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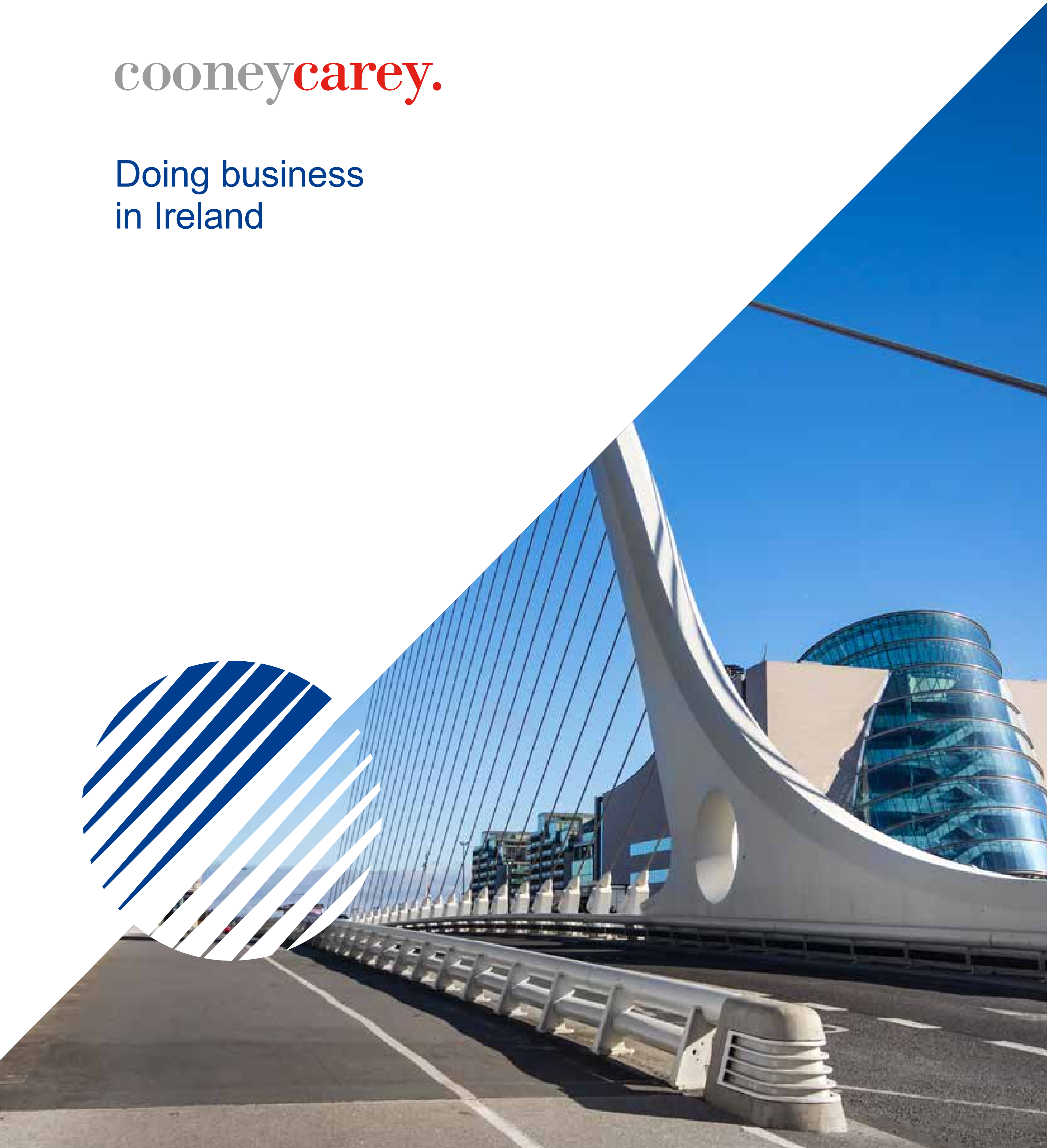
Doing business in Ireland



