation. In contrast, individuals who are engaged in a contract for services, are treated as self-employed and are not safeguarded by the employment law protections. Employers are obliged to exercise a duty of care in the controlling and processing of employee personal data.

### Health and Safety

Irish law imposes obligations on employers to provide safe conditions for employment. The Safety, Health and Welfare Acts set out the legislation providing the rules which lead to optimum health and safety in a workplace. Employers should take reasonable measures in line with the legislation to provide a safe and secure working environment for workers. The level of safety measures which apply to a workplace will depend on the nature of the work, however the general rule is that all employees, in any area of employment, should be able to carry out their tasks in safe, risk-free conditions.

### Employment contracts

Under the Terms of Employment Acts 1994-2017, employers must provide their employees with information regarding their employment, such as a signed contract of employment. The contract should give the full names of the employer and the employee, the address of the employer and state the expected duration of the contract (e.g., whether the contract is probationary, fixed or temporary). The contract would then set out the terms and conditions of the employment which would include the job description, start date, rates of pay, pay intervals,



pension schemes, hours of work, annual leave entitlement, period of notice to be given by employer or employee, place of work and any other agreements which the employer feels necessary for the employee to abide by in the performance of their duties. The employer must sign and date the contract and keep it for at least a year after it ends.

Employers must also have written disciplinary and grievance procedures and must give an employee a copy of these at the start of their employment.

## Salaries

The minimum wage in Ireland is currently EUR 9.80 per hour for an experienced adult employee. The minimum wage for trainees and minors may be lower depending on experience. It is also possible that a sectoral or trade union may agree on a minimum wage which is higher than the national minimum wage through collective bargaining.

Under the Payment of Wages Act 1991, employees in Ireland have the right to receive a pay slip showing their gross to net pay and all deductions which may include benefits-in-kind, pension contributions etc.

## Special Assignee Relief Program

A Special Assignee Relief Program (SARP) is a relief in place for people who are assigned to work in Ireland from a qualifying company

abroad during tax years from 2012 to 2020. The program provides income tax relief and in order for a company to qualify, they must be incorporated and tax resident in a country which has a Double Taxation Agreement with Ireland or a Tax Information Exchange Agreement. There are also conditions which the employee must satisfy which are as follows:

- The employee must arrive in Ireland in any of the tax years 2012 to 2020, at their employers request to perform duties in Ireland for that employer.
- Immediately before being assigned to work in Ireland, the employee must have worked outside of Ireland for at least six months for the same employer who has assigned the employee to work in Ireland.
- The employee must perform their duties for at least 12 continuous months starting from the date that the employee was first assigned.
- The employee must not have been Irish tax resident for the five tax years immediately preceding the year in which the employee arrives in Ireland to take up the employment.
- Employees are tax resident in Ireland for all years for which they claim the relief.
- The employee must earn a minimum basic salary of EUR 75,000 per annum which excludes all bonuses, commissions or other similar payments.

## Working hours

The average working week in Ireland is circa 37.5 hours per week. This is generally from 9am – 5.30 pm Monday to Friday with an hour break each day. The legal maximum working hours per week in Ireland is 48 hours. The Organization of Working Time Act 1997 sets out rules which should be abided by for employees, such as minimum breaks and rest periods.

## Functional and Geographical Mobility

### Permits to Work in Ireland

EAA or Swiss national individuals are entitled to work in Ireland as either a self-employed person or an employee.

Most non-EEA residents will require employment permits to work in Ireland. Employment permits can be applied for by either an employer or employee to the Department of Business, Enterprise and Innovation. Employees with a work permit in Ireland, will have the same rights as an Irish or EEA resident employee resident working in Ireland. Permits are initially issued for a duration of 2 years which may be renewed for a further 3 years. Employees who work in Ireland for 5 consecutive years no longer need a permit to work in Ireland. Employers should always ensure that their employees are entitled to work in Ireland on commencement of employment. Failure to comply with work permit rules can result in severe penalties for employers.

## Termination of employment

Employers should outline the notice period in an employee's contract. This states the amount of notice an employer requires from an employee where an employment is being terminated. The notice period can vary depending on the nature of the work and the length of the employees' service to the company. There is also a Minimum Notice and Terms of Employment Act which sets out minimum entitlements of notice.

When an employee leaves employment, the employer must enter a leave date on the final payroll submission to the Revenue Commissioners. This will update Revenue of the employee's status in a real-time.

Employees in Ireland are protected under the Unfair Dismissals Act 1997-2015. This allows individuals who feel they were unfairly treated in the termination of their employment to bring a claim against their employer.

## International Mobility

Ireland is progressive in the taxation of international mobility for foreign executives coming to work in Ireland. The following procedures can ensure that double tax shouldn't occur on their earnings:

### PAYE Exclusion Order

A PAYE Exclusion Order is a certificate issued by Revenue relieving the employer of the obligation to make PAYE deductions from certain emoluments. It applies to an Irish employer, where the employee carries out all of the duties of their employment abroad and

is a non-resident in Ireland for tax purposes during the tax year. It is also applicable in cases where the Irish employer is paying an occupational pension to an ex-employee who is a non-resident in Ireland for tax purposes during the year and a resident in the country with which Ireland has a Double Taxation agreement. In order to apply for the Exclusion Order the employer is required to send Revenue information about the employee including their name, Personal Public Service (PPS) number and a letter stating the length of time of work abroad. The Exclusion Order may cover a full tax year, or a part of the year. It stays in place (subject to an expiry date but may be extended) as long as the employee works abroad and is a non-resident in Ireland for tax purposes. Employers may still have to deduct employee and employer PRSI from payments to the employee.

### **Remittance Basis**

The remittance basis applies to individuals who are resident and/or ordinarily resident but not domiciled in Ireland. This has the effect of keeping income or gains from the individual's home country outside the Irish tax net.

## **Social Security**

Most employed people in Ireland over the age of 16 years make social insurance contributions called Pay Related Social Insurance (PRSI). The social insurance is deducted at source from employee earnings and applied to many other sources of income. Employers are liable to pay employee PRSI and employer PRSI. While the rate of PRSI may vary depending on the nature of the employment, generally, employee PRSI is charged at 4%, while employer PRSI is usually

10.75% in respect of each employment. The amount of PRSI applicable to an individual depends on the individual's social insurance class.

