Country Guide

Ireland

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Bloomberg Tax

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1. Overview

1.1. Government and Tax System

The Irish tax rules are found in a group of statutes that have been enacted by the Irish Parliament (the Oireachtas).

The principal statutes are the:

- Taxes Consolidation Act 1997 as amended (TCA); which consolidated the law relating to income tax, capital gains tax (CGT) and corporation tax;
- Capital Acquisitions Tax Consolidation Act 2003 as amended (CATCA 2003), which deals with tax on gifts and inheritances;
- Value-Added Tax Consolidation Act 2010 as amended (VAT Act), which provides for VAT (a sales tax) in respect of goods and services;
- Stamp Duties Consolidation Act 1999 as amended (Stamp Act), which provides for the imposition of stamp (transfer) duty on certain instruments and transactions; and
- Social Welfare (Consolidation) Act 2005 as amended (Social Welfare Act), which provides for Pay-Related Social Insurance (PRSI) charges.

These Acts are revised and updated annually to reflect Finance Act legislative amendments.

In addition, as Ireland is a common law jurisdiction, case law precedent has a significant impact on the Irish tax code.

The European Union (EU) also represents an important source of tax law in Ireland. In recent times, Court of First Instance (CFI) and European Court of Justice (ECJ) decisions have become increasingly influential. EU law is also significant in the area of VAT. While the precise application of VAT is decided by national tax authorities, the overall VAT system is based on EU directives.

In addition, certain elements of the Organization for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project have been or are in the process of being implemented through supranational measures, including through the OECD's Multilateral Convention, the EU's Anti-Tax Avoidance Directive (ATAD 1 and 2) and the EU's directive on minimum tax intended to implement the OECD Pillar Two rules, each of which will have an impact on Irish tax law.

The Office of the Revenue Commissioners (Irish Revenue) is responsible for the assessment, collection, and management of taxes and duties; and the implementation of import and export controls. The Department of Finance is responsible for determining taxation policy. However, Irish Revenue can provide policy advice on taxation issues to the Department of Finance.

1.2. Currency

In Ireland, the currency is the euro.

1.3. Membership of International Organizations

Ireland is a member of the EU, the OECD and the World Trade Organization (WTO).

1.4. Official Websites

In Ireland, the following are the relevant tax and finance authority websites:

- Tax Authority – https://www.revenue.ie/en/Home.aspx.
- Department of Finance – http://www.finance.gov.ie.

1.5. Automatic Exchange of Information

Ireland has ratified the Convention on Mutual Administrative Assistance in Tax Matters and is a signatory to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. Ireland has also implemented the OECD Common Reporting Standard (CRS) (the agreed global standard for AEOI) through DAC.

The Directive on Administrative Cooperation 2011/16/EU (DAC) (as amended by other DAC directives) on mandatory automatic exchange of tax information within the EU broadly directs all EU Member States to share certain information for taxable periods starting on or after January 1, 2014. The information exchanged is in relation to residents of other Member States and includes:

- employment income;
- directors' fees;
- life insurance products (not covered by other directives);
- pensions; and
- ownership and income from immovable property.

The EU, including Ireland, has signed agreements to apply DAC as amended by Directive 2014/107/EU (DAC2) with the following countries:

- Andorra;
- Switzerland;
- Liechtenstein;
- San Marino; and
- Monaco.

Ireland has enacted Directive 2018/822/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6) into Irish law (see further Section 8.1).

Ireland has enacted legislation to implement a Foreign Account Tax Compliance Act (FATCA) Model 1 IGA with the United States.

Ireland is also a signatory to the Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country (CbC) Reporting, with CbC reporting requirements applying in Ireland for fiscal years beginning on or after January 1, 2016.

Ireland is a signatory to the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income derived through Digital Platforms ("the DPI-MCAA").

2. Corporate Tax Computation and Administration

2.1. Residence, Taxable Status, Entity Characterization

2.1.1 Residence

A company incorporated in Ireland is automatically regarded as tax-resident in Ireland. In all other cases, residence is based on where the company is centrally managed and controlled. The term "central management and control" is, in broad terms, directed at the highest level of control of the business rather than the day-to-day operations. It looks to the strategic control of the company, including the formulation of company policy, how the company deals with financing and capital structure, etc.

If a company incorporated in Ireland is managed and controlled in a jurisdiction with which Ireland has signed a double tax treaty ("treaty"), it may be regarded as resident in that other state under the "tie-breaker" clause of the treaty with that state. As a result of the implementation of the OECD's Multilateral Instrument (MLI) in 2019, it may be necessary to secure the agreement of the relevant competent authority under a treaty in relation to the residence status of an entity.

2.1.2 Taxable Status

Companies are subject to corporation tax on their taxable profits.

2.1.3 Legal Classification of Nonresident Entities

Irish legislation does not specifically address how foreign entities should be legally classified for Irish tax purposes, i.e., as opaque or transparent. In order to determine the Irish tax status of a foreign entity, consideration must be given to the legal status of the entity in its own jurisdiction and to relevant case law which sets out the traits relevant to an opaque or transparent entity for tax purposes.

The approach of Irish Revenue as to entity classification can vary. Irish Revenue has previously confirmed that a U.S. LLC may be regarded as a "body corporate" for the purposes of associated companies relief from stamp duty, even though the members hold "interests" rather than "shares" in the LLC. Conversely, Irish Revenue argued in a recent case that a U.S. LLC did not constitute a body corporate, but then chose not to appeal a finding to the contrary by the Tax Appeals Commission. Final determination of classification will depend on the facts in each case.

2.2. Corporate Tax Base

2.2.1 Resident Corporations

A company that is resident in Ireland under the rules described above will be liable to Irish corporation tax on its worldwide profits. Profits brought into the charge to Irish corporation tax are the sum of the company's income plus chargeable gains before allowable deductions. The profits on which corporation tax is ultimately borne are the total amount of profits after making all deductions and taking all relevant reliefs.

2.2.2 Nonresident Corporations

A company that is not resident in Ireland is only subject to corporation tax if it carries on a trade in Ireland through a branch or agency. If it does carry on a trade in Ireland, then it is subject to Irish corporation tax on any:

- trading income arising from the branch or agency;
- other Irish source income;
- income from property or rights used by, or held by, or for, the branch or agency; and
- chargeable gains arising from assets which are situated in Ireland, and which are used in or for the purposes of the trade carried on through the branch or agency.

A nonresident company that does not have a branch or agency in Ireland will only be subject to Irish tax on income derived from sources in Ireland. All nonresident companies are subject to CGT on any disposal of specified Irish assets.

2.2.3 Noncorporate Business Entities

2.2.3.1 Recognition

A number of noncorporate business entities are recognized in Ireland, including partnerships and certain investment fund structures such as unit trusts, common contractual funds and investment limited partnerships (ILP).

2.2.3.2 Tax Status

Partnerships

Under general legal principles, a partnership is not a "person" distinct from its members (unlike a company which is a separate person to its shareholders). For Irish tax purposes, an Irish partnership is treated as transparent for tax purposes and is not subject to tax in its own right. Instead, it is the members of the partnership who are subject to Irish tax. However, the partnership taxable profits, capital allowances and charges are determined for the partnership as a whole and once these amounts have been calculated, they are apportioned amongst the partners.

Investment funds

Investment funds in Ireland can be established in a number of different legal forms, including noncorporate forms such as unit trusts, common contractual funds (CCFs) and ILPs.

Unit trusts are taxed as investment undertakings for the purposes of Section 739B, TCA and are subject to the "gross roll-up regime." This regime also applies to investment undertakings constituted as investment companies and Irish Collective Asset-Management Vehicles (ICAVs). Under the gross roll-up regime, investment undertakings are, broadly, not subject to tax in Ireland on any income or gains they realize from their investments and there are no Irish withholding taxes in respect of distributions, redemptions or transfers of units by or to non-Irish investors if certain conditions are met. In particular, non-Irish resident investors and certain exempt Irish investors must provide the appropriate Irish Revenue-approved declaration to the fund.

There are specific rules forming part of the gross roll-up tax regime which apply to investment undertakings holding Irish real estate assets (termed Irish real estate funds or "IREFs"). These rules can give rise to additional withholding tax arising out of certain events including distributions to investors, but this does not affect the tax treatment discussed above where the investment undertaking does not hold Irish real estate assets. For the purposes of these specific tax rules, an IREF is (i) an investment undertaking or a subfund of an investment undertaking in which 25 percent or more of the value of the assets is derived from Irish real estate (or related assets), or (ii) an investment undertaking or subfund of an investment undertaking the main purpose of which, or one of the main purposes of which, is to acquire such assets. In addition, IREFs can be exposed to direct tax in certain circumstances, including where the investment undertaking's leverage exceeds 50 percent of the cost of its assets (subject to relief where the debt incurred is qualifying third party debt).

A CCF is a contractual arrangement enabling investors to pool assets in a regulated fund vehicle which is effectively treated as transparent for Irish tax purposes under Section 739I,TCA.

An ILP is a regulated partnership structured under the Investment Limited Partnerships Act 1994 (which has been amended and extended by the Irish Investment Limited Partnership (Amendment) Act 2020) which is, effectively, treated as transparent for Irish tax purposes under Section 739J, TCA.

2.2.4 Permanent Establishments

2.2.4.1 Domestic Law Definition

A company that is not resident in Ireland, but that carries on a trade through a branch or agency in Ireland is liable to corporation tax with respect to profits attributable to that branch or agency. As such, the application of Irish tax to a nonresident company is not dependent on the existence or otherwise of a permanent establishment (PE). However, all Irish treaties confine this scope to a situation where the trade is carried on through a "permanent establishment" and the treaty will override Irish domestic law.

2.2.4.2 Treaty Definition

The concept of PE in Ireland's treaties is generally based on the OECD definition which provides that a PE means a fixed place of business through which the business of an enterprise is wholly or partially carried on. The PE article in Ireland's treaties generally contains an illustrative list of fixed places of business that will constitute a PE and a list of excluded activities that will not constitute a PE even if there is a fixed place of business.

On June 7, 2017, Ireland signed the MLI and on January 29, 2019, Ireland deposited its instrument of ratification of the MLI, meaning that the MLI became effective from January 1, 2020. The provisions of the MLI mean that the PE article in Ireland's Covered Agreements (as defined in the MLI) may be amended in accordance with the reservations and choices of the two jurisdictions covered by the relevant treaty.

2.2.4.3 Creation via Performance of Services

The performance of services in Ireland should not, in itself, create a PE. The longer the duration of the service, however, the greater the likelihood that other criteria for creating a PE may be met, i.e., that the nonresident entity will either have a fixed place of business through which the company's business is wholly or partly carried out or that the company's business in Ireland will be carried out by a dependent agent who has the authority to do business on the company's behalf.

2.2.4.4 Creation via Customer Downloads or Website Access

A nonresident corporation should not be treated as having a taxable presence in Ireland merely by reason of providing customers with website access or downloading services.

2.2.4.5 Creation via Cloud Services

A nonresident corporation should not be treated as having a taxable presence in Ireland merely by reason of providing customers with access to "cloud" services.

2.3. Taxable Year

2.3.1 Default Taxable Year

Corporation tax is chargeable in respect of the taxable profits of a company for an accounting period. An accounting period for tax purposes cannot be more than 12 months and is normally the period for which a company makes up its accounts. There are specific rules for determining tax accounting periods in cases where a period of account exceeds 12 months.

2.3.2 Reference Year for Computation of Tax

A corporation tax return must be filed by the 23rd day of the ninth month following the end of the tax period. Thus, returns filed in 2023 will (in most cases) reference income from 2022 and tax is calculated on that basis.

2.4. Computing Taxable Income

2.4.1 General

Irish corporate taxable income is measured by net revenue (from trading income, nontrading income and certain capital gains) as reduced by operating expenses and certain special deductions. Deductible operating expenses include the normal day-to-day expenses of running the business, however, certain expenses are specifically disallowed, such as client entertainment and political donations. Deductible expenses must be wholly and exclusively incurred for purposes of the business.

2.4.2 Exempt Income

The following income is exempt from Irish corporation tax in the hands of an Irish resident company which is generally within the charge to corporation tax:

- certain distributions received from Irish resident companies (franked investment income or FII);
- interest on certain government securities held by certain qualifying companies;
- certain capital and Irish Revenue grants; and
- profits or gains from woodlands managed on a commercial basis.

2.4.3 Inventory Valuation and Inventory Flow

There are a number of different methods for calculating the cost of inventory, including the weighted average and first-in, first-out (FIFO) methods. The entity must decide which method is the most appropriate, and apply it consistently year-on-year:

- Weighted Average: under this method, the stock value is arrived at by working out an average unit price based on the quantities purchased at different prices.
- FIFO: under this method, it is assumed that the first goods purchased are the first items of inventory sold.

2.4.4 Depreciation or Capital Allowances

A tax deduction is not available for depreciation. Instead, a company may claim capital allowances (often referred to as tax depreciation) on expenses it incurs on certain qualifying capital expenditure. Capital allowances are treated as an expense when calculating a company's profit (or loss) for corporation tax purposes. Capital allowances are generally calculated on a straight-line basis (evenly over a number of years) on the net cost of the business asset or premises. The main assets which qualify for capital allowances are plant and machinery, industrial buildings, motor vehicles, computer software, transmission capacity rights, certain energy efficient equipment and specified intangible assets. The rate at which capital allowances can be claimed each year depends on the nature of the asset; for instance, capital allowances for plant and machinery can be claimed at 12.5 percent per annum over eight years, while those for industrial buildings can be claimed at 4 percent over 25 years.

See also Section 2.4.6 (for energy-efficient equipment) and Section 2.6.4 (for intangible assets).

2.4.5 Reserves

General reserves are not permitted as deductions for tax purposes. Any provisions such as bad debts or repairs must be for specific items related to the trade.

2.4.6 Special Allowances

Energy-efficient equipment

Capital allowances are also available with respect to certain energy-efficient equipment acquired for use in a company's trade. The equipment must be new and must be included in the list of energy-efficient equipment maintained and published by the Sustainable Energy Authority of Ireland (SEAI) in order to qualify under the scheme.

A company may claim accelerated capital allowances of 100 percent of the capital expenditure incurred on the listed equipment. The Irish Finance Act 2021[1] extended the accelerated capital allowances regime to gas vehicles, hydrogen vehicles and their respective refueling equipment. The Act also amended the regime so as to exclude energy efficient equipment directly operated by fossil fuels with effect from January 1, 2022. The accelerated capital allowance can be claimed for the year in which the equipment is first provided and used. The scheme applies until December 31, 2024.

Normal wear and tear allowances can be used for energy-efficient equipment that is machinery or plant, but that has not been included in the approved list or is otherwise excluded from the accelerated capital allowances regime.

Research and development tax credit

Ireland operates a research and development (R&D) tax credit. For more information, see Section 2.6.3.