Contents

PAGE	CHAPTER
01	**Introduction**
03	**Business Environment**
03	Labour market
03	Population trends
03	Education
03	Language skills
03	Unit labour costs
03	Employment, human resources and labour law
03	Payroll taxes
04	Pensions and benefits
04	Holiday entitlements
04	Maternity leave and benefits
04	Visas and permits
04	Business schemes leading to residency
05	**Business structures**
05	Companies
05	Types of companies
05	Company obligations
06	Partnerships
06	Branches
06	Investment funds

PAGE	CHAPTER
07	**Finance**
07	Banking
07	State support
08	Private equity finance
08	Irish Stock Exchange
09	**Tax incentives**
09	12.5% corporation tax rate
09	Start-up exemption
10	Holding companies and corporate headquarters
10	CGT participation exemption
10	Dividends
10	Controlled foreign company legislation
10	Thin capitalisation rules
10	Intellectual property
11	Research and development credits
11	Tax allowance on qualifying IP
12	Scientific research
12	Energy-efficient equipment
12	Double taxation agreements
12	Property investment
12	Shipping and tonnage tax
12	Renewable energy

01

Introduction

Ireland is one of the top places in the world to do business. Our highly educated, young, English-speaking workforce, EU membership and favourable corporation tax rate (12.5%) have attracted the attention of many of the world's top companies across a range of industries. We're happy to be home to more than half the world's top financial services firms, nine of the top 10 information and communications technology (ICT) companies, eight of the top 10 pharmaceutical companies and fifteen of the top 20 medical device companies.

That's not all. The Irish government has pledged to make this the best little country in the world to do business.

We have a transparent and stable tax system, a favourable holding company regime, strong support for research and development (R&D), a highly developed telecoms and transport infrastructure and an extensive network of double taxation agreements (DTAs).

01

Introduction
(continued)

You don't have to believe us; just look at what some of the most influential global business groups and publications have to say:

– The World Bank Doing Business 2013 report ranks Ireland 15th in the world (2013) as a place for doing business using a series of benchmarks to compare key performance indicators across Organisation for Economic Co-operation and Development (OECD) economies.

– The IMD Work Competitiveness Yearbook 2012 lists Ireland as number one for:

  - Skilled labour
  - A flexible, adaptable workforce
  - Incentives for investment
  - Globalisation attitude.

– The IMD Global Competitiveness Yearbook 2011 says Ireland ranks fourth for labour productivity.

– Forbes ranks Ireland as the best place in Europe to do business in 2011.

– The IBM Global Location Trends annual report 2011 lists Ireland as the top destination globally by quality and value of investment.

– The World Economic Forum says Ireland has one of the best primary education systems in the world, ranking it 10th out of 142 countries in 2011.

A good place to live

There are countless reasons for choosing to live and work in Ireland. With a beautiful coastline, a warm welcome and an ability to attract some of the world's most respected employers, it is easy to see why so many people want to come and live here.

Ireland is a small country with a big reputation, particularly when it comes to quality of life. The country was rated as one of the best places to be born in a recent study undertaken by the Economist Intelligence Unit. Ireland is also ranked among the leading countries for quality of life, according to the OECD's Better Life Index, which reported on the country's strong sense of community and work-life balance.

As if that wasn't enough, Ireland's capital city Dublin was placed higher than Paris, San Francisco, London and Helsinki in the Mercer Quality of Living Survey 2012. The survey compared a wide range of factors including personal, transportation, health and education.

02

Business Environment

Labour market

Ireland's corporation tax rate of 12.5% is often seen as the main factor in foreign multinationals locating in Ireland. However the presence of some of the world's largest and best-known companies – including Google, eBay, Twitter, HP, Intel and Facebook – is testament to the outstanding highly educated and skilled workforce available in Ireland.

Population trends

Ireland's population has grown significantly over the past number of years and we now have one of the youngest populations in the European Union (EU). The availability and quality of our educated young people has been a key reason many companies started locating and recruiting employees in Ireland.

Education

The abolishment of third-level educational fees in Ireland increased the number of young people completing third-level education. Individuals with third-level education and professional qualifications are now the norm, not the exception. Ireland has a wealth of graduates and skilled professionals in the areas needed most by businesses – finance, engineering, IT, law and science. The availability of these individuals helps businesses here to grow and develop.

Language skills

As an English-speaking country located between Europe and the United States, Ireland is ideally positioned to help businesses trade with large global markets such as the US and the UK.