Individuals who attain the age of 66 years do not pay PRSI.

### **Social Security Arrangements when Working Abroad**

There are a wide range of benefits available (for example, maternity leave payments) to those who pay social insurance. Therefore, it is important that one maintains their social insurance contributions. Ireland has social security arrangements in place with other countries which allows individuals to combine their social insurance contributions paid in both Ireland and another country. This can allow the individual to qualify for social insurance payments in either Ireland or in the country with whom Ireland has a social arrangement.

## **Workers representatives and trade unions**

Employees in Ireland have a constitutional right to join a trade union of their choice. Trade union membership protects an individual's rights and interests. Unions are a major source of information in terms of employment issues and give a fair chance to the employees to negotiate for better pay and working conditions with their employers. Most trade unions are independent of the employer and under Irish law, are not legally obliged to recognize a trade union. The Irish Congress of Trade Unions (ICTU) is Ireland's umbrella organization for trade unions with many trade unions affiliated to it.





# 7. Anti-Trust



Regulated industries in Ireland include Broadcasting, Energy, Pharmaceuticals, Postal services, Telecoms and Transport.

## Overview

It is critical for companies operating in Ireland, particularly for those operating in regulated industries, to stay at the forefront of developments in competition and regulated markets law in Ireland and the application of EU law to companies operating in Ireland. This can include:

### Competition/Antitrust

Irish and EU competition/antitrust law which applies in Ireland is very broad, and includes areas such as Abuse of dominance, Cartels, Competition aspects of commercial agreements and behavior, Competition compliance programs and training, Competition litigation, including litigation arising from investigations, disputes with regulators and damages actions, Complaints to regulators, Grocery Regulations, Investigations and dawn raids, Immunity/Leniency applications, Merger control approval for mergers and acquisitions and joint ventures, Sectoral studies and State aid.

### Regulated Markets

Regulated industries in Ireland include Broadcasting, Energy, Pharmaceuticals, Postal services, Telecoms and Transport.

### EU and trade law

The application of EU and trade law to companies operating in Ireland can be complex and can include EU institutional law, Free movement of goods and services, Impact of Brexit, Implementation of EU Regulations and Transposition of EU Directives.

## Merger control

The purpose of Merger Control is to enable competition authorities to vet in advance whether mergers will have a



**Merger Control in Ireland is enforced primarily by the Competition and Consumer Protection Commission (CCPC) in Ireland.**

detrimental impact on market competition. Where a competition authority considers that a merger transaction will result in anti-competitive effects, it can require the merging parties to enter into commitments to remedy those anti-competitive effects, or prohibit a transaction or business function entirely. Merger Control in Ireland is enforced primarily by the Competition and Consumer Protection Commission (CCPC) in Ireland. Certain mergers may also need to be notified to the European Commission under the EU Merger Regulation, or where they impact certain specific industries, such as notification requirements to the Irish Minister for Communications under the Irish media merger rules.

**Competition and Consumer Protection Commission**

- The Competition and Consumer Protection Commission (CCPC) is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland, enabling open and competitive markets where consumers are protected and businesses actively compete.
- The CCPC has a broad mandate, with statutory responsibility for enforcing and promoting competition and consumer protection law.

**Enforcement:**

- Enforcing competition law – The CCPC enforces Irish and European competition law in Ireland. They conduct investigations and can take civil or criminal enforcement action if they find evidence of breaches of competition law.
- Enforcing consumer protection law – They enforce a wide range of consumer protection legislation and have a variety of enforcement tools to tackle illegal practices by traders.
- Assessing mergers– The CCPC must be notified about proposed mergers, acquisitions and takeovers which reach a certain financial threshold, and all media mergers. They assess whether such mergers are likely to result in a substantial lessening of competition.
- Enforcing product safety regulations– Ensuring that product safety standards are being complied with through the General Product Safety Directive and other



relevant regulations, including sharing information about dangerous goods and enforcement measures across the EU through the RAPEX system.

### **Information:**

- Influencing public debate and policy development – Highlighting to the Irish Government and other policymakers the possible impact of proposed legislation or regulations on competition and/or consumer welfare.
- Informing consumers about their rights– Providing consumers information about their rights and running public awareness campaigns.
- Personal finance information and education– The CCPC have a specific role under Irish legislation to provide personal finance information and education to consumers.

### **Protection & Regulation**

- Grocery sector regulations – The CCPC monitor compliance with the Grocery Goods Regulations, investigate complaints and, where appropriate, take enforcement action regarding breaches of food regulations to consumers.
- Authorized Credit Intermediaries – The CCPC share responsibility for the advertising of credit facilities with the Central Bank and have specific responsibility for the authorization of credit intermediaries and for maintaining the Register of Credit Intermediaries.
- Alternative Dispute Resolution– They assess applications from parties that wish to become Alternative Dispute Resolution (ADR) entities. ADRs aim to resolve disputes between consumers and traders out-of-court.

## **Unfair competition and misleading advertising**

Irish competition law is contained in various pieces of legislation, referred to collectively as the Competition Acts 2002 to 2014.

### **What conduct is prohibited by competition law?**

The Competition Act 2002, as amended (Competition Act) contains two main prohibitions:

1. Section 4(1) of the Competition Act prohibits and renders void anti-competitive behavior. The Competition Act lists some specific types of behavior which are expressly prohibited. These include agreements which:
  - Fix prices
  - Limit or control production or markets
  - Share markets or sources of supply
  - Apply dissimilar conditions to equivalent transactions with other trading parties
  - Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts (e.g., tying).
2. Section 5 of the Competition Act prohibits the abuse by a firm of a dominant position. Importantly, it does not prohibit a firm from having a dominant position – only the abuse of that dominant position. Generally, a firm is considered to be dominant if it is able to act without taking account of the reaction of its customers or its rivals.