The Knowledge Development Box may also be relevant (see Section 2.6.4).

Digital gaming tax credit

Ireland has a tax credit for the digital gaming sector available until December 31, 2025.[2] The credit operates as a refundable corporation tax credit for certain expenditure incurred in the design and development of digital games.

Two categories of expenditure qualify for the tax credit, namely:

- "qualifying expenditure", which is the total expenditure incurred by the digital games development company on the design, production and testing of a digital game; and
- "eligible expenditure", which is the portion of qualifying expenditure expended on the development of the digital game in Ireland or the EEA.

The tax credit is available at a rate of 32 percent on the lowest of:

- the eligible expenditure amount;
- 80 percent of the qualifying expenditure; or
- 25 million euros.

A per project minimum spend requirement of 100,000 euros applies.

The relief is only available for projects in the digital gaming sector which have been issued with a "cultural" certificate from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. In considering whether to issue the certificate, the Minister must have regard to the contribution which the digital game makes to the promotion and expression of Irish and European culture. The procedure for applying for a certificate is set out in the Digital Games Regulations 2022, SI 593/2022. These regulations came into operation on November 22, 2022 as regards applications made from that date in respect of digital games developed on or after that date.

[1] Taxes Consolidation Act 1997, s 285C, as amended by the Finance Act 2021, s 22.

[2] Taxes Consolidation Act 1997, s 481A, as amended by the Finance Act 2021, s 33.

2.4.7 Special Provisions or Limits Applicable to Foreign Companies

There are no special provisions or limitations applicable to foreign companies' business in Ireland, or applicable to foreign-owned companies other than those discussed in Section 7.1, Section 7.2, Section 7.3, Section 7.4 and Section 7.5.

2.5. Intercompany Dividends

Distributions received by Irish resident companies from other Irish resident companies (often referenced as FII) are not subject to corporation tax in the hands of the recipient company. Irish resident companies are also exempt from dividend withholding tax (DWT) on dividends payable by other Irish companies but must complete the appropriate declaration form and give it to the company making the dividend.

2.6. Special Tax Regimes

2.6.1 Economic Zones

There are no economic zones.

2.6.2 International Finance or Holding Companies

Securitization

Securitization companies are Irish resident special-purpose companies that hold and/or manage "qualifying assets" (which includes financial assets). The taxable profits of a qualifying company under Section 110, TCA are calculated as if it was a trading entity with the result that the company can deduct funding costs including swap payments and profit-dependent interest, provided certain conditions are met and subject to the application of the interest limitation rule (see Section 8.2). Any residual profit is liable to corporation tax at 25 percent. The nature of the regime has led to its use in a range of international finance transactions including repackagings, collateralized debt obligations and investment platforms. The deductibility of funding costs may be restricted where interest is paid to persons that have the ability to participate in the financial and operating decisions of the securitization company.

Holding Companies

Ireland is a leading location for the establishment of holding companies. This is due in part to the general Irish tax treatment of holding companies which includes a participation exemption from capital gains assuming certain conditions are met and a 12.5 percent rate of corporation tax which applies to (a) dividends from other EU or treaty countries, or countries which have ratified the Convention on Mutual Assistance in Tax Matters which are sourced from trading activities and (b) dividends from foreign portfolio companies (i.e., those in which the Irish holding company has less than a 5 percent interest). Ireland also operates a flexible foreign tax credit system which can eliminate or reduce any Irish tax liability on the receipt of dividends.

2.6.3 Research and Development Companies and Activities

Companies carrying on qualifying R&D can benefit from a credit calculated at 25 percent of qualifying expenditure. Prior to amendments enacted by the Finance Act 2022, the credit could only be used to reduce the company's corporation tax liability. However, for accounting periods with a specified return date on or after September 23, 2023, taxpayers can opt, under the amended legislation,[3] for the credit either to be paid in cash or offset against other tax liabilities. Where a taxpayer chooses the payment option, a three-year fixed installments schedule applies. Transitional provisions are in place for the first accounting period in respect of which the revised rules apply.

To qualify for the credit, the following must apply:

- the applicant must be a company within the charge to corporation tax in Ireland;
- the company must undertake qualifying R&D activities within the European Economic Area (EEA) or the UK; and
- the expenditure must not qualify for a tax deduction under the law of another territory.

[3] Taxes Consolidation Act 1997, s 766C, as inserted by the Finance Act 2022, s. 27(4).

The company must have engaged in qualifying R&D activities which involve systemic, investigative or experimental activities in the field of science or technology and involve one or more of these categories: basic research, applied research, experimental development, scientific or technological advancement, and resolution of scientific or technological uncertainty.

Claims for R&D tax credit must be made within 12 months from the end of the accounting period in which the expenditure was incurred. The R&D activity must seek to achieve (as opposed to succeed in achieving) scientific or technological advancement. Even if the advance in science or technology sought by a project is not achieved or not fully realized, the R&D credit may still be available.

Expenditure on the construction or refurbishment of a building for use for qualifying R&D activity may qualify for an R&D tax credit where such a building also qualifies for industrial buildings capital allowances.

Subject to certain restrictions, expenditure outsourced by the company to universities/institutes to carry out R&D activities can be included in the company's R&D credit. The credit in this instance is restricted to 15 percent of the expenditure incurred by the company on research and development activities, or 100,000 euros, whichever is greater.

A company may transfer some or all of its R&D credit to "key employees." The option to surrender part of the credit is not available to loss-making companies. The credit can be carried back against the previous year liability and then carried forward to later years where it may be possible to obtain a refund of any excess credit.

Further changes introduced by the Finance Act 2022 include the following:

- companies may claim pre-trading expenditure incurred on qualifying R&D activities as a payable R&D tax credit over a three-year period from the year that the company commences to trade;
- the first 25,000 euros of a claim on R&D expenditure is fully payable in the first year; and
- existing caps on the payable element of the R&D tax credit are removed.

The IP Capital Allowance Regime and the Knowledge Development Box may also be relevant to companies engaged in R&D activities (see Section 2.6.4).

Planning Point: The Finance Act 2022 changes to the R&D tax credit have been put in place to ensure that it is regarded as a qualifying refundable tax credit for the purposes of Pillar Two of the OECD Two-Pillar Solution. For further information on the Two-Pillar Solution, see the Bloomberg Tax "OECD Two-Pillar Solution Global Tax Agreement Watch".

2.6.4 Other Special Regimes

IP Capital Allowance Regime

Companies carrying on a trade in Ireland can claim a tax deduction on capital expenditure incurred on the acquisition or development of certain "specified intangible assets" for the purposes of their trade.[4]

The scheme applies to a broad range of intangible assets (e.g., patents, copyright, trademarks, know-how) which are recognized as such under generally accepted accounting principles (GAAP) and which are listed as specified intangible assets in the TCA.

The allowances will typically follow the accounting write-down, but the company can elect for a fixed write-down period of 15 years (7 percent per annum in years 1 to 14, then 2 percent in year 15). The allowances can be offset against income generated from managing, developing or exploiting the intangible assets or income from selling goods or services that derived their value from the intangible assets.

For capital expenditure incurred on or after October 11, 2017, the aggregate amount of:

- capital allowances; and
- interest deductions relating to expenditure on intangible assets;

[4] Taxes Consolidation Act 1997, s 291A as amended.

for an accounting period, cannot exceed 80 percent of trading income for that period (excluding such allowances and interest). Any excess allowances and interest can be carried forward to succeeding accounting periods.

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

Prior to the Finance Act 2020, a balancing charge did not apply (although a balancing allowance may have arisen) when an intangible asset was sold more than 5 years after the beginning of the first accounting period in which the asset was acquired. However, for capital expenditure incurred on or after October 14, 2020, the disposal of any asset, in relation to which capital allowances are obtained, gives rise to a balancing charge regardless of the period of ownership.

Tax relief for start-up companies

There is an exemption from corporation tax for new companies that commence trading no later than December 31, 2026. The maximum annual tax liability for which shelter is available is 40,000 euros. The amount of relief the company is entitled to is linked to the amount of pay-related social insurance (PRSI) paid by the company in respect of its employees (employer's PRSI). The company will be entitled to a 5,000 euros relief for each employee in respect of whom it pays employer's PRSI, subject to a maximum of 40,000 euros.

Tonnage tax

A specific tax regime applies to shipping companies (tonnage tax) which carry out qualifying shipping activities, including carriage of cargo and passengers, marine-related activities, leasing of qualifying ships and related activities. These companies may elect to be subject to a special tonnage tax regime instead of the normal corporation tax regime. If a company enters the tonnage tax regime, it must remain within it for a minimum of 10 years. Under this regime, profits are calculated on the basis of a specified profit per day according to the tonnage of the relevant ship. The standard corporation tax rate for trading income (12.5 percent) applies to the amount of profits determined under this calculation.

Film relief scheme

Until the end of 2024,[5] the film relief scheme provides tax relief in the form of a tax credit for investment in the production of certain films. The Finance Act 2022 contains a provision, taking effect from a date to be set by commencement order, to extend the operation of this relief until December 31, 2028.[6]

The credit relates to the cost of production and is granted at a basic rate of 32 percent on the lowest of:

- eligible expenditure (i.e., costs, incurred within Ireland by a qualifying company on the production of a qualifying film, relating to: (i) the employment of eligible individuals, (ii) individuals providing labor only services, and (iii) certain goods, services or facilities);
- 80 percent of the total cost of production of the film; or
- 70 million euros;

and may be claimed against the production company's corporate tax liabilities.

The minimum film production expenditure is 250,000 euros and the minimum expenditure to qualify for the tax credit is 125,000 euros.

Regional uplift – With effect from July 17, 2019, the Finance Act 2018[7] temporarily introduced enhanced credit rates for productions being substantially carried out in regions designated as "assisted" on the Irish regional aid map.[8] The enhanced rates are:

- 37 percent for claims made on or before December 31, 2021;

[5] Taxes Consolidation Act 1997, s 481(3C) as amended by the Finance Act 2018, s 26(1)(m).
[6] Finance Act 2022, s 41.
[7] See Finance Act 2018, s 26.
[8] Taxes Consolidation Act 1997, s 481(1B)(a)(i) as inserted by the Finance Act 2018, s 26(1)(b).

- 35 percent for claims made after December 31, 2021, but on or before December 31, 2022; and
- 34 percent for claims made after December 31, 2022, but on or before December 31, 2023.

For claims made after December 31, 2023, the rate reverts to 32 percent.[9]

To qualify for the enhanced tax credit, a producer company must show that training and skills development opportunities are provided to individuals habitually resident in the area and that such training will address a skills deficit in the area.[10]

Knowledge Development Box

Ireland offers an OECD-compliant "Knowledge Development Box" for taxing certain intellectual property. The amount of expenditure incurred by a company in developing, creating or improving qualifying patents or computer programs ("qualifying expenditure") is divided by the overall expenditure on such assets before being multiplied by the profits arising from such assets (e.g., from royalties, net sales, and so on). The result is effectively taxed at a rate of 6.25 percent. A potential 30 percent uplift in the qualifying expenditure is available, capped at the total amount of acquisition costs and group outsourcing costs. The knowledge development box applies with respect to accounting periods commencing on or after January 1, 2016, but before January 1, 2027.

A company may qualify for the Knowledge Development Box if it creates a usable qualifying asset from qualifying R&D activities that earn income. A qualifying asset is one that is created from R&D activities, such as a computer program, an investigation protected by a qualifying patent, and certain additional intellectual property assets.

Planning Point: Section 40 of the Finance Act 2022, provides, from a date to be set by commencement order, for the knowledge development box to be amended in response to Pillar Two of the OECD Two-Pillar Solution. Firstly, the rate of the allowance given as a trading expense will be amended to 20 percent of qualifying profits, thereby giving an increased effective tax rate of 10 percent for profits within scope of the relief. Secondly, the scheme will be amended to reflect the new effective 10 percent rate when allowing relief for losses incurred by a company on activities that qualify for relief. It is intended that these amendments will commence from a date determined by reference to international progress on implementation of the OECD Pillar Two "Subject to Tax Rule".

2.7. Double Taxation Protection

2.7.1 Mechanics

Unilateral relief from double tax

Irish tax legislation provides for unilateral credit relief where a parent company, which is resident in Ireland, receives a dividend from its subsidiary in respect of which tax has been paid in a country with which Ireland does not have a treaty.

There is also unilateral credit relief for interest withholding tax suffered in countries with which Ireland does not have a treaty; this credit falls to be taken into account in computing the trading income of the company which receives it.

In addition, Ireland operates unilateral credit relief in respect of foreign tax suffered by a branch of an Irish resident company in a jurisdiction with which Ireland does not have a treaty.

As regards CGT, Ireland allows a unilateral credit for tax paid on foreign capital gains in a country with which Ireland has a treaty, but that treaty does not cover taxes on capital gains because it was agreed before the introduction of CGT in Ireland.

Ireland also offers unilateral credit relief for foreign withholding tax on royalty income and leasing income.

Double tax agreements

Ireland has signed comprehensive tax treaties. The agreements cover direct taxes which, in Ireland, are income tax, corporation tax and CGT. As mentioned above, on January 29, 2019, Ireland deposited its instrument of

[9] Taxes Consolidation Act 1997, s 481(1B)(b) as inserted by the Finance Act 2018, s 26(1)(b).

[10] Taxes Consolidation Act 1997, s 481(1B)(a)(ii) as inserted by the Finance Act 2018, s 26(1)(b).

ratification of the MLI, meaning that the MLI became effective on January 1, 2020. The MLI introduces changes to Ireland's international treaties to implement certain recommendations of the BEPS project.

In addition, there are a number of domestic exemptions that apply where the non-Irish resident counterparty is resident in a jurisdiction with which Ireland has signed a treaty. For example, dividends and interest may be paid without deduction of withholding tax where the recipient is resident in a jurisdiction with which Ireland has signed a treaty.

2.7.2 Treaty or Statutory Priority

In Ireland, there is a general consensus that the provisions of a treaty override domestic legislation.

For treaty information, including the number of agreements signed or in force, original treaty texts, translations, consolidations and any modifications made by the Multilateral Instrument, if applicable, see the International Tax Treaties Collection.

2.7.3 Source of Interpretation

Ireland generally follows the OECD model treaty and commentary in its treaty policy and interpretation. As set out at Section 2.7.1, Ireland has deposited its instrument of ratification of the MLI, meaning that the MLI provisions became effective in Ireland with effect from January 1, 2020.

2.8. Returns and Filing Dates

2.8.1 Filing Deadline

In Ireland, corporation tax returns are due by the 23rd day of the ninth month following the end of the relevant tax period.

2.8.2 Filing Method

Corporation tax returns are filed electronically using the Revenue Online Service (ROS). ROS allows taxpayers to: file returns online, make payments of income tax by credit card, debit instruction or banking, calculate tax liability and claim refunds. Under the Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2011, companies are obliged to file their returns electronically and pay their tax using ROS.