Our educational system places a strong emphasis on language skills and inward immigration rates has created a population with a diverse set of language skills. Businesses trading with some of the largest markets in the world have located here partly due to the language skills of our population.

Unit labour costs

Labour costs and the costs of doing business have fallen in recent years and Ireland is now seen as a competitive place from which to operate.

Employment, human resources and labour law

Our strong labour relations structures ensure that labour disputes are resolved in an efficient and timely way. The two main bodies – the Labour Relations Commission (LRC) and the Labour Court – are responsible for the resolution of disputes.

All employees are entitled to a contract of employment from their employer. Terms and conditions of employment should be outlined in greater detail in a company handbook including disciplinary matters and grievance procedures.

Payroll taxes

Employers are obliged to apply payroll taxes for all employees. This includes income tax collected through the pay-as-you-earn (PAYE) system, pay-related social insurance (PRSI) and the universal social charge (USC). These taxes are applied on wages, salaries and benefits at various rates and increments.

02

Business Environment

(continued)

Pensions and benefits

There is no obligation on employers to establish an occupational pension scheme for employees or to make pension contributions. However, there is an obligation on employers to provide a mechanism through which employees can fund their own pension through a Personal Retirement Savings Account (PRSA). Some employers do provide access to occupational schemes but in recent years, the ‘defined benefits/final salary’ model has been restricted or closed completely due to the difficulty of meeting funding obligations during tough economic times.

Holiday entitlements

Statutory annual leave entitlements are 20 days per annum plus approximately 10 bank holidays that arise each year. Part-time workers are entitled to the same level of holidays but on a pro-rata basis.

Maternity leave and benefits

Female employees have a statutory entitlement to 42 weeks maternity leave. The employer is not obliged to pay the employee during this period but some employers choose to do so. Male employees are not entitled to paternity leave. However, unpaid parental leave is available to both parents up until the child’s eighth birthday.

Visas and permits

Those from outside the EU (or the EEA) may need a visa to enter Ireland, a residence permit and a work permit. See www.citizensinformation.ie for an overview of visas and permits.

Business schemes leading to residency

Business people seeking to live and work in Ireland can apply to participate in the Start-up Entrepreneur Programme and the Immigrant Investor Programme. These Government schemes are aimed at entrepreneurs with a proven record of success.

The Start-up Entrepreneur Programme has been designed to enable non-EEA nationals and their families who commit to a high potential start-up business in Ireland to acquire a secure residency status in the country.

The Immigrant Investor Programme offers a range of investment options that allow approved non-EEA investors and their immediate family to enter Ireland on multi-entry visas and remain in the country for up to five years.

03

Business Structures

Trading entities in Ireland are most commonly formed under one of the following business structures:

1. Companies
2. Partnerships
3. Branches
4. Investment funds.

Before any person, company or organisation establishes a base of operations in Ireland, they should take all relevant company law and taxation advice relating to the specific details of the business in question.

Please note that the Companies Bill 2012 is currently working its way through the enactment process of the Oireachtas (Parliament) and is expected to become law sometime in the year 2014. This Bill proposes a number of significant changes to company law. These will, when enacted, make significant amendments to Irish company law.

Companies

Types of companies

Companies registered in Ireland are governed by various Companies Acts (1963 – 2012) and statutory instruments. The following are key points on incorporated entities in Ireland.

a) **A private company limited by shares** is the most common type of company. This structure effectively limits the liability of a shareholder to the amount subscribed for as share capital. However, private companies restrict the rights of their members to transfer shares held and they are not permitted to invite the public to subscribe for shares. In private companies, it is possible to have one single member and up to a maximum of 99 members.

b) **Public limited companies (PLCs)** must have a minimum of seven members but there is no maximum number. There is a minimum share capital of €38,092 of which 25% must be paid on issue. A PLC may seek subscriptions from the public and can apply to have its shares quoted on any stock exchange.

Other company types include:

– Unlimited companies where the liabilities of the members are unlimited. There must be a minimum of two members in an unlimited company. These companies are typically used to minimise disclosure of financial information in the public domain.

– Public companies limited by guarantee without share capital. These are typically used for the management companies of commercial and residential developments, and for certain charities.