Articles 101 and 102 of the TFEU prohibit the same kind of conduct as that prohibited by sections 4 and 5 of the Competition Act, provided it can be shown that the conduct in question may have an effect on trade between Member States of the EU.

It is the CCPC's role to enforce Irish and EU competition law by investigating suspected breaches of these prohibitions.

### **What are the penalties for breaching competition law?**

In Ireland, businesses or individuals that breach competition law may be subject to civil or criminal sanctions.

As regards civil sanctions, section 14A of the Competition Act gives the CCPC the power to apply to the Circuit Court or the High Court to seek a declaration (e.g., a court ruling that a particular arrangement or behavior is unlawful) or an injunction (e.g., a court ruling requiring a particular arrangement or behavior to be terminated) in any case involving an alleged breach of section 4 or 5 of the Competition Act or Article 101 or 102 of the TFEU. Irish law does not currently allow the courts to impose any form of civil financial penalty on persons found to have breached competition law. Nor does the CCPC itself have the power to impose administrative fines on persons it believes to have breached competition law.

As regards criminal sanctions, sections 6 and 7 of the Competition Act make it an offence to breach section 4 or 5 of the Competition Act or Article 101 or 102 of the TFEU. The CCPC investigates alleged breaches of the Competition Act and can either itself bring

a summary prosecution in the District Court or, in more serious cases, refer a case to the Director of Public Prosecutions (DPP) for prosecution on indictment.

The most serious types of anti-competitive conduct are often referred to as 'hardcore' breaches of competition law. The following are examples of hardcore breaches of competition law and are subject to the most severe criminal sanctions:

- Fixing or agreeing prices with competitors for goods and services, including the level of price increases or discounts
- Sharing markets among competitors by dividing up territories or sharing out customers
- Agreeing with competitors to limit production/supply by controlling the quantity of goods or services to be supplied in a given market
- Rigging bids among competitors so that one particular person or company wins the contract

In the case of these hardcore breaches of competition law, the criminal fines and prison sentences are as follows:

A **business** can be fined up to EUR 5 million or 10% of its annual business turnover, whichever is greater, if convicted on indictment.

An **individual** found guilty of an offence on indictment can be fined up to EUR 5 million or 10% of his or her annual individual turnover, whichever is greater. An individual can also be

imprisoned for up to 10 years.

It is the responsibility of the directors and managers of a business to ensure that the business complies with competition law but it is not only directors and managers who can be prosecuted. Certain employees who involve themselves in serious anti-competitive activities might also face prosecution if they have played a role in such activity. It is also important to note that individual directors, managers and certain employees can be prosecuted for competition law offenses even if the company for which they worked when committing the offence was not prosecuted.

An individual or business that assists a cartel can also be found guilty of a criminal offence. In Ireland, there have been convictions for aiding and abetting cartels where individuals did not work for the firms engaged in price-fixing but took on a co-ordinating or facilitating role in the cartel.

### **Misleading advertising**

Under the Consumer Protection Act 2007, advertising is seen as misleading if it involves false, misleading or deceptive information that is likely to cause the average consumer to act in a way they might otherwise not. Advertising may also be considered misleading if important information that the average consumer needs to make an informed decision is left out. Misleading advertising covers claims made directly to consumers by manufacturers, distributors and retailers, as well as in advertisements, catalogues, websites etc.

### *Enforcement against misleading advertising*

The CCPC is responsible for enforcing the rules around business advertising in Ireland. Under the Consumer Protection Act, the CCPC can take action against businesses found to misled consumers. The Advertising Standards Authority for Ireland (ASAI) also allows members of the public to complain about possible misleading advertisements. The ASAI is a self-regulatory body set up and financed by the advertising industry to promote better standards in advertising and sales promotion. The Food Safety Authority of Ireland is responsible for the advertisement of food products. They allow consumers to make complaints about misleading food information on their website.

### *Consumer credit advertising*

There are additional rules for the advertisement of credit (loans, hire purchase agreements etc.) to consumers. These include:

- Giving the Annual Percentage Rate (APR) a prominent place in the advertisement
- Indicating whether security is required
- Stating any restrictions on the availability of credit
- Details of any charges other than the payments and interest

The Central Bank of Ireland is responsible for enforcing these rules.



## 8. Real Estate



There is a substantial legal and tax requirement to the process of purchasing real estate in Ireland.

### Overview

The Real Estate market in Ireland requires tax, legal, transaction and advisory knowledge to cover all areas of industry issues encompassing estate owners, investors, lenders, developers, homebuilders, and users – including many Real Estate specific structures such as funds, REITs, QUAIFs, L-QUAIFs.

A deep understanding of the key industry issues is key, most importantly the tax and legal issues surrounding disposals and acquisitions of property.

### Procedure to acquire a real estate property

There is a substantial legal and tax requirement to the process of purchasing real estate in Ireland.

#### Decide on property location and budget

This can take longer than most people anticipate. Unless the purchaser is buying for cash, you're going to be speaking to many banks to raise the most competitive mortgage you can. The more money you have saved for your deposit, the more, in theory, you'll be allowed to borrow. A substantial deposit will also help you negotiate better repayment terms with your mortgage lender. You're also going to need to support your mortgage application with extensive documents to prove your credit-worthiness. Make sure you start a file where you keep your bank statements, credit card statements and salary slips together. Banks will provide you with a list of the extra documents they may want to see.

#### Performing searches regarding title, obtaining a survey and, if required, loan approval

Property searches (also known as conveyancing searches) are inquiries made by the purchasers legal team to ensure good title

to property and ensure any publicly disclosed legal or regulatory issues or outstanding debts affecting the property are known to the purchaser. Property searches will be conducted in areas such as Legal Title, Planning, Registered Debts on the property, Registered Charges, Local Authority, Water and Drainage, Environmental, Commons Registration, Land Charges, Index Map Search, Disadvantaged Areas, Chancel Repair, and Indemnity Insurance. Typical real estate searches would include Planning search, Licensing search, Compulsory Purchase Order Search, Land Registry Search, Company search, Judgment search, Bankruptcy search, Sheriff and Revenue Sheriff searches, and Registry of Deeds searches.