2.8.3 Extensions

No extensions are possible.

2.8.4 Penalties

Penalties

Irish Revenue can impose interest and penalties for various actions and offenses including:

- late submission of tax returns;
- late payment of taxes due;
- furnishing incorrect information or particulars; and
- deliberately or carelessly making incorrect returns, statements or declarations.

The amount of any penalty charged depends on the particular action or offense and may also depend on whether the taxpayer has made a qualifying disclosure to Irish Revenue.

No penalty is imposed for (i) technical adjustments, (ii) innocent mistake or (iii) defaults totaling less than 6,000 euros that arise from careless rather than deliberate behavior.

Interest

Interest is payable on any tax due and payable by a chargeable person for a chargeable period and is generally charged for each day or part of a day the tax remains unpaid from the date that the tax became due and payable until payment. Section 1080, TCA sets out the method of calculating that interest. Interest incurred is not allowed as a deduction in computing, for tax purposes, any income, profits or gains.

As part of the government's response to the COVID-19 (coronavirus) pandemic, Section 1080A, TCA has been introduced under the Financial Provisions (Covid-19) (No. 2) Act 2020 to assist taxpayers in difficulty with tax payments. The section provides for a reduced interest rate of approximately 3 percent per annum to apply from August 1, 2020 to taxes declared and owing to Irish Revenue which are subject to a payment agreement.

Surcharge and reduced benefits for late returns

Where a company's return is not submitted on or before the specified date, the following surcharges apply:

- 5 percent of the tax liability, subject to a maximum surcharge of 12,695 euros, where the return is delivered less than two months after the return filing date; and
- 10 percent of the tax liability, subject to a maximum surcharge of 63,485 euros, where the return is delivered two months or more after the return filing date.

If a company fails to submit its return of income for a chargeable period on or before the specified return date for the chargeable period as described above, Section 1085, TCA provides restrictions on the use of a number of reliefs (e.g., certain trading losses (to a maximum of 158,715 euros), excess capital allowances, group relief and advance corporation tax offset).

Section 1078, TCA sets out a list of revenue offenses (e.g., fraudulent evasion of tax that may result in criminal convictions).

2.9. Payment Mechanics

2.9.1 Internal Withholding on Resident Companies

Dividends and other distributions made by Irish resident companies are generally liable to dividend withholding tax (DWT) at a rate of 25 percent for the year of assessment in which the distribution is made. The Irish resident company making the distribution is required to withhold the tax and pay it to Irish Revenue. Generally, DWT must be deducted at the time the distribution is made, unless the company has satisfied itself that the recipient qualifies for an exemption and is entitled to receive the distribution without the deduction of DWT. DWT must be paid to Irish Revenue by the 14th of the month following that in which the distribution is made.

2.9.2 Schedule for Tax Payments or Deposits

A company is required to make two corporation tax payments in respect of each accounting period as follows.

Preliminary tax

If a company is a "large company" (being one with a corporation tax liability of over 200,000 euros in the previous accounting period) then it may pay its preliminary tax in two installments. The first installment is due on the 23rd of the sixth month of the accounting period (based on either 50 percent of the corporation tax liability for the previous accounting period or 45 percent of the corporation tax liability for the current accounting period). The second installment is due on the 23rd day of the 11th month of the accounting period, and this will bring the preliminary tax paid up to 90 percent of the final tax due for the current accounting period.

Alternatively, if a company is a "small company" (being one with a corporation tax liability of less than 200,000 euros in the previous accounting period) then the company must pay its preliminary tax in one installment at least 31 days before the end of its accounting period, and before the 23rd day of that month. The amount to be paid as preliminary tax if the company is a small company can be either 100 percent of its corporation tax liability for the previous accounting period or 90 percent of its corporation tax liability for the current period.

The introduction of interest limitation rules pursuant to Directive 2016/1164/EU (ATAD) has necessitated amendment of the preliminary tax payment provisions insofar as they relate to taxpayers affected by those rules during accounting periods commencing on or after January 1, 2022 and ending before December 31, 2027 (see Section 8.2).

Final tax

The final corporation tax liability is due on the same day as the corporation tax return and must amount to the balance of corporation tax liability for the current year.

2.9.3 Electronic Payments

ROS allows taxpayers to make electronic payments directly from their bank accounts and receive refunds or repayments directly to their bank accounts. For payments, the bank account must be capable of handling direct debits. For refunds or repayments, the bank account must be in a banking institution that is within the Single Euro Payments Area (SEPA) zone.

2.9.4 Interest and Penalties

See the list of penalties, interest, surcharges and criminal penalties in Section 2.8.4.

2.10. Statute of Limitations

Where a tax return for a chargeable period contains a full and true disclosure of all material facts necessary for the making of an assessment for that period, no assessment or amendment to an assessment can be made later than four years after the end of the chargeable period in question. If a taxpayer submits an amended return, this four-year period runs from the end of the year in which the amended return is filed.

The four-year assessment period may be extended in the case of suspected fraud or neglect (i.e., reasonable grounds for belief that fraud or neglect has been committed), or where a person has not delivered a full and true return. There is no time limit for the raising or amending of assessments in cases of fraud or neglect.

3. Corporate Tax Rates

3.1. National Taxes

3.1.1 Corporate Tax Rates

Current rate: 12.5 percent (trading income) or 25 percent (passive income and income arising from a possession outside of Ireland).

There are two rates of corporation tax in Ireland:

- the 12.5 percent rate applies to trading income generated or received by an Irish company; and
- the 25 percent rate applies to passive income or income arising from a possession outside of Ireland (i.e., a foreign trade).

There is no statutory definition of trading in the Irish tax legislation. The question of whether a trade is being carried on is primarily a question of fact. In general, "trading" means the carrying on of business or the engaging in activities on a regular or habitual basis with a view to realizing a profit.

From January 1, 2022, the 25 percent corporation tax rate also applies to Irish-source rental income paid to nonresident companies without a branch in Ireland. Previously, such rental payments were subject to income tax at 20 percent.

As to implementation of Pillar Two of the OECD Two-Pillar Solution see Section 9.4.

3.1.2 Alternative Tax Regime

There are no alternative tax regimes in Ireland.

3.1.3 Special Reduced Rates or Regimes

See Section 2.6 on special tax regimes.

3.1.4 Special Additional Taxes or Levies

For the annual levy imposed on financial institutions in Ireland collecting deposit interest retention tax (DIRT), see Section 10.2.

3.2. State, Cantonal, Provincial or Other Local Taxes

3.2.1 Main Rates

Not applicable; there are no state taxes in Ireland.

3.2.2 Reduced Rates

Not applicable; there are no state taxes in Ireland.

3.2.3 Income Tax Base

Not applicable; there are no state taxes in Ireland.

3.2.4 Income Tax Deductions

Not applicable; there are no state taxes in Ireland.

3.2.5 Incentives

Not applicable; there are no state taxes in Ireland.

3.2.6 Non-Income Taxes in States

Not applicable; there are no state taxes in Ireland.

3.3. Taxes Imposed as a Penalty

An additional surcharge of corporation tax at 20 percent is levied on "close companies" that do not distribute income derived from, broadly, investments or rental property. A close company is an Irish resident company that is controlled by five or fewer participators. This number can be higher if the participators are also directors. In addition, professional service companies may be liable to a surcharge of 15 percent on 50 percent of undistributed trading income. A service company is a close company where the principal part of the company's income is derived from the carrying on directly of a profession or the provision of professional services. The surcharge does not apply if the relevant income is distributed within 18 months of the end of the accounting period in which it arose.

On May 13, 2020, Irish Revenue announced that it will, on application, extend the 18-month period for distributions by a further nine months where a distribution is not made within that period in response to COVID-19 related circumstances affecting the company. The temporary extension is applicable only to accounting periods ending on or before March 31, 2022.

4. Corporate Tax Capital Gains, Losses, Group Treatment

4.1. Taxation of Corporate Capital Gains

Irish resident companies are liable to capital gains tax (CGT) on the disposal of worldwide assets. Non-Irish tax-resident companies are liable for gains arising on the disposal of certain assets, including land and buildings in Ireland, certain exploration and mining rights, and unquoted shares or securities that derive their value, or the greater part of their value, from such assets.

For tax purposes, chargeable gains of Irish resident companies are computed in accordance with CGT principles. However, for the purposes of including chargeable gains in a company's corporation tax computation, the chargeable gain is recalculated to give an amount which, when charged at the appropriate corporation tax rate, produces the same result as if the gains were charged at the appropriate CGT rate.

Capital gains tax is aggregated by reference to the chargeable gains and allowable losses of a chargeable person in the particular tax year. Capital losses arising in a tax year can be set off against chargeable gains arising in the same year and any unutilized losses can be carried forward indefinitely.

Generally, it is the person disposing of the chargeable asset who is liable to pay capital gains. However, where certain assets (including land and buildings in Ireland, and certain exploration and mining rights) are disposed of, the person paying the consideration may be required to withhold 15 percent from the consideration and account for this to Irish Revenue.

No deduction is required where the consideration is less than 500,000 euros (or 1,000,000 euros if the asset disposed of is a dwelling), or where the person disposing of the relevant asset obtains a clearance certificate from Irish Revenue. A clearance certificate will be issued where Irish Revenue are satisfied that the:

- person making the disposal is Irish tax-resident;
- tax does not arise on the disposal; or
- tax has already been discharged.

Certain categories of person are not required to produce a clearance certificate, including regulated Irish funds, real estate investment funds and Irish financial institutions selling financial assets.

As to the exit tax on unrealized gains where, inter alia, a company migrates its residence from Ireland or transfers assets out of the Irish tax net, see Section 9.4.

4.2. Definition of Corporate Capital Gains

CGT generally arises on the disposal of an asset. The chargeable gain is computed by deducting the costs of acquisition and disposal and the costs of any enhancement expenditure from the sales proceeds received on disposal. The application of capital losses carried forward may reduce the amount of gain.

CGT can also arise on certain events that are deemed to constitute disposals. These include situations where a company ceases to be a member of a group of companies, or where certain value shifting acts occur with the effect of passing value from one shareholder to another.

All forms of property may be assets for the purposes of CGT, whether situated in or outside of Ireland. The following are specifically included as assets:

- options, debts and incorporeal property generally;
- any currency other than the currency of Ireland; and
- any property which has not been acquired by the person owning it (e.g., business goodwill or copyright).

4.3. Computation

As set out above, separate calculation of the capital gain/loss must be computed in accordance with CGT rules. Relevant expenses of acquisition and disposal should be deducted from the consideration. Current period capital losses and unutilized capital losses incurred in previous accounting periods are deducted from any capital gains arising in the current period. The tax payable is calculated using the applicable CGT rate, which is currently 33 percent.

The chargeable gain to be included in the company's corporation tax return is then calculated by reference to the corporation tax rate. For resident companies, capital gains are included in the tax computation on business profits. The amount of the gain is adjusted to account for the different rate (as capital gains are currently taxed at 33 percent). The adjusted chargeable gain is then included in the corporation tax computation and charged at 12.5 percent.

Example: Resident Company X has a capital gain of 10 million euros (that would give rise to a tax liability of 3,300,000 euros under CGT). An amount of 26,400,000 euros is the adjusted amount of the charge subject to corporation tax. At an effective rate of 12.5 percent, the equivalent amount of tax liability 3,300,000 euros is paid.

4.4. Corporate Combinations and Divisions

4.4.1 Mergers

Ireland implemented EU Directive 2009/133/EC (the "Merger Directive") on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States through the European Communities Cross-Border Merger Regulations 2008. The main purpose of the Merger Directive is to provide tax neutrality in relation to cross-border mergers, divisions, transfers of assets and exchanges of shares; however, it makes similar provision in relation to the transfer of the registered office of an SE (*societas Europaea*) or SCE (*societas cooperativa Europaea*) between EU Member States.

There are specific domestic Irish reliefs on the exchange of shares and transfers of assets by way of merger which can apply to a company resident in an EU Member State, in an EEA State or in the United Kingdom. In addition, Irish Revenue has general authority to grant the reliefs provided by EU legislation such as those provided in the Merger Directive, if the Irish implementing legislation does not specifically provide for a particular relief. An application can be made to Irish Revenue in this respect.

The effect of the reliefs means that no tax should arise on the transfer of all or part of one company to another in exchange for shares in the second company, and no tax should arise on the transfer of the assets. These reliefs apply to cross-border mergers (that is, transactions between companies from two different Member States) and to transfers between two Irish companies. There is also a stamp duty exemption for the transfer of assets under a merger under relevant EU legislation.

4.4.2 Transfers of Corporate Property

In a reconstruction or amalgamation, where one Irish resident company takes over the whole or part of the business of another Irish resident company and that other company receives no consideration for the transfer of the business other than the taking over of its liabilities, then no corporation tax is to be charged in respect of chargeable gains accruing to the transferor company. The transferee company is to be treated as if it had acquired the assets at the time and the price at which they were acquired by the transferor company. To qualify for this treatment it needs to be shown that the reconstruction or amalgamation is for bona fide commercial reasons and does not form part of a scheme the main purpose (or one of the main purposes) of which is to avoid a tax liability.

4.4.3 Share Transfers

Where shares are transferred as part of a bona fide scheme of reconstruction or amalgamation and certain additional conditions are met, no capital gains arise for the disposing shareholders and the acquiring shareholder is deemed to have received those shares on the same date and at the same cost as the old shares (also known as "share-for-share relief").[11] The relief will only apply where the company acquiring the shares has, or as a result of the transaction will have, control of the target company or where the share-for-share exchange results from a general offer made to the members of the target company. The relief does not apply, however, unless the transaction is for bona fide commercial reasons and not part of a tax avoidance scheme.

Relief may be available from stamp duty on a share-for-share exchange that is a bona fide reconstruction or amalgamation. Various conditions must be met including:

- a company with limited liability must be registered or must increase its share capital with a view to the acquisition of not less than 90 percent of the issued share capital of the target company;
- the acquiring company must be incorporated in an EU or EEA Member State (including Ireland) or the UK;
- where shares are to be acquired, not less than 90 percent of the consideration for the acquisition must consist of the issue of shares in the acquiring company to the holder of shares in the target company in exchange for the shares in the target company; and
- the acquiring company must retain the shares in the target company for at least two years.

4.4.4 Divisions or Separations

Share-for-share relief may also apply to a division or separation where the conditions for relief are met.

4.5. Position of Losses from Business Operations

4.5.1 Definition

For Irish corporation tax purposes, a trading loss is calculated in the same way as a trading profit. As such, trading losses are calculated after deduction of capital allowances from the adjusted taxable income (profit or loss, less allowable deductions, plus any relevant add-backs).