– A Societas Europaea (SE) is also possible under Irish company law. It is a public limited company created where there are two or more entities governed by the laws of different EU member states that wish to come together to form an SE.

Company obligations

a) **Directors**

Companies must have a minimum of two directors, one of whom must be resident in the European Economic Area (EEA). In the absence of having an EEA resident director, companies can put a bond in place to the value of €25,395 for filing with the Registrar of Companies. Companies that can demonstrate a real and continuous link with Ireland can apply to the Registrar of Companies for a certificate of exemption on the director residency/bond requirement. It is not permitted to have a corporate director on the board of an Irish-registered company.

03

Business Structures

(continued)

b) **Secretaries**

Irish companies must have a company secretary. In Ireland, a corporate entity can act as secretary to a company.

c) **Company constitution**

Company constitution documents are known as the Memorandum and Articles of Association. Memoranda typically cover matters such as outlining the company's primary objects while the Articles of Association specify the regulations regarding the affairs of the company.

d) **Financial accounts and records**

Companies are legally obliged under the Companies Acts to keep proper books and records that contain the information necessary to explain transactions and to give a 'true and fair' view of the company's affairs. The financial accounts of Irish companies must be audited unless the company meets the criteria for availing of audit exemption and formally elects to do so. The financial accounts of an Irish limited company and some unlimited companies must be filed as public documents in the Companies Registration Office (CRO). However, there are disclosure exemptions available to withholding certain information dependent on the size of the company's operations.

Partnerships

A partnership is an association of individuals that wish to carry on business together. General statutory provisions for partnerships are outlined in the Partnership Act, 1890. The liability of members within a partnership is unlimited. Where there is a limited partnership as permitted under The Limited Partnership Act, 1907, the liability of at least one partner must be unlimited. The maximum number of partners is 20, although exceptions exist for banking, solicitors' and accountants' partnerships.

Branches

An entity incorporated outside Ireland that establishes a business here must register with the Registrar of Companies and file annual financial statements.

Investment funds

Investment funds pool investor funds together and provide them with professional investment management services. The legal structure can take the form of:

– Capital investment companies (variable or fixed)

– Unit trusts

– Investment limited partnerships

– Common contractual funds.

04

Finance

The availability of finance is often a critical factor when deciding where to locate a business. The Irish financial services sector has a long track record in catering for the needs of both domestic and multinational businesses operating here.

Banking

The Central Bank of Ireland lists more than 400 credit institutions that are authorised to carry on banking business in the state. These credit institutions include:

1) Domestic banks
2) EU member states' credit institutions
3) Market-leading international banks.

These banks provide the services and support typically required to conduct business both domestically and internationally, including:

a) Checking and clearing account services
b) Treasury and international services
c) Lending and providing a variety of financial products
d) Capital markets activities
e) Invoice discounting/factoring.

In addition, Ireland's International Financial Services Centre (IFSC) houses many leading banks that specialise in financial services to the global financial sector. This is complemented by a network of specialist advisors, accountants, lawyers and regulatory professionals located across the country.

State support

Ireland has a number of state and semi-state agencies that provide financial and business support for both indigenous and foreign enterprises. Support is delivered through a number of agencies:

1) IDA Ireland attracts and supports foreign investment in Ireland.
2) Enterprise Ireland develops and promotes indigenous businesses with international growth potential.
3) County Enterprise Boards assist the development of micro-enterprises, with priority given to manufacturing and internationally traded services.

The nature of the supports available varies significantly depending on the suitability/requirements of the indigenous/foreign business.

Typical supports include:

a) R&D grants/tax credits
b) Direct financial aid
c) Capital grants
d) Employments grants
e) Training and marketing support
f) Technical development incentives.

04

Finance
(continued)

Private equity finance

The private equity finance sector is varied and support depends on a company's stage of development. Choices include:

1) Domestic and international venture capital funds
2) Business angel investors
3) High-net-worth individuals.

The private equity finance sector in Ireland is growing. Since 2010 there has been a 21% increase in the number of companies that have raised private equity funding.

The Irish government has also pledged €175 million in funding through the Seed and Venture Capital Scheme, which will be administered by Enterprise Ireland.