A seller is under no obligation to disclose defects in a property. Purchasers should consider conducting a survey of the property to find out if there are any defects before finalizing the purchase. The Society of Chartered Surveyors Ireland (SCSI) is the professional body for chartered surveyors. In many cases, substantial due diligence may be required by an Irish bank in terms of lending to a foreign investor to purchase real estate in Ireland. Many foreign banks may not lend to fund the purchase of a property in Ireland. Where debt funding is required to purchase Irish real estate, substantial planning may be required.

### **Make an offer / the booking deposit stage**

The two most popular methods by which properties are purchased and sold are Private treaty sales and Public auctions.

#### *Private treaty sale*

A private treaty sale is where the property is not put into an auction. Either the seller or the seller's agent can be contacted to agree a purchase price. If there is an estate agent involved, once agreement on price has been agreed the purchaser may be required to pay a booking deposit to the estate agent, which usually comes to 3-5% of the purchase price. The legal process to buy the property may only start when the estate agent receives the booking deposit. This deposit is refundable up to the signing of the contract for sale (see below). Where debt funding is required, a mortgage provider should be engaged to provide formal mortgage approval and issue the purchaser with a loan pack. Mortgage protection insurance and property insurance need to be considered. Once the purchaser's legal advisors have checked the contract for sale, it is signed by the purchaser and a deposit is paid (less any booking fee).

#### *Public auction*

Notice of the date and time of a public auction is usually advertised online, in a local newspaper, estate agent or by a sign on the property. A reserve figure is set for the property, usually by the seller or the auctioneer. The reserve figure is the value the property must achieve; anything below this and the property will be withdrawn from the market. At all times during the auction the vendor can withdraw the property from the market, even if it has achieved the reserve figure. The vendor can also reserve the right to sell the property before the auction. Before the auction takes place, the purchaser's legal team review the contract for sale for the property (issued by the seller's solicitor) and all title documents that are referred to in that



contract. When legal inquiries are satisfied, a survey of the property should be organized to ensure it is structurally sound. The successful bidder immediately pays a deposit and signs the contract for sale (see below).

Under the Property Services (Regulation) Act 2011, estate agents and auctioneers are regulated by the Property Services Regulatory Authority. The estate agent or auctioneer is acting on behalf of the seller and acts in the seller's interest.

**Execution of the Contract for Sale**

All houses, land and apartments sold in Ireland are governed by Section 2 of the Statute of Frauds Act, 1695 which provides that no estate or interest (not being copyhold or customary) in land shall be assigned, granted or surrendered, unless by writing signed, or by act of law. This necessitates a written contract for the acquisition of any real estate in Ireland.

The contract for sale binds the parties to the completion of the sale. If the purchaser withdraws from the sale after this contract has been signed, they may lose their booking deposit. If the property is bought at auction, the purchaser must immediately sign the

contract for sale. If purchased through private treaty, the purchaser's legal team should review the contract to ensure that it is in order prior to execution.

In the case of new developments the contract for sale usually includes building agreements where the property is sold and developed by the same company. The completion date will be set out in the contract and the balance of the agreed purchase price will be due on that date.

The contract may also:

- Where it is a residential property, the contract will establish provision for a spouse who doesn't own the house. The Family Home Protection Act 1976 states that a spouse can't sell property without approval from the non-owning spouse if it is the family home. This has to be agreed to at the contract stage and the document signed accordingly.
- Capture the names and addresses of all parties.
- Record the details of the purchase price and deposit paid for the property.
- State the closing date. The closing date is

when both the seller and the buyer agree that the purchase should be finalized, the money is paid to the seller and the deeds and keys to the house delivered to the purchaser.

- List all the documents that have been delivered to the purchaser as part of the property purchase. These documents include items like surveys and reports on the state of the property. Execution of the contract assumes that the purchaser is aware of all matters contained therein and limits recourse post execution.
- Confirm that standard conditions as documented by the Law Society of Ireland apply. The most well-known condition relates to planning permission. If standard conditions do not apply these must be expressly set out in the contracts.

## Post Sale - Deeds

Once a sale is completed, the deeds of the property, showing the new ownership details and mortgage details, if relevant, must be registered with either the Registry of Deeds or the Land Registry. The Property Registration Authority (PRA) is responsible for both systems of registration. This registration can take a long time to complete but in most cases will not impede on the purchasers ability to enjoy or sell the property.

## Costs

Costs to be considered, in addition to purchase price, include:

- Stamp Duty – determined by how much the house is worth (1% up to EUR 1 million and 2% on all value above EUR 2 million)
- Search fees - cover the cost of all the searches.



- Legal and Tax fees – depending on legal complexity, value and whether tax planning is involved in the purchase of the property
- Surveyor fees - cover the surveyor's work.
- Registration fee - covers the cost to register the new owner of the title at the Land Registry or Registry of Deeds.
- Insurance - banks insist that insurance is organized as part of the requirements of securing a mortgage.

## Types of property investments

Irish real estate can be acquired in either an asset or a share deal. Common wrappers for Irish real estate include, companies, both foreign and domestic, partnership, funds vehicles and REITS.

## Tax related matters

Stamp duty of 6% applies to most acquisitions of Irish commercial real-estate and this charge applies equally to indirect acquisitions of Irish real estate via a wrapper.

## Resident-Companies

Irish companies engaged in an active property development business are taxed at 12.5%.



Irish companies pay 25% corporation tax on passive Irish Real estate income (rents and premiums) and 33% capital gains tax on any gain on the disposal of that real estate. A capital gains tax withholding obligation of 15% of the gross proceeds applies to any purchaser, where the proceeds exceed EUR 500,000 for commercial property and EUR 1 million for residential property, unless the vendor has appropriate clearance from the Revenue Commissioners allowing the proceeds be paid gross.

Certain companies which are under the control of a limited number of shareholders/directors can additionally be subject to a surcharge if the real estate profits are not distributed.

Corporate debt associated with the original acquisition of a rental property usually gives rise to a tax deductible interest expense. This may be limited under new rules being introduced to comply with ATAD/ ATAD II.