For CGT purposes, a loss on disposal of a capital asset can be offset against chargeable gains of the same year and, if the losses exceed the gains, the excess may be carried forward against gains of later years.

4.5.2 Treatment

In Ireland, a company can claim relief for trading losses against other relevant trading income of the current accounting period and against relevant trading income of the preceding accounting period of corresponding length. Relevant trading income means trading income other than income taxable at the 25 percent rate (passive income).

Trading losses may be carried forward for relief against profits of the same trade in which the loss occurred. There is no time limit for making this claim and the loss can be carried forward indefinitely provided the company continues to carry on the same trade.

[11] Taxes Consolidation Act 1997, s 584.

A company is not required to carry back a loss before it (or the remaining loss) can be carried forward, but any such loss carried forward must be used against the first available profits of the same trade.

A temporary accelerated loss relief for companies adversely impacted by the COVID-19 (coronavirus) pandemic was introduced under the Financial Provisions (Covid-19) (No. 2) Act 2020. Section 11 of the Act provides cash flow support to companies by allowing them to estimate their trading losses in an accounting period which includes some or all of the period from March 1, 2020 to December 31, 2020, and therefore means that accounting periods ending in 2020 and 2021 may be eligible for the relief. The relief allows the carry-back of up to 50 percent of those losses on an accelerated basis. Ordinarily, a claim for relief is made on filing of the tax return for the period in question. However, companies can now make an `interim claim' for the relief as early as four months after the beginning of the accounting period. A precondition of the relief is that the company making the claim is fully tax compliant.

4.5.3 Losses After Change in Ownership

Relief for carry forward of trading losses is not available if, within any three-year period, there is:

- a major change in the nature or conduct of a trade; and
- a change in ownership of the company.

The restriction effectively prevents the losses being carried across the change of ownership, so that losses arising prior to the change of ownership are stranded and not available for use against profits arising following the change. A change of ownership is considered to have taken place where more than 50 percent of the ordinary share capital in the company changes hands.

Where either set of circumstances applies, losses incurred in an accounting period beginning before the change in ownership are not available for relief by set-off against the profits of an accounting period ending after the change.

4.6. Group Treatment

4.6.1 General Rule

Ireland recognizes groups for the purposes of both corporation tax and CGT, and the Irish tax rules provide for surrender of trading losses and certain other losses and allowances between members of a corporate group and also exempt from the charge to tax, certain transfers, and transactions between members of a group.

Trading losses and other amounts such as excess management expenses and charges on income on which relief may be given for corporation tax may be surrendered by a company which is a member of a group of companies and the relief given to another company in the same group. This is known as "group relief." Group relief is also available in respect of trading losses and other amounts that are not subject to corporation tax (i.e., losses incurred outside Ireland).

Group relief in respect of losses incurred outside Ireland is only available "vertically upwards," i.e., from a surrendering company that is in an EU Member State, an EEA treaty country, the UK, or a country with which Ireland has a treaty, and is a 75 percent subsidiary of a claimant that is resident in Ireland. For a company located in a country outside the EU and one that does not have a treaty with Ireland, a group may be formed if the parent company is quoted on certain stock exchanges.

4.6.2 Definition of Group

Irish tax law contains separate but similar definitions of groups for different taxes and, in addition, the definition of groups for corporation tax purposes depends on whether the transaction in question involves surrender of losses or payments between group companies.

Two companies will form a group for corporation tax payments purposes if the following tests are met:

- one company is a subsidiary of the other or both companies are subsidiaries of a third company; and
- both companies are resident in the EU or an EEA treaty country or the UK.

For corporation tax losses purposes, a group consists of a parent company and its 75 percent subsidiaries. Two companies are deemed to be members of a group of companies if:

- one company is a 75 percent subsidiary of the other company; or
- both companies are 75 percent subsidiaries of a third company.

Group relief is available if all the companies in the group are resident in the EU, an EEA treaty country, the UK or resident in a country with which Ireland has a treaty. Surplus trading losses of companies owned by a consortium may also be transferred. For the purposes of the relief, a company is owned by a consortium if 75 percent or more of the ordinary share capital of the company is directly and beneficially owned by five or fewer companies.

A CGT group consists of a principal company and all its effective 75 percent subsidiaries, provided that such companies are resident in the EU, an EEA country, the UK or a country with which Ireland has a treaty. A company is an effective 75 percent subsidiary of another company if:

- not less than 75 percent of its ordinary share capital is owned directly or indirectly by the parent company;
- the parent company is beneficially entitled to not less than 75 percent of any profits available for distribution to equity holders of the company; and
- the parent company would be beneficially entitled to not less than 75 percent of the assets of the company available for distribution to its equity holders on a winding up.

Where a member of the group has an effective 75 percent subsidiary, that subsidiary is also a member of the group.

Where a member of a group of companies disposes of a chargeable asset to another member of the group, the disposal is to be treated as if the consideration received by the company making the disposal is such that it does not give rise to a gain or a loss provided certain conditions are met. These are that:

- the transaction is between members of a group of companies;
- the company transferring the asset is resident in Ireland at the time of transfer or the asset is a chargeable asset in relation to that company immediately before the time of transfer; and
- the company acquiring the asset is resident in Ireland at the time of transfer or the asset is a chargeable asset in relation to that company immediately after the time of transfer.

Relief from stamp duty is also available for transfers between associated companies.

4.6.3 Special Aspects

Participation Exemption

Ireland has a participation exemption for capital gains. Where an Irish company disposes of shares in a company resident in Ireland or an EU/treaty jurisdiction in which it has held at least five percent of the ordinary shares for more than 12 months, any gain should be exempt from CGT provided certain other conditions are met. In particular, the subsidiary must carry on a trade or else the activities of the disposing company and all of its five percent subsidiaries taken together must amount to trading activities.

Tax avoidance—company ceasing to be group member

Ireland prevents the avoidance of tax on capital gains by a company transferring assets with a built-in gain to a newly formed subsidiary company and then disposing of the shares in that company in circumstances in which no liability, or a reduced liability, to CGT arises. The avoidance is countered at the time the company leaves the group by effectively reinstating the charge deferred.

5. Corporate Withholding Taxes on Nonresident Corporations

5.1. Dividends

Irish resident companies are required to withhold tax at a rate of 25 percent on dividends and other distributions. However, there are a wide range of exemptions from dividend withholding tax (DWT) where the dividend or distribution is paid by the tax-resident company to certain persons (provided that certain declarations are completed) including:

- another Irish tax-resident company;
- companies resident in an EU Member State (other than Ireland), or a country with which Ireland has concluded a treaty and are not controlled by Irish residents;
- companies that are under the control, directly or indirectly, of a person or persons who are resident in an EU Member State, or a country with which Ireland has concluded a treaty, and are not controlled by persons not so resident;
- companies whose shares are substantially and regularly traded on a recognized stock exchange in another EU Member State or country with which Ireland has concluded a treaty or where the recipient company is a 75 percent subsidiary of such a company or is wholly owned by two or more such companies; and
- a company resident in another EU Member State with at least a 5 percent holding in the Irish paying company (under Directive 90/435/EEC on the taxation of parent companies and subsidiaries) ("Parent Subsidiary Directive").

Ireland has implemented Directive 2015/121/EU which amends the Parent-Subsidiary Directive for the purpose of tackling arrangements which are not genuine and whose purpose, or one of whose main purposes, is to obtain a tax advantage.

Relief under a treaty with Ireland may also be available.

For both companies and individuals, there is a requirement to have certain documentation in order for this domestic exemption from DWT to apply. A nonresident company needs to make a declaration of tax residency to receive payments without the deduction of tax.

5.2. Interest

Irish withholding tax at the standard rate (see Section 6.3.1) is required to be withheld from payments of Irish source "yearly" interest.

However, there are a large number of exemptions available from this requirement, including for:

- interest paid in Ireland to a bank carrying on a bona fide banking business in Ireland;
- interest paid by such a bank in the ordinary course of business;
- interest paid to a company which is resident in an EU Member State or a country with which Ireland has signed a treaty where that territory imposes a tax that generally applies to interest receivable in that territory by companies from outside that territory;
- interest paid to a U.S. corporation that is subject to tax in the United States on its worldwide income;
- interest paid in respect of a "quoted Eurobond" (provided certain other conditions are met);
- interest paid to certain Irish entities, including qualifying companies under Section 110, TCA, investment undertakings and certain government bodies; and
- interest paid by an Irish qualifying company under Section 110, TCA to a person resident in an EU or treaty jurisdiction, other than where the payment relates to an Irish branch or agency of that nonresident person.

In addition, no withholding tax should apply to interest payments made by Irish companies to nonresident companies that are tax resident in countries with which Ireland has signed a double tax treaty. The exemption will not apply where the recipient is not subject to tax on the interest income in the foreign jurisdiction.

5.3. Royalties

Royalties, other than patent royalties, are not generally subject to withholding tax in Ireland. Patent royalty payments are subject to withholding tax at a rate of 20 percent. Withholding tax will not apply to royalties paid by an Irish company in the course of a trade or business to a company resident in a country with which Ireland has concluded a treaty.

Unilateral tax credit relief is available to all trading companies where royalties are received, including those companies resident in treaty and nontreaty countries.

5.4. Services

Ireland does not impose a withholding tax on payments for services to nonresidents.

Professional services withholding tax, at a rate of 20 percent, applies to payments by certain Irish state and governmental bodies with respect to payment by those entities for professional services, including medical, accounting and legal services (for further information, see Section 9.4).

5.5. Other Withholding Taxes

A 20 percent film withholding tax ("FWT") applies primarily to nonresident actors, including voice-over artists, who are resident outside the EEA and who are engaged by qualifying companies to provide artistic services in Ireland. It does not apply to support staff such as camera operators, producers, directors, etc. FWT must be withheld from any payment of whatever nature is made, whether directly or indirectly, by a qualifying company in respect of artistic services provided by an artist who is not EEA-resident. The FWT does not apply to payments that are taxed through the PAYE system, nor to expenses that are reimbursed to the artist or paid on behalf of the artist, and were incurred by the artist in the provision of artistic services to the qualifying company.

5.6. Special Tax Havens Rates

Ireland does not provide for any special withholding tax rates with respect to payments to residents of countries considered to be tax havens. However, as set out above, certain exemptions from dividend, interest or royalty withholding tax are generally only available where recipients are resident in the EU or a treaty jurisdiction.

6. Personal Taxes

6.1. Domicile and Residency Requirements

An individual is resident in Ireland for a tax year if the individual is present in Ireland for 183 days or more in that year, or 280 days or more in that year and the preceding year combined. Presence in a tax year by an individual of not more than 30 days in Ireland will not be reckoned for the purpose of applying the two-year test. An individual will be regarded as present in Ireland for a day if present at any time during that day.

The Irish Revenue has announced that where an individual is prevented from leaving Ireland because of COVID-19, it will be considered a force majeure circumstance and the individual will not be regarded as being present in Ireland for tax residence purposes for the period of time in which the restrictions remain.

The term "ordinary residence," as distinct from "residence," relates to a person's normal pattern of life and denotes residence in a place with some degree of continuity. An individual will be ordinarily resident in Ireland for a tax year if they have been Irish resident for each of the three preceding tax years. An individual who is ordinarily resident will remain ordinarily resident in Ireland until they have been nonresident for three consecutive tax years.

Domicile is the country which is considered a person's permanent home and is distinct from legal nationality and from residence. On birth, a person acquires a domicile of origin, normally their father's domicile. No person can be without a domicile and it is not possible to have more than one domicile at the same time.

6.2. Income Tax Base

6.2.1 Tax Base for Residents

Individuals who are resident, ordinarily resident, and domiciled in Ireland for tax purposes are chargeable to tax in Ireland on their worldwide income and gains.

Individuals who are resident, but not domiciled in Ireland, are generally only chargeable to tax on Irish source income and on non-Irish income only to the extent it is remitted to Ireland.

6.2.2 Tax Base for Nonresidents

Where an individual is nonresident in Ireland for tax purposes, but is ordinarily resident, Irish income tax is levied on the worldwide income except:

- income from a trade, profession, office or employment no part of which is carried out in Ireland; and
- other foreign income if it is 3,810 euros or less (if it is more than 3,810 euros, the full amount is taxable).

Where an individual is nonresident in Ireland, non-ordinarily resident in Ireland, but domiciled in Ireland, Irish income tax is levied on:

- Irish source income and income from a trade, profession, office or employment carried out in Ireland; and
- gains made in Ireland.

Where an individual is nonresident in Ireland, non-ordinarily resident in Ireland, and not domiciled in Ireland, Irish income tax is levied on:

- Irish source income and income from a trade, profession, office or employment performed in Ireland; and
- gains on Irish specified assets (land, buildings, minerals and assets of a trade carried on in Ireland).

6.2.3 Personal Income Subject to Income Tax

General

The extent to which an individual is subject to income tax depends on the residency status of the individual (see Section 6.2.1 and Section 6.2.2). Income tax is a tax on the income of an individual in a tax year; payments of a capital nature are not taxed under income tax rules. Under the Irish tax system, income is divided into separate categories depending on the source of the income, and is taxed according to the rules that apply to that source of income; this is known as the schedular system. For instance, all Irish employment income is taxed under Schedule E, Irish dividend income is taxed under Schedule F, and Irish rental income under Schedule D, Case V. It is significant to note that tax on Irish employment income is deducted at source by the payer under the Irish "pay as you earn" (PAYE) system.

Excluded income

There are provisions for exemption from income tax, subject to conditions, for certain profits or income. The principal exemptions from income tax apply to:

- income below certain thresholds;
- income derived from certain leasing of farmland;
- certain earnings of writers, composers and artists;
- interest on savings certificates, savings bonds, and installment savings schemes, subject to certain upper limits on holdings;
- the discount on certain non-interest-bearing government securities, and the premium on certain others; and
- investment income arising from the investment of compensation payments made by the courts, or under an out-of-court settlement, in respect of personal injury claims where the individual is permanently and totally incapacitated from maintaining him- or herself as a result of the injury.

Qualifying UK residents are entitled to retain certain personal allowances, deductions and reliefs following the exit of the UK from the EU.

6.2.4 Deductions and Allowances

Tax credits are available for deduction from the gross amount of income tax due. The credits available depend on the personal circumstance of the individual.

Every individual is entitled to a personal tax credit of 1,775 euros in 2023. Individuals who are employed are additionally entitled to the employee tax credit at a maximum of 1,775 euros dependent on income.

Individuals who are eligible for the home carer tax credit are entitled to a maximum of 1,700 euros dependent on income.

Individuals whose total income for the year consists in whole or in part of qualifying earned income are entitled to the earned-income credit at a maximum of 1,775 euros dependent on income.

Other tax credits that are available include: age credit, blind credit, dependent-relative credit, incapacitated child credit, one-parent family credit, rent credit, single-person child carer credit, and widowed person with a dependent child credit.