Irish Stock Exchange

The Irish Stock Exchange (ISE) is regulated by the Central Bank of Ireland and it has helped companies raise funds and enabled share trading for more than 200 years.

Companies seeking an ISE listing are subject to the exchange's listing rules and must fulfil its criteria before making a public offer.

05

Tax Incentives

Ireland has earned its reputation as the premier location for foreign direct investment through its continued commitment to maintaining an efficient and competitive tax system within Europe and on a worldwide basis. As mentioned earlier, the cornerstone of this approach has been: the maintenance of the 12.5% rate of corporation tax on trading income; the suite of measures relevant to enterprises with holding companies or corporate headquarters located here; and the incentives encouraging development, maintenance and management of intellectual property (IP).

12.5% corporation tax rate

Successive governments have demonstrated a strong commitment to maintaining the 12.5% rate of corporation tax on trading activities. Since 2003 the corporation tax rate in Ireland has been 12.5% on trading income and the government reaffirmed its commitment in the Minister for Finance's 2012 budget speech.

Ireland has one of the lowest corporation tax rates in the developed world and also provides other generous tax breaks and investment grants to encourage businesses to locate in Ireland.

The 12.5% rate applies to trading activities. Trading operations encompass the usual manufacturing and service activities, but can also include management, development and exploitation of IP rights and many other activities.

Irish resident companies receiving dividends paid out of trading profits of foreign companies that are resident in the EU or in a tax treaty country are also subject to the 12.5% rate of corporation tax. This treatment can also apply to dividends paid by other companies out of trading profits where they are quoted on a recognised stock exchange in another EU member state or where they have ratified the OECD convention on mutual assistance in connection with tax matters.

Start-up exemption

To encourage the establishment of new companies in Ireland, a three-year remission from taxation may apply on trading income and capital gains for certain start-up companies with a tax liability of less than €40,000 a year.

Companies that qualify will be fully exempt from corporation tax on trading income and chargeable gains (on the disposal of assets used for the new trade) where the total amount of corporation tax does not exceed €40,000 in a tax year. Where corporation tax for the year is between €40,000 and €60,000, marginal relief will apply.

The availability of the relief depends on the amount of the employer's social insurance contribution, with a limit of €5,000 per employee applying when arriving at the qualifying total of €40,000. There are provisions for carrying forward unused relief.

05

Tax Incentives
(continued)

Holding companies and corporate headquarters

Ireland is a very attractive location for holding companies. The exemption from CGT for disposals of interests in EU/treaty companies along with the exemption from tax on certain EU/treaty dividends, extensive credit availability for other dividends, the 12.5% rate of corporation tax and the lack of controlled foreign company (CFC) or thin capitalisation legislation is an attractive mix of benefits.

Many corporate groups have already chosen an Irish resident company for their corporate headquarters (HQ) because of the attractive tax measures and business-friendly climate.

CGT participation exemption

There is a wide-ranging CGT participation exemption for disposals by companies of qualifying shareholdings (a minimum 5% shareholding held for at least one year in a trading company resident in an EU/tax treaty country, including Irish companies).

Dividends

Dividends received by an Irish resident company from another Irish resident company are tax exempt. Dividends received by an Irish resident company from a foreign subsidiary resident in an EU/tax treaty country are liable to tax at 12.5% if paid out of trading profits. Other foreign dividends received are liable to tax at 25% but generous relief is provided for foreign tax paid.

There are onshore pooling arrangements in place for tax credits in connection with certain foreign dividends, interest and branch profits. These provisions generally allow for dividends to be received without additional Irish tax.

Controlled foreign company legislation

Ireland does not have controlled foreign company (CFC) regulations so there is no compulsion to repatriate profits to the Irish holding company.

Companies whose corporate HQ is in one jurisdiction, with profits arising in subsidiary companies located in other jurisdictions, are very aware of the increased tax costs where they are forced to pay tax in the holding company jurisdiction even though the relevant profits arise outside that jurisdiction.

Thin capitalisation rules

Unlike many other jurisdictions, Ireland has not implemented general thin capitalisation legislation, which restricts the level of borrowings that can give rise to tax deductible interest costs.

Intellectual property

Ireland recognises the importance of intellectual property (IP) and research, and has implemented a wide range of incentives to encourage companies to develop, manage and locate IP resources in Ireland.