### **Non-Resident investors**

Non-resident investors are subject to Irish income tax of 20% on their Irish rental income. This is not reduced under any Irish tax treaties.

Corporate debt associated with the original acquisition of a rental property usually gives rise to a tax deductible interest expense. This may be limited under new rules being introduced to comply with ATAD/ ATAD II.

Non-resident investors are also subject to capital gains tax at 33% on direct disposals of Irish real estate. In addition, indirect disposals of assets which derive the greater part of their gross value from Irish real estate are also subject to capital gains tax.

There is a capital gains tax withholding of 15% of the gross proceeds in excess of EUR 500,000 (or EUR 1 million where the property is residential) applicable to such transactions.

### **REITs**

Ireland introduced Real Estate Investment Trusts in 2013. REITs must be Irish incorporated and listed companies, which have complied with the relevant revenue rules, and in addition the following restrictions apply:

- It must derive at least 75% of its aggregate income from property rental business.
- It must have at least three properties, the market value of no one of which is more than 40% of the total market value of all its properties constituting the property rental business.
- It must maintain a property to financing costs ratio of 1.25:1.
- It must be at least 75% of the aggregate market value of the assets of the REIT or of the group REIT must relate to assets of the property rental business.
- It must ensure that the aggregate of the specified debt does not exceed 50% of the aggregate market value of the business assets of the REIT or of the group REIT.
- It must have a diversified share ownership and distribute at least 85% of its property income annually on or before the specified date of return date for the accounting period in relation to the REIT or the principal company of the group REIT.

A company that qualifies as a REIT is generally exempt from corporation tax. Distributions are taxed at 20%, although this may be reduced under Ireland's tax treaty network, usually to 15%.

Where a REIT has an investor which holds more than 10% of the equity, the REIT may become subject to corporation tax in respect of the profits attributable to that shareholder.

Where a REIT breaches other criteria it may become subject to limited, or complete, corporation tax.

## **Funds**

Irish funds vehicles like the Irish Collective Asset-management Vehicle (ICAVs) have become popular for holding Irish property portfolios.

While Irish funds vehicles are generally tax neutral, and are obliged to deduct and return tax in respect of Irish resident unit holders only, where the fund derives more than 25% of its value, directly or indirectly, from Irish real estate it falls within the Irish Real Estate Funds (IREF) rules. The IREF rules broadly require a deduction of 20% tax on any direct or indirect return of value to the investors in the fund.

It is possible that Irish tax treaties may allow for a full or partial refund of this tax in certain circumstances where the investors are eligible for tax treaty rates. Where an investor owns more than 10% of an IREF Irish tax rules seek to treat the return of value as income from immovable property which Irish has full taxing rights over under most of its tax treaties.

Limited relief at source may be available for certain Irish and equivalent pension funds in respect of IREF units.

## **S110 Vehicles**

Irish s110 companies are regular companies which make an election, under tax rules, to be treated as a securitization vehicle. This allows the accounts to provide the basis of the tax charge, and displaces other rules which may limit (e.g., the deduction for profit dependent or excessive interest) charges.

Where the loan portfolio in the Irish s110 vehicle contains Irish real estate backed debt, these rules are displaced to that the excessive interest is not allowed, and the company is subject to corporation tax on those profits attributable to the Irish real estate backed debt, subject only to normal arms' length deductions being allowed.

## **VAT on Property**

As a general rule the first sale of residential property is subject to VAT at 13.5%, and subsequent sales are VAT exempt.

For non-residential property VAT applies to the first sale within five years of the property being completed, and also to the second sale (and subsequent sales) within that five-year period, if it has not been occupied for 24 months in aggregate.

A supply of partially developed property attracts a liability to VAT if partially developed within the previous 20 years.

There are transitional rules applicable to properties which were developed prior to 2008, and often it can be critical to determine the VAT history of the property from the vendor in order to determine the correct VAT treatment.

Properties, other than residential properties, which would otherwise be exempt from tax

can be subject to a joint option to tax by the purchaser and vendor and this can be attractive where an exempt sale could result in a VAT clawback by the developer. This may not be attractive where the purchaser has no VAT recovery (e.g., because their business is exempt from VAT).

Leases are also generally exempt from tax (although if there is a long lease pre-dating 2008 care needs to be had) but can also be subject to a joint option to tax where the property is not residential.

Sales of property in conjunction with an agreement to develop the property are always subject to VAT.



**A supply of partially developed property attracts a liability to VAT if partially developed within the previous 20 years.**



## 9. Data protection and IP



The Data Protection Commission (DPC) is the Irish authority established by the Data Protection Act 2018.

### Overview

The Data Protection Commission (DPC) is the Irish authority established by the Data Protection Act 2018 and is accountable for monitoring compliance of the General Data Protection Regulation (GDPR). The standard of data protection is continuously growing thereby imposing greater duties of care on data controllers to only process data necessary to fulfill their purpose.

Companies must only hold data if it is within at least one of the following circumstances:

- If the company has the consent of the individual concerned.
- If there is a contractual obligation between the company and the individual.
- If the data is necessary to satisfy a legal obligation.
- If the reason of holding the data is to protect the vital interests of the individual.
- If the data is in relation to carrying out a task that is in the interest of the public.
- If it is for the company's legitimate interests. This can only be used as grounds for maintaining data if the company has ensured that the fundamental rights and freedoms of the individual in question whose data they are processing will not be seriously impacted. Where the person's rights override the company's interests, then the company cannot process the data.

### Intellectual property

Intellectual property is fundamentally creations of the mind for which property rights may be sold, licensed or assigned. The creators of IP will generally wish to have their inventions

protected. Common types of intellectual property include:

## Copyright

An author or creator of certain categories of published or unpublished work may wish to copyright their work to obtain protective rights. This allows the owner to control their work and prevent the reproduction or copying of material. Copyright is a form of property and can therefore be transferred to another party, for example, a publisher. Where an employee creates the work in the course of their employment, generally the employer is the owner of the copyright of the work. The duration of copyright protection depends on the type of work involved. However, in most cases copyrights last for the creator's lifetime plus seventy years.