There are several exemptions and reliefs which may be relevant to individual taxpayers, including:

- Artist exemption—the first 50,000 euros per annum of profits or gains earned by writers, composers, visual artists, and sculptors from the sale of their work is exempt from income tax in Ireland in certain circumstances.
- Foreign Earnings Deduction—employees who carry out part of the duties of their employment in a qualifying country may claim a tax deduction in relation to qualifying income from that employment. The deduction is available to an employee working for a minimum of 30 qualifying days in the qualifying country in a continuous 12-month period. The deduction is capped at 35,000 euros and calculated by a formula.
- The Special Assignee Relief program (SARP)—operates by exempting 30 percent of a qualifying individual's employment earnings between 100,000 euros and 1,000,000 euros from Irish income tax. For qualifying individuals who first arrived in Ireland before 2023, the relief applies to employment earnings between 75,000 euros and 1,000,000 euros. The relief does not cover PRSI or the Universal Social Charge. The reasonable costs of one family trip to the employee's home country and up to 5,000 euros per child in school fees can also be provided by the employer tax-free.

To qualify for the SARP, an employee must:

- arrive in Ireland during the years up to the end of 2025;
- be employed full-time by the foreign group employer for six months prior to the move to Ireland (i.e., it does not apply to new hires);
- be employed full-time by a foreign group company incorporated and resident in a treaty country or by a company associated with this foreign group company (which can include an Irish resident company);
- exercise all employment duties in Ireland for a minimum of 12 months (apart from incidental duties abroad);
- have been issued with a Personal Public Service (PPS) number;
- have a base salary of 100,000 euros (or 75,000 euros if first arriving in Ireland before 2023), excluding benefits; and
- be nonresident in Ireland for the preceding five years, but resident in the year of claiming the relief.

The relief can be claimed for a maximum of five consecutive tax years, starting with the year in which the entitlement to claim relief first arose.

Remote working relief

Remote working relief is available (subject to conditions) to employees working from home on a full-time or part-time basis for substantial periods. Employees can claim an income tax credit of up to 30 percent of the cost of vouched expenses for heating, electricity and broadband in respect of days spent working from home. Alternatively, an employer may pay a qualifying employee a tax-free allowance of up to 3.20 euros a day to cover the additional costs of working from home.

Employment and Investment Incentive (EII)

The EII provides tax relief for individual independent investors in small and medium-sized enterprises in each tax year up to December 31, 2024. The EII provides a tax saving of up to 40 percent of the investment in the year in which the investment is made in an EII, up to a maximum of 250,000 euros per annum, provided that the investor (who must not be connected with the company) holds his or her investment in a qualifying company for a minimum period of four years. Where the investor holds his or her investment in a qualifying company for a minimum of 10 years this limit is increased to 500,000 euros.

In respect of tax periods before December 31, 2021, the qualifying company was required to spend 30 percent of the funds raised for qualifying purposes, or a period of two years must have elapsed since the end of the year of assessment in which the shares were issued. However, this requirement has been removed for investments made from January 1, 2022. The qualifying company must also issue "statements of qualification" to investors to enable investors to self-assess their own qualification before claiming the relief. The company must be an unquoted company throughout the holding period, and either be resident in Ireland, or, if resident in an EEA state other than Ireland, must carry on business through a branch or an agency in Ireland and carry on relevant trading activities from a fixed place of business.

The EII has been the subject of reforms to expand the types of investment funds that are permitted to make qualifying investments and, more specifically, to allow for investment by investment limited partnerships and limited partnerships.

6.3. Main Rates and Bands

6.3.1 Individual Tax Rates

For tax year 2023, income up to 40,000 euros is taxed at 20 percent (the standard rate) and the balance at 40 percent (the higher rate).

Different bands and thresholds may apply depending on the individual's marital or other personal status. There are various tax credits available to set off some of the tax charge.

The CGT rate for most gains is 33 percent. Disposals of certain business assets after January 1, 2017, and qualifying for "entrepreneur relief", are subject to a CGT rate of 10 percent, subject to a lifetime limit of 1 million euros. Only disposals after January 1, 2016 are counted toward this lifetime limit. There is an annual CGT exemption of 1,270 euros.

6.3.2 Individual Returns, Filing Dates, and Payment

PAYE

The PAYE system of tax deduction operates by employers making deductions of tax from the salaries or wages of their employees evenly throughout the year on each payday and paying over these amounts (along with PRSI) to Irish Revenue on the employees' behalf. These deductions of tax are made by employers based on a notification that the employers receive from Irish Revenue at the start of each year which sets out each employee's tax credit entitlements and tax rate bands for that year. An employee's tax credit entitlements and tax rate bands are determined by Irish Revenue on the basis of the latest information available to them about the taxpayer's personal circumstances, tax credit claims made previously and their employment details. For most taxpayers, at the end of each year the correct amount of tax will have been deducted by the employer. Some tax reliefs, (e.g., health expenses) are generally claimed after the year ends and entitlements to refunds may arise then.

Individuals taxable under the PAYE system are not required to file a self-assessment tax return where their non-PAYE income is under 5,000 euros (excluding deposit interest income subject to DIRT) and is taken into account in determining their tax credits for PAYE purposes. As to DIRT see further Section 6.5.1.

Non-PAYE

Self-assessment taxpayers, typically self-employed individuals and/or individuals with non-PAYE income, such as rental income or investment income, are subject to the Irish Pay and File system. Self-assessment taxpayers, under Pay and File, must pay any income tax due and file tax returns (i.e., Form 11) on or before October 31 of the year following the taxable year.

Preliminary tax must be paid by October 31 of the taxable year. The payment should be equal to or exceed the lower of:

(a) 90 percent of the taxpayer's final liability for the tax year;

(b) 100 percent of the taxpayer's final liability for the previous tax year; or

(c) 105 percent of the tax due for the tax year preceding the immediately previous tax year. This option only applies where payment is made by direct debit and does not apply if the tax due for the pre-preceding year was nil.

For taxpayers who use the Revenue Online Service (ROS) (for which, see Section 2.8.2) both to file the return and make their payments, the deadline for filing the 2022 Form 11 tax return, paying the 2022 income tax balance and making the payment of preliminary tax for 2023 is extended from October 31, 2023 to November 15, 2023.

In the case of a married/civil-partnered couple, it is possible for one of the spouses or civil partners to be nominated as the assessable partner, thereby assuming the responsibility for filing a single tax return and for paying the joint tax liability. The other spouse/civil partner is called the nonassessable spouse or the other civil partner.

6.4. Dividends

6.4.1 Domestic Corporations

Irish resident individuals are taxed on dividends paid by Irish corporations which are actually received by them during the tax year. The rate of dividend withholding tax (DWT) is 25 percent, except for dividends received from Irish real estate funds (IREFs) in which case a 20 percent rate applies.

An individual who is in receipt of Irish dividends is taxed on the gross dividend (i.e., cash dividend received, plus DWT deducted). The individual is entitled to a credit for the DWT against their Irish income tax liability. Any unused DWT credits may be refunded to the individual.

Certain categories of individuals in receipt of dividends may be exempt from DWT. To obtain the exemption, the shareholder must make a written declaration in a specific format to the payer of the dividend prior to the payment of the dividend.

6.4.2 Foreign Corporations

An Irish resident individual is taxed on dividends received from a foreign corporation. Tax is chargeable on the gross amount of the foreign investment income received.

The recipient may be entitled to a credit against the Irish income tax liability for any encashment tax suffered on the dividends. Double taxation relief may be available in respect of foreign withholding tax on foreign dividends received from a corporation resident in a treaty jurisdiction.

6.5. Interest

6.5.1 Domestic Borrowers

Irish banks, building societies and similar institutions must deduct deposit interest retention tax (DIRT) from interest paid on relevant deposits. Relevant deposits are typically deposits with banks, building societies and the Post Office. The rate of DIRT for 2023 is 33 percent. A 41 percent rate remains for exit taxes on financial products.

Individuals must report the interest income received net of DIRT. Deposit interest received from non-EU banks, etc., is also taxed at the same rate as the DIRT rate, save that higher rate taxpayers are taxed at the higher rate of income tax (for which, see Section 6.3.1).

6.5.2 Foreign Borrowers

Deposit interest received by nonresident individuals, who are liable to income tax in Ireland, from banks, building societies, etc., in other EU Member States, is subject to tax at the same rate as the DIRT rate charged on interest received by individuals from lending institutions in Ireland (see Section 6.5.1). As these financial institutions do not have to deduct DIRT, it is the responsibility of the individual to report the income and pay the tax.

6.6. Social Security/National Insurance Payments

6.6.1 Employer Tax or Contribution

In Ireland, a pay-related social insurance (PRSI) contribution is payable in respect of full-time and part-time employees. PRSI is payable by employees and employers at different rates. The amounts payable by the employee and employer depend on the earnings of the individual and the social insurance "class" under which they are insured.

Most employees fall under Class A. Employers' PRSI is payable at 8.8 percent with respect to Class A weekly earnings up to 441 euros, and 11.05 percent on weekly earnings over 441 euros.

6.6.2 Employee Tax or Contribution

The Irish PRSI class of the individual employee determines the rate at which PRSI is calculated. The PRSI class of the employee is determined by the age and earnings of the employee.

Employees earning less than 352 euros per week are exempt from PRSI. Employees earning over 352 euros per week, pay 4 percent PRSI on total earnings. A PRSI credit reduces the amount of PRSI payable for people earning between 352.01 euros and 424 euros per week. The credit is tapered and the amount of the credit depends on earnings. The maximum credit is 12 euros per week.

Unearned income for employees in excess of 5,000 euros per annum is subject to PRSI.

With limited exceptions, self-employed people aged 16 or over and under pensionable age (currently age 66), with income or emoluments of 5,000 euros or more per year, are liable for compulsory PRSI payments. Self-employed workers are liable for PRSI at the Class S rate of 4 percent.

6.6.3 Employee Tax Collection Mechanism

Under the PAYE system, it is the employer's duty to calculate and deduct the tax due, if any, from an employee's emoluments and pay such tax to Irish Revenue. Under the tax credit system, an employee is entitled to tax credits and a standard rate cut-off point depending on personal circumstances, e.g., married person's credit, employee PAYE tax credit, married or single or widowed standard rate cut-off point, etc. (discussed in more detail at Section 6.2 and Section 6.3).

Tax must be deducted or refunded in accordance with the tax credits and standard rate cut-off point due and the tax rate applicable at the time the payment is made. This is so even if all or part of it was earned or treated as earned in a previous or coming income tax year.

6.7. Royalties and Rents

6.7.1 Domestic Licensors

Taxation – Irish resident individuals are generally subject to Irish tax on rents and royalties received with respect to either domestic or foreign property. A credit for foreign tax imposed on the foreign use of property may be available under a treaty.

Rate – Rent and royalty income is taxed at an individual's standard rates.

Withholding tax – There is no requirement to withhold tax on rental payments to an Irish resident individual. Withholding tax of 20 percent must be applied to patent royalty payments.

6.7.2 Foreign Licensors

Taxation – Individuals who are not resident or ordinarily resident in Ireland are generally subject to income tax on any income from an Irish source, such as rental, dividend or royalty income. In the event that a nonresident individual sells an Irish patent, the sale proceeds would be subject to Irish tax.

Rate – Rent and royalty income is generally taxed at an individual's standard rates.

Withholding tax – Where rent is paid to a nonresident landlord or to an account on his or her behalf, the tenant must deduct tax at the standard rate from the payment and remit that tax to Irish Revenue.

As set out at Section 5.3, withholding tax of 20 percent must be applied to Irish patent royalty payments.

7. Transfer Pricing Policies

7.1. Application

Formal transfer pricing legislation (the "Irish TP Rules") was introduced for the first time in 2010 in respect of accounting periods commencing on or after January 1, 2011, for transactions the terms of which were agreed on or after July 1, 2010.

A number of changes to the Irish TP Rules were introduced from January 1, 2020. The changes brought the Irish TP rules into line with the 2017 OECD Guidelines. While these guidelines had, in practice, already applied to Ireland's double tax treaties, the changes significantly broadened the scope of the Irish TP rules and included an extension of the Irish TP Rules to non-trading and capital transactions. Additionally, arrangements predating July 1, 2010 are brought into scope for the first time.

To fall within the Irish TP Rules, there must be an arrangement between associated parties involving the supply and acquisition of goods, services, money, intangible or chargeable assets. The rules provide that in the case of a transaction where the amount paid to the supplier exceeds, or the amount received from the customer is less than, the arm's-length price, then the profits of the customer or vendor respectively will be calculated as though the price was an arm's-length price.

Ireland's TP Rules apply the arm's-length principle which is to be interpreted in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators (OECD Guidelines).

The rules apply to both cross-border and domestic transactions. The Irish legislation contains rules to eliminate double counting where domestic transactions only are involved.

The rules apply even where both parties are within the charge to Irish tax to ensure that the rules are not discriminatory from an EU perspective. However, where the profits of one party are adjusted under the legislation, the rules provide that, where the other party is also within the charge to Irish tax, they can make an election to use the arm's-length price in the calculation of their profits so that the group is not disadvantaged.

Two persons are associated if one controls the other or both are controlled by the same person. The controlled person in each case must be a company. A company will be treated as controlled by an individual if the individual together with relatives of that individual (i.e., husband, wife, ancestor, lineal descendant, brother or sister) control it.

Although the legislation was extended to include small and medium-sized enterprises ("SMEs"), they are subject to enactment under a ministerial order. Accordingly, the new transfer pricing regime does not currently apply to enterprises that employ less than 250 employees, and have a turnover not exceeding 50 million euros, or total assets not exceeding 43 million euros.

A domestic "carve-out" applies to certain non-trading transactions where both the supplier and acquirer are qualifying persons. Under amendments, introduced by Section 27 of the Finance Act 2021, that have effect for financial periods commencing from January 1, 2022, a qualifying person must be Irish tax resident in the relevant period and chargeable to Irish tax in respect of the transaction, or would be so chargeable if any consideration were charged. Additionally, the arrangement must be entered into for bona fide commercial purposes and not be an arrangement where the sole or main purpose is the avoidance of tax. Certain other conditions must also be met. The previous rules, introduced by the Finance Act 2019, still apply to financial periods commencing before January 1, 2022.

Section 28 of the Finance Act 2021 has implemented the Authorized OECD Approach (AOA) for the attribution of income to the Irish branch of a nonresident company. The AOA applies OECD transfer pricing principles to the taxation of a permanent establishment or branch on a separate entity or arm's length basis. In line with the general Irish TP Rules, the extension of the application of the AOA rules to SMEs is subject to enactment under a ministerial order.

Section 35 of the Finance Act 2022 has updated the definition of "transfer pricing guidelines" to refer to the updated OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published on January 20, 2022.