Research and development credits

Ireland provides for a tax credit of 25% based on capital and revenue expenditure on qualifying R&D expenditure. This deduction is in addition to the tax deduction already obtained while calculating trading income taxable at 12.5% rate. Therefore, the total value of the tax deduction, together with the R&D credit, is 37.5%.

Expenditure incurred on buildings used for R&D purposes generates the 25% tax credit in the year the expenditure is incurred. There are claw-back provisions that apply on the sale of the building or on it ceasing to be used for R&D activity.

For companies who undertook qualifying R&D in 2003, the relief is generally applied on an incremental basis. However, the first €200,000 of qualifying expenditure is included in the calculation of the R&D credit, regardless of the R&D expenditure level in 2003.

The credit may be used to shelter the corporation tax liability for the current period. Unused credits can be used to shelter corporation tax paid in the immediately preceding period. Any balance of credits still remaining is carried forward and can be used against future corporation tax liabilities. It is also possible, where certain conditions are met, to claim a tax rebate.

Recent changes allow credits to be applied to key employees who have been involved in the research process so that they receive a portion of their remuneration tax free.

Tax allowance on qualifying IP

Certain IP assets qualify for a tax allowance through accounting depreciation or a 15-year writing down period. Companies may opt to claim the allowance on the basis of depreciation or the 15-year period.

Qualifying IP assets include:

– Inventions, patents, registered designs and design rights

– Trademarks, trade name, trade dress, brand, brand name, domain name, service mark or publishing title

– Copyright or related rights (as defined by the Copyright and Related Rights Act 2000)

– Computer software or a right to use, or otherwise deal with, computer software other than end-user software

– Certain supplementary protection certificates

– Certain plant breeders' rights

– Secret processes or formulae or other secret information concerning industrial, commercial or scientific experience – whether protected or not by patent, copyright or a related right – including certain know-how

– Certain product and medical authorisations

– Licences in respect of an intangible asset referred to above

– Foreign rights similar to those outlined above

– Certain goodwill that is directly attributable to any of the assets listed above.

Capital expenditure on certain end-user computer software is written off over a period of eight years.

There is no claw back of the relief granted if the intangible asset is retained for at least 10 years.

Stamp duty does not arise on the acquisition of qualifying intangible assets, such as intellectual property.

05

Tax Incentives
(continued)

Scientific research

A 100% allowance is available on capital expenditure incurred on scientific research in the case of a company carrying on an Irish trade. Scientific research includes activities in connection with natural or applied science for the extension of knowledge.

Energy-efficient equipment

A 100% capital allowance is available in connection with certain categories of energy-efficient equipment. A company may qualify for this in the year in which the qualifying expenditure is incurred.

Double taxation agreements

Ireland has an extensive double taxation treaty network, with 69 signed DTAs. The benefits of tax treaties include a reduction or exemption from withholding tax.

In Irish law there are provisions that, in the absence of a tax treaty, unilateral relief is allowed against double taxation in respect of certain types of income.

The full list of treaties can be accessed at www.revenue.ie/en/practitioner/law/tax-treaties.html.

Property investment

Property (located in Ireland, the EU, Norway, Iceland and Lichtenstein) purchased between 6 December 2011 and the end of 2013 may qualify for an exemption from CGT. If a property is purchased during this period and held for seven years, the capital gain relating to the seven-year holding period will not be subject to CGT.

Shipping and tonnage tax

Companies choosing the EU-approved tonnage tax regime are not taxed on profits arising from their trade. Instead, they are taxed on a profit calculated according to the tonnage and usage of the ships operated. The standard corporation tax rate of 12.5% is then applied to this profit calculation. Ships qualifying for the tonnage tax regime are seagoing vessels of more than 100 gross tonnage. There is no requirement to flag vessels in Ireland or for the company to be incorporated in Ireland to qualify for the regime.

Renewable energy

To encourage the development of the renewable energy sector, a number of incentives have been introduced, including:

- A relief to encourage corporate investment in renewable energy
- Carbon credits and forest carbon credits
- Stamp duty relief on the transfer of carbon credits
- Tax relief on the purchase and sale of emissions allowances
- Accelerated capital allowances
- Employment and investment incentives.

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