## Design

A design is concerned with the physical appearance of a product. Designs are only registerable if they are new and have an individual character. Registration of a design will last for five years from the date of filing the application and may be renewed upon payment of a fee for four subsequent periods of five years. This means there is a total period of registration of five years. Similarly, to the registration of trade marks, an applicant may apply to the Harmonisation of the International Market (OHIM) for a design to be registered community wide.

## Industrial property

### Patents

A patent gives its owner the right to exclude others from exploiting an invention with a technical solution for a limited period of time. Irish patents are valid for a maximum of 20

years. There is also an option to apply for a short-term patent which lasts for a maximum of 10 years.

An application for a patent in Ireland can be made to the Irish Patents Office by any person who wishes to have an exclusive right over their ideas. However, where an employee makes an invention in the course of their employment, the right may belong to their employer.

### Trademarks

Trademarks can be unique words, designs, packaging, logos that characterize a business etc., which identifies a brand, good or service and distinguishes it from others. Trademark applications must be submitted to the Irish Patents Office and may be registered under one of 45 categories (for example, food, drink, products etc.) Trademarks need to be renewed every 10 years on the payment of a fee. Similar to the process for registering a design, an application can be made to the Harmonisation of the International Market (OHIM) to register a trademark in all European countries. Furthermore, if it is necessary to have a trademark established in several jurisdictions, the Madrid Protocol will recognize trademarks registered by the World Intellectual Property Organization by filing one application in one central office.

### Trade Secrets

Trade secrets are confidential information of a business (often referred to as know-how), which if disclosed, would cause harm to the business.

In some cases, patent royalties are payments used for know-how. Generally, royalties are income received from granting permission to people to utilize the trade secrets of a business. Once the know-how has been

created, the inventor rarely incurs additional costs meaning that royalties earned are pure income profit. Income tax at 20% must be deducted from all payments for the use of a patent.

## Contracting and licensing

### Software License Agreements

A software license agreement is a legal contract between the author and purchaser of software which details the allowable use of the software and provides restrictions imposed on the software. In many cases, the software agreement is presented to the purchaser in digital form when the purchase is complete.

## Data Protection and Privacy

Ireland has high standards of data protection for organizations and individuals. As of the 25th of May 2018, the General Data Protection Regulation (GDPR) was introduced under the EU Data Protection Directive to replace the existing data protection framework. This has further enhanced the transparency, accountability and security for data controllers along with strengthening the right of data privacy for Irish citizens. It is of high importance that all data is correctly used and managed to ensure high standards of privacy and compliance with EU law. All organizations must familiarize themselves with GDPR specific guidelines and be aware of their obligations as data controllers in relation to how they collect, use and protect personal data.

### Obligations of data controllers

Any person or organization holding personal data must implement appropriate measures

## The M&A Agreements of JSCs can either be signed before Notary or not.

and processes to ensure that they are fully GDPR compliant at all times. Data controllers in Ireland can apply for certification from the Data Protection Commission to demonstrate that their processes comply with GDPR. Controllers should only collect data that is absolutely necessary for its purpose.

Under GDPR, a data controller who processes sensitive information or that has over 250 employees must keep a record of their processing activities. The record should consist of:

- Name and contact details of controller
- Purpose for processing the information
- Description of the categories of individuals to whom the personal data relates
- Categories of the recipients of the data.
- Time limits for the deletion of data
- Description of the data security measures in place.



*Na Coirteanna Breithiúnais Coiriúla*  
*The Criminal Courts of Justice*



# 10. Dispute resolution



Where civil disputes arise with a company in Ireland, one should always attempt to solve it initially directly with the company.

## Overview

Where civil disputes arise with a company in Ireland, one should always attempt to solve it initially directly with the company. However, it is not always easy to settle a dispute in the first instance and hence, the parties involved may have to undergo mediation services or take a case to court.

The Small Claims Court deals with claims which do not exceed EUR 2,000. Where the matter is not resolved in the Small Claims Court, the issue may be referred to the District Court.

Mediation services can be used when the parties wish to resolve the dispute outside of court. In this case, a mediator will make a decision to which the parties may agree to, although it is not legally binding. The mediator will be a neutral third party and can often be arranged at short notice. Where mediation is used as a method of resolving a dispute and parties can agree on the decision of the mediator, the disputing parties may avoid some or all of the risk and cost associated with court proceedings.

There are four main types of dispute resolution organizations which can help enforce rights:

- 1. Ombudsman**

An Ombudsman examines complaints from people who have been unfairly treated by a public body.

- 2. Regulators**

Regulators (such as the Central Bank regulating the financial services sector) are agencies which oversee specific parts of an industry ensuring that they are complying with the law.

### 3. Trade associations and professional bodies

Trade associations and professional bodies represent their industry and have codes of practice which they enforce.

### 4. Commissions and Commissioners

These are statutory bodies that exist to protect the rights of individuals and groups of individuals.

## Civil Litigation

Civil litigation involves litigation between individuals or companies conducted in the civil courts. The courts which hear specific cases of civil litigation in Ireland are as follows and vary depending on the value of the case:

- The District Court - Can only award up to EUR 15,000 in damages.
- The Circuit Court - Can award up to EUR 75,000
- The High Court - Unlimited power to award damages.
  - The Commercial Court (A division of the High Court) – Fast tracks disputes of a commercial nature where the value of the claim is at least EUR 1 million.
- The Court of Appeal - Automatic right of appeal for all cases which commenced in the High Court. Where the High Court is sitting in an appellate capacity, leave to appeal may be granted.
- The Supreme Court - Generally only hears cases which involve points of fundamental importance or constitutional cases.

Under the Statute of Limitations 1957, a claim which involves a breach of contract must commence proceedings within six years, while a claim involving defamation must be brought to court within one year of publication and claims relating to land generally must be brought to court within 12 years.

## Arbitration

Arbitration is an alternative method of resolving disputes and is suitable for almost any commercial dispute. It is a process whereby an arbitrator is appointed by the disputing parties to hear their case and make a determination based on the facts and details disclosed. The arbitrator is an independent third party and is usually be an expert in the subject matter of the dispute.