7.2. Permissible Pricing Methods

There are a number of methods which may be used to set an appropriate transfer price. All of these methods seek to replicate the conditions of an independent transaction:

- The comparable uncontrolled price – this relies on the price at which the entity in question sells its goods and services to unrelated parties. The price charged on the sale to the independent customer is assumed to be at a commercial level.
- The cost plus method – the price is determined as a mark-up on costs incurred in providing the good or service. The authorities will determine an appropriate profit margin.

- The resale price method – the price ensures that the reseller is compensated for costs incurred and earns a profit for the functions performed, any assets employed and risks borne. The ultimate retail price is reduced by the costs incurred by the company and an appropriate profit margin to arrive at the price which the company should have paid for the goods.
- The transactional net margin method – this compares the net profit margin earned on sales to unrelated parties with the margin earned on sales to connected parties to determine whether market rates are used for the related-party transactions. Where the company only sells to related parties, the margin earned may be compared with the profit made by companies in the same industry on similar sales.
- The profit split method – this determines the division of profits between connected parties based on the profit which would be expected to be realized by independent businesses in the same situation.

7.3. Penalties for Improper Pricing

Section 27 of the Finance Act 2019 introduced fixed penalties for a failure to meet the transfer pricing requirements. The penalties range from 4,000 euros, where reduced documentary requirements apply, to 25,000 euros (increasing by 100 euros for each day on which the failure continues) where the taxpayer group falls within the local or master file thresholds (see Section 7.5). The new legislation also provides for tax geared penalties with regards to a transfer pricing adjustment where insufficient supporting documentation is maintained.

7.4. Advance Rulings or Pricing Agreements

In July 2016, Ireland introduced a formal bilateral Advanced Pricing Agreement (APA) program and published guidelines in September 2016.

The program is intended to apply only in respect of transactions where the transfer pricing issues involved are complex. Application for a bilateral APA may be made by a company which is tax resident in Ireland for the purposes of a relevant treaty and also by a PE of a nonresident company in accordance with the relevant treaty.

Where the relevant issues involve more than two tax jurisdictions, Irish Revenue will consider entering into a series of bilateral APAs to deal with multilateral situations. Ireland will not enter into unilateral APAs. There must be a treaty in place in order for a bilateral APA application to be considered and the process is conducted under the Mutual Agreement Procedure (MAP) article of the relevant treaty.

Ireland's APA program adheres to the detailed guidelines for concluding APAs that are contained in "Annex II to Chapter IV: Advance Pricing Arrangements" of the OECD Transfer Pricing Guidelines. When negotiating a bilateral APA with an EU Member State, Irish Revenue will also adhere to the best practices for the conduct of APA procedures that are set out in the "Guidelines for Advance Pricing Agreements within the EU," published by the EU Joint Transfer Pricing Forum.

Transparency is fundamental to Ireland's APA program. All bilateral APAs are negotiated on the basis of identifying an arm's-length remuneration for the transactions covered by the APA using any of the transfer pricing methodologies contained in the transfer pricing guidelines.

The APA process itself is conducted over a number of stages:

- prefiling contact with Irish Revenue and informal discussions;
- formal APA application;
- evaluation of the APA application and negotiation of the APA;
- formal agreement; and
- annual reporting.

Irish Revenue will endeavor to conclude APA cases within 24 months of the formal APA application from the taxpayer. An APA will generally be granted for a fixed period, generally between three and five years (excluding any rollback years).

Ireland does not charge any fees in respect of APA applications.

Since January 1, 2017, EU Directive 2015/2376 (DAC3) on the mandatory automatic exchange of information applies and Irish Revenue is obliged to automatically exchange certain information in relation to APAs with other EU Member States and the European Commission. In addition, certain basic information will have to be provided in relation to APAs with non-EU jurisdictions.

7.5. Documentation

Transfer Pricing

The Irish TP Rules impose an obligation on companies to whom those rules apply to have available such records as may reasonably be required for the purposes of determining whether the income of the company has been computed in accordance with the rules or, where applicable, demonstrating compliance with the AOA (for which, see Section 7.1). The main purpose in having transfer pricing documentation available is to enable a company, if requested, to establish to Irish Revenue's satisfaction that its transfer prices are consistent with the arm's-length requirements.

The legislative requirement is that a company must have transfer pricing documentation available. With effect from January 1, 2020, specific documentary requirements (in accordance with the 2017 OECD guidelines) apply for groups whose consolidated revenues exceed certain thresholds. There is a requirement for groups with revenues in excess of 250 million euros to prepare a master file and for groups whose revenues exceed 50 million euros to prepare local file documentation. Reduced documentary requirements apply to groups whose revenues do not exceed either threshold.

The transfer pricing documentation is to be prepared no later than by the date on which the tax return for the relevant taxable period is due (generally 9 months from the end of the accounting period) and where requested by Irish Revenue, documentation must be provided within 30 days of request.

The detail of the information which must be specified in master and local files is noted in the Irish TP Rules as being set out in Annex I and Annex II of Chapter 5 of the OECD Guidelines. In terms of reduced documentary requirements for groups and entities who do not meet the revenue thresholds for local and master files, the transfer pricing documentation must be sufficient to demonstrate a company's compliance with the Irish TP Rules.

Broadly, that would mean that the relevant transfer pricing documentation should clearly identify:

- associated persons for the purposes of the legislation;
- the nature and terms of transactions within the scope of the legislation;
- the method or methods by which the pricing of transactions were arrived at, including any study of comparables and any functional analysis undertaken;
- how that method has resulted in arm's-length pricing etc., or, where it has not, what computational adjustment was required and how this has been calculated. This will usually include an analysis of market data or other information on third-party comparables;
- any budgets, forecasts or other papers containing information relied on in arriving at arm's-length terms, etc., or in calculating any adjustment made in order to satisfy the requirements of the new transfer pricing legislation; and
- the terms of relevant transactions with both third parties and associates.

Irish Revenue's Tax Briefing No. 07-2010 provides that both the OECD Guidelines and the EU Council "Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union" will be acceptable as representing good documentation practice. In addition, the Tax Briefing notes that best practice requires preparation of the documentation at the time the terms of the transaction are agreed. It is expected that complex and high-value transactions will generally require more detailed documentation than simple high-volume transactions.

A court order to compel a taxpayer to submit records or documentation may be sought by the Irish Revenue before the High Court of Ireland.

Country-by-Country Reporting

Ireland requires the provision of a Country-by-Country (CbC) report consistent with Annex III to Chapter V of the Final Report on Action 13 of the OECD/G20 BEPS Project under Section 873H, TCA and the Irish Country-by-Country Regulations. CbC reports must be filed within 12 months from the end of each fiscal year (for example, by December 31, 2020 for fiscal years ending December 31, 2019).

However, in line with the OECD model legislation, these requirements only apply to an Irish resident ultimate parent company of a multinational group with annual consolidated group revenue equal to or exceeding 750 million euros in the preceding fiscal year. A secondary filing mechanism is also available whereby a multinational group can designate an Irish resident constituent entity of the group to act as a "surrogate parent" entity to file a CbC report with Irish Revenue on behalf of the group. If it is not possible for the ultimate parent or surrogate parent to file a CbC report, there is a requirement for a local country filing with Irish Revenue.

Failure to provide a CbC report will render the party liable to a penalty of 19,045 euros and where such failure is made without reasonable excuse, a further penalty of 2,535 euros will apply for each day on which the failure continues.

Ireland is a signatory to the Multilateral Competent Authority Agreement on the Automatic Exchange of CbC Reports, facilitating implementation of the transfer pricing reporting standards developed under the Final Report on Action 13 of the OECD/G20 BEPS Project.

8. Anti-Avoidance Provisions

8.1. General Anti-Avoidance Provisions

Ireland has a number of general anti-avoidance rules (GAAR) in legislation. These effectively give Irish Revenue the power to apply the "substance over form" principle in an area where the courts have refused to apply it. These provisions are designed to counteract certain transactions which have little or no commercial reality, but are carried out primarily to create an artificial tax deduction or to avoid or reduce a tax charge. It is a hybrid of the non-tax-purpose and step-transaction doctrines. There are different sections which apply dependent on the date of the transaction. The sections which apply are dependent on whether a transaction commenced pre- or post-October 23, 2014.

Under these sections, Irish Revenue can form an opinion that a transaction is a tax avoidance transaction and issue a notice to the taxpayer which withdraws the tax advantage.

Irish legislation also contains specific anti-avoidance provisions which are intended to deny the benefit of a loss, relief or exemption which may otherwise be available when a particular type of transaction or series of transactions are undertaken. The targeted anti-avoidance rules are typically used by Irish Revenue to tackle more specific or limited types of transactions than those to which the GAAR applies.

Where a person enters into a tax-avoidance transaction that gives rise to a tax advantage contrary to general or specific anti-avoidance provisions, that person shall be liable to pay a surcharge equal to 30 percent (20 percent for transactions which commenced on or before October 23, 2014) of the amount of the tax advantage. However, no surcharge is payable by a person who has made a valid protective notification. In addition, a taxpayer can also avail of a reduced surcharge amount if a "qualifying avoidance disclosure" is made to Irish Revenue.

If a taxpayer has entered into a tax-avoidance transaction and has claimed the benefit of a tax advantage contrary to the GAAR, there is no time limit on when Irish Revenue can:

- carry out enquiries as to whether or not the transaction is a tax-avoidance transaction;
- withdraw the tax advantage by, for example, amending an assessment; or
- collect or recover any amount of tax.

Hybrid Mismatches

Overview

A hybrid mismatch arrangement is a cross-border arrangement that generally uses a hybrid entity or hybrid instrument and results in a mismatch in the tax treatment of a payment across jurisdictions. With effect from January 1, 2020, Ireland has enacted Part 35C of the TCA to address hybrid mismatch arrangements as required by Directive 2016/1164/EU (the Anti-Tax Avoidance Directive) (ATAD 1), amended by Directive 2017/952/EU (ATAD 2). The reverse hybrid mismatch rule, applicable to entities that are treated as tax transparent in Ireland, applies to tax periods commencing on or after January 1, 2022. Grandfathering of historic structures has not been introduced.

Relationship between the parties

Except in relation to reverse hybrid mismatches, withholding tax and tax residency forms of hybrid mismatch, the Irish legislation generally applies only where the parties are (i) associated enterprises, (ii) head offices and permanent establishments, (iii) permanent establishments of the same entity, or (iv) parties to a structured arrangement. Broadly, enterprises will be associated where:

- one enterprise holds a certain percentage (25 percent or 50 percent depending on the particular provision) of the shares, voting rights or rights to profits in the other enterprise, or if there is a third enterprise that holds an equivalent interest in both enterprises;
- both enterprises are included in the same set out consolidated financial statements prepared under international accounting standards or Irish generally accepted accounting practice, or both enterprises would be included in the same set of financial statements if such statements were to be prepared in accordance with those accounting practices (this is subject to certain exceptions); or
- one enterprise has significant influence in the management of the other enterprise, where significant influence means the ability to participate (on the board of directors or equivalent governing body of that enterprise) in its financial and operating policy.

A structured arrangement is one where the mismatch outcome is priced into the terms of the arrangement or the arrangement is designed to give rise to a mismatch outcome.

With respect to the reverse hybrid mismatch rules, the relationship test requires that a participator in the reverse hybrid entity, or the participator and its associated entities, possess or are beneficially entitled to, directly or indirectly, 50 percent or more of the ownership rights, voting power or rights to profits of the reverse hybrid entity.

Forms of hybrid mismatch

The forms of hybrid mismatch which the legislation addresses are those arising by virtue of double deductions, permanent establishments, financial instruments, hybrid entities, withholding tax and tax residency.

Broadly, where a payment has been "included" by a payee, such inclusion will generally neutralize any form of hybrid mismatch. Payments are considered to be included where the payee is:

- chargeable to tax on that payment (other than on a remittance basis);
- exempt from tax on its profits or gains;
- established in a jurisdiction which does not impose tax on such payment; or
- subject to a controlled foreign company charge or foreign company charge.

Application of hybrid mismatch rules

The rules can apply whenever Irish companies make payments that give rise to a tax deduction in Ireland, but no other country taxes the associated receipt by reason of hybridity. This type of mismatch outcome may arise in one of four situations:

- The payment is not chargeable to tax due to differences in the characterization of the payment in Ireland and another territory; e.g., the payment is treated as debt in Ireland, but equity in the other territory.
- The payment is made to a "hybrid entity" and the mismatch outcome is attributable to differences in the allocation of payments to that entity between the territory in which it is established and the territory in which a participator in that entity is established. This situation can apply where an Irish company makes payments to a company that is disregarded for tax purposes by investors in that company.
- The Irish company is itself a "hybrid entity" and the mismatch outcome is attributable to the fact that payments by the company are disregarded under the laws of the payee territory.
- The rule against imported mismatches applies, i.e., where the hybrid mismatch does not arise with respect to the transaction entered into by the Irish company, but a payment by the Irish company directly or indirectly funds a mismatch outcome arising outside Ireland.

In each of these situations, the Irish company may be denied a deduction for a payment made to an associated entity, permanent establishment or as part of a structured arrangement to the extent such payment is not taxed in another territory.

Form of reverse hybrid mismatch

The reverse hybrid mismatch rules are intended to address mismatch outcomes that arise from an entity being treated as tax transparent in one jurisdiction, but regarded as opaque in a participator's jurisdiction.

Application of reverse hybrid mismatch rules

The reverse hybrid mismatch provisions operate to bring entities that are treated as tax transparent in Ireland within the scope of Irish corporation tax where the entity is 50 percent or more owned or controlled by entities resident in a jurisdiction that regards it as tax opaque and, as a result of this "hybridity", there is double non-taxation. Where the anti-reverse hybrid rules apply, the hybrid entity is subject to Irish corporation tax on the element of profits or gains which would otherwise go untaxed due to the entity being treated as opaque in the participator's jurisdiction. The legislation provides that the hybrid entity may appropriate, or cancel, a portion of the participator's units in order to satisfy this tax.

The Irish implementing legislation provides an exemption for "collective investment schemes" that are subject to investor-protection regulation, are widely held and which hold a diversified portfolio of assets. Irish investment limited partnerships and common contractual funds, along with Irish Collective Asset-management Vehicles, are within the definition of collective investment schemes. The legislation provides that a partnership, including a "1907 limited partnership" managed by an Irish alternative investment fund manager (AIFM), is also capable of constituting a "collective investment scheme" for these purposes.

DAC6: Mandatory Disclosure Rules

The Irish Finance Act 2019 was enacted on December 22, 2019 and, amongst other measures, transposed into Irish law Directive 2018/822/EU (DAC6) (amending Directive 2011/16/EU (DAC)) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.[12] The legislation introduced a mandatory disclosure scheme requiring intermediaries, and certain taxpayers, to notify tax authorities when they promote or enter into cross-border arrangements with particular hallmarks. The measure took effect July 1, 2020, but the reporting obligations were deferred for six months due to the Covid-19 (coronavirus) pandemic.

An arrangement will be "cross-border" where it concerns either more than one EU Member State, or concerns one EU Member State and a third country (i.e., a non-EU Member State). A cross-border arrangement will be reportable if it falls within any one of the hallmarks set out in the new Annex IV to Directive 2011/16/EU. Of the five categories of hallmarks, two also require the satisfaction of a "main benefit test" in all cases, while the other three do not. The main benefit test will be met where obtaining a tax advantage (as defined in the new Section 817RA,

[12] See Taxes Consolidation Act 1997, ss 817RA–817RH as inserted by the Finance Act 2019, s 67(1).

TCA) is one of the main benefits which a person may reasonably expect to derive from an arrangement, having regard to all relevant facts and circumstances.

The type of information that needs to be reported includes:[13]

- identification of the taxpayers and intermediaries involved in the transaction, including name, address, date of birth, tax identification number, associated enterprises;
- details of the hallmarks making the arrangement reportable;
- a summary of the reportable cross-border arrangement;
- date on which the first step in implementing the reportable arrangement was or will be made;
- details of relevant domestic tax rules that form the basis of the reportable arrangement;
- value of the reportable arrangement; and
- identification of any other EU Member State or person affected by the reportable arrangement.

Reporting obligations exist for both intermediaries and, where no intermediaries are required to report, certain taxpayers. The term "intermediary" is very broad and can apply to a number of different participants in an arrangement.[14] It includes anyone who designs, markets, organizes or makes available or implements a reportable arrangement, or anyone who helps with reportable activities and knows or could reasonably be expected to know that they are doing so. This could include accountants, financial advisers, lawyers, in-house counsel and banks. Reporting obligations may also extend to taxpayers in certain circumstances.[15]

If the arrangement is deemed to be reportable, the ensuing reporting obligation lies with all intermediaries involved in a transaction, unless an intermediary can prove that another intermediary involved has reported the arrangement. Disclosure need only be made once in respect of an arrangement. Consequently, it need only be made to the competent authority of one EU Member State. Where possible, disclosure should be made in the place of tax residence.[16] Failing this, the report should be made in the state where there is a permanent establishment connected with the provision of the services. As a final resort, the report should be made in the place of incorporation and location of a tax, consultancy or legal professional association in which the intermediary is registered.

An intermediary is not required to report information with respect to which a claim of legal professional privilege could be maintained by the intermediary in legal proceedings.[17] This will apply to lawyers in certain cases. However, in such cases the intermediary must, without delay, notify any other intermediary, or the relevant taxpayer if there are no other intermediaries, of the obligations imposed on the other intermediary/relevant taxpayer as appropriate.[18] The obligation may revert to the taxpayer in certain situations, including where there is no external intermediary involved in the arrangement or where all EU-based intermediaries invoke legal professional privilege.[19]

In general, reportable cross-border arrangements must be reported within a 30-day period from the triggering event.[20] A "triggering event" is the earlier of (i) the day after the reportable cross-border arrangement is made available for implementation, (ii) the day after the reportable cross-border arrangement is ready for implementation, or (iii) when the first step in the implementation of the reportable cross-border arrangement has been made. In addition, certain intermediaries must file, within 30 days of the day after they provided (directly or by means of other persons) aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.

When an intermediary files a return of information in respect of a marketable arrangement (i.e., non-bespoke arrangement), it must be stated in the return that it is a marketable arrangement. The return should be amended every quarter where new information has become available in respect of certain specified matters.

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[13] Taxes Consolidation Act 1997, s 817RA(3) as inserted.
[14] Taxes Consolidation Act 1997, s 817RA(1) as inserted.
[15] Taxes Consolidation Act 1997, s 817RD as inserted.
[16] Taxes Consolidation Act 1997, s 817RC(7) as inserted.
[17] Taxes Consolidation Act 1997, s 817RC(9)(b) as inserted.
[18] Taxes Consolidation Act 1997, s 817RC(10) as inserted.
[19] Taxes Consolidation Act 1997, s 817RD(1) as inserted.
[20] Taxes Consolidation Act 1997, s 817RC(1) as inserted.

The Irish legislation provides for monetary penalties for non-compliance.[21] The level of penalties depends on the type of breach involved. Certain breaches by taxpayers and intermediaries carry a penalty of up to 4,000 euros, with a further penalty of up to 500 euros per day for each day on which the failure continues. Furthermore, the mere failure by the taxpayer to include the reference number assigned to a reportable cross-border arrangement in a return made by a taxpayer under the new rules, exposes such person to a penalty of up to 5,000 euros.

Official guidance on the "main purpose test" is contained in the Tax and Duty Manual, Part 33-01-01, issued by Irish Tax and Customs. Part 33-03-03 of the Manual contains general guidance on the operation of the regime, and includes information on reportable cross-border arrangements, filing requirements, obligations of intermediaries/relevant taxpayers, and penalties for non-compliance. Part 33-03-04 provides step by step guidance on how to set up a DAC6 reporting obligation and file a DAC6 return electronically.

Planning Point: Practitioners should note that the Irish legislation follows the provisions of DAC6 very closely, with consistent hallmarks and reporting deadlines. The reporting deadlines are strict and short, with a general deadline of 30 days from the date on which the arrangement is made available for implementation. Practitioners (and taxpayers who consider that they may constitute intermediaries for the purposes of DAC6) should ensure that staff are aware of the obligations, and put in place training and procedures to ensure compliance.

DAC7: Reporting Obligations for digital platform operators

The Finance Act 2021 has inserted Section 891I into the TCA transposing Article 1(8) of Directive 2021/514/EU (DAC7) (amending Directive 2011/16/EU (DAC)) and introducing mandatory reporting rules for digital platform operators. Section 81 of the Finance Act 2022, amended Section 891I of the TCA to ensure effective domestic implementation of the automatic reporting obligations placed on digital platforms under DAC7.

Primarily, the directive extends tax transparency rules to digital platforms by requiring (i) reporting platform operators to collect and report prescribed information on reportable sellers using their platforms for certain commercial activities, and (ii) EU Member States to automatically exchange this information.

Ireland's implementation has largely followed the wording of the DAC7 Directive.

Reporting Platform Operators: The legislation provides for the collection and reporting to the Irish tax authority of certain information by digital platform operators in respect of sellers of goods and services using their platforms.

A platform is defined as any software, including websites and mobile applications, which allows sellers to connect to other users to carry out a relevant commercial activity. However, the definition does not include platforms that allow only (i) the processing of payments, (ii) listing or advertising by users or (iii) the redirection or transfer of users to a platform.

Reporting applies to operators of digital platforms who are tax resident in Ireland, incorporated or managed in Ireland, or have a permanent establishment in Ireland, provided that the platform is engaged in a relevant commercial activity. A platform operator that is tax resident, incorporated or managed, or has a permanent establishment in another EU Member State, can elect to register and report in that other Member State.

Non-EU platform operators must also report to the Irish tax authority if they are registered in Ireland and facilitate relevant activities of EU sellers or the rental of immoveable property located in a Member State.

Relevant Activities: The relevant activities that trigger an obligation to report are:

- the rental of immoveable property;
- the provision of a personal service (time or task based work);
- the sale of goods (tangible property); and
- the rental of any mode of transport.

For the reporting obligation to apply, the activity must be carried out for consideration and may be cross-border or domestic.

[21] Taxes Consolidation Act 1997, s 817RH as inserted.

Reportable Sellers: A reportable seller is an EU resident individual, company or legal arrangement, registered on the platform and carrying out a relevant activity. Non-EU resident platform users renting out immoveable property located in an EU Member State are also reportable sellers.

Government and publicly traded entities are excluded from reporting. So too are casual sellers of goods for which the platform has facilitated less than 30 sales and for which the total consideration paid does not exceed 2,000 euros during a reporting period. An exclusion also applies to sellers engaged in high frequency renting of immoveable property. To qualify, there must be more than 2,000 relevant transactions during a reporting period.

Information to be Reported: From January 1, 2023, reporting platform operators must collect prescribed information on non-excluded sellers carrying out a relevant activity and identify reportable sellers. Due diligence provisions require the platform operator to verify the reliability of the information gathered.

The information to be disclosed to the Irish tax authority includes a reportable seller's identity (full name or legal name and primary address), EU Member State of residence, financial account details, tax identification number ("TIN"), VAT/business registration numbers, consideration paid or credited per quarter, and any fees, commissions or taxes withheld by the reporting platform operator.

Additional information is required to be reported in the case of rental of immovable property.

Reporting Mechanics: Reportable information must be submitted to the Irish tax authority no later than January 31 of the year following the calendar year in which a reportable seller is identified. The deadline for first reporting of data by platform operators is January 31, 2024.

Exchange of reported information by EU Member States is required within two months following the end of the reporting period.

Amendments introduced by the Finance Act 2022 enable the Irish tax authority to access data that has been collected for anti-money laundering and terrorist financing reasons when investigating transactions suspected of concealing the beneficial ownership of assets for the purpose of avoiding reporting under DAC7.

Compliance: There are sanctions and monetary penalties for non-compliance.

OECD Model Rules: The Finance Act 2022 introduced legislation to implement the "OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy" and the "Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods". The OECD rules are similar to DAC7, but apply to platforms outside the EU. The legislation will come into force from a day to be set by commencement order.

Planning Point: With reporting obligations applying from January 1, 2023, practitioners and taxpayers should consider whether the DAC7 rules are relevant to them, or their clients, and put in place training and procedures to ensure compliance.

8.2. Thin Capitalization/Other Interest Deductibility Rules

Ireland has no thin capitalization rules. There are, however, anti-avoidance provisions to close off potential abuses related to indebtedness created by intragroup transfers in relation to artificial structures aimed at tax reduction rather than normal business activity.

Interest Limitation Rules

The Finance Act 2021 implements interest limitation rules ("ILR") as required by Directive 2016/1164/EU (the Anti-Tax Avoidance Directive) (ATAD). The ILR, set out in Part 35D of the TCA, apply to accounting periods commencing on or after January 1, 2022.

The ILR potentially apply where a taxpayer's interest expense exceeds its interest equivalent income. The ability to claim a tax deduction for the excess interest is restricted to 30 percent of EBITDA (earnings before deductions for net interest expense, tax, depreciation and amortization).

Exemptions and Exclusions

The ILR incorporate a number of important exemptions and exclusions in line with ATAD. There is an exemption for "standalone entities", being companies resident in Ireland that are not members of a worldwide group, have no associated enterprises, and not having a permanent establishment in a territory other than Ireland.

In addition, the ILR do not apply where the exceeding borrowing costs of an entity are less than 3 million euros. There are also exclusions for legacy debt, (i.e., debt put in place before June 17, 2016) and long term infrastructure projects which since January 1, 2023 include the provision, upgrade, operation or maintenance of a large scale residential development.

The legislation does not incorporate an exception for financial undertakings such as regulated investment funds.

Interest Income and Interest Expense

The definition of interest equivalent income is broad and includes:

- interest;
- the finance income and finance cost element of non-finance leases;
- the finance lease element of finance lease payments;
- discount, on securities issued at a discount; and
- amounts under derivative instruments directly connected with the raising of finance.

The definition of interest also includes elements of the profit and loss movements on financial assets and liabilities, to the extent that these amounts can reasonably be considered as economically equivalent to interest.

Grouping Rules

Companies can elect to operate the interest restriction on a single entity or local Irish group basis (an "interest group"). Where the Irish taxpayer is part of a consolidated worldwide group for accounting purposes ("worldwide group") or part of an Irish loss group, the entity can elect to be a member of that interest group. The Finance Act 2022 clarified that an entity may also be deemed for these purposes to be a member of a consolidated worldwide group for accounting purposes where it is excluded from consolidated financial statements by reason of materiality grounds. The indebtedness of the interest group may be considered for the purposes of providing additional relief under one of two grouping rules – the "equity ratio rule" and the "group ratio rule".

The equity ratio rule allows a taxpayer to fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to, or higher than, the equivalent ratio of the group to which it belongs. The ratio of the taxpayer's equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to two percentage points.

The group ratio rule allows the taxpayer to deduct exceeding borrowing costs at an amount in excess of 30 percent of EBITDA. The higher limit is calculated by reference to a group ratio.

The Irish legislation also includes a new concept of a single company worldwide group ("SCWG"). A SCWG is a company that is not a standalone entity, a member of a worldwide group or a member of an interest group. Where a taxpayer meets this definition, it can apply the grouping rules as if it was a member of a worldwide group consisting of itself.

Where the deductible borrowing costs of a relevant entity are restricted in an accounting period, the excess amount can be carried forward for up to five years.

Payment of Preliminary Tax

The introduction of the ILR has necessitated amendment of the preliminary tax payment provisions (see Section 2.9.2). Under the amendments, a taxpayer impacted by the ILR may make a top-up payment, thereby satisfying the 90 percent pre-payment requirement, within a period of 6 months after the end of an accounting period. The amended provisions apply for accounting periods commencing on or after January 1, 2022 and ending before December 31, 2027.

8.3. Controlled Foreign Company (CFC) Rules

Like other EU Member States, Ireland introduced CFC rules from January 1, 2019, in compliance with Directive 2016/1164/EU (the Anti-Tax Avoidance Directive) (ATAD). The implementing rules are contained in the Finance Act 2018. Ireland has chosen the "Option B" model of CFC rules as described in ATAD, an approach which attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage.

Broadly, CFC income is that which arises to a nonresident company from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage. CFC income is attributed to the controlling or connected company resident in Ireland, where that controlling or connected company has "significant people functions" (SPF) in Ireland. The CFC charge is based on an arm's-length measurement of the undistributed profits of the CFC that are attributable to the SPF.

Whether a CFC charge is imposed on an Irish controlling company will depend on the extent to which the CFC is regarded as having "non-genuine arrangements". A CFC is regarded as having non-genuine arrangements where:

- the CFC would not own the assets or would not have borne the risks which generate all, or part of, its undistributed income, but for relevant Irish activities or SPF being undertaken in Ireland in relation to those assets and risks; and
- it would be reasonable to consider that the relevant Irish activities were instrumental in generating that income.

Official guidance on the CFC rules is contained in the Tax and Duty Manual, Part 35b-01-01, issued by Irish Tax and Customs.

9. Other Taxes

9.1. Payroll Taxes

Ireland operates a PAYE system which applies to certain individuals subject to the income tax system under Schedule E, including employees, directors and people in receipt of pensions. Earnings of all kinds arising from employment, including bonuses, overtime and noncash payments known as "benefit-in-kind" (including use of a company car and preferential loans) are taxable. Employment income, including noncash benefits, is also subject to PRSI (see Section 6.6.1 and Section 6.6.2).