The process is similar to court litigation as it usually involves a full hearing and pleadings. Arbitration is often a chosen method for dispute resolution where the parties involved wish to keep the process private. Both the disputing parties and the arbitrator are obliged to keep the process entirely confidential. This is particularly advantageous where parties do not want media reporting on the dispute.

The arbitrator makes a final decision after hearing all facts, witness statements, evidence and viewing all relevant documents etc. The decision of the arbitrator is final and legally binding and he or she has the same power as a judge to award costs against an unsuccessful party.





Restructuring services in the Irish tax and legal landscape can refer to a whole range of issues

## Overview

Restructuring services in the Irish tax and legal landscape can refer to a whole range of issues depending on the client's needs and can cover such broad areas as:

- Tax Restructuring of business operations to align commercial business structures with domestic and international tax optimized group or holding structures
- Forms of Security over immovable or movable property and creditor and contributory ranking on same
- Actions on Unpaid Debts and recovery including Judgment, Receivership, Set-off and issues facing Foreign creditors and State support on these actions
- Rescue and Insolvency procedures including Examinership, Scheme of arrangements and Liquidation
- Stakeholders' roles, Liabilities of Directors Officers or Partners, Persons of Significant Control and Statutory Registers and other parties
- Ability to set aside certain transactions in conditions of Unfair preference, Fraudulent dispositions or Invalid floating charges
- Procedures for carrying on business during insolvency including Examinership, Liquidation and Receivership

## Restructuring – Out of the Court and Formal Proceedings (Concordatum)

There are a number of ways of restructuring a business in Ireland. The commonest are a voluntary arrangement with creditors, an examinership or a liquidation.

Voluntary arrangements may involve the write off of debt, or the capitalization of debt into equity. While uncommon in Ireland prior to 2012 or 2013 they became very common after that time due to the Irish banking crisis.

They generally contain a windfall clause such that if the business recovers exceptionally well in a short time frame the creditors will receive a top up payment.

Examinership involves the appointment by the court of an examiner to the business. The examiner usually seeks fresh investment for the business, in conjunction with partial payments of existing creditor, and the court then approves the final settlement. This allows the wishes of the creditors be overwritten by the court, including preferred creditors like the Tax Authorities in exceptional cases if the Courts are otherwise convinced that the examinership will save jobs.

A liquidation can be voluntary or involuntary. In a voluntary liquidation the members appoint the liquidator to the company, however, at the creditors meeting the creditors then have the opportunity to replace the members liquidator with one of their own choosing. In recent times the Revenue Commissioners have successfully petitioned the courts to replace a member's liquidator, after the event, with one of their choosing where they were not content with the conduct of the liquidation.

In an involuntary liquidation a High Court petition by one of the creditors is required, and the creditors then appoint the liquidator with the consent of the court.

Finally, a company can enter into a court sanctioned scheme of arrangement with its creditors. This requires that 75% of each class

of creditor is in agreement with the proposed scheme of arrangement. Once this threshold is passed, the court can force the remaining creditors into the arrangement.

## Trading in distressed situations

Where a company continues to trade in distress, the directors of the company may be guilty of an offence, and may additionally become liable for some of the debts of the company.

Transactions with connected parties may subsequently be set aside at the behest of a liquidator.

## Creditor's rights

The general order of preference in a liquidation is

- Fixed charge holders, including floating charges which have been crystallized into fixed charges at the time of the liquidation
- Petitioner's fees
- Liquidators fees
- Super preferred creditors (broadly social security and some employee payments)
- Preferred creditors (most commonly the Revenue Commissioners in respect of tax liabilities incurred in the 12 months before liquidation, and certain other State bodies)
- Non-crystallized floating charge holders
- Other creditors

Fixed charge holders generally have the right to appoint a receiver over the assets over

which they hold security. It should be noted that in this regard, certain tax liabilities (e.g., in relation to capital gains on the disposal of real estate by a receiver or mortgagee in possession) still have to be paid out of the proceeds of any disposal before the fixed charge holder can retain the remaining proceeds.

Certain charges over book debts need to be registered with the Revenue Commissioners at the time they are created, order to prevent the Revenue Commissioners taking priority over the charge holder.

Any creditor can petition the courts to appoint a liquidator to a company, however, in practice it is more usually only the Revenue Commissioners who do so.

In addition to the above, Revenue may attach assets including bank accounts and debtors of the company, and require payment directly from those debtors.

In the event that a company operated PAYE from the salaries of its directors, but did not remit that tax to the authorities, the directors may be precluded from claiming a credit for that PAYE in their income tax return, and may thus remain personally liable for the tax.

## Director's and officer's obligations and liabilities

A company's officers have various obligations under the Companies Acts, and these are now codified

Directors' common law duties can be summarized into three principles:

- Duty to keep adequate accounting records

- Duty to prepare annual financial statements
- Duty to have annual financial statements audited
- Duty to maintain certain registers and other documents
- Duty to file certain documents with the registrar of companies
- Duty of disclosure of certain personal information
- Duty to convene general meetings of the company
- Additional duties of the directors include to
  - act in good faith in what the director considers to be the interests of the company
  - act honestly and responsibly in relation to the conduct of the affairs of the company
  - act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law
  - not use the company's property, information or opportunities for his or her own or anyone else's benefit unless
    - this is expressly permitted by the company's constitution or
    - the use has been approved by a resolution of the company in general meeting;
  - not agree to restrict the director's power to exercise an independent judgment unless
    - this is expressly permitted by the company's constitution



- the director's agreeing to such has been approved by a resolution of the company in general meeting
  - avoid any conflict between the director's duties to the company and the director's other (including personal) interests unless the director is released from his or her duty to the company in relation to the matter concerned, whether in accordance with provisions of the company's constitution in that behalf or by a resolution of it in general meeting
  - exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both
    - the knowledge and experience of a person in the same position as the director and
    - the knowledge and experience which the director has
  - in addition to the duty to have regard to the interests of its employees in general, have regard to the interests of its members.
- Officers who breach the above duties may be accountable to the company for any profit they make from such a breach, and may additionally be liable for prosecution under the Companies Acts. Such prosecution may result in fines or imprisonment, or on a restriction or prohibition in the ability of the individual to act as a director for other companies.