The Universal Social Charge (USC) is a tax payable on gross income, including notional pay, after any relief for certain capital allowances. Individuals are liable to pay the USC if their gross income exceeds the threshold of 13,000 euros per annum.

The USC rates for 2023 are as follows:

- 0.5 percent on income up to 12,012 euros;
- 2 percent on the next 10,908 euros of income;
- 4.5 percent on the next 47,124 euros of income; and
- 8 percent on the balance of income.

An individual with non-PAYE income exceeding 100,000 euros in the year is subject to a 3 percent surcharge on the excess (resulting in a total USC rate of 11 percent on the excess non-PAYE income).

A reduced rate of 2 percent applies on all income over 12,012 euros in the case of individuals whose aggregate income for the year is 60,000 euros or less and who are age 70 or over, or under age 70, but eligible for a full medical card.

A "domicile levy" of 200,000 euros per annum applies to individuals:

- who are domiciled in Ireland for tax purposes in the tax year, regardless of where those individuals live or are resident for tax purposes;

- whose worldwide income for the tax year is more than 1 million euros;
- whose liability to income tax in Ireland for the tax year is less than 200,000 euros; and
- the market value of whose Irish property (meaning all property situated in Ireland, but excluding shares in a trading company or shares in a holding company whose shares derive the greater part of their value from a subsidiary trading company or companies) on the valuation date (December 31 in a tax year) is in excess of 5 million euros.

9.2. Capital Taxes (Capital Duties)

Capital duty was abolished in Ireland for all transactions occurring after December 7, 2005.

9.3. Property Taxes

9.3.1 Transfer Taxes, Including Real Property Transactions

Stamp duty is a tax on certain instruments (primarily written documents). Generally, a document is chargeable to stamp duty where the document is both:

- listed in Schedule 1 to the Stamp Duties Consolidation Act 1999 (SDCA) (the principal head of charge is a transfer of any Irish property); and
- executed in Ireland or, if executed outside Ireland, relates to property situated in Ireland or to any matter or thing done or to be done in Ireland.

In general, the transferee is the party liable to pay stamp duty and a return must be filed and stamp duty paid within 44 days of the execution of the instrument.

Stamp duty is charged on the higher of the consideration paid for, or the market value of, the relevant asset at the following rates:

- shares or marketable securities: 1 percent;
- nonresidential property: 7.5 percent; and
- residential property: 1 percent on consideration up to 1 million euros and 2 percent on the excess.

Stamp duty may also be chargeable in connection with certain leases and rent payments.

There are numerous reliefs and exemptions including:

- group relief on transfers between companies where transferor and transferee are 90 percent associates at the time of execution and for two years afterwards;
- reconstruction relief on a share for share exchange or share for undertaking transaction, subject to meeting certain conditions; and
- exemptions for transfers of intellectual property, of non-Irish shares and land, loan capital, aircraft and ships.

Higher 10 percent stamp duty rate on multiple acquisitions of residential units from May 20, 2021

A higher stamp duty rate of 10 percent applies to residential units (except those in apartment blocks) acquired by a person ("the first person") from May 20, 2021 if the first person, or a connected person, acquires at least 10 such units during any period of 12-months. The higher rate is triggered by the acquisition of the tenth unit, but applies to all relevant units acquired during the previous 12 months (with a credit given for stamp duty already paid on those units at the standard rates referred to above). Although units acquired before May 20, 2021 are not subject to the 10 percent rate, they are counted towards the number of units required to trigger the application of that rate. However, residential units acquired by a connected person are not taken into account for the purposes of the 10-unit threshold if :

- the first person or the connected person are individuals;
- they did not act in concert in the acquisition of the units; and
- the acquisition of any of those units was not part of an arrangement which sought, as one its main purposes, to avoid the unit being a relevant residential unit.

The 10 percent rate also applies to the indirect acquisition of residential units through the transfer of an interest in a company, Irish real estate fund (for which, see Section 2.2.3) or partnership that results in a change in the direct or indirect control of the units held by the entity. In such a case, the 10 percent rate applies only to that part of the transferred interest which derives value from the residential units.[22]

Where stamp duty has been paid at the 10 percent rate on the acquisition of a residential unit, but within 24 months of that acquisition the unit is let for a term of at least 10 years to a local authority or approved housing body for the provision of social housing, a refund can be claimed equivalent to the difference between the stamp duty paid and that which would have been payable under the standard stamp duty rates for residential property.[23] The 10 percent rate does not apply at all if a unit is let to a housing authority, for the provision of social housing, on the day it is acquired.[24]

Further guidance on the application of the 10 percent rate, and the refund provision, is provided by Irish Revenue's Tax and Duty Manual on Section 31E (Stamp duty on certain acquisitions of residential property).

9.3.2 Real Property Taxes

Local Property Tax

Local Property Tax (LPT) is an annual charge on the market value of residential properties in Ireland. For 2022 to 2025, the market value is based on the value declared for the property on November 1, 2021.

For the purposes of calculating LPT, property values are organized into 19 market-value bands up to 1.75 million euros with a different fixed basic rate being applied at each band. A property is subject to the charge applicable to the value band within which it falls. For example, a property with a market-value of 450,000 euros falls within valuation band 5 (437,501 euros – 525,000 euros) and is subject to the 495 euros basic rate charge applicable to that band.

The charge for properties worth more than 1.75 million euros is based on the market value of the property rather than determined in accordance with a valuation band. The LPT charge for these properties is the total of:

- 0.1029 percent of the first 1.05 million euros of market value;
- 0.25 percent of the portion of the market value between 1.05 million euros and 1.75 million euros; and
- 0.3 percent of the portion of the market value over 1.75 million euros.

Local authorities can increase or decrease the LPT rate on residential properties in their area by up to 15 percent from the basic rate each year. This is known as the local adjustment factor.

Irish Revenue have published guidance on the local property tax (including valuation bands and rates) at https://www.revenue.ie/en/property/local-property-tax/valuing-your-property/determining-lpt-charge.aspx.

Zoned Land Tax

The Finance Act 2021 has introduced a new annual zoned land tax, set out in Part 22A of the TCA, to encourage residential construction. The tax applies to land that is zoned residential, or that is zoned for a mixture of uses, including residential use which is serviced but not yet developed for housing. The tax is calculated at 3 percent of the market value of the land.

The owner of the land on February 1 each year is required to submit a return and pay the tax no later than the following May 23. If the land was within the scope of the tax on January 1, 2022, liability will first arise on February 1, 2024. For land that first comes within the scope of the tax after January 1, 2022, the tax is chargeable from the third year after the year in which it first came within scope.

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[22] Stamp Duties Consolidation Act 1999, s 31E, as inserted by Finance (Covid-19 and Miscellaneous Provisions) Act 2021, s 13.

[23] Stamp Duties Consolidation Act 1999, s 83E, as inserted by Finance (Covid-19 and Miscellaneous Provisions) Act 2021, s 15.

[24] Stamp Duties Consolidation Act 1999, s 31E(8), as inserted by Finance (Covid-19 and Miscellaneous Provisions) Act 2021, s 14.

9.3.3 Taxes on Movable Property

There are no personal property taxes.

9.3.4 Fixed Asset Taxes

There is no fixed asset tax.

9.4. Miscellaneous Taxes

Value Added Tax (VAT)/Goods and Services Tax (GST)

For VAT/GST and similar taxes, see the VAT Navigator.

Exit Tax

With effect from October 9, 2019, Ireland has introduced exit tax rules into its national legislation compliant with Council Directive 2016/1164/EU (the Anti-Tax Avoidance Directive) (ATAD).[25] These replace the previous Irish exit tax regime which applied where a taxpayer moved assets or migrated its residence out of Ireland.

Exit tax will now be levied at 12.5 percent on any unrealized gains where a company migrates its residence from Ireland or transfers assets (including intellectual property assets) out of the Irish tax net, including where a company ceases to be tax resident in Ireland or where a company that is resident in another Member State transfers assets from an Irish PE to another territory. This is effectively a form of capital gains tax on deemed disposal, but taxed at the standard Irish corporation tax rate. However, anti-avoidance provisions mean that a rate of 33 percent will apply if the event giving rise to the charge forms part of a transaction the purpose of which was to ensure that the gain was charged at the lower 12.5 percent rate.

The exit tax allows exceptions for temporary transfers of assets for the purposes of financing securities or where the assets are given as security for a debt, provided that the assets are returned to the company or PE within 12 months. Equally, the exit tax does not apply where the assets disposed of remain within the charge to Irish tax, such as where the assets continue to be used as part of a trade or PE in Ireland after the relevant transaction or where the assets consist of Irish land or mining and exploration rights.

It is possible for the company to spread the tax charge over five years if an election is made and provided that the assets have been transferred to an EU Member State or a country with which Ireland has signed a double tax treaty and which is an EEA country.

Effective from 14 October 2020, a technical amendment to the legislation was made to clarify the operation of interest on instalment payments. The amendment provides that calculation of interest on exit tax instalment payments which remain unpaid on or after 14 October 2020 should be calculated on the outstanding balance and not by reference to the amount of the particular instalment due.

Professional Services Withholding Tax (PSWT)

PSWT, at the rate of 20 percent, is deductible at source from payments for "professional services" made to individuals and companies by "accountable persons" (government departments, local authorities, health boards, state bodies, etc.). The tax applies generally to fees and similar payments made by listed accountable persons but it does not apply to payments already covered by PAYE or the construction industry tax deduction scheme. The tax also applies to payments made by health insurers under contracts of insurance to cover fees for services provided by medical practitioners in certain circumstances.

Relevant Contract Tax (RCT)

RCT is a withholding tax which applies to payments made by a principal contractor (as defined) to a subcontractor under a "relevant contract" (a contract to carry out, or supply labor for the performance of relevant operations in most commonly, the construction, forestry or meat processing industries; however, it can also apply to contracts with non-construction type entities, i.e., hospitals, banks, telecommunication companies, oil and gas undertakings, supermarkets, utility companies and local authorities).

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[25] Taxes Consolidation Act 1997, ss 627–629C as inserted by the Finance Act 2018, s 32.

RCT applies to both resident and nonresident contractors operating in the construction, forestry or meat processing industry. RCT does not apply to professionals such as architects, surveyors, etc. Since January 1, 2016, the scope of RCT was extended to relevant contracts carried out in designated areas on the Continental Shelf.

Inheritance and Gift Tax

In Ireland, an inheritance and gift tax, known as capital acquisitions tax (CAT), is imposed at 33 percent on the amount exceeding a specified tax-free threshold. The threshold varies depending on the relationship between donor and beneficiary.

The charge to CAT for gifts or inheritances will generally arise where:

- the disponer (the person providing the benefit) is resident or ordinarily resident in Ireland;
- the beneficiary is resident or ordinarily resident in Ireland; or
- the subject matter of the gift or inheritance is situated in Ireland.

Special rules apply to nondomiciled disponers and beneficiaries.

The tax is charged on the taxable value of the gift or inheritance. The taxable value is arrived at by deducting, from the market value of the property comprised in the gift or inheritance, permissible debts and incumbrances and any consideration paid by the beneficiary.

Once the taxable value of the gift or inheritance has been determined the amount of tax payable will depend on whether the appropriate tax-free threshold has been exceeded.

Probate documentation, relevant information and ancillary documents can now be submitted electronically.

Excise Duties

Excise duties are levied on various items, including alcohol and alcoholic beverages, sugar sweetened drinks, tobacco products and most hydrocarbon oil products.

In addition, Ireland applies duties to the importation of motor vehicles (known as VRT). VRT is chargeable on the registration of motor vehicles (including motorcycles) in Ireland. All motor vehicles in Ireland, other than those brought in temporarily by visitors, must be registered with Irish Revenue. A vehicle must be registered before it can be licensed for road tax purposes. The current VRT regime is based on a CO2 emissions rating system and charged on the "open market selling price" of the vehicle.

Planning Point: Implementation of Pillar Two of the OECD Two-Pillar Solution

Ireland is a signatory to the *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, issued by the OECD on October 8, 2021. The second element of that solution, Pillar Two, seeks to limit corporate tax competition between jurisdictions by implementing an effective 15 percent global minimum corporate tax rate for large multinational entities.

Within the EU, the global minimum tax provisions of Pillar 2 will be implemented through the EU Directive on minimum taxation (Directive (EU) 2022/2523), published in the EU Official Journal on December 22, 2022. Under the Directive, the effective 15 percent global minimum rate will apply to all groups, multinational and domestic, having an annual turnover exceeding 750 million euros and which have either a parent company or a subsidiary in an EU Member State. Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by December 31, 2023. It is envisaged that these measures will apply to financial years beginning after December 31, 2023.

For further information on the Two-Pillar Solution, see the Bloomberg Tax "OECD Two-Pillar Solution Global Tax Agreement Watch".

10. Special Industries

10.1. Oil, Gas and Mineral Extraction

Profits from working scheduled minerals, mineral compounds or mineral substances, working minerals, petroleum activities, and dealing in or developing land (other than profits from construction operations and the disposal of residential development land) are subject to tax at the higher rate of corporation tax or 25 percent.

A Petroleum Production Tax (PPT) applies to oil and gas licenses granted on or after June 18, 2014. The rate of PPT ranges from 5 percent to 40 percent and is charged in addition to the existing 25 percent rate of corporation tax on oil and gas activities. However, the PPT payable is deductible against taxable profits resulting in a maximum marginal tax rate on oil and gas production of 55 percent.

10.2. Banking and Finance

Until the end of 2023, a levy applies (with certain exceptions) to Irish banks and building societies, or their EU equivalents with branches in Ireland, which collect deposit interest retention tax (DIRT) (for which see Section 6.5.1). The amount payable is 308 percent of the DIRT paid by the bank or building society in 2019 ("the base year"). The levy is not payable if the amount of DIRT paid by the financial institution did not exceed 100,000 euros in the base year. The levy cannot be claimed as a deduction or a credit in computing any other tax or duty.

About the Authors

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Andrew is Head of Tax at Maples and Calder, the Maples Group's law firm in Dublin. He is an acknowledged leader in Irish and international tax and advises companies, investment funds, banks and family offices on Ireland's international tax offerings. Andrew is chair of the Irish Debt Securitisation Association, the industry group representing the Irish securitisation industry. Prior to joining the Maples Group, Andrew was a senior partner with a large Irish law firm, and before that a tax consultant with Ernst & Young. He has been recommended by a number of directories, including *Chambers and Partners: The Legal 500*, *Who's Who Legal*, *World Tax*, *Best Lawyers*, *International Tax Review's World Tax Guide* and the *Tax Directors Handbook*. Andrew has been endorsed in Practical Law Company's *Tax on Transactions* multi-jurisdictional guide. Andrew is also the joint author of the book *Taxing Financial Transactions*, Irish Taxation Institute.

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