## Distressed M&A

Distressed M&A became very common in Ireland in the periods after the financial crisis. Most usually such transactions are structured as asset deals, or the business is restructured into a new company prior to the disposal in order to facilitate the transaction while protecting the purchaser from historic liabilities.

One significant issue which can arise in distressed M&A in Ireland, particularly if a receiver or mortgagee in possession is managing the sales process, is VAT on property. Often times, the receiver or mortgagee in possession does not know the VAT history of the property. While the VAT history may determine the current VATable status of the property, including a VAT arising on the purchase of the property, and whether the VAT arises to the vendor or to the purchaser via reverse charge. While the number of distressed property sales has reduced in recent years, significant care must be had in this regard.

Losses forward may attach to either an asset sale, or a share sale and can give rise to a valuable deferred tax asset. However, there are significant anti-abuse rules which can trigger a clog on the losses forward, and there is recent case law due to Revenue challenges in this regard.

Many distressed asset deals involving real estate can result in significant claw backs or other adverse tax affects for the vendors of the assets, and care should be had around this. Loan write-offs, which were previously tax neutral in Ireland are now capable of triggering tax charges if the losses accruing to the assets which the borrowings funded were previously utilized against other income or gains. This again requires careful management, especially if a mortgagor is seeking to have the original mortgagee complete the transaction, to avoid tax liabilities which rank in seniority to the fixed charge as outlined above.





# 12. Public and Regulatory



**Public procurement is the acquisition of works, supplies and services of public bodies whether or not they are under a formal contract.**

## Overview

Regulators, administrators and individual members of a diverse range of leading professional institutions and representative bodies need to be aware of and remain compliant with a wide range of public and regulatory requirements in Ireland.

Statutory requirements, governance issues, registration, codes of professional conduct, disciplinary procedures and membership rights add up to a complex legal environment for today's public, professional, trade and member organizations. The regulatory and administrative framework reflects the many stakeholders and interests involved.

Public and professional bodies need to keep abreast of their statutory duties, representation in professional inquiries and disciplinary hearings require specific focus, and all areas of Public and Regulatory issues require a deep understanding of the relevant legislative and regulatory codes and procedures including Professional fitness to practice, Data protection, Freedom of information, Complaints procedures, Establishing and maintaining professional registers, Judicial Reviews, Statutory Appeals, Governance and compliance with Public and Regulatory rules and procedures.

## Public Administrations involved

### Public Procurement

Public procurement is the acquisition of works, supplies and services of public bodies whether or not they are under a formal contract. The acquisition must be honest, fair and must secure the best value for public money. Public procurement procedures in Ireland are subject to audit and scrutiny under the Comptroller

and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred. Public procurement policy in Ireland is overseen by the Office of Government Procurement.

## Permits and authorizations

Certain types of business activities and industry sectors require specific permits, licenses or statutory authorizations in order to conduct business. Common examples include but are not limited to:

- **Employment Permits**  
In the majority of cases, a non-EEA national must hold a valid Employment Permit to allow them to work in Ireland. Non-EEA individuals who work in Ireland on an employment permit have the same employment rights as an Irish or EEA citizen during their employment. Generally, a minimum annual remuneration is specified for applications to be granted. Employment permits are usually granted initially for two years and can be renewed for a further three years. Where the individual has been working and living in Ireland for a period of 5 years, they can apply for an exemption from the requirement to have an employment permit.
- **Contract for Services Employment Permits**  
A contract for services employment permit should be applied for by non-EEA contractors who are providing services to an Irish entity on a contract for services basis to facilitate non-EEA employees to work in Ireland under the Irish contract.
- **Financial Regulation**  
The Central Bank of Ireland regulates and supervises financial service operators in Ireland. The main functions of the financial

regulations are to protect consumers and ensuring that firms have the funds to trade safely.

- **Planning Permission**  
Planning permission is necessary for starting most development work. Commercial planning permission is required when operating a business. On most cases, planning permission will be granted where there is no impact on neighboring properties.
- **Environmental Permits**  
Environmental permits are required for a number of businesses where activities could pollute the air, water or land. The permit allowing the activity will impose certain restrictions in order to minimize damage to the environment.
- **Oil and Gas Exploration and Extraction Permits**  
An authorization must be granted to any company wishing to explore or extract oil or gas from Ireland. The authorization can be applied for by both Irish and foreign entities.

## Tax Clearance Certificates

Tax clearance certificates are required for many applications and transactions, including when public bodies engage in public contracts with individuals or organizations. The purchaser would need to provide confirmation of their tax clearance certificate to the public body to verify that their taxes are in order. This is issued by the Revenue Commissioners. In some circumstances, a tax clearance certificate may be issued to a taxpayer in arrears where an installment arrangement can be arranged with the Revenue Commissioners.

In certain circumstances, the absence of a tax clearance certificate, can negate the obligation



to receive payment. Therefore, it is critical that a tax clearance certificate is obtained.

A tax clearance certificate can be applied for via Revenue's Online System (ROS). Immediately after application, the taxpayer will be able to see if their tax clearance has been granted or refused. Where a tax clearance certificate has been refused, the reason will be stated. Once the item holding up the tax clearance certificate is dealt with, the tax clearance certificate may be re-applied for and will be granted assuming no other items become outstanding. Typically, unpaid tax, outstanding returns of the taxpayer or any connected party of the taxpayer will cause a refusal of a tax clearance certificate.

When applying for a tax clearance certificate, both the affairs of the taxpayer and the affairs of connected parties are reviewed. This can include, partners, directors, shareholders, a VAT remitter or a connected property. The taxpayer will need to state on the application whether they are applying for a public contract, applying for a grant or obtaining a license. When a tax clearance certificate is issued, the taxpayer will be given a tax clearance access number. This access number can be given along with a PPS number/tax registration number to anyone who needs to verify that the tax affairs of the taxpayer are fully up to date.





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